



ADMINISTRATIVE PENALTIES REGULATORY FRAMEWORK

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PREFACE

As a generic term, an Administrative Penalty (“AP”) is a financial penalty imposed by a regulator to sanction breaches of Acts, Rules, Regulations, Codes, Guidelines and Licensing Conditions, where appropriate, by a licensee.

From an international perspective, APs are recognised by the standard-setting bodies mentioned below as an effective enforcement tool to address regulatory breaches:

- International Organisation of Securities Commissions (IOSCO);
- International Association of Insurance Supervisors (IAIS);
- International Organisation of Pension Supervisors (IOPS);
- Financial Action Task Force (FATF); and
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

These organisations also highlight the importance of frameworks in empowering regulators to detect, investigate and sanction statutory breaches.

The Financial Services Commission (the “Commission”) has power to impose APs in accordance with section 7(1)(c)(v) of the Financial Services Act (“FSA”). As part of its disciplinary powers, the imposition of APs supports the statutory objectives of the Commission by promoting high standards of business conduct in the non-banking financial services and global business sectors as well as compliance, by its licensees, with the relevant laws.

Until now, the Commission has made use of its powers to impose APs under the [Financial Services \(Administrative Penalties\) Rules 2013](#)¹ for specific breaches mentioned in the Schedule therein (non-filing of statutory documents and statistical information).

The Commission has now devised its Administrative Penalties Regulatory Framework (the “Framework”) which sets out the general principles and approach adopted by the Commission regarding the imposition of APs on a licensee pursuant to section 52(3)² of the FSA. These

¹ These Rules are made pursuant to section 93 of FSA by the Commission.

² Section 52(3) of the FSA provides that the Enforcement Committee may exercise the disciplinary powers of the Commission under section 7(1)(c) to impose an administrative sanction on a licensee.

APs, imposed by the Commission for the breaches of relevant laws which are dealt with in the enforcement space, are going to be decided on a case by case basis.

The Framework establishes the policy and methodology for the use of APs by the Commission, including the exercise of its discretion, in determining the applicable quantum in an objective, proportionate and transparent manner.

In line with the Framework, APs will be applied by the Commission to sanction its licensees for instances of regulatory breaches other than specific breaches mentioned in the Schedule of the Financial Services (Administrative Penalties) Rules 2013 (non-filing of statutory documents and statistical information).

Additionally, this Framework does not supersede the Financial Services (Administrative Penalties) Rules 2013.

In contrast to other sanctions, such as revocation and disqualification, this type of AP may, where appropriate, enable viable businesses to maintain their business activities and officers to continue holding their positions, even where they are sanctioned for any statutory breaches that they may have engaged in³.

In view of the continuously evolving financial landscape, this Framework will be subject to periodic reviews and updates.

³ An AP may however be imposed in conjunction with another type of sanction, which may ultimately result in the entity or person being unable to operate as a licensee.

INTERPRETATION

“*Authorised Company*” means a company issued with an authorisation under section 71A of FSA;

“*Commission*” means the Financial Services Commission established under section 3 of the FSA;

“*consumer of financial services*” includes -

- (a) a beneficiary under the Private Pension Schemes Act 2012; and
- (b) any other person entitled to benefit from financial services under the relevant laws;

“*controller*” in relation to a corporation, means a person –

- (a) who is a member of the governing body of the corporation;
- (b) who has the power to appoint or remove a member of the governing body of the corporation;
- (c) whose consent is needed for the appointment of a person to be a member of the governing body of the corporation;
- (d) who, either by himself or through one or more other persons –
 - (i) is able to control, or exert significant influence over, the business or financial operations of the corporation whether directly or indirectly;
 - (ii) holds or controls not less than 20 percent of the shares of the corporation;
 - (iii) has the power to control not less than 20 percent of the voting power in the corporation;
 - (iv) holds rights in relation to the corporation that, if exercised, would result in paragraphs (ii) and (iii);
- (e) who is a parent undertaking of that corporation, or a controller of such parent undertaking; and

- (f) who is a beneficial owner or ultimate beneficial owner of the persons specified in paragraphs (a) to (e) and who appears to the Commission to be a controller of that corporation;

“*corporation*” –

- (a) means a body corporate; and
- (b) includes, where specified in FSC Rules, any trust, *société* or partnership or any other body of persons;

“*Enforcement Committee*” means the internal committee established under section 52 of the FSA;

“*financial crime*” means –

- (a) an offence that involves fraud or dishonesty under the relevant Acts or any other enactment; or
- (b) an offence under the Financial Intelligence and Anti-Money Laundering Act 2002, the Convention for the Suppression of the Financing of Terrorism Act, the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019, the Prevention of Terrorism (International Obligations) Act or under the Prevention of Terrorism Act 2002;

“*financial services*” –

- (a) means any financial services or financial business activities governed by the FSA and the Acts specified in the First Schedule of the FSA; and
- (b) includes the financial business activities specified in Part I of the Second Schedule of the FSA;

“*General Fund*” means the fund established under section 82 of the FSA,

- (a) into which all money received by the Commission shall be paid; and

(b) out of which all payments required to be made by the Commission and all charges on the Commission shall be effected;

“*Global Business*” means the business to which Part X applies;

“*Global Business Licence*” means a licence issued under section 72(6);

“*Global Business Corporation*” means a corporation holding a Global Business Licence issued under section 71 of FSA;

“*guidelines*” includes codes, guidance notes, practice notes and such other similar instruments issued by the Commission;

“*licence*” –

(a) means any licence issued under any relevant Act; and

(b) except where otherwise specified, includes –

- (i) a Global Business Licence; or
- (ii) an Authorised Company; or
- (iii) a management licence;

“*licensee*” –

(a) means the holder of a licence; and

(b) includes –

- (i) any person authorised, registered or approved under the FSA and the Acts specified in the First Schedule of FSA; and
- (ii) any institution established to provide any service under the FSA and the Acts specified in the First Schedule of FSA;
- (iii) any person who is a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee.

“*management company*” means a company holding a management licence;

“*management licence*” means a licence referred to in section 77 of the FSA;

“*officer*” means a member of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary, a partner, a trustee, a money laundering reporting officer, a deputy money laundering reporting officer, a compliance officer or a person holding any similar function with a licensee;

“*relevant laws*” –

- (a) means the FSA and the Acts specified in the First Schedule of FSA;
- (b) includes any regulations and FSC Rules made under those Acts;
- (c) means the Financial Intelligence and Anti Money Laundering Act (“FIAMLA”);
- (d) includes any regulations made under the FIAMLA; and
- (e) includes any Codes, Guidelines, Standards, Guides and Practice Notes issued under section 7(1)(a) of the FSA and/or section 18(1)(a) of the FIAMLA;

“*trust*” has the same meaning as in the Trusts Act 2001.

INTRODUCTION

The Commission has a wide range of powers under the relevant laws to take actions against its licensees who have carried out, are carrying or likely to carry out any activity which may be illegal, dishonourable and involve improper practices, market abuse and financial fraud in relation to any activity in the financial services sector.

The disciplinary powers of the Commission, including the imposition of APs, may be exercised to sanction non-compliance with the relevant laws by a present or past:

- a. licensee;
- b. any person who is:
 - (i) an officer;
 - (ii) a partner;
 - (iii) a shareholder; or
 - (iv) a controller of a licensee.

The Commission considers that APs, as part of its enforcement powers, are a valuable tool in ensuring compliance by its licensees, with the applicable legislations and to sanction regulatory breaches.

1. PURPOSE AND APPLICATION OF APs

1.1. Purpose

Section 7(1)(c)(v)⁴ of the FSA empowers the Commission to impose APs on licensees. This specific power complements the panoply of other administrative sanctions available to the Commission.

The principal objective of an AP is to leverage and encourage compliance with regulatory requirements in order to protect the consumers of financial services and to ensure the soundness of the financial system of Mauritius. Responsiveness, proportionality, fairness and equity, deterrence, punishment and reparation for damage caused are some of the necessary elements of an effective AP. In addition, APs, when imposed by way of an appropriate settlement⁵ mechanism, will allow for the early and effective resolution of enforcement matters.

To ensure appropriate use of this particular sanction, the Commission, through this Framework, is establishing the overarching principles, based on which APs will be imposed for breaches of regulatory requirements prescribed under the relevant laws.

1.2. Application

While this Framework sets out the general principles and approach adopted by the Commission regarding the imposition of APs, it is not intended as an exhaustive description of its approach to the exercise of its enforcement powers and does not limit the use of the Commission's discretion, as required, on a case by case basis. This Framework does not create additional compliance requirements for licensees.

