

**FINANCIAL SERVICES (ADMINISTRATIVE
PENALTIES) REGULATIONS**

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**FINANCIAL SERVICES (ADMINISTRATIVE PENALTIES) REGULATIONS –
SECTION 62**

(S.I.s 86/2006, 62/2007 and 53/2010)

Commencement

[15 January 2007]

Short title

1. These Regulations may be cited as the Financial Services (Administrative Penalties) Regulations.

Interpretation

2. (1) In these Regulations—

“the Act” means the Financial Services Commission Act;

“late payment penalty” means an administrative penalty imposed by the Commission under Regulation 5A.

(Substituted by S.I. 62/2007)

(2) Any reference in these Regulations and the Schedules to a “contravention”, means a contravention of the Act, unless the context otherwise requires, any financial services legislation, the Regulatory Code or any directive issued by the Commission, and references to failures, requirements and obligations shall be construed accordingly. *(Amended by S.I. 62/2007)*

(3) Where the Commission, in accordance with a power granted under the Act, any financial services legislation or the Regulatory Code, extends the time for the filing of any document or the notifying of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the filing of the document or the making of the notification. *(Amended by S.I. 62/2007)*

(4) For the purposes of Schedule 1, “filing” includes “submitting”, “delivering”, “giving” or any similar word describing the provision of a document to the Commission. *(Amended by S.I. 62/2007)*

(5) In determining whether a late payment penalty is payable by a licensee, a fee, charge or penalty is deemed not to have been paid until it is paid in full. *(Inserted by S.I. 62/2007)*

(6) A reference in these Regulations to a “licensee” includes, as the context requires, any person who carries on a financial services business without a licence issued by the Commission. *(Inserted by S.I. 53/2010)*

(7) For the purposes of sending—

(a) a notice of proposed penalty under Regulation 4(1);

(b) a written penalty notice under Regulation 4(4); or

(c) a penalty notice under Regulation 5A(2),

to a person carrying on or who had carried on financial services business without a licence, the Commission may, unless it has a valid physical address at which to serve the

notice, publish the notice in the *Gazette* and on the Commission's website. (*Inserted by S.I. 53/2010*)

(8) A notice published on the Commission's website pursuant to subregulation (7) shall be deemed to be received by the person to whom it relates from the date it is posted on the Commission's website. (*Inserted by S.I. 53/2010*)

Power of Commission to impose administrative penalties

3. (1) This regulation and Regulations 4 and 5 apply to any contravention, other than a contravention for which a late payment penalty is payable. (*Substituted by S.I. 62/2007*)

(1A) If the Commission considers that a licensee has committed a contravention to which this regulation applies, it may impose an administrative penalty on the licensee, with respect to the contravention, as provided for in this regulation and Regulations 4 and 5. (*Substituted by S.I. 62/2007*)

(2) Where the Commission decides to impose an administrative penalty on a licensee under subregulation (1A), it shall, after taking into account the matters specified in Regulation 5, fix the amount of the administrative penalty within the range specified for the contravention as provided in Schedule 1. (*Amended by S.I. 62/2007*)

(3) (*Repealed by S.I. 62/2007*)

(4) (*Repealed by S.I. 62/2007*)

Procedure to be followed by Commission

4. (1) Where the Commission proposes to impose an administrative penalty on a licensee for a contravention in respect of which this regulation applies it shall send a notice of proposed penalty to the licensee stating—

- (a) the contravention in respect of which it proposes to impose the penalty;
- (b) the amount of the proposed penalty; and
- (c) the entitlement of the licensee to make representation to the Commission in accordance with subregulation (2).

(*Amended by S.I. 62/2007*)

(2) Where a licensee receives a proposed penalty notice, it may, within 21 days of the date of the notice, make representation to the Commission as to why it should not be required to pay the administrative penalty or as to why the proposed penalty should be reduced.

(3) The Commission may at any time prior to the issuing of a penalty notice under subregulation (4), withdraw a notice of proposed penalty and substitute a new notice of proposed penalty for a different amount.

(4) Subject to subregulation (5), following the expiration of 21 days from the date of the proposed penalty notice, the Commission may, by written penalty notice, impose an administrative penalty on the licensee in an amount not exceeding the amount stated in the proposed penalty notice.

