

GUERNSEY STATUTORY INSTRUMENT

2010 No.

**The Financial Services Commission
(Administrative Financial Penalties)
(Bailiwick of Guernsey) Regulations, 2010**

Made

2nd July, 2010

Coming into operation

1st September, 2010

Laid before the States

, 2010

THE GUERNSEY FINANCIAL SERVICES COMMISSION, in exercise of the powers conferred upon it by section 11I of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987¹ and all other powers enabling it in that behalf, and after consultation with the States of Guernsey Policy Council, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, hereby makes the following Regulations:-

Charging of administrative financial penalties for late filing, etc.

1. (1) There shall be payable by a licensee, in respect of the late filing by him with the Commission of a financial statement, annual return or other document described in the Schedule (a "**relevant document**"), an administrative

¹ Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; No's. XIX, XXIII and XXIV of 2008; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2009 (G.S.I. 2009/29).

financial penalty (a "**penalty**") of the amount set out in and calculated in accordance with Regulation 2.

(2) The penalty is fixed in amount, non-discretionary and non-refundable.

Amount of penalty and basis of calculation.

2. (1) A penalty is payable in respect of each month or part of a month falling within the period of default.

(2) The period of default commences at the beginning of the day immediately following the latest date on which the relevant document was required to be filed with the Commission by the licensee and terminates at the end of the day immediately prior to the date upon which it is in fact so filed, save where that prior day is the latest day on which the relevant document was required to be filed, in which case the period of default terminates at the end of the first day of the period of default.

(3) The penalty is calculated as follows -

- (a) £100 is payable in respect of the first month or part thereof falling within the period of default,
- (b) £200 is payable in respect of the second month or part thereof falling within the period of default, and
- (c) £300 is payable in respect of each subsequent month or part thereof falling within the period of default.

Appeals.

3. The provisions of section 11H of the Law apply in relation to a decision of the Commission to impose an administrative financial penalty under regulation 1 as they apply in relation to a decision of the Commission described in section 11H(1), except that the sole ground of appeal is that the decision was wrong.

Effect on other penalties and sanctions.

4. The imposition of a penalty under these regulations is without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative) provided for by or under the prescribed Laws.

Enforcement of penalty.

5. A penalty may be recovered by the Commission from the licensee as a civil debt.

Interpretation.

6. (1) In these Regulations, unless the context requires otherwise -

"**Commission**" means the Guernsey Financial Services Commission,

"**filing**" includes delivery, deposit, furnishing and submission (and related expressions shall be construed accordingly),

"**Law**" means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,

"**licensee**" means a person who holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws,

"**month**" means calendar month calculated from the beginning of the first day of the period of default (and for the avoidance of doubt if a month

starts at the end of a month of the calendar which contains more days than the next month of the calendar, the month expires at the end of that next month of the calendar),

"penalty" : see section 1(1),

"period of default" : see regulation 2(2),

"prescribed Laws" has the meaning for the time being given by the Law,

"regulatory Laws" has the meaning for the time being given by the Law,

"relevant document" : see regulation 1(1),

and other expressions have the same meaning as in the Law.

(2) Any reference in these Regulations to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948² applies to the interpretation of these Regulations.

Transitional provisions.

7. (1) In respect of the calendar year 2010 -

- (a) no penalty is payable in respect of any part of a period of default falling before the date of commencement of these regulations,
- (b) notwithstanding the provisions of regulation 2, the penalty payable by a licensee in respect of the part of the period of default falling on or after the date of commencement of these regulations shall be calculated as follows -
 - (i) £100 is payable in respect of the first month or part thereof falling within that part of the period of default,
 - (ii) £200 is payable in respect of the second month or part thereof falling within that part of the period of default, and
 - (iii) £300 is payable in respect of each subsequent month or part thereof falling within that part of the period of default.

(2) Paragraph (1) applies only where the period of default began before the date of commencement of these regulations.

Citation.

8. These Regulations may be cited as the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2010.

Commencement.

9. These Regulations shall come into force on the 1st September, 2010.

Dated this 2nd day of July, 2010

P. A. HARWOOD

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission.

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations prescribe, for the purposes of section 11I of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, the administrative financial penalties payable to the Commission for the late filing or delivery of financial statements and annual returns under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses, and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

SCHEDULE

Relevant documents in respect of the late filing of which by a licensee there is payable a penalty are specified in column 1 of the following table.

The period within which the relevant document is required to be filed with the Commission is the period specified in column 2 of the table or such other period as may for the time being be specified by the relevant enactment.

The "**relevant enactment**" is the Law, Ordinance or statutory instrument pursuant to which the relevant document is required to be filed or (if different) which specifies the period within which the relevant document is required to be filed.

Expressions used in the table have the same meanings as in the relevant enactment.

