



Guernsey Financial  
Services Commission

**GUERNSEY FINANCIAL SERVICES  
COMMISSION**

**DIRECTIONS TO A LICENSEE**

**August 2016**

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## 1. GLOSSARY

Unless the context requires otherwise:

“Applicable Laws” means:

- (a) the Banking Supervision (Bailiwick of Guernsey) Law, 1992 (“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”), and
- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“IMII Law”),

all, as amended,

“Bailiwick” means the Bailiwick of Guernsey

“Commission” means the Guernsey Financial Services Commission

“contravention” includes failure to comply,

“customers” includes, collectively, actual and potential consumers, beneficiaries, investors, unitholders, 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,

“direction” means a direction given by the Commission to a Licensee under an Applicable Law:

- (a) When the Commission is serving a notice on a Licensee that the Commission has decided to revoke its Licence (a “Revocation Notice”)
- (b) At any time after the Revocation Notice has been served (whether before or after the Licence is revoked),
- (c) At any time after a Licensee has served a notice surrendering its Licence (whether or not with immediate effect),
- (d) Upon the Expiry of a Licence or at any time thereafter (in cases where the Licence is subject to a condition regarding the Licence’s duration),

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

“Licence” means a licence issued by the Commission under an Applicable Law,

“Licensee” means a person who holds or is deemed to hold or has held a Licence,

“Note” means this Explanatory Note,

“regulated business” means the business of the Licensee for which the Licence had been granted,

“regulatory Laws” means:

- (a) the Applicable Laws,
- (b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“POI Law”),
- (c) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (“Registered Businesses Law”),
- (d) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (“FSC Law”),
- (e) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (“Prescribed Businesses Law”), and
- (f) 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 issuing directions upon Licensees under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law and the IMII Law.

This Note does not extend to the revocation of a licence, authorisation, registration, consent or permission 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. Further, this Note does not extend to directions issued in connection with the transfer of shares by a shareholder controller under 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 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.

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 the issuing of a direction may have on the reputation, livelihood or business of the firm or individuals involved with that firm.

The Commission may issue directions 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

Under the Applicable Laws, the Commission has the power to issue directions to a Licensee<sup>1</sup>:

- (a) when the Commission is serving a Revocation Notice on a Licensee,
- (b) at any time after the Revocation Notice has been served (whether before or after the Licence is revoked),
- (c) at any time after a Licensee has served a notice surrendering its Licence (whether or not with immediate effect),
- (d) upon the expiry of a Licence or at any time thereafter (in cases where the Licence is subject to a condition regarding the Licence's duration).

The Commission may give the Licensee such directions which appear to the Commission to be desirable in the interests of<sup>2</sup>:

- (e) the public<sup>3</sup>,
- (f) depositors or potential depositors<sup>4</sup>,
- (g) policyholders or potential policyholders<sup>5</sup>,
- (h) clients<sup>6</sup>, and
- (i) the reputation of the Bailiwick as a finance centre<sup>7</sup>,

for the purpose of safeguarding assets or otherwise.

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<sup>1</sup> The Banking Supervision Law, section 12(1); the Fiduciaries Law, section 12(1); the Insurance Business Law, section 16(1); the IMII Law, section 11(1).

<sup>2</sup> The Banking Supervision Law, section 12(1); the Fiduciaries Law, section 12(1); the Insurance Business Law, section 16(1); the IMII Law, section 11(1).

<sup>3</sup> The Insurance Business Law, section 16(1); the IMII Law, section 11(1).

<sup>4</sup> The Banking Supervision Law, section 12(1).

<sup>5</sup> The Insurance Business Law, section 16(1); the IMII Law, section 11(1).

<sup>6</sup> The Fiduciaries Law, section 12(1); the IMII, section 11(1) – in the case of an insurance intermediary.

<sup>7</sup> The Insurance Business Law, section 16(1); the IMII Law, section 11(1).

Although varying slightly between the Applicable Laws, the Commission may in the directions, without prejudice to the general nature of this power<sup>8</sup>:

- (a) require the Licensee to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of his business in a particular way,
- (b) prohibit or impose limitations upon the carrying on the regulated business and other business<sup>9</sup>,
- (c) prohibit the Licensee from soliciting business either generally or from particular persons or classes of persons<sup>10</sup>,
- (d) prohibit the Licensee from entering into any other transaction or class of transactions,
- (e) require the removal of any director, controller, partner, manager, employee, general representative, auditor, actuary or authorised insurance representative.

A person aggrieved by the Commission's decision to issue a direction may appeal to the Court against that decision<sup>11</sup>.

## 5. THE COMMISSION'S APPROACH

The Commission considers that the power to issue a direction is primarily intended to be facilitative and that its object is to ensure that the revocation or cessation of a Licence takes place effectively and that the interests of the Customers and protection of the Bailiwick are protected during and after this process. Whenever a Licence is being or has been terminated in circumstances when the power to issue a direction arises, the Commission will consider whether in the circumstances it is desirable to make a direction.

In deciding whether to issue a direction the Commission will consider the purposes and the relevant interests set out in paragraph 4 above, as set out in the Applicable Laws.

None of the Applicable Laws prescribe any particular factors that the Commission must take into account in determining whether it is desirable to issue a direction. 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 direction is consistent with the Commission's Enforcement Policy and consistent with the Commission's functions. In considering

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<sup>8</sup> The Banking Supervision Law, section 12(2); the Insurance Business Law, section 16(2); the IMII Law, section 11(2).

<sup>9</sup> Under section 12(2)(b) of the Banking Supervision Law, this includes accepting or repaying deposits, the granting of credit or the making of investments.

<sup>10</sup> Under the Banking Supervision Law, this is limited to prohibiting the institutions from soliciting deposits either generally or from persons who are not already depositors (section 12(2)(c)). In relation to the Fiduciaries Law, this is limited to prohibiting the Licensee from soliciting business either generally or from persons who are not already clients (section 12(2)(c)). Under the Insurance Business Law, this is limited to soliciting new business (section 16(2)(c)). In relation to the IMII Law, there is no limitation to this statement (section 11(2)(c)).

<sup>11</sup> The Banking Supervision Law, section 18(1)(d); the Fiduciaries Law, section 19(1)(f); the Insurance Business Law, section 63(1)(b); the IMII Law, section 43(1)(e).

whether to issue a direction, the Commission will take into account all relevant circumstances including the seriousness of any contravention or misconduct.

## 6. PUBLICATION

The Commission may publish a public statement in certain circumstances<sup>12</sup>. In determining whether or not to publish a statement where the Commission has issued a direction, the Commission will take into consideration the circumstances, the Commission's functions and the interests of the public and the reputation of the Bailiwick.

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<sup>12</sup> The FSC Law, section 11C.