

**FINANCIAL SERVICES (FINANCIAL PENALTIES)  
REGULATIONS 2010**

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**FINANCIAL SERVICES (FINANCIAL PENALTIES)  
REGULATIONS 2010**

*(Legal Notice 24 of 2010)*

**MADE** by the Governor under sections 45 and 53 of the Financial Services Commission Ordinance.

Citation and commencement

**1.** These Regulations may be cited as the Financial Services (Financial Penalties) Regulations, 2010 and shall come into effect on 29 October 2010.

Interpretation.

**2.** (1) In these Regulations—

“late payment penalty” means a financial penalty imposed by the Commission under regulation 5;

“Ordinance” means the Financial Services Commission Ordinance 2007.

(2) Any reference in these Regulations and the Schedules to a “contravention”, means a contravention of the Ordinance, any financial services Ordinance or the Code, and references to failures, requirements and obligations shall be construed accordingly.

(3) Where the Commission, in accordance with a power granted under the Ordinance, any financial services Ordinance or the 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.

(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.

(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.

Power of Commission to impose financial penalty

**3.** (1) This regulation and regulation 4 apply to any contravention, other than a contravention for which a late payment penalty is payable.

(2) If the Commission considers that a licensee has committed a contravention to which this regulation applies, it may impose a financial penalty on the licensee, with respect to the contravention, as provided for in this regulation.

(3) Where the Commission decides to impose a financial penalty on a licensee under sub-regulation (2), it shall, after taking into account the matters specified in regulation 4, fix the amount of the financial penalty within the range specified for the contravention as provided in Schedule 1.

(4) The Commission may at any time prior to the issuing of a penalty notice under section 47 of the Ordinance withdraw a notice of intention and substitute a new notice of proposed penalty for a lower penalty.

4. In determining the financial penalty to be imposed on a licensee under regulation 3(2), the Commission—

Determination of appropriate penalty

- (a) shall take into account the following matters—
  - (i) the nature and seriousness of the contravention;
  - (ii) whether the licensee has previously contravened the Ordinance or any financial services Ordinance;
  - (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.

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

Late payment penalty

- (a) any fee or charge payable under the Ordinance or any financial services Ordinance; 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 sub-regulation (1), it shall send a penalty notice under section 47 of the Ordinance 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.

6. (1) Where a contravention committed by a licensee falls into more than one of the categories specified in Schedule I, the Commission—

Miscellaneous provisions concerning financial penalties

- (a) may, in its discretion, determine into which category the contravention will fall, but

(b) shall not impose a financial penalty under more than one category.

(2) 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.

(3) The Commission may agree to the payment of a financial penalty in instalments over such period of time, as it considers appropriate.

## SCHEDULE 1

### FINANCIAL PENALTIES

*(Regulation 3)*

<b>Categories of contravention and description</b>	<b>Penalty range</b>
<p style="text-align: center;"><b>1. Licensing contravention</b></p> <p>Licensee:</p> <p style="padding-left: 40px;">(a) carrying on financial services business not authorised by its licence; or</p> <p style="padding-left: 40px;">(b) carrying on business in breach of a condition of its licence or contrary to a directive issued by the Commission.</p>	<p><b>\$2,000 to \$200,000</b></p>
<p style="text-align: center;"><b>2. Contravention of financial resource requirement</b></p> <p>Licensee failing to comply with any financial resource requirement, including, where applicable to the licensee, any failure:</p> <p style="padding-left: 40px;">(a) to maintain the required level of capital;</p> <p style="padding-left: 40px;">(b) to maintain the required solvency margin;</p> <p style="padding-left: 40px;">(c) to comply with any reserving requirements;</p> <p style="padding-left: 40px;">(d) to maintain any deposit</p>	<p><b>\$2,000 to \$200,000</b></p>

<p>required to be maintained.</p>	
<p><b>3. Late filing /notification</b></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  31 to 60 business days late  61 to 90 business days late  91 to 120 business days late  121 to 150 business days late  151 or more business days late</p>	<p><b>\$100 to \$500</b>  <b>\$500 to \$2,000</b>  <b>\$750 to \$3,000</b>  <b>\$1,000 to \$4,000</b>  <b>\$2,500 to \$6,000</b>  <b>\$3,000 to \$10,000</b></p>
<p><b>4. Failure to obtain approval</b></p> <p>Licensee taking any action for which the approval of the Commission is required without having obtained the necessary approval.</p>	<p><b>\$1,000 to \$5,000</b></p>
<p><b>5. Record keeping contravention</b></p> <p>Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.</p>	<p><b>\$500 to \$5,000</b></p>
<p><b>6. Compliance contravention</b></p> <p>Licensee failing to establish or maintain adequate systems and controls for ensuring compliance with the requirements of, and its obligations under, the Ordinance, the financial services Ordinance, the Code or directives issued by the Commission as required by section 31 of the Ordinance, including—</p> <p>(a) failure to appoint a compliance officer;</p> <p>(b) failure to establish and</p>	<p><b>\$2,000 to \$10,000</b></p>

<p>maintain a compliance procedures manual;</p> <p>(c) failure to comply with any requirement of a regulatory code with respect to compliance.</p>	
<p><b>7. Late payment of fee or penalty</b></p> <p>Licensee</p> <p>(a) paying any fee or penalty required to be paid under any financial services Ordinance 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 financial services Ordinance or any penalty required to be paid under these Regulations after the date when fee or penalty is due.</p>	<p><b>\$500 to \$5,000</b></p> <p>In addition to any penalty payable in accordance with Schedule 2</p>
<p><b>8. Other contravention</b></p> <p>Licensee committing any other contravention not falling within any category specified above.</p>	<p><b>\$100 to \$50,000</b></p>

**SCHEDULE 2**

*(Regulation 5)*

**LATE PAYMENT PENALTIES**

*The following penalties are payable for the late payment of any fee or penalty payable under any financial services Ordinance or for the late payment of any penalty payable under these Regulations*

<b>Description of Fee/penalty</b>	<b>Penalty payable</b>
<p>1. Penalties for late payment of fee or charge payable under any financial services Ordinance</p> <p>For the late payment of a fee or charge payable under any financial services Ordinance</p> <p><i>(a) Where the fee or charge is paid 1-30 days after due date</i></p> <p><i>(b) For each additional period of 30 days, or any part thereof, during which fee or charge remains unpaid</i></p>	<p>20% of fee or charge payable, subject to a minimum of \$80.00</p> <p>10% of fee or charge payable, subject to a minimum of \$20.00</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 financial penalty, other than late payment penalty</p> <p><b>For the late payment of a financial penalty imposed under Schedule 1</b></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 financial penalty payable</p>

Dated this 12<sup>th</sup> day of October 2010.

**GORDON WETHERELL**  
**GOVERNOR**

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide for the Financial Services Commission to take disciplinary action against a licensee, for contravention of any provision of the Financial Services Commission Ordinance, a financial services Ordinance or a provision of the Code, by imposing a financial penalty.