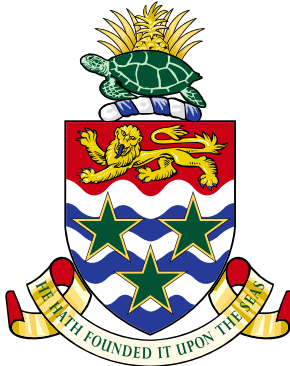


CAYMAN ISLANDS



**Proceeds of Crime Law
(2019 Revision)**

**ANTI-MONEY LAUNDERING
(AMENDMENT)(NO.2) REGULATIONS,
2019**

SL 28 of 2019

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Arrangement of Regulations

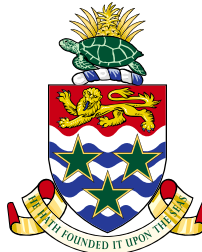
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CAYMAN ISLANDS

Proceeds of Crime Law
(2019 Revision)**ANTI-MONEY LAUNDERING (AMENDMENT)
(NO.2) REGULATIONS, 2019**

SL 28 of 2019

In exercise of the powers conferred by section 145 of the Proceeds of Crime Law (2019 Revision) the Cabinet makes the following Regulations —

Citation

1. These Regulations may be cited as the Anti-Money Laundering (Amendment) (No.2) Regulations, 2019.

Amendment of regulation 2 of the Anti-Money Laundering Regulations (2018 Revision) - definitions

2. The *Anti-Money Laundering Regulations (2018 Revision)*, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2(1) as follows —
 - (a) by inserting in the appropriate alphabetical sequence, the following definitions —

“**appeal**” means an appeal for which leave is granted by the Grand Court under regulation 55ZK and any further appeals relating to the decision on such an appeal;

“**breach notice**” means a notice under regulation 55ZC, of a Supervisory Authority’s intention to impose a fine, issued by a

Supervisory Authority, to a party that a Supervisory Authority believes has breached a prescribed provision;

“**discount agreement**” means an agreement in principle between a Supervisory Authority and a party that has breached a prescribed provision about the amount of a proposed discretionary fine;

“**discretionary fine**” means —

- (a) a proposed fine for which a Supervisory Authority has fine discretions; or
- (b) a fine in respect of which a Supervisory Authority exercised fine discretions;

“**fine discretion**” means a Supervisory Authority’s discretion under regulation 55S(5) to decide whether to impose a fine and the amount of the fine;

“**fine notice**” means a notice issued by a Supervisory Authority under regulation 55ZG;

“**give**”, in relation to a notice or information, means to deliver, provide, send or transmit the notice or information;

“**government body**” means —

- (a) a government company;
- (b) an entity within the public service; or
- (c) a statutory authority,

within the Islands;

“**government company**” means —

- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company;

“**interest**” means interest accrued or accruing on a fine under regulation 55ZQ;

“**minor fine**” means a fine under regulation 55S(1);

“**minor fine (continuing)**” means a fine under regulation 55S(2);

“**notice**” means written information given, or to be given in hard copy, electronically, by hand, by post or by any other mode of communication;

“**original decision**” means a Supervisory Authority’s decision —

- (a) in relation to a minor fine or minor fine (continuing), to impose the fine;



(b) in relation to a discretionary fine, to impose a fine of a specified amount; or

(c) in relation to both (a) and (b);

“**party**”, in relation to a provision under these Regulations dealing with a breach, fine or proposed fine, means the person on whom the fine has been imposed or is being proposed or considered to be imposed;

“**public service**” includes Ministries, Portfolios, departments, agencies reporting directly to the Legislative Assembly, Governmental committees, statutory authorities and government companies;

“**rectification notice**” means a notice to a Supervisory Authority by a party who has breached a prescribed provision stating that the breach was rectified within thirty days after the party received the breach notice;

“**reply**” means a notice to a Supervisory Authority by a party who has received a breach notice, making representations opposing the Supervisory Authority’s proposed action to impose a fine;

“**reply period**” means the period stated in a breach notice, within which the recipient of the breach notice may give a reply to the Supervisory Authority;

“**statutory authority**” means an entity established by a Law to carry out functions which are capable under that Law, of being funded, partly or entirely, by money provided by Cabinet, and for which the Governor or the Cabinet has the power to appoint or dismiss the majority of the Board or other governing body;

“**stayed**”, in relation to a fine, means that the fine may not be imposed because of the operation of an order under regulation 55ZN(2); and

“**winding up notice**” means a demand under section 93(a) of the *Companies Law (2018 Revision)*; and”;

(b) in the definition of the word “**firm**” by deleting paragraph (b) and substituting the following paragraph —

“(b) in respect of accountants, a body corporate, association, partnership, limited liability partnership or sole practitioner —

(i) engaging in public practice, as defined in the *Accountants Law, 2016*; or

(ii) providing an accountancy service of recording, reviewing, analysing, calculating and reporting on

financial information, in the course of business, which includes the following —

- (A) bookkeeping services;
 - (B) payroll services;
 - (C) accounts preparation; or
 - (D) providing tax advisory or tax compliance services;”;
- (c) in the definition of the words “**unique identifier**” by deleting the word “and” appearing at the end of the definition.

