Changes to fiduciary regulation in Guernsey

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Guernsey's fiduciary sector was one of the first in the world to be comprehensively regulated.

Since April 2001, subject to a narrow range of exemptions, anyone offering trust and corporate services from Guernsey for a fee has had to be licensed by the Guernsey Financial Services Commission. The regulatory regime has been revised recently: The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the **Law**) came into effect on 1 November 2021, replacing the 2000 iteration of that law, and was accompanied by the Fiduciary Rules and Guidance, 2021 (the **Rules**) which set out the standards to be met by licensed fiduciaries.

Although the revised regime in the main standardises and consolidates laws and rules that already existed, a few significant changes have been introduced.

Foundations

A key change is that it is now possible for a foundation to seek a full fiduciary licence to offer services including the formation, management or administration of trusts, and company or corporate administration. This is because the Law introduces a new definition of "Bailiwick body", which includes a foundation. Previously, only companies or partnerships could apply for a full licence, and foundations were unlikely to be included in those categories. This change provides welcome clarity for the sector and expands Guernsey's fiduciary offering.

Client money

The Rules are much more detailed than the previous code of conduct, and include new requirements on handling client money that bring Guernsey's regulatory regime into line with the Standard on the Regulation of Trust and Corporate Service Providers issued by the Group of International Finance Centre Supervisors (the **GIFCS Standard**).

Money held or received on behalf of a client or controlled by a licensed fiduciary in the course of carrying on a regulated activity under the Law must be held separately from the licensed fiduciary's own money and another client's money. This requirement does not apply to multi-member pension schemes or "pooled accounts". However the "pooled accounts" exemption applies only in limited circumstances, for example to receive client funds immediately prior to opening a client bank account. Moreover, if a licenced fiduciary wishes to hold client monies in a pooled account, they are required to clearly and specifically agree this with the client.

There are a number of additional requirements, for example that the payment away of client monies must be subject to a dual signature regime, and that prior to holding or receiving any fiduciary client money into a client bank account, a licensed fiduciary must receive a written acknowledgement from the bank that the bank is not entitled to combine the account with any other account or exercise any right of set-off or counterclaim against money in the account in respect of a debt or other obligation owed to it by the licensee. The Rules also state that a licenced fiduciary must not withdraw fiduciary client money to pay for outstanding fees unless permitted under the trust deed, the terms of business, or with the agreement of the client.

We have seen instances where the client money rules have come to the aid of a licensee or their client. In the context of a change of trustee or a termination request it can be helpful to be able to point to the Rules where, for example, an outgoing trustee seeks to hold onto client money to defray fees or expenses.

Terms of business

Whereas the previous code of conduct required licensees to agree a clear fee structure with their clients, the Rules are far more prescriptive. A licensed fiduciary must inform any person with whom it proposes to enter into a contract or agreement in respect of the provision of regulated activities, in writing, of its terms of business and must retain a record of that person’s agreement to those terms. The agreement has to include, among other things, a clear description of the services to be provided, the fees - including exit fees - to be charged, including the nature and scale of the fees and the basis of the calculation of those fees, a record of who is responsible for requests for action and how these are to be given, and the means of complaint. The requirement for clarity upfront should help to prevent disputes, including over fees.

Conclusion

Increased regulation can be burdensome for corporate trustees, but there are clear benefits for Guernsey's fiduciary sector of having a regulatory regime that is not only aligned to international standards but reflects prevailing best practice. The Rules are specific and easy to understand which should help to prevent misunderstanding or disagreement between trustees and their clients.

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