

2020 Enforcement Division Annual Report

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Executive Summary

The year 2020 presented several unprecedented challenges, primarily the socioeconomic fallout from the novel coronavirus pandemic. Notwithstanding, the Commission, in keeping with its core principles, boldly adapted to the new challenges through implementation of flexible and pragmatic working solutions, resulting in continued supervision of our licensees.

Importantly, and as seen by the level of complaints and inquiries received during the year, offenders do not take “days off” and thrive in times of uncertainty and despair. Despite the unanticipated disruptions and uncertainty, the Enforcement team performed their day-to-day responsibilities with resilience, and were able to support the Commission’s operations through timely investigation and decisive action against unauthorised activity of persons purporting to licenced, circulation of forged licence certificates as well as regulatory breaches.

A further testament to Enforcement’s resilience was the team’s ability to investigate an AML/CFT case relating to potential sanction busting and coordinated the jurisdictions response with local law enforcement agencies including the Financial Investigation Agency, Attorney General Chambers and the Royal Virgin Islands Police Force Financial Crimes Division. Stemming from this, Enforcement was instrumental in the formation of new policy and protocols for joint investigations of matters relative to sanctions. This milestone was achieved primarily while working remotely and further demonstrates the team’s firm resolve in upholding the values of professionalism of the Commission.

In terms of strategic priorities, the Division continued work on key deliverables, specifically:

1. Continuing work on Revising the Structure of the Enforcement Regime
2. Developing its Resources and Processes
3. Progressing its Enforcement Cases

The report also provides an overview of decisions taken by the Enforcement Committee during the year. The matters brought before the Committee saw a significant reduction when compared to 2019. This was in part due to the pandemic, reduced onsite inspections performed during the year, and lower numbers of referrals from the Supervisory Divisions to the Enforcement Division.

Highlights

Key Investigations

- I. **Sanctions Busting:** The Director of Enforcement lead the Commission's delegation on a joint team comprising members from local Competent Authorities in reviewing and investigating intelligence from an international counterpart on a matter of potential sanctions busting (*see regulatory & law enforcement cooperation below*).
- II. **Dealing in Affairs of a Company while being struck-off:** Enforcement Division conducted a focused investigation into a licensed Bank's complicity in the transfer of assets deemed to be vested in the Crown.
- III. **Possible Fraud:** Enforcement concluded a long-standing investigation of Private Fund recognised under the Securities and Investment Business Act, 2010. The investigation resulted from complaints relating to client's inability to redeem investments into the Fund. Investigative work concluded in 2020 and the Fund's Certificate was revoked in 2021.

Disciplinary Actions

- IV. **Monetary Penalties:** One (1) Trust and Corporate Services Provider (TCSP) was fined a total of \$10,000 for AML/CFT breaches discovered during an onsite inspection.
- V. **Warning Letters:** Two (2) Investment Business Licensees and One (1) TCSP were disciplined by way of formal warning for AML/CFT and regulatory breaches.

23 Public Warnings Issued

- VI. **22 Public Statements and 1 (one) Advisory warning issued:** Notices were issued to the public due to suspected fraudulent activities by BVI business companies. Such activities included circulation of forged licence certificates, a pyramid/ponzi type scheme targeting the local populace, and phony crypto currency exchanges offering lucrative investment plans with the sole purpose of separating victims from their savings. There is a notable increase in the number of enforcement matters relative to these types of activities.

Improvement in AML/CFT Compliance

- VII. **Release from Supervisory Monitoring:** Six (6) Insurance licensees and seven (7) TCSPs completed implementation of the requisite corrective measures imposed due to AML/CFT compliance deficiencies and were fully released from enhanced monitoring.

Regulatory & Law Enforcement Cooperation

- VIII. **International:** Enforcement Division continued to engage the US regulatory counterpart on their investigation of an investment business Licensee that failed to returned client's investments upon requests.
- IX. **Local:** The Enforcement Division, Financial Investigation Agency, the Financial Crime Unit of the Royal Virgin Islands Police Force and the Attorney General Chambers conducted a joint investigation of a BVI Business Company alleged of breaching OFAC sanctions. The team's work and collaboration lead to the creation of a formal policy guiding the Jurisdiction's response, including investigation of matters relative to sanctions.

Public Engagement

- X. The Director of Enforcement and fellow law enforcement counterparts from the BVI Financial Investigation Agency and the Royal Virgin Islands Police Force's Financial Crime Division were featured as part of the Commission's social media campaign (Money Matters BVI) aimed as sensitising the local populace on identifying ponzi/pyramid type schemes and the inherent risk of financial loss.

Training

- XI. **AML/CFT:** Enforcement staffers participated in an AML/CFT foundation course facilitated jointly by the Commission and the Financial Services Institute.
- XII. **Financial Investigations:** - Two Enforcement staffers completed a specialised training course targeting gaps in terrorism financing and sanctions investigations.
- XIII. **Risk in New Technology:** The Director and Deputy Director of Enforcement obtained specialist certificates in Money Laundering Risk in New Technology from the International Compliance Association (ICA).

Enforcement Workload 2020

1. Complaints and inquiries were the top two triggers for investigations conducted by the Division during the year. Figure 1 below, portrays a snapshot of the Division's workload in 2020:

Investigation Source	Matters Opened
Inquiries	228
Complaints	53
Internal Referrals	20
External Referrals	22
Total	323

Figure 1: Matters Generated during calendar year 2020

Inquiries

2. Overall, the Division handled **228** inquiries in 2020 when compared to **278** in 2019. Of these inquiries of 200 were fielded from internal Divisions. These are primarily due diligence checks¹ by the Approved Persons Unit, but as well other supervisory divisions. These checks are done against ongoing or closed investigations, open sources, as well as the Commission's general database detailing enforcement actions taken.
3. **Twenty-eight** (28) inquiries were actioned from external sources, which most often relate to entities or individuals purporting to carry on financial services business in or from within the territory. Inquiries and certain complaints (discussed below) typically result in the Commission issuing Public Statements that warn the general public of the likelihood of financial loss due to the fraudulent activity.

¹ Due Diligence work may include engaging local law enforcement or other international regulatory counterparts.

Complaints

4. The Division saw an increase in complaints handled in 2020 (53 matters) when compared to 2019 (41 matters). This shows that offenders continue to operate schemes, especially in times of uncertainty and vulnerability. Of the 53 complaints fielded, **15** were in relation to Business Companies (non-regulated BVI companies), **2** in relation to unregistered entities purporting to be registered² and **36** related to licensees.

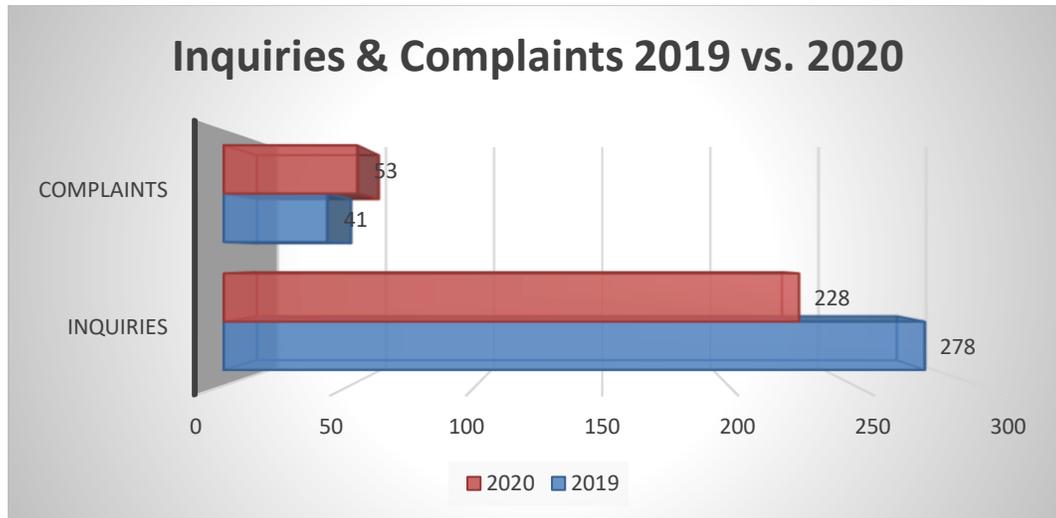


Figure 2: Inquiries and Complaints received in 2019-2020

5. As it pertains to entities making a claim of being registered or regulated in the Virgin Islands, the Commission continues to publish alerts and, also encourages the general public to verify claims of entities purporting to be registered or licenced in the territory before investing in or doing business with such entities. Section 37 of the Financial Services Commission Act, 2001 (“FSC Act”) allows the Commission to take enforcement action against a licensee or business company that conducts unauthorised financial services business. As discussed in paragraph 4 above, **fifteen (15)** complaints received during the year were in relation to unregulated BVI BCs that appeared to be conducting unauthorised financial services business. Any BVI BC (or regulated entity) that is found to be conducting unauthorised financial services business commits an offense and may be subject to significant enforcement action. The Division’s investigations of the 15 BCs remain active and are expected to be concluded in 2021.
6. Complaints relating to licensees are directed to the respective supervisory division for their initial assessment and intervention. Complaints on regulated entities are typically characterised by lack of communication and difficulty in withdrawal of funds invested. Intervention from the supervisory divisions typically result in swift resolutions of the

² Non-BVI domiciled entities.

complaints. Very few complaints involving licensees require more intrusive action by Enforcement. Notably, 35 of the 36 complaints relating to licensees were submitted by a single complainant. It was alleged that multiple Registered Agents (licensees) formed part of a conspiracy to torture and commit other crimes against the complainant. Each complaint was reviewed and found to be baseless accusations that lacked any evidence of regulatory or AML/CFT breaches.

