

**THE LICENSEES (CAPITAL ADEQUACY)(AMENDMENT)  
RULES, 2022**

*Made:* 1 September 2022

*Coming into Operation:* 2 September 2022

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by section 15 of *The Protection of Investors (Bailiwick of Guernsey), 2020*<sup>1</sup> (the “Law”) hereby makes the following Rules.

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<sup>1</sup> Order in Council No. XVIII of 2020.

### Citation and Commencement

1. These Rules may be cited as The Capital Adequacy (Amendment) Rules, 2022 and amend the Licensees (Capital Adequacy) Rules, 2021<sup>2</sup> (“the Rules”).
2. These Rules shall come into force on 2 September 2022.

### Amendments

3. The Rules are amended in accordance with Annex A.

Dated this 1<sup>st</sup> day of September, 2022

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

J.P. WINSER

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

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<sup>2</sup> No.140 of 2021.

## Annex A

### Amendments to The Licensees (Capital Adequacy) Rules, 2021

1. In this section underlining indicates new text, to be added to the Rules, and striking through indicates text to be deleted:

#### PART 2 FINANCIAL RESOURCES

##### 2.1 Financial resources requirements

- (1) A licensee must, at all times, maintain ~~the following financial resources of~~  
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  - (a) for the designated trustee or designated custodian of an open-ended collective investment scheme, net assets of not less than £4,000,000;
    - ~~(i) net assets of £4,000,000; and~~
    - ~~(ii) minimum professional indemnity insurance cover of either £300,000 or three times the total revenue, whichever is greater, the excess of which must not exceed 20% of the total insured;~~
  - (b) for the designated administrator of a collective investment scheme, not less than net assets of not less than £100,000 or the amount equal to the expenditure-based requirement as shown by the latest annual financial statements submitted to the Commission, whichever is greater;

- ~~(i) net assets of £100,000 or net assets equal to the expenditure-based requirement as shown by the latest annual financial statements submitted to the Commission, whichever is greater; and~~
  
- ~~(ii) minimum professional indemnity insurance cover of either £300,000 or three times the total revenue, whichever is greater, the excess of which must not exceed 20% of the total insured;~~
  
- (c) in the case of an entity which does not fall under (a) or (b) but is licensed, authorised, or registered under –
  - (i) The Banking Supervision Law<sup>1</sup>;
  
  - (ii) The Insurance Managers and Insurance Intermediaries Law<sup>2</sup>;
  
  - (iii) The Insurance Business Law<sup>3</sup>; or
  
  - (iv) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. Law<sup>4</sup>,

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<sup>1</sup> The Banking Supervision (Bailiwick of Guernsey) Law, 2020, Order in Council No. XX of 2020.

<sup>2</sup> The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, Order in Council No. XXII of 2002.

<sup>3</sup> The Insurance Business (Bailiwick of Guernsey) Law, 2002, Order in Council No. XXI of 2002.

<sup>4</sup> The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020, Order in Council No. XIX of 2020.

~~capital and solvency requirements as set out under the relevant law and where confirmed, in writing by the Commission, those financial resources as set out under the relevant law;~~

- (d) in the case of a licensee with no physical presence, meaning staff and premises, in the Bailiwick ~~who~~ which does not fall under (a), (b), or (c) net assets the higher of –

(i) £10,000; or

(ii) ~~net assets and professional indemnity insurance cover~~ an amount which is, in the opinion of its directors, sufficient to meet its commitments and to withstand the risks to its business;

- (e) in all other cases, net assets of not less than £25,000 or the amount equal to the expenditure-based requirement, whichever is greater.

~~(i) net assets of £25,000 or net assets equal to the expenditure-based requirement, whichever is greater; and~~

~~(ii) minimum professional indemnity insurance cover of £250,000 or three times total revenue, whichever is the greater, the excess of which must not exceed 20% of the total insured.~~

- (2) Licensees must follow the framework for the calculation of financial resources requirements as set out at Schedule 1.

## PART 2A INSURANCE ARRANGEMENTS

### 2A.1 Insurance arrangements

- (1) A licensee must maintain insurance cover which is commensurate with the size and nature of its business. Cover must include professional indemnity insurance and insurance against employee dishonesty or fraud.

