

Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627.

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REGULATIONS 2020**

LN.2020/033

Commencement

15.1.2020

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In exercise of the powers conferred upon the Minister under sections 6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of the Financial Services Act 2019, the Minister has made these Regulations.

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Fiduciary Services) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

“AML Guidance Notes” means the guidance notes issued by the GFSC in relation to systems of control to prevent the financial system from being used for money laundering or terrorist financing activities;

“auditor”, in relation to a fiduciary services provider, means the person appointed by the provider to be its auditor for the purpose of the Act and these Regulations and who is in office at that time;

“authorised credit institution” means a credit institution with a Part 7 permission or a credit institution that has received authorisation under Article 8 of the Capital Requirements Directive from its home state regulator and that has exercised its EEA right under Part 2 of Schedule 10 of the Act;

“customer” means any person for whom a fiduciary services provider carries on or intends to carry on the activity of a fiduciary services business, and includes a potential customer;

“electronic money” has the same meaning as in paragraph 12 of Schedule 2 to the Act;

“fiduciary services business” means a regulated activity specified in paragraph 126 or 131 of Schedule 2 to the Act;

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“fiduciary services provider” means a person with a Part 7 permission to carry on fiduciary services business;

“financial instrument” has the meaning given in paragraph 44(1) of Schedule 2 to the Act;

“financial year”, in relation to a fiduciary services provider, means—

- (a) the period beginning with the day on which the provider commences to carry on fiduciary services business and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the provider is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the provider is so prepared;

“management agreement” means the agreement to be entered into by a fiduciary services provider and each customer for the provision of fiduciary services business by the fiduciary services provider;

“money” includes any form of money, whether represented by a cheque, or other payable order, or otherwise;

“Part 7 permission” means a permission under Part 7 of the Act;

“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the provision of fiduciary services business, regulation 77; and

“regulatory system” means the arrangements for regulating a fiduciary services provider under the Act, these Regulations and any other subsidiary legislation, rules or directions made under the Act.

(2) In these Regulations any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of these Regulations and required or allowed by that provision to be given in a note to the fiduciary services provider’s financial statements.

Professional trustees and foundation councillors

Scope of permission as professional trustee or foundation councillor.

3.(1) Where a person has a Part 7 permission to carry on the regulated activity specified—

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- (a) in paragraph 131(1) of Schedule 2 to the Act, of acting as a professional trustee;
or
- (b) in paragraph 131(2) of that Schedule, of acting as a professional trustee and professional foundation councillor,

that permission extends to the carrying on by that person of the regulated activity specified in paragraph 126 of Schedule 2 to the Act, of administering any company, foundation, partnership or unincorporated association.

(2) A person who, by virtue of sub-regulation (1), carries on a regulated activity specified in paragraph 126 of Schedule 2 to the Act must comply with the requirements imposed by or under the Act on persons who have a Part 7 permission to carry on that regulated activity.

Permission to act as foundation councillor.

4. No person may be given permission to carry on the regulated activity of acting as a professional foundation councillor otherwise than by the grant of a Part 7 permission to carry on the regulated activity specified in paragraph 131(2) of Schedule 2 to the Act, of acting as a professional trustee and professional foundation councillor.

Individual fiduciary service providers

Application to fiduciary services providers who are individuals.

5.(1) The provisions listed in sub-regulation (2) do not apply to an individual who has permission to carry on the regulated activities specified in—

- (a) paragraph 126 of Schedule 2 to the Act (administering any company, foundation, partnership or unincorporated association); or
- (b) paragraph 131(1) or (2) of that Schedule (acting as a professional trustee or acting as a professional trustee and foundation councillor).

(2) Those provisions are—

- (a) regulations 19 to 26;
- (b) regulation 27(2);
- (c) regulation 43;

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- (d) regulations 55 to 64;
- (e) regulations 65(b), 67 to 73; and
- (f) the Schedule.

(3) In respect of an individual to whom sub-regulation (1) applies, the notification obligations under regulation 66 apply—

- (a) only to the extent that those obligations are relevant to the carrying on of fiduciary services business by an individual; and
- (b) with any modification which is necessary to reflect that fiduciary services business is being carried on by an individual.

PART 2
CONDUCT OF BUSINESS

Customer relations

Advertising by fiduciary services provider.

6.(1) A fiduciary services provider that issues an advertisement concerning the provision of fiduciary services must ensure that—

- (a) the advertisement identifies the fiduciary services provider as the issuer; and
- (b) the contents and presentation of the advertisement are fair and not misleading.

(2) A fiduciary services provider who becomes aware that a business associate for whom it provides fiduciary services is itself advertising those services in such a way as may be detrimental to Gibraltar's reputation as a financial centre must report the matter to the GFSC without delay.

Communication with customer.

7.(1) A fiduciary services provider must take all reasonable steps to ensure that any agreement, written communication, notification or information provided to a customer—

- (a) is presented clearly;
- (b) is fair and not misleading; and

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(c) sets out in adequate detail the basis on which its services are provided.

(2) A fiduciary services provider must not, in any written communication or management agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which it has under the regulatory system;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer of fiduciary services business; or
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of fiduciary services business, subject to compliance by the customer with the customer's obligations under the management agreement.

Management agreement.

8.(1) A fiduciary services provider must enter into a management agreement with each customer.

(2) The management agreement must—

- (a) describe and govern the relationship between the fiduciary services provider and the customer; and
- (b) clearly set out their respective functions, duties and responsibilities.

(3) The management agreement must at a minimum cover the following points—

- (a) the scope of the duties of the fiduciary services provider;
- (b) the extent, if any, to which the fiduciary services provider must give advice;
- (c) a requirement that the fiduciary services provider observes all obligations imposed on the trusts, companies, foundations, partnerships or other bodies under management, whether incorporated or unincorporated, by all relevant authorities and makes all records available as required by law or authorised by the customer;
- (d) confidentiality arrangements which must include a proviso that the fiduciary services provider may breach customer confidentiality if required by law;
- (e) the governing law and jurisdiction;

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- (f) the remuneration, fees or charges payable to the fiduciary services provider, including transfer or exit fees if any;
- (g) the manner in which instructions are to be given and on whose instructions the fiduciary services provider is to act;
- (h) a requirement that the customer must notify the fiduciary services provider of any material changes in its activities; and
- (i) a requirement that the customer must notify the fiduciary services provider, in advance, of any changes in beneficial ownership.

Confidentiality undertaking by staff.

9.(1) A fiduciary services provider must require its staff to sign an undertaking of confidentiality that complies with sub-regulations (2) and (3).

