



Guernsey Financial
Services Commission

GUERNSEY FINANCIAL SERVICES COMMISSION

LICENCE REVOCATION

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1. GLOSSARY

Unless the context requires otherwise:

“Bailiwick” means the Bailiwick of Guernsey,

“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,

“Licence” means a licence, consent, registration, permission or authorisation from the Commission under one of the regulatory Laws,

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

“Note” means this Explanatory Note,

“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”**), and
 - (e) any other enactment or statutory instrument prescribed for the purposes of section 24 of 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 and methodology in relation to the revoking of a Licence under the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law or the IMII Law.

This Note does not extend to the cancellation, revocation or suspension of a licence, authorisation, registration, consent or permission issued or granted by the Commission under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended or The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, as amended. In relation to these regulatory sanctions, please see the Commission's Explanatory Note - Licence Cancellation, Revocation or Suspension.

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 licence 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.

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

The Commission may revoke a Licence alone or in addition to any other regulatory sanction which it is empowered to impose under the regulatory Laws or under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended or The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, as amended as it determines to be reasonable and appropriate. Such determination will be made on a case by case basis.

4. RELEVANT LEGISLATIVE PROVISIONS

Although the wording varies slightly as between the regulatory Laws, in general, the Commission may revoke a Licence if it appears to the Commission that:¹

- (a) Any of the minimum licensing criteria in the relevant regulatory Law are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of both the Licensee or any of its directors, controllers, partners, managers, general representative or employees, or authorised insurance representative,
- (b) The Licensee or any of its directors, controllers, partners, managers, general representative or employees or authorised insurance representative has committed an offence under any provision of the relevant regulatory Law or any Ordinance, regulation or rule made under it or has otherwise contravened any prohibition, restriction, condition, requirement, direction or arrangement imposed by or under any such provision,
- (c) A person has become or has continued to be a controller, director or partner contrary to the regulatory Laws or after a notice of objection has been given,
- (d) The Commission has been provided with false, misleading, deceptive or inaccurate information by or on behalf of the entity or, in connection with an application for a Licence, by or on behalf of a person who is or is to be a director, controller, manager, partner, general representative, authorised insurance representative, or employee,
- (e) The interests of clients, prospective clients, depositors, potential depositors, policyholders or potential policyholders are in any way threatened or jeopardised, whether by the manner in which the Licensee is conducting or proposes to conduct its affairs or for any other reason,
- (f) Failure to pay the prescribed fee for a Licence,
- (g) A relevant supervisory authority in a country outside of the Bailiwick has withdrawn from the entity an authorisation corresponding to a licence, registration or authorisation under one of the regulatory Laws,
- (h) A composition or arrangement with creditors has been made, or a receiver has been appointed in respect of, or possession has been taken of, any property of the Licensee by or on behalf of creditors or debenture holders,
- (i) Where the entity is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which corresponds as nearly as may be to any event described in paragraphs (h), (k), (l) or (m),
- (j) The entity has not carried on by way of business a regulated activity in the Bailiwick or elsewhere within a period of 12 months beginning on the day on which the Licence was granted or, having so carried on a regulated activity in the Bailiwick or elsewhere, has subsequently not done so for any period of more than six months,

¹ Please refer to the relevant regulatory Laws for further details.

- (k) The entity's affairs have been declared in a state of "désastre" by arresting creditors at a meeting held before a Commissioner of the Court,
- (l) A preliminary vesting order has been made against the entity in respect of any real property in the Bailiwick, or
- (m) Otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, a liquidator (provisional or otherwise) has been appointed to act in relation to the entity's estate or affairs or it has passed a special resolution requiring it to be wound up voluntarily.²

In considering whether or not to revoke a Licence the Commission may, without prejudice to the grounds listed above, have regard to any matter to which it may have regard under the regulatory Law provisions relating to the approval or refusal of a Licence application.³

The Insurance Business Law and the IMII Law include some additional grounds which, if not satisfied, are grounds to revoke a Licence.⁴ A person aggrieved by the Commission's decision to revoke its Licence may appeal to the Court against that decision.⁵

5. THE COMMISSION'S APPROACH

Apart from the matters referred to in paragraph 4 above, the relevant Laws do not prescribe any criteria that the Commission must take into consideration in determining whether to revoke a Licence. 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 take into account the seriousness of the contravention or misconduct and all relevant circumstances when deciding whether to exercise its power to revoke a Licence.

