



Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

DIRECTIONS TO ADVERTISERS

August 2016

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1. GLOSSARY

Unless the context requires otherwise:

“Advertisement” includes:

- (a) in respect of the IMII Law and the Insurance Business Law, every form of advertising whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media¹,
- (b) in respect of a Deposit Advertisement or a Fiduciaries Advertisement, any means of bringing such an invitation or such information to the notice of any person²,

“Advertiser” includes:

- (a) A person on whose behalf an Advertisement is issued³,
- (b) A person who issues or causes to be issued an Advertisement by way of display or exhibition in a public place⁴,
- (c) The person specified in an Advertisement which:
 - (i) Contains an invitation to enter into or offer to enter into a contract with that person⁵,
 - (ii) Contains an invitation to become a client of or use services provided by that person⁶,
 - (iii) Invites deposits with that person⁷,

“Applicable 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”), and
- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“IMII Law”),

¹ The Insurance Business Law, Schedule 5; the IMII Law, Schedule 3.

² The Banking Supervision Law, section 19(5); the Fiduciaries Law, section 20(5).

³ The Insurance Business Law, section 64(2)(a); the IMII Law, section 61(10)(a).

⁴ The Banking Supervision Law, section 19(6)(a); the Fiduciaries Law, section 20(6)(a); the Insurance Business Law, section 64(2)(b); the IMII Law, section 61(10)(b).

⁵ The Insurance Business Law, section 64(2)(c); the IMII Law, section 61(10)(c).

⁶ The Fiduciaries Law, section 20(6)(b); the Insurance Business Law, section 64(2)(c); the IMII Law, section 61(10)(c).

⁷ The Banking Supervision Law, section 19(6)(b).

“Banking Direction” means a Direction issued under the Banking Supervision Law,

“Commission” means the Guernsey Financial Services Commission,

“contravention” includes failure to comply,

“Deposit Advertisement” means any Advertisement containing⁸:

- (a) an invitation to make a deposit, or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit,

“Direction” means a Direction given under an Applicable Law to an Advertiser by the Commission if the Commission considers an Advertisement:

- (a) issued or proposed to be issued is misleading⁹, or
- (b) the issue, form or content of any such Advertisement constitutes or would constitute a contravention of section 64 of the Insurance Business Law or any regulation issued under section 64 of the Insurance Business Law, or section 61 of the IMII Law (as relevant)¹⁰,

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

“Fiduciaries Advertisement” means any Advertisement containing¹¹:

- (a) an invitation to become a client of or to use services provided by any person carrying on or offering to carry on by way of business any regulated activities, or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to a person becoming such a client or using such services,

“Note” means this Explanatory Note,

“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”),

⁸ The Banking Supervision Law, section 19(5).

⁹ The Banking Supervision Law, section 19(7); the Fiduciaries Law, section 20(7); the Insurance Business Law, section 64(5)(a); the IMII Law, section 61(4)(a).

¹⁰ The Insurance Business Law, section 64(5)(b); the IMII Law, section 61(4)(b).

¹¹ The Fiduciaries Law, section 20(5).

- (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 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 to Advertisers in relation to Advertisements under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law and 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, or 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 the issuing of a Direction may have on the reputation, livelihood or business of the firm or individuals involved with that firm but will balance this against the need to protect the public from misleading or contravening Advertisements.

The Commission may issue Directions alone or in addition to any other regulatory sanction which it is empowered to impose under the regulatory Laws or the Prescribed Businesses Law, as it determines to be reasonable and appropriate. Such determination will be made on a case by case basis.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1. WHETHER TO ISSUE A DIRECTION

Under the Applicable Laws, the Commission may issue Directions to an Advertiser where it considers that an Advertisement issued or proposed to be issued is misleading¹². In addition, under the Insurance Business Law and the IMII Law, the Commission may issue Directions to an Advertiser where it considers that the issue, form or content of any such Advertisement constitutes or would constitute a contravention of¹³:

- (a) section 64 of the Insurance Business Law, or
- (b) any regulation issued under section 64 of the Insurance Business Law, or
- (c) section 61 of the IMII Law,

as relevant.