(2) The undertaking must cover—

- (a) all information that the member of staff receives or to which he or she has access in the course of work or provision of services for the fiduciary services provider;
- (b) all materials of any kind to which the member of staff may have access in the offices of, or in the course of work or provision of services for, the fiduciary services provider; and
- (c) the business activities of the fiduciary services provider.

(3) The undertaking must be subject to—

- (a) any disclosure of information to a relevant authority as required by law; or
- (b) the disclosure of information in accordance with the management agreement between the fiduciary services provider and the customer.

(4) A fiduciary services provider must ensure the confidentiality of each customer's affairs.

Customer due diligence.

10. A fiduciary services provider must know its customers and must have regular contact with them to establish the nature of the activities and assets of any trusts, companies,

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foundations, partnerships or other bodies under management, whether incorporated or unincorporated, and to ensure that it is informed of any material changes.

Companies under management

Duties of director provided by fiduciary services provider.

11.(1) This regulation applies to a person (“the director”) provided by a fiduciary services provider to act as a director of one or more companies under management by the fiduciary services provider.

(2) The director must–

- (a) acquaint himself or herself with the duties and responsibilities attached to each appointment;
- (b) be aware of and accept the implications arising out of his or her position as director; and
- (c) act in accordance with those obligations.

(3) Sub-regulation (1) applies regardless of the jurisdiction in which the company is incorporated or registered.

(4) The director may take account of advice given to him or her by shareholders, fellow directors or beneficial owners, but must not act in accordance with such advice where this would result in illegality, impropriety or recklessness.

(5) The director must–

- (a) obtain and maintain an adequate knowledge of the business and activities of each company for which he or she acts; and
- (b) maintain full and effective control over all companies for which he or she acts.

Powers of attorney.

12.(1) A power of attorney must be issued for a specific purpose and for a defined period of time not normally exceeding 12 months and must wherever possible include a requirement for the attorney to report to the directors of the company under management any action taken by virtue of the powers granted and to provide any relevant supporting documentation.

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(2) A fiduciary services provider who provides directorship services to a customer must ensure that effective control of the company is not removed from the directors by the issuance of powers of attorney.

(3) Nothing in this regulation detracts from or otherwise affects the formalities required under Gibraltar law for the execution of a power of attorney.

Termination and transfer of customers.

13.(1) The property of any trusts, companies, foundations, partnerships or other bodies under management, whether incorporated or unincorporated, subject to any statutory or common law lien specified in the management agreement, must be handed over by the fiduciary services provider, if required, without delay or fee on termination of the management agreement unless such fee is specified in the management agreement.

(2) A termination arrangement must provide for a notice period sufficient to give the trusts, companies, foundations, partnerships or other bodies under management, whether incorporated or unincorporated, time to make alternative arrangements and provide for the proper and orderly transfer of business in the event of cessation of fiduciary services business by the fiduciary services provider.

Ethical standards

Money laundering prevention.

14.(1) A fiduciary services provider must establish and maintain specific policies, procedures and training programmes that promote high ethical standards in order to prevent the business of the fiduciary services provider and the financial system generally being used to launder money.

(2) The policies, procedures and training programmes required under sub-regulation (1) must cover—

- (a) internal controls;
- (b) communication of policies;
- (c) identification procedures;
- (d) record keeping;
- (e) recognition of, and procedures for reporting, suspicious transactions; and

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(f) education and training.

(3) A fiduciary services provider must act in accordance with the requirements of the AML Guidance Notes.

Conflict of interest.

15.(1) A fiduciary services provider must make all efforts to avoid a conflict of interest–

(a) between itself and a customer; or

(b) between customers.

(2) A fiduciary services provider–

(a) must not unfairly put its own interests before those of a customer or customers;
and

(b) must place the interests of a customer before its own if a properly informed customer would reasonably expect it do so.

(3) A fiduciary services provider who is acting for a customer must–

(a) not claim it is independent or impartial if it is not; and

(b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Disclosure of interest.

16.(1) This regulation applies if a fiduciary services provider–

(a) has a material interest in a customer transaction; or

(b) has a relationship that gives rise to a conflict of interest in relation to a customer transaction.

(2) The fiduciary services provider must not knowingly enter into the transaction unless it has–

(a) fairly disclosed the interest or relationship, as the case may be, to the customer;
and

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(b) taken reasonable steps to ensure that the interest or relationship does not adversely affect the interests of the customer.

(3) In this regulation, “customer transaction” means a transaction to be entered into with or on behalf of a customer.

Inducements prohibited.

17. A fiduciary services provider must take all reasonable steps to ensure that neither it nor any of its directors, agents or staff offers, gives, solicits, or accepts any inducement that is likely to conflict with any duty owed to a customer.

PART 3
CORPORATE GOVERNANCE AND RISK MANAGEMENT

Governance

Governance of fiduciary services provider.

18.(1) The mind and management of a fiduciary services provider must be located in Gibraltar.

(2) The provision of fiduciary services business by a fiduciary services provider must take place in or from Gibraltar except that, in exceptional circumstances and when appropriate, a fiduciary services provider may grant limited powers of attorney to other parties.

(3) For the purposes of determining where the mind and management is located, the following factors must be taken into account (but without limiting the relevance of other factors)–

- (a) where the day-to-day management decisions are taken;
- (b) where management and staff responsible for central administration and control perform their functions;
- (c) where management are located who are able to answer the full range of questions from the GFSC about the day-to-day running of the fiduciary services provider;
- (d) if other parties are able to commit the fiduciary services provider to accept fiduciary services business, where those parties are located;
- (e) whether management functions are exercised by other parties; and

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- (f) whether management functions are exercised outside of Gibraltar.

Fiduciary services provider must have directors.

19. A fiduciary services provider, whether incorporated as a company or not, must have a board or similar committee of directors or persons who fulfil the functions of a director of a company.

Functions of directors.

20. The directors of a fiduciary services provider—

- (a) are responsible for ensuring that the fiduciary services provider complies with the regulatory system;
- (b) are responsible for material errors, omissions and failures by the fiduciary services provider in carrying on its fiduciary services business and are expected to act promptly to remedy any breaches of the relevant regulatory requirements;
- (c) must establish and keep under review written policies on those aspects of the business of the fiduciary services provider that are of particular prudential significance;
- (d) must monitor compliance with those policies by staff of the fiduciary services provider; and
- (e) must deal openly and frankly with the GFSC on all matters relating to the prudent management of the fiduciary services provider's affairs.

Meetings of directors.

21.(1) A fiduciary services provider must have regular board meetings that—

- (a) are held in accordance with a pre-arranged agenda; and
- (b) receive from the management regular and comprehensive reports appropriate to the type and scale of the fiduciary services provider's fiduciary services business.

