



CAYMAN ISLANDS MONETARY AUTHORITY

February 2018

Cayman Islands Monetary Authority 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 by licensees and registrants with the regulatory laws or the Anti-Money Laundering Regulations.

2. Introduction

2.1 Pursuant to section 6(1)(b) of the Monetary Authority Law (2016 Revision) ("the Law"), one of the principal functions of the Cayman Islands Monetary Authority ("CIMA" or "the Authority") is:

"b) *regulatory functions, namely -*

- (i) to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;*
- (ii) to monitor compliance with the money laundering regulations; and*
- (iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;"*

2.2 The Authority, in its role as financial sector regulator, is responsible for exercising the enforcement powers granted to it by regulatory laws and Anti-Money Laundering Regulations and any other legal instrument enacted by the Cayman Islands Government from time to time.

2.3 This document establishes the procedures the Authority will utilise in the process of undertaking enforcement action against licensees and registrants for non-compliance with relevant legislative and regulatory instruments. Where the Authority is establishing requirements for remedial action to be taken by licensees and registrants, outside of the enforcement regime, CIMA may utilise the procedures herein if they are deemed suitable in such cases. CIMA may utilise other means of executing this function, as deemed appropriate.

2.4 This Manual should be read in conjunction with the revised *Procedure for Appointing Controllers and Advisors; and Auditors for Anti-Money Laundering Audits and Assessing Costs*.



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3. Scope of Application

3.1 This Manual applies to all parties subject to the Authority's regulatory functions.

4. Definitions

4.1 For the purpose of this Manual, the definitions below are provided.

- a) **Advisor:** means a person appointed to advise on the proper conduct of affairs of a licensee or registrant.
- b) **Anti-Money Laundering Regulations:** means the Anti-Money Laundering Regulations issued pursuant to the Proceeds of Crime Law, and includes any guidance issued in relation thereto.
- c) **Authority:** means the Cayman Islands Monetary Authority established under the Monetary Authority Law.
- d) **Behaviour:** means any kind of conduct, including action or inaction.
- e) **Board of the Authority:** means the board of directors established under the Monetary Authority Law.
- f) **Company:** means any body corporate formed or registered under the Companies Law (2016 Revision) or the Limited Liability Companies Law (2016 Revision) of the Cayman Islands, and includes foreign companies.
- g) **Controller:** means a person appointed to assume control of the affairs of a licensee or registrant.
- h) **Controllership:** means a licensee or registrant in which a Controller has been appointed.
- i) **Financial crime:** means any kind of criminal conduct relating to money or to financial services or markets, including any offence involving:
 - i. fraud or dishonesty;
 - ii. misconduct in, or misuse of information relating to a financial market; or
 - iii. handling the proceeds of crime, and includes money laundering, terrorism financing, or proliferation financing.



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- j) **Licensee:** means a person licensed under the regulatory laws, and includes a building society, a credit union and a development bank unless otherwise stated.
- k) **Liquidator:** means a person appointed by the Grand Court of the Cayman Islands to wind up a company, partnership, limited liability company, or unit trust.
- l) **Managing Director:** means the managing director of the Authority appointed under the Monetary Authority Law.
- m) **Money Laundering:** means doing any act which constitutes an offence under sections 19 to 22 of the Terrorism Law or section 144 (10) of the Proceeds of Crime Law or, in the case of an act done otherwise than in the Islands, would constitute such an offence if done in the Islands.
- n) **Officer:** means 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.
- o) **Operator:** means a director of a company, a manager or managing member of a limited liability company, a trustee of a trust, or a general partner of a partnership.
- p) **Party:** means a person, licensee, registrant, or other entity subject to the Authority's regulatory functions under the regulatory laws or monitored by the Authority under the Anti-Money Laundering Regulations.
- q) **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.
- r) **Regulatory Functions:** means the functions of the Authority specified in the Monetary Authority Law, or functions corresponding to such functions, and any other similar functions relating to the companies or financial services as may be specified in the regulatory laws