Amendment of regulation 5 - systems and training to prevent money laundering

3. The principal Regulations are amended in regulation 5 as follows —

- (a) in paragraph (a) —
 - (i) by deleting the word “and” appearing at the end of subparagraph (viii);
 - (ii) by inserting after subparagraph (viii), the following subparagraphs —
 - “(viiiia) procedures for the ongoing monitoring of business relationships or one-off transactions for the purposes of preventing, countering and reporting money laundering, terrorist financing and proliferation financing and such procedures allowing for the identification of assets subject to targeted financial sanctions applicable in the Islands;
 - (viiiib) procedures to ensure compliance with targeted financial sanctions obligations applicable in the Islands; and”;
 - (iii) in subparagraph (ix) by deleting the words “and terrorist financing” and substituting the words “, terrorist financing and proliferation financing”;
- (b) in paragraph (c)(ii) by inserting after the words “money laundering” the words “, terrorist financing, proliferation financing and targeted financial sanctions”;
- (c) in paragraph (d) by inserting after the words “money laundering” the words “, terrorist financing or proliferation financing, or whose assets are subject to targeted financial sanctions applicable in the Islands”.

Amendment of regulation 6 - group-wide programmes

4. The principal Regulations are amended in regulation 6 as follows —



- (a) by renumbering regulation 6 as regulation 6(1);
- (b) in regulation 6(1) as renumbered, in subparagraph (c), by inserting after the words “financing purposes” the words “, including information on, and if applicable analysis of, transactions or activities which appear unusual”; and
- (c) by inserting after paragraph (1) the following paragraphs —
 - “(2) The information required to be provided under paragraph (1)(c) may include suspicious activity reports and their underlying information and the fact that a suspicious activity report has been filed.
 - (3) Branches and subsidiaries of the financial group shall receive information provided under paragraph (1)(c), where relevant and appropriate to money laundering and terrorist financing risk management.”.

Amendment of regulation 11 - when customer due diligence is required

5. The principal Regulations are amended in regulation 11(b) by deleting the word “fifteen” and substituting the word “ten”.

Amendment of regulation 12 - obligation to identify customer

6. The principal Regulations are amended in regulation 12 as follows —
- (a) in paragraph (2)(a) by inserting after the words “structure of the customer” the words “and the nature of the customer’s business”; and
 - (b) by inserting after paragraph (4) the following paragraph —
 - “(5) Information collected and held under paragraph (4) shall be kept accurate and up to date and shall be updated on a timely basis.”.

Amendment of regulation 13 - customer due diligence re-beneficiary of life insurance

7. The principal Regulations are amended in regulation 13 as follows —
- (a) in paragraph (a) by deleting the words “legal arrangement - taking the name of the person; and” and substituting the words “legal arrangement, taking the name of the person;”;
 - (b) in paragraph (b) by deleting the words “by other means - obtaining sufficient information concerning the beneficiary to satisfy the person carrying out relevant financial business that it will be able to establish the identity of the beneficiary at the time of the pay out.” and substituting the words “by other means, obtaining sufficient information concerning the beneficiary to satisfy the person carrying out relevant financial business that it will be able to establish the identity of the beneficiary at the time of the pay out; and”; and

(c) by inserting after paragraph (b) the following paragraph —

“(c) for a beneficiary under paragraph (a) or (b), verifying the identity of the beneficiary.”.

Insertion of regulation 17A - considerations for applying customer due diligence

8. The principal Regulations are amended by inserting after regulation 17, the following regulation —

“Considerations for applying customer due diligence

17A. A person carrying out relevant financial business shall apply customer due diligence requirements to existing customers on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when customer due diligence measures have been previously undertaken and the adequacy of the data obtained.”.

Amendment of regulation 25 - eligible introducer

9. The principal Regulations are amended by repealing regulation 25 and substituting the following regulation —

“Eligible introducer

25. (1) A person carrying out relevant financial business is not required to verify the identity of an applicant for business, or the beneficial owner, if applicable, in accordance with Part IV where a business relationship is formed or a one-off transaction is carried out with or for an applicant for business pursuant to an introduction effected by a person who falls within one of the categories under regulation 22(d) and who, upon that introduction, provides a written assurance to the person carrying out relevant financial business which confirms —

- (a) the identity of the applicant for business, and the identity of the beneficial owner, if applicable, of the applicant for business;
- (b) the nature and intended purpose of the business relationship;
- (c) that the introducer has identified and verified the identity of the applicant for business, and, where required, the beneficial owner of the applicant for business, under procedures maintained by the introducer in accordance with applicable laws;
- (d) that the introducer has identified the source of the funds of the applicant for business; and



- (e) that the introducer shall make available on request and without delay copies of identification and verification data and any other relevant documentation relating to customer due diligence requirements in respect of the applicant for business and, where applicable, the beneficial owner of the applicant for business.
- (2) A person carrying out relevant financial business who relies on an introduction effected under paragraph (1) in respect of an applicant for business, is liable for any failure of the introducer to obtain and record satisfactory identification and verification documentation, or to make the same available on request and without delay.
- (3) In this regulation, the ultimate responsibility for compliance with the customer due diligence requirements set out under Part IV is that of the person carrying out relevant financial business who relies on an introduction effected under paragraph (1).”.