(2) A fiduciary services provider which is not a limited company must have procedures equivalent to the board meetings referred in sub-regulation (1).

Management

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Management structure.

22.(1) A fiduciary services provider must have not less than two executives who effectively direct its business.

(2) An executive must be—

- (a) a member of the board, that is, an executive director; or
- (b) a person appointed by the board with executive powers and who reports directly to the board.

(3) Despite sub-regulations (1) and (2), the GFSC may, in its discretion and depending on the situation of each fiduciary services provider, accept a different arrangement in relation to the provider's Part 7 permission.

Role of executives.

23.(1) Without limiting the scope of their role, the executives must demonstrate the qualities and application necessary to influence and perform the functions of—

- (a) formulating and implementing the strategy and day-to-day policies of the fiduciary services provider; and
- (b) managing risks so as to minimise the likelihood of major errors occurring with resulting detriment to the business of the fiduciary services provider.

(2) The executives must have sufficient experience and knowledge of the business and the necessary authority to detect and deal with any imprudence, dishonesty or other irregularity in the fiduciary services provider or in any trusts, companies, foundations, partnerships or other bodies, whether incorporated or unincorporated, under its management or which it administers.

Staff

Staffing levels.

24. A fiduciary services provider must be structured and staffed in a manner appropriate to the fiduciary services provider's operation, taking into account the extent and complexity of its fiduciary services business.

Qualifications and experience of staff.

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25. A fiduciary services provider must ensure that each member of its staff is appropriately qualified and experienced for the level of that person's responsibility.

Supervision and training of staff.

26.(1) A fiduciary services provider must establish and maintain procedures for the–

- (a) adequate supervision of its staff; and
- (b) for ensuring that each of those persons does not perform a function for which he or she is not qualified or competent to perform.

(2) A fiduciary services provider must–

- (a) provide, or provide access to, training courses for assisting staff in understanding and complying with the Fiduciary services provider's policies and procedures; and
- (b) encourage management staff to obtain recognised professional qualifications.

(3) A training course for staff must, where practical and available, include professional examinations.

Compliance

Compliance by fiduciary services provider.

27.(1) A fiduciary services provider must take reasonable steps (including the establishment and maintenance of appropriate procedures) to–

- (a) make its officers, employees and other representatives aware of their obligations under the Act, these Regulations and the regulatory system; and
- (b) ensure those persons act in conformity with the Act, these Regulations and the regulatory system.

(2) A fiduciary services provider must designate an appropriately skilled and experienced person as its compliance officer.

(3) A fiduciary services provider must ensure that sufficient information is recorded and retained about its regulated activities and compliance with the regulatory system.

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- (4) A fiduciary services provider must—
- (a) keep, for not less than six years, records that the regulatory system requires to be maintained; and
 - (b) make those records available for inspection by any person duly authorised by the GFSC to inspect them.

Complaints.

28.(1) A fiduciary services provider must have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

(2) A fiduciary services provider must maintain a complaints register for the purposes of recording a summary of each complaint received and the action taken.

(3) The register must be made available at all times for inspection by the GFSC, or any person duly authorised by the GFSC to carry out such an inspection.

Cessation of business

Cessation of business by fiduciary services provider.

29. A fiduciary services provider that proposes to cease its fiduciary services business must ensure to the satisfaction of the GFSC that any outstanding business is properly completed or transferred to another fiduciary services provider.

**PART 4
PRUDENTIAL REQUIREMENTS**

**CHAPTER 1
GENERAL**

Continuing compliance

Fiduciary services provider must continue to comply with authorisation conditions.

30. A fiduciary services provider must continue, after the GFSC has given it Part 7 permission to carry on fiduciary services business, to comply with any condition or requirement that the GFSC imposes on the provider's permission.

Financial resources

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Sufficient financial resources.

31.(1) A fiduciary services provider must maintain and be able to demonstrate sufficient financial resources commensurate with the nature and volume of its fiduciary services business.

(2) A fiduciary services provider must be solvent and able to meet the risks which it faces.

(3) A fiduciary services provider must maintain a minimum level of financial resources equivalent to three months' worth of operating expenses and the measure of these financial resources must be the net asset figure in the fiduciary services provider's balance sheet.

(4) In this regulation, "net assets" means the total assets of any type less the total liabilities of any type except for—

- (a) intangible fixed assets; and
- (b) related party balances (e.g. shareholders and directors and associated companies) unless in the ordinary course of business, outstanding balances are being settled under normal commercial terms.

(5) A fiduciary services provider must calculate the requirement in this regulation as appropriate to its fiduciary services business but at a minimum of once every three months.

(6) A fiduciary services provider must, unless previously agreed in writing by the GFSC, have a paid-up share capital of substance depending on its fiduciary services business, but it must not be less than—

- (a) £10,000 in the case of a fiduciary services provider that is carrying on a regulated activity within the meaning of paragraph 126 of Schedule 2 to the Act; and
- (b) £50,000 in the case of a fiduciary services provider that is carrying on a regulated activity within the meaning of paragraph 131 of Schedule 2 to the Act.

Customer assets

Safeguarding customer assets.

32. A fiduciary services provider that has custody of a customer's assets in connection with, or with a view to, the provision by it of fiduciary services must—

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- (a) keep safe, or arrange for the safekeeping of, any documents of title relating to those assets;
- (b) ensure that the location of those documents of title is recorded in the customer's records; and
- (c) ensure that any registrable financial instruments that it buys or holds for a customer are properly registered in that customer's name or, with the consent of the customer, in the name of an appropriate nominee.

Customer money

Customer money.

33.(1) For the purposes of these Regulations customer money is money of any currency which, in the course of carrying on fiduciary services business, a fiduciary services provider holds or receives under sub-regulation (2) or which a provider owes to a customer under sub-regulation (3).

(2) A fiduciary services provider holds or receives money for the purposes of sub-regulation (1) if the provider enters or expects to enter into an agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money—

- (a) which is not immediately due and payable on demand to the provider for its own account; or
- (b) which, although so due and payable, is held or received in respect of any obligation of the provider which has not yet been performed.

(3) A provider owes money to a customer for the purposes of sub-regulation (1) where money owed to a customer is immediately due and payable whether demanded or not.

Customer money must be deposited in customer bank account.

34.(1) A fiduciary services provider that receives customer money from a customer must deposit it without delay into a customer bank account that complies with regulation 36.

(2) A fiduciary services provider that receives money that includes both customer money and other money must—

- (a) deposit the total money in a customer account; and

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- (b) after the money has been received in the customer account, withdraw so much of the total money deposited as may properly be transferred to the fiduciary services provider's own account in accordance with these Regulations.