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- s) **Registrant:** means a person registered under the regulatory laws, and includes administered mutual funds
- t) **Regulatory laws:** means any one or more of the following:
- i. Banks and Trust Companies Law
 - ii. Buildings Societies Law
 - iii. Companies Management Law
 - iv. Cooperative Societies Law
 - v. Development Bank Law
 - vi. Directors Registration and Licensing Law
 - vii. Insurance Law
 - viii. Money Services Law
 - ix. Mutual Funds Law
 - x. Securities Investment Business Law
- and any other laws that may be prescribed by the Governor by regulations made under the Monetary Authority Law. This includes any rules, statements of principle or guidance issued in accordance with the Monetary Authority Law, and regulations made under the Monetary Authority Law or the regulatory laws
- u) **Receiver:** means a person appointed by the Grand Court of the Cayman Islands to manage the assets attributable to a particular segregated portfolio of a segregated portfolio company for the purposes of the orderly closing down of the business of or attributable to the segregated portfolio.
- v) **Regulatory objectives:** means the objectives of the Authority specified in the Monetary Authority Law.
- w) **Stakeholder:** means a depositor, investor, policyholder, client, customer, creditor, or member of, or an entity managed or administered by, a licensee or registrant.
- x) **Supervisory division:** means one of the following divisions within the Authority: Banking Supervision Division, Fiduciary Services Division, Investments Supervision Division, Insurance Supervision Division, or Securities Supervision Division.
- y) **Unit Trust:** means a trust established by a trustee and issues trust units, as defined in the Mutual Funds Law.

5. Approach to Enforcement



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- 5.1 The Authority's effective and proportionate use of its powers to enforce the requirements of the regulatory laws and other relevant legislation (such as the Anti-Money Laundering Regulations) plays an important role in the pursuit of its regulatory objectives.
- 5.2 The Authority has a range of regulatory tools available to help it meet its regulatory objectives.
- 5.3 There are a number of principles underlying the Authority's approach to the exercise of its enforcement powers:
 - 5.3.1 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;
 - 5.3.2 The Authority uses a risk-based supervisory approach and its enforcement actions and procedures are aligned with this approach;
 - 5.3.3 The Authority will seek to exercise its enforcement powers in a manner that is transparent, lawful, rational, proportionate, and consistent with its publicly stated policies and guidelines;
 - 5.3.4 The Authority will pursue enforcement action that is timely and effective in dissuading licensees and registrants from future contraventions of the laws and regulations of the Cayman Islands; and
 - 5.3.5 The Authority will exercise its enforcement powers in a manner that is procedurally fair.
- 5.4 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 party, 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.
- 5.5 The Authority will therefore not normally disclose details of the information received or the findings or requirements 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.

6. The Compliance Procedure



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- 6.1 The ultimate objective is to ensure that parties comply with all relevant aspects of the regulatory laws and the Anti-Money Laundering Regulations, through the use of a clear procedure for enforcement action when necessary.
- 6.2 Parties must demonstrate a high level of responsibility in ensuring compliance with the regulatory laws and the Anti-Money Laundering Regulations of the Cayman Islands. Parties that fail to comply run the risk of negatively impacting the interests of stakeholders, financial stability and the wider economy; and harming their own reputation and the reputation of the Cayman Islands as a well-regulated international financial centre.
- 6.3 The broad areas of concern (hereinafter referred to as "contravention") that may result in the Authority taking action include, when a party:
- (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, including increasing risk exposures without the required enhancements to its risk management framework;
 - (c) Contravenes regulatory laws or the Anti-Money Laundering Regulations of the Cayman Islands;
 - (d) Fails to comply with a condition of its licence or registration; or
 - (e) Breaches a rule.
- 6.4 The Authority's Supervisory and Compliance Divisions, in considering what action to recommend that the Authority take in the event of a concern arising, 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 extent of the risk posed by the contravention, to the viability of the party and the overall stability of the financial system;
 - (d) The ability and extent to which remedial action will rectify the contravention;
 - (e) The willingness and ability of the party to cooperate with and assist the Authority with its investigations and in implementing its requirements. This includes how quickly, effectively and completely the party brought the contravention to the attention



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of the Authority; the degree and timeliness of cooperation in meeting the requests of the Authority for information, documents etc; any remedial actions the party 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;

- (f) The compliance history of the party. This includes whether the Authority or any other regulator has taken any previous action against the party; whether the party has previously failed to comply with conditions on its licence/registration or directions of the Authority; and the general compliance history of the party in terms of any other correspondence considered relevant by the Authority;
- (g) The amount of the loss incurred or any benefit lost as a result of the contravention;
- (h) The nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention;
- (i) The nature and extent of civil and/or criminal proceedings that have been or are expected to be commenced against the party or any of its directors and/or shareholders;
- (j) The extent to which the directors and officers have acted in a fit and proper manner;
- (k) 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;
- (l) Whether any rules or guidance have been issued in respect of the contravention and, if so, the extent to which the party has followed the relevant rules or guidance; and
- (m) Action taken by the Authority or other regulatory authorities in previous similar cases.