⁴ Section 7(1)(c)(v) of the FSA empowers the Commission to impose administrative penalties on defaulting licensees and provides as follows:

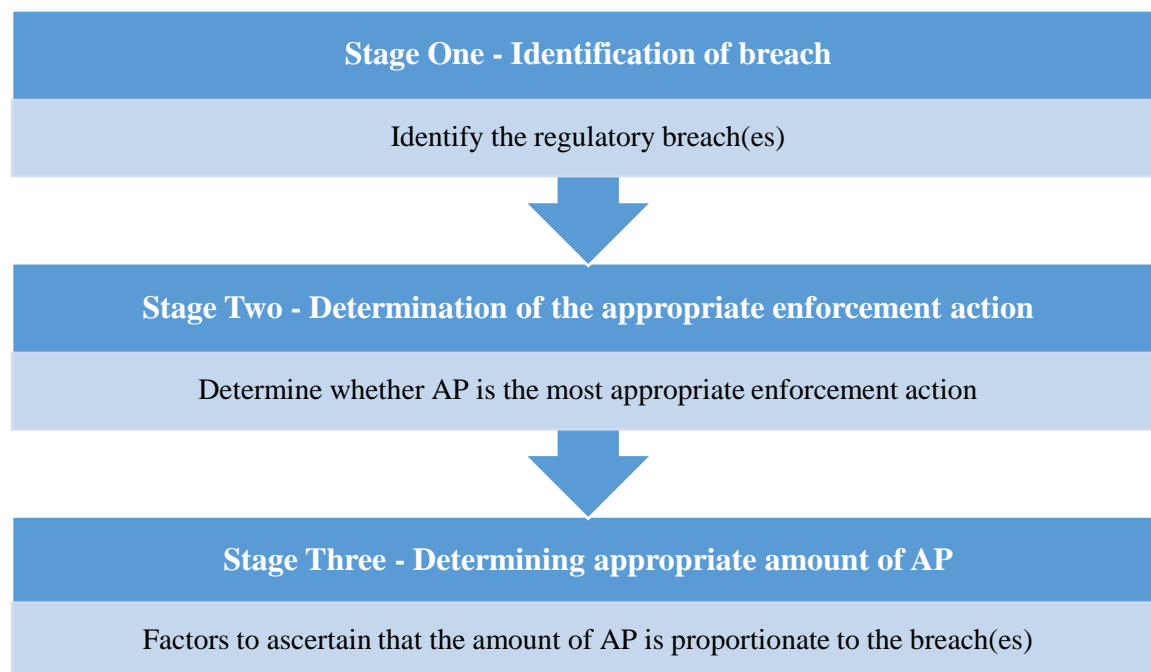
“(1) The Commission shall have such powers as are necessary to enable it to effectively discharge its functions and may, in particular: ...

(c) with respect to a present or past licensee or any person who is a present or past officer, partner, shareholder, or of a licensee –...

(v) impose an administrative penalty;”

⁵ **The Commission is devising its settlement protocols which will be detailed under a separate cover.**

2. DECIDING WHETHER TO TAKE ACTION



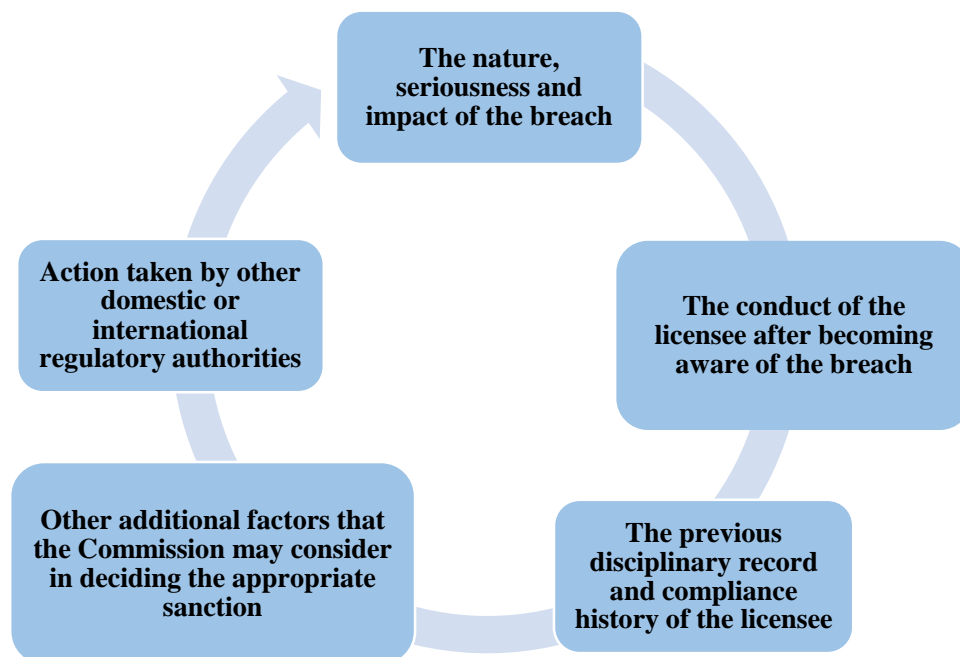
2.1. Stage One – Identification of breach(es)

Breach(es) of the relevant laws is/are identified by the Commission during on-site inspections, investigations and inquiries conducted into the businesses of the licensees and/or as a result of information or intelligence.

2.2. Stage Two - Determination of the appropriate enforcement action(s)

Following the identification of the breach(es), the Commission will adopt a judgement-based approach, in light of the seriousness and circumstances of such breach(es), to decide which disciplinary sanction(s) will be most appropriate. The sanctions prescribed under section 7(1) (c) (v) of the FSA are not mutually exclusive and the Commission may consider cumulative sanctions based on the severity of the breach(es).

The factors contained in the different categories set out below may be taken into account in determining which disciplinary sanction(s) is/are to be imposed on a licensee. In a nutshell, these categories are represented in the diagram below:



The factors set out below are not exhaustive, and the Commission may consider other factors, which although not listed, may be relevant to a particular case.

2.2.1. The nature, seriousness and impact of the breach(es)

The factors which will be considered by the Commission in determining which disciplinary sanction(s) is/are to be imposed on a licensee, include, but are not limited to:

- a) Extent of the breach(es) identified;
- b) Whether the licensee were aware of the breach(es);
- c) The proactive measures or precautions which the licensee took to prevent the breach(es) or to mitigate the impact thereof;
- d) The intent or negligence, if any, of the licensee in committing the breach(es);
- e) The duration and frequency of the breach(es);
- f) The loss or risk of loss or damage caused to clients, to other stakeholders as well as to the financial services sector;
- g) The risk which the licensee's conduct poses to the financial system as a whole;
- h) The amount of gains or losses avoided as a result of the breach(es);

- i) The impact or potential impact of the breach(es) on financial markets including whether confidence in those markets has been damaged or put at risk;
- j) The nature, extent and impact of any damage to the reputation of the Mauritius International Financial Centre as a result of the breach(es);
- k) Whether the breach(es) resulted in financial crime or a significant risk of its occurrence or facilitation of such crime;
- l) The degree of difficulty in detecting the breach(es);
- m) Evidence of intent of the licensee to conceal the breach(es) or mislead the Commission;
- n) Whether there are a number of minor issues, which individually may not justify disciplinary action, but when taken collectively will warrant the imposition of sanctions;
- o) Whether the breach(es) reveals/reveal serious or systemic weaknesses of the management systems or internal controls in the licensee's business conduct; and
- p) Whether it may be more appropriate for another agency, domestic or international, to take consider the matter.

2.2.2. The conduct of the licensee after becoming aware of the breach(es)

The Commission will also have regard to the elements listed below in determining the appropriate disciplinary sanction(s) to be imposed on a licensee;

- a) Whether and when the breach(es) were brought to the Commission's attention;
- b) Whether appropriate remedial actions have been taken in an efficient manner with respect to the breach(es);
- c) The degree of co-operation with the Commission during the inspection, investigation and/or inquiry;
- d) The likelihood of recurrence of the same type of breach(es) if no suitable action is taken; and
- e) The nature and extent of any false or inaccurate information provided, whether knowingly or inadvertently, which results in the Commission being misled.

2.2.3. The previous disciplinary record and compliance history of the licensee

In deciding the appropriate sanction(s) to be imposed, the Commission will consider the previous disciplinary records and compliance history of the licensee through the following non-exhaustive factors:

- a) Whether the Commission or any other agency, domestic or international, has previously taken any disciplinary action and/or any other sanction against the licensee;
- b) Whether the Commission has formerly required the implementation of remedial action by the licensee and the extent to which such action has been taken; and
- c) The general compliance history of the licensee including any adverse findings, if any.