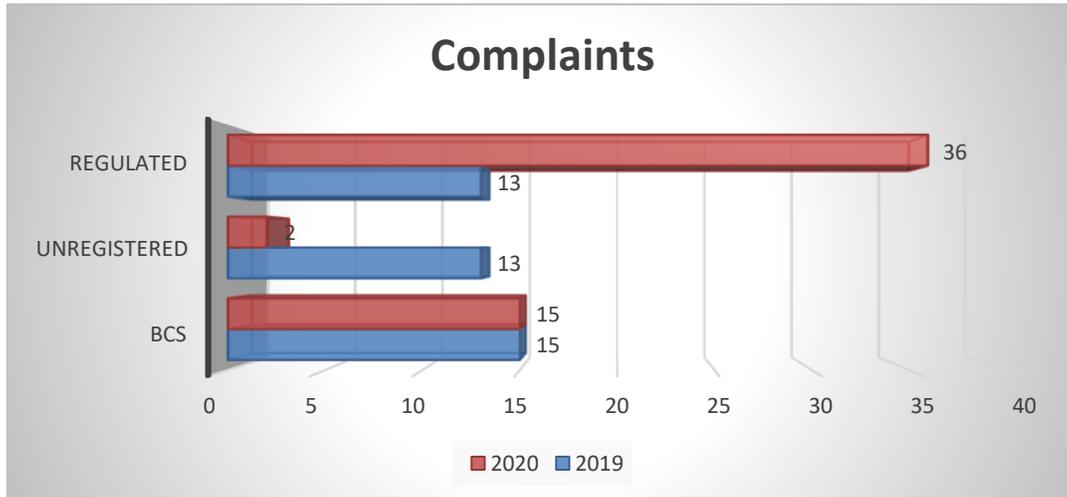


Figure 3: Complaints by type of entity

Public Statements issued in response to Complaints and Inquiries

7. The Director and Deputy Director of Enforcement were granted delegated authority by the Enforcement Committee, to approve the issuance of Public Statements and Advisory Warnings. The delegated function allows for shorter lead time from the date of discovery of fraudulent activity to issuance of the public statement or advisory warning to raise awareness publicly. The twenty-two (22) public statements issued were in relation to entities circulating forged licenses and falsely purporting to be authorised and licensed by the Commission.

Referrals

Division	Monetary Penalty	Warning Letter	Strongly Worded Letter	Revocation	No Enforcement Action	Ongoing	Non-Regulated/BCs
Investment Business							1
Banking Insolvency & Fiduciary Services	2 ³	1	1	1		1 ⁴	
Insurance						3 ^[2]	
Legal	1		1	1		2 ⁵	3
EC/ EC Secretariat			1				
MD Office							1
Total	3	1	3	2	0	6	5

Table 2: Summary of internal referrals and actions taken.

Internal Referrals to Enforcement

8. In 2020, **twenty (20)** cases were referred to Enforcement, of which 15 were regulated entities, and 5 were in relation to BVI Business Companies. These types of referrals are predominantly regulatory breaches that were identified and assessed by the regulatory Divisions. Occasionally, referrals include complex matters that require focused investigative work to confirm and assess breaches and in essence, the fitness and propriety to maintain the licence. A summary of complex matters referred to Enforcement are as follows:

- (i) **Insurance Division** – One (1) Licensee referred for various breaches of the Insurance Act. Further review by Enforcement raised concerns over licensee’s solvency, fitness of directors, etc. This matter continued into 2021.
- (ii) **Legal Division**– One (1) Licensee referred for concerns of dealing in assets of a company struck from the Register. Upon conclusion of the investigation, the Licensee was sanctioned by way of a strongly worded letter. The Enforcement Committee also agreed with Enforcement Division’s recommendation for thematic inspections focusing on policies and procedures for the handling of dormant accounts and the transfer of assets deemed to be vested in the Crown.

³ The administrative penalty imposed on one of the TCSPs was effected in 2021.

⁴ Matter concluded in 2021.

^[2] Two (2) Licensees were referred for revocation of licenses. Revocations concluded in 2021.

⁵ Both matters concluded in 2021.

- (iii) **Legal Division** also referred a BVI Business Company (non-regulated entity) providing crypto exchange services and digital asset investment products that may be in contravention of the Securities and Investment Business Act, 2010. The Enforcement and Investment Business Divisions performed a joint investigation that continued into 2021.

External Referrals to Enforcement

9. The Commission receives regular referrals from external regulatory and local law enforcement counterparts in relation to BVI regulated and unregulated entities. The referrals are essentially a mechanism for the sharing of information received via intelligence from external agencies. In 2020, Enforcement received a total of **22** external referrals: **16** from the BVI Financial Investigations Agency (FIA) and **6** from a foreign regulatory counterpart.
10. Referrals from both authorities were predominantly focused on alleged criminality⁶ conducted by beneficial owners and/or directors of unregulated BCs.⁷ Referrals on regulated entities most often related to potential breaches in other jurisdictions but also included AML/CFT concerns.
11. Given the limited remit over unregulated BCs, the Commission's primary action in handling referrals on BCs is to conduct a review of the respective gate keeper (Registered Agent/Licensee) to determine whether AML/CFT procedures were adhered to, at the point of client on boarding and throughout the life of the relationship. If found to be in breach, enforcement action may be taken against the Commission's licensee only. Matters of alleged criminality involving BCs may also be referred to local law enforcement. The limitations to the powers of the Commission and law enforcement counterparts highlights the reputational risks to the territory from unregulated BCs operating elsewhere.

⁶ Allegations of fraud, money laundering and tax evasion.

⁷ BVI FIA – 6 complaints (38% of referrals) relating to BCs. Jersey FSC referred 4 complaints (66% of referrals) focused on BCs.

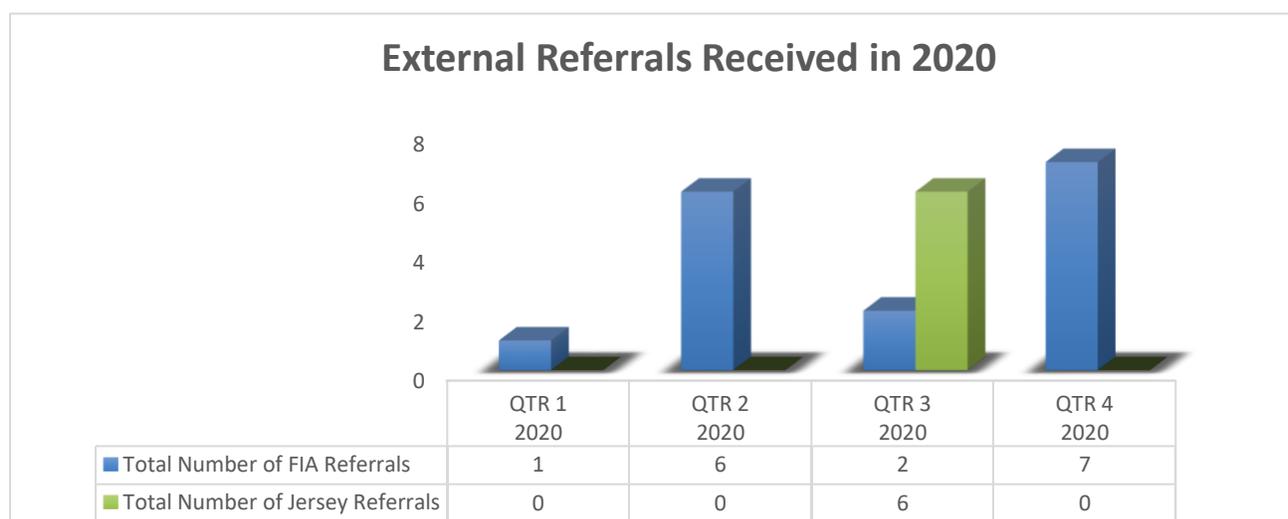


Figure 4: External Referrals received in 2020.

