



**Jersey Financial
Services Commission**

Decision-Making Process

Issued: 10 February 2022

Updated: 12 May 2022

Glossary of terms

For the purposes of this policy statement, the following terms should be understood to have the meaning shown by this table.

AIF Regulations	The Alternative Investment Funds (Jersey) Regulations 2012, as amended.
authorized auditor	An individual or a firm authorized by the JFSC pursuant to Article 113D(6) of the Companies Law to carry out an audit of the accounts of a company that is not a market traded company ¹ .
BB(J)L	Banking Business (Jersey) Law 1991, as amended.
Board	The Board of Commissioners of the JFSC constituted as set out in Article 3 of the Commission Law.
CIF(J)L	Collective Investment Funds (Jersey) Law 1988, as amended.
COBO	Control of Borrowing (Jersey) Order 1958, as amended.
Code of Practice	One or more of the Codes of Practice referred to in Article 21A(2) of the Commission Law. ²
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended.
Companies Law	Companies (Jersey) Law 1991, as amended.
Board DMP Committee or Committee	The committee of the Board responsible for making a determination in relation to the imposition of a regulatory sanction, as set out in Part B of this document.
Executive	One or more officers of the JFSC, including the Director General, acting individually or together, as appropriate, exercising responsibilities delegated to them by the Board.
FS(J)L	Financial Services (Jersey) Law 1998, as amended.
IB(J)L	Insurance Business (Jersey) Law 1996, as amended.
heightened supervision	<p>The application to a particular Subject (or potential Subject)³ of one or more regulatory measures, such as restrictions, controls and additional reporting requirements, whether on a consensual basis or by the use of enforcement powers.</p> <p>Circumstances in which such temporary measures may be employed include where concerns of a regulatory nature arise and the JFSC needs to act in the discharge of its functions whilst remedial action is taken by the Subject/potential Subject.</p>
JFSC	The Jersey Financial Services Commission.
key person	<p>Has the meaning assigned in Article 1 of each of the Regulatory Laws and the Supervisory Bodies Law.</p> <p>Save that 'key person' shall have the meaning given in Article 1 of the Commission Law where the decision relates to the imposition of a financial penalty.</p>

licence	<p>Includes:</p> <ul style="list-style-type: none"> › A certificate granted in accordance with Regulation 9 of the AIF Regulations › A registration granted in accordance with Article 9 of the BB(J)L › A permit granted in accordance with Article 7 of the CIF(J)L › A certificate granted in accordance with Article 8B of the CIF(J)L › A consent granted in accordance with any of Articles 1 to 5 and 7 to 11 of the COBO › A registration granted in accordance with Article 9 of the FS(J)L › A permit granted in accordance with Article 7 of the IB(J)L › A registration under Article 14 or Article 15 of the Supervisory Bodies Law.
Notice of Intent	A notice informing the Subject what regulatory sanction is proposed and the reason(s) why.
person who performs or performed a senior management function	A person who performs or has performed a “senior management function” and “senior management function” has the meaning given in Article 1 of the Commission Law.
principal person	<ul style="list-style-type: none"> › With respect to the AIF Regulations has the meaning assigned to it in Regulation 2 of the AIF Regulations › With respect to the BB(J)L means a director, controller and manager as defined in Article 1 of the BB(J)L › With respect to the CIF(J)L, FS(J)L and Supervisory Bodies Law has the meaning assigned to it in Article 1 of the respective law › With respect to the IB(J)L means a chief executive and shareholder controller as defined in Article 1 of the IB(J)L and any individual intending to act, or acting, as a director. <p>Save that ‘principal person’ shall have the meaning given in Article 1 of the Commission Law where the decision relates to the imposition of a financial penalty.</p>
recognized auditor	An individual or a firm who may carry out an audit of the accounts of a market traded company by virtue of their name having been entered on the Register of Recognized Auditors by the JFSC pursuant to Article 111 of the Companies Law.
registered person	<p>Includes:</p> <ul style="list-style-type: none"> › The holder of any licence › An applicant for a licence › A former holder of a licence › An authorized auditor or recognized auditor. <p>Save that ‘registered person’ shall have the meaning given in Article 1 of the Commission Law where the decision relates to the imposition of a financial penalty.</p>
Regulatory Laws	The collective name for the AIF Regulations; the BB(J)L; the CIF(J)L; the FS(J)L;

	the IB(J)L; and the Supervisory Bodies Law.
regulatory sanction	One or more of the decisions referred to in paragraph 9 where the decision is to be taken as a form of penalty for a prior or ongoing breach of a Regulatory Law or other regulatory requirement.
Subject	The subject of any decision that may be taken in accordance with the decision-making process described in this document. The Subject may be a natural person or a legal person. The Subject may be singular or plural.
Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

