



Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

IMPOSITION OF LICENCE CONDITIONS

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1. GLOSSARY

Unless the context requires otherwise:

“Applicable Laws” means

- (a) 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 Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (“Registered Businesses Law”), and
- (f) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“POI Law”),

“Clients” includes, collectively, any actual or potential policy holder or depositor or any client of a fiduciary Licensee or an insurance intermediary Licensee,

“Commission” means the Guernsey Financial Services Commission,

“contravention” includes failure to comply,

“Condition” means a condition imposed by the Commission in respect of a Licence under an Applicable Law at any time after the Licence has been granted or imposed,

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

“Licence” means a licence, consent, registration, permission or authorisation from the Commission under one of the Applicable Laws (including and without limitation an authorisation or registration for a collective investment scheme granted under the POI 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 Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (“FSC Law”), and
- (c) 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 the imposition of a Condition in respect of a Licence under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law, the IMII Law, the Registered Businesses Law and the POI Law.

This Note does not extend to the imposition of Conditions in respect of a Licence:

- (a) at the time the Licence is granted under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law, the IMII Law, the Registered Businesses Law or the POI Law.
- (b) by agreement between the Commission and the Licensee under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law, the IMII Law, the Registered Business Law or the POI Law.
- (c) where the Conditions are being imposed as a prudential measure, for example to protect depositors.

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 fulfill its regulatory objectives and apply its Enforcement Policy. However, the Commission is also aware of the serious detrimental effect that an Administration Order may have on the reputation, livelihood or business of the party concerned.

The Commission may impose Conditions 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 Commission has the power, by notice in writing served on a Licensee or a designated manager in respect of a collective investment scheme (as applicable), to impose, vary, rescind or revoke a Condition¹.

A person aggrieved by the Commission's decision to impose, vary, rescind or revoke a Condition may appeal to the Court against that decision².

4.1. IMPOSITION OF A CONDITION

Under the Applicable Laws, the Condition may, by notice in writing served on a Licensee or a designated manager in respect of a collective investment scheme (as applicable), impose such Conditions:

- (a) as it thinks fit³, or
- (b) as appear to the Commission to be necessary or desirable⁴.

In considering whether or not to impose a Condition the Commission may, without limitation, have regard to any matter to which it may have regard in determining whether or not to grant an application for a Licence or to cancel, revoke or suspend a Licence⁵.

The Conditions which may be imposed in respect of a Licence may make the provision as to the duration of the Licence⁶ and for the protection of:

- (a) the public⁷,

¹ The Banking Supervision Law, section 9(1) and (3); the Fiduciaries Law, section 9(1) and (3); the Insurance Business Law, section 12(1) and (3); the IMII Law, section 7(1) and (3); the POI Law, section 5(1) and 9(1); the Registration of Businesses Law, section 8(1) and (3).

² The Banking Supervision Law, section 18(1)(c) – however does not extend to rescinding the Condition; the Fiduciaries Law, section 19(1)(c); the Insurance Business Law, section 63(1)(c); the IMII Law, section 43(1)(c); the POI Law, sections 35(1)(b) and (e) and 36(1) – however does not extend to revoking the Condition; the Registration of Businesses Law, section 16(1)(b).

³ The Banking Supervision Law, section 9(1); the Fiduciaries Law, section 9(1); the Insurance Business Law, section 12(1); the IMII Law, section 7(1); the Registration of Businesses Law, section 8(1).

⁴ The POI Law, section 5(1) and section 9(1).

⁵ The Banking Supervision Law, section 9(8); the Fiduciaries Law, section 9(8); the Insurance Business Law, section 12(8); the IMII Law section 7(8); the POI Law, section 5(3); the Registration of Businesses Law, section 8(7). However, the POI Law does not specify any matters to which the Commission may have regard in determining whether or not to impose, vary or revoke a Condition on an authorisation or registration of a collective investment scheme under section 9.

⁶ The Banking Supervision Law, section 9(4); the Fiduciaries Law, section 9(4); the Insurance Business Law, section 12(4); the IMII Law, section 7(4). The POI Law does not contain a similar provision.

⁷ The Insurance Business Law, section 9(4); the IMII Law, section 7(4); the Registered Business Law, section 8(4).

- (b) the Clients⁸,
- (c) the reputation of the Bailiwick as a financial centre⁹.

Although varying slightly between the Applicable Laws, the Commission may, but without limitation, in the Conditions¹⁰:

- (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 acceptance or carrying on the regulated business and other business¹¹,
- (c) prohibit the Licensee from soliciting regulated or other business either generally or from particular persons or classes of persons¹²,
- (d) prohibit the Licensee from entering into any other transaction or class of transactions¹³,
- (e) require the removal of any director, controller, partner, manager, employee, general representative or authorised insurance representative¹⁴,

⁸ The Banking Supervision Law, section 9(4); the IMII Law, section 7(4); the Registered Businesses Law, section 8(4) – also extends to enhancement of the reputation of the Bailiwick as a financial centre.

⁹ The Banking Supervision Law, section 12(2); the Fiduciaries Law, section 9(4); the Insurance Business Law, section 12(4); the IMII Law, section 7(4); the POI Law, section 5(2) and section 9(2); the Registered Businesses Law, section 8(4).

¹⁰ The Banking Supervision Law, section 12(2); the Fiduciaries Law, section 9(4); the Insurance Business Law, section 12(4); the IMII Law, section 7(4); the POI Law, section 5(2) and 9(2); the Registered Businesses Law, section 8(4).

¹¹ Under section 9(4)(b) of the Banking Supervision Law, this includes accepting deposits, the granting of credit or the making of investments.