Investigations

12. Investigations are performed as a result of inquiries, complaints and referrals received from internal divisions and other external regulatory counterparts. Investigations arising from referrals from regulatory divisions are typically handled within 2-3 weeks from date of referral. In those instances, the regulatory divisions would have performed the requisite leg work to establish and assess the breach pursuant to the Guidelines and Operating Procedures of the Enforcement Committee. In essence, Enforcement interrogates the work of the Divisions to (a) verify the occurrence of a breach through engagement with all stakeholders, including the Legal Division and (b) deliver a sound case to the Enforcement Committee with relevant recommendations. Where necessary, Enforcement most often performs additional work that helps to unearth breaches and conduct the requisite assessment, taking into consideration the mitigating and aggravating factors. As discussed earlier, majority of the investigations from external inquiries and complaints results in the issuance of public statements and advisory warnings.

13. Allegations of a more serious nature which requires a deeper assessment and analysis, and are of a higher complexity are worked routinely by more senior officers of the Division. The nature of the complex investigations typically includes sanctions busting, alleged money laundering and corruption and AML/CFT compliance.

14. Details of selected investigations in 2020 are attached at Appendix 1.

Monitoring and Intelligence Reports

15. Another key task undertaken by the Division is media monitoring through a subscribed service. In 2020, there were approximately ninety-five (95) instances where media publications cited BVI companies in negative news articles. The main categories of negative media that stand to pose the most reputational risks are (1) Money Laundering and (2) Fraud. The Division’s analysis of these matters are channelled to the Compliance Inspection Unit to inform their inspection cycle.
16. The graph below sets out the types of incidents addressed in the negative articles for each quarter in 2019.

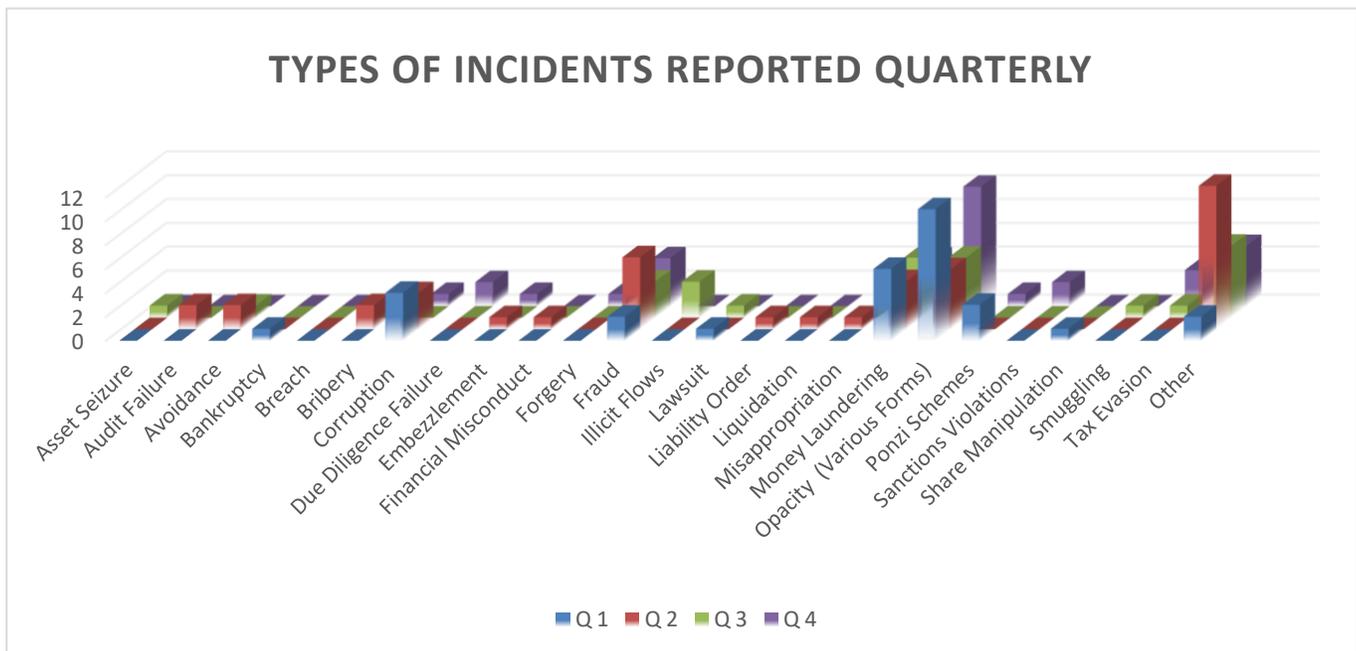


Figure 5: Types of Incidents Reported Quarterly

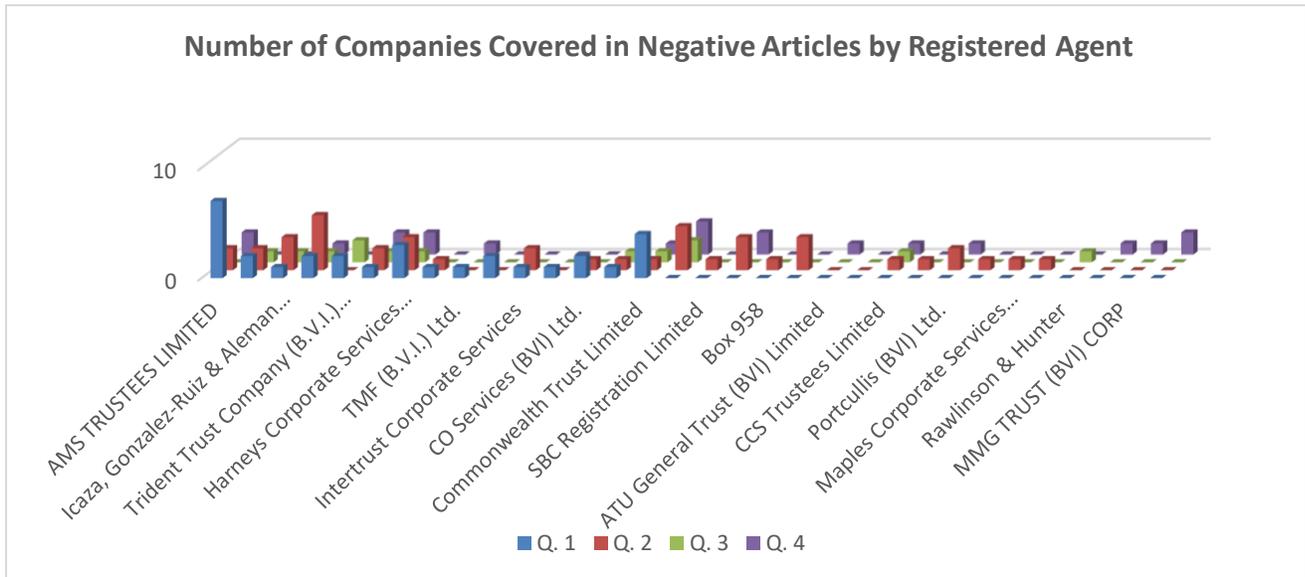


Figure 6: Number of Companies covered in negative articles by Registered Agent

- This intelligence was fed to the Compliance Inspection Unit to help inform which licensees to be included in the 2020 inspection cycle together with supporting rationale for the recommendations. The recommendations were based on intelligence received from the monitoring reports as well as ongoing Divisional work requiring interaction with and investigation of licensees. Recommendations also included specific areas of focus for compliance inspection officers, based on Enforcement’s assessment of potential AML/CFT weaknesses that may have been exploited.

Enforcement Activity 2020

18. The number of decisions taken by the Enforcement Committee (referred to as Enforcement Activity) in 2020 (**150 decisions**) declined from a total of **186** in 2019. Decisions resulting in enforcement action were the lowest in recent history, with **four** (4) warning letters and **two** (2) administrative penalties issued within the year.⁸ Overall, the decline in enforcement decisions was heavily impacted due to reduced onsite inspections performed during the year and reduced referrals from the supervisory Divisions to the Enforcement Division. Onsite inspections commenced during third quarter of 2020 and a total of **ten** (10) were performed for the year.
19. As seen from figure 7 below, volume at the Enforcement Committee (and throughout the Commission) dipped significantly during the second quarter due to the onset of the pandemic, and slowly increased throughout the third quarter. By the commencement of the final quarter of the year, volume increased significantly as the contingency measures facilitated increased output within the Commission.