2.2.4. Other additional factors

In addition to the above, the Commission may consider the following supplementary matters in deciding whether to impose disciplinary sanction(s), including an AP, on the licensee:

- a) The potential financial repercussions to the licensee, including to other third parties such as investors, consumers of financial services and other stakeholders;
- b) The need to encourage and enforce high standards of business conduct so as to deter future abuse and to bolster confidence in the financial services sector of Mauritius; and
- c) In the event that an AP is being envisaged, the Commission may have regard to any precedents and may adjust the quantum in relation to the matter under consideration.

2.2.5. Action taken by other domestic or international regulatory authorities:

The Commission acknowledges that some breach(es) may potentially result in enforcement actions being considered by other domestic or overseas regulatory authorities.

Where, in permissible circumstances, other regulatory authorities are contemplating disciplinary actions against a licensee, with respect to the same breach(es) under consideration by the Commission, the Commission will consider whether the other regulatory authority's action would be adequate to address its concerns, or if it will need to impose separate sanctions.

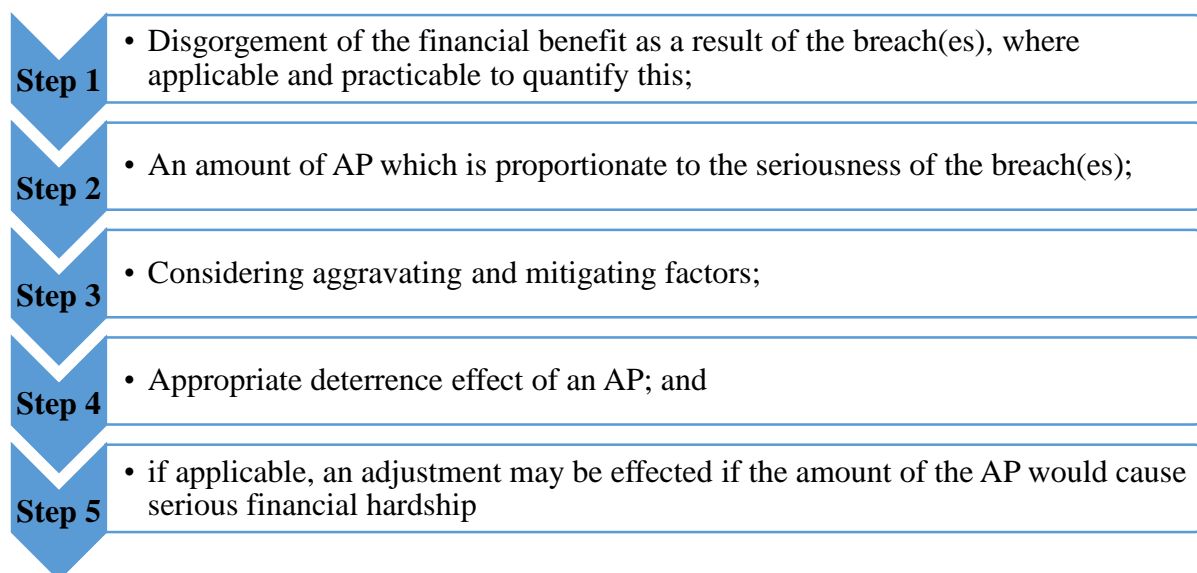
2.3. Stage Three - Determining appropriate amount of AP

The Commission's penalty-setting regime is based on the principles set out below, in the following order of importance:

- a) Discipline: The amount of the AP will encompass an appropriate penal element.
- b) Disgorgement: The amount of the AP will seek to ensure that a licensee does not directly benefit financially from any breach(es) or wrongdoing(s) whether in terms of profit made or loss avoided. Thus, the amount of the AP imposed will take account of any such financial benefit to the extent possible or practicable.
- c) Deterrence element: The AP will comprise of an element which serves to deter the licensee and others in the industry from committing such wrongdoing.

In the event that the Commission, through the Enforcement Committee or as a result of settlement discussions, deems that the imposition of an AP will be the most suitable sanction with respect to the statutory breach(es), this Framework will enable the Commission to consider each individual case on its own merits to ensure the appropriateness of the AP.

These principles have been incorporated in the following 5-Step approach which aims at ensuring that the amount of the AP is proportionate to the breach(es) and the specific circumstances of the case:



The abovementioned steps are further detailed below:

2.3.1. Step 1: Disgorgement of the financial benefit as a result of the breach(es)

Where relevant and where it is practicable to ascertain and quantify, the Commission will seek to deprive its licensee of any financial benefits derived from or attributable to the breach of its regulatory requirements, including any profit made or loss avoided. Any such amount (the disgorgement amount) will be included in the total amount arrived at in Step 5 (paragraph 2.3.5).

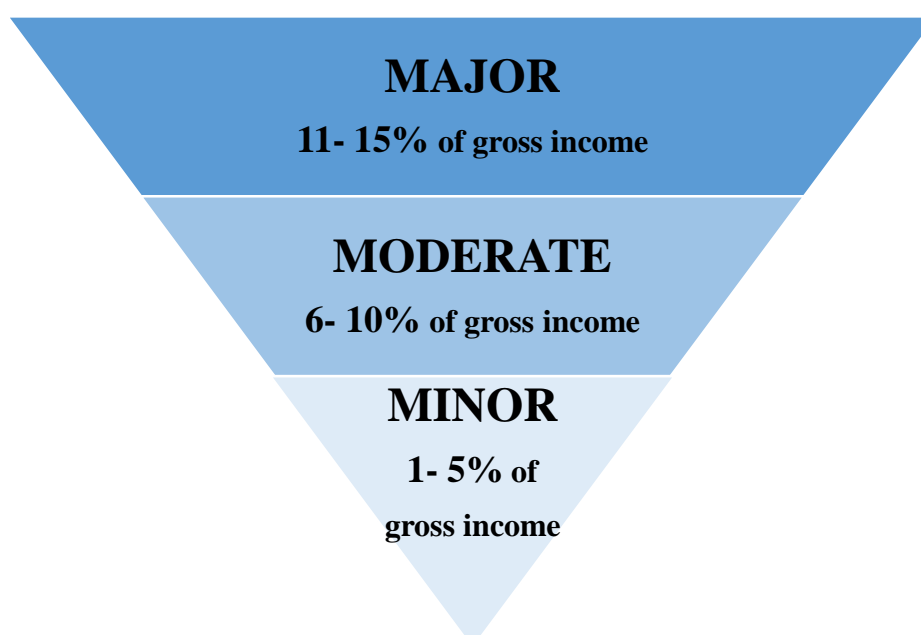
2.3.2. Step 2: An amount of AP which is proportionate to the seriousness of the breach(es)

In addition to any disgorgement amount established at Step 1, the Commission will determine the amount of AP that is commensurate to the seriousness of the breach(es).

To ensure consistency in such determination, the breaches are divided into three categories **(i) Minor breaches (ii) Moderate breaches and (iii) Major breaches**⁶.

⁶ The terms “Minor”, “Moderate” and “Major” are given their ordinary dictionary meanings.

The categorisation of the breach(es) is intended to reflect the progression of severity of the factors contained within the following table. The Commission will identify the category in which the breach falls based on its seriousness and the AP will be calculated on a percentage of the relevant gross income of the licensee. The diagram below illustrates the three categories in which a breach can possibly sit, along with the corresponding percentage spread to be used in the calculation of the APs of the relevant gross income of the contravening party:-



The classification of each breach as minor, moderate or major, will rely on an assessment of the nature, extent and impact of each regulatory failing. These factors, as detailed in the table below, are not intended to be exhaustive and may be extended to encompass other elements, which have not been anticipated at the time of publication of this Framework but which may be pertinent to a specific case.

