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Guernsey Financial
Services Commission

GUERNSEY FINANCIAL SERVICES COMMISSION

LICENCE CANCELLATION, REVOCATION OR SUSPENSION

ARCHIVED

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1. GLOSSARY

Unless the context otherwise requires:

"Bailiwick" means the Bailiwick of Guernsey,

"behaviour" includes, but is not limited to, the Licensee having ceased to carry on in the Bailiwick the business to which the Licence relates, the Licensee having not commenced to carry on in the Bailiwick the business to which the Licence relates within one year of its issue and behaviour of the Licensee as a result of which the Commission considers it desirable to cancel, revoke or suspend the Licence for the protection of the public or of the reputation of the Bailiwick as a financial centre,

"Commission" means the Guernsey Financial Services Commission,

"contravention" includes failure to comply,

"Enforcement Policy" means the Guernsey Financial Services Commission's Enforcement Policy dated 13 June 2011,

"Licence" means a licence, consent, registration, permission or authorisation from the Commission under the POI Law or the Registered Businesses Law,

"Licensee" means a person who holds or is deemed to hold a Licence,

"Note" means this Explanatory Note,

"prescribed Laws"¹ means:

- (a) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
 - (b) The Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
 - (c) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
 - (d) The Disclosure (Bailiwick of Guernsey) Law, 2007,
 - (e) The Transfer of Funds (Guernsey) Ordinance, 2007,
 - (f) The Transfer of Funds (Alderney) Ordinance, 2007,
 - (g) The Transfer of Funds (Sark) Ordinance, 2007, and
 - (h) any other enactment or statutory instrument prescribed for the purposes of section 42 of the Registered Businesses Law by regulations of the Commission,
- all, as amended,

¹ As defined under section 42 of the Registered Businesses Law.

“regulatory Laws” means:

- (a) The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**“POI Law”**),
 - (b) The Banking Supervision (Bailiwick of Guernsey) Law, 1994 (**“Banking Supervision Law”**),
 - (c) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (**“Fiduciaries Law”**),
 - (d) The Insurance Business (Bailiwick of Guernsey) Law, 2002 (**“Insurance Business Law”**),
 - (e) The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (**“IMII Law”**),
 - (f) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (**“FSC Law”**)
 - (g) The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (**“Registered Businesses Law”**), and
 - (h) any other enactment or statutory instrument prescribed for the purposes of section 24 of the FSC Law by regulations of the Commission,
- 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 cancellation, revocation or suspension of a Licence under the POI Law and the revocation or suspension of a registration under the Registered Businesses Law.

This Note does not extend to the revocation of a licence, consent, registration, permission or authorisation issued or granted by the Commission under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law or the IMII Law. In relation to these regulatory sanctions, please see the Commission’s Explanatory Note - Licence Revocation.

3. INTRODUCTION

The Enforcement Policy provides that the Commission is committed to a fair, proportionate, consistent and responsive 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 attempt 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 an agreement to changes in corporate governance, management and internal controls, an agreement to discontinue some or all of the person's operations or areas of activity or an agreement to amended or additional licence conditions, which are framed to encourage or ensure compliance going forward.

From time to time, there will be a need for the Commission to undertake more assertive enforcement action, through the use of its statutory powers, where action by agreement is not considered to be a sufficient or appropriate response, where co-operation on the part of the person is lacking and/or where the contravention or misconduct is such that a deterrence response is warranted.

It is important that the Commission is able to fulfill its regulatory objectives and apply its Enforcement Policy. However, the Commission is also aware of the serious detrimental effect that the cancellation, revocation or suspension of a Licence, other than at the request of a Licensee, may have on the reputation, livelihood or business of the firm or individuals involved with that firm.