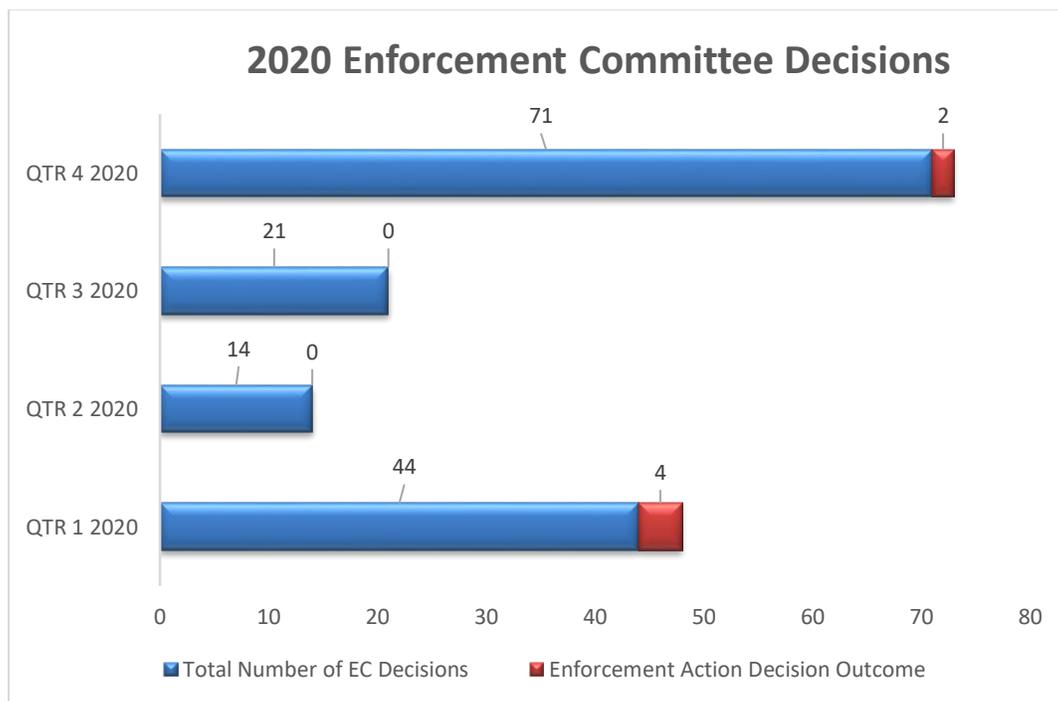


Figure 7: Illustrates Enforcement Committee decision made in 2020 on a quarterly basis

⁸ It should be noted that EC agreed to issue three (3) revocation notices and to impose four (4) fines and two (2) administrative penalties for 2020. However, only one (1) penalty notice was issued while the revocation notices were served during 2021.

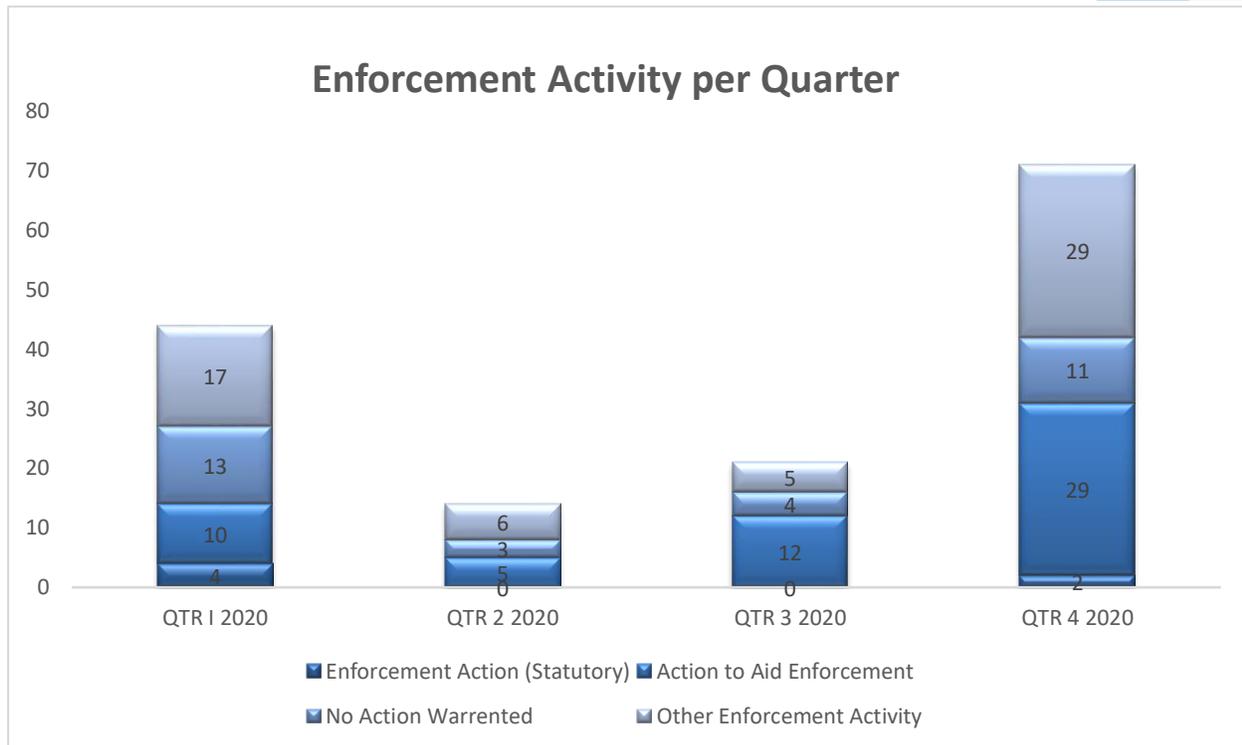


Figure 8: Diagram showing quarterly enforcement activity for 2020

Enforcement Activity	2020
Enforcement Action	6
No Enforcement Action	31 ⁹
Aides to Enforcement	56 ¹⁰
Other	57 ¹¹
Total	150

Table 4: total enforcement activity undertaken in 2020

⁹ In majority of cases, EC decided not to impose enforcement action as the costs outweighed the benefit (minor contraventions) coupled with the fact that the licensees had long ceased operations and commenced voluntary cancellation. In this case, minor contraventions were primarily failure to 2019 licence fees and were committed in most cases by insurance loss adjusters that arrived in the territory due to the 2017 natural disasters.

¹⁰ See section below in Aides to Enforcement Action including Table 6 below.

¹¹ Majority of EC's deliberations were in relation to other administrative matters such as information updates provided to the Committee on ongoing litigation and critical regulatory matters, referrals to the Board of Commissioners, review of draft inspection reports and suggested penalties for breaches identified.

Enforcement Action - 4 Warnings & 2 Monetary Penalties

Enforcement Actions by Quarter – 2020							
Types of Enforcement Actions ¹²	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Total	AML	Non-AML
Warning Letters	2	0	0	2	4	3	1
Directives	0	0	0	0	0	0	0
Amendment of a Directive	0	0	0	0	0	0	0
Lifting of a Directive	0	0	0	0	0	0	0
Revocation Notices ¹³	0	0	0	0	0	0	0
Cease and Desist Orders	0	0	0	0	0	0	0
Continuation of Enforcement Investigation	0	0	0	0	0	0	0
Penalties/Fines ¹⁴	2	0	0	0	2	2	0
Total Enforcement Actions	4	0	0	2	6	5	1

Table 5: Characterizes enforcement actions effected in relation to AML and Non-AML breaches in 2020.

20. Table 5 above distinguishes enforcement actions effected in relation to AML and Non-AML breaches in 2020. The warning letter was the most widely used enforcement action in 2020, a trend that has continued for three consecutive reporting years.

Warnings for AML/CFT Breaches

21. Three Licensees were warned for AML/CFT breaches as follows:

¹² Enforcement powers granted to the Commission pursuant to section 37 of the Financial Services Commission Act, 2001.

¹³ Enforcement Committee agreed to 3 revocation notices, however the notices were not issued within the year.

¹⁴ Enforcement Committee agreed to impose 4 fines and 2 penalties for 2020, however, only 2 penalties were issued before year end.

- (i) An Investment Business Licensee failed to conduct enhanced customer due diligence in relation to its portfolio of clients;
- (ii) An Investment Business Licensee failed to update customer due diligence in relation to its portfolio of clients; and
- (iii) A TCSP (Class I Trust Licence) failed to conduct proper verification procedures relating to individuals and legal persons.

Warning for Regulatory Breaches

- 22. A TCSP (Class I Trust Licence) failed to seek prior approval for disposal or acquisition of significant interest.

Monetary Penalty imposed for AML/CFT Breaches - \$10,000

- 23. A TCSP (Company Management Licence) received two monetary penalties totalling \$10,000 for the following AML/CFT breaches:
 - (i) \$2,500 – failed to conduct money laundering and terrorist financing risk assessment of clients; and
 - (ii) \$7,500 – failed to conduct enhanced customer due diligence on high-risk clients.

