ENFORCEMENT OUTCOME

Imposition of Administrative Penalty - Ref: ENF/05G2021/E1

---

1. Background

1.1. Bao Asset Managers Ltd (the "Company") holds a Global Business Licence and a Collective Investment Scheme Manager Licence issued by the Financial Services Commission (the "FSC") on 16 December 2010.

1.2. An on-site inspection (the "Inspection") conducted by the FSC on the premises of the Company revealed that it was in breach of numerous statutory obligations. A deficiency letter was thus issued to the Company detailing the Inspection findings and requiring the Company to submit an action plan to remedy these statutory breaches with an implementation timeline to be agreed with the FSC. The Company duly responded to the deficiency letter and submitted its remedial plan.

1.3. Notwithstanding the remedial plan, the matter was referred to the Enforcement Directorate of the FSC for such action as it deems appropriate in relation to the contraventions revealed by the Inspection.

1.4. In this regard, following an assessment of the matter, the Enforcement Directorate gave written notice to the Company of its intention to refer the matter to the Enforcement Committee (the "EC") pursuant to section 53(1) of the Financial Services Act (the "FSA"). The Company duly responded to the Enforcement Directorate and subsequent to an assessment of the Company's submissions, the matter was referred to the EC.

Financial Services Commission
FSC House, 54 Cybercity
Ebene, 72201 Mauritius
T: (+230) 403-7000 • F: (+230) 467-7172
E:fscmauritius@intnet.mu
www.fscmauritius.org

2. Breaches committed by the Company

2.1. The EC observed that the Company has been operating in breach of the Financial Intelligence and Anti-Money Laundering Act 2002 (the "FIAMLA"), the Financial Intelligence and Anti-Money Laundering Regulations 2018 (the "FIAML Regulations") and the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (the "UN Sanctions Act") in relation to the following:

2.2. *Risk Assessment*

2.2.1. The Inspection revealed that the Company failed to conduct a risk assessment in relation to its business and that it was using that of its Management Company, namely Harel Mallac Global Ltd. While the Company had risk-assessed its clients in 2018, this exercise was not conducted while considering all risk factors provided under section 17 of the FIAMLA. In addition, the client risk assessment has not been periodically updated since 2018.

2.2.2. The EC noted that thereafter, as part of its remedial plan, the Company undertook a risk assessment in relation to its business, its clients and all funds under its management. Yet, as at the date of the Inspection, the Company was in contravention of section 17 of the FIAMLA since it failed to take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks for customers, countries or geographic areas, as well as, products, services, transactions or delivery channels and to consider all relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied.

2.3. *Policies, Controls and Procedures*

2.3.1. The EC observed, according to the Inspection findings, that the Company's policies, controls and procedures pertaining to Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") were not approved by its senior management. Also, steps taken to internally communicate those policies, controls and procedures, or any changes thereto, were not recorded, resulting into the Company being in contravention of sections 17A(l)(c)(iii) and 17A (2) of the FIAMLA.

2.3.2. The EC also took note that post Inspection, the Company initiated appropriate actions to prepare and submit its AML/CFT policies and procedures for its senior management approval.

2.4. *Targeted Financial Sanctions ("TFS")*

2.4.1. The EC further noted that as at the Inspection, the Company's policies and procedures did not cover its obligations under the UN Sanctions Act to undertake TFS screening.

2.4.2. While this shortcoming was thereafter addressed by the Company through its updated AML/CFT policies and procedures, it was found by the EC to be in breach of section 41 of the UN Sanctions Act at the time of the Inspection.

2.5. *Money Laundering Reporting Officer ("MLRO"), Deputy MLRO and Compliance Officer*

2.5.1. The EC took note that the Company had failed to appoint a Compliance Officer. In addition, following the resignation of the Deputy MLRO and the then MLRO on 29 January 2018 and 11 September 2018 respectively, the Company was operating without an MLRO and Deputy MLRO.

2.5.2. By operating without a Compliance Officer, an MLRO and a Deputy MLRO, the EC concluded that the Company was in breach of regulations of 22(1), 26(1) and 26(2) of the FIAML Regulations.