Customers money is held on trust.

35. Customer money is held by the fiduciary services provider on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

Requirements for customer bank account.

36.(1) A customer bank account–

- (a) must be held with an authorised credit institution;
- (b) may be either a general account or an account in the name of a specified customer;
- (c) must be designated as a customer account;
- (d) must be segregated from any account holding money belonging to the fiduciary services provider;
- (e) must clearly be set up as a customer account which a liquidator, authorised credit institution or any other person is not able to access in the event that the fiduciary services provider defaults on its commitments or is put in liquidation; and
- (f) must be subject to dual signatory control consistent with the “four eyes” principle in the conduct of business.

(2) A fiduciary services provider that opens a customer bank account must–

- (a) give the authorised credit institution clear written notice of the nature and purpose of the account; and
- (b) in that notice require the authorised credit institution to acknowledge in writing that–
 - (i) it accepts the terms of the notice;
 - (ii) all money standing to the credit of the customer bank account is held by the provider as trustee and that the authorised credit institution is not

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entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the provider; and

(iii) interest payable to the account will be credited to the account.

(3) If the authorised credit institution does not provide the confirmation referred to in sub-regulation (2)(b) within ten working days after the fiduciary services provider sends the notice, the provider must—

- (a) withdraw all money standing to the credit of the account;
- (b) close that account; and
- (c) deposit the money in a customer bank account with another authorised credit institution.

Payment of other money into customer bank account.

37. Money which is not customer money must not be paid into a customer bank account unless it is required—

- (a) to open or to maintain the account;
- (b) to restore an amount withdrawn in error from the account; or
- (c) to be paid in as part of the interest earned on the account.

Restriction on use of customer bank account.

38.(1) A fiduciary services provider must not use a customer bank account for the payment or settlement of the provider's own expenses or liabilities.

(2) Except as allowed by these Regulations and, in particular regulation 37, a fiduciary services provider must ensure that no money is paid into a customer bank account other than the customer money of the customer in whose name the account is held.

(3) A fiduciary services provider must, subject to the provisions of regulation 44 with respect to mixed payments, ensure that—

- (a) it accounts properly and promptly for customer money;
- (b) customer money and other money do not become mixed; and

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- (c) money belonging to one customer is not used for another customer.

Withdrawals from customer bank account.

39. Subject to regulation 40, a fiduciary services provider may withdraw the following money from a customer bank account–

- (a) money properly required for a payment to or on behalf of the customer;
- (b) money that is then properly transferred to another customer bank account or into a bank account in the customer's own name;
- (c) money that is not customer money;
- (d) money properly required for or towards payment of fees or commissions payable to the fiduciary services provider in accordance with the management agreement;
- (e) money properly required for or towards payment of a debt due to the fiduciary services provider from the customer, otherwise than in respect of fees or commissions payable to the fiduciary services provider; and
- (f) money withdrawn with the authority of the customer or in accordance with the management agreement.

Restrictions on withdrawal from customer bank account.

40.(1) A fiduciary services provider must not withdraw money from a customer account in excess of the total of the money held for the time being in that account.

(2) A fiduciary services provider must not withdraw money from a customer bank account for or towards payment of fees or commissions payable to the fiduciary services provider unless–

- (a) the fees or commission accord with the arrangements agreed with the customer;
- (b) the customer and the fiduciary services provider have agreed on the specific amount to be withdrawn; or
- (c) the alternative procedure set out in sub-regulation (3) is followed.

(3) The alternative procedure is the following–

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- (a) the customer–
 - (i) has received a notice that complies with sub-regulation (4); and
 - (ii) has not objected or otherwise communicated disagreement within a reasonable time after receiving the notice; and
 - (b) the withdrawal is expressly authorised by a director or employee of the fiduciary services provider who has authority to authorise withdrawals from customer bank accounts.
- (4) For the purposes of sub-regulation (3)(a)(i), the notice must–
- (a) be received by the customer not less than seven days before the withdrawal;
 - (b) state that money held in the account will be applied to the fees or commissions that are payable; and
 - (c) provide a breakdown in adequate detail of how the money to be withdrawn will be applied to those fees or commissions.

Accounting for customer money.

- 41.(1) A fiduciary services provider must at all times–
- (a) maintain records in a form that clearly show the following–
 - (i) how much customer money stands to the credit of each customer;
 - (ii) the money that it has received, held or paid on account of its customers; and
 - (iii) details of any other money that it has dealt with through a customer bank account; and
 - (b) for each customer bank account, generate or otherwise retain adequate supporting documentation to justify each transaction in the account.
- (2) The records required by sub-regulation (1)(a) must clearly distinguish the money of each customer from the money of–
- (a) other customers; and

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- (b) the fiduciary services provider.

Interest on customer money.

42.(1) Except in so far as may be agreed in writing to the contrary between a fiduciary services provider and each of its customers, a fiduciary services provider must, at least once in every six months, credit interest to each customer on money held for that customer and standing (or which should be standing) to the customer's credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the authorised credit institution at which the account is held.

Fiduciary services provider as authorised credit institution.

43. Where a fiduciary services provider is an authorised credit institution it may hold a customer bank account with itself and provided and for so long as the bank observes normal banking practice relating to money of that character and complies with these Regulations, it is not liable to account to any customer for any profits it makes as banker by using the money in the customer bank account.

Customer safeguard accounts.

44.(1) The provisions of this regulation apply where—

- (a) for any financial year of a fiduciary services provider, the provider maintains a customer safeguard account; and
- (b) for any such financial year, the provider expects to receive from customers specified mixed payments, that is to say, payments representing in part designated customer money which are disbursements (of which no individual disbursement exceeds £500) and in part other money;

and in the following provisions of this regulation “relevant financial year” means a financial year for which the fiduciary services provider has such an approved account.

(2) In this Part—

- (a) a “customer safeguard account” means an account approved by the GFSC into which a fiduciary services provider pays, out of its own money, one or more sums of money representing, as at the beginning of a relevant financial year, 110 per cent of the fiduciary services provider's best estimate of that portion of the

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mixed payments expected to be received during or in respect of that year which will be represented by designated customer money; and

- (b) in relation to a financial year of a fiduciary services provider, customer money is “designated” if it is designated by the fiduciary services provider for the purposes of these Regulations before the beginning of, and in relation to, that year;

and a customer safeguard account must be under dual signatory control consistent with the four eyes requirement in the conduct of business.

