

GUERNSEY STATUTORY INSTRUMENT

2008 No. 3

GREFFE
ROYAL COURT

22 JAN 2008

GUERNSEY

**Regulation of Fiduciaries, Administration Businesses and
Company Directors, etc (Bailiwick of Guernsey) (Amendment)
Regulations, 2008**

<i>Made</i>	<i>21st January, 2008</i>
<i>Laid before the States</i>	<i>, 2008</i>
<i>Coming into operation</i>	<i>23rd January, 2008</i>

THE POLICY COUNCIL, in exercise of the powers conferred on it by paragraph 6 of Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^a, and after consultation with the Guernsey Financial Services Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, hereby makes the following regulations:-

Amendment to Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000.

1. For Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, substitute the following -

"SCHEDULE 1

MINIMUM CRITERIA FOR LICENSING.

^a Order in Council No. I of 2001; amended by No. XIV of 2003; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

Integrity and skill.

1. (1) The business of the applicant or licensed fiduciary is or, in the case of a person who is not yet carrying on a regulated activity, will be carried on –

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of his activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his business, the applicant or licensed fiduciary shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles and instructions issued from time to time under this Law and under any other enactment as may be applicable to him.

Economic benefit.

2. Repealed.

Fit and proper persons.

3. (1) The applicant or licensed fiduciary is a fit and proper person to hold a fiduciary licence and, in the case of a full fiduciary licence, every person who is, or is to be, a director, controller, partner or manager of the applicant or licensed fiduciary is a fit and proper person to hold that position.

(2) In determining whether a person is a fit and proper person to hold a fiduciary licence or a particular position, regard shall be had to -

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed fiduciary or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of clients of the applicant or licensed fiduciary are, or are likely to be, in any way threatened by his holding a fiduciary licence or that position,
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) - - (Bailiwick of Guernsey) Law, 1991,

- (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007,
 - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, or
 - (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced in paragraph 1(2).

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has -

(a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,

(b) contravened any provision contained in or made under

-

(i) this Law,

(ii) the regulatory Laws,

(iii) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, rules, instructions and guidance issued by the Commission in relation thereto), or

(iv) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -

(A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities, banking, insurance, investment or other financial services; or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a

state of "désastre"),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on regulated activities, or

(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

(4) For the purposes of this paragraph and for the avoidance of doubt,

(a) "conduct and activities" includes any conduct, activity or omission in any jurisdiction,

(b) "offence" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

(c) "enactment" includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Business to be directed by at least two individuals.

4. (1) In the case of a full fiduciary licence, at least two individuals who are –

- (a) resident in the Bailiwick,
- (b) of appropriate standing and experience, and
- (c) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensed fiduciary.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

Composition of board of directors.

4A. Where the applicant or licensed fiduciary is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

Business to be conducted in prudent manner.

5. (1) The licensed fiduciary conducts or, in the case of a person who is not yet carrying on a regulated activity, will conduct his business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), a person shall not be regarded as conducting his business in a prudent manner unless –

(a) he maintains or, as the case may be, will maintain –

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) he maintains or, as the case may be, will maintain adequate liquidity, having regard to –

(i) the relationship between his liquid assets and his actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and his assets will mature,

(iii) the nature and scale of his operations,

(iv) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company, and

(v) any other factors appearing to the Commission

to be relevant,

- (c) in the case of a full fiduciary licence, he makes or, as the case may be, will make adequate provision for –
 - (i) depreciation or diminution in the value of his assets (including provision for bad or doubtful debts),
 - (ii) liabilities which will or may fall to be discharged by him, and
 - (iii) losses which he will or may incur, and
- (d) he maintains or, as the case may be, will maintain –
 - (i) adequate accounting and other records of his business, and
 - (ii) adequate systems of control of his business and records.

(3) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether a person is to be regarded as conducting his business in a prudent manner, to the following -

- (a) in the case of a full fiduciary licence, whether the applicant or licensed fiduciary has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,

- (b) the systems of control and record keeping of the applicant or licensed fiduciary for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems,
 - (c) the complaints history of the applicant or licensed fiduciary, and
 - (d) in the case of a full fiduciary licence, whether the structure or organisation of the group of which the applicant or licensed fiduciary is a part, hinders effective supervision.
- (4) For the purposes of –
- (a) subparagraph 2(a), an appropriate amount is –
 - (i) an amount commensurate with the nature and scale of his operations, and
 - (ii) an amount and nature sufficient to safeguard the interests of his clients, having regard to –
 - (A) the nature and scale of the his operations,
 - (B) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company, and

- (C) any other factors appearing to the Commission to be relevant,
-
- (b) subparagraph 2(b), in considering the liquid assets of a person, the Commission may, to such extent as it thinks appropriate, take into account -
 - (i) the assets of the person, and
 - (ii) the facilities which are available to him and which are capable of providing liquidity within a reasonable period, and
-
- (c) subparagraph 2(d),
 - (i) records and systems shall not be regarded as adequate unless they are such as to enable -
 - (A) the business of the person to be managed prudently, and
 - (B) the person to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 3(2)(f), and
 - (ii) where the person is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

5A. The applicant, licensed fiduciary and any person who is, or is to be, a director, controller, partner or manager of the applicant or licensed fiduciary, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

Power to make regulations.

6. The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, make regulations amending the provisions of this Schedule."

Interpretation.

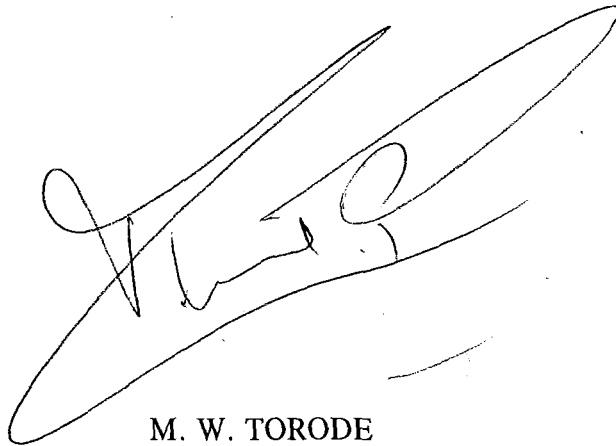
2. (1) In these Regulations, unless the context requires otherwise, "enactment" means any Law, Ordinance, and any subordinate legislation made thereunder.

(2) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

3. (1) These Regulations may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008 and shall come into force on the 23rd day of January, 2008.

Dated this 21st day of January, 2008

A handwritten signature in black ink, appearing to read 'M. W. Torode', is written over a horizontal line. The signature is stylized and cursive.

M. W. TORODE

Chief Minister

For and on behalf of the Policy Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the minimum criteria for licensing in respect of an applicant or licensed fiduciary or directors, controllers, partners and managers in an applicant or licensed fiduciary under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2002.