6.5 The Authority will notify the party of the action that will be taken by the Authority according to the nature of the contravention and upon consideration of the factors listed above in Section 6.4.

6.6 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 party and the steps taken by the Division relating to the party and the contravention.



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6.7 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.

7. Information Gathering and Investigation Powers

7.1 The regulatory laws give the Authority the powers to examine the affairs or business of any party regulated under the regulatory laws.

7.2 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 believed to have information relevant to an enquiry by the Authority:

7.2.1 To provide specified information or information of a specified description; or

7.2.2 To produce specified documents or documents of a specified description.

7.2.3 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.

7.3 Where documents are produced pursuant to these powers, the Authority may take copies of them or extracts from them.

7.4 Under Section 34(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 believed to have information relevant to any enquiries to which the request relates:

7.4.1 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

7.4.2 To produce specified documents or documents of a specified description to those inquiries; or,



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7.4.3 To give to the Authority such assistance in connection with those inquiries as the Authority may specify in writing.

7.5 The matters that must be satisfied prior to the Authority exercising its powers are set out in the Monetary Authority Law.

7.6 Furthermore, many of the regulatory laws 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.

8. Access to the Records of the Authority

8.1 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 party.

8.2 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.

9. Decision Making

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

9.1.1 Those that the Authority may exercise by the warning notice and decision notice procedure; and

9.1.2 Those that the Authority may exercise actions without the warning notice and decision notice procedure.

The Warning and Decision Notice Procedure

9.2 The purpose of issuing Warning Notices is to give reasonable opportunity for parties affected by enforcement decisions of the Authority to make representation to the Authority prior to those decisions being finalised.

9.3 This procedure is relevant to the following regulatory decisions:



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- (a) suspension of the licence of a licensee;
- (b) suspension of the registration of a registrant;
- (c) revocation of the licence of a licensee or cancellation of a registration of a registrant;
- (d) imposition or amendment of conditions or imposition of further conditions on a licence or registration;
- (e) requiring the substitution of a director, operator, senior officer, general partner, promoter, manager or shareholder of a licensee or registrant (as applicable); or
- (f) requiring licensees or registrants to take such action as the Authority reasonably believes necessary.

9.4 *Issuing a Warning Notice*

- 9.4.1 Subject to paragraph 9.7 below, if the Authority is contemplating to proceed with one of the regulatory decisions discussed in section 9.3, 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.
- 9.4.2 Once the Authority has determined that a Warning Notice is to be issued, such notice will:
 - (i) Be in writing;
 - (ii) State the action that the Authority proposes to take; and
 - (iii) Document the Authority's reason for the proposed action.
- 9.4.3 The Warning Notice will contain a statement that the affected party may make written representations to the Authority. The notice will specify a reasonable period of up to 30 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.
- 9.4.4 The Authority may expand or amend the scope of its action; and/or shorten the Warning Notice period, at its discretion.
- 9.4.5 A sample Warning Notice is attached as Appendix 1.
- 9.4.6 There may be exceptional circumstances in which the Authority is unable to disclose full reasons for the proposed decision. Such situations would include:



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- 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 a 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 financial stability or 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 fully disclose reasons will be approved by the Executive Committee of the Board of Directors of the Authority.

9.5 *The Representation Process*

- 9.5.1 In deciding on the length of the representation period, the Authority will have regard to the circumstances of each case, including the complexity of the issues/details surrounding the contravention, the nature of the proposed action and its likely effect on the person concerned. The Authority will also have particular regard to the risk to stakeholders, the financial system and to its regulatory objectives of any delay in imposing the proposed action.
- 9.5.2 After receiving the Warning Notice, if the party concerned believes that the stated period for making representations is inadequate, then he/she may within a period stipulated by the Authority in accordance with the regulatory laws, request the Authority in writing for more time. Requests for an extension of time will be considered by the Authority, which will promptly notify the recipient of the notice whether the request for an extension of time has been accepted. At the discretion of the Authority, each recipient may be granted one extension of up to 14 days.
- 9.5.3 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 9.6 of this Manual.



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9.5.4 Upon receiving written representations in relation to a Warning Notice that has been issued, the Authority will have two options available to it:

- a) If the Authority is of the view that it should take the action presented in the Warning Notice or any other action warranted, it will issue a Decision Notice. The process for issuing a Decision Notice is detailed in Section 9.6 of this Manual.
- b) If the Authority decides not to take any action, it will notify all relevant parties of its decision not to proceed.