Category of breach(es)	Percentage of the relevant gross income
A. Minor	1 - 5%
<ul style="list-style-type: none"> (i) The breach(es) had relatively minor impact; (ii) The breach(es) occurred during a short period before being remedied; (iii) The licensee brought the breach(es) to the Commission’s attention in a prompt manner; (iv) Appropriate steps have been taken to rectify the breach(es) and prevent recurrence; (v) There is no evidence that the breach(es) is/are symptomatic of a widespread problem or weakness of the licensee’s conduct of business; (vi) Profit made or loss avoided by the licensee as a result of the breach(es), either directly or indirectly, is minor; (vii) There has been little or no loss to investors or other consumers of financial services; (viii) There has been no, or very limited, incidence on the confidence of investors as a result of the breach(es); (ix) The breach(es) has/have little or no effect on the good repute of Mauritius in the financial services sector; and/or (x) In case of multiple breaches, when considered collectively, are of minor seriousness. 	
B. Moderate	6 - 10%

<ul style="list-style-type: none"> (i) The breach(es) does/do not present a major threat to the jurisdiction but the threat may not be considered as minor; (ii) The breach(es) has/have occurred in a recurrent manner over an extended period of time; (iii) The act or omission of the licensee resulting in the breach(es), deviates from the statutory requirement to a moderate extent; (iv) The licensee has failed to implement appropriate remedial actions in a prompt manner and has failed to take sufficient steps to rectify the breach(es) and/or to prevent its/their recurrence; (v) The loss or risk of loss to clients, while not being significant, may also not be considered as minor; (vi) A moderate risk to the good repute of Mauritius in the financial services sector is present; (vii) The breach(es) has/have been observed by the Commission and brought to the attention of the licensee who promptly acknowledged the occurrence of the breach(es); and/or (viii) In case of multiple breaches, when considered collectively, are of moderate seriousness. 	
<p>C. Major</p>	<p>11 - 15%</p>
<ul style="list-style-type: none"> (i) The breach(es) has/have occurred over a long period of time; (ii) The licensee failed to acknowledge the occurrence of the breach(es) and to implement appropriate remedial action; (iii) The breach(es) has/have resulted in a significant loss or risk of loss to investors or consumers of financial services; (iv) The breach(es) has/have revealed serious or systemic weaknesses in the licensee's procedures or internal systems and controls; 	

- (v) The breach(es) has/have resulted in significant risk of commission of a financial crime; and
- (vi) The licensee has failed to act with integrity; and/or
- (vii) The breach(es) has/have posed and/or may pose a significant risk to the good repute of Mauritius in the financial services sector.

2.3.2.1. “Relevant Income”

For the purposes of the calculation of the quantum of the AP, “Relevant Income” in the instance of a corporate licensee means the gross income earned, and in cases relating to individuals, relevant income means the salary and any relevant commission⁷, as may be applicable during the period of the breach(es). In situations where the breach(es) lasted less than 12 months or was a one-off event, the “Relevant Income” will be considered as the gross income or salary and commission derived by the licensee or the individuals, in the 12 months’ period preceding the detection of the breach(es).

Where the licensee was in existence for less than 12 months, its “Relevant Income” will be calculated on a pro-rata basis.

Where the breach(es) lasted for more than one year, the amount of AP will be calculated on the average “Relevant Income” of the licensee for that specific period.

The following illustration is provided for reference purpose:

It was found during an onsite inspection that Company X has committed numerous breaches of the relevant laws from 2016 to 2018. The Commission has decided

⁷ The onus is on the individual to supply information as to his salary and any relevant commission. If this information is not forthcoming from the individual or cannot be satisfactorily verified, the Commission will impose a penalty of an amount which is considered appropriate taking into account domestic (if any) and/or international precedents and any other factors that the Commission deems relevant.

that imposition of an AP will be the most appropriate sanction in this context. The Commission will consider the total gross income for the aforesaid years and an average of same will be calculated as per the sample table provided below. The average gross income will be the “Relevant Income”, based on which the amount of the AP will be calculated.

Sn.	Year	Gross income (MUR)
1.	2016	2,000,000
2.	2017	3,000,000
3.	2018	2,500,000
<i>Calculation of the average gross income</i>		$2,000,000+3,000,000+2,500,000/3=2,500,000$

Currency: *The currency regarding the imposition of the AP may differ (MUR, Euro, USD, GBP, CHF). The imposition of the AP will be based on the currency stated in the accounts and/or salary of the licensees.*

2.3.3. Step 3: Considering aggravating and mitigating factors

The Commission takes into account any aggravating or mitigating factors in order to determine the amount of the AP to be imposed. Aggravating factors will likely result in the application of the higher limit of the percentage spread, whilst mitigating factors are likely to result in the application of the lower percentage spread.

The following non-exhaustive list of factors are expected to have an aggravating or mitigating impact on the amount of the AP following the calculation at Step 2, but not including any amount to be disgorged as set out in Step 1:

- a) The occurrence of any financial crime as a result of the breach(es);

- b) The conduct of the licensee failing to bring the breach(es) to the attention of the Commission in a timely manner or deliberately concealing it from the Commission;
- c) The degree of cooperation of the licensee with the Commission during the inspection, investigation and/or inquiry;
- d) The extent of the impact of the breach(es) on any external third parties;
- e) Whether the breach(es) was/were incurred deliberately, recklessly and advertently;
- f) What efforts, if any, have been made to rectify the breach(es) and to prevent any re-occurrence;
- g) Whether the licensee has arranged its/his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- h) The previous disciplinary record and general compliance history of the licensee; and/or
- i) Any action taken against the licensee by other domestic or international regulatory authorities on matters connected to the breach(es).

2.3.4. Step 4: Deterrence effect of an AP

If the Commission considers that the amount of the AP, as cumulated from Steps 1 to 3, does not provide sufficient deterrence to the licensee involved in the breach(es) or to the financial services industry, it may further adjust this amount to achieve this effect. The circumstances which are likely to justify such an adjustment include where:

- a) previous actions or steps by the Commission regarding similar breaches have failed to improve the business conduct of the licensee; and
- b) the absence of such an increase will not dissuade the licensee and or other licensees of the Commission from committing similar breaches in the future.

2.3.5. Step 5: If applicable, an adjustment may be effected if the amount of the AP would cause serious financial hardship.

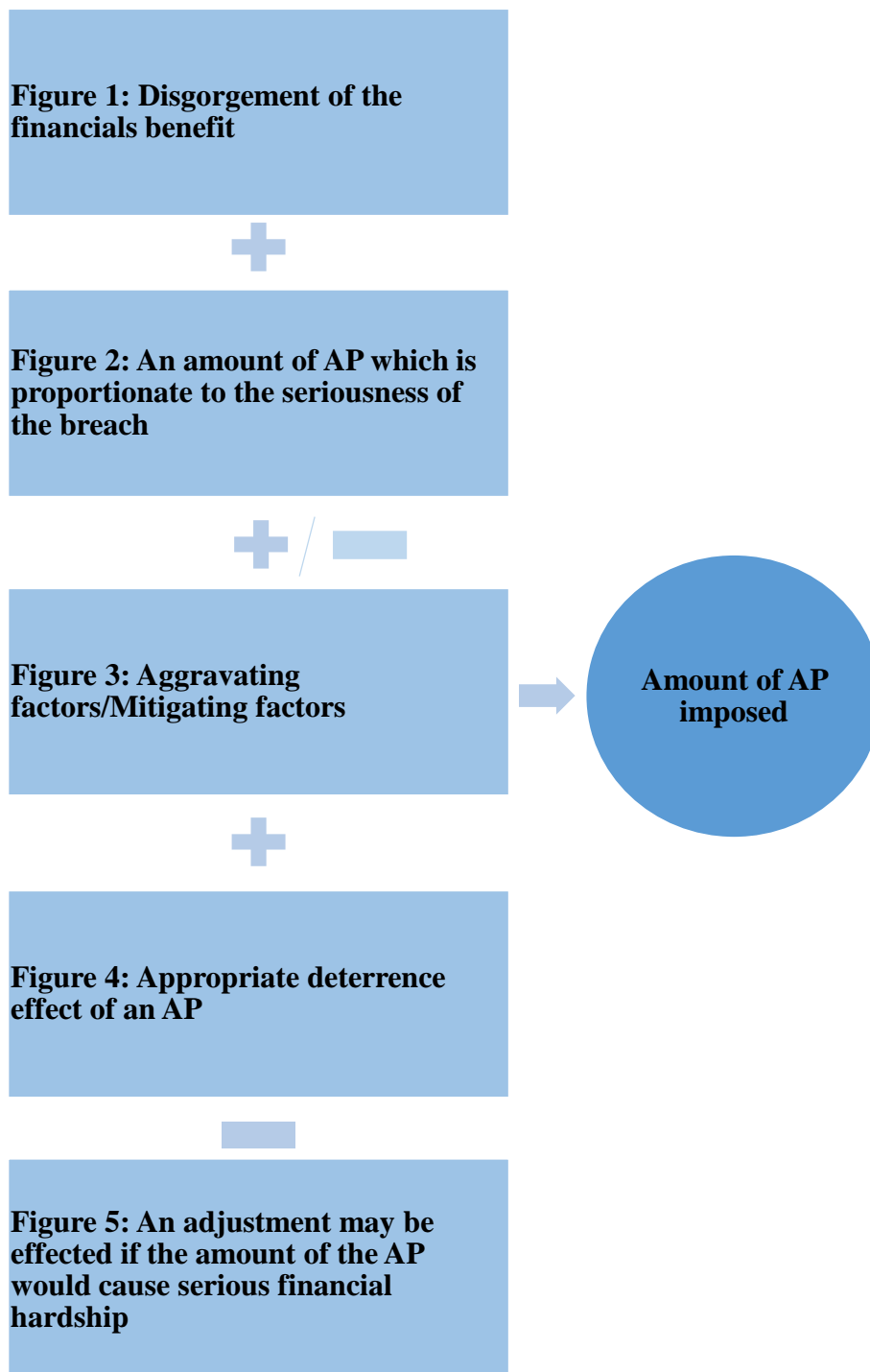
The Commission recognises that the imposition of an AP may cause significant financial hardship to a licensee. In these circumstances, the Commission may consider a reduction in the proposed amount of the AP.

