



The Enforcement Manual

1. Statement of Objectives

To describe the policies and procedures for the exercise of the enforcement actions available to the Authority in the event of non-compliance with regulatory laws.

2. Approach to Enforcement

- 2.1 The Authority's effective and proportionate use of its powers to enforce the requirements of the regulatory laws and other relevant legislation (for example, the money laundering regulations) will play an important role in pursuit of its regulatory objectives.
- 2.2 The Authority has a range of regulatory tools available to help it meet its regulatory objectives. Where a licensee has failed to comply with the legislative requirements, it will often be appropriate to address this without further need for formal disciplinary or other enforcement action.
- 2.3 In those circumstances where the Authority does take disciplinary action in respect of the contravention of the regulations, the effective use of the enforcement powers under the regulatory laws, where necessary, will play an important role in buttressing the Authority's pursuit of its regulatory objectives.
- 2.4 There are a number of principles underlying the Authority's approach to the exercise of its enforcement powers:



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- 2.4.1 The effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and co-operative relationship between the Authority and those whom it regulates;
 - 2.4.2 The Authority will seek to exercise its enforcement power in a manner that is transparent, proportionate, and consistent with its publicly stated policies and guidelines;
 - 2.4.3 The Authority will seek to ensure the fair treatment of those who are subject to the exercise of its enforcement powers.

3. The Ladder of Compliance

- 3.1 The ultimate objective is to ensure that licensees comply with all appropriate legislation and regulations but it is recognised that a clear process through which defaulting licensees will be taken is necessary.
- 3.2 Licensees must demonstrate a high level of responsibility in compliance with the regulatory laws and regulations of the Cayman Islands. Licensees that fail to comply run the risk of harming the reputation of the Cayman Islands as a well regulated international financial centre and negatively impact on the interests of their stakeholders.
- 3.3 The broad areas of concern (hereinafter referred to as “contravention”) that may result in the Authority taking action include when a licensee:
 - (a) Is unable to, or appears to become unable to, meet its obligations as they fall due;
 - (b) Is carrying on business that is, or is likely to be, detrimental to the public interest, the interests of stakeholders, or any other third party;



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- (c) Contravenes regulatory laws or regulations of the Cayman Islands;
 - (d) Fails to comply with a condition of its licence; or
 - (e) Breaches a rule.

3.4 In considering what action to take in the event of a concern arising, the Authority will take into account, amongst other things, the following:

- (a) The impact on stakeholders' interests, third parties and market confidence;
- (b) The nature and extent of the contravention;
- (c) The ability and extent to which remedial action will rectify the contravention;
- (d) The willingness and ability of the licensee to cooperate with and assist the Authority in terms of its investigations and recommendations. This includes how quickly, effectively and completely the licensee brought the contravention to the attention of the Authority; the degree and timeliness of cooperation in meeting the requests of the Authority for information, documents etc; any remedial actions the licensee has already taken or intends to take in rectifying the situation; and any action that has been taken to ensure that such a contravention does not arise in the future;
- (e) The compliance history of the licensee. This includes whether the Authority or any other regulator has taken any previous action against the licensee; whether the licensee has previously failed to comply with licence conditions or directions or rules of the Authority; and the general compliance history of the licensee in terms of any other correspondence considered relevant by the Authority;



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- (f) The amount of the loss incurred or any benefit lost as a result of the contravention;
 - (g) The nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention;
 - (h) The nature and extent of civil and/or criminal proceedings that have been or are expected to be commenced against the licensee or any of its directors and/or shareholders;
 - (i) The extent to which the directors and officers have acted in a fit and proper manner;
 - (j) Whether there are a number of issues which, when considered individually may not justify disciplinary action, but which do, when considered collectively, indicate a pattern of unfit and improper behaviour;
 - (k) Whether any rules or guidance have been issued in respect of the contravention and, if so, the extent to which the licensee has followed the relevant rules or guidance; and,
 - (l) Action taken by the Authority or other regulatory authorities in previous similar cases.
- 3.5 The Authority will notify the licensee of the action that will be taken by the Authority according to the nature of the contravention and upon consideration of the factors listed in above in Section 3.4.

3.5.1 Stage 1 – Preliminary Findings

The Authority will promptly provide the licensee with details of the contravention by letter and request remedial action. In the case of more serious contraventions, or where time is of the essence, the senior officers of the licensee may be required to attend a preliminary findings meeting or engage in such a meeting by conference call. The licensee must notify the



Authority of any remedial action taken or to be taken as it attempts to avoid progression to stage 2.

3.5.2 Stage 2 – Recommendations For Remedial Action

Where considered appropriate the Authority will make recommendations to the licensee for corrective action within a prescribed period and failure to respond to the recommendations will lead to further action set out at Stage 3. In exceptional circumstances Stages 1 and 2 may be effected simultaneously.

3.5.3 Stage 3 – Non-Compliance With Recommendations

In the event that the licensee does not comply with the recommendations for remedial action given in Stage 2 in a satisfactory manner and there are no valid mitigating circumstances, the Authority will take appropriate action with or without notice to the licensee. In the event of valid mitigating circumstances, the Authority may extend the period for the implementation of remedial action or amend the nature of the proposed remedial action.

3.6 In relation to the above stages, the Authority may take the following actions:

3.6.1 Stage 1

The Authority will promptly address contraventions with the licensee and/or its directors. The preliminary findings letter will set out detail(s) of the contravention and request that the licensee and/or directors provide, on a timely basis, proposals



for remedial action and a timetable for completion. No further action will be taken if the matter is satisfactorily rectified.

