



# INTERCONTINENTAL TRUST NEWSLETTER

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**INTERCONTINENTAL TRUST**  
*International Tax & Management Services*

## Administrative Penalties for late filing of Accounts & Reports

The Financial Services Commission (“FSC”) has, under section 93 of the Financial Services Act 2007, issued a new set of Rules which introduces, for the first time, financial administrative penalties for non-compliance of obligations as set out in Appendix 1.

### Highlights

- ◁ These Rules will come into operation on the 31<sup>st</sup> March 2014.
- ◁ The Rules will apply to all entities licenced and/or regulated by the FSC.
- ◁ Penalties will start accruing as from 1<sup>st</sup> April 2014, the 31<sup>st</sup> March being a public holiday in Mauritius.
- ◁ Penalty fee of USD 10 (Rs 300) for each business day of non-compliance.

We have reproduced, in Appendix 2, the FAQ issued by the FSC in respect of the above.

**For any additional information please contact us.**

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**Intercontinental Trust Ltd is regulated by the Financial Services Commission in Mauritius.**

**ISAE 3402**  
COMPLETED TYPE II AUDIT

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## Legal Obligations and Administrative Penalties

Type of Entities / licence	Legal Obligation (Late filing of Accounts)	Penalty for each business day of non-compliance (USD/Rs)
<p>Category 1 Global Business Companies (“GBC1”) including:</p> <ul style="list-style-type: none"> <li>- Professional Collective Investment Scheme</li> <li>- Expert Fund</li> <li>- Closed-end Fund (which is not a reporting issuer)</li> </ul> <p>Category 2 Global Business Company (“GBC 2”)</p>	<p><i>“An obligation, pursuant to Section 30 of the Financial Services Act 2007, to file with the Commission audited financial statements or financial summaries, within such time as may be required.”</i></p> <p>A GBC1 is required to file with the FSC an audited Financial Statements in accordance with IFRS within 6 months of the close of the company’s financial year.</p> <p>A GBC2 is required to file with the FSC a Financial Summary within 6 months of the close of the company’s financial year.</p>	<p>USD 10 (Rs 300)</p>
<p>Insurance Manager</p> <p>Insurance Agent</p> <p>Insurance Broker</p>	<p><i>“An obligation, pursuant to Sections 51 and 72 of the Insurance Act 2005, to file any account, balance sheet, certificate, report, return or statement with the Commission within such time as may be required.”</i></p> <p><b>Insurance Managers, Insurance Agents and Insurance Brokers are required to file with the FSC:</b></p> <ul style="list-style-type: none"> <li>- An audited Financial Statements in accordance with IFRS within 3 months of the close of the company’s financial year.</li> </ul>	<p>USD 10 (Rs 300)</p>
<p>Investment Dealer</p> <p>Investment Adviser (Restricted and Unrestricted)</p> <p>Collective Investment Schemes (“CIS”) Manager</p> <p>Retail CIS</p> <p>Closed-end Fund (reporting issuer)</p>	<p><i>“An obligation, pursuant to Sections 20, 55, 88 and 106 of the Securities Act 2005, to file any annual report or financial statements with the Commission within such time as may be required.”</i></p> <p><b>Investment Advisers and Investment Dealers are required to file with the FSC:</b></p> <ul style="list-style-type: none"> <li>- An annual report including an audited Financial Statements in accordance with IFRS, within 90 days of the close of the company’s financial year.</li> </ul> <p><b>CIS Manager / Retail CIS / Closed-end Fund (reporting issuer) are required to file with the FSC:</b></p> <ul style="list-style-type: none"> <li>- Interim Financial Statements in accordance with IFRS within 45 days after the closing of each interim period.</li> <li>- An annual report including an audited Financial Statements in accordance with IFRS within 90 days of the close of the company’s financial year.</li> </ul>	<p>USD 10 (Rs 300)</p>



Type of Entities / licence	Legal Obligation (Late filing of Accounts)	Penalty for each business day of non-compliance (USD/Rs)
Custodian	<p><i>“An obligation, pursuant to Regulation 29 of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, to file quarterly and audited annual financial statements with the Commission within such time as may be required.”</i></p> <p><b>A custodian is required to file with the FSC:</b></p> <ul style="list-style-type: none"><li>- Quarterly financial statements within 45 days of the close of the relevant quarter.</li><li>- Audited Financial Statements in accordance with IFRS with the FSC within 90 days of the close of the company’s financial year.</li></ul>	USD 10 (RS 300)
Any Licensee	<p><i>“An obligation to furnish the Commission with such statistical information required to be furnished pursuant to Section 7 (2) of the Financial Services Act 2007 (the “Act”), within such time as may be required.”</i></p> <ul style="list-style-type: none"><li>- A licensee is required to furnish statistical information relating to his business or to the business administered or managed by him for its clients at such interval and within such time as may be required by the FSC.</li></ul>	USD 10 (Rs 300)

#### Notes

1. The content in the table above apply for non-reporting issuers (except where specified). The legal obligations are subject to the conditions laid out in the respective Acts.