DESCRIPTION OF RELEVANT DOCUMENT	PERIOD WITHIN WHICH RELEVANT DOCUMENT MUST BE FILED WITH COMMISSION*
1. THE BANKING SUPERVISION (BAILIWICK OF GUERNSEY) LAW, 1994 [SECTION 31(2)]	
<i>Audited accounts of licensed institutions incorporated in the Bailiwick</i>	<i>3 months after the date to which the accounts are drawn up [Rule 1(b) of the Banking Supervision (Accounts) Rules, 1994 (no. 22)].</i>
2. THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES, AND COMPANY DIRECTORS, ETC. (BAILIWICK OF GUERNSEY) LAW, 2000 [SECTIONS 29(1) AND 56]	
<i>Financial statements of licensed fiduciary who holds a full fiduciary licence</i>	<i>4 months of the end of the accounting period to which the statements relate [Rule 10(2) of the Regulation of Fiduciaries (Accounts) Rules, 2001 (no. 14)]</i>
<i>Annual return of licensed fiduciary</i>	<i>1 calendar month of the end of the annual return period to which it relates [Regulation 3(2) of the Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2001 (no. 15)]</i>

DESCRIPTION OF RELEVANT DOCUMENT	PERIOD WITHIN WHICH RELEVANT DOCUMENT MUST BE FILED WITH COMMISSION*
3. THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002 [SECTION 37(1)]	
<i>Annual return of licensed insurer under section 33, audited annual accounts of licensed insurer under section 35, auditor's report under section 36 and (if applicable) actuarial report under section 41</i>	<i>4 months beginning on the close of the financial year to which the accounts relate [section 37(1) of the Insurance Business (Bailiwick of Guernsey) Law, 2002]</i>
4. THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES (BAILIWICK OF GUERNSEY) LAW, 2002 [SECTIONS 24 AND 26]	
<i>If applicable in respect of licensee, auditor's management letter or confirmation that no auditor's management letter required to be issued and evidence of professional indemnity insurance cover</i>	<i>6 months beginning on the close of each financial year of the licensee [section 24(a) and (b) of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002]</i>
<i>Annual return of licensee under section 20, annual accounts of licensee under section 22 (audited, if applicable) and auditor's report (if applicable) under section 23</i>	<i>6 months beginning on the close of the financial year to which the accounts relate [section 26(1) of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002]</i>
5. THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 1987 [PART III]	
<u>Holder of licence to carry on controlled investment business</u>	
<i>Audited financial statements and compliance return of licensee</i>	<i>4 months after accounting reference date [Rule 4.2.6 of the Licensees (Conduct of Business) Rules, 2009 (No. 75)]</i>
<u>Licensed investment exchange</u>	

**DESCRIPTION OF RELEVANT
DOCUMENT**

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RELEVANT DOCUMENT MUST
BE FILED WITH
COMMISSION***

*Annual accounts of exchange and auditors'
report thereon*

*3 months of annual accounting
reference date [Paragraph 6(2) of
Schedule 1 to the Investment
Exchange (Notification) Rules, 1998
(no. 26)]*

Collective investment schemes - Class A

Manager's annual report

*4 months after end of annual
accounting period [Rule 4.5.11(i) of
the Authorised Collective Investment
Schemes (Class A) Rules 2008 (no.
58)]*

Manager's annual report

*4 months after end of each annual
accounting period [Rule 10.02(1) of
the Collective Investment Schemes
(Class A) Rules 2002 (no. 30)]*

Manager's half-yearly report

*2 months after end of half-yearly
accounting period [Rule 4.5.11(i) of
the Authorised Collective Investment
Schemes (Class A) Rules 2008 (no.
58)]*

Manager's half-yearly report

*2 months after end of each half-
yearly accounting period,
respectively [Rule 10.02(1) of the
Collective Investment Schemes
(Class A) Rules 2002 (no. 30)]*

Collective investment schemes - Class B

Manager's annual report

*6 months after end of annual
accounting period [Rule 6.02(1) of
the Collective Investment Schemes
(Class B) Rules 1990 (no. 22)]*

Collective investment schemes - Class Q

*Manager's annual report and financial
statements*

*6 months after end of annual
accounting period [Rule 7.02(1) of
the Collective Investment Schemes*

**DESCRIPTION OF RELEVANT
DOCUMENT**

**PERIOD WITHIN WHICH
RELEVANT DOCUMENT MUST
BE FILED WITH
COMMISSION***

*(Qualifying Professional Investor
Funds) (Class Q) Rules 1998 (no. 5)]*

Authorised Closed-ended Investment
Schemes

*Audited annual report and accounts for the
scheme*

*6 months following the end of the
annual accounting period [Rule
5.02(i) of the Authorised Closed-
ended Investment Schemes Rules
2008 (no. 83)]*

Registered collective investment schemes

*Audited annual report and accounts for the
scheme*

*6 months following the end of the
annual accounting period [Rule 6.03
of the Registered Collective
Investment Scheme Rules 2008 (no.
82)]*

** - where the relevant enactment specifies or authorises a period different from that specified in column 2, then that different period shall be the period within which the relevant document must be filed with the Commission.*