Amendment of regulation 27 - application of enhanced customer due diligence

10. The principal Regulations are amended in regulation 27 as follows —

- (a) by deleting the word “or” appearing at the end of paragraph (e);
- (b) in paragraph (f) by deleting the words “activity.” and substituting the words “activity; or”; and
- (c) by inserting after paragraph (f) the following —
 - “(g) in relation to business relationships and transactions with persons, including financial institutions, from countries for which this is requested by the Financial Action Task Force, and in each case, the enhanced customer due diligence shall be proportionate to the risk.”.

Amendment of regulation 40 - transfers of funds with missing or incomplete information about payer

11. The principal Regulations are amended in regulation 40(5) by inserting after the words “where the required” the words “payer or”.

Amendment of regulation 53A - duty of a person carrying out relevant financial business to produce information

12. The principal regulations are amended in regulation 53A by repealing paragraph (7) and substituting the following paragraph—

- “(7) The production of a document does not affect any lien which a person has on the document.”.

Amendment of regulation 53C - requirement to share information

13. The principal Regulations are amended in regulation 53C by repealing paragraph (4).

Amendment of regulation 55A - designated non-financial business and professions

14. The principal Regulations are amended in regulation 55A as follows —
- (a) in paragraph (d) by deleting the word “and” appearing at the end of the paragraph;
 - (b) in paragraph (e) by deleting the words “law.” and substituting the words “law; and”; and
 - (c) by inserting after paragraph (e) the following paragraph —
 - “(f) any other business or profession for which a Supervisory Authority under regulation 55B is assigned, by Cabinet, under section 4(9) of the Law.”.

Amendment of regulation 55B - supervisory authorities of DNFBPs

15. The principal Regulations are amended in regulation 55B as follows —
- (a) in paragraph (a) by deleting the words “and dealers in precious stones” and substituting the words “, dealers in precious stones and any other business or profession for which it has been designated the Supervisory Authority, by Cabinet, under section 4(9) of the Law”; and
 - (b) in paragraph (b) by deleting the words “that engage in or assist other persons in the planning or execution of relevant financial business, or otherwise act for or on behalf of such persons in relevant financial business”.

Amendment of regulation 55E - duty to maintain DNFBP Register

16. The principal Regulations are amended in regulation 55E by inserting after paragraph (1) the following paragraphs —
- “(1A) A Supervisory Authority may impose registration fees for the purpose of defraying the cost of establishing and maintaining the DNFBP Register and discharging its responsibilities under these Regulations.
 - (1B) The fees imposed under paragraph (1A) shall be subject to the approval of Cabinet and published in the Gazette.”.

Repeal of regulation 55F and substitution - requirement for registration

17. The principal Regulations are amended by repealing regulation 55F and substituting the following regulation —



“Requirement for registration

- 55F.** (1) A person who carries on or intends to carry on business as a DNFBP in or from within the Islands shall —
- (a) submit to the Supervisory Authority designated for that DNFBP —
 - (i) a written declaration that the person carries on or intends to carry on business as a DNFBP; and
 - (ii) subject to paragraph (2), the registration information required under regulation 55E(2); and
 - (b) where applicable, pay the registration fee imposed by the Supervisory Authority under regulation 55E(1A).
- (2) A person is not required to submit the registration information under paragraph (1)(a)(ii) if the person who carries on or intends to carry on business as a DNFBP provides written consent to the relevant government body or any other competent authority which holds such information, to provide the information to the Supervisory Authority designated for that DNFBP.”

Amendment of regulation 55G - cancellation of registration

- 18.** The principal Regulations are amended in regulation 55G(2)(a) by deleting the words “under regulation 55U”.

Amendment of regulation 55H - fit and proper person test

- 19.** The principal Regulations are amended in regulation 55H by deleting paragraph (1) and substituting the following paragraph —
- “(1) In determining whether a person who carries on business as a DNFBP or a connected person is a fit and proper person, the Supervisory Authority designated for that DNFBP shall have regard to —
- (a) the person’s probity, competence and soundness of judgement for fulfilling the responsibilities of the position;
 - (b) the diligence with which the person is fulfilling or likely to fulfil the responsibilities; and
 - (c) whether the interests of the DNFBP are, or are likely to be, in any way threatened by the person holding the position.”

Amendment of regulation 55J - notification of cancellation of registration

- 20.** The principal Regulations are amended in regulation 55J(1)(b) by deleting the words “Professional Institute of Public Accountants” and substituting the words “Cayman Islands Institute of Professional Accountants”.

