



Consultation on amendments
under the Financial Services
Commission (Jersey) Law 1998
regarding the civil financial
penalties regime

Summary

The Financial Services Commission (Jersey) Law 1998 (the “FSC Law”) came into force on 4 June 1998 to establish the Jersey Financial Services Commission (the “Commission”). Under the FSC Law, the Commission is responsible for the supervision and development of financial services provided in or from within Jersey. Since the commencement of the FSC Law, several consequential amendments have been made to the FSC Law to ensure that the Commission can discharge its responsibilities effectively.

The Financial Services Commission (Amendment No. 6) (Jersey) Law 2015 granted the Commission the power to impose civil financial penalties while the Financial Services Commission (Financial Penalties) (Jersey) Order 2015 (the “FP Order”) sets certain parameters for the imposition of a financial penalty. This consultation paper seeks views on draft amendments prepared under the FSC Law and the FP Order.

These draft amendments look to extend the existing civil financial penalties regime which is available to the Commission to deal with natural or legal persons which fail to comply with anti-money-laundering and countering the financing of terrorism requirements and that the regime is applicable to financial institutions as well as Designated Non-Financial Businesses and Professions (casinos, real estate agents, accountants, lawyers) and to their directors, i.e. “principal persons” and senior management, including “key persons”.

Furthermore, the intention is to increase the overall effectiveness, proportionality, and dissuasiveness of the existing civil financial penalties regime. Implementing the draft amendments will help to align the existing regime more closely with international standards, especially FATF Recommendation 35, and best practices whilst providing for fairer and more equitable enforcement action outcomes.

Date published: 7 July 2021

Closing date: 1 September 2021

Supporting documents attached:

1. Draft Financial Services Commission (Amendment No. 8) (Jersey) Law 202-
2. Draft Financial Services Commission (Financial Penalties) (Amendment No. 2) (Jersey) Order 202-

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Do you give permission for your comments to be quoted?

- 1. No ☐
- 2. Yes, anonymously ☐
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Name to attribute comments to:

Organisation to attribute comments to, if applicable:

Ways to respond

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INTRODUCTION

Jersey is a leading and well-regulated International Finance Centre, and it is critical to maintain its reputation and therefore its prosperity, through its support for the global fight against financial crime, money laundering and the financing of terrorism.

Money laundering is the process through which criminals give the appearance of legitimacy to proceeds of crime. It is an expanding and increasingly international phenomenon, with current estimates of money laundered worldwide ranging from \$500 billion to \$1 trillion, with disastrous effects on the global economy and society.¹

The international community and society at large including the people of Jersey, are exposed to the negative effects of money laundering and terrorist financing in different ways and the economic, security, and social consequences can be summarised as follows:²

- Money laundering undermines the legitimate private sector by the use of front companies, co-mingling the proceeds of illicit activity with legitimate funds, hiding ill-gotten gains and enabling these companies to cross-subsidise their products and services at levels well below market rates, giving them an unfair competitive advantage over legitimate businesses. This results in the potential crowding out of private sector businesses by criminal organisations.
- Money laundering undermines the integrity of financial markets because financial institutions that rely on the proceeds of crime face additional challenges in adequately managing their assets, liabilities, and operations which can lead to asset-liability mismatches, causing liquidity issues and potential bank runs which erode client assets and investor trust.
- Money laundering diminishes government tax revenue and therefore indirectly harms honest taxpayers. It also makes government tax collection more difficult. This loss of revenue generally means higher tax rates than would normally be the case if the untaxed proceeds of crime were legitimate.
- The financing of terrorism enables extremists to commit violent and atrocious attacks against the lives of hundreds or thousands of civilians.
- Money laundering causes significant social costs and risks as it allows drug traffickers, smugglers, human traffickers, child abusers and other criminals to expand their operations. This drives up the cost of government due to the need for increased law enforcement and social and health care expenditures to combat the serious consequences that result.

¹ See: The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL: Annual Report 2020.

² McDowell and Novis (2001): *The Consequences of Money Laundering and Financial Crime*, Electronic Journal of the U.S. Department of State, Vol. 6, No. 2.

In order to prevent these negative economic, security and social consequences as far as possible, the Government of Jersey has made several critical commitments to combat financial crime and illicit finance whilst protecting the integrity of the international financial system from misuse.

These efforts are based on the standards developed by the Financial Action Task Force (FATF). The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society.

