



Jersey

## **FINANCIAL SERVICES COMMISSION (AMENDMENT No. 6) (JERSEY) LAW 2015**

### **Arrangement**

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## FINANCIAL SERVICES COMMISSION (AMENDMENT No. 6) (JERSEY) LAW 2015

A **LAW** to amend further the Financial Services Commission (Jersey) Law 1998 so as to introduce a civil financial penalty regime and to make minor amendments to related enactments.

*Adopted by the States*

*9th December 2014*

*Sanctioned by Order of Her Majesty in Council*

*11th February 2015*

*Registered by the Royal Court*

*20th February 2015*

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Amendment of Financial Services Commission (Jersey) Law 1998**

- (1) The Financial Services Commission (Jersey) Law 1998<sup>1</sup> is amended in accordance with this Article.
- (2) In Article 1 –
  - (a) in paragraph (1) after the definition “Minister” there shall be inserted the following definitions –
    - “ ‘penalty’ means a civil financial penalty imposed by the Commission under Article 21A;
    - ‘prescribed’ means prescribed by Order made by the Minister;
    - ‘registered person’ means –
      - (a) a registered person within the meaning of the Banking Business (Jersey) Law 1991<sup>2</sup>;
      - (b) a permit holder within the meaning of the Insurance Business (Jersey) Law 1996<sup>3</sup> other than the holder of a Category A permit (within the meaning of Article 5(2) of that Law);
      - (c) a registered person within the meaning of the Financial Services (Jersey) Law 1998<sup>4</sup>, other than a person registered under that Law to conduct general insurance mediation business falling within Class R or Class S as set out in the

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- Schedule to the Financial Services (Financial Services Business) (Jersey) Order 2009<sup>5</sup>;
- (d) a service provider within the meaning of Regulation 2 of the Alternative Investment Funds (Jersey) Regulations 2012<sup>6</sup>;
- (b) for sub-paragraph (2) there shall be substituted the following sub-paragraph –
- “(2) The States may by Regulations amend the definition ‘registered person’ in paragraph (1).”.
- (3) in Article 14(c) there shall be deleted the word “and” and after that paragraph there shall be inserted the following paragraph –
- “(ca) the amount of any penalty paid to the Commission that is not paid or to be paid to the States under Article 21G; and”.
- (4) After Article 15(3)(b) there shall be inserted the following sub-paragraph –
- “(ba) details of the extent (if any) to which any penalties received have reduced the level of fee that would otherwise have been proposed;”.
- (5) After Article 21 there shall be inserted the following Articles –

#### **“21A Power to impose civil financial penalties**

- (1) If the Commission is satisfied that a registered person has, to a significant and material extent, contravened a Code of Practice to which this Article applies, the Commission may impose on that person a penalty to the extent permitted by the following provisions of this Law.
- (2) This Article applies to the Codes of Practice issued by the Commission under –
- (a) Article 19A of the Banking Business (Jersey) Law 1991<sup>7</sup>;
- (b) Article 42 of the Insurance Business (Jersey) Law 1996<sup>8</sup>;
- (c) Article 19 of the Financial Services (Jersey) Law 1998<sup>9</sup>;
- (d) Article 22 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>10</sup>; and
- (e) Regulation 22 of the Alternative Investment Funds (Jersey) Regulations 2012<sup>11</sup>.

#### **21B Level of penalty and criteria for imposition**

- (1) The penalty that the Commission may impose must not exceed the maximum level of penalties prescribed for the particular type of contravention.
- (2) The Order may prescribe those levels by reference to a fixed amount, a percentage of the registered person’s income or such other criteria as the Minister considers appropriate.

