

# Investec Bank (Channel Islands) Limited Standard Terms of Business for Loan Introducers

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# Standard Terms of Business for Loan Introducers

## 1 Definitions and interpretation

1.1 In this Agreement the following words and expressions have the following meanings:

### **Affiliates**

has the meaning set out under section 529 of the Companies (Guernsey) Law, 2008 (as amended).

### **Agent**

an officer or employee of the Introducer who introduces or may introduce an Applicant to Investec.

### **Agreement**

this agreement between the Parties.

### **Anti-Bribery Laws**

the UK's Bribery Act 2010 and all other anti-bribery laws and requirements of those countries or territories in which the Introducer operates in connection with this Agreement.

### **Applicant**

a person who applies for a Loan from Investec as a result of an introduction made by the Introducer.

### **Applicable Laws**

all laws, ordinances, statutes and statutory provisions that (in each case) apply to the activities of the relevant Party under this Agreement.

### **Business Day**

a day, other than a Saturday or Sunday, on which banks are open for business in Guernsey.

### **Client**

an Applicant to whom Investec agrees to provide a Loan.

### **Commission**

the amount payable by Investec to the Introducer in accordance with condition 4.

### **Confidential Information**

in relation to either Party (the **Disclosing Party**), any information, including any information relating to the operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers, customer details, Applicants, Applicant's details, Clients, Client's details and business affairs of the Disclosing Party (or, where Investec is the Disclosing Party, of any other member of Investec Group), but excluding any information which the Party in receipt of the information (the **Receiving Party**) can reasonably prove:

- (a) was already known to it prior to its receipt from the Disclosing Party;
- (b) was subsequently disclosed to it lawfully by a third party who did not obtain it (whether directly or indirectly) from the Disclosing Party; or
- (c) was in the public domain at the time of receipt by the Receiving Party or subsequently entered into the public domain other than by reason of breach of this Agreement or breach of any obligation of confidentiality owed by the Receiving Party or its agents or subcontractors to the Disclosing Party.

### **Data Protection Authority**

The Office of the Data Protection Commissioner in Guernsey, the Office of the Information Commissioner in Jersey (or such other name as may be given to them from time to time).

### **Data Protection Directives**

The European Data Protection Directive (95/46/EC) and The European Privacy and Electronic Communications Directive (Directive 2002/58/EC).

### **Data Protection Legislation**

means (as applicable): (i) the Guernsey Data Protection Law or the Jersey Data Protection Law (each subject to any applicable transitional provisions) (ii) the Data Protection Regulation; (iii) the e-Privacy Legislation until the effective date of its repeal; and (iv) any guidance, directions, determinations, codes of practice, circulars, orders, notices or demands issued by any applicable Data Protection Authority or other data protection laws or regulations in Guernsey, Jersey or any other territory in which the Services are provided or received or which otherwise apply.

### **Data Protection Notice**

such data protection notice as may be published by or on behalf of Investec from time to time.

### **Data Protection Regulation**

means on and from 25 May 2018, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

### **Effective Date**

the date set out at the back of this Agreement.

### **e-Privacy Legislation**

any laws or ordinances which implement the directive known as 'The European Privacy and Electronic Communications Directive' or 'e-Privacy Directive' (Directive 2002/58/EC) in the Islands of Guernsey and Jersey to the extent that it applies and is in force, including the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.

### **Guernsey Data Protection Law**

The Data Protection (Bailiwick of Guernsey) Law, 2017.

### **Introducer**

Introducer's Legal Name.

### **Investec**

Investec Bank (Channel Islands) Limited (a company registered in Guernsey with registered number 5845), whose registered office is Gategny Court, Gategny Esplanade, St Peter Port, GY1 1WR, and its successors and assignees.

### **Investec Group**

Investec Bank plc (registered number 489604), Investec plc (registered number 03633621) registered in England and Wales, whose registered offices are at 30 Gresham Street, London EC2V 7QP, Investec Limited (registered in South Africa number 1925/002833/06) whose registered office is at 100 Grayston Drive, Sandown, Sandton, South Africa and the holding companies (and other subsidiaries of those holding companies) and any direct or indirect subsidiaries of those three companies.