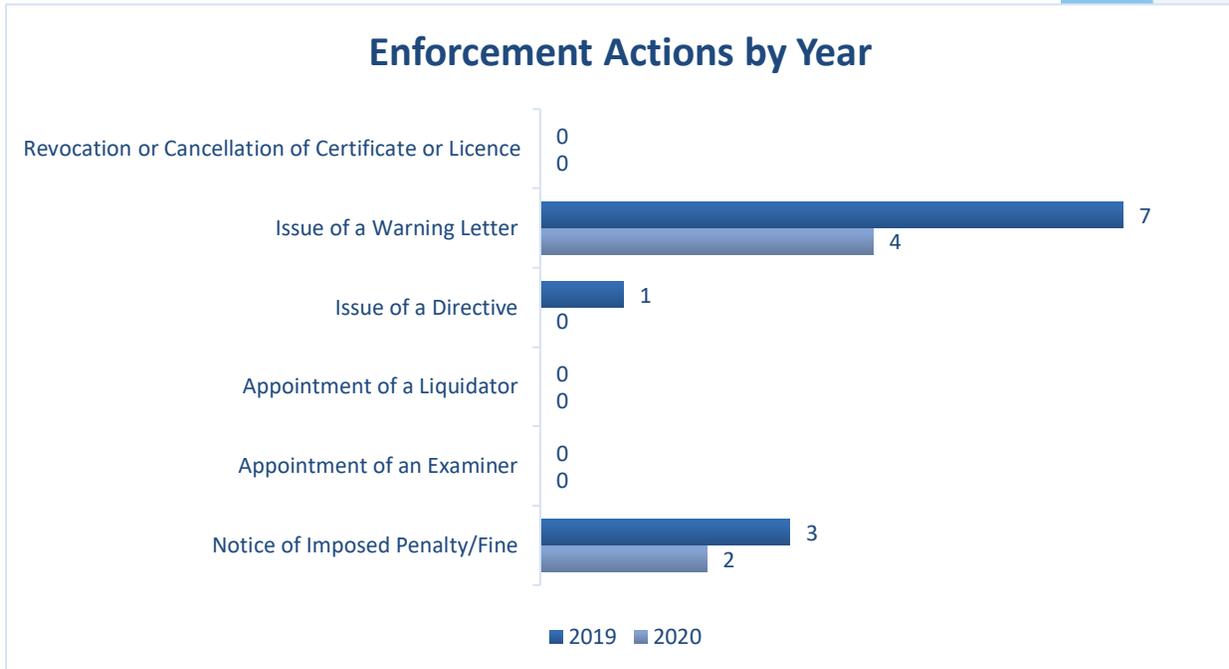


Figure 9: Illustrates the types of enforcement actions executed on a yearly basis.

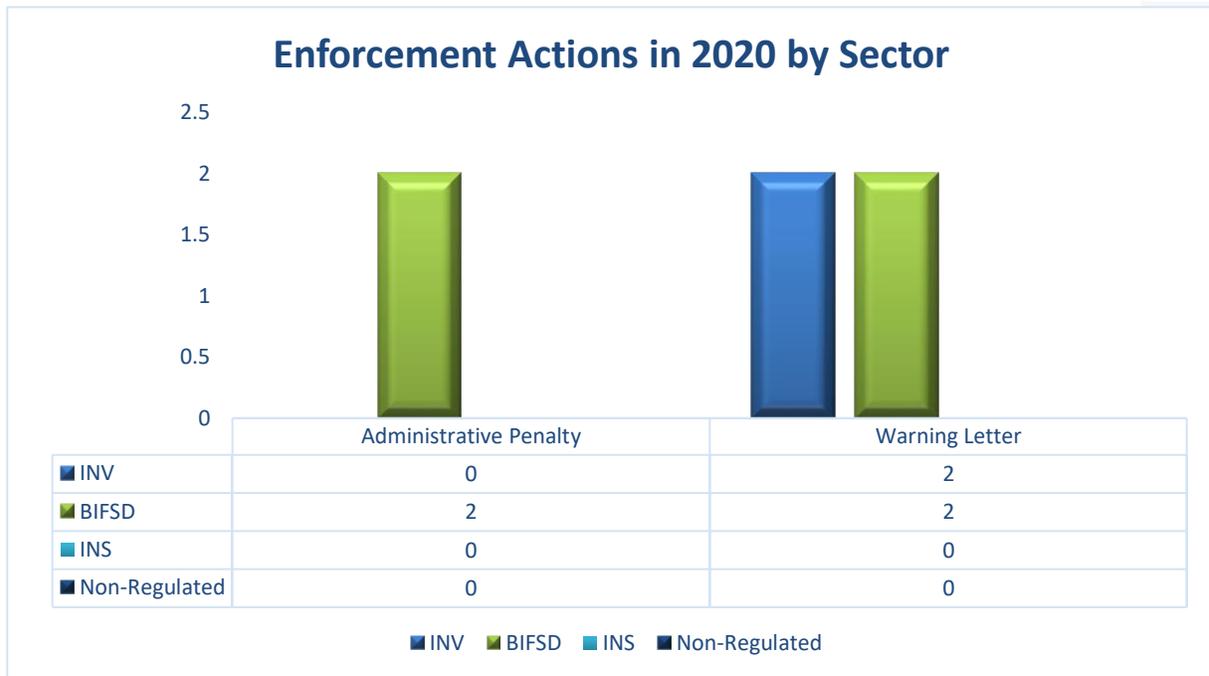


Figure 10: Illustrates the total number of enforcement actions executed on a quarterly basis by sector.

Aides to Enforcement – Complementary Actions

24. Aides to Enforcement include certain specific measures when paired together with enforcement action or imposed individually, help to achieve a greater impact on regulatory compliance and deter undesired behaviour. These include:

Aides to Enforcement	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Totals	AML	Non- AML
Public Statements	4	2	8	8	22	0	22
Advisory Warnings	0	1	0	0	1	1	0
Strongly Worded Letters	3	0	0	1	4	4	0
Release from Monitoring	0	1	0	12	13	13	0
Referral to FIA	0	0	0	0	0	0	0
Referral to RVIPF	0	0	0	0	0	0	0
Addition to Commission's Watch List	0	0	1	0	1	0	1
Continuation of Monitoring	0	0	0	2	2	2	0
Follow up Inspection	0	0	0	1	1	1	0
Approval of Corrective Action Plan	1	0	2	4	7	7	0
Issuance of Notice of Intent to Revoke Certificate or License	0	1	1	1	3	0	3
Meeting with Licensee	2	0	0	0	2	0	2
Total Aides to Enforcement	10	5	12	29	56	28	28

Table 6: Total aides to enforcement carried out in relation to AML and Non-AML breached

Public Statements

25. 22 public statements issued by the Commission in 2020 were the highest output in recent history. The nature of the public statements were primarily warnings against entities purporting to be licenced, circulation of forged Investment Business licence certificates and phony online crypto currency exchanges. In relation to warnings against BVI BCs

conducting unauthorised financial services business, investigations continue as due process is given to allow the directors of those entities the opportunity to respond to the allegations. A total of 10 BCs were under investigation for unauthorised activity.

Advisory Warning

26. The sole Advisory Warning was issued regarding a ponzi/pyramid type scheme that rocketed in popularity and growth amongst the local population. The scheme, “cooperative economics friends and family money sharing” presented the following characteristics:
 - a. persons were asked to invest \$1,350 dollars and in return they will receive \$10,800;
 - b. persons were solicited to enter private social media platforms then explained how the scheme operated;
 - c. in effect, a member paid \$1,350 and was required to recruit 2 members, who were then required to recruit 2 members, and so on; and
 - d. Each person ‘gifts’, via a payment app the \$1,350 to the member that makes it to the centre of a circle (effectively a pyramid represented in a circular format), and that member is usually the first person to join the circle.
27. The Advisory Warning was published in local print, online and social media platforms within days of the Commission becoming aware of the scheme on 1 July 2020. A social media sensitising campaign was also launched by the Commission’s Money Matters program, featuring the Director of the Enforcement Division and fellow law enforcement counterparts from the BVI Financial Investigation Agency and the Royal Virgin Islands Police Force’s White Collar Crime division.

Enforcement Committee Watchlist

28. As matters of contravention and misconduct are brought before the Enforcement Committee, persons who are deemed to be unfit for purpose of conducting regulated financial services business are placed on the Commission’s internal watchlist of non-desirable persons. Naturally, directors and senior officers who have been convicted of criminal offenses or failed to take appropriate steps to prevent serious regulatory actions such as revocation of licenses would be deemed unfit and placed on the watchlist. Enforcement shares relevant information from the watchlist as part of its due diligence service to supervisory divisions.

AML/CFT v. Regulatory Breaches

29. Tables 7 and 8 below depict that majority of enforcement actions imposed in 2020 were as a result of AML/CFT breaches and were primarily imposed against TCSPs.

AML Related Breaches by Sector

Enforcement action for AML Breach by Sector	QTR 1	QTR 2	QTR 3	QTR 4
Investment Business	0	0	0	2
Banking, Insolvency and Fiduciary Services	3	0	0	0
Insurance	0	0	0	0
Non-Regulated	0	0	0	0

Table 7: Illustrates the total number of enforcement actions taken within each sector in relation to AML breach on a quarterly basis.

