

# 2021 Enforcement Division Annual Report

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## Executive Summary

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- I. Despite challenges presented by the prolonged effects of the global pandemic, the Enforcement Division experienced a 47% increase in its overall workload for 2021. Contributing to the increase in the Divisions workload were: (a) Inquiries (↑63%); (b) complaints (↑42%), (c) referrals from internal divisions (↑15%) and (d) external referrals (↓77%).

### *Expanded Functions of the Division*

- II. At the end of 2020, the Division drew up its roadmap for increasing efficiency within the enforcement process. Key to this objective was the need for greater centralisation of the enforcement processes. Therefore, during the second half of 2021, the responsibility for implementation of decisions of the EC (including the addition of new staff) was transferred from the Secretariat and into the Division. As projected, the added responsibility allowed for greater oversight of the implementation process, resulting in a reduction in time taken to process and implement EC decisions and actions. The Division also completed an exercise to audit outstanding EC decisions and action them, including collecting administrative penalties and fines that were outstanding.

### *Focus on Training*

- III. The unique circumstances of the global pandemic presented a great opportunity for the Division to upskill a wider group of staffers through virtual training seminars on key areas and disciplines. During the year, Enforcement staffers were exposed to training across the disciplines of AML/CFT compliance, cryptocurrency/virtual assets regulation, investigative techniques, risk management and the CFATF methodology.

### *2021 Enforcement Action*

- IV. 2021 also saw an increase in enforcement action meted out against licensees for non-compliance. The Commission's Enforcement Committee (primary decision-making authority on enforcement actions) levied a total of 11 administrative penalties and fines for breaches ranging from AML/CFT non-compliance to regulatory violations. A total of \$232,000 in administrative penalties and fines were imposed during the year. As the Commission continued to assess the effectiveness of enforcement actions, the trending increase in monetary penalties signals a shift in enforcement philosophy and overall approach in achieving a greater level of compliance.

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## Highlights

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### Key Investigations

- V. **Cryptocurrency Exchange:** The Division committed significant man hours into investigating a crypto exchange group. Work in 2021 included service of demand notices for the production of documentation and information relating to the corporate and operational functions of the Company and other group related entities. In response, the Division reviewed thousands of pages of documents submitted by the group relating to its group structure, legal issues, compliance function, complaints handling and resolution procedures, transactional records, financial, banking and accounting records and function and other documentation. The Division's assessment of this matter continued past the end of the year and culminated in a substantial and detailed investigation report being delivered and considered by EC in 2022.
- VI. **Fictitious entity posing as a licenced Bank:** The Division swiftly moved to action to prevent potential financial losses by local residents interacting with a fictitious website purporting to be that of a local bank. A public statement was issued on the Commission's website informing the general public of the use of the fraudulent website. The bank also circulated a client advisory on its official website to inform its customers of the phishing website and to confirm that the website is fraudulently identifying itself. The Notices were also picked up and circulated by local media broadcasters. Enforcement has not received any complaints from persons suffering any loss or engaging in any activities with this entity that was falsely purporting to be the local bank.
- VII. **Abandoned Fund:** The Commission revoked the certificate of recognition for an Investment Business Fund after concluding a protracted investigation into the operation of the fund. The investigation resulted from complaints relating to investors' inability to redeem investments placed with the Fund.

### Enforcement Actions

- VIII. **Monetary Penalties:** The Commission imposed the third largest fine of its enforcement history against one of the BVI's largest TCSPs in the total amount of \$135,000.
- IX. **Warning Letters:** Five (5) Licensees were disciplined by way of formal warnings for AML/CFT and regulatory deficiencies.

## Public Warnings Issued

- X. **A record number of Public Statements (34):** were issued to the public to warn and raise awareness of suspected fraudulent activity by BVI entities. Such activity included circulation of forged licence certificates, a fictitious website targeting the local populace, and phony crypto currency exchanges offering lucrative investment plans. There is a notable increase in the number of enforcement matters relative to these types of activities.

## Improvement in AML/CFT Compliance

- XI. **Release from Supervisory Monitoring:** Four (4) Insurance licensees and seven (7) TCSPs completed implementation of their requisite corrective measures imposed due to AML/CFT compliance deficiencies and were released from ongoing desk-based monitoring.

## Training

- XII. Enforcement staffers participated in several training seminars throughout the year focusing on AML/CFT compliance, cryptocurrencies/digital assets regulation, risk management and investigative techniques.

## Enforcement Workload 2021

1. Overall, the Division handled **475** matters in 2021 when compared to **323** in 2020. This signals a 47% increase in the Division's workload from the previous year. The primary sources and triggers for investigations continue to flow from inquiries and complaints<sup>1</sup>, many of which are administrative in nature. Figure 1 below, portrays a snapshot of the Division's workload in 2021:

	2021	2020
Investigation Source	Matters Opened	Matters Opened
Inquiries	372	228
Complaints	75	53
Internal Referrals	23	20
External Referrals <sup>2</sup>	5	22
<b>Total</b>	<b>475</b>	<b>323</b>

Table 1: Comparison of Matters Generated for the years 2020 and 2021.

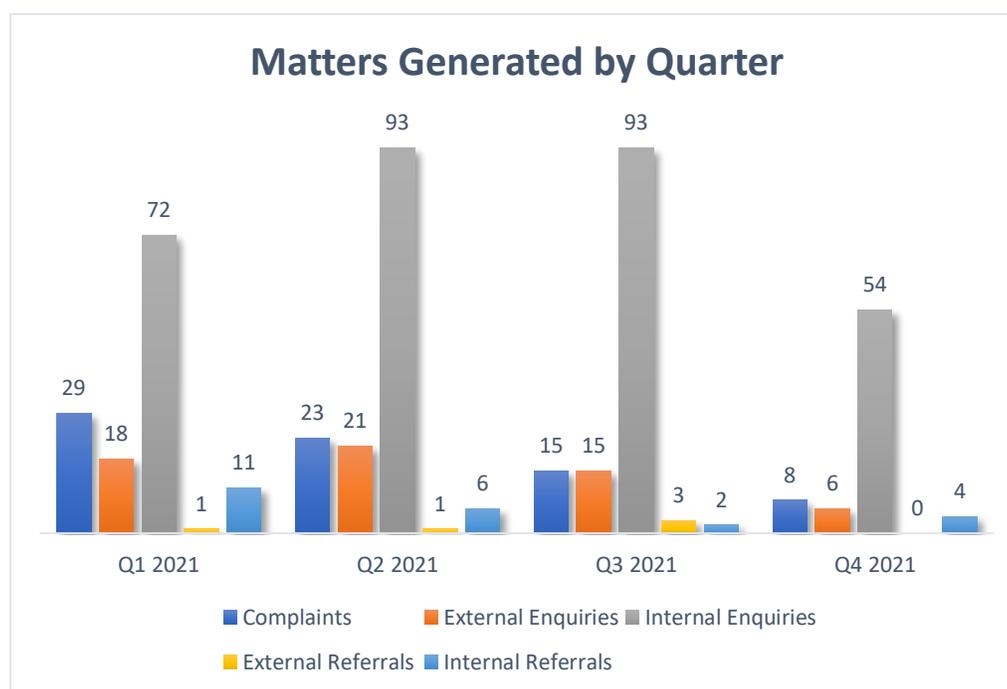


Figure 1: Illustrates the enforcement matters generated each quarter of 2021.

<sup>1</sup> Inquiries increased by 63% year over year whereas Complaints grew by 42% post 2020.

