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Guernsey Financial
Services Commission

GUERNSEY FINANCIAL SERVICES COMMISSION

PRIVATE REPRIMANDS

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1. GLOSSARY

Unless the context requires otherwise:

"Applicable Laws" means the Registered Businesses Law and the Prescribed Businesses Law,

"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,

"Registration" means a registration from the Commission under section 5 of the Registered Businesses Law or regulation 16 of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, as amended,

"Business" means the person who holds a Registration,

"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,
 - (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,

"Private Reprimand" means a private reprimand issued by the Commission under section 25 of the Registered Businesses Law or section 12 of the Prescribed Businesses Law,

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

“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 (**“IMI Law”**),
 - (e) The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**“POI 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”**),
 - (h) The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (**“Prescribed Businesses Law”**), and
 - (i) any other enactment or statutory instrument prescribed for the purposes of section 24 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 in relation to the issuing of a Private Reprimand under the Registered Businesses Law or the Prescribed Businesses Law.

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 registration 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.

The Commission does not propose to publish details relating to Private Reprimands. However, the Commission is aware that, once issued, a Private Reprimand forms part of the regulatory history of a firm or individual and as such a Private Reprimand may be required to be disclosed to a foreign regulator or other authority.

The Commission may issue a Private Reprimand 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

The issuing of a Private Reprimand is an enforcement sanction which can only be applied to Businesses though under both the Registered Businesses Law and the Prescribed Businesses Law references to the relevant business includes references to a person carrying it on.²

A person aggrieved by the Commission's decision to issue a Private Reprimand may appeal to the Court against that decision.³

4.1. THE REGISTERED BUSINESSES LAW PROVISIONS

The Commission may issue a Private Reprimand to a Business if it considers it appropriate to do so, having regard to the conduct of a Business or of any person who is a director, controller, partner, senior officer or beneficial owner.⁴

The Commission may, in considering whether or not to issue a Private Reprimand, among other things, have regard to the following factors:⁵

- (a) Whether the Business has contravened any of the provisions of section 5(2)(d) to (h) (Grounds to refuse or grant a registration application),
- (b) Whether the Business has contravened any condition imposed by the Commission under section 8 (conditions of registration),
- (c) Whether 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:

² The Registered Businesses Law, section 43; the Prescribed Businesses Law, section 33.

³ The Registered Businesses Law, section 16(1)(f); the Prescribed Businesses Law, section 4(1)(d).

⁴ The Registered Businesses Law, section 25(1).

⁵ The Registered Businesses Law, section 25(2).

- (i) by or on behalf of the Business, or
 - (ii) by or on behalf of a person who is or is to be a director, controller, partner, senior officer or beneficial owner,
- (d) The annual fee has not been paid,
- (e) It appears to the Commission that any information, statement or document provided by the Business in support of its application was false, misleading, deceptive or inaccurate,
- (f) It appears to the Commission that the Business has contravened in a material particular or committed an offence under a provision of, or made under, the Registered Businesses Law or the prescribed Laws,
- (g) 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,
- (h) It appears to the Commission that the Business or any person who is, or is to be, a director, controller, partner, senior officer or beneficial owner:
- (i) 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
 - (ii) 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,
- (i) 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 applicant is conducting, or proposes to conduct, its affairs or for any other reason, or
- (j) A relevant supervisory authority in a country outside the Bailiwick has withdrawn from the applicant an authorisation corresponding to a registration under the Registered Businesses Law.

4.2. THE PRESCRIBED BUSINESSES LAW PROVISIONS

Under the Prescribed Businesses Law, without prejudice to any other powers of the Commission, where the Commission considers that it is appropriate to do so, having regard to compliance with any provision of, or made under, the Law or any of the relevant enactments, a registered prescribed business or any person who is a director, controller, partner, senior officer or beneficial owner of a registered prescribed

business, the Commission may, subject to the provisions of section 4 of the Law, issue to the Business a private reprimand.⁶

5. THE COMMISSION'S APPROACH

Apart from the matters referred to in paragraph 4.1 and 4.2 above, the Applicable Laws do not prescribe any criteria that the Commission must take into consideration in determining whether to issue and the terms which may be included in the Private Reprimand. 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 will consider in each case whether the issuing of a Private Reprimand is consistent with the Commission's Enforcement Policy and consistent with the Commission's functions. In considering whether to issue a Private Reprimand, the Commission will take into account all relevant circumstances including the seriousness of any contravention or misconduct.

6. CONSEQUENCES OF A PRIVATE REPRIMAND

The issuing of a Private Reprimand is a regulatory sanction that is applied as a result of regulatory non-compliance or other conduct. A Private Reprimand will not be expunged from a Business' regulatory history, nor from the regulatory history of those individuals involved in its control and direction at the time the Private Reprimand was issued.

The Commission reserves its right, should it determine it reasonable to do so, to take the Private Reprimand into account should regulatory concerns arise in the future.

⁶ The Prescribed Businesses Law, section 12(1).