Non-AML Related Breaches by Sector

Enforcement Action for Non-AML Breached by Sector	QTR 1	QTR 2	QTR 3	QTR 4
Investment Business	0	0	0	0
Banking, Insolvency and Fiduciary Services	0	0	0	1
Insurance	0	0	0	0
Non-Regulated	0	0	0	0

Table 8: Illustrates the total number of enforcement actions taken within each sector in relation to Non-AML breaches on a quarterly basis.

30. A summary of actions (aides to enforcement) relating to AML/CFT breaches are further explained below in table 9:

Types	AML/CFT Related	Summary of Breach
Recommended for inspection	1	Failure to implement corrective measures for AML/CFT deficiencies during the monitoring stage resulted in the recommendation for a follow up inspection.
Release from Monitoring	13	Successful implementation of corrective measures to address deficiencies discovered during onsite inspection. Licensee released from desk-based monitoring.
Continuation of Monitoring	2	Licensee failed to meet deliverables in the corrective action plan that was designed to address AML/CFT deficiencies.
Approval of Correction Plan	7	Approval of corrective action plans as set out in the Licensee's Compliance Inspection Report
Strongly Worded Letters	4	Failure to conduct risk assessments and other AML/CFT deficiencies.
Advisory Warning	1	Warning issued as a result of prevalence of ponzi schemes perpetrated locally.
Total	28	

Table 9 – Aides to enforcement relative to AML/CFT breaches

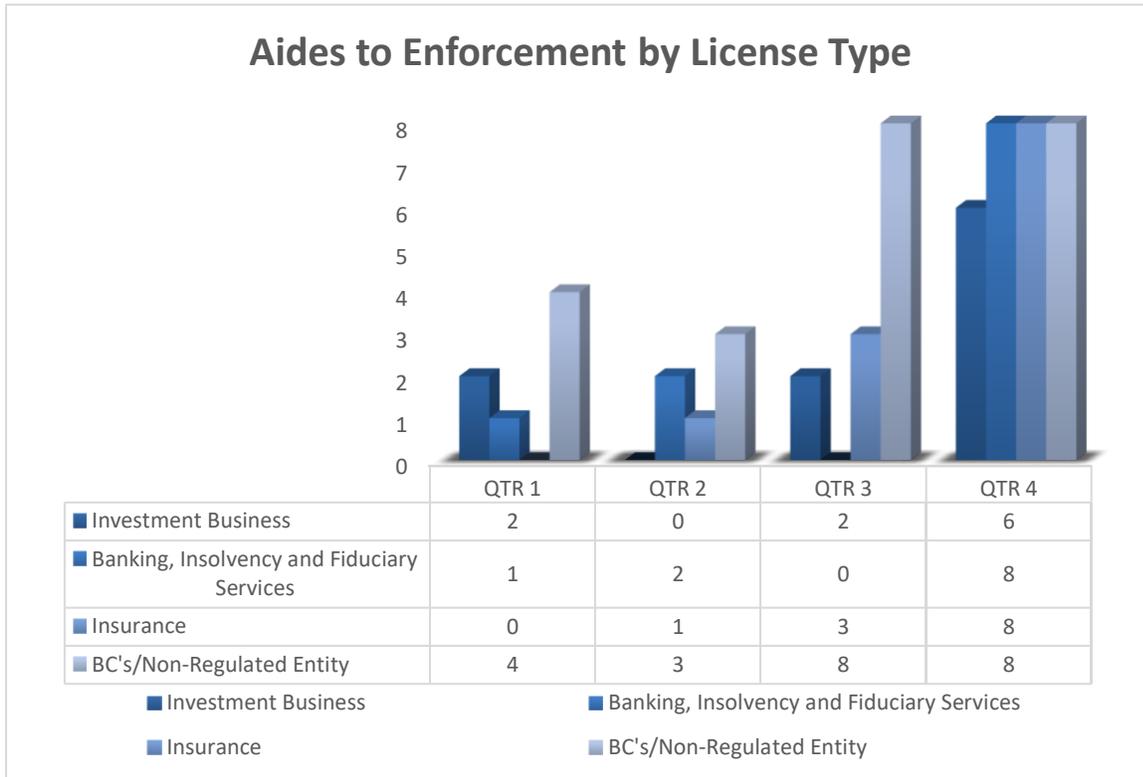


Figure 11 - Aides to enforcement imposed by sector

Progress against 2020 Workplan & 2021 Outlook

31. Enforcement progressed the following work relative to its 2020 workplan:

- ❖ Continued development of the Enforcement Manual – the Enforcement Manual among others, will set out the Division’s procedures for investigating breaches of financial services legislation and inter-agency cooperation with local law enforcement authorities. The Division commenced and concluded work to map its operating procedures, including investigatory, reporting functions. Other development and drafting work on the manual continued in 2021.
- ❖ Revising the Structure of the Enforcement Regime – the initial engagement phase with all relevant internal stakeholders progressed during the year. From discussions, it was evident that an assessment of the effectiveness of the enforcement regime was critical in advancing any proposals for change. It was proposed that the assessment examine the Commission’s own internal decision-making methodology in exercising enforcement action, the enforcement tool-kit, and effectiveness of each action among other facets.
- ❖ Developing its Resources - the existing staff complement of Enforcement were exposed to internal and external developmental training in the discipline of AML/CFT as well as more tailored towards enforcement investigative techniques, processes and procedures.
- ❖ Progressing Enforcement Cases – Enforcement continued to work new referrals as well as long standing cases from previous years. One measure of success was the Division’s closure of one of the more difficult and resource intensive cases. The findings and recommendations were presented to the EC in 2020 with the final notice of revocation and publication effected in 2021.

Key Objectives for 2021 and Enforcement Outlook

32. Enforcement’s priorities for 2021 include ongoing work on assessing the effectiveness of the enforcement regime, finalizing a draft of the enforcement manual, and implementing more technology to manage its workload. As it relates the effectiveness assessment, work to be undertaken includes conducting internal and external surveys on the enforcement process, methodology and actions. Another key objective is the streamlining of the roles of the Enforcement Secretary and the Enforcement Division. Specifically, this will see the

management and implementation of enforcement decisions transferred from the Secretariat to the Enforcement Division.

33. As it relates to Enforcement's workload, it is expected that complaints and inquiries will continue to be the leading sources of work for the Division. Of concern is the increasing number of complaints relating to unregulated BVI companies that continued into 2021. As part of the assessment of the effectiveness of the enforcement regime, consideration will be given to the Commission's current approach to unregulated BVI companies and exploring measures to mitigate the risk posed by this group, specifically, extension of enforcement powers to this group among others.

Appendix I – Key Investigations

Alleged Sanction Busting

34. Through various sources such as, the Governor’s Office Intelligence and media reports, the Commission and other competent authorities were informed of the alleged violations of the OFCAC N. Korea Sanctions Regulations; US Anti-money Laundering Regulations; The Bank Secrecy Act and the USA PATRIOT. A BVI Business Company, and its registered agent was charged and pleaded guilty to conspiring to launder monetary instruments in connection with evading sanctions on North Korea and deceiving correspondent banks into processing U.S. dollar transactions. The Company was fined a financial penalty of \$673,714.04.
35. The Enforcement Division (“the Division”) launched an independent investigation into one of the BVI’s largest registered agents to determine whether they breached any of its obligations under any BVI AML legislation. In addition, the Division collaborated with the Sanctions Sub Committee of the Council of Competent Authorities (“SSCCA”) in assessing the matter and arriving at an appropriate action. In doing so, the Division issued a Section 32 notice to the Registered Agent to obtain various information relating to their handling of the Company. The Division’s conclusion subsequent to the review of the documents received from the Registered Agent was that there were no material failings by the Agent in regard to its responsibilities, and as such there were no breaches of AML Laws or regulations to be pursued against the Registered Agent.

Fraudulent Websites/ Certificates

36. Enforcement continues to receive enquiries of entities with websites that have given their contact addresses as being in Virgin Islands. In majority of the cases, the entities were neither registered nor licenced to conduct financial services business in or from within the Territory. There has been an uptick in the number of fraudsters sheltering behind domain privacy services to frustrate investigations into registered ownership of the fraudulent websites. As indicated under inquiries, such matters are handled swiftly through the issuance of Public Statements that warn the public of the potential fraudulent scheme and to refrain from conducting business through the fraudulent website. Most recently, Enforcement has been assessing whether there were any legal constraints affecting the Commission’s ability towards seeking the shut-down of those websites purporting to be registered and or licenced to operate in or from within the Territory.

AML/CFT Non-Compliance

37. As previously reported within Enforcement's 2019 Annual report, the Commission received a referral from the ITA regarding a prominent Trust and Corporate Services Provider ("TCSP") and its failure to produce beneficial ownership information with respect to one of its companies, due to premature destruction of records. After the Commission's very own experience with the TCSP in obtaining beneficial ownership information, The Commission also experienced great difficulty when investigating other matters. The TCSP has explained that in such cases the information was not kept or that relationships with third party providers and clients were severed due to their inability to collect due diligence documentation, albeit several years post client onboarding.
38. Subsequent to TCSP's full compliance inspection, they were found to be partially complaint and non-compliant in key AML/CFT functions, resulting in a decision to propose an administrative penalty. The notice of proposed penalty was issued to the TCSP. However, after several meetings conducted, the matter of imposing the penalty subsequent to obtaining written representation was significantly delayed. The large monetary penalty was effectively imposed in the first quarter of 2021.