Therefore, where an AP is being contemplated by the Commission and its amount has been specified to the licensee, as may be applicable, the onus will be on the licensee to satisfy the Commission, on the basis of cogent and verifiable evidence, that the proposed AP may give rise to serious financial hardship.

The Commission will generally **not** reduce the amount of the AP for reasons of serious financial hardship in any of the following situations:

- a) The contravening party refuses to correct the violation or comply with the applicable requirements;
- b) The contravening party has a long history of previous violations and non-compliance; or
- c) The breach(es) is/are serious in nature.

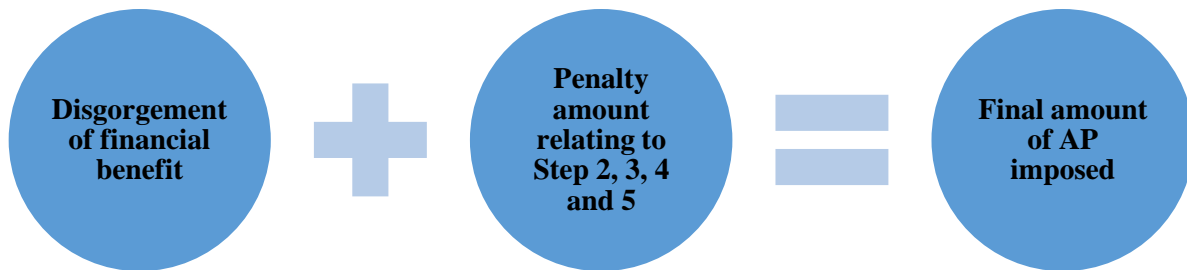
ILLUSTRATIVE DIAGRAM FOR IMPOSITION OF FINAL AMOUNT OF AP



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⁸ Steps 2 and 3 are interconnected. If there are aggravating factors, the higher limit of the percentage spread of the category of breach(es) will apply whilst, if there are mitigating factors, the lower limit of the percentage spread of that category of breach(es) will apply. For more clarifications, please refer to Appendix 3 to 7.

Where it is practicable to quantify the financial benefit derived directly from the breach(es), the amount relating to the disgorgement of the benefit will be added to the penalty amount reached at Steps 2 to 5 (see Appendix 4 to 7):



3. ANCILLARY GUIDING PRINCIPLES FOR THE IMPOSITION OF AP

In deciding whether to take action, the Commission will consider the factors set out in paragraph 2.2 (Stage 2) and its approach to determine the amount of the AP described in paragraph 2.3 (Stage 3) is intended to ensure that the AP is appropriate and proportionate given the circumstances of the breach(es). Other principles that the Commission will consider in imposing an AP are:

3.1. Consistency and Transparency

The Commission will seek to achieve a consistent approach to its decisions on the imposition of an AP. Where a licensee has committed breach(es) of a similar nature and set of characteristics, it/he will be fined consistently. The reasons for the AP, including the factors considered and the weight given to those factors in reaching the amount of an AP will be set out by the Commission. It must however be noted that the aim is to facilitate consistency in the application of principles, not consistency in the amount of the AP.

3.2. Multiple breaches and the totality principle

Where the conduct of a licensee involves separate breaches, this is likely to trigger the totality principle. The totality principle seeks to ensure that the quantum of AP, overall, is appropriate and not excessive in relation to the totality of the breaches and the conduct. Where a person is found to have committed two or more breaches of the same provision of the law, an appropriate AP will be imposed with respect to both or all of those breaches. However, the final amount of the AP will take account of the ‘totality principle’ to ensure that the final amount of the AP imposed is adequate to act as a deterrent without being oppressive.

4. PROCESS FOR IMPOSITION OF AP BY THE ENFORCEMENT COMMITTEE

Pursuant to sections 7(1)(c)(v) and 52(3) of the FSA, the Enforcement Committee (the “Committee”) may exercise the disciplinary powers of the Commission under the aforesaid sections to impose an AP on the contravening party.

4.1. Implementation of AP

Where the Chief Executive has reasonable cause to believe that a licensee has contravened any relevant laws, he may refer the matter to the Committee, under section 53(1) of the FSA, for such action(s) as the Committee may deem appropriate.

Pursuant to section 52(3) of the FSA, the Committee may exercise the disciplinary powers of the Commission to impose an administrative sanction on a licensee. In this regard, in accordance with sections 7(1)(c)(v) and 52(3) of the FSA, the Committee may impose an AP on a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee.

When a matter is referred by the Chief Executive, the proceedings of the Committee will be in accordance with section 53 of the FSA and the notices issued by the Committee will include the details covered at paragraph 4.1.1 and 4.1.6 below.

Following the decision of the Committee to impose an AP on a licensee, the aggrieved person may apply to the Financial Services Review Panel (the “Review Panel”), within 21 days from the issue of the notice under section 53(3) of the FSA (Decision Notice), for a review of the decision of the Committee, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application shall, at the same time, be filed with the Commission.

4.1.1. Notice under section 53(2) of the FSA (“Warning Notice”)

Where the Committee decides to impose an AP, it shall give a Warning Notice in writing which shall contain the following details:

- The proposed amount that the Committee contemplates to impose; and
- Give the reasons for the Committee’s action including how it arrived to the said amount.

4.1.2. Written representations

Where the Committee has issued a Warning Notice to a licensee, the latter as of right shall be provided with an opportunity to make written representations to the Committee within such time as the Committee deems appropriate in the circumstances, but not exceeding 21 days from the date of the Warning Notice. Any such representations must be made in writing and sent to the Committee's secretariat at the following address: Enforcement Committee Secretariat, FSC House, 54 Cybercity Ebène.

4.1.3. Request for an extension to make written representations

The Committee will only consider requests to extend the period for the submission of the written representations in exceptional circumstances.

4.1.4. Assessment of the written representations

Where representations are received, the Committee will schedule its meeting to consider the written representations and decide whether to take:

- the action proposed;
- any different action; or
- no action.

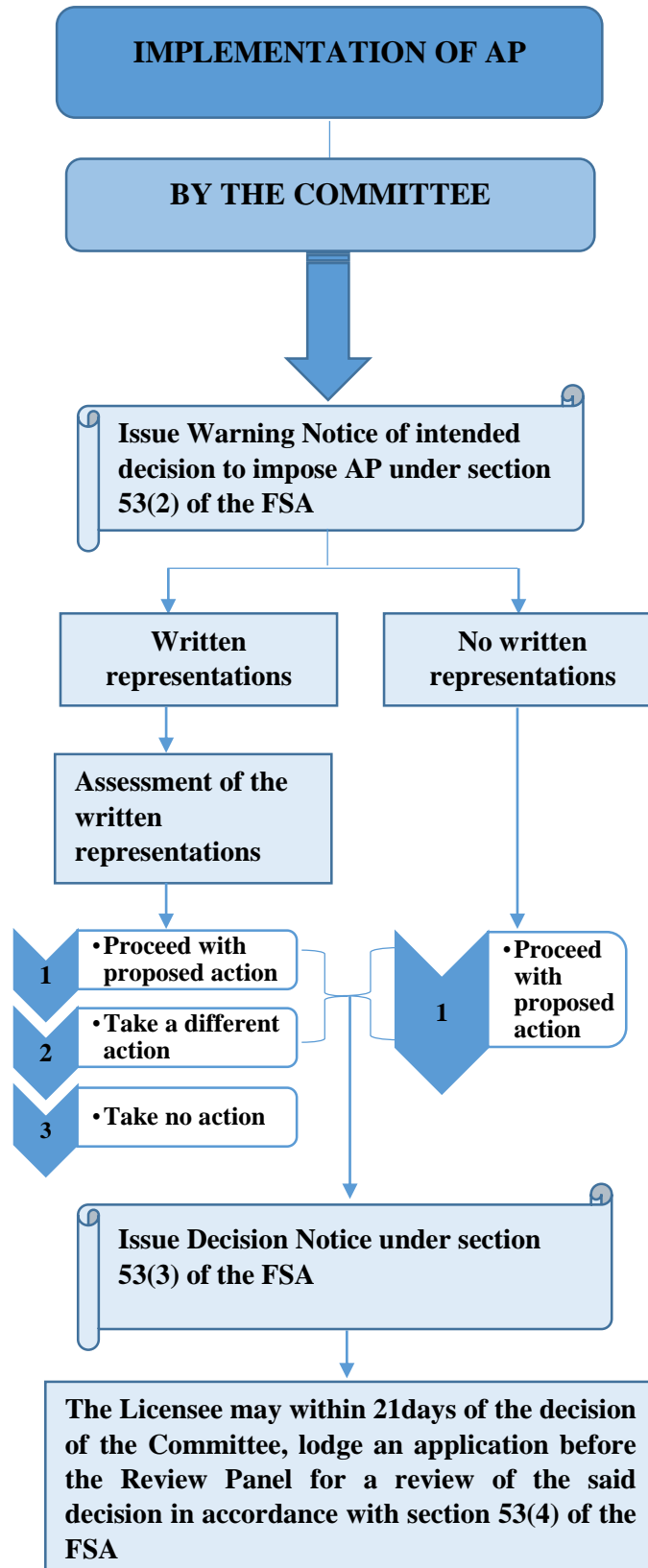
If the Committee receives no response or representations from the recipient of the Warning Notice within the period specified therein, the Committee may regard the allegations contained therein as undisputed and in such cases the notice under 53(3) of the FSA will be issued accordingly.