<sup>2</sup> Excludes referrals from local and international counterparts

## Inquiries

2. These are primarily due diligence reviews requested by the Approved Persons Unit<sup>3</sup> (“APRU”) together with other supervisory divisions. Enforcement typically cross-references its database of current and former investigations and the Commission’s general enforcement records to feed any concerns into the APRU’s assessment of the applicant(s) fitness and propriety. The Division also receives due diligence request from the Legal Division during the processing of International Cooperation requests. Of these inquiries, 312 or 83% were fielded from internal Divisions.
3. **Sixty** (60) 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. Often, several inquiries would be received relating to the same subject entity. The Division also noted an uptick in requests from external sources seeking to confirm regulatory status of entities. 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.

## Complaints

4. In 2021 there were 75 complaints fielded by the Division. This represents a 20% increase when compared to the 53 matters handled in 2020. A further breakdown of the 75 complaints fielded reveals that **36** were in relation to Business Companies (non-regulated BVI companies), **20** in relation to unregistered entities purporting to be registered<sup>4</sup> and **19** related to licensees.

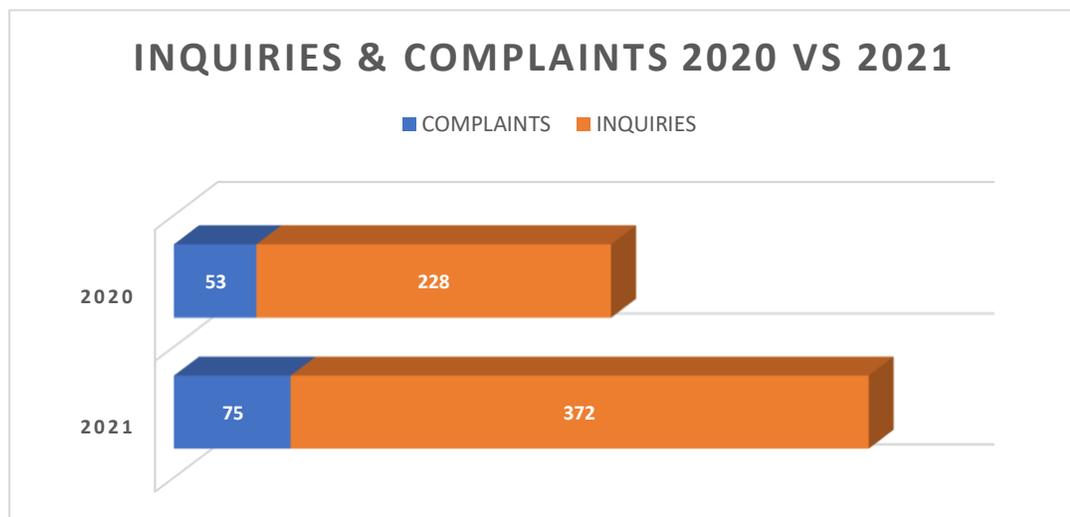


Figure 2: Inquiries and Complaints received in 2020-2021

<sup>3</sup> Due Diligence work may include engaging local law enforcement or other international regulatory counterparts.

<sup>4</sup> Non-BVI domiciled entities.

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 cautions the public to verify claims of entities purporting to be registered or licenced in the territory before investing in or conducting business with such entities.
  
6. Complaints relating to licensees are directed to the respective supervisory division for their initial assessment and intervention. The sharp increase in complaints received in 2021 were in relation to unfounded accusations of mistreatment by TCSPs from a single individual, followed by complaints in relation to entities licenced under the Securities and Investment Business Act, 2010 and mutual funds. Very few complaints involving licensees required more intrusive action by Enforcement.

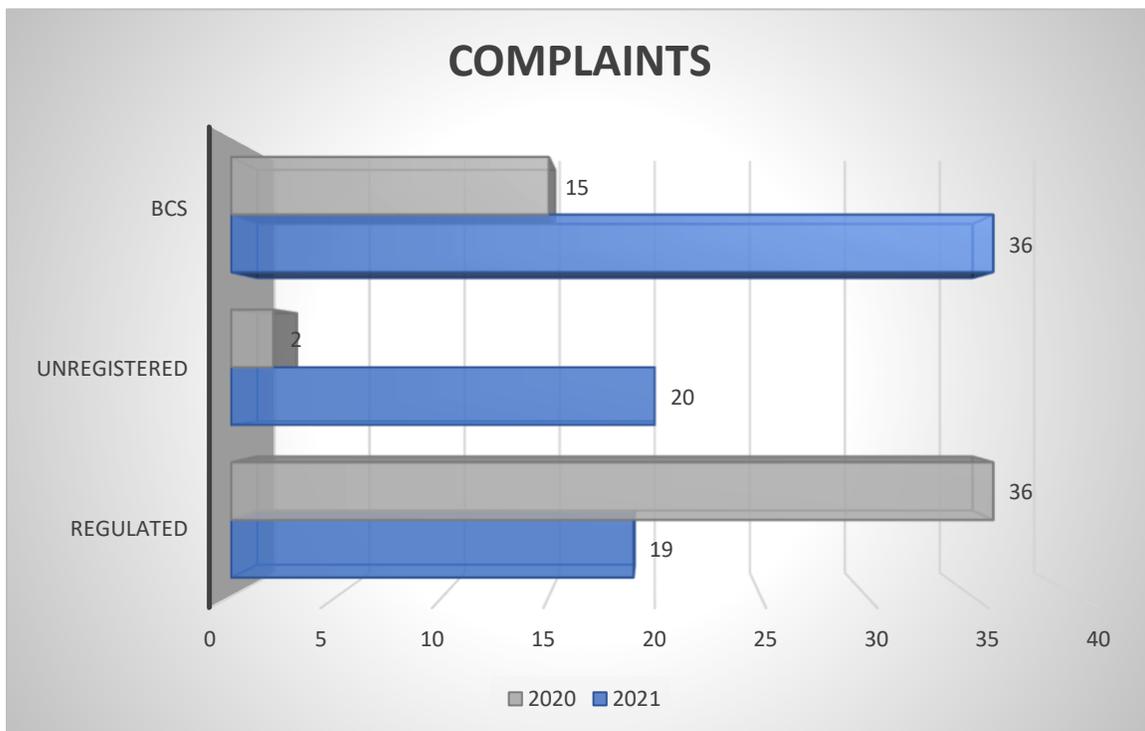


Figure 3: Complaints by type of entity

*Public Statements issued in response to Complaints and Inquiries*

7. Public statements and advisory warnings are authorised and issued through delegated authority granted by the Enforcement Committee. The primary function of a public statements is to alert and warn the public about potential schemes or fraudulent activity with a high possibility of financial loss occurring. In 2021 thirty-one (31) public statements were issued as a result of complaints and inquiries about the circulation of forged licences and fictitious entities falsely purporting to be authorised and licensed in the Virgin Islands. This is 41% more than the twenty-two (22) public statements issued in 2020. Of those statements issued, thirteen (13), (42%) related to forged licenses where entities purported to be licensed in the BVI, and an additional fifteen (15), (48%) also purported to be licensed in the BVI.
8. Enforcement continues to see a marked increase in circulation of forged copies of Commission issued licenses, primarily targeting persons in the securities and investment space. These schemes are typically perpetrated through fictitious websites promoting forex or securities trading and more popularly, cryptocurrency trading.
9. As part of the investigation process, Enforcement typically reports the fraudulent activity to the website host with the aim of suspension or removal of the fictitious website from the internet. Unfortunately, fraudsters continue to utilize domain privatization services that disguise the true owner/operator of the fictitious websites. From a security perspective, Enforcement recommends that the Commission explore additional security measures that would increase difficulty or prevent forgery of its Licenses.
10. Enforcement was also swift in action to prevent potential financial losses by local residents interacting with a fictitious website purporting to be that of a local bank. The fictitious website was first reported by the bank and resulted in the circulation of public notices on the Commission's website and the banks official website. The warning against the fictitious website was also broadcasted via local print and online media houses and radio.