The FATF has developed and revised 40 Recommendations³ (the “Recommendations”), which ensure a co-ordinated global response to prevent organised crime, corruption, and terrorism and more than 200 countries and jurisdictions, including Jersey, committed to implementing the Recommendations.

At the top of Government’s commitments is the commitment of the Chief Minister of the day to the FATF President to implement, *in full*, the revised Recommendations and the FATF Methodology post their development and adoption in 2012 and 2013 respectively. This makes compliance with the Recommendations a national commitment and therefore of national interest.

Recommendation 35

For the purpose of this consultation, certain legislative amendments are being discussed in order to achieve compliance in particular with Recommendation 35 of the Recommendations, in line with the national commitments. While certain Recommendations provide requirements regarding preventative measures, Recommendation 35 provides requirements which form part of the powers and responsibilities of competent authorities acknowledging the importance of an effective financial penalties regime⁴ which is able to deal with non-compliance.

Recommendation 35 specifically requires countries to ensure that

- (i) there is a range of effective, proportionate, and dissuasive criminal, civil or administrative penalties available to deal with natural or legal persons which fail to comply with anti-money-laundering and countering the financing of terrorism (“AML/CFT”) requirements and
- (ii) that these penalties are applicable to financial institutions and Designated Non-Financial Businesses and Professions (“DNFBPs”) and
- (iii) that these penalties are applicable to directors as well as senior management of financial institutions and DNFBPs.

In order to implement an effective, proportionate and dissuasive civil financial penalties regime available to the Jersey Financial Services Commission (the “Commission”) with respect to AML/CFT requirements in line with the Recommendation 35, several amendments (the “Amendments”) to the Financial Services Commission (Jersey) Law 1998 (the “FSC Law”) and the Financial Services

³ See: [The FATF Recommendations \(2012\)](#).

⁴ For the purpose of Recommendation 35, the term “Sanctions” has the meaning of financial penalties.

Commission (Financial Penalties Order) (Jersey) 2015 (the “FP Order”) have been identified in consultations with the Commission.

Following the consultations with the Commission, the Amendments have been drafted and are now the subject of this consultation. There are two sets of amendments and this consultation is divided into two parts, considering each of the Amendments separately. We would welcome responses to the questions posed in this consultation.

PART ONE: DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT NO. 8) (JERSEY) LAW 202-

The FSC Law came into force on 4 June 1998 to establish the Commission. Under the FSC Law, the Commission is responsible for the supervision and development of financial services provided in or from within Jersey. Since the commencement of the FSC Law, several consequential amendments have been made to the FSC Law to ensure that the Commission can discharge its responsibilities effectively.

The Financial Services Commission (Amendment No. 6) (Jersey) Law 2015 granted the Commission with the power to impose civil financial penalties. Under Article 21A (2) FSC Law, these powers are limited to contraventions by registered persons of the Codes of Practice issued by the Commission under the following provisions:

- (a) Article 19A of the Banking Business (Jersey) Law 1991;
- (b) Article 42 of the Insurance Business (Jersey) Law 1996;
- (c) Article 19 of the Financial Services (Jersey) Law 1998;
- (d) Article 22 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008; and
- (e) Regulation 22 of the Alternative Investment Funds (Jersey) Regulations 2012;

and to principal persons where the contravention by the registered was committed with the consent or connivance of, or is attributable to neglect on the part of a principal person, or was aided abetted, counselled or procured by a principal person.

While the Codes of Practice issued under the aforementioned provisions make reference to the Commission's AML/CFT Handbook and provide for certain requirements with respect to the prevention of money laundering, for example the appointment of a money laundering reporting officer and compliance officer, contraventions of the Money Laundering (Jersey) Order 2008 (the "MLO") are currently not themselves subject to civil financial penalties. Hence, the Commission can impose civil financial penalties with respect to MLO contraventions only insofar as those contraventions are covered by the Codes of Practice, for example, where a contravention of the MLO is the result of a failure by a regulated entity to comply with a systems and controls or corporate governance requirement set out in a Code of Practice.

These limitations impact the effectiveness and dissuasiveness of the existing civil financial penalties regime when the Commission has to deal with natural or legal persons which fail to comply with AML/CFT requirements and thus are detrimental to achieve full compliance with Recommendation 35.