4.1.5. Notice under section 53(3) of the FSA (“Decision Notice”)

Where a Decision Notice is issued by the Committee, it shall be in writing and shall:

- contain the action that the Committee has decided to take;
- contain the date on which such action shall take effect;
- give the reasons for the Committee’s action;
- specify the means by which such AP may be paid;

- specify any conditions that the Commission may have imposed for payment of such AP;
- remind that an AP imposed by the Commission is a civil debt and may be recovered by the Commission as such in a Court of competent jurisdiction;
- be served on the recipient as reasonably practicable;
- maximum period of one calendar month for such payment or such a date as may be specified in writing. The latter provision is to allow for circumstances in which a longer payment timeframe is necessary; and
- also inform the concerned party that it may, within 21 days from the issue of the Decision Notice, make an application to the Review Panel for a review of the decision of the Committee, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application shall, at the same time, be filed with the Commission, in such manner as it may approve.



4.1.6. *Service of the Notices by the Committee*

The service of the Notices will be effected by Registered Post at the last business or residential address of a licensee on the records of the Commission;

4.2. Settlement

At any stage prior to the issue of the Warning Notice by the Committee, a licensee may indicate that it wishes to enter into settlement discussions with the Commission. The settlement process will be set out under a separate cover.

4.3. Publication

The publication of information in relation to the imposition of an AP is a key element of the AP regime. It facilitates deterrence and reduces the likelihood of similar breaches occurring in the future. The publication of enforcement actions is also consistent with the Commission's objectives and commitment to have open and transparent processes.

The Commission will generally publish the name of the person subject to the AP along with the amount imposed and will do so in a timely manner after reaching its final decision.

The Commission reserves the right not to publish any information if in its opinion such publication would be detrimental or prejudicial to the interests of consumers.

4.4. Discount for early payment of the AP

The Commission will provide a discount on the amount of the AP to be paid by a licensee, where payment is made promptly from the date of the Decision Notice. The applicable discount rates are provided in the table below.

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

The following illustration is provided for reference purpose:

Following the breaches committed by the Company X, the Commission has imposed an AP amounting to MUR 1,000,000 and the date of payment is one calendar month from the date of the Decision Notice.

Original amount of AP (MUR)	Early Payment	Discount Applicable	Discounted amount (MUR)
1,000,000	Within 7 days	5%	950,000
	Within 14 days	3%	970,000
	Within 21 days	2%	980,000
	After 21 days	0%	1,000,000

5. General Fund

APs paid to the Commission are credited to the General Fund established under section 82 of the FSA.

6. Non Payment of AP

The imposition of an AP is a sanction for non-compliance with statutory or other regulatory requirements. The payment of an AP will form part of the compliance history of the licensee with the Commission. The Commission reserves the right, should it determine it reasonable to do so, to take the AP into account in cases of regulatory concerns arising in the future against the licensee.

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

APPENDIX 1: FINANCIAL SERVICES AUTHORITY, UK CASE LAW⁹

LINEAR INVESTMENTS LIMITED (2018)

The Financial Services Authority (the “FCA”) published a Decision notice in relation to Linear Investments Limited ("Linear"), in which it sought to impose on Linear, with respect to its breach of Principle 3 of the Principles for Businesses for failing to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems in relation to the detection and reporting of potential instances of market abuse between 14 January 2013 and 9 August 2015 (the "Relevant Period"), a total financial penalty of £409,300 (rounded down to the nearest £100, in line with the FCA's usual practice).

Linear agreed the facts set out in the Decision Notice and its liability for the breaches identified by the FCA, however, it disputed the level of penalty.

Point 6.3 of the Decision Notice dated 07 June 2018 stated that a *five-step* is applied by the FCA to determine the appropriate level of financial penalty:

1. Step 1: Disgorgement

1.1. At step 1, the FCA seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify. The FCA will ordinarily also charge interest on the benefit.

1.2. The FCA had not identified any financial benefit that Linear derived directly from its breach.

Step 1 was therefore £0.

2. Step 2: The seriousness of the breach

2.1. At Step 2 the FCA determines a figure that reflects the seriousness of the breach and that figure will be based on a percentage of the firm's revenue from the relevant products or business area which is indicative of the harm or potential harm that its breach may cause.

⁹ <https://www.fca.org.uk/publication/decision-notice/linear-investments-limited.pdf>

- 2.2. The nature of Linear's business, relevant to the breach, is arranging and/or executing transactions in certain instruments directly for its clients. The relevant revenue is therefore the total revenue derived by Linear from this business area during the Relevant Period, which is £6,497,134.
- 2.3. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the FCA considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:
- Level 1 - 0%
 - Level 2 - 5%
 - Level 3 - 10%
 - Level 4 - 15%
 - Level 5 - 20%
- 2.4. In assessing the seriousness level, the FCA takes into account various factors which reflect the impact and nature of the breach.
- 2.5. Paragraph 6.5A.2G(II) of the Decision Procedure and Penalties manual (the "DEPP") lists the factors likely to be considered as 'level 4 or 5 factors'. Of these, the FCA considered that the breach revealed serious or systemic weaknesses in Linear's procedures relating to a key part of its business.
- 2.6. DEPP 6.SA.2G(12) lists the factors likely to be considered as 'level 1, 2 or 3 factors'. Of these, the FCA considered the following factors to be relevant:
- a) There were no profits made or losses avoided as a result of the breach, either directly or indirectly;
 - b) There was limited risk of loss caused to individual consumers, investors or other market users; and
 - c) The breach was committed negligently.

2.7. Taking all of these factors into account, the FCA considered the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £6,497,134.

Step 2 was therefore £649,713.

3. Step 3: Mitigating and Aggravating factors

3.1. At Step 3 the FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

3.2. The FCA considered that the following factor mitigated the breach: Upon becoming aware of the need to conduct its own post-trade surveillance in November 2014, Linear took steps to source and install an automated post-trade surveillance system.

3.3. Taking into account this mitigating factor, the FCA considered that the Step 2 figure should be reduced by 10%.

Step 3 was therefore £584,741.

4. Step 4: Adjustment for deterrence

4.1. If the FCA considered the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, the FCA may increase the penalty.

4.2. The FCA considered that the Step 3 figure of £584,741 represents a sufficient deterrent to Linear and others, and so has not increased the penalty at Step 4.

Step 4 was therefore £584,741.

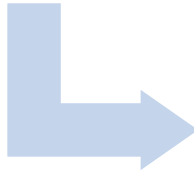
5. Step 5: Settlement discount

5.1. The FCA and Linear reached agreement during Stage 1 as to facts and liability. Therefore, pursuant to DEPP 6.SA.SG and DEPP 6.7.3AG(1), a 30% discount applies to the Step 4 figure.

Step 5 was therefore £409,318. Aforesaid amount was then rounded to nearest £100, in line with the FCA's usual practice.

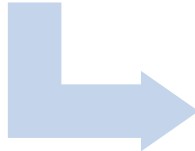
- **Step 1: Disgorgement**

The FCA had not identified any financial benefit that Linear derived directly from its breach.
Step 1 was therefore £0.



- **Step 2: the seriousness of the breach**

The FCA considered the seriousness of the breach to be level 3 and so the Step 2 figure was 10% of £6,497,134.
Step 2 was therefore £649,713.



