

Financial Services (Framework for the Imposition of Administrative Penalties) Rules 2022

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THE FINANCIAL SERVICES ACT

FSC Rules made by the Financial Services Commission under section 93 of the Financial Services Act

1. Citation

These rules may be cited as the **Financial Services (Framework for the Imposition of Administrative Penalties) Rules 2022**.

2. Interpretation

In these rules -

“Act” means the Financial Services Act;

“Decision Notice” means a notice issued under section 53(3) of the Act;

“General Fund” means the fund established under section 82 of the Act;

“licensee” has the same meaning as in section 53(11) of the Act;

“Settlement Committee” means the Settlement Committee set up under section 53A of the Act;

“Warning Notice” means a notice issued under section 53(2) of the Act.

3. Application

These rules shall not apply to administrative penalties imposed under the Financial Services (Administrative Penalties) Rules 2013.

4. Administrative penalties

(1) Where, in the exercise of the disciplinary powers under section 7(1)(c)(v) of the Act, the Commission, the Enforcement Committee or the Settlement Committee imposes an administrative penalty, it shall, in determining the amount of administrative penalty to be imposed, apply the methodology specified in the Schedule and take into consideration the following factors -

(a) nature, seriousness and impact of the breach;

- (b) duration of the breach;
 - (c) conduct of the licensee after becoming aware of the breach;
 - (d) previous disciplinary record and compliance history of the licensee;
 - (e) economic impact of the administrative penalty on the licensee; and
 - (f) any other factors which it may deem necessary.
- (2) Notwithstanding paragraph (1), the Settlement Committee may by mutual agreement with a licensee, determine any other amount of administrative penalty to be imposed on the licensee.
- (3) The Enforcement Committee or the Settlement Committee may apply a discount on the amount of administrative penalty imposed as specified in the Schedule.
- (4) Without prejudice to any provisions of the relevant Acts, any administrative penalty levied under these rules shall be a debt due to the Commission and may be recovered by the Commission as a civil debt in a Court of competent jurisdiction.
- (5) Any administrative penalty levied under these rules shall be credited to the General Fund.

5. Effect on other sanctions

The imposition of an administrative penalty shall be without prejudice to any other power, penalty, sanction or remedy provided under the relevant Acts.

6. Saving provision

The provisions of these rules shall not affect the imposition of administrative penalties with respect to any act, omission or relevant situation which occurred before the commencement date of these rules.

7. Commencement

These rules shall come into operation on 1 October 2022.

Made by the Financial Services Commission on 21 September 2022.

SCHEDULE

(rule 4)

Part I - Methodology

1. The Commission, the Enforcement Committee or the Settlement Committee, shall identify the category in which the breaches fall depending on the severity thereof as either (i) Minor breaches; (ii) Moderate breaches; or (iii) Major breaches¹.
2. The administrative penalty shall be calculated on a percentage of the relevant gross income² of the licensee.
3. The table below provides for the range of administrative penalty applicable for each category of breach:

Categorisation	% of the relevant gross income
Major	11%-15%
Moderate	6%-10%
Minor	1%-5%

4. The Commission, the Enforcement Committee or the Settlement Committee shall take into account any aggravating or mitigating factors³ in order to determine the amount of the administrative penalty to be imposed. Aggravating factors will likely result in the application of the higher limit of the percentage spread, whilst mitigating factors will likely result in the application of the lower percentage spread. Alternatively, the aggravating factors or mitigating factors may lead to a re-classification of the breach to another category.

¹ Please refer to Note 1 below

² Please refer to Note 2 below

³ Please refer Co Note 3 below

5. If the Commission, the Enforcement Committee or the Settlement Committee considers that the amount of the administrative penalty determined above does not provide sufficient deterrence to the defaulting licensee and/or to the financial services industry, it may further adjust this amount to achieve the deterrent effect. The maximum penalty to be levied by the Commission, the Enforcement Committee or the Settlement Committee shall not exceed MUR 10 million or such equivalent amount in a foreign currency.
6. The Commission, the Enforcement Committee or the Settlement Committee may consider a reduction in the, amount of the administrative penalty reached where such amount may cause significant financial hardship⁴ to the licensee.
7. In addition to the above, the Commission, the Enforcement Committee or the Settlement Committee shall seek to deprive its licensee of any financial benefits derived from or attributable to the breach, including any profit made or loss avoided, where relevant and practicable.

⁴ Please refer to Note 4 below

Part II - Discount on Administrative Penalty

1. The Enforcement Committee may apply a discount, as specified in the table below, on the amount of the administrative penalty imposed on a licensee, which shall exclude any disgorged amount:

Payment of administrative penalty from date of the Decision Notice	Discount
Within 7 days	5%
Within 14 days	3%
Within 21 days	2%

2. The Settlement Committee may apply a discount, as specified in the table below, on the amount of the administrative penalty imposed on a licensee, which shall, exclude any disgorged amount:

Stage at which the licensee has communicated its intention to settle	Discount
Stage 1 - Early settlement stage, at any stage before the matter is referred to the Enforcement Committee	30%
Stage 2 - Settlement between referral to the Enforcement Committee and the issue of a Warning Notice	10%
Stage 3 - Settlement between the issue of a Warning Notice and the issue of a Decision notice	5%
Stage 4 - Settlement after a matter has been remitted to the Enforcement Committee by the Financial Services Review Panel for reconsideration	0%

Part III - Explanatory Notes

Introduction

The following Explanatory Notes are intended to provide further guidance on the methodology set out above.