## Referrals

### *Internal Referrals to Enforcement*

11. In 2021, **twenty-three (23)** cases were referred to Enforcement compared to the twenty (20) cases referred in 2020. The cases referred in 2021 included eighteen (18) regulated entities, and five (5) non-regulated Business Companies. These types of referrals are predominantly regulatory breaches that were identified and assessed by the supervisory 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) *Investment Business Division* – Two (2) matters referred regarding Companies conducting unauthorised business, resulting in the imposition of fines and subsequent licensing approval of the Companies. The matters were concluded in 2022. Further, public statements were issued in relation to four (4) Business Companies circulating forged licenses and falsely purporting to be authorised and licensed by the Commission.
- (ii) *Insurance Division* – One (1) Licensee referred for failure to prepare and submit audited financial statements. This matter is currently following the statutory process and is expected to conclude in 2022.
- (iii) *Legal Division* – One (1) matter referred regarding a Company conducting business without a licence, resulting in the imposition of fine and subsequent licensing approval of the Company.
- (iv) *Banking, Insolvency & Fiduciary Services Division* – Ten (10) matters were referred in relation to various regulatory breaches by TCSPs. Of those matters concluded, Enforcement Committee agreed to enforcement actions including fines, warning letters and strongly worded letters.
- (v) *Compliance Inspection Unit* - Three (3) matters were referred to the Division for consideration and recommendation of appropriate enforcement action subsequent to the Licensees' compliance inspections. Two (2) of the enforcement actions were issued within the first quarter of 2021 to which one Licensee received monetary penalty and a warning letter and the other matter remained active at the end of 2021.
- (vi) *Managing Director (MD) Office* – One (1) matter was referred from the MD's Office pertaining to a BVI Company advertising services to the public of the Virgin Islands that appears to suggest could be regulated investment business services. The matter

is sensitive in nature as it involves Government Ministers that have endorsed the activity and remains ongoing.

Division	Monetary Penalty	Warning Letter	Strongly Worded Letter	Rescind Monetary Penalty	Ongoing	Non-Regulated/BCs
Investment Business	2 <sup>5</sup>					4 <sup>6</sup>
Banking Insolvency & Fiduciary Services	2 <sup>7</sup>	5	1	1 <sup>8</sup>	1	
Insurance					1	
Legal	1					
CIU	2 <sup>9</sup>	1 <sup>10</sup>			1	
EC/EC Secretariat			1			
MD Office					1	
<b>TOTAL</b>	<b>7</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>4</b>

Table 2: Summary of internal referrals and actions taken

<sup>5</sup> The monetary penalty/fine was imposed in 2022

<sup>6</sup> Public Statements were issued in relation to BCs purporting to be licensed and/or regulated by the Commission

<sup>7</sup> One of the matters to which EC decision was to impose a penalty/fine was effectively issued in 2022

<sup>8</sup> EC made a decision to rescind the penalty.

<sup>9</sup> One of the matters to which EC decision was to impose a penalty/fine was effectively issued in 2022

<sup>10</sup> The EC agreed to impose a penalty/fine and a warning letter for a Licensee in breach.

12. The graph below provides a yearly comparison of the internal referrals received in 2020 and 2021 and shows that the Banking, Insolvency & Fiduciary Services Division consistently accounts for an average of 37% of total internal referrals on a yearly basis. Further, referrals from the Legal Division accounts for an average of 22% of total internal referrals each year.

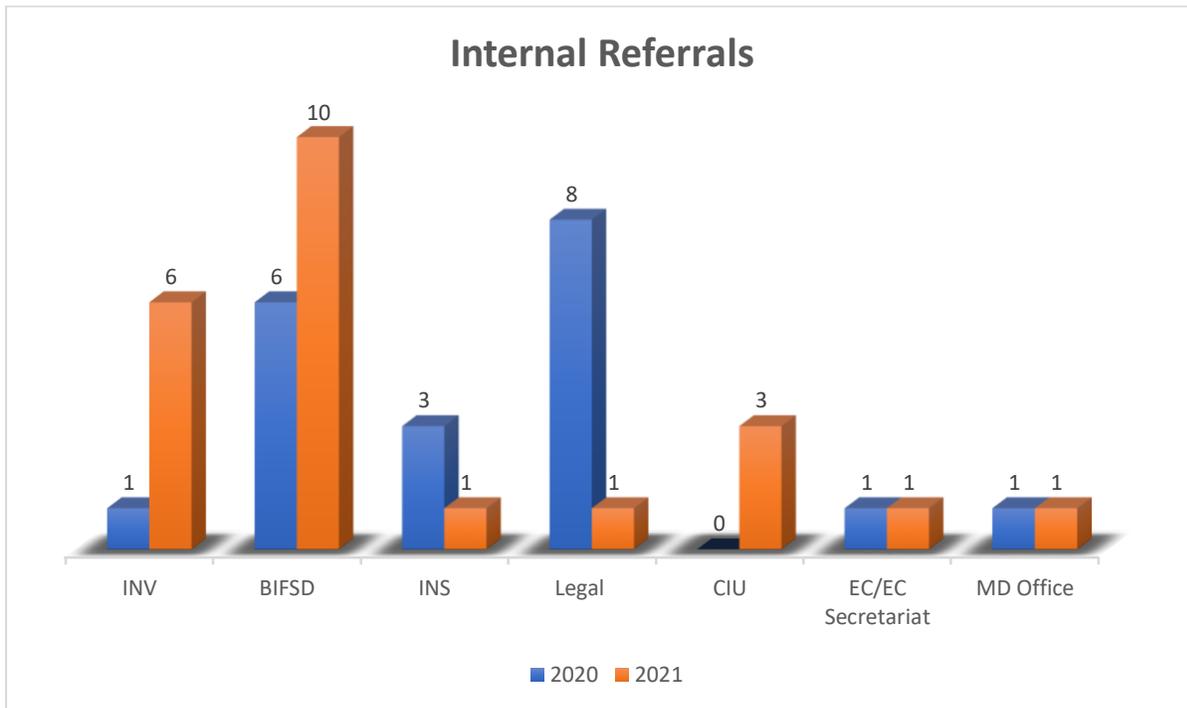


Figure 4: Compares the number of referrals received by each Division/Department in 2020 and 2021

### ***External Referrals (Local and International Counterparts)***

13. 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.
14. In 2021, Enforcement received sixteen (16) such external referrals: thirteen (13) from BVI Financial Investigation Agency and three (3) from the international regulatory counterpart, a 27% decrease from the twenty-two (22) referrals received in 2020.
15. The FIA referrals mainly stem from allegations of money laundering, fraud, regulatory breaches and sanctions violations. Notably, majority of referrals received appeared to be dated matters and transactions, as VIRRGIN searches revealed most Companies were struck well before the date of the referrals.

16. The three (3) referrals from international regulatory counterpart in 2021 alleged BVI Companies involvement in money laundering, tax evasion and connections to Russian businessmen.
17. Given the limited remit and powers 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.

## Investigations

18. 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 the date of referral.
19. Allegations of misconduct including fraud or other financial crimes require deeper assessment and analysis of each matter, and are automatically treated as a higher priority within Enforcement. Such matters of higher complexity are worked routinely by more senior officers of the Division, with investigations extending beyond one month. The nature of the complex investigations typically includes sanctions busting, alleged money laundering, corruption, and AML/CFT compliance.
20. Details of key investigations received and closed in 2021 are attached at Appendix II.