(3) In this Part–

- (a) “disbursement” and “disbursements” mean monies which are not immediately payable on demand to the fiduciary services provider for its own account in respect of company registry filing fees, notary fees, apostille fees, overseas agent fees, yacht and ship registry filing fees and licences, annual tax in overseas jurisdictions, courier and postage costs, and any fees ancillary to any of them; or
- (b) although so due and payable to the fiduciary services provider, are held or received in respect of an obligation of the fiduciary services provider which has not yet been performed; or
- (c) represent other disbursements which have not yet fallen due but which are the responsibility of the customer,

but a single disbursement must not exceed £500.

(4) A fiduciary services provider who opens a customer safeguard account–

- (a) must give written notice in clear terms to the authorised person of the nature of the account;
- (b) must require the authorised person to designate it as such and to acknowledge in writing that it accepts the terms of the account;
- (c) must at all times maintain records so as to show clearly the monies which the fiduciary services provider has paid in and the monies which have been withdrawn as permitted by sub-regulation (8);

and, in the event that the fiduciary services provider defaults on any of its commitments, a liquidator, authorised credit institution or other creditor must not have access to any money

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in the account except in so far as they exceed the amount representing designated customer money.

- (5) The GFSC must not approve an account as a customer safeguard account unless—
- (a) the application for the GFSC’s approval is made at least 30 days before the beginning of that financial year;
 - (b) the account is with an authorised credit institution;
 - (c) the GFSC is satisfied that the calculation of the best estimate referred to in sub-regulation (2) is certified by the fiduciary services provider’s auditor as a fair calculation; and
 - (d) the fiduciary services provider’s auditor certifies that the balance in the account at the date of the application is an amount equal to not less than 110 percent of that best estimate.
- (6) A fiduciary services provider approved by the GFSC under sub-regulation (5) to operate a customer safeguard account on an ongoing basis must submit evidence to the GFSC of its compliance with sub-regulation (5)(b), (c) and (d) no later than 30 days before the beginning of that provider’s financial year.
- (7) Any mixed payments as defined in sub-regulation (1)(b) above received by a fiduciary services provider in or in respect of a relevant financial year must be paid by the provider into the provider’s own account.
- (8) A customer safeguard account must be regarded as a “customer bank account” for the purposes of regulations 36 and 48 and no withdrawal may be made from such an account unless it is towards the payment of fees or commissions payable to the fiduciary services provider and—
- (a) the customer has been notified in writing that the monies will be applied against those fees or commissions and the customer has not disagreed;
 - (b) a director of the fiduciary services provider or staff member who has been granted executive powers has expressly authorised the withdrawal; and
 - (c) either an appropriate time has elapsed since the date of delivery to the customer of the notification or the precise amount to be withdrawn has been agreed with the customer.

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(9) If, at any time in a financial year, a fiduciary services provider or the provider's auditor becomes aware that the balance in a customer safeguard account has fallen below the required minimum, that is to say, 110 per cent of that portion of the mixed payments received during or in respect of that year which at that time represents designated customer monies—

- (a) the fiduciary services provider or, as the case may be, the auditor must within seven days of that time notify the GFSC of that fact; and
- (b) immediately on becoming aware of that fact, the fiduciary services provider must take steps to pay into the account so much as is necessary to restore the balance to at least the required minimum;
- (c) the GFSC may require the fiduciary services provider to suspend or end the operation of the customer safeguard account,

and at the end of each financial year of a customer safeguard account, the provider's auditor must certify to the GFSC whether, throughout that financial year, the balance in the account was at all times equal to not less than the required minimum.

(10) The following regulations do not apply in relation to a customer safeguard account nor to any designated customer monies:

- (a) regulation 34;
- (b) regulations 36(2)(a) and (b)(i);
- (c) regulations 36(1)(e) and (f);
- (d) regulation 37;
- (e) regulation 38(1);
- (f) regulations 39(a), (d), (e) and (f);
- (g) regulations 40(1), (2)(a) and (b);
- (h) regulations 40(3)(a) and (b); and
- (i) regulation 41.

Professional indemnity insurance

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Professional indemnity insurance.

45.(1) A fiduciary services provider must be covered by adequate professional indemnity insurance to the extent that it is reasonably available, or by some other arrangement approved by the GFSC in writing that has a similar effect.

(2) A policy required by sub-regulation (1) must typically cover, among other things–

- (a) liability for any negligent act, error or omission or dishonest or fraudulent act or omission by the fiduciary services provider, a director or a staff member in the course of its business;
- (b) liability for libel or slander;
- (c) liability for loss of customer money or other property arising from fraud or dishonesty by any director, staff member, former director, or former staff member; and
- (d) liability resulting from the loss of documents and the cost of restoring or replacing them.

(3) The excess or deductible under a policy required by sub-regulation (1) must not be greater than can be reasonably met by the financial resources of the fiduciary services provider.

(4) A fiduciary services provider must, so far as such insurance is reasonably available, have a minimum cover of the following amount (or its equivalent in another currency)–

- (a) in the case of a provider carrying on a regulated activity within the meaning of paragraph 126 of Schedule 2 to the Act, £500,000; and
- (b) in the case of a provider carrying on a regulated activity within the meaning of paragraph 131 of Schedule 2 to the Act, £1,000,000.

(5) The GFSC is, with the approval of the Minister, the arbiter of whether any such insurance as is referred to in sub-regulation (1) is reasonably available in the case of any particular fiduciary services provider.

**CHAPTER 2
FINANCIAL REPORTING**

Accounting records

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General duty to keep accounting records.

46.(1) A fiduciary services provider must, in respect of its fiduciary services business, keep accounting records which–

- (a) disclose with reasonable accuracy, at any time, the financial position of the fiduciary services provider at that time;
- (b) demonstrate whether or not the fiduciary services provider is at that time complying with any financial resources requirements imposed by the GFSC; and
- (c) enable the fiduciary services provider to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) By virtue of the fiduciary nature of its business, the accounting records of a fiduciary services provider must be exemplary and maintained to the general standards expected in a prudently run company or trust management operation.

(3) A fiduciary services provider must be aware that it is not sufficient for its fiduciary services business to be accounted for within the financial statements of a related entity given that, amongst other reasons, it needs to satisfy the GFSC that it has adequate financial resources for the fiduciary services business that it carries on.

Records of transactions and commitments.

47.(1) A fiduciary services provider must keep accurate records of every transaction or commitment which it enters into, either on its own behalf or on behalf of companies for which directors are provided or trusts or foundations administered, with sufficient information to–

- (a) explain its nature and purpose;
- (b) explain any asset and liability, actual or contingent, which arises from it;
- (c) explain any income and expenditure, current or deferred, which arises from it; and
- (d) clearly identify the parties.