9.6 *Issuing a Decision Notice*

9.6.1 If the Authority decides to take the action proposed in its Warning Notice or any other action in the circumstances set out in paragraph 9.3 during the Warning Notice Period, it will issue a Decision Notice.

9.6.2 Once the Authority has determined that a Decision Notice 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 Decision Notice relates; and
- (iv) State the effective date the Authority's decision.

9.6.3 There may be exceptional circumstances in which the Authority is unable to disclose full 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 a 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.



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

- 9.6.4 The Authority will send a Decision Notice to the relevant parties.
- 9.6.5 The Decision Notice is final, subject to any statutory right to apply for reconsideration or appeal.
- 9.6.6 A sample Decision Notice is attached as Appendix 2.

The Decision Procedure In Urgent Situations

- 9.7 There will be situations when the Authority will need to deal with a matter urgently. These will include the exercise of statutory powers where time is of the essence in order to protect the interests of stakeholders; or where there are concerns about the imminent failure of the institution, heightened contagion risks and/or risks to the financial system.
- 9.8 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:
 - 9.8.1 Information indicating a significant loss, risk of loss, or other adverse effects for stakeholders, where action is necessary to protect their interests;
 - 9.8.2 Information indicating that a party's conduct has put it at risk of being used for the purposes of financial crime, or of being involved in such crime;
 - 9.8.3 Evidence that the party has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about a party's viability or ability to meet its regulatory obligations;
 - 9.8.4 Circumstances suggesting a serious problem within a party's structure or with a party's management that call into question the party's ability to continue as a going concern or to meet the regulatory requirements, where that party is a trust, partnership or company;



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- 9.8.5 Evidence that the party is exposed to heightened risk exposure as a result of the lack of fitness and propriety of a director, operator, senior officer, general partner, promoter, or shareholder; and
 - 9.8.6 Information that the direction and management of a licensee's or registrant's business is not conducted in a fit and proper manner and therefore poses significant risk to the entity.
 - 9.9 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:
 - 9.9.1 The seriousness of any suspected contravention of the regulatory laws and Anti-Money Laundering Regulations; and the steps required to taken to correct the contravention;
 - 9.9.2 The risk that the party's conduct or business presents to other financial system participants, the financial system and to confidence in the financial system, including the potential for contagion;
 - 9.9.3 Public interest concerns;
 - 9.9.4 The nature and extent of any false or inaccurate information provided by the party; and,
 - 9.9.5 The impact that use of the Authority's powers will have on the party and on stakeholders.
 - 9.10 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.

10. Enforcement Actions Toolkit

- 10.1 The Authority has a range of enforcement powers and in any particular enforcement situation, the Authority may need to consider the most appropriate power to be used and whether it may be necessary to use one or more of the powers.
- 10.2 The actions that the Authority may take include:



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- 10.2.1 Suspension of the licence of a licensee;
- 10.2.2 Suspension of a registration of a registrant;
- 10.2.3 Revocation of the licence of a licensee or cancellation of a registration of a registrant;
- 10.2.4 Imposition or amendment of conditions or further conditions on a licence or registration;
- 10.2.5 Requiring the substitution of a director, operator, senior officer, general partner, promoter, insurance manager or shareholder of a licensee or registrant (as applicable);
- 10.2.6 Appointing a person to assume control of the affairs of a licensee or registrant;
- 10.2.7 Appointing a person to advise a licensee or registrant on the proper conduct of its affairs;
- 10.2.8 Requiring a licensee, registrant, or other entity to obtain an auditor's report on its anti-money laundering systems and procedures for compliance with the Anti-Money Laundering Regulations;
- 10.2.9 Applying to the Grand Court of the Cayman Islands for an order directing that:-
 - a) The company be wound up in accordance with the Companies Law or a limited liability company be wound up in accordance with the Limited Liability Companies Law;
 - b) The trustee wind up the trust; or
 - c) The partnership be dissolved;
- 10.2.10 Requiring licensees or registrants to take such action as the Authority reasonably believes necessary; and/or
- 10.2.11 Referring contraventions that result in offences and criminal penalties to the appropriate authorities.
- 10.3 The Authority has at its disposal, additional powers that it may utilise to assist entities that are at risk of the imposition of enforcement action. The Authority



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uses the procedure set out in Section 9 when deciding on utilising those powers, which include:

10.3.1 Directing a licensee or registrant to cease or refrain from committing an act that is unsafe or unsound, and perform such actions that are in the opinion of the Authority, necessary to remedy or ameliorate the situation; or

10.3.2 Directing a licensee or registrant to cease or refrain from pursuing a course of conduct that is unsafe or unsound, and perform such actions that are in the opinion of the Authority, necessary to remedy or ameliorate the situation.