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## Enforcement Activity 2021

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21. The number of decisions taken by the Enforcement Committee (referred to as Enforcement Activity) in 2021 (**one hundred and sixty-six (166) decisions**) increased from a total of **one hundred and fifty (150)** in 2020. The majority of these decisions fell within the category of “Aides to Enforcement” and “Other” (See footnote 12 and 13 below).
22. Decisions resulting in enforcement action (referred to as Enforcement Action Decision Outcome) rose 233% to twenty (20) decisions year over year. Overall, there was an uptick in referrals into the Enforcement Division and the EC, which can be attributed to the Commission slowly returning to full productivity due to the waning effects of the pandemic. In examining the usual referral sources, notable increases were observed across board as follows:
  - ***Onsite Compliance Inspections*** – 60% increase in onsite inspections conducted year over year when compared to 2020 (16 in 2021 v 10 in 2020); and
  - ***Referrals from Supervisory Divisions*** – 15% increase in referrals from Supervisory Divisions (23 in 2021 v 20 in 2020).
23. 2021 also saw a marked shift in enforcement action meted out against licensees for non-compliance. The EC levied a total of eleven (11) administrative penalties and fines for breaches ranging from AML/CFT non-compliance to regulatory violations. This shift in philosophy and action represents a significant increase in monetary penalties and fines issued in 2021 (\$232,000) when compared to 2020 (2 imposed penalties with a total value of \$10,000).
24. For the first time in three years, the use of the Warning Letter fell as the most widely used enforcement action with a total of five (5) warnings issued during the year. This represents a 25% reduction year over year when compared to 2020 (5 in 2021 v 4 in 2020).

## 2021 Enforcement Committee Decisions

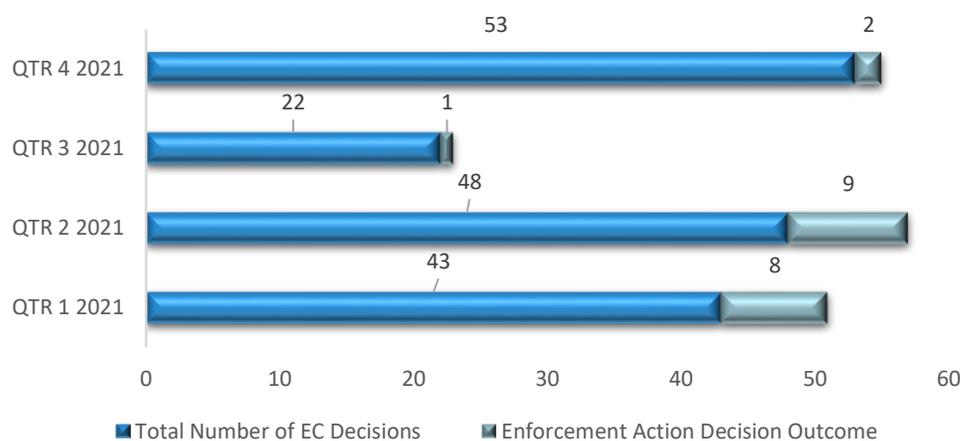


Figure 5: Illustrates Enforcement Committee decision made in 2021 on a quarterly basis

Enforcement Activity	Q1 2021	Q2 2021	Q3 2021	Q4 2021	Total
Enforcement Action	8	9	1	2	20
No Enforcement Action	4	3	2	1	10
Aides to Enforcement	22	20	10	21	73 <sup>11</sup>
Other	9	16	9	29	63 <sup>12</sup>
<b>Total</b>	<b>43</b>	<b>48</b>	<b>22</b>	<b>53</b>	<b>166</b>

Table 3: Total enforcement activity undertaken in 2021

<sup>11</sup> See section below in Aides to Enforcement Action (Public Statements, Releases from Monitoring, Corrective Action Plans etc) detailed in Table 5 below.

<sup>12</sup> Other 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

Enforcement Action by Quarter - 2021							
Types of Enforcement Actions	Q1 2021	Q2 2021	Q3 2021	Q4 2021	Total	AML	Non-AML
Warning Letters	2	3	0	0	5	4	1
Directives	1	0	0	0	1	1	0
Revocation Notices	0	2	0	1	3	0	3
Penalties/Fines	5	4	1	1	11	6	5
<b>Total Enforcement Actions</b>	<b>8</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>20</b>	<b>11</b>	<b>9</b>

Table 4: Characterises enforcement actions effected in relation to AML and Non-AML breaches in 2021.

25. Table 4 above distinguishes enforcement actions effected in relation to AML and Non-AML breaches in 2021. Monetary penalties issued for AML/CFT non-compliance dominated enforcement action for the year.

### Warnings for AML/CFT Breaches

26. Four Licensees were warned for AML/CFT breaches as follows:

- (i) An Investment Business Licensee with AML/CFT deficiencies identified during an onsite Compliance Inspection. Specific deficiencies included failure to conduct risk assessments and enhanced customer due diligence;
- (ii) A TCSP (Company Management License) with identified AML/CFT deficiencies, including failure to appoint Independent Audit Function and staff training requirements;
- (iii) An Investment Business Licensee with identified AML/CFT deficiencies, including failure to conduct Risk Assessments, Updating Customer Due Diligence and Enhanced Customer Due Diligence; and
- (iv) An Investment Business Licensee with identified AML/CFT deficiencies, including failure to conduct risk assessments and enhanced customer due diligence.

### Warning for Regulatory Breaches

27. A TCSP Licensees failed to seek approval for any change of persons designated as an authorised agent.

### Monetary Penalty imposed for AML/CFT Breaches

28. Two Licensees received monetary fines/penalties for AML/CFT breaches as follows:

- (i) A TCSP Class I Trust License holder, received three monetary penalties totalling \$100,000 and monetary fine totalling \$35,000 for the following AML/CFT breaches:
- \$20,000 – failure to conduct the requirements for customer due diligence;
  - \$40,000 – failure to conduct the requirements for enhanced customer due diligence;
  - \$40,000 – failure to conduct the requirements to update customer due diligence; and
  - \$35,000 – failure to test third party relationships.
- (ii) A TCSP Class I Trust License holder, received one monetary penalty in the amount of \$30,000 for its failure to conduct enhanced customer due diligence.

29. The monetary penalties imposed were in relation to onsite compliance inspections conducted in 2019 and 2021.

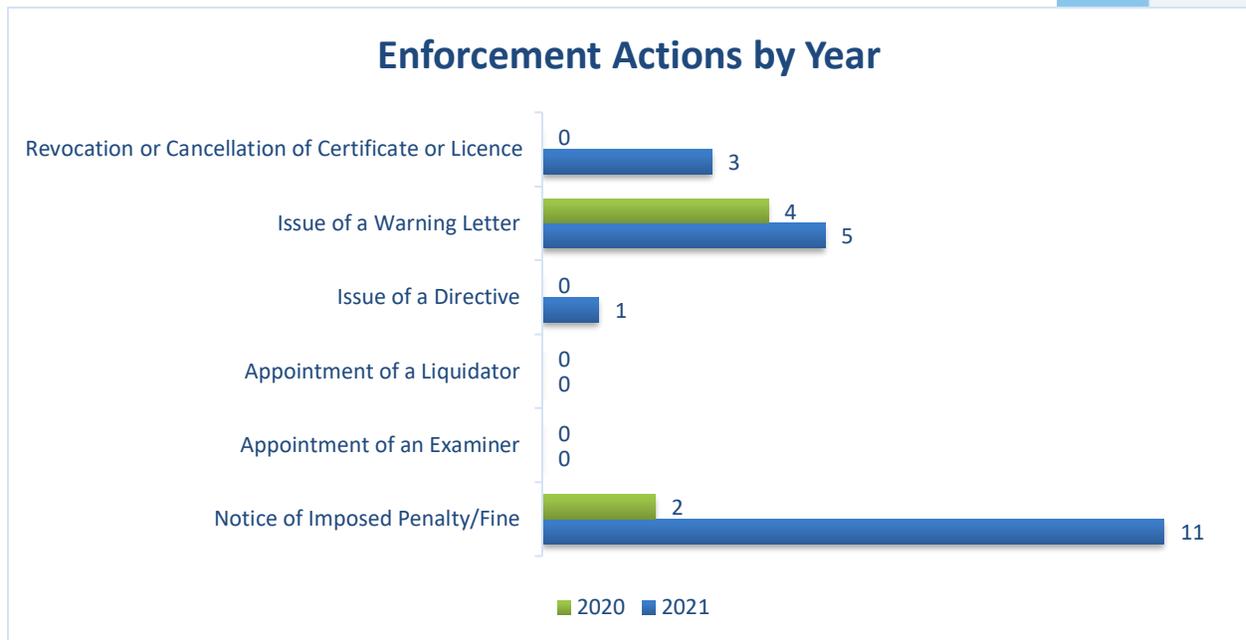


Figure 6: Illustrates the types of enforcement actions executed on a yearly basis.