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- (3) In considering whether to impose a penalty and the amount of penalty to be imposed the Commission must have particular regard to the following matters –
    - (a) the seriousness of the contravention of the Code of Practice;
    - (b) whether or not the registered person knew, or ought to have known, of the contravention;
    - (c) whether or not the registered person voluntarily reported the contravention;
    - (d) whether or not the registered person has taken steps to rectify the contravention and to prevent its recurrence;
    - (e) the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty;
    - (f) the principle of ensuring that registered persons cannot expect to profit from contravention of the Codes;
    - (g) the penalties imposed by the Commission in other cases;
    - (h) the principles mentioned in paragraph (4) (other than those set out in this paragraph).
  - (4) The Commission must publish a statement setting out –
    - (a) the principles (including the matters set out in paragraph (3)(a) to (g)) it will apply in determining the imposition and amount of the penalty, including within those principles what are the aggravating and mitigating factors, which must be stated not to be exhaustive; and
    - (b) the processes it will follow when exercising the power to impose a penalty.
  - (5) The Commission must review the statement from time to time and revise it when it considers it necessary to do so.
  - (6) Before publishing or revising the statement the Commission must consult the Minister, registered persons and such other persons as the Commission considers appropriate.
  - (7) The Minister may prescribe the principles and processes the Commission must follow when exercising the power to impose a financial penalty in prescribed circumstances, and such principles and processes shall override anything in the Commission's published statement that is inconsistent with them.
  - (8) The Minister must consult the Commission before making any Order under this Article.

#### **21C Notification of imposition of penalty**

- (1) Before imposing a penalty the Commission must issue and then serve on the registered person a notice (a 'notice of intent') informing the registered person –

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- (a) that the Commission proposes to require the registered person to pay a penalty;
    - (b) of the Commission's grounds for believing –
      - (i) that the registered person has contravened a Code of Practice,
      - (ii) that the contravention should give rise to a penalty,
      - (iii) that the amount of penalty should be as specified in the notice; and
    - (c) that the registered person may make representations to the Commission regarding the imposition of the penalty or its amount within one month of the date of service.
  - (2) The Commission must include within its grounds under paragraph (2)(b) –
    - (a) details of any provision of the Code alleged to have been contravened; and
    - (b) how the proposed penalty has been calculated by reference to any Order made under Article 21B(1).
  - (3) The Commission must consider any representations made within the period specified under paragraph (1)(c) and if it considers that it is still appropriate to impose a penalty as proposed in the notice of intent, or as modified in light of any such representations, it may issue and then serve on the registered person a notice (a 'final notice') requiring the registered person to pay a penalty.
  - (4) The final notice must –
    - (a) include the matters mentioned in paragraph (1)(b) but modified as the Commission considers appropriate in the light of any representations made;
    - (b) specify the date by which payment of the penalty must be made, being a date not less than 2 months after the date of service of the final notice;
    - (c) specify how payment must be made;
    - (d) advise the registered person of the surcharge that may be imposed under Article 21E(1) in the event of late payment;
    - (e) advise the registered person of the Commission's power to enforce the penalty under Article 21E(4); and
    - (f) advise the registered person of the right of appeal against the imposition or amount of the penalty under Article 21F.
  - (5) When issuing a notice under this Article the Commission need not specify –
    - (a) any reason that would, in its opinion, involve disclosing confidential information the disclosure of which would be prejudicial to a third party; or
    - (b) the same reasons, or reasons in the same manner, when issuing notices to different registered persons about the same matter.
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**21D Restrictions on powers of Commission in respect of notices**

- (1) The Commission may not issue a notice of intent under Article 21C(1) –
  - (a) in respect of a contravention of a Code of Practice that occurred before the commencement of Article 21A; or
  - (b) more than 3 years after the contravention giving rise to the notice came to the attention of the Commission.
- (2) However –
  - (a) in the case of a contravention falling within paragraph (1)(a) that was continuing at the time of the commencement of Article 21A, a notice of intent may be issued in respect of such part of the contravention that continued after such commencement;
  - (b) the Commission may apply to the Royal Court for an extension of time for issuing a notice of intent beyond the time limit set out in paragraph (1)(b) and the Royal Court may grant such extension if it considers the Commission has a reasonable excuse for not issuing the notice within that time limit.
- (3) The Commission may not issue a public statement about the issue or service of notice under Article 21C except in the case of a final notice and then only –
  - (a) where the period within which an appeal against the imposition of a penalty may be lodged has expired without an appeal having been lodged; or
  - (b) if such an appeal has been lodged, after it is determined by the court or withdrawn.
- (4) The States may by Regulations amend the time limit set out in paragraph (1)(b).
- (5) In this Article ‘public statement’ means a statement issued under any of the enactments mentioned in Article 21A(2).