(2) The accounting records must in particular contain–

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- (a) entries from day to day of all sums of money received and expended by the fiduciary services provider, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the fiduciary services provider including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of financial instruments by the fiduciary services provider, distinguishing those which are made by the provider on its own account and those which are made by the provider on behalf of others;
- (d) entries from day to day of the receipt and despatch of documents of title, or documents evidencing title, to financial instruments which are in the possession or control of the fiduciary services provider;
- (e) a record of financial instruments the documents of title, or the documents evidencing title, to which are in the possession or control of the fiduciary services provider identifying—
 - (i) where those documents are kept;
 - (ii) the beneficial owner of each of those financial instruments;
 - (iii) the purposes for which those documents are held; and
 - (iv) whether those financial instruments are subject to any charge;
- (f) entries from day to day of—
 - (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Regulations; and
 - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and
- (g) a record of—
 - (i) balances on individual customer bank accounts;
 - (ii) balances on individual customer accounts at intermediate brokers and exchanges;

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- (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
- (iv) reconciliations made pursuant to regulations 48 and 49.

Reconciliation of customer money.

48.(1) A fiduciary services provider must, at least once every two months, reconcile the balance on each customer bank account (as recorded by the fiduciary services provider) with the balance on that account (as set out on the statement issued by the authorised credit institution.

(2) Where a customer bank account contains the money of more than one customer a fiduciary services provider must, in addition to the reconciliation made under sub-regulations (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the fiduciary services provider).

(3) Where any difference arises on reconciliation under sub-regulation (1) or (2), the fiduciary services provider must correct it forthwith unless the difference arises solely as a result of timing differences between the accounting systems of the authorised credit institution and of the fiduciary services provider.

Reconciliation of customers' financial instruments held by fiduciary services provider.

49.(1) A fiduciary services provider must at least twice in every financial year carry out a reconciliation in accordance with this regulation and correct any discrepancy revealed by the reconciliation.

(2) The first such reconciliation must be carried out at some time in the fifth and sixth months of the financial year and the second must be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are—

- (a) in relation to documents of title and documents evidencing title to financial instruments of the fiduciary services provider's customers which are in the possession of the fiduciary services provider or in the possession of the fiduciary services provider's own custodian, the fiduciary services provider must inspect and count all those documents and, in the case of registrable financial instruments, reconcile any results which show discrepancies with the books and records of the appropriate register;

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- (b) in relation to documents of title or documents evidencing title to financial instruments of the fiduciary services provider's own customers which are in the possession of a custodian other than the fiduciary services provider's own custodian, the fiduciary services provider must obtain from that custodian a statement specifying in relation to each description of financial instrument the documents of title or certificates of title which were held by the custodian for the fiduciary services provider, the amount of that financial instrument and, where the financial instrument is a registrable financial instrument, the amount so held in each different name, made up as at the date at which the reconciliation under paragraph (a) is carried out; and
- (c) the fiduciary services provider must reconcile the results of each inspection under sub-regulation (a) and the contents of each statement referred to in sub-regulation (b) with the records maintained by the fiduciary services provider under regulation 47(2)(e).

Records to be kept up to date.

50. The obligations under this Part are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

Audit trail.

51.(1) Information required by this Part to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the fiduciary services provider.

(2) All records must be arranged, filed, indexed and cross-referenced so as to permit prompt access to any particular record.

Conformity with accounting standards.

52. The accounting records required to be kept by a fiduciary services provider must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed.

Retention of records.

53. A fiduciary services provider must preserve the accounting records which it is required to keep under regulation 46 for six years from the date on which they are made.

Inspection of records.

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54. Accounting records which are required to be kept under regulation 46 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

Financial statements

Duty to prepare annual financial statements.

55. A fiduciary services provider must, in respect of its fiduciary services business, prepare for each of its financial year's annual financial statements which must consist of—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account for the financial year.

Balance sheet to give true and fair view.

56. The balance sheet must give a true and fair view of the state of affairs of the fiduciary services provider as at the end of the financial year.

Profit and loss account to give true and fair view.

57. The profit and loss account must give a true and fair view of the profit or loss of the fiduciary services provider for the financial year.

Form and content of financial statements.

58.(1) The financial statements of a fiduciary services provider must comply with the provisions of the Schedule (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of the Schedule and the other provisions of these Regulations as to the matters to be included in the fiduciary services provider's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the fiduciary services provider must depart from that provision to the extent necessary to give a true and fair view.

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(4) If the fiduciary services provider departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

Annual financial statements to be submitted to meeting of partners, etc.

59.(1) Where the fiduciary services provider is not a sole proprietor, the annual financial statements of the fiduciary services provider must be submitted to a meeting of the partners or, if the fiduciary services provider is not a partnership, to a meeting of the directors or other governing body of the fiduciary services provider and the meeting must be invited to pass a resolution approving those statements.

(2) Where sub-regulation (1) applies, the balance sheet must contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the fiduciary services provider and, if so, the date on which they were approved.

Additional requirement in case of sole proprietor.

60. Where the fiduciary services provider is a sole proprietor, the balance sheet must be accompanied by a statement (which must not be regarded as part of the annual financial statements of the fiduciary services provider for the purposes of regulation 63) stating whether, at the date as at which the balance sheet is made up—

- (a) the provider's current assets exceed his or her current liabilities; and
- (b) the provider's total assets exceed his or her total liabilities.

Annual financial statements must be submitted to GFSC.

61. Each financial year a fiduciary services provider must submit its annual financial statements to the GFSC within four months after the end of the financial year to which the annual financial statements relate.

Fiduciary services provider must obtain auditor's report, etc.

62.(1) A fiduciary services provider must submit its annual financial statements to its auditor for audit and must obtain an auditor's report thereon which report must comply with the requirements of regulation 63.

(2) A fiduciary services provider must submit its auditor's report to the GFSC together with—

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- (a) the annual financial statements in accordance with regulation 61; and
- (b) confirmation in writing that it has complied with each and every one of the provisions of this Part with which it is required to comply and such further information or confirmation as may be prescribed.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the fiduciary services provider to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating—

- (a) whether all the accounting records of the fiduciary services provider have been made available to the auditor for the purposes of the audit;
- (b) whether all transactions undertaken by the fiduciary services provider have been properly reflected and recorded in the fiduciary services provider's accounting records; and
- (c) whether all other records of the fiduciary services provider and related information have been made available to the auditor.

Contents of auditor's report.

63.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the fiduciary services provider have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor—

- (a) the annual financial statements of the fiduciary services provider have been properly prepared in accordance with these Regulations;
- (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the fiduciary services provider as at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the fiduciary services provider for the financial year;
- (d) the fiduciary services provider has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the balance sheet and the profit and loss account are in agreement with the fiduciary services provider's accounting records;

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- (f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit;
- (g) if the fiduciary services provider has custody of customers' assets in connection with its fiduciary services business, that the provider maintained throughout the financial year systems adequate for complying with its obligations under regulation 32; and
- (h) the fiduciary services provider was in compliance with regulation 32 as at the date on which the balance sheet was prepared.