Amendment of regulation 55R - power to impose administrative fines

- 21.** The principal Regulations are amended in regulation 55R as follows —
- (a) in paragraph (1) by inserting after the words “administrative fine” the words “, under regulation 55S,”; and
 - (b) by repealing paragraph (2) and substituting the following paragraphs —
 - “(2) Where a DNFBP contravenes a prescribed provision in Column 1 of the Table in Schedule 2, the categories of breach in Column 2 of the Table in Schedule 2, shall be prescribed as minor, serious or very serious and the breach may be proceeded with under regulation 55S.
 - (3) A Supervisory Authority may issue guidance on the enforcement of administrative fines for a breach prescribed as minor under these regulations.”.

Repeal of regulations 55S through 55ZE and substitution

- 22.** The principal Regulations are amended by repealing regulations 55S through 55ZE and substituting the following regulations —

“Fine amounts

- 55S.**(1) For a breach prescribed as minor the fine is five thousand dollars.
- (2) For a breach prescribed as minor, a Supervisory Authority designated for a DNFBP may impose one or more continuing fines of five thousand dollars each, in addition to the fine already imposed for the breach (the “initial fine”), at intervals it decides, until the earliest of the following occurs —
 - (a) the breach stops or is remedied;
 - (b) payment of the initial fine and continuing fines imposed for the breach; or
 - (c) the total of the initial fine and continuing fines for the breach reaches twenty thousand dollars.
 - (3) For a breach prescribed as serious, the fine is a single fine of —
 - (a) fifty thousand dollars for an individual; or
 - (b) one hundred thousand dollars for a body corporate.
 - (4) For a breach prescribed as very serious, the fine is a single fine of —
 - (a) one hundred thousand dollars for an individual; or
 - (b) two hundred and fifty thousand dollars for a body corporate.
 - (5) For breaches prescribed as serious or very serious the Supervisory Authority designated for a DNFBP has a discretion to decide



whether to impose a fine and the amount of the fine, taking into consideration the criteria under regulations 55V, 55X and 55Y.

Limitation period

- 55T.**(1) A Supervisory Authority designated for a DNFBP shall not impose an administrative fine after the expiration of the following period from the date on which it became aware of the breach —
- (a) six months for a breach prescribed as minor; or
 - (b) two years for a breach prescribed as serious or very serious.
- (2) For the purposes of paragraph (1), a Supervisory Authority is deemed to have become aware of the breach when the Supervisory Authority first received information from which the breach could have reasonably been inferred.

Relationship with penalties

- 55U.**(1) Where a breach of a prescribed provision is an offence, a Supervisory Authority designated for a DNFBP may, subject to paragraphs (2) and (3) —
- (a) impose an administrative fine in accordance with these Regulations; or
 - (b) recommend to the Director of Public Prosecutions that the contravention be prosecuted as an offence.
- (2) Where a breach of a prescribed provision is an offence, the imposition of an administrative fine for the breach shall not preclude a prosecution for the breach where the administrative fine remains unpaid after twenty-eight days of the issue of a fine notice.
- (3) Where a breach of a prescribed provision is prosecuted as an offence, the prosecution of the breach as an offence shall preclude a Supervisory Authority designated for a DNFBP from imposing an administrative fine in accordance with these Regulations.
- (4) Where a Supervisory Authority designated for a DNFBP commences proceedings for a breach of a prescribed provision by imposing an administrative fine, the payment of the administrative fine within twenty-eight days of the issue of a fine notice constitutes a discharge from liability for conviction for a breach of a prescribed provision that is an offence.

Principles for making fine decision

- 55V.**(1) In making a decision under regulation 55S(5), a Supervisory Authority designated for a DNFBP shall consider any relevant factors including the following criteria —

- (a) the criteria under regulations 55X and 55Y, after applying any prescribed relative weight that must be given to the criteria; and
 - (b) the following principles, in the following order of importance —
 - (i) firstly, the disgorgement principle;
 - (ii) secondly, the disciplinary principle; and
 - (iii) thirdly, the deterrence principle.
- (2) In exercising a fine discretion under regulation 55S(5), the principles under paragraph (1)(b) shall prevail over the criteria prescribed under regulations 55X and 55Y.
- (3) Notwithstanding paragraph (2), a Supervisory Authority designated for a DNFBP may consider the criteria under regulation 55X or 55Y and reduce the amount of a fine.
- (4) Notwithstanding paragraph (1)(a), a Supervisory Authority designated for a DNFBP may consider a particular criteria to the extent it considers the criteria relevant to making the decision.
- (5) In this regulation —
- “deterrence principle”** means the principle applied to deter DNFBPs which carry out relevant financial business and connected persons from breaching prescribed provisions;
- “disciplinary principle”** means the principle applied to punish intentional, reckless or negligent breaches of prescribed provisions; and
- “disgorgement principle”** means the principle applied to ensure that —
- (a) DNFBPs which carry out relevant financial business and connected persons do not gain (including by avoiding losses) from breaching prescribed provisions; and
 - (b) persons mentioned in paragraph (a) disgorge all such gains.

Discretionary fine criteria

Application of discretionary fine criteria

- 55W.** For the purposes of regulation 55S(5) and 55V(1)(a), the criteria for exercising fine discretions shall apply when —
- (a) issuing breach notices;



- (b) considering or reconsidering matters under regulation 55ZD(2) or 55ZO(2)(b); and
- (c) imposing discretionary fines.