### 2A.2 Minimum indemnity limit and excess of the PII policy

- (1) For the designated trustee, or designated custodian, of an open-ended collective investment scheme, and the designated administrator of a collective investment scheme, the minimum indemnity limit for any one claim, and in the aggregate, must equal or exceed the greater of –

(a) three times relevant income; or

(b) £1,000,000,

where the relevant income is based on the latest audited financial statements or, for new businesses, estimated figure for the first year.

- (2) A licensee with no physical presence, meaning staff and premises, in the Bailiwick which does not fall under rule 2A.2 (1), must maintain PII cover which is, in the opinion of its directors, sufficient to meet its commitments and to withstand the risks to its business.
- (3) In all other cases, the minimum indemnity limit for any one claim, and in the aggregate, must equal or exceed the greater of –

(a) three times relevant income; or

(b) £250,000.

where the relevant income is based on the latest audited financial statements or, for new businesses, estimated figure for the first year.

- (4) For the purpose of this Part, “relevant income” means income from controlled investment activity and any other regulated activity, where applicable.
- (5) Notwithstanding (1) to (3), a licensee is not required to have aggregate insurance cover exceeding £10,000,000 provided that the Board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the Board assessment if requested by the Commission.
- (6) Where the licensee also carries out unregulated activities, the licensee must consider whether the minimum indemnity limit of its PII policy, and scope of the PII cover, are appropriate for its businesses, considering possible claims that may also arise from unregulated business.
- (7) Where a licensee also holds a licence under another Regulatory Law, the licensee must meet the PII rules under whichever regime requires the highest aggregate minimum indemnity limit, unless otherwise instructed by the Commission.

### 2A.3 Scope of cover

- (1) A licensee must maintain, at all times, cover for –
  - (a) negligence, errors, or omissions by the licensee or its employees;
  - (b) any liability for the dishonest or fraudulent acts of employees which may fall on the licensee;
  - (c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;
  - (d) liabilities which the licensee might incur, in any jurisdiction, in which it should reasonably foresee that it may be held liable for damages and costs;
  - (e) where relevant, ombudsman awards; and
  - (f) legal defence costs.

### 2A.4 Captive insurance

- (1) Where a licensee relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business

Law<sup>5</sup>, or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man or a country which is a full member of OECD.

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## PART 5 GENERAL PROVISION

### 5.1 Interpretation

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(2) In these Rules the following definitions should be followed –

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**“adjustments”** means –

- (a) deductions for non-current assets which includes any investment in a subsidiary, debtors arising from sales or other transactions to associates, any deficiencies where the liabilities of a subsidiary of a licensee exceed its assets, and any other assets specified, in writing, by the Commission; ~~and~~
- (b) additions for creditors arising from purchases or other transactions from associates and other liabilities specifically permitted in both cases, in writing, by the Commission; and
- (c) deduction of the amount of the excess on licensee’s PII policy;

**“annual audited expenditure”** means either –

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<sup>5</sup> The Insurance Business (Bailiwick of Guernsey) Law, 2002, Order in Council No. XXI of 2002.

## PART 6 TRANSITIONAL ARRANGEMENTS, REVOCATIONS, CITATION AND COMMENCEMENT

### 6.1 Transitional Arrangements

- (1) Confirmations, issued by the Commission under rule 2.2.3 of The Licensees (Capital Adequacy) Rules, 2010, will be accepted as having been issued under these Rules.
- (2) Any other exclusion or modification granted by the Commission, under The Licensees (Capital Adequacy) Rules, 2010, will continue to apply where the Law and these Rules provide the scope for such exclusions or modifications.
- (3) Licensees must comply with the amendments made to these Rules, by the Licensees (Capital Adequacy) (Amendment) Rules, 2022, at their next insurance renewal following the date on which the Licensees (Capital Adequacy)(Amendment) Rules, 2022 come into force.

### 6.2 Revocations

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## EXPLANATORY NOTE

The Commission recognised that there are differences between insurance requirements under the Fiduciary, Investment and Insurance frameworks and that the relevant rules have been applied unchanged for many years. Consequently, the Commission was prompted to review the requirements under the Capital Adequacy Rules (*along with the Fiduciary Rules, the Insurance Managers Rules and the Insurance Intermediaries Rules*).

Following a public consultation, the proposed changes are being adopted and these amendments are being made to effect the changes.

Overall, the objective is to ensure that insurance requirements remain fit for purpose and consistent with the minimum licensing criterion to conduct business in a prudent manner, thereby helping to ensure appropriate levels of customer protection are maintained.