Contraventions of the Money Laundering (Jersey) Order 2008

In order to achieve full compliance with Recommendation 35 by extending the existing civil financial penalties regime to include failures to meet AML/CFT requirements by registered persons and principal persons, it is proposed to amend Article 21A of the FSC Law to allow the Commission to

impose civil financial penalties for significant and material contraventions of the MLO, in addition to contraventions of the existing Codes of Practice.

The ability of the Commission to impose civil financial penalties with respect to significant and material contraventions of the MLO, provides for a more effective, proportionate and dissuasive enforcement environment and thus aligns the regime with the requirements under the Recommendations and ultimately will support better compliance with the MLO.

Adopting the amendments will also allow Jersey's financial penalty regime to step in line with other jurisdictions where financial regulators are already equipped with similar powers and are using them in order to enforce better AML/CFT compliance and increase the dissuasiveness of their regimes. Overall, regulators across the US, UK, Europe and Asia have imposed AML-related financial penalties of more than \$10 billion on financial institutions in 2020.⁵

Individual examples of recent financial penalties include the Cayman Islands Monetary Authority⁶ imposing a discretionary fine of \$4.23 million on Intertrust for contraventions of the AML regulations in May 2021, Malta's Financial Intelligence Analysis Unit⁷ imposing a fine of €360,000 on Em@ney plc for a series of AML contraventions in April 2021, the UK's Financial Conduct Authority⁸ imposing a fine of £38 million on Commerzbank for AML compliance failures in June 2020, and the Guernsey Financial Services Commission⁹ imposing a fine of £150,000 on Safehaven International Ltd and several individuals for AML contraventions in December 2020.

Designated Non-Financial Businesses and Professions

Another requirement of Recommendation 35 is that civil financial penalties are applicable to DNFBPs like casinos, real estate agents, accountants, and lawyers. This is currently not the case.

DNFBPs are included in Schedule 2, Part B Other Business of the Proceeds of Crime (Jersey) Law 1999 (the "POC Law"). Furthermore, Article 2 of Proceeds of Crime (Supervisory Bodies) (Designation of Supervisory Bodies) (Jersey) Order 2008 designates the Commission as the supervisory body for prescribed persons, with prescribed persons being defined under paragraph (2) of said Article as a person carrying on a specified Schedule 2 business.

Hence, in order to achieve compliance with Recommendation 35, it is proposed to amend the definition of "registered person" in Article 1 FSC Law by adding a paragraph that brings into scope "a supervised person within the meaning of Article 1 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008".

Directors and Senior Management

Furthermore, the civil financial penalties regime needs to include the ability to fine directors and senior management of financial institutions and DNFBPs. The Recommendations do not provide any

⁵ [Regulators issued \\$10 bn in AML fines in 2020 - FStech Financial Sector Technology.](#)

⁶ [PublicNotice-Administrativefine-IntertrustCorporateServicesCaymanLimited_1620946178.pdf \(cima.ky\).](#)

⁷ [Sliema-based financial institution fined €360,000 by FIAU \(timesofmalta.com\).](#)

⁸ [FCA fines Commerzbank London £37,805,400 over anti-money laundering failures | FCA.](#)

⁹ [Safehaven International Limited, Mr Richard John Bach, Miss Tracey Jane Ozanne, Mr David Charles Housley Whitworth, Mr Michael John Good and Mr Stephen John Dickinson | GFSC.](#)

further definition of senior management, however, precedent decisions of the FATF give clear guidance as to the sort of roles that would need to be captured by this provision in order to be compliant with the Recommendations which has been incorporated in the below definition.

For the civil financial penalties regime to be effective, it is important that the Commission is able to apportion accountability to all senior decision makers involved with the prevention of money laundering and the financing of terrorism, in order to create a dissuasive environment to non-compliance. Considering the decision-making structure in financial institutions and DNFBPs, decision making and responsibility with regards to AML/CFT measures goes beyond principal persons and this needs to be reflected in the civil financial penalties regime, in line with the Recommendations in order to appropriately capture “Senior Management”.

The existing regime provides for principal persons via Article 21A (1) (b) FSC Law. However, in order to include individuals which are not principal persons but might have certain responsibilities for AML/CFT compliance within financial institutions and DNFBPs, like key persons, and other senior individuals, further additions to Article 21A (1) (b) FSC Law are required.

Hence, it is proposed, to amend the FSC Law to state that the following three categories of persons are within scope of the civil financial penalty regime:

- 1) principal persons;
- 2) key persons; and
- 3) any person performing a “senior management function”.