Criteria in relation to both fine and amount

55X.(1) The following are the criteria for exercising fine discretions under regulation 55W —

- (a) the nature and seriousness of the breach;
- (b) the degree of the party's inadvertence, intent or negligence in committing the breach;
- (c) where the breach is a continuing one, its duration;
- (d) the measures or precautions the party took to prevent the breach;
- (e) the measures or precautions that a reasonable person in the party's position, acting prudently and exercising due diligence, would have taken to prevent the breach;
- (f) whether the breach was due to —
 - (i) reasonable reliance on information given to the party; or
 - (ii) a cause beyond the party's control, including, for example, someone else's act or default or an accident;
- (g) the degree of difficulty in detecting the breach;
- (h) evidence of intent by the party to conceal the breach or mislead the Supervisory Authority;
- (i) the party's conduct after becoming aware of the breach, including —
 - (i) whether and how quickly the party brought the breach to the attention of the Supervisory Authority; and
 - (ii) the party's efforts to remedy the breach or prevent its reoccurrence;
- (j) any financial or other damage or loss or other harm done or caused by the breach, including, for example, to —
 - (i) the party's creditors, customers, investors, policyholders or shareholders; or
 - (ii) the performance of the functions of the Supervisory Authority;
- (k) whether, before or after the breach, there was a change to the party's business or affairs that affects or may affect the consequences of the breach for the party, including, for example, the party's ability to pay a fine;

- (l) where the Supervisory Authority previously imposed a fine on the party for a similar breach, the amount of that fine; and
 - (m) the party's history of compliance with these Regulations and similar laws in other jurisdictions in the five years before the breach.
- (2) A Supervisory Authority designated for a DNFBP shall only take into account the party's compliance with and breaches of those laws in other jurisdictions of which it is aware or made aware by the party, when considering the criteria under paragraph (1)(m) .
- (3) Paragraph (2) applies even if no punishment was imposed or no other action relating to the breach was taken under those laws in other jurisdictions.

Additional criteria in relation to fine amount

55Y. In deciding the amount of a fine when exercising fine discretions, the criteria also includes —

- (a) the following in relation to the party —
 - (i) any circumstances of mitigation that may exist;
 - (ii) resources and ability to pay; and
 - (iii) financial hardship;
- (b) potential adverse financial consequences on third parties of imposing a fine in the amount proposed; and
- (c) a circumstance that aggravates, or may tend to aggravate, the breach or its effects.

Power to discount usual fine to reflect agreement

55Z. (1) A Supervisory Authority designated for a DNFBP may negotiate with a party to attempt to reach a discount agreement with the party, whether or not it has given a breach notice.

- (2) Subject to paragraph (3), the Supervisory Authority may discount the usual fine to reflect the fact of the discount agreement and the stage in the fine process under regulations 55ZA, 55ZB, 55ZC, 55ZD, 55ZE, 55ZF and 55ZG at which the agreement was reached.
- (3) The Supervisory Authority shall not discount any component of the usual fine that represents the application of the disgorgement principle under regulation 55V.
- (4) In this regulation, “**usual fine**” means the amount of the fine the Supervisory Authority decided, or would otherwise have decided —
- (a) before taking into account the discount agreement; and



- (b) after considering —
 - (i) any relevant criteria, including the criteria and principles under regulation 55V; and
 - (ii) the criteria under regulation 55X or 55Y.

General

Steps required

- 55ZA.** (1) A Supervisory Authority designated for a DNFBP may only impose a minor fine or discretionary fine by taking the following steps —
- (a) giving a party a breach notice;
 - (b) where regulation 55ZD or 55ZE applies, complying with that regulation; and
 - (c) giving a party a fine notice.
- (2) The following exceptions apply in relation to the steps under paragraph (1) where a Supervisory Authority designated for a DNFBP decides to impose a discretionary fine —
- (a) where the party entered into a discount agreement for the breach and the fine is no more than the amount agreed under the agreement, a fine notice may be given without first giving a breach notice; and
 - (b) where a fine is varied on appeal under regulation 55ZO(2), the steps do not apply to the fine as varied.
- (3) A Supervisory Authority designated for a DNFBP may only impose a minor fine (continuing) —
- (a) by giving the party a fine notice; and
 - (b) if the relevant minor fine is not stayed.
- (4) A decision in relation to the imposition of a minor fine, a minor fine (continuing) or a discretionary fine shall be made on the balance of probabilities.

Notice containing an inaccuracy

- 55ZB.** A breach notice, rectification notice or fine notice which contains an inaccuracy is only invalid because of the inaccuracy where a party establishes that —
- (a) the inaccuracy was material; and
 - (b) the inaccuracy misled the party.