### **Jersey Data Protection Law**

The Data Protection (Jersey) Law, 2018 and the Data Protection Authority (Jersey) Law, 2018.

### **Loan**

any type of loan or credit arrangement that may be made available by Investec to any person from time to time, whether secured or unsecured.

### **Party**

Investec or the Introducer and any reference to the Parties means both of them.

### **Sanction**

a person shall be or become the subject of a Sanction if he:

- (a) is or has been the subject of a disqualification order; or
- (b) has been convicted of a criminal offence (other than a motoring offence) or is the subject of criminal proceedings; or
- (c) has been censured by a regulatory or other authority or professional body or had his licence or membership revoked; or
- (d) is the subject of any investigation by any regulatory or other authority or body; or

- (e) is or has been the subject of insolvency proceedings or had a receiver, administrator or administrative receiver over the whole or any part of his assets or made any arrangement with his creditors, in any jurisdiction in which he carries out any business activities including under this Agreement.
- 1.2 In this Agreement, the terms “controller”, “processor”, “processing”, “data subject”, and “personal data” shall bear the meaning ascribed under the Data Protection Regulation.
- 1.3 Where the words “including”, “include” or “for example” are used, they shall be read as if followed by the words “without limitation”.
- 1.4 References to laws, ordinances, subordinate legislation, regulations and rules shall be to such laws, ordinances, subordinate legislation, regulations or rules as may be subsequently amended, substituted, modified or re-enacted from time to time.
- 1.5 Where the Introducer is a partnership, references to the Introducer in this Agreement are to the partnership and all the partners of the partnership. The partners shall be parties to this Agreement and this Agreement shall be binding on the partnership and all of the partners jointly and severally, unless otherwise agreed.

## 2 Introductions and cross-selling

- 2.1 The appointment of the Introducer shall take effect from the Effective Date. Commissions shall be payable under this Agreement only in respect of introductions made from the Effective Date.
- 2.2 The Introducer shall not introduce Loans through any third party (other than its Agents), without the prior written consent of Investec.
- 2.3 The Introducer shall ensure that all Agents are suitably trained, have all necessary professional qualifications and have sufficiently detailed and reasonable knowledge and experience to enable them to perform their obligations in respect of Applicants and Clients in accordance with all Applicable Laws.
- 2.4 The Introducer shall be responsible for all acts and defaults of the Agents in the performance of any functions or obligations under this Agreement.
- 2.5 The Introducer shall ensure each of the Agents it intends to use has not been the subject of any Sanction.
- 2.6 Where the Introducer becomes aware that any Agent has become the subject of a Sanction, or that the requirements set out in condition 2.4 are no longer met by that Agent, the Introducer shall ensure that that Agent ceases to introduce Applicants to Investec and shall notify Investec that Investec should no longer accept introductions from that Agent.
- 2.7 The Introducer shall inform Investec as soon as possible of any change in its Agents (for example, removal of an Agent for any reason, or addition of a new Agent), providing such information regarding the change as Investec may reasonably require in order to perform its obligations under this Agreement. Where an Agent is unknown to Investec, Investec may decline to consider any introduction it receives from such Agent until the Introducer has confirmed to Investec that the Agent is an officer or employee of the Introducer who is authorised to make such introductions.
- 2.8 Prior to introducing an Applicant to Investec, the Introducer shall ensure that it has a lawful basis to allow the Introducer to disclose the Applicant’s personal data, and personal data of individuals connected to the Applicant, to Investec for the purposes of Investec processing such personal data for the purposes of considering the Applicant’s application for financial services to be provided by Investec (and for such further purposes as may be set out in the Data Protection Notice from time to time). For the purposes of this clause 2.8,