#### 2. Specialised CIS

The filing conditions for specialised CIS are determined by the FSC on a case by case basis as per Regulation 77 of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.



Financial Services Commission  
Mauritius

## FREQUENTLY ASKED QUESTIONS ('FAQs')

### FINANCIAL SERVICES (ADMINISTRATIVE PENALTIES) RULES 2013

#### 1. What Is The Purpose Of Introducing Financial Services (Administrative Penalties) Rules 2013?

The Economic and Financial Measures (Miscellaneous Provisions) Act 2012 empowers the Commission to provide for the imposition of an administrative penalty in relation to such matters as may be prescribed. The Commission, after discussions, published the Financial Services (Administrative Penalties) Rules in the Government Gazette of Mauritius on 31 October 2013.

The Administrative penalties will act as an additional administrative tool for the Commission, in pursuance of its statutory requirements as a regulator, to ensure compliance with reporting requirements set out in the law.

#### 2. What are the ongoing obligations for companies to prepare and submit audited financial statements?

Companies have both the legal obligation to keep accounting records and to prepare and submit audited financial statements to regulatory authorities. The following legislative framework imposes the obligations on companies to prepare and submit audited financial statements:

- **Companies Act 2001**

The Companies Act 2001 provides under Section 210 that the Board of every company shall ensure that, within six (6) months after the balance sheet date of the company, financial statements are completed in relation to the company at its balance sheet date; and dated and signed on behalf of the Board by 2 directors of the company, or, where the company has only one director, by that director.

- **Financial Services Act 2007**

Licensees of the Commission must also comply with Section 30 of the Financial Services Act 2007 which requires corporations licensed under the aforementioned Act, to file

with the Commission every year, audited financial statements prepared in accordance with International Financial Reporting Standards.

For corporations holding Category 2 Global Business Licence, a financial summary in the Form set out in the Ninth Schedule to the Companies Act shall be filed with the Commission once every year.

- **Other relevant Acts**

Licensees are required to submit their audited financial statements /or financial summary and other legally required documents within six (6) months after the end of their financial year , except where otherwise required under any other relevant Acts.

### **3. What do other relevant Acts mean?**

Other relevant Acts are defined under the Financial Services Act 2007 and include among others, the Insurance Act 2005 and the Securities Act 2005.

Licensees who are licensed under the Insurance Act 2005, for example, are required to file their audited financial statements and other returns within three (3) months after the end of their financial year.

Licensees must ensure that the requirements of the relevant Acts related to their licences are duly complied with.

### **4. The prescribed time limit to prepare and submit audited financial statements is considered to be too short?**

The six (6) months period has been set since 2001 and most entities have been able to comply. For certain financial services activities, this period is three (3) months. In some countries, this is period is three (3) months instead of six (6) months. To be able to prepare and submit audited financial statements within the time limit, the company needs to keep accounting records correctly, that is in a manner suitable for its business.

It is to be noted that as per Section 193 of the Companies Act, the Board of a company shall cause accounting records to be kept that -

- (a) correctly record and explain the transactions of the company;
- (b) shall at any time enable the financial position of the company to be determined with reasonable accuracy;
- (c) shall enable the directors to prepare financial statements that comply with this Act; and
- (d) shall enable the financial statements of the company to be readily and properly audited.

**5. Will administrative penalties be applied to all submissions made to the Commission?**

Administrative Penalties are applied to non-compliance of the requirements as detailed in the Schedule accompanying the Financial Services (Administrative Penalties) Rules 2013. To learn more about the requirements please follow the link: [www.fscmauritius.org/legal-framework/rules-and-regulations.aspx](http://www.fscmauritius.org/legal-framework/rules-and-regulations.aspx)

**6. When will the administrative penalties be imposed?**

The Rules become effective as from 01 Jan 2014. The Board of the Commission considered representations made by its licensees since its publication in the Government gazette on 31 October 2013 and has under Section 7 (1) (d) resolved to exempt all licensees from complying with the requirement to pay penalties as specified in the Financial Services (Administrative Penalties) Rules 2013, for the period up to 30 March 2014.