11. Suspension of Licence or Registration (Companies, Trusts, Partnerships, Limited Liability Companies)

Application

11.1 This enforcement action applies to licensees and registrants where the licensee or registrant is not a natural person, except building societies, cooperative societies and development banks.

Purpose

11.2 The suspension of a licence or registration is used by the Authority to fulfil its regulatory objectives. It is employed when a licensee's or registrant'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 or registrant will restructure its business or management to bring it into compliance with the relevant regulatory laws or the Anti-Money Laundering Regulations.

Criteria

11.3 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to suspend a licence or registration. 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 regulatory laws or the Anti-Money Laundering Regulations and the steps required to be taken



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to correct the breach. If the breach can be corrected in the short term, then suspension 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 is none or minimal, the suspension of the licence or registration will not adversely affect the position.

11.3.3 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 or registrant.

11.3.4 The financial resources of the licensee or registrant. The greater the financial resources, the more likely that the problem can be rectified in the short term.

11.3.5 The capacity of the licensee or registrant to implement adequate risk management techniques to mitigate the potential loss from exposures. Suspension may not be appropriate in cases where the licensee is ill-equipped or unable to manage its risks.

11.3.6 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 licence or registration may be appropriate.

11.3.7 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.

11.4 The suspension of the licence or registration will only be taken when the problem is expected to exist in the short term.

Implementation

11.5 Once the Authority has decided and has received the necessary resolution to suspend a party's licence or registration, the Authority will take the following steps to implement the suspension.

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



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11.5.2 Notify the public of the suspension in the Cayman Islands Gazette;

11.5.3 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 or registrant be preserved, not moved or otherwise disposed.

12. Suspension of Licence or Registration (Natural Persons)

Application

12.1 This enforcement action applies to licensees and registrants who are natural persons.

Purpose

12.2 The suspension of a license or registration is used by the Authority to fulfil its regulatory objectives. Suspension of a natural person's licence or registration is also used in short term situations where a person's ability to carry out its business effectively is under review.

Criteria

12.3 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to suspend a licence or registration. The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but are not limited to:

12.3.1 The seriousness of any suspected breach of the regulatory laws or the Anti-Money Laundering 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.

12.3.2 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 licence or registration will not adversely affect the position.

12.3.3 The extent to which the stakeholders' assets appear to be at risk. Suspension is appropriate when it is necessary to reduce the



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opportunity for a licensee or registrant to continue a course of action or potential course of action.

12.3.4 The availability of possible solutions to rectifying the problem in the short term, for example if there is a discrete timeframe on an outstanding issue.

12.4 The suspension of the licence or registration should only be taken when the problem is expected to exist in the short term.

13. Revocation of Licence or Cancellation of Registration

Application

13.1 This enforcement action applies to all licensees and registrants, except building societies, cooperative societies, and development banks.

Purpose

13.2 The revocation of licence or cancellation of registration is employed when the licensee or registrant is in serious contravention of the regulatory laws or the Anti-Money Laundering Regulations. Because the revocation or cancellation does not necessarily cause the entity to cease to operate, sometimes the Authority will take additional steps to have an entity struck from the companies' register, register of trusts, partnerships, or limited liability companies.

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 or cancellation.

Criteria

13.3 The Authority will consider the relevant circumstances of each case when deciding whether it is appropriate to revoke a licence or cancel a registration. The general factors that the Authority will consider before deciding to exercise this enforcement power may include, but are not limited to:

13.3.1 The seriousness of any suspected breach of the regulatory laws or the Anti-Money Laundering Regulations, the steps required to be taken to correct the breach and the public interest.



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- 13.3.2 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 licence may be appropriate.
- 13.3.3 The extent to which the stakeholders' assets appear to be at risk. Revocation or cancellation is appropriate when third parties have no or minimal assets at risk.
- 13.3.4 The financial resources of the party. The lack of liquid assets, particularly assets held locally, would suggest that revocation or cancellation is appropriate.
- 13.3.5 The extent to which the contravention could pose contagion risks. Where the breach could have adverse implications for other financial system participants or the financial system as a whole, revocation may be appropriate.
- 13.3.6 The party's financial position, specifically as it relates to its solvency position and the potential for continuing operations as a going concern.
- 13.3.7 The availability of alternative solutions. Where there are limited options available to rectifying the problem, revocation or cancellation may be appropriate.

