

British Virgin Islands Financial Services Commission

ENFORCEMENT **PHILOSOPHY**

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Enforcement Philosophy

Introduction

The British Virgin Islands Financial Services Commission (“the Commission”) is the autonomous regulatory body for all financial services businesses operating in or from within the British Virgin Islands (“the BVI”). We aim to ensure that the BVI is a well-regulated international finance centre; and that the economic interests of the territory are safeguarded.

Among its many functions, the Commission is responsible for:

- Protecting the interest of the general public and market participants;
- Regulating and supervising relevant financial services business, in accordance with the Financial Services Commission Act, 2002 ("the FSC Act") and its various subsidiary legislation and
- Ensuring compliance with all relevant laws.

Enforcement Approach

A crucial part of the Commission's regulatory activities is its Enforcement function which allows the Commission to act against its licensees and unauthorised persons who commit breaches of relevant laws to protect the market, its participants, and the reputation of the BVI.

As the jurisdiction's financial services business has evolved and matured, the Commission's focus on supervision and Enforcement has also evolved.

The Commission utilises broad powers for Enforcement [underpinned by the FSC Act and its regulations and the Guidelines and Operating Procedures of the Enforcement Committee (“the Guidelines”)], to deter and penalise for breaches; as well as to encourage and compel compliance with all its relevant rules and laws. Each case that warrants enforcement investigation or action is reviewed and assessed on its own merit. However, not all cases that are investigated result in enforcement action.

The Commission's Enforcement Principles

Through its Enforcement Committee (“the EC”), which comprises a cross-section of senior directors within the Commission, decisions are made by consensus and based on consistent practice. Fundamental principles guide the Commission's EC actions, including:

Transparency of processes, procedures, and decisions
Disclosure of all relevant information is essential to making a fully considered decision
Due process to allow for compliance with established procedure and the rules of natural justice
Efficiency in order to achieve appropriate, timely and expeditious handling and decision making
Confidentiality of private information of regulated persons, except as lawfully authorised
Consistency in the application of the rules based on the commonality of cases, facts and circumstances
Professionalism must guide members' conduct, including their duty to act without personal prejudices and arbitrary conduct
Integrity of the entire enforcement process through adherence to all the principles

How the FSC Exercises its Enforcement Powers

The Commission uses many enforcement tools and actions to achieve effective compliance while delivering fair, transparent and robust enforcement outcomes. These may range from warnings to directives to take specific actions to administrative penalties or fines and even revocation of licences. See the Guidelines for full details of the enforcement powers and actions.

The Commission also aims to ensure that its enforcement processes are consistently applied and that its decision-making is timely and transparent. This is achieved through fair and open communication with its Licensees and publication of its decisions, which are fundamental principles of the Commission's Enforcement Philosophy. Through the publication of its decisions, the Commission not only aims to deliver transparency but also messages to the broader regulated community (as well as BVI's global financial participants), BVI's intolerance for non-compliance. In so doing, it also aims to encourage market participants to comply with its laws and regulations.

The Commission always aims to ensure that its actions are proportionate to the breaches. As such, the nature and gravity of the breach is carefully considered. In this manner, factors such as the duration of the breach, its impact, the systemic nature or degree, financial gain, or loss to stakeholders are fully considered.

Additionally, other factors such as the frequency of the breach, compliance and Enforcement history, reasonable cause explanations, forthrightness, responsiveness and effective remedial actions are all mitigating factors that the Commission considers in determining the most effective enforcement action.

Risk-Based Supervision

The Commission practices risk-based supervision. Consequently, licensees that pose higher risks and are therefore more closely and frequently monitored, inspected or otherwise examined; will be subjected to greater supervision, which may invariably permeate its enforcement function.

The extent to which breaches under any financial services legislation constitute an offence, the Commission has adopted a policy to issue and administer fines pursuant to section 56 of the FSC Act.

New Enforcement Priorities

The Commission has adopted new enforcement priorities, including:

- Instituting enforcement actions on the higher order of hierarchy and range of enforcement options;
- Imposing higher levels of fines and penalties for non-compliance on a reducing scale starting at the maximum levels and subject to adjustments based on mitigating circumstances;
- Imposing higher levels of fines and penalties for repeated breaches on a reducing scale starting at the maximum levels and subject to adjustments based on mitigating circumstances;
- Imposing enhanced levels of fines and penalties for partial compliance, subject to adjustments based on aggravating and mitigating circumstances;
- Ensuring that Compliance Inspections Reports specifically rate each section and subsections being analysed and that these ratings are appropriately considered when arriving at aggregate or overall compliance ratings to more accurately and proportionately apply enforcement penalties.

- To determine the most appropriate enforcement action, as well as the quantum of fines or penalties to impose; among other aggravating and mitigating factors, the following are considered:

<u>Aggravating Factors</u>	<u>Mitigating Factors</u>
Duration of the breach	First-time breach
Serious or systemic weaknesses (regulated person)	Reasonable cause explanation for the breach
Market impact of the breach	Corrective measures by the regulated person
Financial gain resulting from the breach	Full and adequate disclosure of the breach
Loss or risk of loss to shareholders or investors	Responsiveness and cooperation
Breach constitutes an offence	Remedial steps taken and their effectiveness

The Commission's consideration of these factors aims to help ensure that its decisions are fair, objective and rational.

Through its enforcement actions, the Commission aims to deliver on its principal objectives to protect the public, protect and enhance the territory's reputation and reduce illegal and unlawful activity within the financial services sector. These new imperatives are intended to ensure that these objectives are better achieved by applying an enforcement philosophy underpinned by more robust and dissuasive enforcement actions and penalties.