Breach notice and reply

Requirements for breach notice

- 55ZC.**(1) A breach notice shall be dated and state the following —
- (a) the party’s name;
 - (b) that the Supervisory Authority proposes to impose a fine on the party for a specified breach that the Supervisory Authority believes the party committed;
 - (c) the prescribed provision for which the fine is proposed to be imposed;
 - (d) the nature of the specified breach;
 - (e) a summary of the facts and circumstances that the Supervisory Authority believes constituted the specified breach;
 - (f) whether the Supervisory Authority proposes to impose —
 - (i) a minor fine; or
 - (ii) a discretionary fine,
for the specified breach and the amount of the fine;
 - (g) that the party may give the Supervisory Authority a reply within the reply period under paragraph (2); and
 - (h) that, for a minor fine, the party may give the Supervisory Authority a rectification notice.
- (2) The reply period shall end no less than thirty days after the giving of a breach notice.

Duty to consider reply

- 55ZD.** (1) A Supervisory Authority designated for a DNFBP shall act in accordance with paragraph (2) where —
- (a) a breach notice is given for a minor fine, minor fine (continuing) or discretionary fine;
 - (b) the reply period ends; and
 - (c) a reply is given.
- (2) Where paragraph (1) applies, the Supervisory Authority under paragraph (1) shall —
- (a) reconsider whether it still holds the belief stated in the breach notice, in light of all the matters raised in the reply concerning that belief; and



- (b) where a breach notice was for a discretionary fine, consider the matters raised in the reply to the extent that the matters raised are relevant to exercising fine discretions.

Rectification of a breach subject to a minor fine

- 55ZE.** (1) A Supervisory Authority designated for a DNFBP shall act in accordance with paragraph (2) where —
- (a) a breach notice is given for a minor fine;
 - (b) the party subject to the breach notice rectifies the breach specified in the notice within thirty days of receiving the notice;
 - (c) the reply period ends; and
 - (d) a rectification notice is given.
- (2) Where paragraph (1) applies, the Supervisory Authority under paragraph (1) shall consider, in light of the matters raised in the rectification notice, whether the specified breach is rectified within thirty days of the issue of the breach notice to its satisfaction.
- (3) Where the Supervisory Authority is satisfied that the breach is rectified as described in paragraph (2) and, in the case of the breach of a filing requirement that the party has requested a filing extension and paid any applicable filing extension fees, the Supervisory Authority shall —
- (a) refrain from issuing a fine notice or imposing a fine on the party for the breach; and
 - (b) give the party notice of its decision in accordance with regulation 55ZF(6).

Imposing a fine

Decision about fine

- 55ZF.** (1) This regulation applies at the end of the reply period in relation to a breach notice where —
- (a) no reply is given;
 - (b) a reply is given and a Supervisory Authority designated for a DNFBP has complied with regulation 55ZD; or
 - (c) a rectification notice is given and the Supervisory Authority designated for a DNFBP has complied with regulation 55ZE.
- (2) Where a breach notice is issued for a minor fine or minor fine (continuing) and a Supervisory Authority —

- (a) continues to hold the belief stated in the notice; and
 - (b) is not satisfied that the breach was rectified within thirty days of the issue of the notice,
- the Supervisory Authority shall impose a fine in accordance with regulation 55S.
- (3) Where a breach notice is issued for a discretionary fine, the Supervisory Authority may exercise fine discretions.
 - (4) The amount of a discretionary fine shall not be more than the amount stated in the breach notice.
 - (5) Where a Supervisory Authority designated for a DNFBP imposes a fine, it may decide that the fine is payable immediately on the giving of a fine notice or within a particular period stated in the fine notice.
 - (6) Where a Supervisory Authority designated for a DNFBP decides not to impose a fine, it shall give the party notice of the decision within fifteen days after the end of the reply period.

Requirements for fine notice

55ZG. (1) A fine notice shall be dated and state the following —

- (a) the party's name;
 - (b) that the Supervisory Authority has imposed a specified fine on the party;
 - (c) the amount of the fine; and
 - (d) when the fine shall be paid.
- (2) Where the specified fine is a minor fine, the fine notice under paragraph (1) shall also state —
- (a) the prescribed provision for which the fine is imposed;
 - (b) a description of the breach;
 - (c) where a reply is given during the reply period, the reasons why the Supervisory Authority continues to hold the belief stated in the breach notice;
 - (d) if a rectification notice was given within the reply period, the reasons why the Supervisory Authority is not satisfied that the breach was rectified within thirty days of the issue of the breach notice; and
 - (e) that the party may, within thirty days after receiving the fine notice, apply to the relevant person or body within the Supervisory Authority to review the decision to impose the fine.



- (3) Where the specified fine is a minor fine (continuing), the fine notice under paragraph (1) shall also state —
- (a) the date of the fine notice given for the relevant minor fine; and
 - (b) that the party may, within thirty days after receiving the fine notice, apply to the relevant person or body within the Supervisory Authority to review the decision to impose the fine.
- (4) Where the specified fine is a discretionary fine, the fine notice under paragraph (1) shall also state —
- (a) the prescribed provision for which the fine is imposed;
 - (b) a description of the breach;
 - (c) the reasons for the way in which fine discretions were exercised; and
 - (d) that the party may, within thirty days after receiving the fine notice, apply to the Grand Court for leave to appeal against the decision to impose the fine, the amount of the fine or both.