3.6.2 Stage 2

Where Stage 2 is reached, in addition to the recommendations, the Authority may also take, amongst other things, any of the following actions:

- (a) Place the licensee on the regulatory watch list.
- (b) Require the Board of Directors of the licensee to provide a letter of commitment, signed by each director, acknowledging the recommendations of the Authority. A letter of commitment should state that the Board of Directors of the licensee are aware of the recommendations for remedial action and has approved the steps necessary for the licensee to comply with such recommendations.
- (c) Where appropriate, an external auditor may be required to perform an audit or investigation in relation to the specific issue and report to the Authority. This will be at the expense of the licensee;
- (d) In the case of licensee undertaking regulated insurance business, require that an actuarial report be prepared at the expense of the licensee;
- (e) Increase and/or enlarge the scope and/or frequency of the on-site inspection programme;
- (f) Increase the level of reporting by the licensee;

3.6.3 Stage 3

In the event that the recommendations for remedial action are not complied with in a satisfactory manner, the relevant



regulatory division of the Authority may take the following actions, where available under the existing regulatory laws and regulations;

- (a) Issue specific directives;
- (b) Require that a special audit or investigation is conducted by an external auditor at the cost of the licensee;
- (c) In the case of a licensee undertaking regulated insurance business, require that an actuarial report be prepared at the expense of the licensee;
- (d) Impose business restrictions;
- (e) Expand existing restrictions;

3.7 There may be circumstances where the Authority will not notify the licensee of the action that it intends to take and will make regulatory decisions that fall outside the above procedure. These will include the exercise of statutory powers where time is of the essence in order to protect the interests of stakeholders or depositors and the decision is expected to be for a period of time (eg. appointment of a controller, advisor or actuary; the suspension of a license), where the affected persons have the right to be heard in court (eg. appointment of liquidators or the assessment of penalties/fines), or where it is in the public interest to do so.

3.8 In the event that a licensee does not comply with the recommendations for remedial action given in stage 3 of the Ladder of Compliance in a satisfactory manner and there are no valid mitigating circumstances, the Authority will take the appropriate action with or without notice to the licensee. At this stage the responsibility for the licensee will be delegated to the Compliance Division.



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- 3.9 In order to facilitate the delegation of responsibility, the Head of the respective supervisory division shall provide to the Compliance Division, where practical, a summary of the pertinent background information of the licensee and the steps taken by the division to remedy the contravention. In cases of a serious nature or where time is of the essence, a meeting of the members of the respective supervisory division, Compliance Division, and the Legal Advisors may be appropriate.
- 3.10 The Compliance Division will investigate and collect any further information that it deems necessary to determine an appropriate action. This may include receipt of legal advice regarding the sufficiency of the evidence obtained and the appropriateness of the proposed course of action.
4. Information Gathering and Investigation Powers
- 4.1 The regulatory laws give the Authority the powers to examine the affairs or business of any licensee.
- 4.2 In addition, under Section 34(8) of the Monetary Authority Law, the Authority may, as it may reasonably require in connection with the exercise of functions conferred on it or under the Monetary Authority Law or the regulatory laws, at all reasonable times by notice in writing require a person regulated under the regulatory laws; a connected person; or a person reasonably to have information relevant to an enquiry by the Authority:



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- 4.2.1 To provide specified information or information of a specified description; or
- 4.2.2 To produce specified documents or documents of a specified description.
- 4.2.3 The Authority may also apply to the court to have a person examined on oath and have the results of that examination sent to the Authority.
- 4.3 Where documents are produced pursuant to these powers, the Authority may take copies of them or extracts from them.
- 4.4 Under Section 38(9) of the Monetary Authority Law, the Authority, where satisfied that assistance should be provided in response to a request by an overseas regulatory authority, may direct in writing a person regulated under the regulatory laws; a connected person; a person that is engaging in an activity that is subject to regulation under the regulatory laws; or a person reasonably to have information relevant to an enquiries to which the request relates:
- 4.4.1 To provide the Authority with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates; or
- 4.4.2 To produce specified documents or documents of a specified description to those inquiries; or,
- 4.4.3 To give to the Authority such assistance in connection with those inquiries as the Authority may specify in writing.
- 4.5 The matters that must be satisfied prior to the Authority exercising its powers are set out in the Monetary Authority Law.



4.6 Furthermore, many of the regulations give the Authority or a police officer of the rank of Inspector or above the power to apply to a magistrate to issue a warrant authorising the Authority or a police officer and any such other persons to search, inspect and take possession of records.

5. Access to the Records of the Authority

5.1 Controllers and those appointed as fiduciaries of the court (i.e. receivers, provisional liquidators and official liquidators) may seek access to and collection of copies of the records of the Authority under their mandate to investigate the affairs of the licensee.

5.2 While the Authority will assist controllers and fiduciaries of the court, where possible, it is appropriate for the Authority to seek legal advice prior to releasing any documentation.

6. Decision Making

6.1 The Authority's powers to take regulatory enforcement action are of two types:

6.1.1 Those that the Authority may exercise by the warning notice and notice of decision procedure, and

6.1.2 Those that the Authority may exercise actions without the notice procedure.



The Warning and Notice of Decision Procedure

6.2 The purpose of issuing Warning Notices is to give reasonable opportunity for persons affected by adverse decisions of the Authority to make representation to the Authority prior to those decisions being finalised. Typically the Authority will make every reasonable attempt to resolve any issues or concerns prior to issuing Warning Notices and Notices of Decision, and will only proceed down this route where timely resolution of the issues and concerns does not appear likely.

6.3 This procedure is relevant to the following regulatory decisions:

- a) Substitution or removal of a director, manager, senior officer and controller of a licensed entity;
- b) Suspension or revocation of an entity's license;
- c) Imposition of conditions, or further conditions, upon a licensee,
- d) Requirements to take action or to cease carrying on certain activities or conduct.

