

THE FIDUCIARY (AMENDMENT)(No.2) 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 sections 34 and 35 of *The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), 2020*¹ (the “Law”) hereby makes the following Rules.

¹ Order in Council No. XIX of 2020.

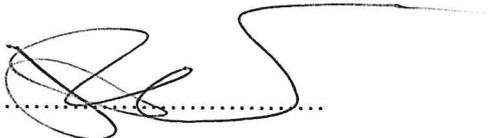
Citation and Commencement

1. These Rules may be cited as The Second Fiduciary Amendment Rules, 2022 and amend the Fiduciary Rules, 2021² (“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 1st day of September, 2022

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. The signature is written over a horizontal dotted line.

J.P. WINSER

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

² No.134 of 2021.

Annex A

Amendments to The Fiduciary Rules, 2021

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

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4.1 Insurance arrangements

- (1) A licensed fiduciary must maintain ~~professional indemnity~~ insurance (“PII”) cover which is commensurate with the size and nature of its business. Cover must include professional indemnity insurance (“PII”) and insurance against employee dishonesty or fraud.
- (2) ~~The Subject to (2A), the minimum indemnity limit for any one claim, or for aggregate claims, must be the greater of~~ and in the aggregate must equal or exceed the greater of-
 - (a) three times turnover from regulated activities; or
 - (b) £1,000,000,

where the turnover from regulated activities shall be taken from the ~~previous year’s~~ latest audited financial statements or, for new businesses, estimated turnover for the first year.

- (2A) A licensed fiduciary 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.

(2B) Where the licensed fiduciary also carries out unregulated activities, the licensed fiduciary must consider whether the minimum indemnity limit of its PII policy and scope of the PII cover are appropriate for its business as a whole, taking into account possible claims that may also arise from non-fiduciary business.

(2C) Where a licensed fiduciary also holds a licence under another Regulatory Law the licensed fiduciary must meet the PII rules under whichever regime requires the highest aggregate minimum indemnity limit, unless otherwise instructed by the Commission.

~~(3) Any excess must not exceed 3% of turnover from regulated activities.~~

(4) For a licensed fiduciary, which holds a primary or secondary fiduciary licence, the Commission will consider arrangements under group policies ~~or, where its parent or ultimate parent is of sufficient stature, for self insurance.~~ Where a licensed fiduciary relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man, or a country which is a full member of the OECD.

(5) A licensed fiduciary must maintain, at all times, cover for policies must include cover against –

- (a) negligence, errors, or omissions by the licensed fiduciary, or its employees;
- (b) any liability for the dishonest or fraudulent acts of employees which may fall on primary or secondary fiduciary licensees;
- (c) liabilities of its employees who, in the course of their duties to the licensed fiduciary, perform functions in their own names; and
- (d) liabilities which the licensed fiduciary might incur in any jurisdiction in which it ~~carries on business.~~ should reasonably foresee that it may be held liable for damages and costs;

(e) where relevant, ombudsman awards; and

(f) legal defence costs.

(6) Licensed fiduciaries must also ensure that they hold insurance policies which cover -

(a) loss and theft of data; and

(b) liability for the replacement, restoration, or reconstruction of data.

(7) A licensed fiduciary must have adequate procedures in place to ensure compliance with all terms and conditions set out in its PII policy particularly in relation to the timely notification of events, to its insurer, which may lead to a claim on the policy.

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PART 7 – REVOCATIONS, TRANSITIONALS, CITATION AND COMMENCEMENT

7.1 Revocations

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7.1.3 Revocation of The Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012

7.1.A Transitional provision

- (1) Licensees must comply with the amendments made to rule 4.1, by the Fiduciary (Amendment)(No.2) Rules, 2022, at their next insurance renewal following the date on which the Fiduciary (Amendment)(No.2) Rules, 2022 come into force.

7.2 Citation and commencement

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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 Fiduciary Rules (*along with the Capital Adequacy 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.