- “lawful basis” may include but not be limited to obtaining all and any necessary consents in order to enable the lawful processing of the personal data, and for ensuring that a record of such consents is maintained. Should any relevant consent be revoked by a data subject, the Introducer is responsible for communicating the fact of such revocation to Investec.
- 2.9 The Introducer and the Agents shall not have any power or right to act on behalf of Investec or to bind Investec to any agreement, commitment or warranty, and shall not, and shall procure that the Agents shall not, hold itself or themselves out as having any such power or authority to act on behalf of Investec.
- 2.10 Nothing in this Agreement shall establish an exclusive introducer relationship between the Parties.
- 2.11 Investec shall not be obliged to provide a Loan to any Applicant and may refuse any application without any obligation to notify the Introducer or to provide the Introducer or the Applicant with any reason for doing so.
- 2.12 Where Investec has refused to provide a Loan no Commission shall be payable to the Introducer.
- 2.13 The Introducer agrees that once an Applicant becomes a Client, nothing in this Agreement shall prohibit Investec (or any other member of Investec Group) from dealing with the Client in respect of any products or services of the Investec Group. No Commission shall be payable to the Introducer in respect of any further dealings by any member of the Investec Group with the Client.

## 3 Commission

- 3.1 Subject to the provisions of this condition 3, the maximum Commission payable by Investec to the Introducer (the Maximum Commission) in respect of a Client who draws a Loan (or any part of it) shall be a sum not exceeding 50% of the arrangement fee charged by Investec to that Client under the Loan.
- 3.2 Any Commission payable shall be a one-off payment in respect of a Loan which is drawn by a Client.
- 3.3 No Commission shall be payable in respect of any Loan to any Client who is currently, or has at any time previously been, a customer of a member of the Investec Group (an Existing Client), regardless whether the Client was initially introduced by the Introducer under this Agreement or otherwise. Investec may, if requested by the Introducer, provide such reasonable evidence that a Client is an Existing Client, subject to any duties of confidentiality and other obligations owed to the Client or imposed by law.
- 3.4 Any statement issued by Investec as to the amount of Commission payable to the Introducer under this Agreement shall be conclusive and binding on the Introducer.
- 3.5 No Commission shall be payable if, for any reason, the relevant Loan is not drawn.
- 3.6 Investec shall pay the Commission to the Introducer as soon as reasonably practical after the date on which the Loan is first drawn.
- 3.7 Any Commission paid by Investec to the Introducer shall be deemed to be inclusive of value added tax (and other taxes on the supply of goods and services) if applicable.
- 3.8 Investec shall be entitled to vary the Maximum Commission at any time by notice in writing to the Introducer. Such variation shall apply in respect of any Applications received by Investec after the date of such notice.

## 4 Compliance

- 4.1 The Introducer shall comply in all respects with all Applicable Laws in performing its obligations under or pursuant to this Agreement and shall, in particular (and shall ensure that its directors, employees, agents and affiliates shall):

- 4.1.1 comply with applicable Data Protection Legislation in relation to any personal data that is processed by either Party under or in connection with this Agreement. The Introducer acknowledges and agrees that, for the purposes of this Agreement it shall be acting as a controller and not as a processor in respect of such personal data;
- 4.1.1A bring the Data Protection Notice to the attention of any underlying data subjects on whose behalf or account the Introducer may act or whose personal data will be disclosed to Investec by virtue of this Agreement, including any of the Introducer's affiliates, representatives, office holders, employees, beneficial owners or agents;
- 4.1.1B assist Investec with its responsibilities under applicable Data Protection Legislation, especially with regard to the exercising of data subjects' rights.
- 4.1.2 at all times comply with Anti-Bribery Laws. In the furtherance of the foregoing, the Introducer undertakes that it shall (and shall ensure that its directors, employees, agents and affiliates shall) have in place adequate processes and procedures to ensure compliance with Anti-Bribery Laws at all times;
- 4.1.3 at all times comply with all applicable anti-money laundering and sanctions laws and regulations; and
- 4.1.4 have in place such policies and procedures relating to the handling of complaints from its clients as are required to comply with all Applicable Laws.
- 4.2 The Introducer acknowledges that Investec may need to transfer personal data relating to an underlying data subject outside of the Channel Islands and the European Economic Area (as more fully set out in the Data Protection Notice) in accordance with the European Union (EU) Commission's approved standard contractual clauses or other available data transfer mechanisms under applicable Data Protection Legislation.
- 4.3 Where the Introducer is a natural person, the Introducer confirms that he or she has read and understood the terms of the Data Protection Notice.

