

Revised Regulation of Anguilla: F28-2

FINANCIAL SERVICES COMMISSION ACT, R.S.A. c. F28

ADMINISTRATIVE PENALTIES REGULATIONS

Note: These Regulations are enabled under section 57 of the Financial Services Commission Act, R.S.A. c. F28.¹

(Am. in L.R. 15/12/2014)

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Interpretation

1. In these Regulations—

“Act” means the Financial Services Commission Act;

“late payment penalty” has the meaning given in Part 6 of the Act;

“submit” includes “file”, “give”, “deliver” or any similar word describing the provision of a document to the Commission.

Fixing of penalties

2. (1) Where the Commission decides to impose on a licensee an administrative penalty, other than a late payment penalty, for a disciplinary violation of a category specified in Column 1 of Schedule 1, it shall, after taking account of the factors specified in section 3, fix the amount of that administrative penalty within the range specified in Column 2 of Schedule 1.

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- (2) Where the Commission decides to impose a late payment penalty on a licensee, the penalty shall be calculated in accordance with Schedule 2.

¹ This Note has been corrected to reflect the renumbering of the Act by Act 4 of 2013.

Factors to be considered by Commission

3. In determining the administrative penalty to be imposed on a licensee, other than a late payment penalty, the Commission—

- (a) shall take into account the following factors—
 - (i) the nature and seriousness of the disciplinary violation committed by the licensee,
 - (ii) whether the licensee has previously committed a disciplinary violation and, if so, the number and seriousness of the licensee's previous disciplinary violations,
 - (iii) whether the disciplinary violation 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 disciplinary violation,
 - (v) whether there has been any gain to the licensee as a result of the disciplinary violation, and
 - (vi) the ability of the licensee to pay the penalty; and
- (b) may take into account such other matters as it considers appropriate.

Citation

4. These Regulations may be cited as the Administrative Penalties Regulations, Revised Regulations of Anguilla, F28-2.

SCHEDULE 1

(Section 2(1))

ADMINISTRATIVE PENALTIES, OTHER THAN LATE PAYMENT PENALTIES

Column 1	Column 2
Category of Disciplinary Violation and Description	Penalty Range
<p>1. Licensing Contravention</p> <p>Licensee—</p> <p>(a) carrying on type of 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>	\$5,000 to \$50,000
<p>2. Late filing or Notification</p> <p>Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after the last date on which the document is required to be filed or the matter is required to be notified to the Commission—</p> <p>(a) 1 – 30 business days late;</p> <p>(b) 31 – 60 business days late;</p> <p>(c) 61 – 90 business days late;</p> <p>(d) 91 – 120 business days late;</p> <p>(e) 121 – 150 business days late;</p> <p>(f) 151 or more business days late.</p>	<p>\$250 to \$1,250</p> <p>\$1,250 to \$5,000</p> <p>\$1,875 to \$7,500</p> <p>\$2,500 to \$10,000</p> <p>\$6,250 to \$15,000</p> <p>\$7,500 to \$25,000</p>
<p>3. 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>	\$2,500 to \$12,500
<p>4. Record Keeping Contravention</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>	\$1,250 to \$12,500
<p>5. Contravention Relating to Policies, Systems and Controls</p> <p>Licensee failing to—</p> <p>(a) establish or maintain policies, systems and controls or procedures required by a financial services enactment or the Regulatory Code to be established or maintained by the licensee;</p>	\$5,000 to \$25,000

(b) establish or maintain a function required by a financial services enactment or the Regulatory Code to be established or maintained by the licensee, including to appoint a compliance officer of a money laundering reporting officer.	
6. Contravention of AML/CFT Obligations Licensee contravening any AML/CFT obligation.	\$15,000 to \$100,000
7. Other Contravention Licensee committing any other contravention of a financial services enactment or the Regulatory Code not falling within a category specified above.	\$250 to \$12,500

SCHEDULE 2

(Section 2(2))

LATE PAYMENT PENALTIES

1. Where any fee or charge payable under the Act or a financial services enactment is not paid on or before the day on which the payment is due, the following late payment penalties apply—
 - (a) where the fee or charge is paid 1-30 days after the due date, 20% of the fee or charge, subject to a minimum of \$150; and
 - (b) for each additional period of 30 days, or any part of an additional period, during which the fee or charge remains unpaid, 10% of the fee or charge, subject to a minimum of \$80.
 2. Late payment penalties payable under section 1(a) and (b) are cumulative, but shall not exceed 100% of the fee or charge payable.
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