Qualified reports.

64.(1) If the auditor is of the opinion that one or more of the requirements of regulation 63 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 63 have been met, the auditor must state that fact in the auditor's report and must specify those requirements and give the reasons why the auditor has been unable to form an opinion.

**PART 5
REPORTING AND NOTIFICATION**

Fiduciary services provider must file returns with GFSC.

65. A fiduciary services provider must file annually with the GFSC—

- (a) within four months of the end of the fiduciary services provider's accounting period, a return showing the number of trusts, companies, foundations, partnerships or other bodies, whether incorporated or unincorporated, under its management, as at the end of the fiduciary services provider's financial year end; and
- (b) financial statements (within four months after the end of the fiduciary services provider's accounting period).

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Notification to GFSC by fiduciary services provider.

66.(1) A fiduciary services provider must notify the GFSC in writing of the following matters—

- (a) any change to its name;
- (b) any change to its registered business or trading name under which it carries on a regulated activity;
- (c) any change to its trading address;
- (d) any change to the address of its registered office;
- (e) any change to its shareholding and beneficial ownership;
- (f) any change in its board of directors;
- (g) any change in its executive management, including any change affecting compliance with the “four eyes” principle;
- (h) any material change in the nature of the business that it undertakes;
- (i) the making of an application to the court for its winding-up or the winding-up of a company that is its subsidiary or holding company;
- (j) an application being made by a person in any jurisdiction for the commencement of an insolvency proceeding or the appointment of a receiver or provisional liquidator in relation to the fiduciary services provider or its assets;
- (k) the conviction of the fiduciary services provider or any of its directors or staff under the law of any jurisdiction for an offence involving fraud or dishonesty;
- (l) the grant or refusal of an application for, or the revocation of, authorisation to carry on regulated business in any country or territory outside Gibraltar;
- (m) in the case of a director or member of the staff of the fiduciary services provider who holds a notifiable position—
 - (i) the withdrawal by that person of an application for membership of any professional body in any jurisdiction; or

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- (ii) the revocation of the person's membership of any professional body in any jurisdiction;
- (n) the appointment or resignation of its auditor;
- (o) any notification to its professional indemnity insurers or any any payment to it by an insurer under a professional indemnity insurance policy;
- (p) any other matter that the fiduciary services provider considers is material to the requirements placed on it or the obligations of any director, notifiable person or staff member under the regulatory system;
- (q) any matter that might reasonably be expected to affect the Part 7 permission of the fiduciary services provider or be in the interests of its customers to disclose; and
- (r) any matter that might be prejudicial to the reputation of Gibraltar as a finance centre.

(2) The GFSC must notify the Minister of any matter that is notified to it under sub-regulation (1)(r).

Appointment of auditors

Auditor required.

67. A fiduciary services provider must not carry on, or hold itself out as carrying on, fiduciary services business unless it has appointed an auditor in accordance with the Act and these Regulations.

Qualification for appointment as auditor.

68. A person is not qualified for appointment as the auditor of a fiduciary services provider unless the person is registered in accordance with sections 487 to 491 of Part 24 of the Act.

Ineligibility on ground of lack of independence.

69.(1) A person must not act as an auditor to a fiduciary services provider if the person is ineligible for appointment to the office.

(2) A person is ineligible for appointment as auditor to a fiduciary services provider if the person is—

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(a) a director, officer, employee, shareholder or partner of the fiduciary services provider; or

(b) a partner or employee of such a person.

(3) For the purposes of this regulation an auditor of a fiduciary services provider is not regarded as an officer or employee of the fiduciary services provider.

Engagement letters.

70. A fiduciary services provider must ensure that the auditor appointed under these Regulations has the powers and duties specified in regulation 72 and section 165 of the Act and that—

(a) those powers and duties are set out in an engagement letter;

(b) the engagement letter is signed by the fiduciary services provider and the auditor;
and

(c) the fiduciary services provider retains a copy of the engagement letter.

Auditor to notify GFSC of certain matters.

71.(1) In the circumstances specified in sub-regulation (2) the auditor of a fiduciary services provider must notify the GFSC of any matters which relate to the affairs of the provider and of which the auditor becomes aware in its capacity as auditor.

(2) The circumstances referred to in sub-regulation (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either—

(a) whether a person is a fit and proper person to carry on fiduciary services business; or

(b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect investors or customers from a significant risk of loss.

Report on financial statements

72.(1) An auditor must submit a report to the GFSC on the annual financial statements in accordance with these Regulations and the report must state the matters specified in regulation 63.

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(2) In preparing an auditor's report for the purposes of these Regulations, the auditor must carry out such investigations as will enable the auditor to form an opinion as to the matters required by regulation 63 to be stated in the auditor's report.

Resignation or removal of auditors.

73.(1) This regulation includes provisions which supplement the requirements of section 168 of the Act, as they apply to fiduciary services providers.

(2) A fiduciary services provider must, within seven days, give written notice to the GFSC of the appointment, removal or resignation of an auditor.

(3) Where an auditor resigns or is removed by a fiduciary services provider, a notice to that effect sent to the GFSC under sub-regulation (2) must contain either—

(a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the GFSC; or

(b) a statement signed by the auditors of such circumstances as are mentioned in (a).

(4) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditor's term of office must be deemed to be a removal of that auditor.

**PART 6
REGULATORY POWERS**

Directions

Directions.

74.(1) If it appears to the GFSC that a person is not a fit and proper person to carry out any function in relation to fiduciary services business or a fiduciary services provider, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC—

(a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or

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- (b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.
- (3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice—
- (a) cannot be given because of urgency;
 - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or
 - (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.
- (4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.
- (5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.
- (6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.
- (7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)—
- (a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and
 - (b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).
- (8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

Sanctions

Sanctioning powers.

75. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to contravention of a regulatory requirement

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(including a regulatory requirement contained in these Regulations) are to be read together with the provisions of regulation 76.

Maximum amounts of administrative penalty.

76.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply in connection with the provision of fiduciary services business must be of an amount which does not exceed the higher of the following—

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person—
 - (i) £250,000; or
 - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 7
MISCELLANEOUS**

The Register: fiduciary services providers.

77.(1) This regulation makes provision as to the contents of the Register in connection with fiduciary services business.

(2) The Register must contain such information as the GFSC considers appropriate and must include, at least, a list of fiduciary services providers.