**21E Late payment surcharge and enforcement**

- (1) If any part of a penalty imposed by the Commission remains unpaid after the date for payment specified in the final notice under Article 21C(3), the amount unpaid attracts a surcharge of 5% for each complete month that it remains unpaid.
- (2) However –
  - (a) in computing the surcharge, the time from when any appeal is lodged under Article 21F till the appeal is determined by the court or withdrawn, must be disregarded;
  - (b) the Commission has a discretion to waive, or reduce the amount of, any surcharge.

- (3) The Minister may by Order, on the recommendation of the Commission, vary the percentage set out in paragraph (1).
- (4) A penalty, including any surcharge imposed under this Article, may be enforced as if it were a debt owed by the registered person to the Commission.

#### **21F Appeal against imposition of penalty**

- (1) A registered person may appeal to the Royal Court against the imposition of a penalty or the amount of penalty imposed only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (2) The appeal must be lodged with the Royal Court no later than a month after the date of service of the final notice under Article 21C(3).
- (3) Once an appeal has been lodged the Commission must not take any action to enforce payment of the penalty until the conclusion of the appeal.
- (4) On hearing the appeal the Royal Court may confirm or rescind the imposition of the penalty, substitute a penalty of a different amount or make such other interim or final order as it thinks fit.

#### **21G Proceeds of penalties**

- (1) Subject to this Article the Commission may retain any sum of money it receives in respect of a penalty as part of its income.
- (2) The money must be treated as if it were part of the fees due from registered persons of the same class (with reference to the various meanings of 'registered person' set out in Article 1 and the various classes of financial service business in respect of which a person may be registered as mentioned in paragraph (c) of that definition) as the registered person on whom the penalties were imposed so as to reduce the level of fees that would otherwise have been charged to those registered persons.
- (3) However, if the result of the application of paragraph (2) would be to reduce substantially the level of fees that the Commission would otherwise have charged, the Commission may pay the money, or a proportion of it, to the States.
- (4) An Order may prescribe the circumstances in which money received by the Commission in respect of a penalty must be paid to the States.
- (5) The Order may be made –
  - (a) only to the extent that the Commission has not already applied the money so as to reduce the level of fees that would otherwise be charged; but
  - (b) irrespective of when the money was received or is due to be received by the Commission.



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- (6) Before making an Order under this Article the Minister must consult the Commission and take account of the requirement under Article 15(2)(c) for the Commission to maintain a reserve and its need to meet contingent liabilities, in particular those relating to the costs of investigations or litigation.”

**2 Amendments to related enactments**

The Schedule has effect.

**3 Citation and commencement**

- (1) This Law may be cited as the Financial Services Commission (Amendment No. 6) (Jersey) Law 2015.
- (2) This Law comes into force one month after the day on which it is registered.

**L.-M. HART**

*Deputy Greffier of the States*

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**SCHEDULE**

(Article 2)

**AMENDMENTS TO RELATED ENACTMENTS****1 Collective Investment Funds (Jersey) Law 1988**

- (1) The Collective Investment Funds (Jersey) Law 1988<sup>12</sup> is amended as follows.
- (2) For Articles 7(6)(f) and 8B(7)(f) there shall be substituted in each case the following sub-paragraph –
  - “(f) the Commission has reason to believe that the applicant has at some time contravened a code of practice;”.
- (3) In Article 15 –
  - (a) in paragraph (1)(a) for the words “for the purpose of establishing sound principles and providing practical guidance” there shall be substituted “setting out the principles and detailed requirements that must be complied with”;
  - (b) for paragraph (3) there shall be substituted the following paragraph –
    - “(3) The contravention of a code of practice –
      - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
      - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”.
- (4) In Article 17(2)(b) for the words “failed to comply with” there shall be substituted the word “contravened”.