Note 1: Categorisation of breach

The classification of each breach as either minor, moderate or major will depend on the nature, extent and impact of the breach. The Commission, the Enforcement Committee or the Settlement Committee will consider the following factors, which are not intended to be exhaustive, in order to identify the category in which the breach may fall.

Category of Breach	% of the relevant gross income
<p style="text-align: center;">Minor breach</p> <ul style="list-style-type: none"> (i) the breach had relatively minor impact; (ii) the breach occurred during a short period before being remedied; (iii) the licensee brought the breach to the Commission's attention in a prompt manner; (iv) appropriate steps have been taken to rectify the breach and prevent recurrence; (v) there is no evidence that the breach is symptomatic of a widespread problem or weakness of the licensee's conduct of business; (vi) profit made or loss avoided by the licensee as a result of the breach, either directly or indirectly, is minor; (vii) there has been little or no loss to investors or other consumers of financial services; (viii) there has been very limited or no incidence on the confidence of investors as a result of the breach; (ix) the breach has little or no effect on the good repute of Mauritius in the financial services sector; and/or (x) in case of multiple breaches, when considered collectively, are of minor seriousness. 	1 - 5%

<p style="text-align: center;">Moderate breach</p> <ul style="list-style-type: none"> (i) the breach does not present a major threat to the jurisdiction but the threat may not be considered as minor; (ii) the breach has occurred in a recurrent manner over an extended period of time; (iii) the act or omission of the licensee resulting in the breach, deviates from the statutory requirement to a moderate extent; (iv) the licensee has failed to implement appropriate remedial actions in a prompt manner and has failed to take sufficient steps to rectify the breach and/or to prevent its recurrence; (v) the loss or risk of loss to clients, while not being significant, may also not be considered as minor; (vi) a moderate risk to the good repute of Mauritius in the financial services sector is present; (vii) the breach has been observed by the Commission and brought to the attention of the licensee who promptly acknowledged the occurrence of the breach; and/or (viii) in case of multiple breaches, when considered collectively, are of moderate seriousness. 	<p>6 - 10%</p>
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Major breach	11 - 15%
<ul style="list-style-type: none"> (i) the breach has occurred over a long period of time; (ii) the licensee failed to acknowledge the occurrence of the breach and to implement appropriate remedial action; (iii) the breach has resulted in a significant loss or risk of loss to investors or consumers of financial services; (iv) the breach has revealed serious or systemic weaknesses in the licensee's procedures or internal systems and controls; (v) the breach has resulted in significant risk of commission of a financial crime; (vi) the licensee has failed to act with integrity; and/or (vii) the breach has posed and/or may pose a significant risk to the good repute of Mauritius in the financial services sector. 	

Note 2: Relevant Gross Income

- (1) For the purpose of the calculation of the administrative penalty, in the instance of a corporate licensee, the gross income earned is considered as the "relevant gross income", and in cases of individuals, the salary and any relevant commission⁵ are considered as the "relevant gross income", as may be applicable during the period of the occurrence of the breach.

⁵ The onus is on the individual to supply information as to his salary and any relevant commission. If this information is not forthcoming from the individual or cannot be satisfactorily verified, the commission will impose a penalty of an amount which is considered appropriate taking into account domestic (if any) and/or international precedents and any other factors that are deemed relevant by the commission

- (2) Where the breach lasted less than 12 months or was a one-off event, the “relevant gross income” will be considered as the gross income or salary and commission derived by the licensee, in the 12 months’ period preceding the detection of the breach.
- (3) Where the licensee was in existence for less than 12 months, its “relevant gross income” will be calculated on a pro-rata basis.
- (4) Where the breach lasted for more than one year, the amount of administrative penalty will be calculated on the average “relevant gross income” of the licensee for that specific period.

Note 3: Aggravating or Mitigating Factors

The following non-exhaustive list of factors may be considered as having an aggravating or mitigating impact on the amount of the administrative penalty:

- a) the occurrence of any financial crime as a result of the breach;
- b) whether the licensee has failed to bring the breach to the attention of the Commission in a timely manner or has deliberately concealed the breach from the Commission;
- c) the degree of cooperation of the licensee with the Commission;
- d) the extent of the impact of the breach on any external third parties;
- e) the nature, extent and impact of any damage to the reputation of the Mauritius International Financial Centre as a result of the breach;
- f) whether the breach was incurred deliberately, recklessly, negligently or advertently;
- g) any effort that has been made by the licensee to rectify promptly the breach and to prevent any re-occurrence;
- h) whether the licensee has arranged its resources in such a way to avoid disgorgement and/or payment of an administrative penalty;
- i) the previous disciplinary record and compliance history of the licensee; and/or
- j) any action taken against the licensee by other domestic or international regulatory authorities on matters in connection to the breach. -

Note 4: Financial Hardship

- (1) The onus will be on the licensee to satisfy the Commission, the Enforcement Committee or the Settlement Committee, on the basis of cogent and verifiable evidence, that the amount of administrative penalty may give rise to serious financial hardship.
- (2) The Commission, the Enforcement Committee or the Settlement Committee shall not reduce the amount of the administrative penalty for reasons of serious financial hardship in any of the following situations:
 - a) the defaulting licensee refuses to correct the violation or comply with the applicable requirements;
 - b) the defaulting licensee has a long history of previous violations and non-compliance;
 - c) the breach is of serious nature; or
 - d) any other situation that the Commission may deem applicable.