As such administrative penalties (in case of non-compliance with obligations specified in the Rules) will be applied as from 31 March 2014.

Since 31 March 2014 is a public holiday, penalties will be calculated starting 01 April 2014.

**7. Will penalties imposed be calculated on a 365 days basis?**

No - Administrative penalties will be calculated based on business days only, as such no penalty will be imposed on Saturdays, Sundays and public holidays.

**8. Can licensees submit soft copies of the documents?**

Yes, the Commission encourages submissions by soft copies. Thereafter, licensees have to file with the Commission a true and exact copy of the submission within seven (7) business days.

If the Commission does not receive the hard copies of the submissions within seven (7) business days, the electronic version of the submission will be automatically disregarded.

Incomplete submissions will be treated as non-compliant, i.e. not filed.

All submissions sent in soft copies, should be addressed to the following email address.

Email: [filing@fscmauritius.org](mailto:filing@fscmauritius.org)

**9. What if there is a dispute over the date of submission?**

The Commission will accept 'email delivery reports' as evidence of submission.

#### **10. Are there any specific procedures that licensees must follow for the submissions?**

For ease of processing and to avoid any disagreement, it is advised that all submissions be accompanied with a duly completed form as its front cover. However, all late submissions must be accompanied with the Form.

The Form can be downloaded from [http://www.fscmauritius.org/media/106901/form\\_-\\_submission\\_of\\_returns\\_information\\_and\\_reports.xlsx](http://www.fscmauritius.org/media/106901/form_-_submission_of_returns_information_and_reports.xlsx) It should be filled in electronically, printed, signed, and submitted to the Commission in hard copy along with payment of applicable penalties.

The Commission recommends all licensees to ensure that all submissions are accompanied with the Form which can be downloaded at [http://www.fscmauritius.org/media/106901/form\\_-\\_submission\\_of\\_returns\\_information\\_and\\_reports.xlsx](http://www.fscmauritius.org/media/106901/form_-_submission_of_returns_information_and_reports.xlsx)

When sending submission through email, licensees must ensure that the following are clearly mentioned in the order given below:

- Licence number;
- Licensee name;
- The description of submission (Audited financial statements / Statutory returns/ interim financial reports as the case may be); and
- The year/period to which the submission relates to.

#### **11. What if penalties are due, at the time submissions are made electronically?**

All payments should be remitted to the Commission along with the hard copies within seven (7) business days of electronic submissions.

#### **12. What if a licensee is not in a position to file its submission within the prescribed time limit?**

In cases where the Commission is empowered by the Relevant Act to extend the time for prescribed time limit, the Commission will on application consider, whether the failure to comply was due to a just and reasonable cause.

The Commission will communicate its stand, to extend the time limit to such time and on such conditions that it may determine, by notice to the applicants.

#### **13. Will the penalties be applied for such time that the licensee has been granted an extension?**

Licensees who have applied for extension for the submissions must ensure that:

- they allow reasonable time for the consideration of such request by the FSC; and
- they have obtained notice from the FSC of the granting of the extension.

Licensees must comply within the extended time granted by the Commission. Failure to comply will trigger the imposition of penalties.