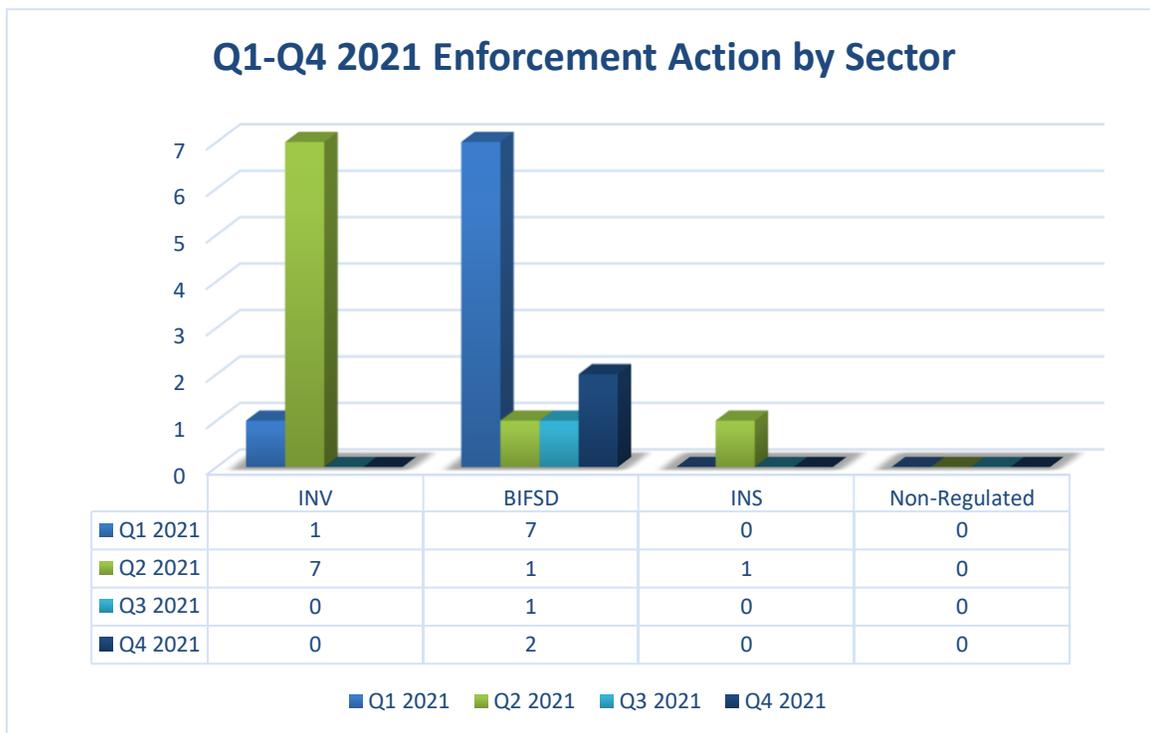


Figure 7: Illustrates the total number of enforcement actions executed on a quarterly basis by sector

## Aides to Enforcement – Complementary Actions

30. 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 2021	Q2 2021	Q3 2021	Q4 2021	Totals	AML	Non-AML
Public Statements	11	9	4	10	34	0	34
Strongly Worded Letters	1	1	0	1	3	1	2
Release from Monitoring	0	2	2	7	11	0	11
Commission's Watch List	3	4	0	1	8	0	8
Approval of Correction Action Plan	6	3	4	2	15	13	2
Issuance of Notice of Intent to Revoke	1	0	0	1	1	0	1
Publication of Enforcement Action	0	1	0	1	1	0	1
<b>Total Aides to Enforcement</b>	<b>22</b>	<b>20</b>	<b>10</b>	<b>21</b>	<b>73</b>	<b>14</b>	<b>59</b>

Table 5: Total aides to enforcement carried out in relation to AML and Non-AML breached

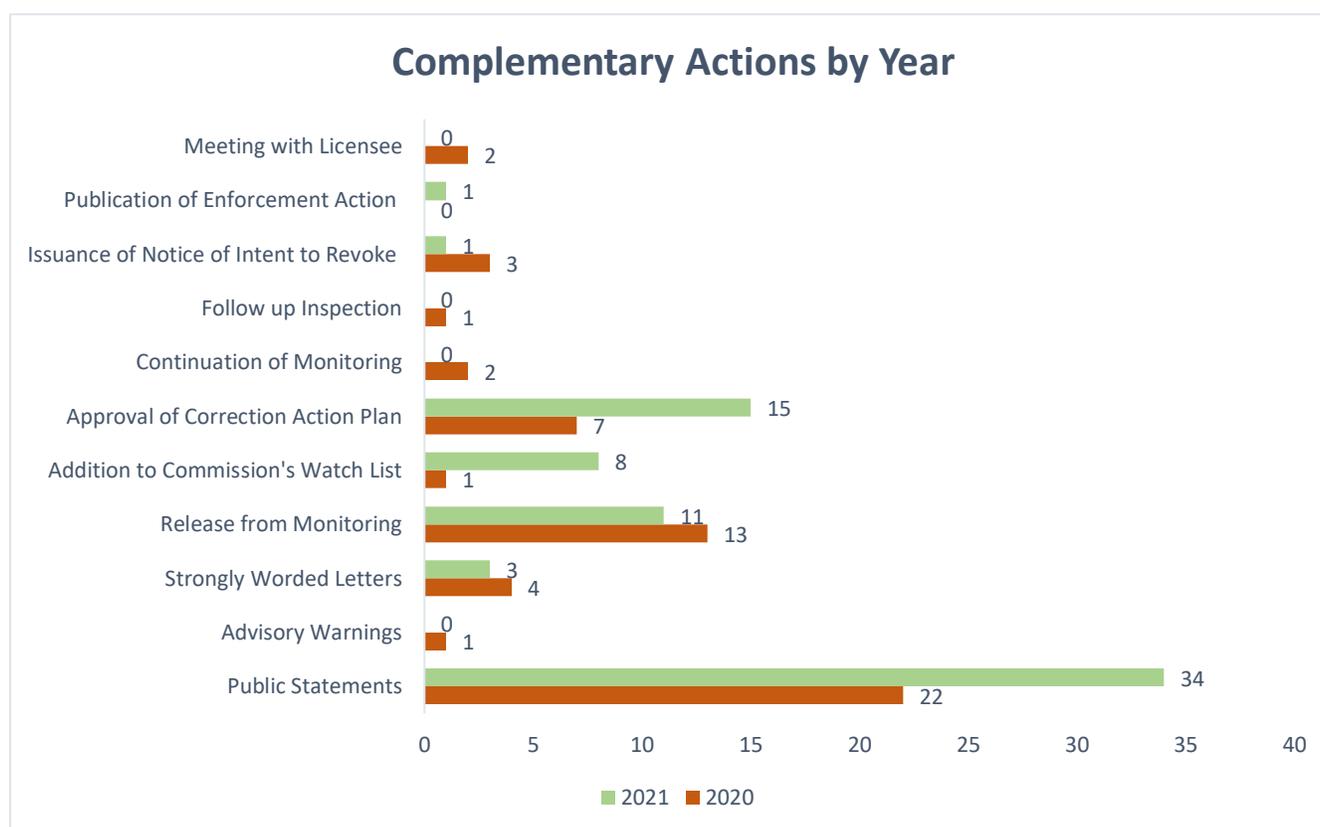


Figure 8: Illustrates the complementary actions taken in 2021 compared to 2020

## Public Statements

31. A record thirty-four (34)<sup>13</sup> public statements issued by the Commission in 2021 were the highest output in recent history and represents a 55% increase from twenty-two (22) issued in 2020. 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 ten (10) BCs were under investigation for unauthorised activity.