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Part A - Overview

Introduction

- 1 The purpose of this document is to explain the process that the JFSC will follow when it takes administrative action that could result in the imposition of a regulatory sanction.
- 2 The JFSC is not a judicial body. Court rules and procedures do not apply to the decisions that it takes. The JFSC takes administrative decisions in accordance with powers vested in it that are set out in the legislation that it administers. In so doing, the JFSC will act as supervisor, investigator and decision-maker.
- 3 The JFSC's decision-making process is designed to ensure that the final decision taken by it:
 - › is one that the JFSC is lawfully empowered to take;
 - › is one that is made in accordance with statutory obligations imposed on the JFSC;
 - › has been arrived at fairly; and
 - › is proportionate and reasonable based on all relevant information before the decision-maker at the time.
- 4 Part B of this document sets out the decision-making process that the JFSC will normally follow. However, it is impossible for any published administrative decision-making process to anticipate all circumstances. Subject to any statutory obligations that it has, the JFSC is responsible for setting its own procedures and to ensure the sound administration of a case it may, on occasions, be necessary to vary or supplement the process set out in this document to better serve achieving any or all of the objectives set out in paragraph 3.
- 5 This document incorporates the information that must be included in a statement published by the JFSC pursuant to Article 21B(4) of the Commission Law setting out the principles it will apply in determining the imposition and amount of a financial penalty and the processes it will follow when exercising the power to impose a financial penalty.

Delegation of JFSC powers

- 6 Under Article 11 of the Commission Law, the Board is able to delegate any of its functions or powers wholly or partly, to the Chairman, one or more Commissioners, or an officer of the JFSC.
- 7 The Board has decided to routinely delegate the taking of any decision to which this document applies (see next section) to a committee of three Commissioners (the Board DMP Committee). (Note that, although an ex-officio Commissioner, the Director General will not sit on the Board DMP Committee.)
- 8 However, this delegation by the Board does not preclude the Board from deciding in any particular case, whether for operational reasons or otherwise, that a decision to impose a regulatory sanction may be taken by a committee of Commissioners consisting of less, or more than, three Commissioners or that the decision be taken by the Board itself (without the Director General). Nor does it preclude the Board DMP Committee in any particular case referring the matter up to the Board for a decision should the Committee feel that is the appropriate course of action in the circumstances.

Decisions to which this document applies

- 9 The decision-making process set out in this document will apply in respect of the following administrative decisions of the JFSC:
- › revoking⁴ a licence, or a recognized auditor's registration or an authorized auditor's permission to audit⁵;
 - › objecting to the continuing appointment of a principal person, key person, or an actuary;
 - › publishing a public statement censuring the Subject and/or publicising the imposition of a regulatory sanction;
 - › issuing a direction to require a person, who has not already taken that decision voluntarily, to cease operations and to wind up its affairs;
 - › issuing a direction to prevent or restrict the employment of an individual by a registered person;
 - › refusing an application to withdraw or vary, in whole or in part, a direction that has been issued pursuant to this document⁶;
 - › withdrawing approval under the Companies (Audit) (Jersey) Order 2010 of the rules of a recognized professional body that govern the conduct of the audit of market traded companies⁷;
 - › imposing a financial penalty.

When this document will not apply

- 10 The process described by this document will not apply where the circumstances require urgent action to be taken.⁸ In addition, without limitation, this document will not apply to any decision where:
- › the decision is taken by the Executive as part of normal or heightened supervision;
 - › the decision is taken with the agreement of the relevant firm or individual;
 - › legislation provides that a decision will have immediate effect (as is the case for most types of direction);
 - › the JFSC intends to exercise a power to reduce the period of notice of a decision (such as for some public statements warning the public of scam websites);
 - › an application is to be made by the JFSC to the Royal Court.
- 11 For the avoidance of doubt, the decision-making process in this document does not include any decision that may be taken under the Companies Law (other than those relating to recognized or authorized auditors).