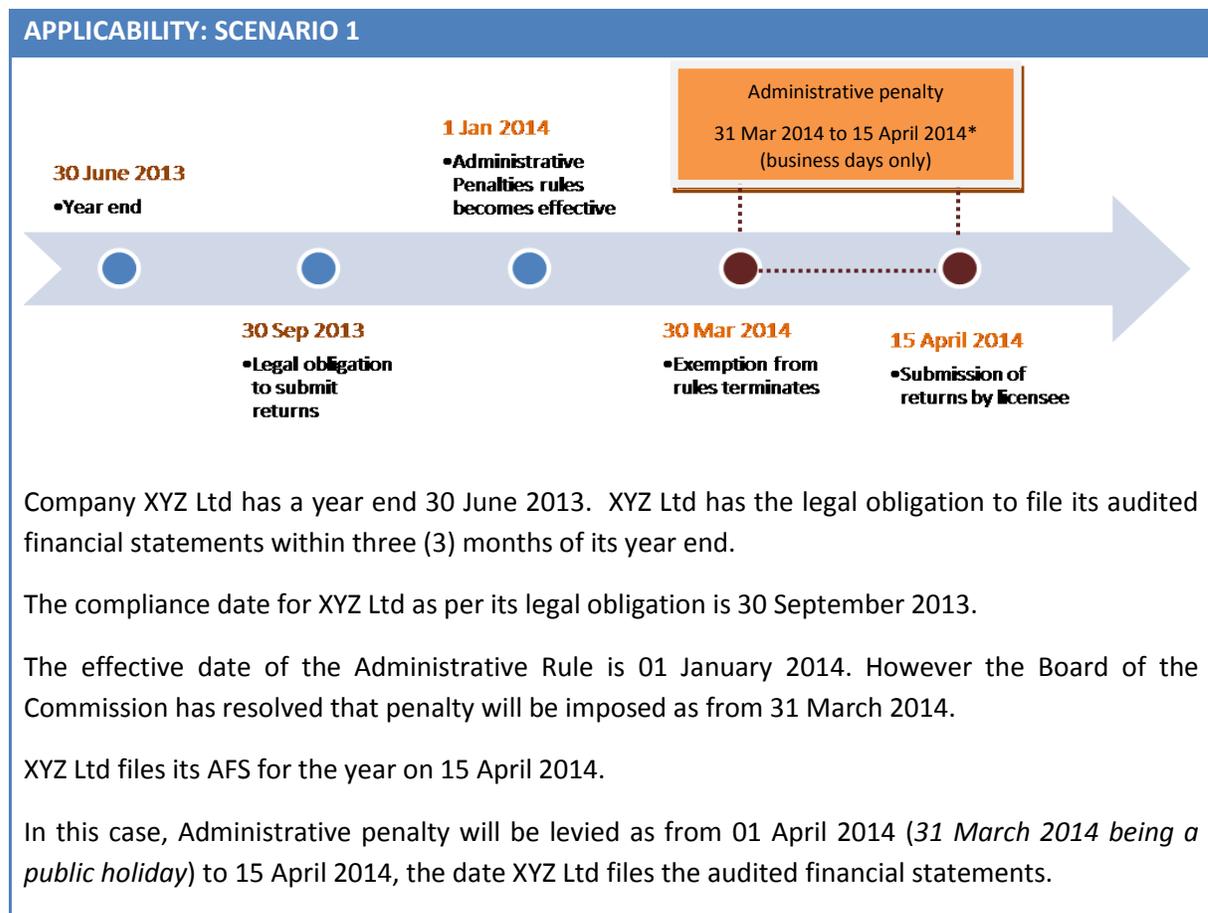
**14. How will the administrative penalties be applied for PCCs which have elected to present separate financial statements for each cell?**

Where a PCC elects to present separate financial statements in respect of each of its cells or is required to present separate consolidated financial statements for each cell under the Companies Act 2001, each cell shall be liable for its own non-compliance.

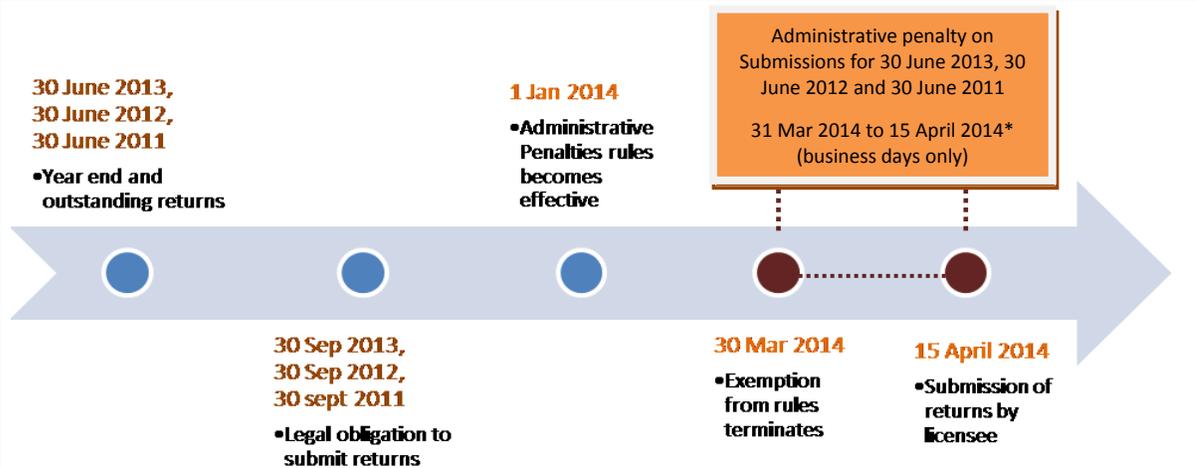
**15. Can a licensee make representations to the Commission on the application of the administrative penalty?**

Licensees can submit representations to the Commission relating to reliefs from penalties. However, the licensees must demonstrate to the Commission the nature and circumstances justifying the request for relief. Further, the licensee must demonstrate that non-compliance with submissions to which the administrative penalties relate to, was due to a just and reasonable cause.