6.4 Issuing a Warning Notice

6.4.1 Subject to paragraph 6.7 below, if the Authority is contemplating to proceed with one of the regulatory decisions discussed in section 6.3, it will issue a Warning Notice to the concerned person to alert the recipient to the fact the Authority intends to take the regulatory action, and to indicate that the recipient may make representations to the Authority.

6.4.2 Once the Authority has determined that a Warning Notice is to be issued, such notice will:



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- (i) Be in writing;
 - (ii) State the action that the Authority proposes to take;
 - (iii) Document the Authority's reason for the proposed action.

6.4.3 There may be exceptional circumstances in which the Authority is unable to or determines it is inappropriate to disclose the reasons for the proposed decision. Such situations would include:

- Information between the Authority and its professional legal advisor;
- Information which a court has directed is not to be disclosed;
- Information indicating knowledge or suspicion that the Applicant or another person is engaged in money laundering or terrorist financing activity;
- Information received from a regulatory or law enforcement authority;
- Information received on a confidential basis;
- Where the disclosure of information could adversely affect the national interest, including the national security, of the Cayman Islands; or,
- Where it is in the public interest to do so.

In these exceptional circumstances, the decision not to disclose the reasons will be approved by the Board of the Authority.

6.4.4 The Authority will send a Warning Notice to all interested parties, including:

- (i) The Person affected by the decision;
- (ii) The Licensee, if not (i);
- (iii) The person acting for or managing the license.



6.4.5 The Warning Notice will contain a statement that the person concerned may make written representations to the Authority. The notice will specify a reasonable period, of at least 28 days from receiving the Warning Notice, within which the person whom it is served on may make representations. The Warning Notice will also detail a contact and address at the Authority to whom representations must be made.

6.4.6 A sample Warning Notice is attached as Appendix 1.

6.5 The Representation Process

6.5.1 Any Warning Notice issued by the Authority will contain a statement that the person concerned will have a specified amount of time, at least 28 days, in which to make written representations to the Authority.

6.5.2 In deciding on the length of the representation period, the Authority will have regard to the circumstances of each case, including the nature of the proposed action and its likely effect on the person concerned. The Authority will also have particular regard to the risk of its regulatory objectives of any delay in imposing the proposed action.

6.5.3 After receiving the Warning Notice, if the person concerned believes that the stated period for making representations is inadequate, then he may within 14 days of receiving the notice, request the Authority in writing for more time. Requests for an extension of time will be considered by the Authority, who will promptly notify the recipient of the notice whether the request for



an extension of time has been accepted or not. At the discretion of the Authority, each recipient may be granted one extension of up to 14 days.

6.5.4 Any written representations should be addressed to the Managing Director of the Authority at the address specified in the Warning Notice.

6.5.5 If the Authority receives no response or representations within the period specified in the Warning Notice, the Authority may regard as undisputed the allegations or matters detailed in the Warning Notice and issue a Decision Notice, as set out in Section 6.6 of this procedure.

6.5.6 Upon receiving written representations in relation to a Warning Notice that has been issued, the Authority will have two options available to it. If the Authority is of the view that its concerns stated in the Warning Notice have not been sufficiently addressed by the person concerned in his representations, it will issue a Decision Notice, which will be a decision to take the proposed action stated in the Warning Notice. The process for issuing a Decision Notice is detailed in Section 6.6 of this policy. If the Authority decides not to proceed with the proposed action stated in a Warning Notice, it will notify all interested parties of its decision not to proceed.

6.6 Issuing a Notice of Decision

6.6.1 If the Authority decides to take the action proposed in its Warning Notice or other action in the circumstances set out in paragraph 6.3, it will issue a Notice of Decision.



6.6.2 Once the Authority has determined that a Notice of Decision is to be issued, such notice will:

- (i) Be in writing;
- (ii) State the decision taken by the Authority;
- (iii) State the Authority's reasons to take the action to which the Notice of Decision relates;
- (iv) State the date the Authority's decision is effective.

6.6.3 There may be exceptional circumstances in which the Authority is unable to or determines it is inappropriate to disclose the reasons for the decision. Such situations would include:

- Information between the Authority and its professional legal advisor;
- Information which a court has directed is not to be disclosed;
- Information indicating knowledge or suspicion that the Applicant or another person is engaged in money laundering or terrorist financing activity;
- Information received from a regulatory or law enforcement authority;
- Information received on a confidential basis;
- Where the disclosure of information could adversely affect the national interest, including the national security, of the Cayman Islands; or,
- Where it is in the public interest to do so.

In these exceptional circumstances, the decision not to disclose the reasons will be approved by the Board of the Authority.



6.6.4 The Authority will send a Notice of Decision to all interested parties, including:

- (i) The Person affected by the decision;
- (ii) The Licensee, if not (i);
- (iii) The person acting for or managing the license.

6.6.5 The Notice of Decision is final, subject to any statutory right to apply for reconsideration or appeal.

6.6.6 A sample Notice of Decision is attached as Appendix 2.

No Notice Procedure

6.7 The Authority will make regulatory decisions that fall outside this procedure. These will include the exercise of statutory powers where time is of the essence in order to protect the interests of stakeholders or depositors and the decision is expected to be for a period of time (e.g. appointment of a controller, advisor or actuary; the suspension of a license), where the affected persons have the right to be heard in court (e.g. appointment of liquidators or the assessment of penalties/fines), or where it is in the public interest to do so.