2.5.3. The EC duly observed that these positions have now been filled with the FSC's prior approval.

2.6. *Training of Board of Directors, Employees and Officers on AML/CFT matters*

2.6.1. The Inspection showed that the Company did not implement an ongoing training programme for its directors, officers and employees to maintain awareness of the legislative provisions relating to money laundering and terrorism financing ("ML/TF") to assist them in recognising transactions and actions that may be linked to ML/TF and did not instruct them on the procedures to be followed where any links have been identified.

2.6.2. Despite the remedial steps taken thereafter, the EC concluded that the Company failed to abide by regulation 22(1)(c) of the FIAML Regulations at the time of the inspection.

2.7. *Independent Audit*

2.7.1. The Inspection revealed that the Company did not have an independent audit function to review and verify its compliance with and effectiveness of the measures taken in accordance with the FIAMLA and the FIAML Regulations.

2.7.2. The EC took due note of the Company's undertaking to carry out the required AML independent audit at a later stage. However, the EC formed the opinion that as at time of the Inspection, the Company was in contravention of regulation 22(1)(d) of the FIAML Regulations.

3. Proceedings before the EC

3.1. *Contemplated sanction*

Following assessment of the information submitted by the FSC regarding the abovementioned breaches, the EC considered that the most appropriate way to sanction the breaches committed by the Company was through the imposition of an administrative penalty pursuant to section 7(1)(c) (v) and 52(3) of the FSA.

3.2. *Calculation of the Administrative Penalty*

3.2.1. The FSC's policy for imposing an administrative penalty is set out in the Administrative Penalties Regulatory Framework. In this respect, the EC has taken a five-step approach to determine the appropriate level of administrative penalty to be imposed on the Company in relation to breaches committed.

3.2.1.1. Step 1: Disgorgement

At Step 1, the EC seeks to deprive the Company of the financial benefit derived directly from the breaches detailed above, including any profit made or loss avoided, where it is practicable to quantify this.

Based on the referral material provided by the FSC, the EC was not able to quantify any financial benefit that the Company had derived directly from these breaches, to be subjected to disgorgement. Step 1 was therefore USD 0.

3.2.1.2. Step 2: Seriousness of the breaches

Gross income

At Step 2, the EC determines a figure, which, to its opinion, reflects the seriousness of the breaches committed by the Company. That figure is

based on a percentage of the Company's gross income for the duration of the breaches.

The breaches occurred over the period from 01 October 2018 to the date of the Inspection in June 2020. The EC considered that the gross income of the Company for this period amounted to [**Edited for Confidentiality**].

In deciding on the percentage of the gross income forming the basis of the Step 2 figure, the EC considered the seriousness of the breaches and chose a percentage between 1% and 15%. This range is divided into three (3) fixed levels which represent, on a sliding scale, the seriousness of the breaches - the more serious the breaches, the higher the level:
Minor: 1– 5%
Moderate: 6 – 10%
Major: 11 –15%

In assessing the level of seriousness of the breaches, the EC took into consideration the factors reflecting the impact and nature of the breaches. In this regard, after considering all relevant circumstances of the matter, the EC formed the opinion that the level of seriousness of these breaches was **Moderate**. The figure under Step 2 was therefore **8%** of the gross income.

3.2.1.3. Step 3: Mitigating and aggravating factors

At Step 3, the EC may increase or decrease the amount of the Administrative Penalty arrived at after Step 2, but not including any amount disgorged at Step 1, to consider factors that aggravate or mitigate the breaches.

Having regard to the circumstances of this matter, EC took due note of the remedial actions proposed by the Company. In the absence of cogent

evidence that the Company had completed the implementation of the proposed remedial plan, the EC did not apply any mitigating or aggravating factor at this stage and maintained the figure at 8% of the gross income of the Company for the period 01 October 2018 to the date of the Inspection in June 2020. Step 3 was 8% amounting to USD 31,313.

3.2.1.4. Step 4: Adjustment for deterrence

Where the EC considers that the figure arrived at after Step 3 is insufficient to deter the licensee for having committed the breaches, or others, from committing further or similar breaches, then the EC may increase the penalty.

The EC, however, considered that the figure at Step 3 was sufficient to act as a deterrent to the Company and others. As such, the EC did not increase the penalty at Step 4 and it was therefore maintained at USD 31,313.