Regarding the definition of key persons, it is proposed that key person has the meaning given to that expression by the law which governs the registered person in any given contravention whereas money laundering compliance officer and money laundering reporting officer refer to a person appointed under the MLO.

Regarding the definition of a senior management function in relation to a registered person, it is proposed to mean a function designated as such by the Commission by notice but only where

(a) the function that requires the individual performing it to be responsible for managing one or more aspects of the registered person’s affairs, and

(b) those aspects involve, or might involve, a risk of serious consequences

(i) for the registered person, or

(ii) for business or other interests in Jersey,

and in paragraph (a), the reference to managing one or more aspects of the registered person’s affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.

Having regard to this definition, it would be expected that the Commission’s notice will describe which functions/roles it would consider to constitute a senior management function, providing further clarity to the financial services industry and DNFBPs.

Persons ought to be registered

Finally, to improve effectiveness and dissuasiveness, where a person ought to have been registered, but was not, the Commission needs to have the power to impose a civil financial penalty for the codes that would have been contravened, had that person been registered. This is to prevent a person from gaining the benefit of avoiding a civil penalty, by virtue of their own failure to register, and it is proposed to amend Article 1(1) of the FSC Law accordingly.

These Amendments are considered necessary to achieve compliance with international AML/CFT standards, as reflected in the Recommendations, and to support the Government of Jersey's long-standing commitment to combat financial crime and illicit finance whilst protecting the integrity of the international financial system from misuse and the resulting negative consequences.

PART ONE: QUESTIONS

- 1. Do you agree with the proposed way in which Article 21A of the FSC Law is amended to include significant and material contraventions of the MLO? If not, please provide details.**
- 2. Do you agree with the proposed way to amend the definition of registered persons to include DNFBPs? If not, please provide details.**
- 3. Do you agree with the proposed definition of a senior management function? If not, please provide details and an alternative definition.**
- 4. Do you agree with the proposed way to amend Article (1) of the FSC Law to give the Commission the power to impose civil financial penalties where persons ought to have been registered, but were not, for the codes they would have contravened, had they been registered? If not, please provide details.**
- 5. Please provide any further comments or suggestions you might have on how to increase the effectiveness, proportionality, and dissuasiveness of the civil financial penalties regime with respect to AML/CFT contraventions.**

PART TWO: DRAFT FINANCIAL SERVICES COMMISSION (FINANCIAL PENALTIES) (AMENDMENT NO. 2) (JERSEY) ORDER 202-

The FP Order came into force on 23 June 2015 and sets certain parameters for the imposition of a financial penalty.

Following consultation with the Commission regarding its experience to date in applying and enforcing the FP Order as well as contrasting its requirements with the revised Recommendations, the need for further amendments has been identified.

Proportionality, Dissuasiveness and Fairness

Financial institutions are able to generate potentially significant profits from AML/CFT contraventions, either by illicit activity or through compliance cost savings, and any civil financial penalties regime needs to be able to reflect that. In line with Recommendation 35, the Commission needs to be able to impose civil financial penalties which are:

1. proportionate; and
2. dissuasive regarding potential non-compliance.

The existing FP Order looks to implement proportionate civil financial penalties in two steps. Firstly, Article 2 of the FP Order provides for the definition and calculation of Relevant Income. Secondly, Article 3 and the Schedule of the FP Order provide for four different Bands which reflect the nature of the contravention and four different applicable fractions of hundredths. The amount of a civil financial penalty is then calculated as a fraction of hundredths applied to the Relevant Income.

Additionally, for each category of contravention, Article 3 and the Schedule also provide for caps of either £10,000 or £4m respectively on the absolute amount that can be imposed by the Commission.

If applying the relevant fraction of hundredths to the Relevant Income would result in a higher amount, the maximum possible amount is limited to those caps. This means, irrespective of the nature or egregiousness of the contravention or the actual amount of Relevant Income, the Commission can never impose a civil financial penalty of more than £4m against a registered person.

Thus, it can be concluded that the existing caps prohibit the Commission from issuing civil financial penalties which meet the requirements of proportionality¹⁰ and dissuasiveness for Relevant Incomes above the respective threshold for each Band.

