



**Leniency Policy**

**Under the**

**Competition (Jersey) Law 2005**

## **Introduction**

Part 2 of the Competition (Jersey) Law 2005, which enters into force on 1 November 2005, prohibits anti-competitive agreements between businesses.

Cartels are a particularly damaging form of anti-competitive behaviour. They include but are not limited to price fixing, market sharing, production or sales quotas, excluding competitors and collusive tendering. Their purpose is to increase prices by reducing or removing competition and therefore directly affect the purchasers of their goods or services. Any business found to have engaged in cartel activity is likely to face a high financial penalty. The JCRA has the power to impose a fine of up to 10 per cent of a company's turnover for a period of up to three years.

The purpose of this Leniency Policy is to give businesses involved in cartels strong incentives to assist the JCRA in the detection of cartels. The JCRA will grant either total or partial immunity from JCRA imposed financial penalties to a business involved in a cartel that comes forward on or after 1 November 2005 with relevant information (as defined below) about the cartel, and cooperates fully with the JCRA throughout its investigation and any subsequent proceedings.

## **Form of Leniency**

Leniency will take the form of total immunity from, or a significant reduction of, the financial penalties that the JCRA can impose. It does not extend to the other consequences of infringing the Law, which include the fact that the unlawful agreement is void and cannot be enforced, and the possibility that third parties who consider they have been harmed by the cartel may have a claim for damages in the Royal Court. Leniency does not provide immunity from any penalty that may be imposed by other competition authorities outside Jersey where the cartel breaches not only Jersey law but also the competition law of one or more other jurisdictions, such as the European Union. It also does not cover penalties for obstruction of JCRA investigations, such as knowingly or recklessly providing materially false or misleading information.

## **Total Immunity**

The JCRA will offer total immunity from financial penalties for an infringement of Part 2 of the Law to the first participant in a cartel to come forward with relevant information, as defined below, relating to the cartel; provided the JCRA has not already started an investigation of the cartel activity, or does not already have sufficient information to suspect the existence of the alleged cartel activity.

The participant must:

- provide the JCRA with access to all information available to them regarding the existence, activities, operation and membership of the cartel. Information includes all information, documents, material and evidence of any kind whatsoever, including all

oral, written and electronic information, but does not include information protected from disclosure by legal professional privilege;

- maintain continuous, complete and expeditious co-operation with the JCRA throughout its investigation and any ensuing proceedings;
- use best efforts to ensure that each of the business's related entities provides all assistance reasonably requested by the JCRA;
- refrain from further participation in the cartel (unless the JCRA directs otherwise); and
- have not coerced others to take part in the cartel at any time on or after 1 November 2005.

If the JCRA at any time determines that a participant granted leniency has failed to meet any of the above conditions, it will not be bound by its grant of leniency to that person.

### **Significant Reductions in Penalty**

If a participant is

- not the first participant to approach the JCRA about a cartel; or
- has approached after the JCRA already has commenced an investigation into the cartel; or
- comes forward when the JCRA already has sufficient information to suspect the existence of the cartel but the information the participant can provide is useful for the investigation,

this may result in a significant reduction of the financial penalties that the JCRA might impose against the participant. When deciding on the reduction in penalty, the JCRA will take into account the stage at which the cartel participant has come forward, the evidence provided by it and the evidence already in the JCRA's possession. The participant must also fulfil the conditions set out above.

### **Confidentiality**

The participant must not disclose to, or communicate with, any third party<sup>1</sup> regarding:

- the participant's leniency enquiry or application;
- any request by the participant for clarification regarding its leniency enquiry or application; and
- any information provided by the participant to the JCRA for the purposes of, or in connection with, an enquiry or leniency application.

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<sup>1</sup> Except as required by law, or in the case of communications with competition authorities in other jurisdictions, or otherwise with the prior written consent of the JCRA.

The JCRA is obliged to keep the information it receives in a leniency application confidential, subject to its use to conduct an investigation of the alleged cartel. The JCRA will endeavour, to the fullest extent possible, to keep the identity of a person granted immunity confidential.

## **Procedure**

### *Enquiry*

If you wish to know whether leniency is available and could be granted to your company, you (or your advisers) may informally approach the JCRA for clarification. The JCRA can deal with such inquiries on a 'hypothetical' or 'no-names' basis. No specific documents or information need be disclosed at this time, although the party should be willing to discuss the types of documents or information it could provide to the JCRA, should immunity be granted. Any information provided to the JCRA in this context will not be used by the JCRA for any purpose other than to provide the requested clarification. An enquiry will not be considered to be an application for leniency under the policy.

Enquiries must be directed to the Executive Director of the JCRA.

### *Application*

If a business decides to apply for leniency, this may be done in writing or in person. A leniency application must be made by an officer who has the authority to represent the business for this purpose.

Leniency applications must be directed to the Executive Director of the JCRA.