The Commission may cancel, revoke or suspend a Licence alone or in addition to any other regulatory 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

The cancellation, revocation or suspension of a Licence, other than upon request by a Licensee, is an enforcement sanction that in effect, halts the ongoing operation of a regulated financial services business in the Bailiwick. The provision or continuation of the relevant operations by the financial services business after the cancellation or revocation of the Licence or during the period of suspension of the Licence is an offence under the POI Law or the Registered Businesses Law.²

The Commission may, if it thinks fit, by notice in writing served on a Licensee or a designated manager (as applicable):³

- (a) Suspend a Licence for a specified period, until the occurrence of a specified event, or until prohibitions, requirements or specified conditions are complied with, or
- (b) Cancel or revoke a Licence.

A person aggrieved by the Commission's decision to cancel, revoke or suspend a Licence may appeal to the Court against that decision.⁴

² The POI Law, sections 1 and 38; the Registered Businesses Law, section 2.

³ The POI Law, sections 6 and 11; the Registered Businesses Law, sections 9 and 10.

4.1. THE POI LAW PROVISIONS

The Commission may cancel, revoke or suspend a Licence under the POI Law:⁵

- If the designated manager of a scheme, or in the case of an authorised or registered open-ended collective investment scheme, the trustee or custodian of the scheme has contravened a provision of the POI Law or has failed to satisfy an obligation to which he is subject by virtue of the POI Law,
- If the Licensee has contravened a provision of the POI Law or has failed to satisfy an obligation to which he is subject by virtue of the POI Law,
- If it appears to the Commission that the scheme no longer fulfils the requirements set out in Schedule 3 of the POI Law (Requirements for Authorised or Registered Collective Investment Schemes),
- If the Licensee has failed to comply with a condition of the Licence,
- If the Licensee has furnished misleading or inaccurate information to the Commission under or for the purposes of any provision of the POI Law,
- If the Licensee has not commenced to carry on in the Bailiwick the business to which the Licence relates within one year of its issue,
- If the Licensee has ceased to carry on in the Bailiwick the business to which the Licence relates,
- If the Commission considers it desirable to cancel, revoke or suspend the Licence for the protection of the public or of the reputation of the Bailiwick as a financial centre, or
- On any other ground which the States may by Ordinance specify as a ground to do so.

4.2. THE REGISTERED BUSINESSES LAW PROVISIONS

The Commission may revoke a Licence or suspend the registration of a Licensee under the Registered Businesses Law where:⁶

- The Licensee has contravened any of the provisions of section 5(2)(d) to (h) of the Registered Businesses Law (grounds to refuse or grant a registration application),
- The Licensee has contravened any condition imposed by the Commission under section 8 of the Registered Businesses Law (conditions of registration),

⁴The POI Law, section 36 and the Registered Businesses Law, section 16.

⁵ In addition the Commission may cancel or suspend a Licence at the request of the Licensee or, in relation to a scheme, the designated manager of a fund or, in the case of an authorised or registered open-ended collective investment scheme, the trustee or custodian of the scheme.

⁶ In addition the Commission may revoke or suspend a Licence at the request of the Licensee.

- The Commission has been provided with false, misleading, deceptive or inaccurate information for the purposes of any provision of, or made under, the Registered Businesses Law:
 - by or on behalf of the Licensee, or
 - by or on behalf of a person who is or is to be a director, controller, partner, senior officer or beneficial owner of the Licensee,
- The annual fee has not been paid,
- It appears to the Commission that any information, statement or document provided by the Licensee in support of its application was false, misleading, deceptive or inaccurate,
- It appears to the Commission that the Licensee has contravened in a material particular or committed an offence under a provision of, or made under the prescribed Laws,
- Proceedings have been or are to be instituted in respect of the Licensee under section 14 (winding up), section 26 (disqualification orders) or section 27 (injunctions) of the Registered Businesses Law,
- It appears to the Commission that the Licensee or any person who is, or is to be, a director, controller, partner, senior officer or beneficial owner:
 - is not a fit and proper person to be concerned in the management of a financial services business, having regard to the provisions of Schedule 2 of the Registered Businesses Law (Directors etc. to be fit and proper persons), or
 - has failed without reasonable excuse to provide the Commission with any information reasonably requested by the Commission concerning the fitness or propriety of any such person to be concerned in the management of a financial services business,
- It appears to the Commission that the interests of the public or the reputation of the Bailiwick as a finance centre are in any way jeopardised, whether by the manner in which the Licensee is conducting, or proposes to conduct, its affairs or for any other reason, or
- A relevant supervisory authority in a country outside the Bailiwick has withdrawn from the Licensee an authorisation corresponding to a registration under The Registered Businesses Law.