Complaints regarding BVI BCs

39. Enforcement continues to get an influx of complaints on BVI Business Companies ("BVI BCs") from persons alleging to have entered into business with Companies to provide some type of regulated business, usually investment business services. During the third quarter of 2020, Enforcement received several complaints regarding a BVIBC alleged to be providing investment services to clients. Complainants stated that after requesting the withdrawal of invested funds, the BVIBC responded that the funds had been transferred to a blockchain company and would be returned with time. The BVIBC further stated that the blockchain company has a high guarantee that made the return unlikely.
40. A review of the matter revealed that the BVIBC was not licensed in the Territory to carry on investment business. The Director of Enforcement utilizing his powers under delegated authority to issue public statements pursuant to section 37 of the FSC Act to caution the general public against engaging with the BVIBC and other Companies purporting to be providing investment business services that are not or has ever been licensed or regulated by the Commission to carry on any type of regulated activity. Enforcement continued to receive complaints against this BVIBC well within 2021 and has written to the directors of the Company regarding the unauthorised activity.

Regulatory Failings & Cooperation with Foreign Regulatory Authority

41. There has been a particular entity on Enforcement and the Investment Business Division's radar for some time due to investor complaints relating to the inability to withdraw funds. In

some cases, the complainants subsequently confirmed that their issues were resolved. In other cases, the Investment Business Division awaited responses from this entity in relation to the outstanding complaints. In June 2019, the Commission received an international request for cooperation and assistance from a US regulator relative to this entity. That regulator was investigating potential breaches of US regulations and had also received complaints from clients. Following several correspondence and teleconferences, the Commission provided the US regulator with voluminous records and documentation relating to its review and historic banking transactions obtained from two resident banks. Both the Commission and CFTC agreed that it would be mutually beneficial for the US authorities to seek recourse from the US Courts as the directors and beneficial owners were residents of the US.

42. The Commission has committed to supporting the US regulator as the authority advances its investigation. Enforcement continues to evaluate the circumstances, including contemplation of enforcement action that the Commission may pursue.
43. The Commission commenced investigations of an insurance licensee licensed to conduct long term insurance business in the classes of life and Annuities (now by amendment life and health business), where its primary business activity is to provide retirement plans, education plans, term life and variable life products for customers residing mainly in Latin America. It has a history of regulatory failures of repeatedly failing to: consistently maintain the required solvency margin, submit audited financial statements and to notify the Commission of changes in its directorship.
44. The investigation is ongoing and regulatory action is expected to be proposed in 2021.
45. The Commission received sixteen complaints and inquiries in relation to investments made into an entity in 2018 and prior. Upon investigation, it was noted the entity is incorporated and recognised as a private mutual fund by the Commission since 2008. Enforcement considers the complaints against the entity to be significant on the basis that complainants have expressed that they have experienced material financial loss and due to the reoccurrence of complaints received from 2018 through 2020.
46. It is alleged that the entity was used to add legitimacy to the scheme for the purposes of defrauding UK residents into investing in what they believed to be retirement homes with guaranteed fixed annual yield. It appears that upon maturity of their investments, the consumers inquired about their return on investment in which it was claimed that representatives furnished excuses as to why their initial investments and interest payments were withheld. Eventually, representatives were unresponsive to clients' withdrawal requests. The Commission took into consideration the factors of the case and decided to initiate the revocation on the basis that numerous regulatory breaches were committed, and

the entity was carrying on business in a matter that is detrimental to the public interest and to its investors/creditors and that based on the Commission's fit and proper assessment its director no longer meets the criteria of fit and proper. The Notice of intent to revoke was issued in 2021 and it is expected that the matter of the case will be concluded within the first quarter of 2021.

Cryptocurrency Trading and Exchanges and International Cooperation

47. The Commission's investigation into two complex entities has progressed slowly due to several factors, including resourcing. A detailed assessment of the companies' activities has commenced in conjunction with the Investment Business Division. In 2020, a subsidiary of one of the entities, applied for licensing pursuant to the Securities and Investment Business Act, 2010. Investment Business Division is leading the review of the application with support from Enforcement. In addition, Enforcement has advanced its investigation by preparing a detailed Notice of Demand to produce information and documentation pursuant to section 32 of the Financial Services Commission Act, 2010. The all-encompassing request includes all known BVI subsidiaries or related parties. As at 31 July 2021, a substantial response to the Commission's request for information was provided.
48. In another case, the Commission received a request for assistance from the US regulators under the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the CFTC and the Commission are signatories. The purpose of the request for assistance was to assist the Division of Enforcement ("DOE") with its investigation of a BVIBC, operating an unregistered cryptocurrency derivative trading platform in violation with the Commodities Exchange Act and Regulations.
49. The Commission issued a Section 32 Notice requesting corporate documents, beneficial ownership information, Register of Directors, members and/or shareholders, information on affiliate companies and details of their business activities. A response was received from the BVIBC's Registered Agent which enabled the Commission to submit a complete response to US regulator's request of assistance.
50. In taking the matter further, Enforcement has taken the mantle to assess the business operations against the guidelines of the Guidance on Regulation of Virtual Assets in the Virgin Islands, to determine whether its business activities and/or products falls under the remit of existing BVI legislations and therefore will require the relevant licensing.
51. Enforcement has seen a rise in BVIBCs engaged in virtual assets type products and services and is expected to continue to see increased numbers of companies in this space even as the Commission continues to develop its Virtual Assets Services Providers legislation.

Investigation into conducting possible unauthorised financing business

52. Towards the end of 2020, Enforcement received a disclosure from the FIA regarding business transactions to which one individual extended a loan to another. Both parties residing within the Virgin Islands.
53. Enforcement assessment was that the lender of the loan, who is not a regulated person in the BVI, carried on financing business from within the VI in violation of section (1) of the Money Services Act. Investigative work continued into 2021, culminating in the Enforcement Committee's decision to propose an administrative penalty for the breach.

Breach of BC Act and unauthorised use of assets vested in the Crown

54. In October 2020, the Commission was served with an application under section 218 of the BC Act to declare the dissolution of the Company void. The BVI registered company, ceased trading during the period 2010-2011 and was subsequently abandoned, was struck, and dissolved from the Register for non-payment of fees back in 2018.
55. During the assessment of the application, it was revealed that a local BVI banking institution had maintained an account on behalf of the BVIBC and had knowingly facilitated several transfers of funds out of the account by the sole director of the company.
56. The Bank, as a licensee was complicit in facilitating several violations of the BC Act which:
 - a. prohibits, the dealing in the affairs of a company struck from the register;
 - b. provides that undistributed asset of a dissolved company are vested in the Crown for the date of dissolution; and
 - c. That assets vested in the Crown can only be returned by Virtue of a Court order restoring the company.
57. In December 2020, EC agreed to the issuance of a Strongly Worded Letter to the Licensee expressing the Commission's concerns regarding its complicity with BVIBC regarding the breach of section 215(1) of the BC Act. It was further agreed that the Compliance Inspection Unit should conduct a thematic based inspection on all licensed banks with regards to ongoing monitoring and updating of due diligence information, and policies of dealing with dormant/abandoned accounts.

