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Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

DISQUALIFICATION OF AUDITORS

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1. GLOSSARY

Unless the context requires otherwise:

“Commission” means the Guernsey Financial Services Commission,

“Disqualification Order” means an order imposed pursuant to Section 11B(1) of the FSC 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.

“Licensee” means a person who holds or is deemed to hold or has held a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws,

“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 section 24 of the FSC 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 auditor of a Licensee or a particular class of Licensee.

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 firm or individual concerned.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1. POWER TO IMPOSE A DISQUALIFICATION ORDER

There are prescribed requirements and duties under the regulatory Laws which must be complied with by those who act as an auditor of a Licensee¹.

The Commission has the power to disqualify a firm or an individual from a firm, from acting as the auditor of any Licensee or particular class of Licensee². This power applies both in relation to those who are currently auditors of a Licensee and those who have previously been the auditor of a Licensee³.

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 motion⁴.

A party aggrieved by the Commission's decision to make, vary or refuse to revoke or vary a Disqualification Order made against them may appeal to the Court against that decision⁵.

4.2. LEGISLATIVE REQUIREMENTS

The Commission may make a Disqualification Order against a person who is or has been an auditor of a Licensee from being an auditor of any Licensee or any particular class of Licensee where it is satisfied that⁶:

- (a) the firm or individual has failed to comply with any duty imposed on him by or under the regulatory Laws, or
- (b) the firm or individual is for any other reason unfit to be an auditor of a Licensee (where by reason of lacking the necessary skills or resources to carry out effectively his responsibilities as auditor or otherwise), or
- (c) for any other reason it is in the interests of the public or any class thereof to do so.

5. THE COMMISSION'S APPROACH

Apart from the matters referred to in paragraph 4.2 above, the FSC 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

¹ See, for example: the Fiduciaries Law, section 30(2); the IMII Law, section 21(4); the Insurance Business Law, section 34(4); the POI Law, section 27A; the Banking Supervision Law, section 32(2).

² The FSC Law, section 11B(1).

³ The FSC Law, section 11B(1).

⁴ The FSC Law, section 11B(2).

⁵ The FSC Law, section 11H(1)(a) and (b).

⁶ The FSC Law, section 11B(1).

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 is appropriate.

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.

The Commission also has the power to report an auditor to any authority, institution or professional body to whose rules or requirements the auditor or actuary is subject, where it appears to the Commission that an auditor has failed to comply with a duty imposed on him under the regulatory Laws⁷. The Commission may also consider taking regulatory action against a Licensee who appointed the auditor in certain circumstances, for example where the auditor had no skill to fulfil their duties as auditor due to a lack of expertise or experience in relation to the type of assets held by the company.

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 auditor's regulatory history with the Commission. The Commission reserves its right to take the original Disqualification Order into account should regulatory concerns arise in the future.

⁷ The Insurance Business Law, section 82(4); the POI Law, section 27B.