7 Publicity and Confidentiality

7.1 For reasons of confidentiality, the Authority is not permitted to disclose any information relating to the affairs of the Authority, any application made to the Authority under the regulatory laws, the affairs of a licensee, or the affairs of a stakeholder that he has acquired in the course of his duties or in the exercise of the Authority's functions, except in the



performance of its duties under the law. The Monetary Authority Law lists those limited circumstances where disclosure is permitted.

- 7.2 The Authority will therefore not normally disclose details of the information received or the findings or recommendations made during an investigation. This would include disclosure of any enforcement actions that have not been notified in the Cayman Islands Gazette nor are in the public domain, for example the appointment of controllers or advisors and the substitution of directors. In many cases, the statutory and contractual restrictions of confidentiality prevent any disclosure of such information.

8 The Authority's Approach in Urgent Situations

- 8.1 There will be situations where the Authority will need to deal with a matter urgently, for example when it is in the public interest to do so, and where it will be necessary to use its statutory powers immediately.
- 8.2 It is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, however they are likely to include one or more of the following characteristics:
- 8.2.1 Information indicating a significant loss, risk of loss, or other adverse effects for stakeholders, where action is necessary to protect their interests;
 - 8.2.2 Information indicating that a licensee's conduct has put it at risk of being used for the purposes of financial crime, or of being involved in such crime;



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- 8.2.3 Evidence that the licensee has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the licensee's ability to meet its regulatory obligations; and,
- 8.2.4 Circumstances suggesting a serious problem within a licensee or with the licensee's management that call into question the licensee's ability to continue to meet the regulatory requirements.
- 8.3 Whether the urgent exercise of powers is an appropriate response to serious concerns will depend on a number of factors, which include but are not limited to:
- 8.3.1 The seriousness of any suspected breach of the regulations and the steps required to taken to correct the breach;
 - 8.3.2 The financial resources of the licensee;
 - 8.3.3 The risk that the licensee's business may be used or has been used to facilitate financial crime or to launder the proceeds of crime;
 - 8.3.4 The risk that the licensee's conduct or business presents to the financial system and to confidence in the financial system;
 - 8.3.5 The licensee's conduct;
 - 8.3.6 The extent of any loss, or risk of loss or other adverse effect on stakeholders;
 - 8.3.7 The extent to which the stakeholder's assets appear to be at risk;



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- 8.3.8 The nature and extent of any false or inaccurate information provided by the licensee; and,
- 8.3.9 The impact that use of the Authority's powers will have on the licensee and on its stakeholders.
- 8.4 In these cases, it may not be appropriate or effective for the supervisory division to progress a matter through all the stages under the ladder of compliance, and it may be more appropriate or effective to delegate the matter to the Compliance Division immediately.
- 8.5 In order to deal with the matter expeditiously it may also be necessary for the Board of the Authority and/or Management Committee to delegate authority to one or more persons in pursuing disciplinary action.

9 Enforcement Actions Available

- 9.1 The Authority has a range of enforcement powers and in any particular enforcement situation, the Authority may need to consider the power to use and whether to use one or more of the powers.
- 9.2 The actions that the Authority may take include:
- 9.2.1 Suspension of the license of a licensee and preservation of its records;
 - 9.2.2 Revocation of the licence of a licensee;



9.2.3 Requiring the substitution of a director, operator, senior officer, general partner, promoter, insurance manager or shareholder of the licensee (as applicable);

9.2.4 Appointing a person to assume control of the affairs of the licensee;

9.2.5 Appointing a person to advise the licensee on the proper conduct of its affairs;

9.2.6 Applying to the Grand Court of the Cayman Islands for and order directing that:–

9.2.6.1 The company to be wound up in accordance with the Companies Law;

9.2.6.2 The trustee wind up the trust; or,

9.2.6.3 The partnership be dissolved.

9.2.7 Prosecution of offences and the assessment of fines and penalties.

10 Suspension of Licence and Preservation of Records

Application

10.1 This enforcement action only applies to those licensees subject to the Insurance Law.

Purpose

10.2 The suspension of license and, if appropriate, preservation of records, is used by the Authority to fulfil its regulatory objectives. It is employed



when the licensee's business has severe problems that require that operations be suspended for a period of time, usually short term, with the intent that the licensee will restructure its business or management to bring it into compliance with the regulations.

Criteria

- 10.3 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to suspend a licensee's license and, if appropriate, preserve the records of the licensee. The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but is not limited to, the following:
- 10.3.1 The seriousness of any suspected breach of the regulations and the steps required to be taken to correct the breach. If the breach can be corrected in the short term, then suspension may be appropriate.
 - 10.3.2 The extent of any loss, or risk of loss or other adverse effect on stakeholders. Where the extent of loss is none or minimal, the suspension of the license will not adversely affect the position.
 - 10.3.3 The extent to which the stakeholders' assets appear to be at risk. Suspension is appropriate when it is necessary to freeze any further payments out of the licensee.
 - 10.3.4 The financial resources of the licensee. The greater the financial resources, the more likely that the problem can be rectified in the short term.
 - 10.3.5 Management's present and historical attitude to resolving problems. If management or the directors have had an open and



co-operative attitude to resolving the problem, then suspension of the license may be appropriate. And,

10.3.6 The availability of possible solutions to rectifying the problem in the short term, for example investment of additional capital, implementation of a new business plan or a change in management.

10.4 The suspension of the license and, if appropriate, preservation of records, should only be taken when the problem is expected to exist in the short term.

Implementation

10.5 Once the Authority has decided and has received the necessary resolution to suspend a licensee's license (and if appropriate, preserve the records of the licensee), the Authority will take the following steps to implement the suspension.

