

Enforcement Regime

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Enforcement Regime

- BVI regulatory regime
- Role of enforcement action
- Assisting overseas counterparts
- Promoting high standards of regulation



Regulatory Objectives

- The protection of investors
- The protection of the reputation of the Territory as a financial services centre
- The reduction of financial crime



Regulatory Objectives (cont'd)

- The power to grant authorisation
- The power to make rules
- The power to discipline non-compliance with obligations and standards



Underlying Purpose

- Financial services business presents risk
- Rules and requirements aimed at mitigating risks
- Commission's responsibility to monitor and enforce compliance



Authorisation Process

- To filter out potential threats
- Applicant, its directors and senior officers must be fit and proper
- LSC determines applications for licensing and approval of director and senior officer appointments



On going Supervision

- Proactive monitoring to control the risks of financial services business
- Compliance inspections involving an off-site review of records and on-site meetings with management and review of records
- Inspections conducted using “KReview”



Enforcement Process

- Protective measures to secure compliance with regulatory requirements
- In many cases regulatory non-compliance addressed without recourse to enforcement action
- Proportionate response, fairness and consistency



Enforcement Powers

- Different powers aimed at addressing different consequences of regulatory breaches
- Powers aimed at punishing and deterring
- Powers to enable the Commission to prevent breaches



Enforcement Powers (cont'd)

- To promote public awareness of regulatory standards
- To show that regulatory standards are being upheld
- To protect the public interest and the interests of clients, creditors and investors



Enforcement Powers (cont'd)

- Revocation or suspension of licence
- Appointment of examiner
- Appointment of qualified person
- Issue of directive



Enforcement Powers (cont'd)

- Appointment of liquidator
- Imposition of administrative penalty
- Costs and expenses
- Protection orders



Enforcement Powers (cont'd)

- Order preventing the transfer or disposition of property
- Order appointing an administrator to take over and manage licensee
- Order granting a search warrant



Administrative Penalty Regime

- Penalty ranges recognise the differences in licensees' resources
- Range from \$100 to \$20,000
- Notice of intention to impose penalty



Administrative Penalty Regime (cont'd)

- Opportunity to make representations
- Final decision on penalty



Enforcement Committee

- Responsible for decisions on enforcement action
- Guidelines and Operating Procedures set out policies on the used of enforcement powers
- Guiding principles include confidentiality, consistency, fairness and transparency



Regulatory Misconduct

- Breaches of regulatory laws
- Failure to comply with a regulatory requirement
- Conduct giving rise to concerns about fitness and propriety



Regulatory Misconduct (cont'd)

- Conduct that is detrimental to the public interest or the interests of clients, creditors or investors



Investigating Misconduct

- Scope of investigations depends on nature and seriousness of the matter
- Use of information gathering and investigation powers
- Appointment of examiners – firm of auditors or forensic accountants



Appropriate Action

- Nature and seriousness of breach
- Reasonable cause explanation
- Remedial measures
- Other regulatory concerns



Accountability

- Commission accountable to Government
- Decision making processes subject to judicial review
- Decisions subject to appeal to Financial Services Appeal Board



International Cooperation

- Significant feature of enforcement regime
- Seamless flow of information across borders and among agencies
- Domestic efforts alone inadequate in global financial markets



International Cooperation (cont'd)

- Basel Committee, FATF, CFATF, IOSCO and IAIS principles and recommendations to facilitate effective cross border cooperation
- Regulator must have power to assist overseas counterparts



International Cooperation (cont'd)

- Use of information in civil and administrative enforcement proceedings



Conclusion

- Financial regulators must use collaborative efforts to promote highest standards of regulation
- The consequences of waning vigilance in any area may be catastrophic

