

GUERNSEY STATUTORY INSTRUMENT

2016 No. 87

**The Financial Services Commission
(Administrative Financial Penalties)
(Bailiwick of Guernsey) Regulations, 2016**

*Made*2nd December, 2016*Coming into operation*1st January, 2017*Laid before the States*

, 2017

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, 1987^a and all other powers enabling it in that behalf, and after consultation with the States of Guernsey Policy & Resources Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Performance Committee of the Chief Pleas of Sark, hereby makes the following Regulations:-

Late Filing Penalties

1. (1) A late filing penalty shall become due in the event that a person does not file with the Commission a financial statement, annual return or other document described in the Schedule (a "**relevant document**") by or on the last date on which the relevant document was required to be filed with the Commission by that person ("**the Filing Date**"), which penalty shall be calculated in accordance with Regulation 3.

^a Ordres en Conseil Vol. XXX, p. 243; amended by Ordres en Conseil Vol. XXXI, p. 278, Vol. XXXII, p. 471, ; XXV(1), p. 271; Vol. XXXVII, p. 24; Order in Council No's. XVII and XXI of 2002; No's. III and XXII of 2003; No's. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; Ordinance No. XXXIII of 2003; No. XXXIV of 2005; No. XII of 2015, No. XX of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; No. XXII of 2016 and by Regulations, G.S.I. No. 29 of 2009.

- (2) The late filing penalty arising under paragraph (1) -
- (a) shall be incurred whilst the document remains outstanding after the Filing Date, commencing from the day after the Filing Date, and
 - (b) shall not be incurred on the day of filing the document, save where that day is the day immediately after the Filing Date in which case a penalty shall be incurred.

Late Payment Penalties

2. (1) A late payment penalty shall become due in the event that any fee detailed in paragraphs (2) and (3) below is not paid by the Due Date.

(2) Fees due under the following regulations of the Financial Services Commission (Fees) Regulations, 2016 –

- (a) regulation 1(2) (fees payable in respect of licensed banking institutions),
- (b) regulation 2(1)(b), 2(2)(b) or 2(3)(b) (fees payable in respect of licensed insurers),
- (c) regulation 3(2) and 3(3) (fees payable in respect of mutual, provident or friendly societies licensed as insurers),
- (d) regulation 5(2) and 5(4)(b) (fees payable in respect of licensed insurance intermediaries),
- (e) regulation 6(2) (fees payable in respect of licensed insurance managers),
- (f) regulation 7(2) (fees payable in respect of licensed controlled investment business),

- (g) regulation 8(2) or 8(3) (fees payable in respect of authorised or registered collective investment schemes),
- (h) regulation 9(2) (fees payable in respect of a designated territory business notification),
- (i) regulation 10(2) (fees payable in respect of a non-Guernsey open-ended collective investment scheme notification), and
- (j) regulation 11(5), 11(7), 11(9) or 11(15) (fees payable in respect of licensed fiduciaries).

(3) Fees due under the following regulations of the Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2016

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- (a) regulation 2(1) and 2(2) (periodic fee payable by protected cell companies which are licensed as insurers),
 - (b) regulation 3(1) and 3(2) (periodic fee payable by incorporated cell companies which are licensed as insurers), and
 - (c) regulation 4 (periodic fee payable by incorporated cells which are licensed as insurers),
- (4) For the purpose of this regulation the "**Due Date**" is –
- (a) the date specified by those regulations as the date by which the fee must be paid, or
 - (b) if no date is so specified, a date notified by the Commission to the person obliged to pay the fee in

question which shall be not less than 30 days after the day on which the fee first became payable.

- (5) The late payment penalty arising under paragraph (1) -
 - (a) shall be incurred whilst the fee remains outstanding in whole or part after the Due Date, commencing from the day after the Due Date, and
 - (b) shall not be incurred on the day of payment of the entirety or the remainder of the outstanding fee, as the case may be.

Calculation of Penalties

3. The late penalties are payable in respect of each month or part of a month falling within the period of default and shall be calculated as follows –

- (a) in respect of the first month (or part thereof) after the Filing Date or Due Date, as the case may be, £125,
- (b) in respect of the second month (or part thereof) after the Filing Date or Due Date, as the case may be, £250, and
- (c) in respect of the third month, and every month (or part thereof) thereafter, after the Filing Date or Due Date, as the case may be, £375.

Penalties: general

4. (1) The late penalties, shall be payable to the Commission by the person obliged to file the document or pay the fee, in question, as the case may be.

(2) The late penalties –

- (a) are recoverable from the person obliged to pay the penalty by the Commission as a civil debt, and

(b) are not refundable and non-discretionary.

Appeals.

5. The provisions of section 11H of the Law apply in relation to a decision of the Commission to impose a late penalty, 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.

6. The imposition of a late 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.

Interpretation.

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

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

"**Due Date**" : see regulation 2(4),

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

"**Filing Date**" : see regulation 1(1),

"**late penalties**" means the late filing penalty arising under regulation 1 and the late payment penalty arising under regulation 2,

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

"**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),

"**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, 1948^b applies to the interpretation of these Regulations.

Revocation.

8. The following regulations are hereby revoked –

- (a) the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2010^c and
- (b) the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) (Amendment) Regulations, 2013^d.

^b Ordres en Conseil Vol. XIII, p. 355.

^c G.S.I. No. 63 of 2010.

^d G.S.I. No. 36 of 2013.

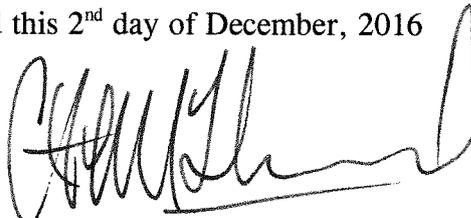
Citation.

9. These Regulations may be cited as the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2016.

Commencement.

10. These Regulations shall come into force on the 1st January, 2017 and, for the avoidance of doubt, shall not apply to any period of default arising before the commencement of these regulations.

Dated this 2nd day of December, 2016



CEES SCHRAUWERS

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, and late payments of fees due, 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>2 calendar months of the end of the annual return period to which it</i> |

DESCRIPTION OF RELEVANT DOCUMENT

PERIOD WITHIN WHICH RELEVANT DOCUMENT MUST BE FILED WITH COMMISSION*

relates [Regulation 5(3) of the Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012 (no. 28)]

3. THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002 [SECTION 37(1)]

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

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]

4. THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES (BAILIWICK OF GUERNSEY) LAW, 2002 [SECTIONS 24 AND 26]

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

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]

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

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]

5. THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 1987 [PART III]

Holder of licence to carry on controlled investment business

Audited financial statements and compliance return of licensee

4 months after accounting reference date [Rule 4.2.6 of the Licensees (Conduct of Business) Rules, 2009 (No. 75)]

DESCRIPTION OF RELEVANT DOCUMENT

PERIOD WITHIN WHICH RELEVANT DOCUMENT MUST BE FILED WITH COMMISSION*

Licensed investment exchange

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 (Qualifying Professional Investor

DESCRIPTION OF RELEVANT DOCUMENT

PERIOD WITHIN WHICH RELEVANT DOCUMENT MUST BE FILED WITH COMMISSION*

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)] or Rule 5.03 of the Private Investment Fund Rules 2016

** - 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.*