10.5.1 Communicate the suspension to the persons or entities responsible for managing the licensee;

10.5.2 Notify the public of the suspension in the Cayman Islands Gazette; and,

10.5.3 Determine whether it is necessary to apply ex parte to the Grand Court of the Cayman Islands for an order that the assets, books or papers of the licensee be preserved, not moved or otherwise disposed.

11 Revocation of Licence



Application

- 11.1 This enforcement action applies to all licensees, except registered and administered mutual funds, building societies and cooperative societies.

Purpose

- 11.2 The revocation of license is used by the Authority to fulfil its regulatory objectives. It is employed when the licensee is in serious contravention of the regulations. Because the revocation does not necessarily cause the entity to cease to operate, often steps will be taken to have the entity struck from the companies' register.

Where third party stakeholders' interests are at risk, the Authority may consider taking other enforcement action, for example the appointment of a controller, before resorting to revocation.

Criteria

- 11.3 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to revoke a licensee's license. The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but is not limited to, the following:
- 11.3.1 The seriousness of any suspected breach of the regulations and the steps required to be taken to correct the breach. If the breach is not considered to be a matter of public interest, then revocation may be appropriate.
 - 11.3.2 The extent of any loss, or risk of loss or other adverse effect on stakeholders. Where the extent of loss, risk of loss or



adverse effect is none or minimal, the revocation of the license may be appropriate.

- 11.3.3 The extent to which the stakeholder's assets appear to be at risk. Revocation is appropriate when third parties have no or minimal assets at risk.
- 11.3.4 The financial resources of the licensee. The lack of liquid assets, particularly locally, would suggest that revocation is appropriate.
- 11.3.5 The availability of possible solutions. Where there are limited options available to rectifying the problem, revocation may be appropriate.

Implementation

- 11.4 Section 6 of the Manual sets out the procedures that should be followed when the Authority is proposing to revoke a license.
- 11.5 Once the Authority has decided and has received the necessary resolution to revoke a licensee's license, the Authority will take the following steps to implement the revocation.
 - 11.5.1 Communicate the revocation to the persons or entities responsible for managing the licensee;
 - 11.5.2 Notify the public of the revocation in the Cayman Islands Gazette.



12 Substitution of a Director, Operator, Senior Officer, General Partner, Promoter, Insurance Manager or Shareholder (as applicable)

The *Procedures – Assessing Fitness and Propriety* set out and establish the procedures that the Authority will take to assess the fitness and propriety of persons who have applied to act or are existing directors, operators, senior officers, general partners, promoters, insurance managers or shareholders of licensed entities.

13 Appointment of a Controller

Application

13.1 This enforcement action applies to all licensees.

Purpose

13.2 The appointment of a person to assume control of the affairs of a licensee (the “Controller”) is used by the Authority to fulfil its regulatory objectives, protect stakeholders and reduce financial crime by, amongst other things, enabling it to:

13.2.1 Stop licensees and unauthorised persons carrying on insolvent or unlawful business, and

13.2.2 Protect the assets of the company.

13.3 A Controller is appointed at the expense of the licensee.

Criteria

13.4 The Authority takes full account of the principle consistently adopted by the courts that recourse to the appointment of a Controller is a step to be



taken when there are serious concerns regarding the solvency and lawfulness of the licensee's business.

- 13.5 It will consider the relevant circumstances of each case when deciding whether to use its powers and exercise its rights. The Authority will also consider the other powers available to it under the regulations and to the stakeholders of the licensee, and the extent to which the use of the other powers meets the needs of stakeholders as a whole and the Authority's regulatory objectives.
- 13.6 The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but is not limited to, the following:
- 13.6.1 The seriousness of any suspected breach of the regulations and the steps required to be taken to correct the breach. If the business of the licensee is unlawful, or the breach of the regulations is serious, then the appointment of controller may be appropriate.
 - 13.6.2 The extent of any loss, risk of loss or other adverse effect on stakeholders. Where the extent of loss is significant, the appointment of controller may be appropriate.
 - 13.6.3 The extent to which the stakeholder's assets appear to be at risk. The appointment of controller is appropriate when it is necessary to protect or control the assets of the licensee.
 - 13.6.4 The financial resources of the licensee. Although not absolutely necessary, there should be sufficient assets to pay the costs of the controller.



13.6.5 Management's present and historical attitude to resolving problems. If management or the directors have a history or being difficult or non-cooperative to resolving regulatory problems, then the appointment of controller may be appropriate.

13.6.6 The availability and effectiveness of alternative solutions. The appointment of controller will be used after consideration has been given as to whether an alternative power meets the needs of stakeholders as a whole and the Authority's regulatory objectives.

Preliminary Steps

13.7 Prior to selecting a person or persons to act as Controller, the Authority should attempt to collate the following information, which the potential controller will be interested to receive in considering the appointment:

13.7.1 The type of license and business the licensee is involved in;

13.7.2 The most current financial position and the liquid assets available, particularly locally, to pay the expenses of the controller;

13.7.3 The jurisdiction(s) where the licensee operates;

13.7.4 The names and contact details of the directors and shareholders, and whether they are co-operative;



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- 13.7.5 The names and contact details of the principal service providers and whether they are co-operative;
- 13.7.6 The location of the licensee's books and records, and whether they are complete and up-to-date;
- 13.7.7 Details of the regulatory concerns;
- 13.7.8 Whether the Authority requires a particular concern or concerns to be addressed in the initial report; and,
- 13.7.9 A proposed timetable for appointment and reporting.
- 13.8 When determining which person or persons to appoint as Controller, the Authority will be minded to consider the following:
- 13.8.1 The Authority will collate a list of relevant parties involved with the licensee (including the directors, shareholders, auditors, managers, advisors and other service providers that may carry obligations for the licensee) for the purpose of determining which persons may have a conflict in being appointed.
- 13.8.2 Any person with a direct potential conflict of interest or appearance of a conflict should not be selected for appointment, unless the Authority is persuaded that the potential conflict will not prejudice the independence of that person in performing their duties as Controller.
- 13.8.3 Other factors, for example, expertise in the respective industry, past relationship with the Authority, presence in any foreign jurisdictions where the licensee operates, and available



resources to perform the Controller function and prepare the report, should also be considered when selecting an appropriate person or persons to act as controller.

