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Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

DISQUALIFICATION OF ACTUARIES

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1. GLOSSARY

Unless the context requires otherwise:

“Actuary” means a fellow of the Institute of Actuaries in England and Wales or the Faculty of Actuaries in Scotland or any other person approved for the time being by the Commission and authorised by the Commission to act as an Actuary for insurers licensed to carry on long term business in or from within the Bailiwick,

“Bailiwick” means the Bailiwick of Guernsey,

“Commission” means the Guernsey Financial Services Commission,

“customers” includes, collectively, actual and potential consumers, beneficiaries, investors, policy holders and depositors,

“Disqualification Order” means an order imposed pursuant to section 84A of the Insurance Business Law,

“Enforcement Policy” means the Guidance Note on the Commission’s general approach to Enforcement dated 22 April 2016,

“FSC Law” means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended,

“Insurance Business Law” means the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended and any other enactment or statutory instrument prescribed for the purposes of that law by regulations of the Commission,

“licensed insurer” means an insurer for the time being licensed under section 7 of the Insurance Business Law and includes an insurer carrying on business in such circumstances as not to require licensing by virtue of section 5 of that Law,

“long term business” means, subject to section 2(3) and (4) of the Insurance Business Law, insurance business of any of the descriptions set out in Schedule 1 of that Law,

“Note” means this Explanatory Note,

“professional body” means a body which regulates the practice of its profession,

“regulatory body” means a body formed or mandated under the terms of a legislative act or statute to supervise and ensure compliance with the provisions of that act or statute, and in carrying out its purpose,

“regulatory Laws” means:

- (a) the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (“Banking Supervision Law”),
- (b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (“Fiduciaries Law”),
- (c) the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“Insurance Business Law”),

- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“IMII Law”),
- (e) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“POI Law”),
- (f) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (“Registered Businesses Law”), and
- (g) any other enactment or statutory instrument prescribed for the purposes of Schedule 5 of the Insurance Business Law in connection with the definition of “regulatory Laws”,

all, as amended, and

“regulatory sanction” includes those measures as summarised in the Commission’s Enforcement Powers summary on its website, and such equivalent measures as agreed to or imposed upon a party by another regulatory body.

2. EXECUTIVE SUMMARY

This document sets out the Commission’s approach and methodology in relation to the disqualification of persons from acting as an Actuary of a licensed insurer or a particular class of licensed insurer.

3. INTRODUCTION

The Enforcement Policy provides that the Commission is committed to a fair, proportionate and consistent use of its enforcement powers, to achieve effective outcomes. Where appropriate, the Commission will address contraventions or misconduct by agreement with the person concerned through ordinary supervisory processes, and will endeavour to agree with that person the implementation of a remedial action plan to restore that person to compliance as soon as possible. This may involve agreement to changes in corporate governance, management and internal controls, agreement to discontinue some or all of the person’s operations or areas of activity, or agreement to amended or additional licence conditions framed to encourage or ensure compliance going forward.

However, that approach is not always possible. The Commission will generally seek to use its enforcement powers in relation to more serious or repeated breaches of the law although it would be improper for the Commission to, a priori, rule out enforcement proceedings in relation to any breach.

In addition, it may also be appropriate for the Commission to take further steps in the public interest, in particular with a view to protecting the public, through other elements, such as deterring the firm concerned and others who may also be involved.

It is important that the Commission is able to fulfil its regulatory objectives and apply its Enforcement Policy. However, the Commission is also aware of the serious detrimental effect that a Disqualification Order may have on the reputation, livelihood or business of the person concerned.

The Commission may impose a Disqualification Order alone or in addition to any other sanction which it is empowered to impose under the regulatory Laws, as it determines to be reasonable and appropriate. Such determination will be made on a case by case basis.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1 POWER TO MAKE A DISQUALIFICATION ORDER

There are prescribed requirements and duties under the Insurance Business Law which must be complied with by those who act as an Actuary of a licensed insurer carrying on long term business¹.

The Commission has the power to disqualify a person from acting as the Actuary of a licensed insurer carrying on long term business². The power applies both in relation to those persons who are currently actuaries of a licensed insurer carrying on long term business and those who have previously been actuaries to a licensed insurer carrying on long term business.

The Commission may also vary or revoke a Disqualification Order on the application of the person named in a Disqualification Order or of its own motion³.

A person aggrieved by the Commission's decision to impose, vary or refusal to revoke a Disqualification Order made against them may appeal to the Court against that decision⁴.

4.2 WHEN MAY THE COMMISSION MAKE A DISQUALIFICATION ORDER?

The Commission may make a Disqualification Order against a person who is or has been an Actuary of a licensed insurer carrying on long term insurance business from being an Actuary of any licensed insurer or any particular class of licensed insurer if it appears to the Commission that⁵:

- i. the person has failed to comply with any duty imposed on him by or under the regulatory Laws, or
- ii. the person is or for any other reason unfit to be an Actuary of a licensed insurer (whether by reason of lacking the necessary skills or resources to carry out effectively his responsibilities as Actuary or otherwise), or
- iii. for any other reason it is in the interests of the public or any class thereof to do so.

¹ See, for example, the Insurance Business Law, sections 40(4) and 82

² The Insurance Business Law, section 84A(1).

³ The Insurance Business Law, section 84A(2).

⁴ The Insurance Business Law, section 63(1)(n) and (o)

⁵ The Insurance Business Law, section 84A(1).

5. THE COMMISSION'S APPROACH

The Insurance Business Law does not prescribe any criteria that the Commission must take into consideration in determining whether to impose, vary or revoke a Disqualification Order, nor in relation to the scope or duration of such an Order. It is not possible nor would it be appropriate for the Commission to try and produce a definitive list of matters that the Commission might take into account. The Commission must consider in each case whether, consistent with its Enforcement Policy, the imposition, variation or revocation of a Disqualification Order is reasonable and appropriate.

6. CONSEQUENCES OF ORDER REVOCATION OR EXPIRATION

A Disqualification Order is a regulatory sanction that is applied as a result of regulatory non-compliance. The expiration or revocation of a Disqualification Order will not expunge the Order from the person's regulatory history with the Commission. The Commission reserves its right, should it determine it reasonable to do so, to take the original Disqualification Order into account should regulatory concerns arise in the future.

7. PUBLICATION

The Commission may publish the list of all persons to whom a Disqualification Order applies and the fact that a person has been named in a Disqualification Order or that a Disqualification Order has been varied or revoked⁶. Further, the publication may include such information in respect of one or more of the persons named therein as the Commission thinks desirable or expedient.

The Commission will proceed on the basis of a presumption in favour of publishing the fact that a Disqualification Order has been made. This presumption will only be overridden in exceptional circumstances, particularly where the continuing exercise by the Commission of its statutory duties would be prejudiced by present disclosure. Publication will take place upon the imposition of the Disqualification Order.

⁶ The Insurance Business Law, section 84B(1).