Implementation

- 13.4 Section 9 of the Manual sets out the procedures that should be followed when the Authority is proposing to revoke a licence or cancel a registration.
- 13.5 Once the Authority has decided and has received the necessary resolution to revoke a licence or cancel a registration, the Authority will take the following steps to implement the revocation or cancellation:
 - 13.5.1 Communicate the revocation or cancellation to the persons or entities responsible for managing the licensee or registrant; and
 - 13.5.2 Notify the public of the revocation or cancellation in the Cayman Islands Gazette if required under the relevant regulatory law.
- 14. Substitution of a Director, Operator, Senior Officer, General Partner, Promoter, or Shareholder (as applicable)**



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Application

14.1 This enforcement action applies to all licensees and registrants.

Purpose

14.2 It is a requirement under the regulatory laws that persons carrying out certain functions in a licensee or regulated fund be fit and proper.

14.3 Persons approved by the Authority are expected to remain fit and proper.

Criteria

14.4 The regulatory laws list the following criteria for assessment as to whether a person is fit and proper:

- a) Honesty, integrity and reputation;
- b) Competence and capability; and
- c) Financial soundness.

Implementation

14.5 *The Regulatory Procedure - Assessing Fitness and Propriety* sets out and establishes the procedures that the Authority will take to assess the fitness and propriety of persons who are directors, operators, senior officers, general partners, promoters, insurance managers or shareholders of licensed or registered entities.

14.6 Once the Authority has cause to consider that a person is no longer fit and proper, the Authority will take the following steps:

14.6.1 Issue the licensee, registrant or person in the controlled function a notice of the Authority's assessment in accordance with section 9.4 of the Manual; and provide them with the opportunity to make representations to the Authority within an appropriate timeframe.

14.6.2 The Authority will consider those representations and take a decision on whether the person is fit and proper based on available information.



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- 14.6.3 If the Authority, maintains the view that the person is not fit and proper, the Authority will request that the licensee or registrant remove and replace the person within a reasonable timeframe.

15. Appointment of a Controller

Application

- 15.1 This enforcement action applies to all licensees and registrants, with the exception of development banks.

Purpose

- 15.2 The appointment of a Controller is used by the Authority to fulfil its regulatory objectives, protect stakeholders and reduce financial crime by, amongst other things, enabling it to:

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

15.2.2 Protect the assets of the licensee or registrant.

- 15.3 Pursuant to the regulatory laws, a Controller is appointed at the expense of the licensee or registrant.

Criteria

- 15.4 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 or lawfulness of the licensee's or registrant's business.

- 15.5 The Authority 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 regulatory laws or the Anti-Money Laundering Regulations 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. The Authority also considers the rights of the stakeholders of the licensee or registrant under the regulatory laws.



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

15.6.1 The seriousness of any suspected breach of the regulatory laws or the Anti-Money Laundering Regulations and the steps required to be taken to correct the breach. If the business of the licensee or registrant is unlawful, or the breach of the regulatory laws or the Anti-Money Laundering Regulations is serious, then the appointment of a Controller may be appropriate.

15.6.2 The extent of any loss, risk of loss or other adverse effect on stakeholders. Where the extent of loss is significant, the appointment of a Controller may be appropriate.

15.6.3 The extent to which the stakeholder's assets appear to be at risk. The appointment of a Controller is appropriate when it is necessary to protect or control the assets of the licensee or registrant.

15.6.4 The financial resources of the licensee or registrant. Although not a primary consideration, there should be sufficient assets to pay the costs of the Controller.

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

15.6.6 The extent to which the contravention could pose contagion risks. Where the breach could have adverse implications for other financial system participants or the financial system as a whole, appointment of a Controller may be appropriate.

15.6.7 The entity's financial position, specifically as it relates to its solvency position and the potential for continuing operations as a going concern

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

Implementation



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15.7 Once the Authority has decided and has received the necessary resolution to appoint a person to take control of the licensee's or registrant's affairs, the Authority will take the following steps to implement the appointment:

15.7.1 The terms and conditions of appointment are provided to the Controller.

15.7.2 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.

16. Appointment of an Advisor

Approach

16.1 This enforcement action applies to all licensees and registrants.

Purpose

16.2 The appointment of an Advisor is used by Authority in circumstances where the Authority is of the opinion that the business of the licensee or registrant is fundamentally sound but has been mismanaged, where the internal controls or risk management systems of the licensee or registrant are weak or where insufficient anti-money laundering policies are in place.

16.3 Pursuant to the regulatory laws, the Advisor is appointed at the expense of the licensee or registrant.

Criteria

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

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

16.5.1 The seriousness of any suspected breach of the regulatory laws or the Anti-Money Laundering 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.