5. THE COMMISSION'S APPROACH

Apart from the matters referred to in paragraphs 4.1 and 4.2 above, the relevant Laws do not prescribe any criteria that the Commission must take into consideration in

determining the scope or duration of any condition, event, prohibition or requirement prescribed in relation to the cancellation, revocation or suspension. 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, any condition, event, prohibition or requirement prescribed in relation to the cancellation, revocation or suspension are reasonable and appropriate.

The Commission will take into account the seriousness of the contravention or misconduct and all relevant circumstances when deciding whether to exercise its power to cancel, revoke or suspend a Licence and the specified event or conditions to be satisfied.

The Commission recognises that because cancellation, revocation or suspension of a Licence brings the business to a halt, its impact is likely to be particularly severe. For this reason cancellation, revocation or suspension will usually only be applied in the more serious cases. However, as the circumstances in which a Licence may be cancelled, revoked or suspended vary considerably, this may not always be the case.

6. CONDUCT OF BUSINESS POST-SUSPENSION

During the period during which a Licence is suspended, the Licensee must not carry on, or hold itself out as carrying on, business of the description to which the Licence relates in or from within the Bailiwick. To discourage others from assisting Licensees to circumvent a suspension or cancellation of their registration, the Registered Businesses Law prohibits payments made by or to the Licensee or any person acting on the Licensee's behalf in respect of business which would require registration under the law, without the Commission's prior written approval.

7. EFFECTIVE DATE OF CANCELLATION, REVOCATION OR SUSPENSION

7.1. THE POI LAW PROVISIONS

The Commission's decision to cancel, revoke or suspend a Licence will have effect upon the service of the notice of such cancellation, revocation or suspension.

7.2. THE REGISTERED BUSINESSES LAW PROVISIONS

The Commission's decision to revoke or suspend a Licence will not have effect until the end of the period within which an appeal can be brought or, if an appeal is brought, until the appeal is disposed of or withdrawn.

However, where the Commission is of the view that it is necessary or desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick as a finance centre, the Commission may apply to the Court for an

order directing that its decision should, without prejudice to any appeal, have immediate effect.⁷

8. CONSEQUENCES OF LIFTING OR EXPIRATION OF SUSPENSION

The suspension of a Licence is a regulatory sanction that is applied as a result of regulatory non-compliance or the Licensee's behavior. The lifting of a suspension of a Licence will not expunge the suspension from the individual or firm's regulatory history with the Commission.

Similarly, the cancellation or revocation of a Licence is a regulatory sanction that is applied as a result of regulatory non-compliance. A Licence cancellation or revocation will not be expunged from an entity's regulatory history, nor from the regulatory history of those individuals involved in its control and direction at the time the Licence was cancelled or revoked.

The Commission reserves its right, should it consider it reasonable to do so, to take the cancellation, revocation or suspension into account should regulatory concerns arise in the future.

9. PUBLICATION

The Commission maintains lists of all persons who are licensed under the POI Law or the Registered Businesses Law. The Commission is required to publish the fact that a person has ceased to hold a Licence or that a Licence has been suspended and to amend the list of licensees the Commission has published. Publication will take place upon the date on which the Licence is cancelled, revoked or suspended, as applicable.

⁷ The Registered Business Law, sections 9(6) and 10(3) to (6).