² The Banking Supervision Law, section 8(1); the Fiduciaries Law, section 8(1); the Insurance Business Law, section 14(1); the IMII Law, section 9(1).

³ The Banking Supervision Law, section 8(3); the Fiduciaries Law, section 8(2); the Insurance Business Law, section 14(2); the IMII Law, section 9(2).

⁴ The Insurance Business Law, section 14(1)(n) - the insurer's general representative has failed to satisfy an obligation to which he is subject by virtue of that Law; the IMII Law, section 9(1)(m) - in the case of an insurance intermediary, his authorised insurance representative has failed to satisfy an obligation to which he is subject by virtue of that Law. In relation to both the IMII Law, section 9(1)(k) and the Insurance Business Law, section 14(1)(l) - an interim vesting order has been made against the licensee in respect of any real property in the Bailiwick. In relation to both the IMII Law, section 9(1)(l) and the Insurance Business Law, section 14(1)(m); otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up, a liquidator (provisional or otherwise) has been appointed to act in relation to the estate or affairs of the licensee or the licensee has passed a special resolution requiring it to be wound up voluntarily.

⁵ The Banking Supervision Law, section 18(1)(b); the Fiduciaries Law, section 19(1)(b); the Insurance Business Law, section 63(1)(b); the IMII Law, section 43(1)(b).

The Commission recognises that because revocation of a Licence brings the business to a halt, its impact is likely to be particularly severe. For this reason revocation will usually only be applied in the most serious cases. However, as the circumstances in which a Licence may be revoked vary considerably, this may not always be the case.

6. CONDUCT OF BUSINESS POST-REVOCATION

Once a person's Licence has been revoked, it is no longer able to legally conduct business or engage in activities for which a Licence is required under the regulatory Laws. The Commission has the power to impose other regulatory sanctions upon those who engage in unlawful business. The conduct of business following a Licence revocation is considered to be unlawful and an offence under the regulatory Laws.⁶

7. EFFECTIVE DATE

The Commission's decision to revoke a Licence will not have effect until the end of the period within which an appeal can be brought or, if an appeal is brought, until the appeal is determined or withdrawn.⁷

However, where the Commission is of the view that it is necessary or desirable to do so, (a) in the interests of the clients of the Licensee, or (b) for the protection or enhancement of the reputation of the Bailiwick, the Commission may apply to the Court for an order directing that its decision should, without prejudice to any right of appeal, have immediate effect.⁸

8. CONSEQUENCES OF REVOCATION

The revoking of a Licence is a regulatory sanction that is applied as a result of regulatory non-compliance. The Commission reserves its right, should it determine it reasonable to do so, to take the revocation into account should regulatory concerns arise in the future.

Where the Commission makes a decision to revoke a Licence, it may give the Licensee such directions as appear to the Commission to be desirable in the interests of the public, policyholders, potential policyholders, clients, potential clients, depositors or potential depositors.⁹ In relation to this regulatory sanction, please see the Commission's Explanatory Note – Directions to a Licensee.

⁶ The Banking Supervision Law, section 1; the Fiduciaries Law, section 1; the Insurance Business Law, sections 1, 3 and 4; the IMII Law, sections 1 and 2.

⁷ The Banking Supervision Law, section 8(2); the Fiduciaries Law, section 8(3); the Insurance Business Law, section 14(3); the IMII Law, section 9(3).

⁸ The Fiduciaries Law, section 8(4); the Insurance Business Law, section 14(4); the IMII Law, section 9(4). There is no equivalent provision in the Banking Supervision Law.

⁹ The Banking Supervision Law, section 12(1); the IMII Law, section 11(1); the Insurance Business Law, section 16(1); the Fiduciaries Law, section 12 (1).

9. PUBLICATION

The Commission must maintain a list of all persons who are licensed under the regulatory Laws. The Commission is required under the regulatory Laws to publish the fact that a person has ceased to hold a Licence and to amend the list of licensees the Commission has published.¹⁰ Publication will take place the date upon which the Licensee ceases to be licensed.

¹⁰ The Banking Supervision Law, section 13(3); the Fiduciaries Law, section 13(3); the Insurance Business Law, section 17(4) and (6); the IMII Law, section 12(3) and (6).