Part B – The Decision-Making Process

Introduction

- 12 This Part B explains the various steps involved in the JFSC's decision-making process.
- 13 It is important to note that where a firm or individual (the Subject) becomes subject to the decision-making process it is not inevitable that a regulatory sanction will be the resulting outcome. At any stage, the decision-making process will be terminated if it is determined that no further action is required, or that the matter should be addressed through normal or heightened supervision, or the JFSC and the Subject have agreed a course of action.
- 14 In addition, the decision-making process may be temporarily suspended where the JFSC takes a decision to do something that is not covered by this document, such as enter into discussions with the Subject with a view to settlement (see the JFSC's separate policy statement on Regulatory Settlements); or to refer related matters to the Attorney General to review, investigate and potentially prosecute any criminal conduct; or for any other reason of pressing public interest.

Stage 1: Investigation

- 15 Normally, the first step in the decision-making process will be the opening of an investigation case by the Executive.
- 16 This will happen where the JFSC becomes aware of an issue or behaviour that gives rise to concern in relation to the Subject. The investigation may be resourced by the JFSC's own staff, contracted staff or third parties, as considered appropriate.
- 17 When an investigation is opened, the Executive will provide the Subject with a written note of the scope of the investigation. Should it be necessary to amend the scope of the investigation as matters progress, the Executive will provide the Subject with a note of the revised scope.
- 18 During an investigation, the JFSC will often use statutory powers that it has to require persons to attend for compulsory interviews or to provide information and documents to assist in its investigation.
- 19 At an appropriate point those investigating will prepare a draft report, which will set out the facts of the case as they understand them to be (in essence - what took place, who was involved and when).
- 20 The Subject will be provided with an opportunity to comment on the draft report in order to clear up any misunderstandings or to correct factual inaccuracies.

Stage 2: Review of the case by the Executive

- 21 Once the investigation has been concluded the case will be reviewed by the Executive.
- 22 If the Executive then determines that the case merits consideration by the Board DMP Committee the case will be referred to the Committee. The Subject will be notified that the case has been referred to the Committee.

Stage 3: Consideration of the case by the Board DMP Committee

- 23 Upon receiving a referral from the Executive, the Board DMP Committee will meet to consider the case.
- 24 If the Board DMP Committee reasonably believes that upon the basis of the material placed before it by the Executive the Subject may be found to have contravened regulatory requirements in respect of which a regulatory sanction could be imposed, the Committee will issue a Notice of Intent to the Subject.
- 25 The Notice of Intent will inform the Subject what regulatory sanction is proposed and the reason(s) why. Where the proposed regulatory sanction is a civil financial penalty the proposed amount will be stated. Where a direction or public statement is proposed a draft will be provided.

Stage 4: Determination of the case by the Board DMP Committee

- 26 In advance of the Board DMP Committee meeting to determine the case the Subject will be given an opportunity to make a written representation to the Committee on the Notice of Intent. The Subject will be given one month in which to make those representations.
- 27 The Board DMP Committee will invite the Executive to comment on the Subject's written representation. A copy of the Executive's comments will be provided to the Subject.
- 28 When the Board DMP Committee meets to determine the case, the Subject may choose to make an oral representation to supplement its previous written representation. The focus of the Subject's oral representation should be on explaining why it considers the proposed regulatory sanction would be inappropriate or not justified.
- 29 The Subject may be accompanied at the meeting with the Board DMP Committee by their legal adviser and may request that their legal adviser speak on their behalf.
- 30 The meeting of the Board DMP Committee is intended to be interactive rather than adversarial. The Subject may be required to answer questions from the Committee or clarify issues.
- 31 The Executive will be present during the Subject's oral representation and may be asked by the Board DMP Committee to comment on it. The Executive may also be required to answer questions from the Committee or clarify issues.
- 32 If, during the meeting, new information is introduced by the Subject that was not previously made available to the JFSC the Board DMP Committee may decide to defer making a decision until the information has been evaluated.
- 33 Once the Board DMP Committee has received all submissions any person who is not a member of the Committee will leave the meeting (except for the Committee's legal adviser (if one has been instructed) and the Commission Secretary who will remain to take the minutes) whilst the Committee deliberates.
- 34 In reaching its decision, the Board DMP Committee will have regard to the written and oral representations received and all other information in the documents before it. It is for the Committee to decide which, of the matters before it, it accepts and which it does not.

- 35 As soon as reasonably practicable after the meeting, the Subject will be given written notice of the Board DMP Committee’s decision. If the decision is to impose a regulatory sanction the relevant statutory notice will be served on the Subject and will include the reasons for the decision and particulars of the Subject’s right of appeal to the Royal Court.