## Release from Desk Based Monitoring

32. There were eleven (11) Licensees released from monitoring in 2021 based on the relevant Supervisory Division's assessment that the measures taken by Licensees to rectify deficiencies identified are satisfactory. Seven (7) were TCSP Licensees and four (4) were Insurance Licensees.

## Enforcement Committee Watchlist

33. 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 watch list 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 watch list. Enforcement shares relevant information from the watch list as part of its due diligence service to supervisory divisions.

## AML/CFT v. Regulatory Breaches

34. Tables 7 and 8 below depict that majority of enforcement actions imposed in 2021 were as a result of AML/CFT breaches and were primarily imposed against TCSPs. Nine (9) enforcement actions were taken for non-AML breaches, primarily against SIBA licensees for conducting unauthorised investment business without the appropriate licences.

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<sup>13</sup> Three (3) of the public statements were a result of the revocation of licences

AML Related Breaches by Sector

Non-AML Related Breaches by Sector

Enforcement action for AML Breach by Sector	Q1 2021	Q2 2021	Q3 2021	Q4 2021
Investment Business	1	2	0	0
Banking, Insolvency and Fiduciary Services	6	0	0	2
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

Enforcement Action for Non-AML Breached by Sector	Q1 2021	Q2 2021	Q3 2021	Q4 2021
Investment Business	0	5	0	0
Banking, Insolvency and Fiduciary Services	1	1	1	0
Insurance	0	1	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 breach on a quarterly basis

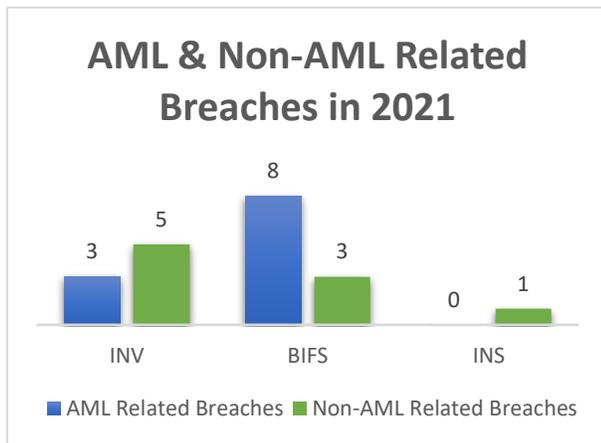


Figure 9: Total number of enforcement actions taken within each sector, comparing AML & Non-AML breaches

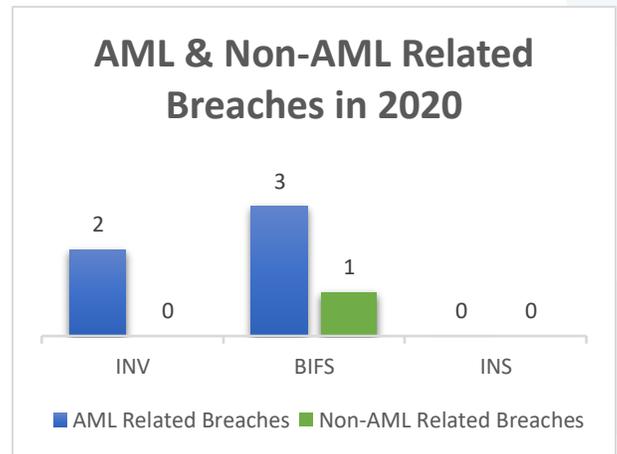


Figure 10: Total number of enforcement actions taken within each sector, comparing AML & Non-AML breaches

35. 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
Approval of Correction Plan	13	Approval of corrective action plans as set out in the Licensee's Compliance Inspection Report
Strongly Worded Letters	1	Failure to conduct risk assessments and other AML/CFT deficiencies.
<b>Total</b>	<b>14</b>	

Table 9: Aides to Enforcement relative to AML/CFT breaches.

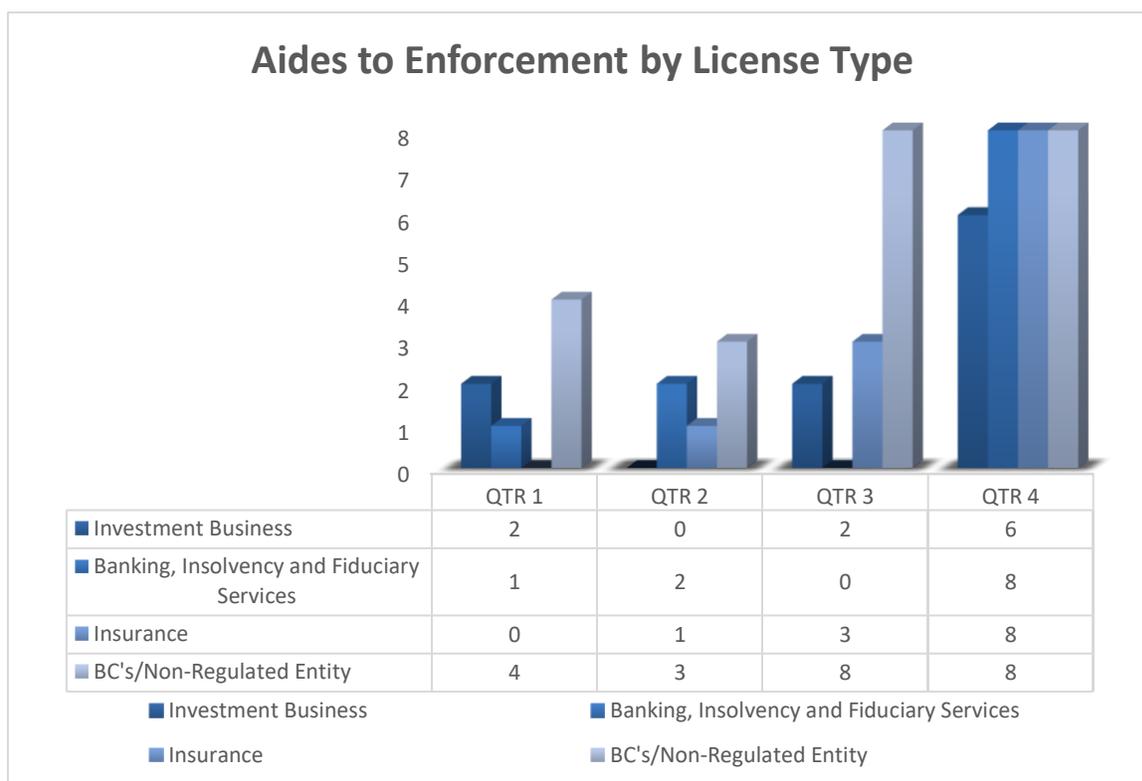


Figure 11: Aides to enforcement imposed by sector

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## Progress against 2021 Workplan & 2022 Outlook

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36. Enforcement progressed the following work relative to its 2021 work plan:

### 1) People Development

A wider range of staffers were selected and included on virtual training seminars in critical areas of focus such as AML/CFT, investigative techniques, CFATF methodologies, Risk management and cryptocurrencies/ virtual assets regulation.

### 2) Progressing Enforcement Cases

The Division experienced an increase in overall workload during the year. One critical success was the successful review, analysis and reporting on a protracted and complex investigation of Crypto Asset Business Group which saw the delivery of the final report and recommendations to EC in 2022.