**16. Illustrative Scenarios**



## APPLICABILITY: SCENARIO 2

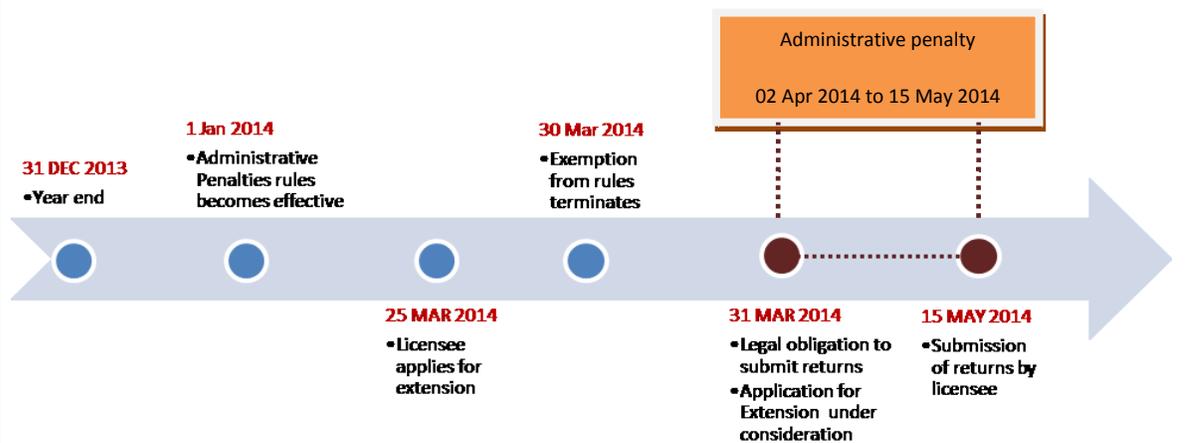


XYZ Ltd has not filed its audited financial statements for 30 June 2013 and prior periods 30 June 2012 and 30 June 2011. As such XYZ has three (3) years of outstanding audited financial statements to be filed.

XYZ Ltd files all outstanding AFS on 15 April 2014.

In this case, Administrative penalty will be levied on all submissions as from 01 April 2014 (31 March 2014 being a public holiday) to 15 April 2014, the date XYZ Ltd files the audited financial statements.

### SCENARIO 3



Company XYZ Ltd has a year end 31 December 2013. XYZ Ltd has the legal obligation to file its audited financial statements within three (3) months of its year end.

The compliance date for XYZ Ltd as per its legal obligation is 31 March 2014.

On 25 March 2014, XYZ Ltd applies for an extension of the time limit under Section 120 of the Insurance Act 2005.

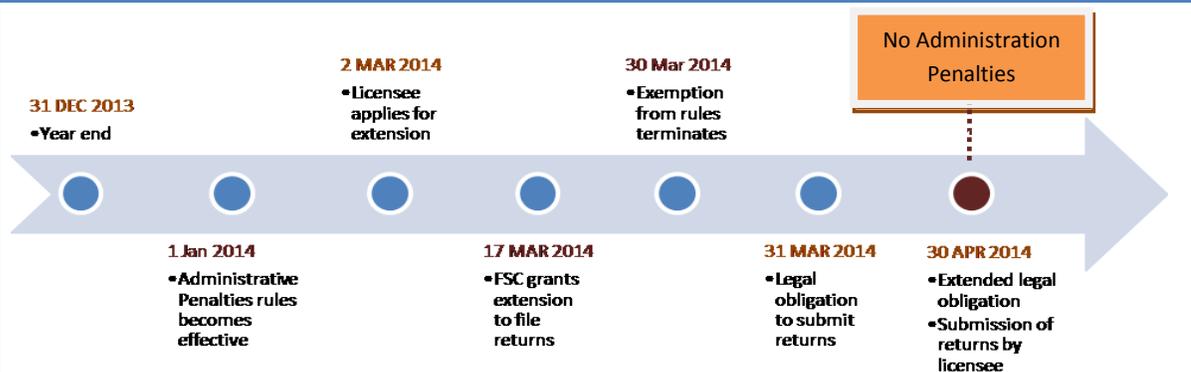
As at 31 March 2014, the application is still under process and XYZ Ltd has not yet been granted approval.