(3) The Register must identify the fiduciary services business to which a fiduciary services provider's Part 7 permission relates.

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(4) The Register must include details of any variation or cancellation of a fiduciary services provider's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

Restriction on use of the word “trust”.

78.(1) A person must not carry on business in or from Gibraltar under a name that includes the word “trust” or use that word in connection with any business other than—

- (a) in relation to one of the following regulated activities for which the person has a Part 7 permission under—
 - (i) paragraph 3 of Schedule 2 to the Act (accepting deposits);
 - (ii) paragraph 106 of that Schedule (establishing etc. a personal pension scheme); or
 - (iii) paragraph 131(1) or (2) of that Schedule (acting as a professional trustee or professional trustee and foundation councillor),

where, in accordance with that permission, the word forms part of the person's business name or the name of a scheme, fund or other arrangement operated by the person; or

- (b) with the prior written consent of the GFSC and in accordance with any conditions which the GFSC may impose in giving its consent.

(2) For the purposes of sub-regulation (1) “trust” includes any cognate expression or similar word or abbreviation, the use of which is likely to mislead the public as to the nature of a person's business.

(3) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

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**SCHEDULE
FORM AND CONTENT OF FINANCIAL STATEMENTS**

**PART 1.
GENERAL RULES.**

1. Subject to the following provisions of this Schedule, the annual financial statements of a fiduciary services provider must—

- (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
- (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.

2. Any item required in accordance with paragraph 1 to be shown in a financial statement of a fiduciary services provider may be shown in greater detail than required by the appropriate format.

3. A financial statement of a fiduciary services provider may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.

4.(1) In respect of every item shown in a fiduciary services provider's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.

5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

6. In the case of a fiduciary services provider that is a sole proprietor, the items to be included in the provider's financial statements prepared in accordance with these Regulations must be those that arise in the course of the provider's fiduciary services business.

**PART 2.
ACCOUNTING PRINCIPLES AND RULES.**

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7.(1) The amounts to be included in respect of all items shown in the annual financial statements of a fiduciary services provider must be determined in accordance with the Companies Act 2014 and either Gibraltar Financial Reporting Standards or International Accounting Standards.

(2) Sub-paragraph (1) is subject to regulation 52.

8. Subject to paragraph 7, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances

APPENDIX 1 BALANCE SHEET FORMAT

A. FIXED ASSETS

I. Intangible Assets

1. Development costs
2. Goodwill
3. Other

II. Tangible Assets

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

III. Investments

1. Loans to and shares in group companies and connected companies
2. Other listed investments
3. Other unlisted investments

B. CURRENT ASSETS

I. Physical stocks

II. Debtors (1)

1. Trade debtors (2)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

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III. Investments (long positions)(3)

IV. Cash at bank and in hand

C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Investments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

D. NET CURRENT ASSETS (LIABILITIES)

E. TOTAL ASSETS LESS CURRENT LIABILITIES

F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

G. PROVISIONS FOR LIABILITIES AND CHARGES

1. Commissions on indemnity terms
2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

H. TOTAL ASSETS LESS TOTAL LIABILITIES

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I. CAPITAL AND RESERVES

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account.

Approved by the [directors][partners][governing body] on

Signature

Signature

NOTES ON THE BALANCE SHEET FORMAT

(1) Debtors

The amount falling due after more than one year shall be shown separately for each item included under debtors.

(2) Trade debtors

(a) Fees

Outstanding for more than 30 days
Outstanding for 30 days or less.

(b) Commissions

Outstanding for more than 30 days
Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days
Amounts outstanding for 30 days or less.

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(3) Investments (long positions)

(i) Debt instruments

	Residual Maturity				Total
	0 - 90 days	90 days - 12 Months	12 months - 5 years	more than 5 years	
UK Government, Government of Gibraltar and local authority debt Accepted or issued by an approved bank Floating Rate Notes Other debt instruments: - marketable investments - not marketable investments	_____	_____	_____	_____	_____

(ii) Shares (other than in group companies)

UK listed
UK unlisted:
- marketable investments
- not marketable investments
Overseas listed on an established investment exchange
Overseas unlisted

(iii) Collective investment schemes

Units in authorised and recognised unit trust schemes
Other

(iv) Futures, options, contracts for differences

Futures
Purchased options
Written options
Contracts for differences

(v) Shares in group companies

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(vi) **Other investments (specify)**

(4) Trade Creditors

- (a) Amounts due to be paid against delivery of securities
- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.
- (c) Others

(5) Investments (short positions)

The same detail should be given as that required by note (3) above

(6) Eligible subordinated loans

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

(7) Called up share capital

Any amount of share capital which has not been paid up shall be shown separately.

(8) Contingent liabilities and commitments

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for
- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information shall be given, where relevant–

- (i) Whether any valuable security has been provided by the licensee in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

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PROFIT AND LOSS ACCOUNT FORMAT

A. DEALING

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other - specify

B. REVENUE

I. Commissions on transactions in collective investment schemes

1. authorised unit trust schemes and recognised schemes
2. other - specify

II. Commissions on transactions in life insurance policies

1. commission on indemnity terms
2. other initial commission
3. renewal commission
4. other - specify

III. Commissions on securities transactions

1. equities
2. debt instruments
3. other - specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures
2. options
3. contracts for differences
4. other - specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

VIII. Trustee fees

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- IX. Interest and dividends
 - 1. investment positions
 - 2. loan accounts and margin accounts
 - 3. in respect of balances in client bank accounts
 - 4. other - specify
- X. Dealing and settlement services
- XI. Revenue from research and consulting services
- XII. Retained underwriting and placing commissions
- XIII. Other revenue - specify if material
- C. EXPENDITURE**
- I. Commissions
 - 1. paid to staff
 - 2. paid to other investment businesses
 - 3. other - specify
- II. Salaries and other employment costs (exclusive of commission)
- III. Directors' emoluments
- IV. Staff bonuses
- V. Interest charges
 - 1. payable to customer in respect of customer's money balances
 - 2. other - specify
- VI. Establishment costs
- VII. Communications and marketing
- VIII. Office equipment and services
- IX. Provisions for losses, bad and doubtful debts
- X. Professional charges
- XI. Investment exchange and clearing house charges

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- XII. Regulatory fees and expenses
- XIII. Audit fees (including expenses)
- XIV. Miscellaneous office expenses
- XV. Other expenditure - specify if material
- D. PROFIT OR LOSS BEFORE TAXATION**
- E. TAXATION**
- F. PROFIT OR LOSS AFTER TAXATION**
- G. EXTRAORDINARY ITEMS**
- H. PROFIT OR LOSS FOR THE FINANCIAL YEAR**