(5) Before imposing an administrative penalty on a licensee, the Commission shall consider any representations received under subregulation (2).

(6) Subject to subsection (7), a licensee that receives a penalty notice shall pay the penalty stated in the notice to the Commission within 14 days of receipt of the notice.

(7) *(Repealed by S.I. 62/2007)*

Determination of appropriate penalty

5. In determining the administrative penalty to be imposed on a licensee under Regulation 4, the Commission—

- (a) shall take into account the following matters—
 - (i) the nature and seriousness of the contravention;
 - (ii) whether the licensee has previously contravened the Act or any regulatory legislation;
 - (iii) whether the contravention was deliberate or reckless or caused by the negligence of the licensee;
 - (iv) whether any loss or damage has been sustained by third parties as a result of the contravention; and
 - (v) the ability of the licensee to pay the penalty, including any gain resulting to the licensee as a result of the contravention; and
- (b) may take into account such other matters as it considers appropriate.
(Amended by S.I. 62/2007)

Late payment penalty

5A. (1) The Commission may impose an administrative penalty on a licensee in accordance with Schedule 2 where the licensee fails to pay—

- (a) any fee or charge payable under the Act or any regulatory legislation; or
- (b) any penalty payable under these Regulations,

on or before the date upon which the fee, charge or penalty is due for payment.

(2) Where the Commission decides to impose a late payment penalty on a licensee under subregulation (1), it shall send a penalty notice to the licensee stating—

- (a) the fee, charge or penalty in respect of which the penalty is imposed; and
- (b) the amount of the proposed penalty calculated in accordance with Schedule 2.

(3) Subject to Regulation 8(6), a licensee that receives a penalty notice shall pay the penalty stated in the notice to the Commission within 14 days of receipt of the notice.

(Inserted by S.I. 62/2007)

Appeal against an administrative penalty

6. (1) Where a licensee is aggrieved by a decision of the Commission to impose an administrative penalty on it, or by the amount of such administrative penalty, the

licensee may, within 14 days of receiving the penalty notice, appeal to the Appeals Board.

(2) An appeal of a decision of the Commission to impose an administrative penalty does not operate as a stay on the obligation of the licensee to pay the penalty.

Limitation period

7. (1) The Commission may not issue a proposed penalty notice to a licensee under Regulation 3(1A) for a contravention in respect of which this regulation applies after the end of the period of 2 years commencing on the date that the Commission first knew of the contravention. *(Amended by S.I. 62/2007)*

(2) For the purposes of subregulation (1), the Commission is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.

(3) The Commission may not issue a penalty notice under Regulation 5A more than 6 years after the date upon which the fee, charge or penalty became due for payment. *(Inserted by S.I. 62/2007)*

Miscellaneous provisions concerning administrative penalties

8. (1) The imposition by the Commission of an administrative penalty on a licensee with respect to a contravention does not limit the power of the Commission to take any other enforcement action against the licensee with respect to that contravention, except that where the Commission imposes an administrative penalty, it shall not revoke the licensee's licence in reliance on the same contravention.

(2) Where the Act or any regulatory legislation provides for the payment of a penalty by a licensee with respect to a contravention, the Commission—

- (a) may, in its discretion, determine whether to impose a penalty under these Regulations or under the Act or the regulatory legislation; but
- (b) shall not impose more than one administrative penalty on a licensee in respect of the same contravention.

(3) Where a licensee has, by reason of committing more than one contravention, become liable to more than one penalty, the Commission may compound the penalties. *(Inserted by S.I. 62/2007)*

(4) The Commission may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate. *(Inserted by S.I. 62/2007)*