The commencement date of the Administrative Rule is 01 January 2014. However, the Board of the Commission has resolved that penalty will be imposed as from 31 March 2014.

XYZ Ltd fails to file the audited financial statements on 01 April 2014 (*31 March 2014 being a public holiday*) and files returns on 15 May 2014.

Administrative penalty will be levied as from 02 April 2014 (*31 March 2014 being a public holiday*) to the date XYZ Ltd files the audited financial statements with the Commission.

## SCENARIO 4



Company ABC Ltd has a year end 31 December 2013. ABC Ltd has the legal obligation to file its audited financial statements within three (3) months of its year end.

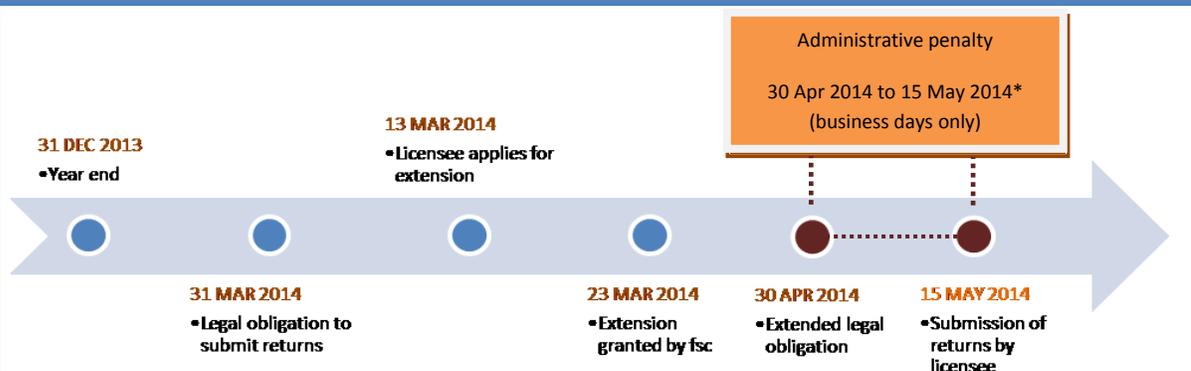
The compliance date for ABC Ltd as per its legal obligation is 31 March 2014.

On 02 March 2014, ABC Ltd applies for an extension of the time limit under Section 120 of the Insurance Act 2005.

On 17 March 2014, the Commission grants the extension of the time limit to 30 April 2014 by giving notice to ABC Ltd.

ABC Ltd files its audited financial statements on 30 April 2014. No administrative penalties will be levied.

## SCENARIO 5



Company ABC Ltd has a year end 31 December 2013. ABC Ltd has the legal obligation to file its audited financial statements within three (3) months of its year end.

The compliance date for ABC Ltd as per its legal obligation is 31 March 2014.

On 13 March 2014, ABC Ltd applies for an extension of the time limit under Section 120 of the Insurance Act 2005

On 23 March 2014, the Commission grants the extension of the time limit to 30 April 2014.

ABC Ltd files its audited financial statements on 15 May 2014. Administrative penalty will be levied as from 01 May 2014 to 15 May 2014, the date XYZ Ltd files the audited financial statements

## SCENARIO 6

XYZ PCC is a collective investment scheme which has three (3) cells (Cell A, Cell B and Cell C) and has elected to file separate financial statements. The Year End of XYZ PCC is 31 December 2013.

XYZ PCC has the legal obligation to file its Annual Report within three (3) months of its year end.

The compliance date for XYZ PCC as per its legal obligation is 31 March 2014.

Cell A is compliant with the prescribed deadline. However, Cell B and Cell C fail to file the audited financial statements on 01 April 2014 (31 Mar 2014 being a public holiday) and files returns on 04 April 2014.

Administrative penalty will be levied from 02 April 2014 to 04 April 2014 on both Cell B and Cell C.

Penalties will therefore be as follows:

- Cell B - USD 30 (USD10\*3)
- Cell C - USD 30 (USD10\*3)

***Financial Services Commission  
23 December 2013***

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