In summary, the current set-up of the civil financial penalties regime¹¹ exhibits the following shortcomings:

- The civil financial penalties that can be imposed by the Commission are only proportionate for a certain range of Relevant Incomes below the respective thresholds, however, a

¹⁰ Since the amounts of financial penalties and Relevant Incomes are quantifiable, the terms proportionate and proportional are used interchangeably.

¹¹ An example for illustrative purposes is included in Appendix A.

significant number of Relevant Incomes are above the respective thresholds.¹² For registered persons with Relevant Incomes above the thresholds, the civil financial penalties are no longer proportionate and hence the regime falls short of the proportionality requirement of Recommendation 35.

- Due to the lack of proportionality for Relevant Incomes above the threshold, the financial penalty percentage that is being imposed is decreasing for increasing Relevant Incomes. The higher the Relevant Income of the registered person, the smaller the financial penalty percentage it might have to pay as a result of enforcement actions. In situations where potential profits from illicit activity or non-compliance will exceed the financial penalty percentage, any civil financial penalty amount could be considered just normal costs of doing businesses by some actors, exemplifying the ineffective dissuasiveness. This set-up fails to provide civil financial penalties which could be considered dissuasive across the entire range of Relevant Incomes and thus falls short of the dissuasiveness requirement of Recommendation 35.
- The two aforementioned points could result in the conclusion that the entire civil financial penalties regime in Jersey is considered to be less effective compared to other jurisdictions which do not provide for caps in their civil financial penalty regimes. This could also be criticised by international assessors.
- Finally, under the current provisions of the FP Order, enforcement actions might result in registered persons with high Relevant Incomes getting penalised relatively less than registered persons with low Relevant Income even though the egregiousness of the contravention might be exactly the same. These outcomes could be considered unfair towards registered persons with low Relevant Income. Alternatively, due to the caps, enforcement actions against a Band 2 contravention of one registered person for example might result in the same amount being imposed as the amount being imposed against another registered person for a Band 3 contravention i.e. a lot more egregious contravention. These outcomes could be considered inappropriate and do not provide for a fair and equitable application of the law across all registered persons and thus undermine the integrity of the supervisory enforcement process and ultimately the compliance efforts undertaken by all financial institutions.

Hence, it is proposed to remove the existing caps for registered persons in the FP Order across all Bands in order to achieve compliance with Recommendation 35, aligning the civil financial penalties regime with international best practices as well as making it fairer and more equitable for all registered persons irrespective of their particular level of Relevant Income. For the avoidance of doubt, it is currently not proposed to remove the existing caps for natural persons.

¹² For the reporting period of 2019, more than 150 companies in the financial services sector recorded profits of more than £60m (source: Revenue Jersey).

Moving to Aggregate Turnover

Article 2 (1) of the FP Order provides the definition of Relevant Income as income derived from the business activities in respect of which the registered person is licensed for and then outlines further details regarding the different business activities.

This definition poses a number of challenges and issues which became apparent during enforcement actions undertaken by the Commission.

Most financial institutions which operate in the jurisdiction are not stand-alone registered persons but operate as part of a group structure. These group structures can be complex and include, inter alia, registered persons or other entities acting as holding companies, subordinate companies, sibling companies etc. However, group structures can potentially prevent the Commission from imposing proportionate and dissuasive civil financial penalties.

A group structure could, for example, be set up from the outset in a way which only ever generates a small or negligible amount of Relevant Income in one registered person, compared to the overall income of the group generated in Jersey. If that registered person is then subject to enforcement action, the potential civil financial penalty which the Commission might be able to impose, might thus neither be proportionate compared to the overall or aggregate group income generated in Jersey nor considered to be dissuasive.

Such a structure may be created for entirely legitimate reasons and in the ordinary course of business. But it could also be the result of deliberate actions taken by actors which are trying to use group structures to avoid the consequences of enforcement actions, shielding profits generated through illicit activities or non-compliance with AML/CFT requirements.

Another shortcoming of the current definition of Relevant Income is that is it generated only from business activities the registered person is licensed for by the Commission. For many businesses however, and especially DNFBPs which are being brought into scope, the income from activities which require a licence from the Commission might only be a small part of their overall income. This again, might prevent the Commission from imposing a proportionate and dissuasive civil financial penalty.

A civil financial penalties regime which is not able to provide for proportionate and dissuasive financial penalties, could be considered ineffective and could undermine the integrity of the entire enforcement process. An impaired enforcement regime on the other hand, ultimately undermines the integrity of the entire supervisory regime and risks to expose the jurisdiction to all the negative consequences outlined at the beginning including significant reputational risks.