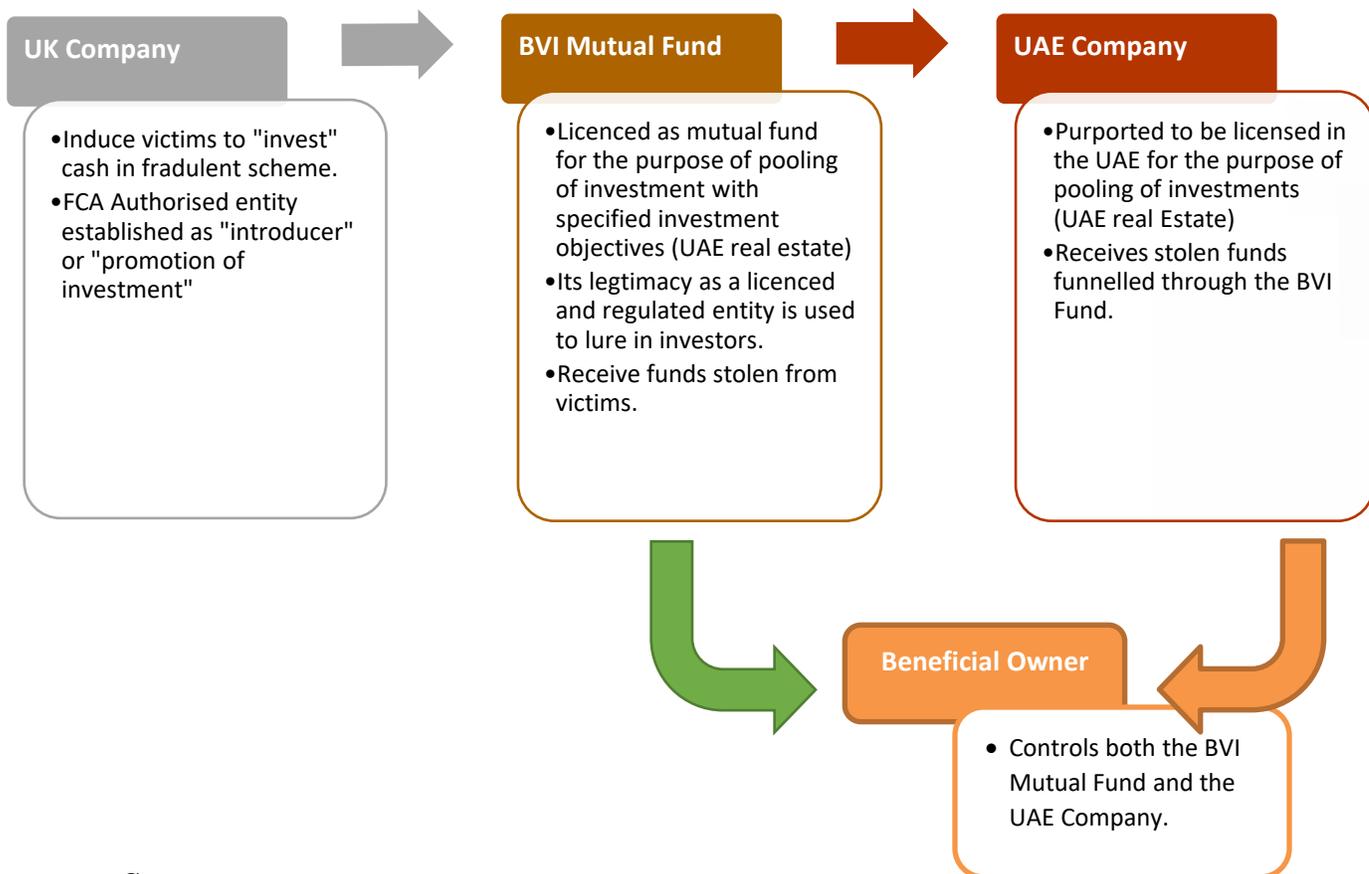
Appendix II – Typologies

Typologies on the Misuse of Legal Persons

Introduction

The typologies below were identified from enforcement cases and classified according to specific Modus Operandi observed. Legal Persons under the Commission’s purview are typically Business Companies or Limited Partnerships. In the case of investment fund vehicles, structures established as limited partnerships share identical ML risks and vulnerabilities as those structures a companies.

❖ *MO (1) Suspected Money Laundering using pass-through Transactions/Abuse of Licenced Fund products*



Summary:

As part of the fraudulent scheme, companies were established in the UK, BVI and UAE. The scheme targeted retired citizens of the UK seeking a relatively safe and low risk investment to generate returns on retirement funds and savings. Despite the creation of a legitimate BVI investment fund, it served no real economic purpose and was only created to impose additional layers to mask the proceeds of crime. Cash deposited through BVI fund's bank account were directly accessed by the directors who were also the BOs.

Red Flags:

- Poorly written marketing and contractual agreement;
 - Continuous reporting of several years of inactivity despite receiving complaints;
 - Fund abandoned and allowed to be struck from the Register of Companies (filed to remit incorporation fees);
 - The directors failed to cooperate with requests for information.
- ❖ *MO (2) Suspected Money Laundering using pass-through Transactions/Abuse of BVI BCs through Unauthorised Licensable Activity*

PROFILE:

Client B – A Russian citizen. Incorporates a BVI company for the sole intent of defrauding victims. BVI company used to establish offshore bank account to layer proceeds of crime.

Company AB – incorporated for the sole purpose of holding company. A fraudulent website offering exchange services for fiat and/or crypto currencies is created to purport the fraud. The website domain is registered in the name of Company AB or its name is featured on the website as “licenced in the British Virgin Islands”. It was never intended for Company AB to seek licensing by the Commission.

Summary:

Client B creates a false website purporting to provide exchange services for fiat and crypto transactions. The website is marketed in Russia and Asia. Unsuspecting victims are provided with a false sense of comfort by falsely stating on the website that Company AB is regulated by the Commission or is regulated in the BVI. Victims sign up on the “platform” to trade and make initial deposits via wire transfer or credit card payments. False statements of performance were provided with the requirement of increased deposits to unlock financial gains. Upon requests for withdrawals, victims are provided with unending excuses and ultimately silence as Client B (or a fictitious employee) ceased communication.

Company AB's bank account is not maintained in the BVI. It is typically used as a passthrough to several layers of accounts or to the private account of AB. Victims were typically unsavvy and usually file complaints with the Commission after conducting google searches or learning of similar victims through online blogs. Complaints were filed with the Commission after Company AB was long abandoned.

Red Flags:

- Geographic location of client
- False information provided on the activities of the company during onboarding and updating of CDD
- BO/directors abruptly end communication with Agent
- Foreign voluntary liquidator is used and liquidation concluded in a matter of a day/s

❖ *MO (3) – Suspicious use of Money Services Business / Conveying proceeds of crime to foreign jurisdiction*

PROFILE

Customer A of Licensee (Money Remitter) – BVI work permit holder and national of the Dominican Republic. Initially assessed as low risk by Licensee. Infrequent transactions performed (minimal value) at branch. Customer A and two other individuals were arrested by United States Coast Guard for possession of undeclared funds totaling circa US\$1.6 million dollars.

Money Remitter (“Licensee”) – a company incorporated and Licensed as a Money Services Business. Licensee forms part of well-known money remittance group within the Caribbean.

Summary:

Customer A established a relationship with the Licensee at which time, due diligence measures were undertaken. Customer A was risked assessed to be low given infrequent visits to remit funds to home jurisdiction and low value of transactions. Suddenly, Customer A’s activity with the Licensee increased, Over the course of one month, Customer A visited the Licensee six (6) times with increased amounts being remitted. The Licensee also observed that remittances were being paid to multiple recipients as opposed to the usual beneficiary before the increased activity. A clear departure from Customer A’s usual remittance. The Licensee’s risk matrix identified Customer A’s unusual activity and was flagged for performance of enhanced customer due diligence by the Licensee’s employees (Customer A’s account was blocked from performing remittances). The Licensee returned the majority of Customer A’s transactions to him under the disguise as “processing error”). Customer A was arrested two months later by the US Coast Guard for possession of undeclared sums totaling circa \$1.6million dollars. It was alleged that Customer A embarked from the BVI and was en route to the Dominican Republic when the motor vessel he was travelling on suffered an engine failure.

Red Flags:

- Increased frequency of activity outside of normal scope of transactions;
- Increased sums being remitted outside of normal scope of transactions;
- Remittances sent to multiple recipients within short time frame and outside the normal

scope of transactions.

❖ ***MO (4) – Suspected Money Laundering, including Tax Motivated Activity & Hidden Familial Relationship - Abuse of BVI BC by PEP as Holding Company***

PROFILE

Client Z – an Asian Politically Exposed Person (“PEP”), CEO and Chairman of two global automotive companies. Client Z was introduced to a local Registered Agent via third party engagement. Notwithstanding, the Licensee maintained full due diligence documents to identify Client Z as the beneficial owner of the BVI BC administered (“Company X”).

Client ZW – close family member of Client Z.

Licensee – A BVI incorporated company and holder of a Class I Trust licence. The Licensee provided registered agent/office services as well as shipping registration services.

Company X – a BVI incorporated company for the sole purpose of holding assets. Company X was the registered owner of a multi-million dollar yacht registered in the BVI, but domiciled in Asia. In addition to registered agent/office services, the Licensee provided ship registration services to Company X.

Summary:

Client Z, a successful CEO in the automotive industry established Company X as a holding company for personal investments. Overtime, the beneficial ownership of Company X was changed from Client Z to his close family member, Client ZW. Immediately prior to the change of BO, Company X had acquired ownership of a multi-million dollar yacht, which was re-registered in the BVI.

International reports later indicated that Client Z was arrested for allegedly misappropriating tens of millions of dollars from his company of employment and redirected portion of the proceeds of crime to personal holdings, including Company X. misappropriated funds also included “silent” salary increases that were paid indirectly to Company X through other companies owned by the automotive giant. Essentially it was alleged that Client Z was falsifying the accounting records of his employer to disguise the misappropriated funds.

Red flags:

- Changing of beneficial ownership without disclosing close familial relationship between both parties. A possible attempt to disguise true BO
- Purchase of exotic or high valued assets. Although the Licensee’s due diligence measures

verified Client Z's source of wealth, extravagant purchases especially by PEPs are typical red flags.