13.9 As soon as practically possible, and prior to recommending the appointment of a person or persons as Controller, the Authority should perform the following:

13.9.1 Send, on a confidential basis, the list of relevant parties to the potential Controller in order that they may confirm formally that they do not have an actual or potential conflict of interest. If an actual or potential conflict should arise, discussions with the said person should cease and efforts should be taken to determine another candidate for the role.

13.9.2 Upon confirmation that an actual or potential conflict of interest does not exist, steps should be taken to arrange a meeting with the potential Controller to discuss the regulatory issues and the steps they would take upon being appointed as Controller.

13.10 The regulations require that the Controller provide a report within 90 days of the date of appointment. The Authority will determine whether it requires any interim report to be provided earlier. In determining the deadline for an interim report, the Authority may consider the following:

13.10.1 The extent of concern regarding the insolvency or unlawfulness of the licensee's business;



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- 13.10.2 The extent of concern that the assets of the licensee may be at risk of dissipation;
 - 13.10.3 Access to persons with information and book and records, and the extent of such;
 - 13.10.4 The nature and extent of investigation required;
 - 13.10.5 Number of jurisdictions involved;
 - 13.10.6 Public interest considerations.

Implementation

- 13.11 Once the Authority has decided and has received the necessary resolution to appoint a person to take control of the licensee's affairs, the Authority will take the following steps to implement the appointment:
 - 13.12 The terms and conditions of appointment are provided to the Controller.
 - 13.13 Where applicable, the Controller is advised of the requirement to apply to the Grand Court of the Cayman Islands to obtain directions under Section 18 of the Bankruptcy Law.

Communication with the Supervisory Divisions

- 13.14 During the period of controllership, the Authority and the Controller will communicate regarding the Controller's findings and the actions taken. In some instances, it may be appropriate to communicate directly with the Supervisory Division.



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- 13.15 Where the Controller is communicating with the Authority to rectify regulatory problems with a view to having the licensee be in compliance with regulations, it may be appropriate that the controller communicate directly with the Supervisory Division, in order that it may satisfy itself that the proposals being put forward would meet the regulatory requirements.
- 13.16 Despite the above, within the Authority, the supervisory division and the Compliance Division are responsible to ensure that the supervisory division has all pertinent information. In addition, where appropriate, the information should be copied to the Managing Director and the Legal Division.
- 13.17 All discussions of the Authority with the Controller shall be documented.

Controller's Report

- 13.18 The Authority should seek a minimum of four copies of the controller's report, one copy for each of the Compliance Division, supervisory division and Legal Division. The fourth copy should be kept on file.
- 13.19 The Authority will review the report, with specific emphasis on the Controllers' recommendation(s).
- 13.20 It is usually appropriate to arrange a meeting with the Controller after receipt of his report to discuss the report and the recommendation(s).

14 Appointment of an Advisor



Approach

14.1 This enforcement action applies to all licensees.

Purpose

14.2 The appointment of a person to advise the licensees on the conduct of its affairs (the “Advisor”) is used by Authority to fulfil its regulatory objective. It is employed in circumstances where the Authority is of the opinion that the business of the licensee is fundamentally sound but has been mismanaged, where the internal controls or systems of the licensee are weak or where insufficient anti-money laundering policies are in place.

14.3 The Advisor is normally appointed at the expense of the licensee.

Criteria

14.4 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to appoint an Advisor.

14.5 The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but are not limited to, the following:

14.5.1 The seriousness of any suspected breach of the regulations and the steps required to be taken to correct the breach. If the breach is resolvable, then the appointment of Advisor may be appropriate.

14.5.2 The extent of any loss, risk of loss or other adverse effect on stakeholders. Where the extent of the loss is not significant and there is a reasonable expectation that with expert advice the



situation is resolvable, the appointment of Advisor may be appropriate.

- 14.5.3 The extent to which the stakeholder's assets appear to be at risk. The appointment of an Advisor is appropriate when it does not appear that the assets of the licensee are at significant risk.
- 14.5.4 The financial resources of the licensee. There should be sufficient assets to pay the costs of the Advisor and maintain the business of the licensee.
- 14.5.5 Management's present and historical attitude to resolving problems. If management or the directors have a history of being co-operative to resolving regulatory problems, then the appointment of Advisor may be appropriate.
- 14.5.6 The availability and effectiveness of alternative solutions. The appointment of Advisor will be considered prior to more serious powers, where this power meets the needs of stakeholders as a whole and the Authority's regulatory objectives.

Implementation

- 14.6 Once the Authority has decided to appoint an Advisor, the Authority will take the following steps to implement the appointment:
 - 14.6.1 Communicate the appointment to the persons responsible for managing or operating the licensee;
 - 14.6.2 Provide the terms of the appointment to the Advisor;
 - 14.6.3 Communicate the deadline for an interim report and recommendations;
 - 14.6.4 The Advisor will provide advice to the licensee on the steps required or systems to be implemented to put the licensee in



compliance. The Authority must give prior approval to any proposals on the restructuring or reorganisation of the licensee.