## 5 Introducer's information undertakings

- 5.1 The Introducer shall promptly inform Investec, providing (to the extent permitted by law) full details, where any regulatory investigation, action or proceeding is commenced or taken in relation to any of the activities of the Introducer (whether under this Agreement or otherwise).
- 5.2 Where an Applicant or Client (or any person acting on their behalf) either orally or in writing expresses dissatisfaction, or refers a complaint, to the Introducer in relation to the terms of a Loan, Investec's activities and/or the content of any documentation or information made available by Investec to an Applicant, a Client or the Introducer in relation to a Loan, the Introducer shall, no later than the next Business Day after the Introducer becomes aware of the expression of dissatisfaction or complaint, refer such matter to Investec and shall inform the Applicant or Client that it has done so. Investec shall assume responsibility for the handling of that matter.
- 5.3 For the avoidance of doubt, condition 5.2 shall not apply where the expression of dissatisfaction or complaint relates solely to the conduct of the Introducer and/or any Agent in providing services to the Applicant or Client. In such circumstances the Introducer alone shall determine how to deal with the expression of dissatisfaction or complaint.

## 6 Duration and termination

- 6.1 This Agreement shall commence on the Effective Date and continue unless and until terminated in accordance with the provisions of this condition 6.
- 6.2 Each Party shall be entitled to terminate this Agreement on giving not less than three (3) months' prior written notice to the other.
- 6.3 Either Party shall be entitled to terminate this Agreement immediately by written notice to the other if:
  - the other Party commits a breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
  - 6.3.1 the other Party becomes unable to pay its debts in the ordinary course of business, passes a resolution for winding up or has a receiver or administrator appointed over all or any of its assets, becomes insolvent (whether voluntary or involuntary), placed in liquidation, ceases to carry on business as a going concern, suffers any event analogous to or comparable with any of the above in any jurisdiction; or
  - 6.3.2 the other Party ceases to hold such authorisations, permissions and/or licences as are required by that Party to perform its obligations under this Agreement.
- 6.4 Investec shall be entitled to terminate this Agreement immediately by written notice to the Introducer where:
  - 6.4.1 any regulatory investigation, action or proceeding is commenced or taken in relation to any of the activities of the Introducer (whether under this Agreement or otherwise);
  - 6.4.2 any complaint is made by any Applicant or Client in relation to any of the activities of the Introducer under this Agreement; and/or
  - 6.4.3 the Introducer or any of its Agents does or omits to do anything under this Agreement, and in the reasonable opinion of Investec this is detrimental to the best interest and/or business and/or reputation of Investec and/or any other member of the Investec Group.
- 6.5 On termination of this Agreement (howsoever caused), the Introducer shall cease introducing Applicants.
- 6.6 On termination of this Agreement, the following conditions shall continue in force: condition 1, condition 3, conditions 6.5 to 6.7, condition 8, condition 9, and condition 11.11.
- 6.7 Termination of this Agreement shall not prejudice or affect the rights, remedies, obligations or liabilities and liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## 7 Warranty

- 7.1 The Introducer warrants that by entering into this Agreement and performing its obligations under this Agreement, the Introducer shall not be in breach of any law, regulation, contract or other obligation.

## 8 Confidentiality

- 8.1 Save as is otherwise required by law any regulatory, authority or securities exchange each Party (the **Disclosing Party**) undertakes to the other Party (the **Receiving Party**) that during the term of the Agreement and thereafter it will keep secret and will not without the prior written consent of the Disclosing Party disclose to any third party any Confidential Information learned by the Receiving Party or

disclosed to the Receiving Party pursuant to or otherwise in connection with the Agreement.