Appendix

(see paragraph 5)

Financial Penalties: Statement of Principles

Where the JFSC is satisfied that a registered person has, to a significant and material extent, contravened a relevant enactment or Code of Practice it will apply, where applicable, the following principles in determining the imposition and amount of the penalty.

Where the JFSC is satisfied that the contravention was committed with the consent or connivance of, or is attributable to neglect on the part of a principal person, key person, or any person who performs or performed a senior management function; or was aided, abetted, counselled or procured by that person these principles will also apply, where applicable, in determining the imposition and amount of the penalty on that person.

The principles are:

- › The seriousness of the contravention
- › Whether or not the person knew, or ought to have known, of the contravention
- › Whether or not the person voluntarily reported the contravention
- › Whether or not the person has taken steps to rectify the contravention and to prevent its recurrence
- › The potential financial consequences to the person and to third parties (including customers and creditors of the person) of imposing the penalty
- › The principle of ensuring that persons cannot expect to profit from a contravention
- › The penalties imposed by the JFSC in other cases
- › Factors that the JFSC considers aggravate or mitigate the contravention (see below)

Factors that the JFSC will regard as aggravating a contravention include (i.e. this is a non-exhaustive list):

- › A failure by the person to take action appropriate to their position on becoming aware of the contravention (determination of the level of aggravation under this factor will take into account, amongst other things, the extent to which the person has executive management responsibility for the part of the registered person's business affected by the contravention and/or for the particular matter that was the subject of the contravention)
- › The person supporting (whether implicitly or explicitly) a business model that encourages a disregard for requirements of a relevant enactment or the Codes of Practice
- › The person having a poor compliance record (this will include a failure to follow any direction(s) issued⁹) and the person's past actions or inactions being a contributory factor to that record
- › A failure by the person to pay appropriate attention to relevant guidance issued by the JFSC

- › A failure by the person to follow relevant internal procedures
- › An absence of relevant internal procedures to prevent the contravention
- › A failure to implement internal recommendations to ensure compliance with a relevant enactment or Code of Practice where it was the person's responsibility to implement such recommendations
- › Clients, customers or funds experiencing a material loss as a result of the contravention, or not making a profit that would otherwise have accrued, absent the contravention.

Factors that the JFSC will regard as mitigating a contravention include (i.e. this is a non-exhaustive list):

- › The contravention being brought promptly and completely to the attention of the JFSC
- › The person taking action appropriate to their position on becoming aware of the contravention
- › The person co-operating fully with any investigation
- › An evidenced previously strong compliance record
- › Procedures were promptly amended to address the contravention
- › Swift resolution of any client, customer or fund losses arising as a result of the contravention, or swift payment of compensation to make good a profit that would otherwise have accrued absent the contravention

Endnotes

- ¹ 'Market traded company' is defined in Article 102 of the Companies Law.
- ² Note that the definition of 'Codes of Practice' includes the JFSC's "Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws".
- ³ Heightened supervision is not applicable to auditors: authorized auditors are not subject to supervision; and for more information on the oversight regime for recognized auditors, please see the JFSC's website: <https://www.jerseyfsc.org/industry/guidance-and-policy/recognised-auditors/>
- ⁴ Or suspending a licence or registration where the relevant law allows it.
- ⁵ Except where: (1) the revocation is at the request of the holder of the licence or registration; (2) the holder of the licence or registration has not commenced the relevant activity within one year of being granted the licence or registration; (3) the holder of the licence or registration has ceased to perform the relevant activity.
- ⁶ The JFSC will refuse to consider applications to withdraw or vary a direction that it considers are vexatious or repetitious.
- ⁷ Except for the power to withdraw approval in the circumstances set out in endnote 5 where a reference to 'holder of the licence or registration' should be read as though it is a reference to 'recognized professional body'.
- ⁸ For example: to safeguard the assets of investors; or in the best interests of customers, beneficiaries, investors or the public where the financial resources of the registered person do not comply with regulatory requirements; or where statute vests in the JFSC the right to apply to Court for relief.
- ⁹ A direction issued under Article 23 of the FS(J)L or under the equivalent provision in one of the other regulatory laws.

12 May 2022 update

This 12 May 2022 update made consequential amendments required as a result of the enactment of the Financial Services Commission (Amendment No. 8) (Jersey) Law 2022. That law widened the scope of the civil financial penalties regime.