¹² 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 9(4)(c)) and prohibiting, restricting or imposing limitations on the carrying on of deposit-taking business, or any class or description of deposit taking business, in or from within any place, or particular place, outside the Bailiwick: (i) by the institution itself (ii) by any undertaking established by the institution (including, without limitation, any branch or subsidiary thereof), or (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association) (section 9(4)(h)). 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 9(4)(c)). Under the Insurance Business Law, this is limited to soliciting business either generally or from particular persons or classes of persons (section 12(4)(c)). Under the IMII Law, this is limited to soliciting business either generally or from particular persons or classes of persons (section 7(4)(c)). Under the POI Law, this is limited to soliciting business in a specified place, or from persons of a specified description or otherwise than from such persons (section 5(2)(a)(ii)). Under the Registered Businesses Law, this is limited to soliciting business, either generally or from particular persons or classes of persons (section 8(4)(c)).

¹³ This is not specifically provided for under section 8 of the Registered Businesses Law.

¹⁴ The Banking Supervision Law, section 9(4)(e) – applies to directors, controllers, managers and employees. The Fiduciaries Law, section 9(4)(e) – applies to a director, controller, manager, partner or employee. The Insurance Business Law, section 12(4)(e) – applies to a director, controller, manager, partner, employee or authorised insurance representative. The POI Law, section 5(2)(d) – applies to a director, controller, manager, partner or employee. In addition each of the Applicable Laws contains general powers to require a Licensee to perform certain actions. This is not specifically provided for under section 8 of the Registered Businesses Law.

- (f) specify requirements to be fulfilled otherwise than by action taken by the Licensee,¹⁵
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be specified¹⁶,
- (h) In respect of collective investment schemes only, prohibit or restrict the promotion of the scheme:
 - i. to the public in the Bailiwick, or
 - ii. from within the Bailiwick to the public in any specified country or territory, or elsewhere than in any specified country or territory.

In addition, a number of the Applicable Laws specify further matters which the Conditions may make provision for¹⁷.

4.2. VARIATION OR REVOCATION OF A CONDITION

In considering whether or not to vary or rescind any Condition the Commission may, without limitation, have regard to any matter to which it may have regard in determining whether or not to grant an application for a Licence or to cancel, revoke or suspend a Licence¹⁸.

5. THE COMMISSION'S APPROACH

Apart from the matters referred to in paragraphs 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 impose a Condition. 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 imposition of a Condition is consistent with the Commission's Enforcement Policy and consistent with the Commission's functions. In considering whether to impose a Condition, the Commission will take into account all relevant circumstances including the seriousness of any contravention or misconduct.

¹⁵ This is not specifically provided for under sections 5 or 9 of the POI Law or under section 8 of the Registered Businesses Law.

¹⁶ This is not specifically provided for under sections 5 or 9 of the POI Law or under section 8 of the Registered Businesses Law.

¹⁷ The Fiduciaries Law, section 9(4)(h) and (i); the Insurance Business Law, section 12(4)(h) – (n); the IMII Law, section 7(4)(h) – (l); the POI Law, section 52(c) and (e).

¹⁸ The Banking Supervision Law, section 9(8); the Fiduciaries Law, section 9(8); the Insurance Business Law, section 12(8); the IMII Law, section 7(8); the POI Law, section 5(3); the Registration of Businesses Law, section 8(7). However, the POI Law does not specify any matters to which the Commission may regard in determining whether or not to impose, vary or revoke a Condition on authorisations or registration of collective investment schemes under section 9.

6. CONSEQUENCES OF CONDITION REVOCATION OR EXPIRATION

In some circumstances, the imposition of a Condition is a regulatory sanction that is applied as a result of regulatory non-compliance. The expiration or revocation of a Condition will not expunge the Condition 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 Condition into account should regulatory concerns arise in the future.

7. PUBLICATION

The Banking Supervision Law and the Fiduciaries Law

The Commission maintains lists of all persons who are Licenced under the Banking Supervision Law, the Fiduciaries Law and the POI Law. The Commission is able to include in the list such information in respect of any or all of the persons named therein as the Commission may think desirable or expedient¹⁹. This may include reference to Conditions imposed upon a Licence. In deciding whether or not to publish information in relation to a Condition, the Commission may have regard to:

- (a) the interests of the public
- (b) the reputation of the Bailiwick as a financial centre.

Publication, by amendment of the list, will take place upon the imposition of the Condition.

The Insurance Business Law, the IMII Law and the Registered Businesses Law

The Commission may, inter alia, give public notice of the imposition of a Condition²⁰. In deciding whether or not to do so, the Commission shall have regard to:

- (a) the interests of the public²¹,
- (b) the interests of policyholders and potential policyholders²²,
- (c) the Clients²³, and
- (d) the reputation of the Bailiwick as a finance centre²⁴.

¹⁹ The Banking Supervision Law, section 13(1) and (5); the Fiduciaries Law, section 13(1) and (5); the Insurance Business Law, section 17(1) and (2); the IMII Law, section 12(1) and (2); the Registered Business Law, section 12(1) and (2).

²⁰ The Banking Supervision Law, section 13(1) and (5); the Fiduciaries Law, section 13(1) and (5); the Insurance Business Law, section 17(1) and (2); the IMII Law, section 7(9); the Registered Business Law, section 8(8).

²¹ The Insurance Business Law, section 12(9); the IMII Law, section 7(9); the Registered Business Law, section 8(8).

²² The Insurance Business Law, section 12(9); the IMII Law, section 7(9).

²³ The IMII Law, section 7(9).

²⁴ The Registered Businesses Law, section 8(8) – also extends to the protection and enhancement of the reputation of the Bailiwick as a financial centre.