**2 Banking Business (Jersey) Law 1991**

- (1) The Banking Business (Jersey) Law 1991<sup>13</sup> is amended as follows.
- (2) For Article 10(3)(f) there shall be substituted the following sub-paragraphs –
  - “(f) the Commission has reason to believe that person A has at some time contravened a code of practice;
  - (fa) person A has failed to pay any part of a penalty imposed by the Commission under Article 21A of the Financial Services Commission (Jersey) Law 1998<sup>14</sup> (including any surcharge imposed under Article 21E(1) of that Law);”.
- (3) In Article 19A –
  - (a) for paragraph (1)(a) there shall be substituted the following sub-paragraph –

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- “(a) prepare and issue a code of practice setting out the principles and detailed requirements that must be complied with in the conduct of deposit-taking business;”;
  - (b) for paragraph (3) there shall be substituted the following paragraph –
    - “(3) The contravention of a code of practice –
      - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
      - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”.
  - (4) For Article 48(2)(b) there shall be substituted the following sub-paragraph –
    - “(b) a public statement with respect to the serving of a final notice on a registered person under Article 21C(3) of the Financial Services Commission (Jersey) Law 1998 imposing a penalty following the contravention of a code of practice by that person; or”.

### **3 Insurance Business (Jersey) Law 1996**

- (1) The Insurance Business (Jersey) Law 1996<sup>15</sup> is amended as follows.
- (2) For Article 7(4)(i) there shall be substituted the following sub-paragraphs –
  - “(i) the Commission has reason to believe that the applicant has at some time contravened a code of practice;
  - (j) the applicant has failed to pay any part of a penalty imposed by the Commission under Article 21A of the Financial Services Commission (Jersey) Law 1998<sup>16</sup> (including any surcharge imposed under Article 21E(1) of that Law).”.
- (3) In Article 11(7)(c) for the words “registered person” there shall be substituted the words “permit holder”.
- (4) In Article 42 –
  - (a) for paragraph (1)(a) there shall be substituted the following sub-paragraph –
    - “(a) prepare and issue a code of practice setting out the principles and detailed requirements that must be complied with in the conduct of insurance business;”;
  - (b) for paragraph (3) there shall be substituted the following paragraph –
    - “(3) The contravention of a code of practice –
      - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but

- (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”;
  - (c) in paragraph (4)(a) and (b) for the words “relevant provision” there shall be substituted the word “requirement”.
- (5) In Article 43 –
  - (a) after paragraph (1)(g) there shall be added the following sub-paragraph –
    - “(h) a code of practice.”;
  - (b) for paragraph (2)(b) there shall be substituted the following sub-paragraph –
    - “(b) a public statement with respect to the serving of a final notice on a permit holder under Article 21C(3) of the Financial Services Commission (Jersey) Law 1998 imposing a penalty following the contravention of a code of practice by that permit holder; or”.

#### 4 Financial Services (Jersey) Law 1998

- (1) The Financial Services (Jersey) Law 1998<sup>17</sup> is amended as follows.
- (2) For Article 9(3)(f) there shall be substituted the following sub-paragraphs –
  - “(f) the Commission has reason to believe that the applicant has at some time contravened a Code of Practice;
  - (fa) the applicant has failed to pay any part of a penalty imposed by the Commission under Article 21A of the Financial Services Commission (Jersey) Law 1998<sup>18</sup> (including any surcharge imposed under Article 21E(1) of that Law);”.
- (3) In Article 19 –
  - (a) for paragraph (1)(a) there shall be substituted the following sub-paragraph –
    - “(a) prepare and issue a Code of Practice setting out the principles and detailed requirements that must be complied with in the conduct of financial service business;”;
  - (b) for paragraph (3) there shall be substituted the following paragraph –
    - “(3) The contravention of a Code of Practice –
      - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
      - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”.
- (4) In Article 25 –
  - (a) in paragraph (b) for the words “failed to comply with” there shall be substituted the word “contravened”;

(b) after paragraph (b) there shall be inserted the following paragraph –

“(ba) a public statement with respect to the serving of a final notice on a registered person under Article 21C(3) of the Financial Services Commission (Jersey) Law 1998 imposing a penalty following the contravention of a Code of Practice by that person;”.