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- 16.5.2 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.
- 16.5.3 The extent to which the stakeholders' assets appear to be at risk. The appointment of an Advisor is appropriate when it does not appear that the assets of the licensee or registrant are at significant risk.
- 16.5.4 The financial resources of the licensee or registrant. There should be sufficient assets to pay the costs of the Advisor and maintain the business of the licensee or registrant.
- 16.5.5 Management's capacity to undertake remedial action towards resolving the breaches and to implement systems to avoid future contraventions.
- 16.5.6 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.
- 16.5.7 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

- 16.6 Once the Authority has decided to appoint an Advisor, the Authority will take the following steps to implement the appointment:
 - 16.6.1 Communicate the appointment to the persons responsible for managing or operating the licensee or registrant;
 - 16.6.2 Provide the terms of the appointment to the Advisor or allow the licensee or registrant to appoint their own Advisor on the approval of the Authority;
 - 16.6.3 Communicate the deadline for an interim report and recommendations;



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16.6.4 The Advisor will provide advice to the licensee or registrant on the steps required or systems to be implemented to put the licensee or registrant in compliance. The Authority must give prior approval to any proposals on the restructuring or reorganisation of the licensee or registrant.

16.6.5 The Authority must receive a copy of the Advisor's recommendations and must approve the recommendations before the licensee or registrant can proceed with the implementation. The Authority must receive all reports, interim or final, at the time that they are issued to the licensee or registrant.

16.7 The *Procedure for Appointing Controllers and Advisors; and Auditors for Anti-Money Laundering Audits and Assessing Costs* establishes the procedures for appointing advisors, advisors' reports and meetings, and assessing advisor costs, *inter alia*.

16.8 The Authority also applies the procedures in this section for the appointment of an auditor to conduct an AML audit.

17. Winding Up, Dissolution or Receivership Applications

Application

17.1 This action applies to all licensees and registrants, except for building societies, cooperative societies, and development banks.

17.2 A receiver may only be appointed over a segregated portfolio of a segregated portfolio company, where that segregated portfolio company is not being wound up.

Purpose

17.3 The winding up, dissolution, or appointment of a receiver over a licensee or registrant is considered once a person has been appointed a Controller or Advisor to a licensee or registrant. Upon receipt of a report from a Controller or Advisor, the Authority may:

17.3.1 If the licensee or registrant is a company, apply to the Grand Court of the Cayman Islands for the company to be wound up by the Court;



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- 17.3.2 If the licensee or registrant is a segregated portfolio company, apply to the Grand Court of the Cayman Islands for the appointment of a receiver over one or more of the segregated portfolios of the segregated portfolio company;
 - 17.3.3 If the licensee or registrant is a limited liability company, apply to the Grand Court of the Cayman Islands for the limited liability company to be wound up by the Court;
 - 17.3.4 If the licensee or registrant is a 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 trust; or
 - 17.3.5 If the licensee or registrant is a partnership governed by the laws of the Cayman Islands, apply to the Grand Court for an order to dissolve the partnership.
- 17.4 The winding up, dissolution, or appointment of a receiver over a segregated portfolio, of a licensee or registrant is used by the Authority to fulfil its regulatory objectives, protecting stakeholders and reducing financial crime by, amongst other things, enabling it to:
- 17.4.1 Stop licensees, registrants and unauthorised persons carrying on insolvent or unlawful business, and
 - 17.4.2 Ensure the orderly realisation and distribution of their assets.

Criteria

- 17.5 The Authority takes full account of the principle consistently adopted by the courts that recourse to the winding up, dissolution, or appointment of a receiver over a segregated portfolio, of the licensee or registrant 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, or appoint a receiver over a segregated portfolio of, a licensee or registrant on the grounds that it is just and equitable to do so. The Authority will use its powers with these in mind.
- 17.6 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



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to it under the regulatory laws and to the stakeholders of the licensee or registrant, 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.

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

17.7.1 Whether the licensee or registrant has taken or is taking steps to deal with its insolvency, including:

- a) petitioning for its own compulsory winding up, dissolution or appointment of a receiver over a segregated portfolio;
- b) placing itself into voluntary liquidation, dissolution or appointment of a receiver over a segregated portfolio; or
- c) proposing to enter into a voluntary arrangement;

and the effectiveness of these steps.

17.7.2 Whether any stakeholder or other creditor of the licensee or registrant has taken steps to petition the licensee or registrant into liquidation, dissolution, or the appointment of a receiver over a segregated portfolio.