3.2.1.5. Step 5: Adjustment effected if the amount of the Administrative Penalty would cause serious financial hardship

The EC recognises that the imposition of an administrative penalty may cause significant financial hardship to a licensee. In these circumstances, it may consider a reduction in the administrative penalty. However, the onus will be on the licensee to satisfy the EC, based on cogent and verifiable evidence, that the proposed Administrative Penalty may give rise to serious financial hardship. At this stage, the EC did not consider such an adjustment to be applicable.

3.2.1.6. Amount of Administrative Penalty

In light of the above, the EC contemplated the imposition of an Administrative Penalty amounting to USD 31,313 on the Company.

4. Warning Notice under section 53(2) of the FSA and the Company's written representations

4.1. The EC issued a notice dated 07 April 2021 to the Company pursuant to section 53(2) of the FSA. The purpose of this notice was to inform the Company that:

4.1.1. the EC was contemplating to impose an administrative penalty amounting to USD 31,313 on the Company in accordance with sections 7(1) (c) (v) and 52(3) of the FSA; and

4.1.2. it was entitled, as of right, to make written representations to the EC within a period of 21 days as to why it should not be subject to this Administrative Penalty.

4.2. A copy of the referral material provided by the FSC was duly submitted to the Company along with the Warning Notice.

4.3. The Company exercised its right to make written representations to the EC by way of letter dated 20 April 2021. These written representations were duly considered by the EC.

4.4. The EC also took note that the Company has remedied all breaches revealed by the Inspection.

5. Decision of the EC

5.1. In light of the above and based on the written representations of the Company, the EC has resolved to impose an administrative penalty on the Company for the breaches revealed by the Inspection as detailed in paragraph 2 above.

5.2. The prompt remedial actions taken by the Company have been considered as mitigating factors by the EC, resulting in a decrease from 8% to 6% of the Company's gross income for the duration of the breaches.

5.3. Owing to these timely corrective measures coupled with the fact that the Company solely manages four (4) funds duly regulated by the FSC, thereby posing a lower risk to the financial system, the EC has reclassified the seriousness of the breaches committed by the Company from Moderate to Minor with a corresponding decrease from 6% to 5% of the Company's gross income for the duration of the breaches. In this respect, the reviewed Administrative Penalty now amounts to USD 19,571.

5.4. Consequently, the EC has resolved to impose an administrative penalty amounting USD 19,571 on the Company under sections 7(1) (c) (v) and 52(3) of the FSA.

5.5. This decision shall take effect immediately after a period of 21 days from the date of the decision notice.

6. Payment of the Administrative Penalty

6.1. Payment of the administrative penalty to the FSC is to be effected within a maximum period of one (1) calendar month from the date of the decision notice and may be made through wire transfer.

6.2. Banking details of the FSC are provided in the table below: **[Edited for Confidentiality]**

6.3. In line with section 53(9) of the FSA, an administrative penalty imposed under section 7(1) (c) (v) of the FSA is a debt due to the FSC and may be recovered as a civil debt in a court of competent jurisdiction.

7. Discount for early payment of the Administrative Penalty

The attention of the Company was drawn to the Administrative Penalties Regulatory Framework which provides for a discount on the amount of the Administrative Penalty to be paid by a licensee, where payment is made promptly

from the date of the notice. The applicable discount rates are provided in the table below.

Payment of Administrative Penalty	Discount
Within 7 days	5%
Within 14 days	3%
Within 21 days	2%

8. Application to the Financial Services Review Panel (the "FSRP")

8.1. The Company may make an application to the FSRP for a review of the above decision of the EC, within 21 days from the issue of the notice. Such an application must be lodged with the Secretary of the FSRP specifying the reasons for a review, in accordance with section 53(4) of the FSA. A copy of the application must be filed with the FSC.

8.2. The decision notice was issued on 27 May 2021 and became effective on 17 June 2021. Based on the records of the FSC as at date, no such application has been filed by the Company.

05 July 2021

This published version of the Decision Notice has been edited for formatting purposes, to remove certain confidential, sensitive or personal information and to include certain information which the FSC deems important for the awareness of the members of the public and for transparency purposes.

Financial Services Commission
FSC House, 54 Cybercity
Ebene, 72201 Mauritius
T: (+230) 403-7000 • F: (+230) 467-7172
E:fscmauritius@intnet.mu
www.fscmauritius.org