Hence, it is proposed to remove the definition of Relevant Income in its entirety from the FP Order and instead provide for civil financial penalties based on the fraction of hundredths applied to the aggregate turnover derived from all the business activities of the registered person and its associated persons carried out in or from within Jersey.

This requires the introduction and definition of an Associated Person under Article 1 of the FP Order which is proposed as follows:

- (1) Associated Persons means such persons as are reasonably believed by the Commission to be associated to the registered person committing the contravention.
- (2) When considering whether a person is associated to the registered person, the Commission may have regard to the following –
 - (a) whether one person has been created to support the other's business;
 - (b) whether the registered person is majority owned or controlled by the other person;
 - (c) whether the registered person majority owns or controls the other person;
 - (d) whether both persons are jointly owned or controlled by a majority of the same persons;
 - (e) whether the registered person is in a partnership or other legal arrangement with the other person (except that in a joint business venture only that part of the venture from which the registered person or an associated person thereof economically benefits shall be had regard to by the Commission); and
 - (f) whether the income or profits of both persons are attributable to the same beneficial owner or controller.
- (3) Where the registered person is a company its associated persons includes any other company that is its holding company or subsidiary and any other company that is a subsidiary of the holding company.

The removal of Relevant Income and the application of the fraction of hundredths to the aggregate turnover of a registered person and its associated persons instead, will enable the Commission to impose civil financial penalties which are more proportionate and dissuasive and hence, provide for a more effective civil financial penalties regime in line with Recommendation 35 and international best practices whilst supporting the integrity of the supervisory enforcement process.

PART TWO: QUESTIONS

- 6. Do you agree that the proposed removal of the existing caps for registered persons in the FP Order will increase the proportionality, dissuasiveness, and effectiveness of the civil financial penalties regime while making it fairer and more equitable for all registered persons? If not, please provide details.**
- 7. Do you agree that the proposed removal of Relevant Income and the application of the fraction of hundredths to the aggregate turnover of a registered person and its associated persons instead, will increase the proportionality, dissuasiveness, and effectiveness of the civil financial penalties regime? If not, please provide details.**
- 8. Do you agree with the proposed definition of an Associated Person? If not, please provide details and an alternative definition.**

CONCLUSION

Subject to responses received to this consultation paper, Government intends to lodge the legislation in Q3 2021 for debate by the States Assembly at the next available sitting.

APPENDIX A: FINANCIAL PENALTY ILLUSTRATIVE EXAMPLE

The existing caps in the FP Order prohibit the Commission from issuing civil financial penalties which meet the requirements of proportionality and dissuasiveness for Relevant Incomes above the respective threshold for each Band.

The reasons for this assessment can be illustrated by an example using the misconduct outlined in Band 3 of the FP Order¹³, where the Commission has established that a registered person has committed a reckless contravention which damaged the reputation of Jersey and now needs to determine the civil financial penalty amount. The applicable fraction of hundredths to determine the civil financial penalty in this case is 8% of the Relevant Income or a maximum of £4m i.e. the civil financial penalty amount depends on the amount of Relevant Income.

Hence, the amount of the civil financial penalty P is a function of the Relevant Income i with

$$(1) \quad P := f(i) = ci \mid \forall i \in \mathbb{R}^+$$

with c denoting the fraction of hundredths as a constant¹⁴ of 0.08. With c being a constant, (1) establishes a proportional relationship.

However, to fully reflect the current regime, the cap or maximal possible amount that can be imposed needs to be considered as well. If the maximal possible amount is denoted by Φ , this results in the following boundary condition

$$(2) \quad P = \min(ci, \Phi)$$

with Φ being a constant of £4m in this case.

The Relevant Incomes threshold can generally be established by rewriting (2) requiring that the civil financial penalty P is less than or equal to the maximal possible amount Φ i.e. $P \leq \Phi$ and substituting ci for P which gives $ci \leq \Phi$ and solving for the Relevant Income:

$$(3) \quad i > \frac{\Phi}{c}.$$

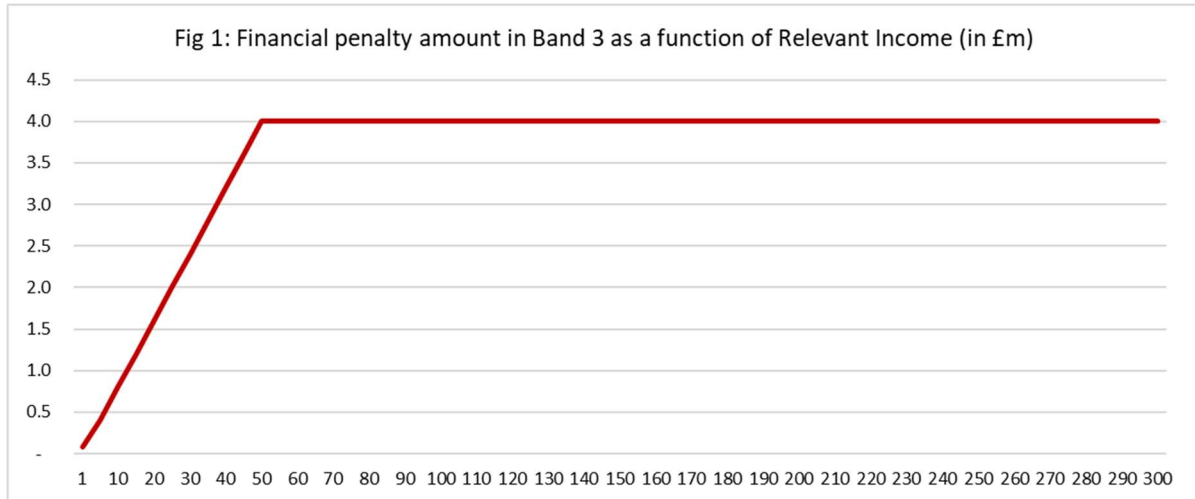
With $\Phi = £4m$ and $c = 0.08$ in Band 3 of the FP Order, the Relevant Incomes above the threshold are those greater than £50m¹⁵.

The absolute financial penalty amount P can be plotted as a function of the Relevant Income as depicted in Figure 1:

¹³ The principles outlined in the example apply to all Bands.

¹⁴ Or any other constant the Commission might set during a particular enforcement process with $0 < c \leq 0.08$ in accordance with the FP Order and in reflection of the contravention.

¹⁵ The Relevant Income threshold is £250,000 for Band 1, £67m for Band 2 and £57m for Band 2A.

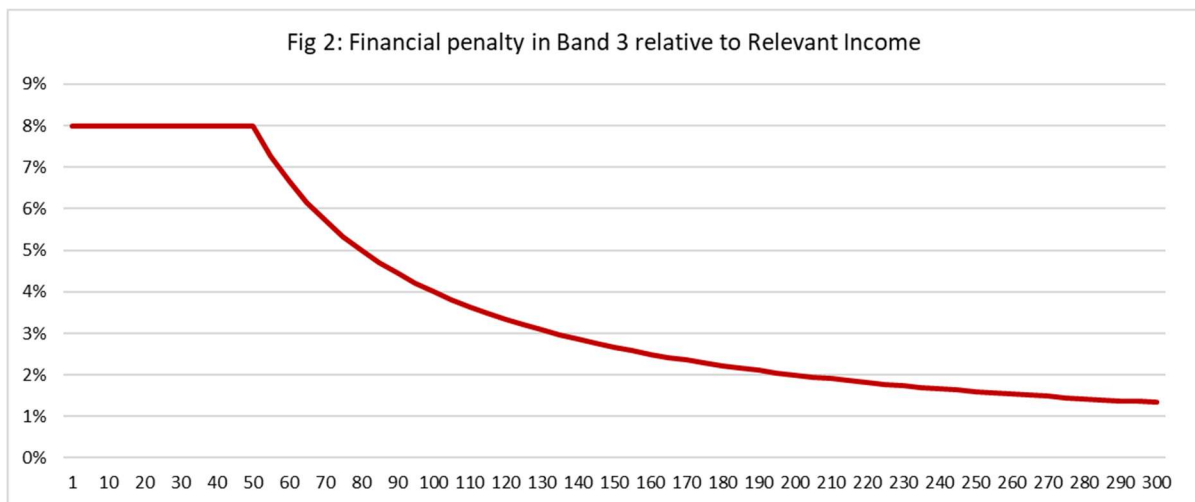


While the financial penalty amount is proportional to Relevant Incomes below and equal to £50m, there is no proportionality anymore between the financial penalty amounts for Relevant Incomes above £50m, due to the boundary condition in (2) which caps any penalty amount at £4m.