- 8.2 To the extent that it is necessary to perform its obligations under this Agreement, the Receiving Party may disclose Confidential Information to its employees or agents as may reasonably be necessary provided that before any such disclosure the Receiving Party shall make such persons aware of their obligations of confidentiality under the Agreement and shall at all times procure compliance with such obligations of confidentiality.
- 8.3 Save to the extent required in order to introduce potential Applicants, Applicants and Clients, or to comply with Applicable Laws, neither Party shall disclose or announce the existence of the relationship between the Parties or the subject matter of this Agreement.

## 9 Indemnity

- 9.1 The Introducer undertakes to indemnify and hold harmless Investec (both for itself and as trustee for and on behalf of the Investec Group) in respect of, all damages, losses, costs, charges, expenses or liabilities (whether criminal or civil) sustained, incurred, brought, threatened or established against Investec or the Investec Group by any person (including all costs and expenses properly incurred in connection with any claim) and which in any case arises out of or by reason of:
- (a) the negligence, recklessness, bad faith, fraud or wilful misconduct by the Introducer or its Agents;
  - (b) any act of omission or breach of the duties of the Introducer or of its Agents under this Agreement;
  - (c) the failure by the Introducer to comply with any data protection provisions contained in this Agreement and/or applicable Data Protection Legislation in respect of the processing of the personal data.

## 10 Relationship between the Parties

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other cooperative entity.

## 11 General

### Assignment and transfer

- 11.1 The Introducer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Investec, such consent may not be unreasonably withheld or delayed.
- 11.2 Investec may at any time assign, novate or transfer (Transfer) this Agreement in whole or in part to any person (the Transferee) provided that the Transferee has, at the date on which the Transfer takes effect, all necessary licences, permits, registrations and authorisations required by all Applicable Laws to enable it to perform its obligations and exercise its rights under this Agreement as so Transferred. The Introducer shall execute all documents reasonably required to give effect to any such Transfer.

### No waiver

- 11.3 No delay or omission on the part of either Party in exercising any right or remedy under this Agreement shall impair that right or remedy or operate as or be taken to be a waiver of it, nor shall any single partial or defective exercise by either Party of any such right or remedy preclude any other or further exercise under this Agreement of that or any other right or remedy.

### Severance

- 11.4 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this Agreement.
- 11.5 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### Entire agreement and relationship with other agreements

- 11.6 This Agreement contains all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understanding between the Parties relating to that subject matter. Neither Party has been induced to enter into this Agreement by a statement or promise which it does not contain, save that this condition shall not exclude any liability which one Party would otherwise have to the other Party in respect of any statement made fraudulently by that Party.
- 11.7 Unless otherwise expressly agreed in writing between the Parties, this Agreement is separate from and does not amend, supplement or otherwise affect, nor is it or shall it be amended, supplemented or otherwise affected by:
- 11.7.1 any other commercial agreement between the Parties that may exist from time to time; or
  - 11.7.2 any commercial agreement that may exist between the Introducer and any other member of or division within the Investec Group regarding the introduction of Loans to that member of or division within the Investec Group.

### Amendment

- 11.8 Investec may amend this Agreement at any time by giving not less than three (3) months' prior written notice to the Introducer. This condition 11.8 shall not apply however where condition 3.8 applies.

### Notices

- 11.9 Any notice to be given under this Agreement shall either be delivered in person or sent by pre paid post to the recipient's address as set out in this Agreement, or to such other address as may be notified in writing from time to time by the recipient. Notice shall be deemed to have been delivered at the time of delivery in person) or on the third Business Day after posting (in the case of delivery by pre paid post).

### Third party rights

- 11.10 No person other than the parties, their successors and permitted assignees, shall have any right to enforce any of the terms of this Agreement.

### Governing law and jurisdiction

- 11.11 This Agreement shall be governed and construed in accordance with the laws of the Island of Guernsey and the Parties agree to submit to the exclusive jurisdiction of the courts of Guernsey.

THIS AGREEMENT has been executed by the Parties.

Signed

For and on behalf of (Introducer's name and address)

Signature

Signature

For and on behalf of Investec Bank (Channel Islands) Limited

Signature

Signature

Date

Investec Bank (Channel Islands) Limited, PO Box 188, Gategny Court, Gategny Esplanade, St Peter Port, Guernsey, GY1 3LP  
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