

FINANCIAL SERVICES COMMISSION (FINANCIAL PENALTIES) (JERSEY) ORDER 2015

Official Consolidated Version

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FINANCIAL SERVICES COMMISSION (FINANCIAL PENALTIES) (JERSEY) ORDER 2015

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Jersey

FINANCIAL SERVICES COMMISSION (FINANCIAL PENALTIES) (JERSEY) ORDER 2015

THE CHIEF MINISTER, in pursuance of Articles 21B and 22 of the Financial Services Commission (Jersey) Law 1998 and after having consulted the Jersey Financial Services Commission, orders as follows –

Commencement [see endnotes]

1 Interpretation

(1) In this Order –

"affiliation", in respect of trust company business, means a group of persons carrying on or intending to carry on that business who have agreed that one member of the group will be the affiliation leader;

"contravention" means a contravention of a Code of Practice to which Article 21A of the Financial Services Commission (Jersey) Law 1998 applies;

"licensed", in relation to a registered person, means registered or holding a permit (as the case may be) to carry on a business activity regulated by the Commission;

"net interest income" means interest income received or accrued (including income accrued in respect of the amortisation of discounts and premiums on the purchase of fixed maturity investments not held for dealing) minus interest paid or payable;

"total banking income" means the sum total of –

(a) net interest income;

(b) the net income derived from revaluations of foreign exchange positions and, where identifiable, fees and commissions relating to foreign exchange business;

(c) the net income derived from investments not included in paragraph (e);

(d) net income from banking fees, charges and commissions; and

(e) any net gains derived from the revaluation of investments other than those arising from the sale of investments in subsidiary or associated companies, trade investments or the amortisation of discounts or premiums on the purchase of fixed maturity investments not held for dealing.

(2) Unless the context otherwise requires, words and phrases used in this Order that are not defined in or for the purposes of this Order have the same meaning as in the Financial Services (Jersey) Law 1998.

2 Meaning and calculation of relevant income

(1) In this Order "relevant income" means the income derived from the business activities in respect of which the registered person is licensed, namely –

(a) in the case of a registered person regulated under the Banking Business (Jersey) Law 1991, total banking income;

(b) in the case of a permit holder regulated under the Insurance Business (Jersey) Law 1996, the gross premium income earned in respect of any insurance business to which Article 5(1) of that Law applies, reduced by –

(i) any rebates, refunds and reinsurance commission payable by the registered person, and

(ii) the gross amount of any premiums for reinsurance ceded by the insurer;

(c) in the case of a registered person carrying on trust company business or money service business, any fees or commission received (net of any refunds) in respect of any such business; and

(d) in the case of a registered person carrying on general insurance mediation business, fund services business or investment business, any fees or commission retained (net of any refunds) in respect of any such business,

calculated to be the higher of –

(i) the average of that income over the financial years since the registered person has been carrying on the business for which the person is licensed, up to a maximum of the last 5 financial years, but excluding, from both the sum of total and number of years used to calculate the average, any financial year in which the income was a negative amount; and

(ii) that income in the registered person's last complete financial year before the registered person notified the Commission of the contravention, or the Commission notified the registered person of the contravention, as the case may be.

(2) In calculating the relevant income for the purposes of this Order –

(a) if the registered person undertakes more than one business activity, the income to be calculated is the total relevant income derived from each business activity in respect of which a Code of Practice has been contravened by the registered person;

(b) if the registered person operates in Jersey through a branch of its business the main operation of which is elsewhere, only relevant income derived from the business activity giving rise to the contravention, in so far as it is undertaken through that branch, may be brought into account;

(c) in the case of trust company business in respect of which there is an affiliation, relevant income derived from the business activity giving rise to the contravention from all members of the affiliation must be brought into account.

3 Level of penalties[1]

The Commission may impose penalties –

(a) on registered persons only up to the maximum level set out in the third column in the table in the Schedule;

(b) on principal persons only up to the maximum level set out in the fourth column in the table in the Schedule,

for the appropriate band of penalty, determined according to the nature of the contravention.

4 Citation

This Order may be cited as the Financial Services Commission (Financial Penalties) (Jersey) Order 2015.

SCHEDULE[2]

(Article 3)

MAXIMUM LEVEL OF PENALTIES

Band	Nature of contravention	Maximum level of penalty that may be imposed on a registered person	Maximum level of penalty that may be imposed on a principal person
1	A failure, on more than one occasion in any period of 2 years, to notify the Commission of any matter required by a Code of Practice (whether or not the subject matter is the same on each occasion), such failures comprising either or both of the following – (a) a notification not being made at all; (b) a notification not being made within the timeframe required by the Code, provided that – (1) the Commission has notified the registered person in writing after the first contravention that the registered person has failed to make the required notification or has not made the notification within the required timeframe; and (2) the contravention does not fall into either band 2, band 2A or band 3 below.	4% of relevant income up to a maximum of £10,000.	£10,000.
2	A contravention not falling into either band 2A or band 3 below and not rectified to the satisfaction of the Commission within the timeframe determined by the Commission after discussion with the registered person concerned, which timeframe must be reasonable.	6% of relevant income up to a maximum of £4,000,000.	£200,000.

Band	**Nature of contravention**	**Maximum level of penalty that may be imposed on a registered person**	**Maximum level of penalty that may be imposed on a principal person**
2A	A contravention committed negligently that satisfied one or more of the following, namely that it – (a) caused or risked causing financial loss to the public; (b) damaged or risked damaging the reputation and integrity of Jersey in commercial and financial matters; (c) damaged or risked damaging the economic interests of Jersey; (d) jeopardized or risked jeopardizing the need to counter financial crime both in Jersey and elsewhere; (e) took place for commercial reasons.	7% of relevant income up to a maximum of £4,000,000.	£300,000.
3	A contravention committed either intentionally or recklessly that satisfied one or more of the following, namely that it – (a) caused or risked causing financial loss to the public; (b) damaged or risked damaging the reputation and integrity of Jersey in commercial and financial matters; (c) damaged or risked damaging the economic interests of Jersey; (d) jeopardized or risked jeopardizing the need to counter financial crime both in Jersey and elsewhere; (e) took place for commercial reasons.	8% of relevant income up to a maximum of £4,000,000.	£400,000.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Financial Services Commission (Financial Penalties) (Jersey) Order 2015	R&O.71/2015	23 June 2015
Financial Services Commission (Financial Penalties) (Amendment) (Jersey) Order 2018	R&O.84/2018	2 August 2018
Financial Services Commission (Amendment No. 7) (Jersey) Law 2018	L.28/2018	26 October 2018

Table of Renumbered Provisions

Original	Current
4(1)	4
4(2)	spent, omitted

Table of Endnote References

[1] *Article 3* *substituted by L.28/2018*
[2] *Schedule* *amended by R&O.84/2018, L.28/2018*