## 5 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

(1) The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>19</sup> is amended as follows.

(2) In Article 18(1) –

(a) in sub-paragraph (f) for the words “not complied with” there shall be substituted the word “contravened”;

(b) after sub-paragraph (f) there shall be inserted the following sub-paragraph –

“(fa) if the registered person has failed to pay any part of a penalty imposed by the Commission under Article 21A of the Financial Services Commission (Jersey) Law 1998<sup>20</sup> (including any surcharge imposed under Article 21E(1) of that Law);”.

(3) In Article 22 –

(a) for paragraph (1)(a) there shall be substituted the following sub-paragraph –

“(a) prepare and issue a Code of Practice setting out the principles and detailed requirements that must be complied with in order to meet certain requirements of this Law and anti-money laundering and counter-terrorism legislation, by persons in relation to whom that body has supervisory functions;”;

(b) for paragraph (4) there shall be substituted the following paragraph –

“(4) The contravention of a Code of Practice –

(a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but

(b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”;

(c) in paragraph (5)(a) and (b) for the words “relevant provision” there shall be substituted the word “requirement”.

(4) In Article 23(1)(b) for the words “failed to comply with” there shall be substituted the words “contravened”.

(5) After Article 26(b) there shall be inserted the following paragraph –

“(ba) a public statement with respect to the serving of a final notice on a person under Article 21C(3) of the Financial

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Services Commission (Jersey) Law 1998 imposing a penalty following the contravention of a Code of Practice by that person;”.

## 6 Alternative Investment Funds (Jersey) Regulations 2012

- (1) The Alternative Investment Funds (Jersey) Regulations 2012<sup>21</sup> are amended as follows.
- (2) In Regulation 9(7)(f) for the words “there has been failure on the part of the applicant to follow” there shall be substituted the words “the applicant has contravened”.
- (3) In Regulation 22 –
  - (a) in paragraph (1)(a) for the words “for the purpose of establishing sound principles and providing practical guidance” there shall be substituted “setting out the principles and detailed requirements that must be complied with”;
  - (b) for paragraph (3) there shall be substituted the following paragraph –

“(3) The contravention of a code of practice –

    - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
    - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.”.
- (4) In Regulation 24 –
  - (a) after paragraph (1)(g) there shall be added the following subparagraph –

“(h) a code of practice.”;
  - (b) for paragraph (2)(b) there shall be substituted the following subparagraph –

“(b) a public statement with respect to the serving of a final notice on a service provider under Article 21C(3) of the Financial Services Commission (Jersey) Law 1998<sup>22</sup> imposing a penalty following the contravention of a Code of Practice by that service provider;”.

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- 1 *chapter 13.250*
  - 2 *chapter 13.075*
  - 3 *chapter 13.425*
  - 4 *chapter 13.225*
  - 5 *chapter 13.225.04*
  - 6 *chapter 17.245.51*
  - 7 *chapter 13.075*
  - 8 *chapter 13.425*
  - 9 *chapter 13.225*
  - 10 *chapter 08.785*
  - 11 *chapter 17.245.51*
  - 12 *chapter 13.100*
  - 13 *chapter 13.075*
  - 14 *chapter 13.250*
  - 15 *chapter 13.425*
  - 16 *chapter 13.250*
  - 17 *chapter 13.225*
  - 18 *chapter 13.250*
  - 19 *chapter 08.785*
  - 20 *chapter 13.250*
  - 21 *chapter 17.245.51*
  - 22 *chapter 13.250*