Although varying slightly between the Applicable Laws, the Commission may in a Direction¹⁴:

- (a) prohibit the issue of any Advertisements or any Advertisements of a specified description,
- (b) prohibit the issue of any Advertisements which are, wholly or substantially, repetitions of an Advertisement which has been issued and which is identified in the Direction,
- (c) require that all practicable steps are taken to withdraw, whether from display in any place or otherwise, any Advertisements or any Advertisements of a specified description,
- (d) require that any Advertisement or Advertisements of a specified description be modified in a specified manner.

A Direction issued by the Commission under the Fiduciaries Law, the Insurance Business Law or the IMII Law may have immediate effect¹⁵, whereas under the Banking Supervision Law, a Direction issued will have immediately effect¹⁶. The Advertiser has the right to then make written representations to the Commission concerning the Banking Direction. The Commission shall, within a period of seven days immediately following the day upon which the representations are made, decide whether to maintain or revoke the Banking Direction¹⁷.

¹² The Banking Supervision Law, section 19(7); the Fiduciaries Law, section 20(7); the Insurance Business Law, section 64(5)(a); the IMII Law, section 61(4)(a).

¹³ The Insurance Business Law, section 64(5)(b); the IMII Law, section 61(4)(b).

¹⁴ The Banking Supervision Law, section 10(8); the Fiduciaries Law, section 20(8); the Insurance Business Law, section 64(6); the IMII Law, section 61(5).

¹⁵ The Fiduciaries Law, section 20(9)(a); the Insurance Business Law, section 64(7)(a); the IMII Law, section 61(6)(a).

¹⁶ The Banking Supervision Law, section 19(9).

¹⁷ The Banking Supervision Law, section 19(10).

A person aggrieved by the Commission's decision to issue a Direction may appeal to the Court against that decision¹⁸.

4.2. REVOCATION, RESCISSION OR VARIATION OF DIRECTIONS

The Commission may vary a Direction by issuing a further Direction or revoke or rescind a Direction by notice in writing to the Advertiser¹⁹.

5. THE COMMISSION'S APPROACH

Other than the matters referred to in paragraph 4.1 above, the Applicable Laws do not prescribe any criteria that the Commission must take into consideration in determining whether to issue a Direction. It is not possible nor would it be appropriate for the Commission to try and produce a definite 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 whether to issue a Direction, the Commission will take into account:

- (a) all relevant circumstances including the seriousness of any contravention or misconduct, and
- (b) whether it is desirable in the public interest to issue the Direction.

In general the Commission is likely to take the view that a misleading Advertisement (or one which contravenes section 64 of the Insurance Business Law (or regulations made under it), or section 61 of the IMII Law) should not be allowed although the Commission is not bound to issue a Direction in all cases.

Where the Commission determines that an Advertisement should not be allowed, it will consider the form of the Direction to be issued. In considering the form of the Direction, the Commission may have regard to a number of factors, including but not limited to, the circumstances of the case, the manner in which the Advertisement came to be issued, whether it is reasonably practicable to modify the Advertisement in a specified manner to remove or correct the misleading (or contravening) elements, whether this would be a reasonable response and protect the public or whether the Advertisement and any other Advertisements should be prohibited completely.

6. CONSEQUENCES OF DIRECTION REVOCATION OR EXPIRATION

The revocation or expiration of a Direction will not expunge the Direction from the person's regulatory history with the Commission. The Commission reserves the right, should it determine it reasonable to do so, to take the fact that a Direction was issued into account should regulatory concerns arise in the future.

¹⁸ The Banking Supervision Law, section 18(1)(g); the Fiduciaries Law, section 19(1)(f); the Insurance Business Law, section 63(1)(g); the IMII Law, section 43(1)(e).

¹⁹ The Banking Supervision Law, section 19(11); the Fiduciaries Law, section 20(10); the Insurance Business Law, section 64(8); the IMII Law, section 61(7).

7. PUBLICATION

The Commission may publish a statement concerning an Advertisement in relation to which a Direction has been issued. The Commission will proceed on the basis of a presumption in favour of publishing the fact that a Direction has been issued and other matters in relation to the Direction and the relevant Advertisement. Publication will take place at the time the Direction is issued by the Commission.