### 3) Revising the Structure of the Enforcement Regime

#### i) *Streamlining of the roles of the Enforcement Secretary and the Enforcement Division*

The Division successfully integrated the function of implementing the enforcement decisions of the Enforcement Committee with the daily operational work of the Enforcement Division. This has led to greater efficiency and harmonisation in the enforcement process.

#### ii) *Audit of the EC Records*

In order to promote a smooth transition for the implementation of the EC decisions through the Division, an audit of the EC records from 2018 to 2021(present date) was conducted to ensure that they were fully actioned within their limitation periods. The scope of the audit included among other areas, (a) efficacy of operations of the Secretariat in effecting enforcement related decisions; (b) reliability of enforcement related statistics originating from the Secretariat; and (c) identification of outstanding decisions requiring enforcement action.

The process consisted of reviewing each extract of EC from 2018 through 2021 and reviewed volumes of records and liaised with other Division/Departments to determine whether all relevant actions implemented. Matters were then reassigned to Enforcement Officers to progress through the enforcement process. It was imperative that an assessment of the EC records was done to effectively allocate resources within the Division to ensure efficiency of EC with the timely communication of decisions and the taking of actions.

Upon concluding the audit, the Division observed the following findings:

- (i) *Efficacy of operations of the Secretariat* – although the Guidelines and Operating Procedures of the Enforcement Committee provides general guidance on the enforcement process, there appeared to be a misunderstanding in roles of the Supervisory Division and the Secretariat as it relates to implementation of certain enforcement actions. Consequently, this caused certain decisions, specifically, revocation of licences to be stalled in the enforcement process.
- (ii) *Reliability of enforcement related statistics* – Where the EC had imposed individual penalties for each contravention committed by a licensee, such decisions were recorded and reported as a single penalty against the Licensee. Consequently, it was observed that the Secretariat was under reporting decisions relative to administrative penalties and fines.
- (iii) *Identification of Outstanding matters* – a number of matters were found to be outstanding as the enforcement decisions were either not yet actioned or was note not yet concluded. The Division worked to finalise these matters throughout 2021.

### iii) *Analysis and Compilation of EC Decision*

The Division conducted a project to populate a comprehensive spreadsheet of all matters of enforcement presented and agreed upon by the EC from 2015 through 2021. The objective was to create a central repository of all decisions which could then be utilised for references, data analysis, precedents and policy development. Due to the lack of a central data management system, it was a tedious task of sifting through large number of extracts, minutes and EC papers to assess EC decisions over the years and to then populate the information within a spreadsheet.

Given the Division's limited resources, the Division obtained the temporary employment of an intern to execute the project under the supervision of the Senior

Enforcement Officer. A key benefit of the project is that the Division now maintains a more customised database to log and analyse of all decisions of the EC.

iv) *Assessing the Effectiveness of the Enforcement Regime*

The Division commenced a project to assess the effectiveness of its enforcement regime. The project aimed to assess the effectiveness of the regime (through an internal survey of relevant stakeholders in senior management), identify deficiencies, and set benchmarks for determining its effectiveness; and to make recommendations for improvements. The project is ongoing but has already identified a number of changes to be recommended including adapting the Commission's enforcement practices to deliver enforcement actions and outcomes that are stronger and more dissuasive in their impact.

## Key Objectives for 2022 and Enforcement Outlook

37. Enforcement's priorities for 2022 include among others:

- 1) Completion of the assessment of the effectiveness of the enforcement regime.
- 2) Developing FSCs enforcement philosophy to be informed by the results on effectiveness.
- 3) Reporting on the Analysis and Compilation of EC Decisions
- 4) Finalising its enforcement manual.
- 5) Increasing Division resourcing to effectively deliver on increasing responsibilities.
- 6) Exploring measures to mitigate the risk posed by unregulated BVI companies, specifically, extension of enforcement powers to this group among others.

38. The Division continues to be concerned with 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 – Public Statements

Date Received	Entity	Case Description
<b>Q1 2021</b>		
17 Dec, 2020	Gerco Capitalz Investment	Circulating a forged investment business licence and is falsely purporting to be authorised and licensed in the BVI.
18 Nov, 2020	Cryptocent.Live	Circulating a forged investment business licence and is falsely purporting to be authorised and licensed in the BVI.
18 Jan, 2021	British Virgin Islands Financial Regulator	Falsely purporting to be operating from premises in the BVI for the purpose of carrying out investment protection, payment transaction and related financial and legal services.
10 Nov, 2020	GFC Investments Limited	Falsely purporting to be regulated by the FSC to conduct investment business including Forex trading services and is believed to have circulated a forged investment business licence.
28 Jan, 2021	Vendor Investment Group	Circulating a forged investment business licence and is falsely purporting to be authorised and licensed in the BVI.
29 Jan, 2021	Heros Investments Inc.	Purporting to be providing investment business services to the general public.
16 Feb, 2021	National Bank of the British Virgin Islands	Falsely purporting to be NATIONAL BANK OF THE VIRGIN ISLANDS LIMITED, which is a bank licensed and regulated by the FSC.
23 Feb, 2021	Prize FX Limited	Falsely purporting to be licensed and regulated by the FSC.
18 Nov, 2020	Leizan Capital Limited	Circulating a forged investment business licence and is falsely purporting to be authorised and licensed in the BVI.
25 Mar, 2021	Terrance Export Bank	Falsely purporting to be operating from premises in the British Virgin Islands for the purpose of carrying out banking and other financial services business.
09 Mar, 2021	Binacryptogain24	Circulating a forged investment business licence and is falsely purporting to be authorised and licensed in the BVI.
<b>Q2 2021</b>		
05 Mar, 2021	Eurswiss	falsely purporting to be licensed and regulated by the FSC
17 Mar, 2021	NewSolid Markets Co., Ltd. & Tianrun	falsely purporting to be licensed and regulated by the FSC
	International Corporation	
14 April, 2021	Gea Corp	falsely purporting to be licensed and regulated by the FSC
	Disbursprofit Limited	falsely purporting to be licensed and regulated by the FSC
21 April, 2021	Mr. Robin Leo Nicholas	Circulating forged investment license
02 Feb, 2021	WDCMarkets.com	Falsely purporting to be licensed and regulated by the FSC
08 Feb, 2021	Daweda Limited	Falsely purporting to be licensed and regulated by the FSC
<b>Q3 2021</b>		

Date Received	Entity	Case Description
21 July, 2021	Cryptolivetrading.Ltd	Circulating a forged licence and falsely purporting to be authorised and licensed
16 July, 2021	Blockspace Option, LLC	Circulating a forged licence and falsely purporting to be authorised and licensed
15 Sept, 2021	Daily Earning Ltd.	Circulating a forged licence and falsely purporting to be authorised and licensed
06 May, 2021	Accurate Trading FX Limited	Purporting to be licensed
<b>Q4 2021</b>		
29 June, 2021	Unia Trade and Invest. Limited	Falsely purporting to be authorised and licensed
08 Oct, 2021	Richfield Capital Limited	Circulating a forged licence and falsely purporting to be authorised and licensed
14 Oct, 2021	Central Forex Limited	Circulating a forged licence and falsely purporting to be authorised and licensed
25 Oct, 2021	AMC Co Pty Ltd	Circulating a forged licence and falsely purporting to be authorised and licensed
28 Oct, 2021	Galaxy Capital Trading Ltd.	Falsely purporting to be authorised and licensed
23 Nov, 2021	DERIVLIVETRAIDING.COM	Circulating a forged licence and falsely purporting to be authorised and licensed
16 Jul, 2021	EFRA European Financial Regulator (Financial Regulator of the British Virgin Islands)	Falsely purporting to be the Regulatory Authority in the British Virgin Islands.
17 Jun, 2021	Vast Triumph Holding Limited	Falsely purporting to be authorised and licensed
23 Dec, 2021	Amey Sigh	Falsely purporting to be authorised and licensed

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## Appendix II – Key Investigations

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### Fraudulent Websites/ Certificates

1. Enquires from the general public regarding entities with websites that purport to have their contact addresses in Virgin Islands has led to a number of investigations. 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 a notable uptick in these types of cases where fraudsters shelter behind domain privacy services to frustrate investigations into the registered ownership of the fraudulent websites. Usually, the investigations result in swift issuance of Public Statements that warn the public of the potential fraudulent scheme and to refrain from conducting business through the fraudulent website. Further work on establishing protocols and pursuing mechanisms to shut-down those websites where entities purport to be registered and or licenced to operate in or from within the Territory must be undertaken, including an assessment of the legal and other constraints in taking action.