15 Winding Up or Dissolution Applications

Application

15.1 This enforcement action applies to all licensees.

Purpose

15.2 The winding up/dissolution of a licensee is normally considered once a person has been appointed a Controller or Advisor. Upon receipt of a report from a Controller or Advisor, the Authority may *inter alia*:

15.2.1 If the licensee is a company, apply to the Grand Court of the Cayman Islands under Section 96 of the Companies Law for the company to be wound up by the Court in accordance with that Law;

15.2.2 If the licensee is an unit trust governed by the laws of the Cayman Islands, apply to the Grand Court of the Cayman Islands for an order directing the trustee to wind up the unit trust; or,

15.2.3 If the licensee is a partnership governed by the laws of the Cayman Islands, apply to the Grand Court for an order to dissolve the partnership.

15.3 The winding up/dissolution of a licensee is used by the Authority to fulfil its regulatory objectives, protecting stakeholders and reducing financial crime by, amongst other things, enabling it to:



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- 15.3.1 Stop licensees and unauthorised persons carrying on insolvent or unlawful business, and
- 15.3.2 Ensure the orderly realisation and distribution of their assets.

Criteria

- 15.4 The Authority takes full account of the principle consistently adopted by the courts that recourse to the winding up/dissolution of the licensee is a step to be taken for the benefit of creditors as a whole. It also takes full account of the fact that the court will have regard to public interest when considering whether to wind up/dissolve a licensee on the grounds that it is just and equitable to do so. The Authority will use its powers to seek the winding up/dissolution of the licensee with these in mind.
- 15.5 The Authority will consider the recommendations of the Controller or Advisor and the facts of each case when deciding whether to use its powers and exercise its rights. The Authority will also consider the other powers available to it under the regulations and to the stakeholders of the licensee, and the extent to which the use of the other powers meets the needs of stakeholders as a whole and the Authority's regulatory objectives.
- 15.6 The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but is not limited to, the following:
- 15.6.1 Whether the licensee has taken or is taking steps to deal with its insolvency, including petitioning for its own compulsory winding up/dissolution, placing itself into voluntary



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- liquidation/dissolution or proposing to enter into a voluntary arrangement, and the effectiveness of these steps.
- 15.6.2 Whether any stakeholder or other creditor of the licensee has taken steps to petition the licensee into liquidation/dissolution;
- 15.6.3 The effect on the licensee and on the creditors if the licensee is wound up/dissolved;
- 15.6.4 Whether the use of other powers available to the Authority will achieve the same or a more advantageous result in terms of protection of consumers, and of market confidence and the restraint and remedy of unlawful activity.
- 15.6.5 The nature and extent of the licensee's assets and liabilities, and in particular whether the licensee holds stakeholders assets and whether its secured and preferred liabilities are likely to exceed available assets.
- 15.6.6 Whether there is a significant cross border or international element to the business of the licensee and the effect on foreign assets or on the continuation of the business abroad of making a winding up/dissolution order.
- 15.6.7 Whether there is an advantage to seeking a moratorium in relation to proceeding against the licensee.
- 15.7 When deciding whether to petition on the grounds that it is just and equitable for the licensee to be wound up/dissolved, regardless of whether the licensee is able to pay its debts, the Authority will consider the relevant facts including:



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- 15.7.1 Whether the interests of the stakeholders and the public interest require the licensee to cease to operate;
 - 15.7.2 The need to protect stakeholders' claims and stakeholder assets.
 - 15.7.3 Whether the interests of stakeholders and the public interest can be met instead by the use of other powers available to the Authority.
 - 15.7.4 Whether the licensee appears to have been or has been involved in financial crime or appears to be or has been used as a vehicle for financial crime.

Also, where appropriate, the Authority will take the following factors into account:

- 15.7.5 The complexity of the licensee (as this may have a bearing on the effectiveness of winding up/dissolution or any alternative action);
- 15.7.6 Whether there is significant cross border or international element to the business being carried on by the licensee and the impact on the business in other jurisdictions.
- 15.7.7 The adequacy and reliability of the licensee's accounting or administrative records.
- 15.7.8 The extent to which the licensee's management has co-operated with the Authority.



Implementation

15.8 Once the Authority has decided and has received the necessary resolution to apply to the Grand Court of the Cayman Islands to wind up/dissolve the licensee, the Authority will take the following steps.

15.8.1 The Authority will arrange either in their role as petitioner to file the appropriate legal documentation with the Grand Court of the Cayman Islands.

15.8.2 Such documents must be served on such parties as required by the Companies Law.

15.8.3 Publication of the petition must be filed in the Cayman Islands Gazette.

15.8.4 The Legal Advisor(s) and the person swearing the affidavit should attend the petition.

15.8.5 The Authority will co-ordinate finalisation of the sealed order winding up/dissolving the licensee and delivery of such upon the court appointed liquidators.

16 Prosecution of Offences and Assessment of Fines and Penalties

Application

16.1 This enforcement action applies to all licensees, those carrying on business without being a holder of a current relevant license, operators and auditors.



Purpose

16.2 The prosecution of offences and assessment of fines are regulatory tools the Authority may employ to help it to achieve its regulatory objectives. The principal purpose of prosecuting offences and assessing fines is to promote high standards of regulatory conduct by deterring licensees and persons who have breached regulatory requirements from committing contraventions, helping to deter other licensees and persons from committing contraventions, and by demonstrating generally to licensees and persons the benefits of compliant behaviour.

Criteria

16.3 The Authority attaches considerable importance to two matters:

16.3.1 Those persons or entities carrying on business being properly licensed. This allows the Authority to determine whether a person is a fit and proper person to hold a position as director, manager or officer of a licensee and to properly regulate the business of the licensee once its licence has been approved.

16.3.2 Licensees making timely submission of reports and relevant documents. This is because the information that they contain is essential to the Authority's assessment of whether the licensee is complying with the requirements and standards under the regulatory regime and the Authority's understanding of the licensee's business.