### *Grant of Leniency*

The business applying for leniency will be informed as soon as possible whether the application is approved. The business will be required to sign and comply with a Conditional Grant of Immunity Agreement as a condition for approval. A template of the Agreement is attached to this Policy. The Agreement shall remain confidential between the applicant and the JCRA.

27 October 2005

## ATTACHMENT

### CONDITIONAL GRANT OF IMMUNITY AGREEMENT

This Agreement sets forth the terms and conditions agreed between the Jersey Competition Regulatory Authority (JCRA) and [Name] in connection with conditional immunity for possible [insert generic description of conduct: price fixing, bid rigging, etc.] or other conduct infringing Part 2 of the Competition (Jersey) Law 2005 (the Law) in the [insert generic description of industry, i.e., widget] industry in the Bailiwick of Jersey (hereinafter, the 'infringing activity'). This Agreement is conditional and depends on [Name] satisfying the conditions set forth below. Unless otherwise specified herein, all terms used in this Agreement have the same meaning as defined in the Law.

**1. Representations:** [Name] desires to report the infringing activity to the JCRA. [Name] represents to the JCRA that, in connection with such activity, it:

- a) has taken prompt and effective action to terminate its part in the activity [delete if the JCRA directs otherwise]; and
- b) did not coerce others to participate in the activity at any time on or after 1 November 2005.

**2. Cooperation:** [Name] agrees to provide full, continuing and complete cooperation to the JCRA in connection with any investigation of, or proceedings against, the infringing activity including, but not limited to, the following:

- a) preserve all information known to [Name] relating to the activity and provide the same to the JCRA;
- b) providing promptly, and without requirement of legal process, all documents or other items in its possession, custody or control, wherever located, requested by the JCRA for the purpose of investigating the infringing activity, to the extent not provided already and to the extent the requested information is not protected from disclosure by legal professional privilege;
- c) using its best efforts to secure the complete, candid, truthful and prompt cooperation of its current [and former] directors, officers and employees;
- d) facilitating the ability of current [and former] directors, officers and employees to appear for such interviews or testimony as the JCRA may require;
- e) using its best efforts to ensure that current [and former] directors, officers and employees make no attempt either falsely to protect or falsely to implicate any person or entity; and
- f) using its best efforts to secure the complete, candid, truthful and prompt cooperation of its related entities to the extent the JCRA requests such cooperation in connection with the infringing activity.

**3. Immunity:** Subject to [Name's] representations in Section 1, above, and its full, continuing and complete compliance with the requirements listed in Section 2, above, the JCRA conditionally agrees to provide total immunity to [Name] with respect to the infringing activity. Total immunity means that the JCRA will not impose financial penalties against [Name] [or any related entity] under Article 36(4) of the Law for any act or omission it may have committed prior to the date of this Agreement in connection with the infringing activity. The commitments in this section are binding only upon the JCRA although, upon request of [Name], the JCRA will bring this Agreement to the attention of other administrative agencies, either within Jersey or abroad. This Agreement does not prohibit the JCRA from taking actions to end potential violations of the Law or seek financial penalties against participants in the infringing activity not bound by this Agreement.

If the JCRA at any time determines that [Name] has violated this Agreement, this Agreement shall be void and have no effect, and the JCRA shall not be prohibited from imposing financial penalties against [Name] under Article 36(4) of the Law in connection with the infringing activity. If the JCRA determines that such a violation has occurred, it may use any information provided by [Name] or its current [or former] directors, officers or employees in any investigation of, or proceedings against, [Name].

**4. Confidentiality:** [Name] shall not disclose, and direct that its directors, officers, and employees shall not disclose, the fact or content of this Agreement to any third party, without the prior written consent of the JCRA. The JCRA shall not disclose information it receives under this Agreement to any third party, except to the extent that disclosure is permitted under Articles 44 or 45 of the Law. The JCRA shall endeavour, to the fullest extent possible, to not disclose the identity of [Name] to any third party. For the purpose of this section 'third party' means an undertaking or person that is not a party to this Agreement.

**5. Entire Agreement:** This Agreement constitutes the entire agreement between the JCRA and [Name] and supersedes all prior understandings, if any, either oral or written, relating to the infringing activity.

**6. Authority and Capacity:** The JCRA and [Name] represent and warrant each to the other that the signatories to this Agreement on behalf of each party hereto have all the authority and capacity necessary to execute this Agreement and bind the respective parties hereto.

**7. Miscellaneous:**

- a) The signatories below acknowledge acceptance of the foregoing terms and conditions.
- b) Unless otherwise directed, communications concerning this Agreement shall be directed to the individuals identified below.
- c) This Agreement may be executed in counterparts, which together shall form the entire Agreement.

- d) The failure of the JCRA to enforce any provision of this Agreement at any time shall not operate as a waiver of that provision in respect of the particular act or omission or any other act or omission.
- e) Any amendments to this Agreement shall be in writing signed on behalf of JCRA and [Name].
- f) This Agreement shall be governed by, and construed in accordance with, the laws of the Bailiwick of Jersey.

Read and Agreed on [Date] by:

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[Name]  
[Company]  
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