### AML/CFT Non-Compliance

2. Following the conclusion of CIU's Thematic Compliance Inspections in 2021, it was discovered that Licensees were commonly non-compliant in key AML/CFT function such as the requirement to conduct enhanced customer due diligence.
3. In those instances, the Enforcement Committee decision was to take enforcement action in the form of administrative penalties or fines. In one instance, Enforcement Committee's decision was to impose an administrative penalty in the amount of \$30,000 taking into consideration the mitigating and aggravating factors in the case. Enforcement action regarding the other cases were effectively imposed in 2022.
4. Further, through desked-based monitoring conducted by the Supervisory Division, the Commission was able to ensure that relevant corrective actions were fully implemented by the Licensee which aim to improve the Licensees' compliance with AML/CFT requirements going forward.
5. In 2020, the Enforcement Committee initiated the revocation process of a former recognised private mutual fund. It was alleged that the fund 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. The Certificate of Recognition as a Private Fund was effectively revoked during the second quarter of 2021 on the basis that they committed numerous regulatory breaches, operated its business in a manner detrimental to

the public interest and to its investors/creditors and that based on the Commission's fit and proper assessment, the fund and its director were no longer fit and proper.

### Regulatory Failings

6. The matter relating to a BVI banks failure to satisfy its reporting obligations as mandated under section 72(1) of the Regulatory Code, 2009 and section 49(2) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 as a result of impropriety of a former employee of the Bank.
7. During his employment, a former employee of the Bank debited the account of two customers of the Bank, crediting his personal account, and later withdrew the funds from his account. The primary concerns of this matter were:
  - a) The occurrence of both incidents went undetected by the bank until the Bank was notified separately by the affected customers.
  - b) The Bank failed to notify the Commission of their termination of the employee or the apparent failure of their systems and controls within the allotted time frame to do so.
8. The matter was taken to the Enforcement Committee to which it was decided that a \$5,000 proposed administrative penalty for the contravention of section 72(1) of the Code, and a \$5,000 proposed fine for the contravention of section 49(2) of the AMLTFCOP as sufficient enforcement action against the Licensee. Ultimately, the proposed administrative penalty and the proposed fine were imposed in their entirety and the matter was concluded within the second quarter of 2022.

### Cryptocurrency Trading and Exchanges

9. The Commission's investigation into the operations of two (2) entities involved in crypto exchange was complex and has progressed slowly due to several factors, including resourcing.
10. The Enforcement Division revived the case in 2020 and undertook a more in-depth review of the group and their circumstances, issuing a follow-up request to produce information and clarification regarding previously provided documentation. This resulted in further voluminous information that was thoroughly reviewed and assessed by the Division. In 2022, the investigation was concluded with the production of a comprehensive 44-page Investigation Report detailing key findings and high-level recommendations requiring

action. The report was delivered to the Enforcement Committee and the Board of Commissioners during the first quarter of 2022.

11. Enforcement has seen a rise in BVI BCs engaged in virtual assets type products and services and continue to investigate all complaints and inquiries received in this regard. Public Statements are expeditiously issued regarding BVI BCS engagement in these types of business activities to inform the public of the risks involved in soliciting these types of products and services and its unregulated nature. Enforcement expects to continue to see increased numbers of companies in this space as the Commission continues to develop its Virtual Assets Services Providers legislation and regime

### Investigation into conducting possible unauthorised financing business

12. During the reporting year, enforcement actions were taken against a number of BVI Business Companies, at the time, for conducting unauthorised investment business activities. In each case, Enforcement determined that the Companies were conducting regulated business for a number of years and gained financial benefits from those activities.
13. The matters were taken to EC for decision, and it was agreed on all cases due to the nature of the breach, the duration and taking into account other aggravating factors as well as mitigating factors, monetary enforcement action should be taken against the Companies. The monetary penalties ranged from \$5,000 - \$15,000 for conducting unauthorised investment business without a licence for a period ranging from one (1) to three (3) years. Each Company remedied the breach by subsequently obtaining the relevant licence from the Commission based on the nature of their business, with the exception of one Company that entered voluntarily liquidation.

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## Appendix III – Enforcement Typologies

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Demonstrating Effectiveness of MOUs between local Competent Authorities – Supervisory Action taken against Individual conducting unauthorised Financing Business through loan scheme to “Friends and Family”.

### **PROFILE:**

**Senior Officer:** an individual approved as a Senior Officer in the capacity of Managing Director of a Regulated Entity. Senior Officer has been approved more than 10 years and is deemed to be knowledgeable in regulatory and statutory laws.

**Unauthorised Activity:** financing loans in the range of tens of thousands and up to hundreds of thousands of dollars, while bearing interest on each loan transaction.

**The Law:** The Financing and Money Services Act, 2009 provides that a person shall not carry on, or hold himself or herself out as carrying on, financing business unless the person is a BVI business company or foreign company licensed.

**Mechanism for Information Sharing among Competent Authorities:** Memorandum of Understanding between the FSC and the Financial Investigation Agency (FIA). Article 1 of the MoU provides for co-operation and information exchange between both authorities

### **Summary:**

As a result of their analysis of a SAR received, the Financial Investigation Agency (FIA) became concerned that Senior Officer was in violation of the Financing and Money Services Act, 2009 (FSMA) as a result of a loan transaction that was reported to the FIA. Through the MoU, the FIA made a direct referral as intelligence to the Commission for its consideration and action, if the transaction was deemed to be a violation of the FMSA, 2009. Through its supervisory power to demand information, the Commission issued a letter requiring the Senior Officer to provide details of the specific transaction, as well as any other loan/financing transaction(s) performed.

The Senior Officer attempted to categorise the transactions simply as “loans to friends and acquaintances” and had caused some financial losses over the years. Contrary to this, the Commission observed that the Senior Officer within a six-year period, financed six loans ranging from \$20,000 to \$600,000. It was also evident that the recipients of the loan funding had no familial relationship to the Senior Officer. A further indication that the loans may have been issued with commercial intent was that the loan agreements were structured in similar fashion to that of a financial institution, including provisions for interest repayment and charges over collateral as surety of repayment of the loans. The Commission’s investigation concluded that the Senior Officer had in fact breached FSMA, 2009 by carrying on financing business without proper authorisation to do so. In determining the appropriate enforcement action, due consideration was given to the Senior Officer’s co-operation in the investigation and the fact that the breach was the Senior Officer’s first offence. Notwithstanding, a financial penalty was assessed and imposed for the breach of the FSMA, 2009. The Senior Officer was also required to:

- (i) cease and desist from carrying on unauthorised financial services business;
- (ii) commence wind-down plan for each loan agreement as advised by legal counsel of the Senior Officer; and
- (iii) Quarterly reporting on progress of wind-down of loans.

**Red Flags:**

- Multiple loan transactions issued to non-familial relationships;
- Loans financed in individual capacity as opposed to Corporate Entity to avoid scrutiny;
- Loan agreements structured as typical commercial arrangements with collateralized security;
- Multiple loans financed over a period of time; and
- No action taken for loans in default to avoid publicity and further scrutiny of action.