Internal review of minor fines by a Supervisory Authority designated for a DNFBP

Application to relevant person or body within the Supervisory Authority designated for a DNFBP for review

- 55ZH.** (1) A party who has received a fine notice for a minor fine or minor fine (continuing) may apply to the Supervisory Authority designated for the DNFBP for the relevant person or body within the Supervisory Authority to review the original decision.
- (2) An application under paragraph (1) shall —
- (a) be made within thirty days from the date of receipt of the fine notice; and
 - (b) shall contain —
 - (i) in respect of the applicant —
 - (A) the name of the applicant;
 - (B) the physical address of the applicant; and
 - (C) the email address of the applicant; and
 - (ii) in respect of the particulars of the application —
 - (A) the prescribed provision set out in the fine notice;

- (B) the grounds on which the applicant relies for the review; and
- (C) the facts and circumstances on which the applicant relies for the review.

No stay of original decision

55ZI. An application for review under regulation 55ZH does not stay the operation of the original decision.

Decision by relevant person or body within the Supervisory Authority upon review

- 55ZJ.**(1) The relevant person or body within a Supervisory Authority designated for a DNFBP shall, within twenty days after receiving an application for review under regulation 55ZH, reconsider the original decision and decide whether to affirm or set aside the original decision.
- (2) The relevant person or body within the Supervisory Authority shall, within ten days after making a decision on the application, give the party notice of its decision.
 - (3) Where the relevant person or body within the Supervisory Authority affirms the original decision, the notice of the decision on the application for review shall state —
 - (a) the reasons for the decision; and
 - (b) that the party may apply to the Grand Court for judicial review of the decision.
 - (4) Where the relevant person or body within the Supervisory Authority sets aside the original decision, the original decision is deemed to have never been made.
 - (5) The appropriate person within the Supervisory Authority who made the original decision may make written representations to the relevant person or body within the Supervisory Authority concerning an application for review of the original decision, but shall not otherwise participate in any discussion, decision, debate or vote of the relevant person or body concerning the review.



Appeal against discretionary fines to Grand Court

Application to the Grand Court for leave to appeal

- 55ZK.** (1) A party who receives a fine notice for a discretionary fine may apply to the Grand Court within thirty days after receiving the fine notice for leave to appeal against the original decision.
- (2) The Grand Court may only grant leave to appeal under this regulation where —
- (a) the party has grounds for seeking judicial review of the decision; or
- (b) the decision was made with a lack of proportionality or was not rational.
- (3) Notwithstanding paragraph (1), a party may not apply for leave to appeal against the original decision if the party entered into a discount agreement for the breach and the fine is no more than the amount agreed to in the discount agreement.

Application of Grand Court Rules and practice directions on judicial review

- 55ZL.** (1) The *Grand Court Rules, 1995* and the Court's practice directions about judicial review apply to an appeal, with necessary changes, as if the appeal were an application for judicial review.
- (2) Notwithstanding paragraph (1), the Court's rules about alternative dispute resolution do not apply to the appeal.

Security for costs

- 55ZM.** A Supervisory Authority designated for a DNFBP may apply to the Grand Court for —
- (a) an order that the appellant provide sufficient security for costs; and
- (b) a stay of the appeal proceedings until the security is provided.

Stay of original decision only by application

- 55ZN.** (1) An appeal does not stay the operation of an original decision.
- (2) The Grand Court may, on an appellant's application, order that the fine imposed by an original decision be stayed to secure the effectiveness of the appeal.
- (3) The stay ordered by the Grand Court under paragraph (2)—
- (a) may be given on conditions that the Grand Court considers appropriate;

- (b) operates for the period fixed by the Grand Court; and
 - (c) may be amended or revoked by the Grand Court.
- (4) The period of a stay shall not extend past when the Grand Court determines the appeal.

Hearing and outcome

- 55ZO.** (1) An appeal may only be determined on the evidence on which the Supervisory Authority exercised the relevant fine discretions.
- (2) After hearing an appeal, the Grand Court may —
- (a) affirm, set aside or vary the original decision; or
 - (b) set aside the original decision and remit the matter to the Supervisory Authority for it to reconsider subject to such directions as the Court considers fit.
- (3) The following apply if the Grand Court’s decision is to affirm the original decision or to vary it in a way that a fine is still imposed —
- (a) the Grand Court’s decision is (other than in relation to regulations 55ZA, 55ZH and 55ZK) deemed to have been the original decision;
 - (b) the Grand Court may, at the Supervisory Authority’s request, give judgment against the party for all or any part of the fine that continues to be owing, and for interest; and
 - (c) the request of the Supervisory Authority under subparagraph (b) may be made during the appeal, when the Grand Court’s decision is handed down or at any later time on the tendering of a certificate under regulation 55ZU(2)(d) about the amount owing.
- (4) Where the Grand Court sets aside the original decision and does not remit the matter to the Supervisory Authority for reconsideration —
- (a) both the fine and interest are deemed to have never been owing; and
 - (b) any minor fine (continuing) imposed for the breach is deemed to have also been set aside and to have never been owed.