17.7.3 The effect on the licensee or registrant and on the creditors if the licensee or registrant is wound up, dissolved, or a receiver is appointed over a segregated portfolio.

17.7.4 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.

17.7.5 The nature and extent of the licensee's or registrant's assets and liabilities, and in particular whether the licensee or registrant holds stakeholders' assets and whether its secured and preferred liabilities are likely to exceed available assets.

17.7.6 Whether there is a significant cross border or international element to the business of the licensee or registrant and the effect on foreign assets or on the continuation of the business abroad of making an order for winding up, dissolution, or the appointment of a receiver over a segregated portfolio.



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- 17.7.7 Whether there is an advantage to seeking a moratorium in relation to proceeding against the licensee or registrant.
- 17.8 When deciding whether to petition on the grounds that it is just and equitable for the licensee or registrant to be wound up, dissolved, or a receiver be appointed over a segregated portfolio, regardless of whether the licensee or registrant is able to pay its debts, the Authority will consider the relevant facts including:
- 17.8.1 Whether the interests of the stakeholders and the public interest require the licensee or registrant to cease to operate;
- 17.8.2 The need to protect stakeholders' claims and stakeholder assets.
- 17.8.3 Whether the interests of stakeholders and the public interest can be met instead by the use of other powers available to the Authority.
- 17.8.4 Whether the licensee or registrant 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:
- 17.8.5 The complexity of the licensee or registrant (as this may have a bearing on the effectiveness of winding up, dissolution, or the appointment of a receiver over a segregated portfolio, or any alternative action).
- 17.8.6 Whether there is significant cross border or international element to the business being carried on by the licensee or registrant and the impact on the business in other jurisdictions.
- 17.8.7 The adequacy and reliability of the licensee's or registrant's accounting or administrative records.
- 17.8.8 The extent to which the licensee's or registrant's management has co-operated with the Authority.

Implementation



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17.9 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, or appoint a receiver over a segregated portfolio, of the licensee or registrant, the Authority will take the following steps:

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

17.9.2 Such documents must be served on such parties as required by the relevant Law and the Grand Court Rules.

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

17.9.4 The Legal Counsel(s) and the person swearing the affidavit should attend the petition.

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

18. Prosecution of Offences and Assessment of Fines and Penalties

Application

18.1 This enforcement action applies to all parties, such as licensees or registrants, those carrying on business without being a holder of a current relevant licence, operators and auditors.

Purpose

18.2 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 parties who have breached regulatory requirements from committing contraventions, helping to deter other parties from committing contraventions, and by demonstrating generally to parties the benefits of compliant behaviour.

Criteria



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18.3 The Authority attaches considerable importance to two matters:

18.3.1 Those persons or entities carrying on business being properly licensed or registered. 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 or registrant and to properly regulate the business of the licensee or registrant once its licence or registration has been approved.

18.3.2 Licensees or registrants 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 or registrant is complying with the requirements and standards under the regulatory regime and the Authority's understanding of the licensee's or registrant's business.

18.4 The regulatory laws or the Anti-Money Laundering Regulations specify the contraventions that result in a party being guilty of an offence and liable upon conviction to a fine, and the amount of the applicable fine.

18.5 This enforcement action is to be used after consideration has been given as to whether an alternative power meets the Authority's regulatory objectives.

18.6 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 party and where the prosecution of offences and assessment of fines will achieve the regulatory objectives.

Implementation

18.7 Once the Authority has decided that this enforcement action is appropriate, it will be necessary for the Authority to make a recommendation to the Director of Public Prosecutions to commence proceedings against the party. The Director of Public Prosecutions would thereupon be responsible for prosecuting the offence and convicting the person, which, if convicted, the amount of the fine would be determined and be liable.



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Appendix 1

Date:

To: [Firm or other person]

Of: [Address]

WARNING NOTICE

TAKE NOTICE: The Cayman Islands Monetary Authority of 80 Shedden Road, Elizabethan Square, P.O. Box 10052, Grand Cayman, Cayman Islands, KY1-1001 (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 [xx days] of receiving this Warning Notice, or such longer period as requested of, and approved by the Authority. Where an extension to this time is required, a request for extension must be submitted within [xx days] of receiving the Notice. Written representations should be made to the Managing Director 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



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Appendix 2

Date:

To: [Firm or other person]

Of: [Address]

DECISION NOTICE

TAKE NOTICE: The Cayman Islands Monetary Authority of 80 Shedden Road, Elizabethan Square, P.O. Box 10052, Grand Cayman, Cayman Islands, KY1-1001 (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