16.4 The regulations specify the contraventions that result in a licensee or person being guilty of an offence and liable upon conviction to a fine, and the amount of the applicable fine.



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- 16.5 This enforcement action is to be used after consideration has been given as to whether an alternative power meets the Authority's regulatory objectives.
- 16.6 In certain cases, the Authority may consider that although a contravention has taken place, it may not be appropriate or beneficial from a regulatory point of view to bring formal disciplinary action against the licensee or person and where the prosecution of offences and assessment of fines will achieve the regulatory objectives.

Implementation

- 16.7 Once the Authority has decided that this enforcement action is appropriate, it will be necessary for the Authority to make a recommendation to the Attorney General to commence proceedings against the licensee or person. The Attorney General would thereupon be responsible for prosecuting the offence and convicting the licensee or person, which, if convicted, the amount of the fine would be determined and be liable.



17 Glossary of Terms

The preceding document makes use of various terms that have the meanings set out below.

Advisor	A person appointed at the expense of the licensee to advise on the proper conduct of its affairs
Authority	The Cayman Islands Monetary Authority established under the Monetary Authority Law
Behaviour	Any kind of conduct, including action or inaction
Board of the Authority	Means the board of directors established under the Monetary Authority Law
Company	Any body corporate constituted under the laws of the Cayman Islands
Controller	A person appointed at the expense of the licensee to assume control of the affairs of the licensee
Controllership	A licensee in which a controller has been appointed
Financial crime	Any kind of criminal conduct relating to money or to financial services or markets, including any offence involving: <ul style="list-style-type: none"> (a) fraud or dishonesty; (b) misconduct in, or misuse of information relating to, a financial market; or, (c) handling the proceeds of crime.
Insurance Manager	Means a company operating or from within the Cayman Islands which provides insurance expertise and which has in its bona fide employment a person who is qualified or in good



	standing, as defined in the Insurance Law
Licensee	Means a person holding a license under the regulatory laws, and includes a building society, a credit union, and administered or registered mutual funds
Liquidator	A person appointed by the Grand Court of the Cayman Islands to wind up the company or unit trust
Managing Director	Means the managing director of the Authority appointed under the Monetary Authority Law
Money Laundering	The process by which the direct or indirect benefit of crime is channelled through financial institutions to conceal the true origin and ownership of the proceeds of criminal activities, and means doing any act which constitutes an offence under the Proceeds of Criminal Conduct Law or, in the case of an act done otherwise than in the Cayman Islands, would constitute such an offence if done in the Cayman Islands.
Officer	In relation to a body corporate, a director, a member of the committee of management, chief executive (however described), manager, secretary, operator or other similar officer of the body, or a person purporting to act in that capacity
Operator	Means a director of a company, a trustee of a trust, or a general partner of a partnership
Promoter	Means, in respect of a mutual fund or proposed mutual fund, any person whether within or without the Cayman Islands who causes the preparation or distribution or an offering document in respect of



	the mutual fund or proposed mutual fund but does not include a professional advisor acting for or on behalf of such a person
Regulatory functions	Means the function of the Authority, or functions corresponding to such functions, and any other similar functions relating to the companies or financial services as may be specified in the regulations.
Regulatory laws or regulations	Means any one or more of the: <ul style="list-style-type: none"> (a) Banks and Trust Companies Law (b) Buildings Societies Law (c) Companies Management Law (d) Cooperative Societies Law (e) Insurance Law (f) Money Services Law (g) Mutual Funds Law (h) Securities Investment Business Law and any other laws that may be prescribed by the Governor by regulations made under the Monetary Authority Law. This also includes any rules, statements of principle or guidance issued in accordance with the Monetary Authority Law.
Regulatory objectives	The objectives of the Authority, in performing its regulatory functions
Stakeholder	Means a depositor, investor, policyholder, client, customer, creditor and member of, or a company or mutual fund managed by, a Licensee.
Supervisory Division	Means one of the following divisions within the Authority: Banking Division, Fiduciary Services Division, Investments & Securities Division, or Insurance Division.



Unit Trust

Means a trust established by a trustee and issues trust units, as defined in the Mutual Funds Law



Appendix 1

Date:

To: [Firm or other person]

Of: [Address]

WARNING NOTICE

TAKE NOTICE: The Cayman Islands Monetary Authority of 80e Shedden Road, Elizabethan Square, P.O. Box 10052 APO, Grand Cayman, Cayman Islands, BWI (the “Authority”) proposes to take the following action.

PROPOSED ACTION

[Details of proposed action]

REASONS

[Reasons for proposed action]

NOTICE OF REPRESENTATION

You may make written representations to the Authority. If you wish to make such representations you must do so within 28 days of receiving this Warning Notice, or such longer period as requested of, and approved by the Authority. Written representations should be made to the Managing Directors of the Authority, at the above address.

Please contact [contact name and details] at the Authority for more information.

Cindy Scotland (Mrs.)
Managing Director



Cayman Islands Monetary Authority

Appendix 2

Date:

To: [Firm or other person]

Of: [Address]

DECISION NOTICE

TAKE NOTICE: The Cayman Islands Monetary Authority of 80e Shedden Road, Elizabethan Square, P.O. Box 10052 APO, Grand Cayman, Cayman Islands, BWI (the “Authority”) has decided to take the following action.

ACTION

[Details of action]

REASONS

[Reasons for the Authority’s decision to take the action]

EFFECTIVE DATE OF DECISION

The Authority’s decision regarding the above action is effective [date].

Cindy Scotland (Mrs.)
Managing Director
Cayman Islands Monetary Authority