SCHEDULE 1*(Regulation 3(2))***ADMINISTRATIVE PENALTIES**

Categories of contravention and description	Penalty range
<p>1. Licensing contravention</p> <p>Licensee—</p> <p>(a) carrying on financial services business not authorised by its licence; or</p> <p>(b) carrying on business in breach of a condition of its licence or contrary to a directive issued by the Commission.</p>	\$2,000 to \$20,000
<p>2. Contravention of financial resource requirement</p> <p>Licensee failing to comply with any financial resource requirement, including, where applicable to the licensee, any failure—</p> <p>(a) to maintain the required level of capital;</p> <p>(b) to maintain the required solvency margin;</p> <p>(c) to comply with any reserving requirements;</p> <p>(d) to maintain any deposit required to be maintained.</p>	\$2,000 to \$20,000
<p>3. Late filing/notification</p> <p>Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after last date on which the document is to be filed or the matter is to be notified to the Commission—</p> <p>1 to 30 business days late \$100 to \$500</p> <p>31 to 60 business days late \$500 to \$2,000</p> <p>61 to 90 business days late \$750 to \$3,000</p> <p>91 to 120 business days late \$1,000 to \$4,000</p> <p>121 to 150 business days late \$2,500 to \$6,000</p> <p>151 or more business days late \$3,000 to \$10,000</p>	
<p>4. Failure to obtain approval</p> <p>Licensee taking any action for which the approval of the Commission is required without having obtained the necessary approval.</p>	\$1,000 to \$5,000

Categories of contravention and description	Penalty range
<p>5. Record keeping contravention</p> <p>Licensee failing to maintain any record required to be maintained or failing to maintain records in the manner, for the period or at the place required.</p>	\$500 to \$5,000
<p>6. Compliance contravention</p> <p>Licensee failing to establish or maintain adequate systems and controls for ensuring compliance with the requirements of, and its obligations under, the Act, the regulatory legislation, the Regulatory Code or directives issued by the Commission as required by section 34 of the Act, including—</p> <p>(a) failure to appoint a compliance officer;</p> <p>(b) failure to establish and maintain a compliance procedures manual;</p> <p>(c) failure to comply with any requirement of a regulatory code with respect to compliance.</p>	\$2,000 to \$10,000
<p>7. Late payment of fee or penalty</p> <p>Licensee—</p> <p>(a) paying any fee or penalty required to be paid under any regulatory legislation or any penalty required to be paid under these Regulations more than 360 days after the date when fee or penalty is due; or</p> <p>(b) persistently paying fees or penalties required to be paid under any regulatory legislation or any penalty required to be paid under these Regulations after the date when fee or penalty is due.</p>	<p>\$500 to \$5,000</p> <p>In addition to any penalty payable in accordance with Schedule 2</p>
<p>8. Failure to submit returns</p> <p>Licensee failing to—</p> <p>(a) submit to the Commission a return of any matter concerning the business or affairs of the licensee or his or her clients; or</p> <p>(b) ensure that information provided in any return is accurate and complete.</p>	\$500 to \$5,000

Categories of contravention and description	Penalty range
9. Carrying on unauthorized financial services business A person— (a) carrying on unauthorised financial services business; or (b) failing to comply with a directive given by the Commission.	\$5,000 to \$60,000
10. Other contravention Licensee or other person committing any other contravention not falling within a category specified above.	\$100 to \$5,000

(Amended by S.I.s 62/2007 and 53/2010)

SCHEDULE 2*(Regulation 5A(1))***LATE PAYMENT PENALTIES**

The following penalties are payable for the late payment of any fee or penalty payable under any regulatory legislation or for the late payment of any penalty payable under these Regulations.

Description of Fee/Penalty	Penalty payable
<p>1. Penalties for late payment of fee or charge payable under any regulatory legislation</p> <p>For the late payment of a fee or charge payable under any regulatory legislation—</p> <p>(a) Where the fee or charge is paid 1-30 days after due date</p> <p>(b) For each additional period of 30 days, or any part thereof, during which fee or charge remains unpaid</p>	<p>20% of fee or charge payable, subject to a minimum of \$80.</p> <p>10% of fee or charge payable, subject to a minimum of \$20.</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the fee or charge payable</p>
<p>2. Penalty for late payment of administrative penalty, other than late payment penalty</p> <p>For the late payment of an administrative penalty imposed under Schedule 1,</p> <p>(a) Penalty paid 1-30 days after due date</p> <p>(b) For each additional period of 30 days, or any part thereof, during which penalty remains unpaid</p>	<p>10% of penalty payable</p> <p>10% of penalty payable</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the administrative penalty payable.</p>

(Inserted by S.I. 62/2007)