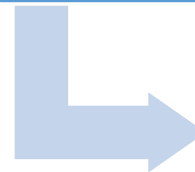
- **Step 3: Mitigating and Aggravating factors**

Linear took steps to source and install an automated post-trade surveillance system in order to remedy the breach
Taking into account this mitigating factor, the FCA considered that the Step 2 figure should be reduced by 10%.
Step 3 was therefore £584,741.



- **Step 4: adjustment for deterrence**

The FCA considers that the Step 3 figure of £584,741 represents a sufficient deterrent to Linear and others, and so has not increased the penalty at Step 4.
Step 4 was therefore £584,741.



- **Step 5: settlement discount**

The FCA and Linear reached agreement during Stage 1 as to facts and liability, a 30% discount applies to the Step 4 figure.
Step 5 was therefore £409,318.



❖ *The FCA therefore imposed a total financial penalty of £409,300 (rounded down to the nearest £100, in line with the FCA's usual practice).*

APPENDIX 2: DUBAI FINANCIAL SERVICES AUTHORITY, DUBAI CASE LAW¹⁰

CLEMENTS (DUBAI) LIMITED (2016)

Clements (Dubai) Limited (“CDL”) is authorised by the Dubai Financial Services Authority (the “DFSA”) to provide Financial Services of Insurance Intermediation in the Dubai International Financial Centre (DIFC). In providing this service, as an Insurance Intermediary in the DIFC, CDL is restricted under DFSA Rules from intermediating a Contract of Insurance for a risk situated in the UAE unless the risk is situated in the DIFC or the contract is one of re-insurance. However, the DFSA’s investigation identified that CDL provided prohibited Insurance Intermediation services in breach of DFSA Rules on 21 occasions and failed to have adequate systems and controls in place to detect, monitor and prevent such activities from occurring. CDL earned a total commission of US\$15,162 for the 21 Contracts of Insurance it intermediated.

By engaging in this conduct, CDL failed to comply with a number of specific provisions of the Conduct of Business Module of the DFSA Rulebook (COB), Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook (AML) and General Module of the DFSA’s Rule Book (GEN).

With reference to Section 6-2 of the DFSA’s Regulatory Policy and Process Sourcebook (RPP), the DFSA considers the following factors to be of particular relevance in deciding to impose the Fine on CDL:

- a) the deterrent effect of the action and the importance of deterring CDL and other Authorised Firms from committing further or similar contraventions; and
- b) CDL’s conduct after the contraventions – in particular, the DFSA notes that CDL fully cooperated with the DFSA’s investigation and has taken steps to remediate the issues in this Decision Notice.

With regards to the determination of the fine, the DFSA adopts a five-step approach to determine the appropriate level of financial penalty. In determining the appropriate level of

¹⁰ <http://dfsa.ae/getattachment/c6f9c5a3-e311-427d-91f3-30ac21d242d5/attachment>

financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in Sections 6-4 and 6-5 of the RPP as follows:

1. Step 1 – Disgorgement

- 1.1. The DFSA’s investigation found that CDL earned US\$15,162 in commission from the 21 Contracts of Insurance it intermediated for risks situated in the U.A.E. (and outside the DIFC).
- 1.2. The DFSA considered the commission earned by CDL to be an economic benefit gained from its contraventions and accordingly disgorges this amount.
- 1.3. With reference to Section 6-5-1 of the RPP, the DFSA ordinarily charges interest on such a benefit. In this particular matter, the DFSA considered it appropriate to impose a fine of US\$2,029 to represent the simple interest calculated to 12 July 2016, at a rate of 5.89% p.a., on the commission earned by CDL.

The figure after Step 1 is therefore US\$17,191, including interest.

2. Step 2 – The seriousness of the contraventions

- 2.1. The DFSA considered CDL’s contraventions to be serious because:
 - a) intermediating direct insurance for risks situated in the U.A.E. (and outside the DIFC) without being licensed to do so is not only a breach of DFSA administered legislation but is also a breach of the Federal FFZ Law;
 - b) CDL failed to ensure that its employees were carrying out their business activities in accordance with DFSA administered legislation; and
 - c) CDL failed to ensure that it had in place adequate systems, controls and compliance arrangements to prevent CDL from intermediating direct insurance for risks situated in the U.A.E. (and outside the DIFC).

Taking the above factors into account, the DFSA considers that a financial penalty of US\$100,000 appropriately reflects the seriousness of the contraventions.

3. Step 3 – Mitigating and aggravating factors

3.1. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the factors set out in Section 6-5-8 of the RPP.

3.2. The DFSA considered the following factors have a mitigating effect on the contraventions:

- a) CDL self-reported to the DFSA its conduct and the concern that it may have breached DFSA administered legislation;
- b) CDL ceased its business activities and commenced remediating its business model;
- c) CDL dealt with the DFSA in an open and cooperative manner throughout the investigation; and
- d) CDL and its current senior management have taken steps towards remediating the issues in this Decision Notice.

3.3. As result of these mitigating factors, the DFSA considered it appropriate to adjust the figure after Step 2. Accordingly, the DFSA decided to reduce the figure by 15%.

Step 3 figure was therefore US\$85,000.

4. Step 4 – Adjustment for deterrence

4.1. Under Section 6-5-9 of the RPP, if the DFSA considered that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it.

4.2. The DFSA considered that the figure after Step 3 was sufficient for the purposes of deterring CDL and others from committing further or similar contraventions.

4.3. Accordingly, the DFSA did not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.

Therefore, the figure after Step 4 was US\$85,000.

5. Step 5 – Settlement discount

5.1. Where the DFSA and the firm on whom the financial penalty is to be imposed agree on the amount and other terms, Section 6-5-10 of the RPP provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.

5.2. In this matter, DFSA and CDL reached agreement on the relevant facts and matters relied on and the amount of the Fine to be imposed. Having regard to the stage at which this agreement has been reached and in recognition of the benefit of this agreement to the DFSA, the DFSA applied a 20% discount to the level of Fine which the DFSA would have otherwise imposed.

Accordingly, the figure after Step 5 was US\$68,000.

❖ Therefore, the DFSA determined that it was proportionate and appropriate to impose on CDL a fine of US\$85,191, comprising of the following elements:

- a) disgorgement of US\$17,191 (including interest) in commission earned by CDL from the 21 Contracts of Insurance it intermediated for risks situated in the U.A.E. (and outside the DIFC); and
- b) a penalty amount of US\$68,000.

- **Step 1: Disgorgement**

The DFSA identified a financial/economic benefit that CDL derived directly from its breach. The DFSA ordinarily charges on such benefit and in this case, a rate of 5.89% p.a. was charged on the commission earned by CDL. Therefore, an amount of US\$17,191 representing disgorgement of benefit including interest.

Step 1 was therefore US\$17,191.

- **Step 2: the seriousness of the breach**

The DFSA considered that a financial penalty of US\$100,000 appropriately reflects the seriousness of the contraventions.

Step 2 was therefore an additional amount of US\$100,000.

- **Step 3: Mitigating and Aggravating factors**

The DFSA discounted the amount of the fine imposed on CDL after taking into consideration certain mitigating factors which include CDL's initiative to self-report the misconduct to the DFSA, take steps to remediate its deficiencies and co-operate fully with the DFSA's investigation. Accordingly, the DFSA has decided to reduce the Step 2 figure by 15%.

Step 3 figure was therefore US\$85,000.

- **Step 4: adjustment for deterrence**

The DFSA considered that the Step 3 figure of US\$85,000 represents a sufficient deterrent to CDL and others, and so has not increased the penalty at Step 4.

Step 4 was therefore US\$85,000.

- **Step 5: settlement discount**

The DFSA and CDL reached agreement as to facts and matters relied on and the amount of the penalty to be imposed, a 20% discount applies to the Step 4 figure.

Step 5 was therefore US\$68,000.

❖ *The DFSA therefore imposed a total financial penalty of US\$85,191. This final figure represents a disgorgement of US\$17,191 (including interest) and a penalty amount of a penalty amount of US\$68,000 reached at step 5.*

APPENDIX 3

Worked example #1 – for illustrative purposes only

- Calculating the amount of AP for a minor breach
- This example assumes that the contravening party’s relevant gross income is **MUR 5 million**.

Step	Application of the five-step	Consideration	Contribution towards AP amount	Amount (Rupees)
1	Disgorgement of the financial benefit as a result of the breach	This step is not considered to be relevant as the contravening party did not gain any direct financial benefit as a result of the breach.	N/A	MUR 0
2	An amount of AP which is proportionate to the seriousness of the breach	Since the breach is classified as a minor one, 1-5 % of the relevant gross income of the contravening party is calculated.	Considering that a number of mitigating factors have been	MUR 100,000
3	Mitigating and Aggravating factors	If mitigating factors have been identified, the lower limit of the percentage range applicable to the category of breach will normally apply. However, if aggravating factors have been identified, the upper limit of the percentage range of that category of breach will apply.	identified, the lower limit of the percentage range of this category of breach will apply – 2% of the relevant gross income.	

