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Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

PROHIBITION ORDERS

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1. GLOSSARY

Unless the context requires otherwise:

“Bailiwick” means Bailiwick of Guernsey,

“Commission” means the Guernsey Financial Services Commission,

“customers” includes, collectively, actual and potential customers, beneficiaries, investors, unit holders, policy holders, depositors and those who have or had a relationship with the party or, where the party is an individual, had a relationship with the Licensee with which the party is or was associated,

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

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

“Note” means this Explanatory Note,

“professional body” includes a body which directs the professional behaviour of its members and which regulates the practice of its profession,

“Prohibition Order” mean an order made by the Commission pursuant to section 34E of the POI Law, section 17A of the Banking Supervision Law, section 17A of the Fiduciaries Law, section 28A of the Insurance Business Law or section 18A of the IMII Law,

“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”),
- (g) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (“FSC Law”),

- (h) 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 making an order prohibiting a person from performing any function, any specified function or any specified description of function in relation to the matters specified under the POI Law, the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law or the IMII Law.

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 Prohibition Order may have on the reputation, livelihood or business of the individual concerned.

The Commission takes very seriously the requirement under the regulatory Laws that an individual be fit and proper to hold a position which is subject to such a requirement under the minimum licensing criteria of the regulatory Laws. The requirement to be fit and proper is a continuous one and exists:

- (a) when the Commission is notified of the proposed appointment,

- (b) when the Commission approves the proposed appointment or does not object to the proposed appointment (as relevant under the regulatory Laws), and
- (c) at all times thereafter until the individual ceases to hold a relevant position.

The Commission may, from time to time, issue guidance in relation to fitness and proprietary issues to which such individuals should make reference.

The Commission may issue a Prohibition 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

A Prohibition Order is an enforcement sanction that prohibits an individual from acting in certain roles within the Bailiwick's regulated financial services industry. A Prohibition Order can only be applied to an individual.

A Prohibition Order can be imposed where it appears to the Commission that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a Licensee¹. In determining whether a person is fit and proper, the Commission must have regard to the fit and proper requirements of the minimum licensing criteria².

The Commission has the power to prohibit an individual from performing any function, any specified function or any specified description of function³. The Prohibition Order may relate to a Licensee or licensed institution generally or any specified class of Licensee or licensed institution⁴ or, as relevant:

- (a) any insurance business⁵,
- (b) any business as an insurance manager or an insurance intermediary⁶,
- (c) any controlled investment business, any specified controlled investment business or any specified description of controlled investment business⁷,
- (d) any deposit-taking business, any specified deposit-taking business or any specified description of deposit-taking business⁸, or

¹ The Banking Supervision Law, section 17A(1); the Fiduciaries Law, section 17A(1); the Insurance Business Law, section 28A(1); the IMII Law, section 18A(1); the POI Law, section 34E(1).

² The Banking Supervision Law, Schedule 3; the Fiduciaries Law, Schedule 1; the Insurance Business Law, Schedule 7; the IMII Law, Schedule 4; the POI Law, Schedule 4.

³ The Banking Supervision Law, section 17A(1); the Fiduciaries Law, section 17A(1); the Insurance Business Law, section 28A(1); the IMII Law, section 18A(1); the POI Law, section 34E(1).

⁴ The Banking Supervision Law, section 17A(2)(b); the Fiduciaries Law, section 17A(2)(b); the Insurance Business Law, section 28A(2)(b); the IMII Law, section 18A(2)(b); the POI Law, section 34E(2)(b).

⁵ The Insurance Business Law, section 28A(2)(a).

⁶ The IMII Law, section 18A(2)(a).

⁷ The POI Law, section 34E(2)(a).

⁸ The Banking Supervision Law, section 17A(2)(a).

- (e) any regulated activity, any specified regulated activity or any description of regulated activity⁹.

The Commission may also vary or revoke a Prohibition Order on the application of the person named in a Prohibition Order¹⁰.

A person aggrieved by the Commission's decision to make, vary or refuse to revoke a Prohibition Order made against them may appeal to the Court against that decision¹¹.

The Commission must maintain a list of all person to whom a Prohibition Order applies¹², and that list may contain such information (if any) in respect of all or any of the persons named therein as the Commission thinks desirable or expedient. The Commission may publish the list and the fact that a person has been named in a Prohibition Order or that a Prohibition Order has been varied or revoked.

5. THE COMMISSION'S APPROACH

The regulatory Laws do not prescribe any criteria that, following a determination that an individual is not fit and proper, the Commission must take into consideration in determining whether to impose, vary or revoke a Prohibition 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 is appropriate.

In considering whether to make a Prohibition Order, the Commission will consider the seriousness of the contravention or misconduct and all relevant circumstances when deciding whether to exercise its power to impose a Prohibition Order and the scope and duration of the prohibition sought.

The Commission will generally consider imposing a Prohibition Order where the contravention or misconduct is by an individual with greater responsibility or who undertakes a more senior role or where the behaviour of an individual, irrespective of their level, is such that the contravention has caused or is likely to cause damage to the reputation of the Bailiwick or the individual poses a risk to Customers or the public.

⁹ The Fiduciaries Law, section 17A(2)(a).

¹⁰ The Banking Supervision Law, section 17A(5); the Fiduciaries Law, section 17A(5); the Insurance Business Law, section 28A(5); the IMII Law, section 18A(5); the POI Law, section 34E(5).

¹¹ The Banking Supervision Law, section 18(1)(e) and (f); the Fiduciaries Law, section 19(1)(k) and (l); the Insurance Business Law, section 63(1)(l) and (m); the IMII Law, section 43(1)(j) and (k); the POI Law, section 36.

¹² The Banking Supervision Law, section 17B; the Fiduciaries Law, section 17B; the Insurance Business Law, section 28B; the IMII Law, section 18B; the POI Law, section 34F.

6. CONSEQUENCES OF BREACH OF PROHIBITION ORDER

It is a criminal offence for an individual to perform or agree to perform any function in breach of a Prohibition Order¹³. A Licensee is required to take reasonable care to ensure none of its functions, in relation to the relevant business or activity, are performed by a person who is prohibited from performing that function by a Prohibition Order¹⁴.

7. CONSEQUENCES OF ORDER REVOCATION OR EXPIRATION

A Prohibition Order is a regulatory sanction that is applied as a result of regulatory non-compliance. The expiration or revocation of a Prohibition 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 Prohibition Order into account should regulatory concerns arise in the future.

8. PUBLICATION

It is currently the practice of the Commission to publish the list of all individuals to whom Prohibition Orders apply, the functions or descriptions of functions which the individual concerned is prohibited from performing and whether an Order has been varied or revoked.

The Commission may also publish such information (if any) as it may think desirable or expedient.

The Commission will continue to proceed on the basis of a presumption in favour of publishing the fact that a Prohibition Order has been imposed and the scope and duration of any Prohibition Order imposed. 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 Prohibition Order by the Commission.

¹³ The Banking Supervision Law, section 17A(3); the Fiduciaries Law, section 17A(3); the Insurance Business Law, section 28A(3); the IMII Law, section 18A(3); the POI Law, section 34E(3).

¹⁴ The Banking Supervision Law, section 17A(4); the Fiduciaries Law, section 17A(4); the Insurance Business Law, section 28A(4); the IMII Law, section 18A(4); the POI Law, section 34E(4).