Fine is a debt to the Crown

Fine is a debt to the Crown

- 55ZP.**(1) Subject to paragraph (2), where a fine is not paid by the date stated in the relevant fine notice, the fine becomes a debt owing to the Crown.



- (2) The following factors affect whether the fine in the fine notice becomes a debt owing to the Crown under paragraph (1) —
 - (a) whether the fine was set aside on review under regulation 55ZJ or on appeal under regulation 55ZO; and
 - (b) whether the fine was varied on appeal under regulation 55ZO.
- (3) Where the fine under the fine notice was varied on appeal under regulation 55ZO, the varied fine becomes a debt owing to the Crown where the fine is not paid by the date stated in the order of the Grand Court.

Interest on fines

- 55ZQ.**(1) Interest accrues at a rate of five per cent annually while all or any part of a fine continues to be owing, starting on the day immediately after the fine becomes a debt to the Crown and ending on the day the fine is paid in full.
- (2) Interest under paragraph (1) accrues daily and as compound interest.
 - (3) Interest under paragraph (1) is a debt owing to the Crown.
 - (4) The accruing of interest applies even while the fine is stayed.
 - (5) Payments relating to the fine are to be applied to the interest first.
 - (6) This regulation is subject to any setting aside or variation of the fine in a review applied for under regulation 55ZH or an appeal.

Payment of more than one fine

- 55ZR.** Where more than one fine is imposed on a party, payments for the fines are to be applied in the order in which the fines and interest became owing.

Enforcement

- 55ZS.**(1) The Crown may recover in a civil proceeding, as a debt owing to the Crown, the unpaid amount of a fine or interest, or both.
- (2) Paragraph (1) does not apply while the fine is stayed.
 - (3) A proceeding to recover a debt under this regulation does not prevent —
 - (a) interest continuing to accrue on the total owing; or
 - (b) where the party is a body corporate, the Crown enforcing the fine by serving a winding up notice for the debt.

Miscellaneous

Electronic notices by the Supervisory Authority

- 55ZT.** (1) A Supervisory Authority designated for a DNFBP may give a party a notice for any purpose under these Regulations by sending it to —
- (a) the email address that the party last provided the Supervisory Authority with;
 - (b) where the party is a body corporate (either in its own right or as a trustee of a trust), the email address that the body corporate last provided to the Supervisory Authority, of —
 - (i) any of its directors or members; or
 - (ii) its registered office provider; or
 - (c) where the party is a partnership, the email address that the partnership last provided to the Supervisory Authority of —
 - (i) any of its partners; or
 - (ii) its registered office provider (if the party has a registered office).
- (2) In this regulation —
- “**partner**” does not include a limited partner of a limited partnership; and
- “**registered office provider**” means the person who provides or maintains the party’s registered office as required by law.

Evidentiary provisions

- 55ZU.**(1) A signature purporting to be the signature of anyone acting on behalf of the Supervisory Authority designated for a DNFBP is evidence of the signature it purports to be, unless the contrary is proved.
- (2) A certificate signed, or purporting to be signed, by anyone acting on the Supervisory Authority’s behalf stating a matter as follows, is evidence —
- (a) that a stated document is a copy of a notice given under this Part;
 - (b) that an email address stated in the copy was, when the notice was given to its stated recipient, the recipient’s email address under regulation 55ZT;
 - (c) that on a stated day the recipient was given the notice in a stated way; or
 - (d) that a fine of a stated amount is owing by a stated person.”.



Schedule repealed and substituted

23. The principal Regulations are amended by repealing the Schedule and substituting the following Schedules —

“SCHEDULE 1

(regulation 2)

CLASSES OF LONG TERM BUSINESS

Number	Description	Nature of Business
1	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class 3 below.
2	Marriage and birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
3	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
4	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident, of an accident of a specified class or of sickness or infirmity, being contracts that —

- (a) are expressed to be in effect for a period of not less than five years for the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
- 5 Tontines Effecting and carrying out tontines.
- 6 Capital redemption Effecting and carrying out capital redemption contracts.
- 7 Pension fund management Effecting and carrying out —
(a) contracts to manage the investments of pension funds; or
(b) contracts of the kind mentioned in paragraph (a) that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.



SCHEDULE 2*(regulation 55R)***PRESCRIBED PROVISIONS AND BREACH CATEGORIES**

Column 1 Prescribed provision	Column 2 Category of breach
5(a), (c) , (d) or (e)	Serious
5(b)	Very serious
10	Very serious
36	Serious
37	Serious
39	Serious
40(1) to (5)	Serious
40(6)	Very serious
42	Serious
43	Serious
44	Serious
47(3) to (5)	Serious
48	Very serious
50 and 51	Very serious
52 and 53	Serious
53A	Minor
55F	Serious
55M	Minor
55O	Minor
57	Same as for the body corporate".

Made in Cabinet the 16th day of July, 2019.

Kim Bullings
Clerk of the Cabinet