4	Adjustment for deterrence	It is considered that the figure after Step 3 is sufficient for the purposes of deterring the contravening party and others from committing further or similar breach(es). Accordingly, it is resolved not to adjust the amount of the AP arrived at after Step 3 for the purposes of deterrence.	N/A	MUR 0
5	An adjustment may be effected if the amount of the AP would cause serious financial hardship	It is recognised that the AP will not cause significant financial hardship and thus, no adjustment is deemed necessary.	N/A	MUR 0
<i>Amount of AP reached</i>			<i>MUR 100,000</i>	

- ❖ Therefore, an appropriate amount of AP of MUR 100,000, comprising of the following elements, is imposed:
 - (i) MUR 0 as disgorgement of benefit; and
 - (ii) a penalty amount of MUR 100,000

APPENDIX 4

Worked example #2 – for illustrative purposes only

- Calculating the amount of AP for a moderate breach
- This example assumes that the contravening party’s relevant gross income is **MUR 5 million**. The contravening party has earned an amount of MUR 700,000 as commission as a result of the breach.

Step	Application of the five-step	Consideration	Contribution towards AP amount	Amount (Rupees)
1	Disgorgement of the financial benefit as a result of the breach	The commission earned by the contravening party constitutes an economic benefit gained from its breach(es) and thus, this amount should be disgorged.	MUR 700,000	MUR 700,000
2	An amount of AP which is proportionate to the seriousness of the breach	Since the breach is classified as a moderate one, 6-10 % of the relevant gross income of the contravening party is calculated.	Considering that few aggravating factors have been	MUR 400,000
3	Mitigating and Aggravating factors	If mitigating factors have been identified, the lower limit of the percentage range applicable to the category of breach will normally apply. However, if aggravating factors have been identified, the upper limit of the percentage range of that category of breach will tend to apply.	identified, the middle limit of the percentage range of this category of breach will apply – 8% of the relevant gross income.	

4	Adjustment for deterrence	It is considered that the figure after Step 3 is sufficient for the purposes of deterring the contravening party and others from committing further or similar breach(es). Accordingly, it is resolved not to adjust the amount of the AP arrived at after Step 3 for the purposes of deterrence.	N/A	MUR 0
5	An adjustment may be effected if the amount of the AP would cause serious financial hardship	It is recognised that the AP will not cause significant financial hardship and thus, no adjustment is deemed necessary.	N/A	MUR 0
<i>Amount of AP reached</i>			<i>MUR 1,100,000</i>	

❖ Therefore, an appropriate amount of AP of MUR 1,100,000, comprising of the following elements, is imposed:

- (i) MUR 700,000 as disgorgement of benefit; and
- (ii) a penalty amount of MUR 400,000

APPENDIX 5

Worked example #3 – for illustrative purposes only

- Calculating the amount of AP for a moderate breach
- This example assumes that the contravening party's relevant gross income is **MUR 3 million**. The contravening party has earned an amount of MUR 700,000 as commission as a result of the breach.

Step	Application of the five-step	Consideration	Contribution towards AP amount	Amount
1	Disgorgement of the financial benefit as a result of the breach	The commission earned by the contravening party constitutes an economic benefit gained from its breach(es) and thus, this amount should be disgorged.	MUR 700,000	MUR 700,000
2	An amount of AP which is proportionate to the seriousness of the breach	Since the breach is classified as a moderate one, 6-10 % of the relevant gross income of the contravening party is calculated.	Considering that few aggravating factors have been identified,	MUR 160,000
3	Mitigating and Aggravating factors	If mitigating factors have been identified, the lower limit of the percentage range applicable to the category of breach will normally apply. However, if aggravating factors have been identified, the upper limit of the percentage range of that category of breach will tend to apply.	the middle limit of the percentage range of this category of breach will apply – 8% of the relevant gross income.	

4	Adjustment for deterrence	It is considered that the figure after Step 3 is sufficient for the purposes of deterring the contravening party and others from committing further or similar breach(es). Accordingly, it is resolved not to adjust the amount of the AP arrived at after Step 3 for the purposes of deterrence.	N/A	MUR 0
5	An adjustment may be effected if the amount of the AP would cause serious financial hardship	It is recognised that the AP will cause significant financial hardship and thus, an adjustment is deemed necessary.	A reduction of MUR 50,000 is provided to the contravening party (provided that the party successfully proves that the imposition of AP will pose serious financial hardship)	-MUR 50,000
<i>Amount of AP reached</i>			<i>MUR 810,000</i>	

- ❖ Therefore, an appropriate amount of AP of MUR 810,000, comprising of the following elements, is imposed:
 - (i) MUR 700,000 as disgorgement of benefit; and
 - (ii) a penalty amount of MUR 110,000

APPENDIX 6

Worked example #4 – for illustrative purposes only

- Calculating the amount of AP for a major breach
- This example assumes that the contravening party's relevant gross income is **MUR 5 million**. The contravening party has earned an amount of MUR 700,000 as commission as a result of the breach.

Step	Application of the five-step	Consideration	Contribution towards AP amount	Amount
1	Disgorgement of the financial benefit as a result of the breach	The commission earned by the contravening party constitutes an economic benefit gained from its breach(es) and thus, this amount should be disgorged.	MUR 700,000	MUR 700,000
2	An amount of AP which is proportionate to the seriousness of the breach	Since the breach is classified as a major one, 11-15 % of the relevant gross income of the contravening party is calculated.	Considering that a number of aggravating factors have been	MUR 750,000
3	Mitigating and Aggravating factors	If mitigating factors have been identified, the lower limit of the percentage range applicable to the category of breach will normally apply. However, if aggravating factors have been identified, the upper limit of the percentage range of that category of breach will apply.	identified, the higher limit of the percentage range of this category of breach will apply – 15% of the relevant gross income.	

4	Adjustment for deterrence	It is considered that the figure after Step 3 is insufficient for the purposes of deterring the contravening party and others from committing further or similar breach(es). Accordingly, it is resolved that it is appropriate to adjust the amount of the AP arrived at after Step 3 for the purposes of deterrence.	An amount of MUR 100,000 is added to achieve credible deterrence.	+ MUR 100,000
5	An adjustment may be effected if the amount of the AP would cause serious financial hardship	It is recognised that the AP will not cause significant financial hardship and thus, no adjustment is deemed necessary.	N/A	MUR 0
<i>Amount of AP reached</i>			<i>MUR 1,550,000</i>	

❖ Therefore, an appropriate amount of AP of MUR 1,550,000, comprising of the following elements, is imposed:

- (i) MUR 700,000 as disgorgement of benefit; and
- (ii) a penalty amount of MUR 850,000

APPENDIX 7

Worked example #5 – for illustrative purposes only

- Calculating the amount of AP for a major breach
- This example assumes that the contravening party's relevant gross income is **MUR 5 million**. The contravening party has earned an amount of MUR 700,000 as commission as a result of the breach.

Step	Application of the five-step	Consideration	Contribution towards AP amount	Amount
1	Disgorgement of the financial benefit as a result of the breach	The commission earned by the contravening party constitutes an economic benefit gained from its breach(es) and thus, this amount should be disgorged.	MUR 700,000	MUR 700,000
2	An amount of AP which is proportionate to the seriousness of the breach	Since the breach is classified as a major one, 11-15 % of the relevant gross income of the contravening party is calculated.	Considering that a number of mitigating factors have been	MUR 550,000
3	Mitigating and Aggravating factors	If mitigating factors have been identified, the lower limit of the percentage range applicable to the category of breach will normally apply. However, if aggravating factors have been identified, the upper limit of the percentage range of that category of breach will apply.	identified, the lower limit of the percentage range of this category of breach will apply – 11% of the relevant gross income.	

4	Adjustment for deterrence	It is considered that the figure after Step 3 is insufficient for the purposes of deterring the contravening party and others from committing further or similar breach(es). Accordingly, it is resolved that it is appropriate to adjust the amount of the AP arrived at after Step 3 for the purposes of deterrence.	An amount of MUR 100,000 is added to achieve credible deterrence.	MUR 100,000
5	An adjustment may be effected if the amount of the AP would cause serious financial hardship	It is recognised that the AP will not cause significant financial hardship and thus, no adjustment is deemed necessary.	N/A	MUR 0
<i>Amount of AP reached</i>			<i>MUR 1,350,000</i>	

- ❖ Therefore, an appropriate amount of AP of MUR 1,350,000 comprising of the following elements, is imposed
 - (i) MUR 700,000 as disgorgement of benefit; and
 - (ii) a penalty amount of MUR 650,000