Furthermore, using (1) and (2) the financial penalty percentage r relative to the Relevant Income can be calculated as follows:

$$(4) \quad r = \frac{P}{i}$$

This relationship is depicted in Figure 2:



Due to the proportional relationship between the financial penalties and Relevant Incomes below or equal to the Relevant Income threshold of £50m, the relative financial penalty percentage r equals c or 8% for all those Relevant Incomes.

However, due to the boundary condition in (2), the financial penalty percentage constantly decreases for increasing Relevant Incomes above the threshold of £50m.

For example, the financial penalty percentage r for a Relevant Income of £100m equals 4%. For a Relevant Income of £200m, the r drops to 2%, for a Relevant Income of £300m, the financial penalty percentage drops to 1.3% and for a Relevant Income of £2bn, the r equates to just 0.2%.

In general, as the Relevant Income increases above the threshold, the financial penalty percentage will approach zero. This relationship can be represented by the following limit:

$$(5) \quad \lim_{i \rightarrow \infty} r \rightarrow 0.$$

This outcome is problematic since it cannot be assumed, neither theoretically nor empirically, that significant and material contraventions will only be committed by registered persons with Relevant Incomes below the threshold. Furthermore, a low financial penalty percentage for Relevant Incomes above the threshold could be considered an indicator or measure of low or ineffective dissuasiveness regarding non-compliance for these registered persons, especially in cases where potential profits from illicit activity or non-compliance will exceed the financial penalty percentage r .

In situations where potential profits from illicit activity or non-compliance will exceed the financial penalty percentage r , any civil financial penalty amount could be considered just normal costs of doing businesses by some actors, exemplifying the ineffective dissuasiveness. These situations could then result in all the aforementioned negative consequences including significant reputational risks for the Island.

SUMMARY OF QUESTIONS

Part one	
1.	Do you agree with the proposed way in which Article 21A of the FSC Law is amended to include significant and material contraventions of the MLO? If not, please provide details.
2.	Do you agree with the proposed way to amend the definition of registered persons to include DNFBPs? If not, please provide details.
3.	Do you agree with the proposed definition of a senior management function? If not, please provide details and an alternative definition.
4.	Do you agree with the proposed way to amend Article (1) of the FSC Law to give the Commission the power to impose civil financial penalties where persons ought to have been registered, but were not, for the codes they would have contravened, had they been registered? If not, please provide details.
5.	Please provide any further comments or suggestions you might have on how to increase the effectiveness, proportionality, and dissuasiveness of the civil financial penalties regime with respect to AML/CFT contraventions.
Part two	
6.	Do you agree that the proposed removal of the existing caps for registered persons in the FP Order will increase the proportionality, dissuasiveness, and effectiveness of the civil financial penalties regime while making it fairer and more equitable for all registered persons? If not, please provide details.
7.	Do you agree that the proposed removal of Relevant Income and the application of the fraction of hundredths to the aggregate turnover of a registered person and its associated persons instead, will increase the proportionality, dissuasiveness, and effectiveness of the civil financial penalties regime? If not, please provide details.
8.	Do you agree with the proposed definition of an Associated Person? If not, please provide details and an alternative definition.

Data Protection (Jersey) Law 2018 Privacy Notice

How will we use the information about you?

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will not pass any personal data on to anyone outside of the States of Jersey, other than those who either process information on our behalf, or because of a legal requirement, and we will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not process your information overseas using web services that are hosted outside the European Economic Area.

Data Sharing

We may need to pass your information to other States of Jersey (SOJ) departments or organisations to fulfil your request for a service. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request.

We may disclose information to other departments where it is necessary, either to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

Your rights

You can ask us to stop processing your information

You have the right to request that we stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.

You can withdraw your consent to the processing of your information

In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.

You can ask us to correct or amend your information

You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.

You request that the processing of your personal data is restricted

You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.

You can ask us for a copy of the information we hold about you

You are legally entitled to request a list of, or a copy of any information that we hold about you. However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.

You can ask us:

- to stop processing your information
- to correct or amend your information
- for a copy of the information we hold about you.

You can also:

- request that the processing of your personal data is restricted
- withdraw your consent to the processing of your information.

You can complain to us about the way your information is being used by contacting us at dataprotection2018@gov.je alternatively you can complain to the Information Commissioner by emailing enquiries@jerseyoic.org.

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