

Civil liability for breaches of the Codes: Registered Entities

Insights - 01/04/2019

Since 2015, the Jersey Financial Services Commission (JFSC) has had the power to impose civil financial penalties against registered entities for significant and material contraventions of the Codes of Practice and the AML/CFT Handbook.

In addition, in 2018 the JFSC's power was widened to enable it to impose similar civil penalties against "principal persons" (such as directors or shareholder controllers) of registered entities.

There are three bands of financial penalties, depending on the nature of the contravention, and the JFSC will follow a published decision making process in determining the level of the penalty.

Who is affected?

The civil penalty regime applies to any entity which is registered or has been issued a certificate or permit under the following laws and is therefore required to comply with the corresponding Codes of Practice relevant to their regulated activities:

- the Banking Business (Jersey) Law 1991 (the Codes of Practice for Deposit Taking Business)
- the Insurance Business (Jersey) Law 1996 (the Codes of Practice for Insurance Business)
- the Financial Services (Jersey) Law 1998 (the Codes of Practice for each of trust company business, investment business, money service business, fund services business and general insurance mediation business); and/or
- the Alternative Investment Funds (Jersey) Regulations 2012 (the Codes of Practice for alternative investment funds and AIF services business)

In addition, the civil penalty regime applies to any entity registered under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and is therefore required to comply with the AML/CFT Handbook.

What are the levels of penalties that can be imposed?

There are three levels of penalty depending on the seriousness and circumstances of the breach of the Codes of Practice.

The first level is up to 4% of 'relevant income' up to a maximum of £10,000. The second level is up to 6% of 'relevant income' up to a maximum of £4,000,000. The third and highest level of financial penalty is up to 8% of 'relevant income' up to a maximum of £4,000,000.

Broadly, 'relevant income' is income derived from licensed business activities.

The proceeds of penalties may be retained by the JFSC and applied to reduce licence fees. The Chief Minister can order that substantial penalties must be paid to the States of Jersey.

The JFSC will also be able to issue public statements when it imposes a penalty. There is a right of appeal to the Royal Court but only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case (a high threshold).

What are the JSFC's processes when imposing penalties?

The JFSC has published Regulatory Sanctions: Decision Making Process setting out the process and principles that apply to JFSC decisions in a number of areas, including on civil penalties.

It states that early acknowledgment of regulatory breaches will always be considered favourably by the JFSC. It also includes a statement of principles that the JFSC must take into account when imposing civil penalties (such as the seriousness of the contravention and whether it was voluntarily reported) as well as a list of aggravating and mitigating factors (for instance a poor compliance record on the one hand and co-operation with the JFSC on the other).

What should I be checking?

While it may be difficult to obtain cover for civil penalties imposed by the JFSC, registered persons may wish to check that their insurance policies cover the costs associated with a JFSC action to impose civil penalties.

Registered persons may also wish to confirm that they comply with the Codes of Practice and the AML/CFT Handbook now that breaches may lead to civil penalties and public sanction. If

they have not done so already, registered persons will wish to conduct a thorough and continuing gap analysis to ensure that they comply with the Codes of Practice and the AML/CFT Handbook as amended by the JFSC from time to time. Specialist teams at Ogier can help with that process.

Resources:

- [The Financial Services Commission \(Jersey\) Law 1998 \(as amended by the Financial Services Commission \(Amendment No. 7\) \(Jersey\) Law 2018\)](#)
- [The Penalties Order](#)

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