

FSC Newsletter

Penalties Regulations

Now that the Financial Services Ordinance and its Regulations have been in existence for more than two years, the Commission has felt it necessary to introduce a system of penalty fines to better administer the Ordinance. These have been introduced by means of the Financial Services (Penalty Fees) Regulations 1993 (Legal Notice 177 of 1993).

Licensees should be aware that breaches in the Ordinance or its Rules and Regulations continue to be prosecutable under Section 48 of the Ordinance. These regulations mainly enable the Commission to seek restitution where breaches are minor in their nature. However, these regulations will be applied strictly and therefore licensees can expect heavy penalty fines for breaches of the mentioned regulations.

Note should be taken that the penalties listed are for each and every occurrence of an event. This is to say for example, if five separate investments have been brought for a client which have not been properly recorded of penalty fine of 5 X Level 3 (£500) will accrue.

The penalty fees relate to the level on the standard scale of the Schedule of the Criminal Procedures Ordinance. These levels are currently:-

Level	Amount
1	100
2	200
3	500
4	2000
5	5000

A summary of the penalty fees provisions is shown below. This, however, is not a copy of the legal notice which persons can purchase from the Publications Department, No 6 Convent Place priced at £0.60.

Licensing

Regulation	Description	Penalty Fees
7(b)	Where an applicant or licensee fails to inform the Commission of any occurrence of an event which is of material significance to that person or proposed alteration of the business of that person.	£500
7(d)	Where financial services business is conducted other than that permitted by its licence is conducted or from any premises other than those specified in the licence.	£5000
10	Failure to display the licence.	£100

Fees

5(4)	Non-Payment of annual fees within 28 days from the 1st April. Unless prior written consent of the Commissioner has been obtained.	£100 per week.
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Conduct Of Business

39	Failure to maintain adequate arrangements for the safekeeping of documents of title etc and/or ensuring that registrable instruments are registered in the customer's name or that of an approved nominee.	£500
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Advertisements

5	Where an advertisement fails to comply with the provisions of the schedule and where this failure has not been prejudicial to investors or potential investors.	£2000
6	Failure to comply with a direction issued by the Commissioner on an advertisement.	£500
7	Where a licensee does not forward to the Commission, forthwith, a copy of every advertisement issued or caused to be issued.	£100

Accounting And Financial

4(2)	Failure to maintain accounting records of the form and content described in the section	£500
5 & 6	Failure to conduct reconciliations on customer's money and/or customer's investments in the manner prescribed.	£2000
10	Where accounting records are not maintained for 6 years.	£2000
15	Where annual financial statements do not comply with the prescribed format. There not being special circumstances for this occurrence.	£500
18	Failure to submit to the Commission annual financial statements within 4 months of the end of the period to which they refer.	£200 per week in arrears.
33 & 34	Where payments in and out of customers money accounts are effected which are not in accordance	£200

41	with the regulations. Failure to notify the Commissioner of a change of auditors within 7 days of the occurrence.	£100 per week.
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The effect of these regulations is to enable the Commission to "exercise more muscle" in what are relatively minor infractions of the Ordinance where the cancellation of a licence would be inappropriate. Licensees should pay closer attention to the provisions of the Regulations, specially those relating to payment of fees, submission of accounts, as well as advertising requirements as licensees could find themselves with larger than expected compliance costs.

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