

Jersey civil penalties regime – principal persons

Insights - 29/10/2018

The powers of the Jersey Financial Services Commission (JFSC) to impose civil financial penalties for significant and material contraventions of the Codes of Practice were extended on 26 October 2018 to apply to "principal persons" of registered persons.

| Who is affected?

The widened civil penalty regime now applies to any "principal person" of any entity (in addition to the entity itself) which is registered or has been issued a certificate or permit under the following laws and is therefore required to comply with the corresponding Codes of Practice relevant to their activities (a "registered person"):

- the Banking Business (Jersey) Law 1991 (the Codes of Practice for Deposit Taking Business)
- the Insurance Business (Jersey) Law 1996 (the Codes of Practice for Insurance Business)
- the Financial Services (Jersey) Law 1998 (the Codes of Practice for each of trust company business, investment business, money service business, fund services business and general insurance mediation business)
- the Alternative Investment Funds (Jersey) Regulations 2012 (the Codes of Practice for alternative investment funds and AIF services business)
- the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the AML/CFT Codes of Practice incorporated in the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism)

Who constitutes a "principal person" will depend on which of the above laws the registered person is registered or holds a certificate/permit. Generally speaking, not only does the wider regime capture directors and/or managers of the registered person, but also those persons who

are "shareholder controllers" or "controllers" by virtue of having a direct or indirect ownership interest in the registered person as prescribed in the relevant law listed above.

What are the levels of penalties that can be imposed?

The JFSC now has the power to impose civil penalties where a significant and material contravention of a Code of Practice was committed:

- with the consent or connivance of, or is attributable to neglect on the part of a "principal person"; or
- aided, abetted, counselled or procured by a "principal person"

The financial penalties are banded depending on the seriousness and the nature of the contravention, as they are for the civil financial penalties that the JFSC can impose against registered persons themselves. The maximum level of penalty that may be imposed on a "principal person" ranges from £10,000 through to £400,000 for the most serious of contraventions.

The law sets the considerations that the JFSC must have regard to when considering whether to impose a penalty and the amount.

The law does not have retrospective effect and will only apply to breaches that occurred on or after, or existed and continued after, 26 October 2018.

What should I do now?

While it may be difficult to obtain cover for civil penalties imposed by the JFSC, affected principal persons may wish to check that their insurance policies cover the costs associated with a JFSC action to impose civil penalties.

Principal persons, particularly those in management/directorship positions, will need to ensure that registered persons comply with the Codes of Practice applicable to them and that their own actions or omissions do not place them under the scrutiny of the JFSC now that breaches may lead to personal civil penalties and public sanction.

Principal persons should consider requiring registered persons to conduct a thorough and continuing gap analysis to ensure that they comply with the Codes of Practice applicable to them as amended from time to time. Specialist teams at Ogier can help with that process.

For more information on the civil penalties regime for registered persons that came into force in 2015, [read our accompanying briefing](#).

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