

FREQUENTLY ASKED QUESTIONS

Enforcement Manual (the “Manual”)

1. What is the Manual and why is it being published now?

The Manual sets out the overall approach of the Commission to enforcement and generally, the use made of enforcement powers.

It is a comprehensive document and its publication delivers on the Commission’s commitment to facilitate a better understanding and give broader perspective about the efforts of the Commission to meet its statutory objectives, vision and mission. It aims at increasing the level of clarity and transparency in discharging our functions and promotes a better understanding of our credible deterrence approach.

2. Does the Manual have any force of law?

The Manual is not binding and is indicative in nature. The Manual is not intended to, does not, and may not be relied upon to create any rights be it substantive or procedural and it not enforceable by any party in any matter, civil or criminal. The Manual will be periodically reviewed and updated.

3. What are the broad principles behind the enforcement policy of the Commission?

The 3 broad underlying principles are:

- Effectiveness and efficiency;
- Fairness; and
- Transparency, Proportionality and Consistency.

4. How is an investigation different from an inspection or from an inquiry?

An investigation is initiated where there are reasonable grounds to believe that activities that may constitute a breach may have occurred.

An inspection is a supervisory tool used to understand the business model, culture and the extent of a licensee's compliance with requirements of relevant Acts and Guidelines and other standards as may be set out in the relevant Acts (relevant Acts - defined in the Manual).

An inquiry is similar to an investigation except that an inquiry will only take place in cases where the licensees hold only a Global Business licence.

5. Should an investigation necessarily follow an inspection?

An investigation may be triggered following an inspection. However, the absence of an inspection does not prevent the initiation of an investigation.

6. Who can be the subject of an investigation?

The holder of a licence, as well as the officers of the licence holder (as defined at section 2 of the Financial Services Act 2007) may be the subject of an investigation.

Additionally, the Commission may investigate:

- a person who is providing financial services or investment activity without a licence from the Commission;
- a person who is acting in contravention of the relevant Acts (relevant Acts - defined in the Manual); and
- any person who is a present or past officer, partner or controller of the licensee.

7. Should an investigation precede an action against a person?

It is not always necessary for the Commission to conduct an investigation before initiating enforcement action against a person. The Commission may take action if it has sufficient information and material from which it may make a finding of wrongdoing.

8. Who can be an investigator?

An investigator includes:

- any staff of the Commission; and/or
- any other person appointed by the Commission to conduct an investigation, either jointly or separately.

9. What are the powers of an investigator?

The investigator can:

- enter any premises used or apparently used by the licensee for business purposes, at any reasonable time;
- search for any document or other thing that he considers may be relevant to the investigation;
- administer oath, affirmation or declaration;
- seize any document, article, object or any electronically stored information which the investigator deems necessary; and
- summon any licensee, or its officers, employees and associates, or any witness necessary for the conduct of the investigation.

10. How may investigators ask questions to persons under investigation or witnesses?

Investigators may require a person to answer questions in the following ways:

- a) Compelled interview – answering of questions under oath; or
- b) Voluntary interview.

11. How are interviews conducted?

Individuals being interviewed may be accompanied by a law practitioner if he/she so wishes. Compelled interviews will be tape-recorded.

12. Is there a timeframe to complete an investigation?

There is no set timeframe during which an investigation should be completed. The length of an investigation will vary depending on the complexity of the issues.

13. What is the consequence of obstructing an investigator in the execution of his duties?

A person who intentionally obstructs and/or gives false or misleading information; and/or fails to answer questions; and/or is deliberate or reckless as to accuracy of the information he/she provides to an investigator, in a material particular, may be guilty of an offence.

In some circumstances the person may on conviction be liable to a fine not exceeding 500,000 rupees and imprisonment for a term not exceeding 5 years.

14. What are the general circumstances in which the Chief Executive will issue a direction?

Under the Financial Services Act, there are four general circumstances in which the Chief Executive has discretion to issue a direction namely where:

- A licensee has or is likely to contravene the provisions of the relevant Acts and section 52 or 52A of the Bank of Mauritius Act 2004;
- A licensee is conducting its affairs in an improper or financially unsound way;
- A licensee is involved in financial crime; or
- A direction is necessary or desirable to protect the interests of a licensee.

15. In what circumstances is a direction issued with immediate effect?

Where the Chief Executive considers that any delay in giving directions may cause severe prejudice to the clients of a licensee, the public or any part of the financial services industry, he may issue a direction with immediate effect.

16. Do the obligations of a licensee change when its licence is suspended?

The suspension of the licence does not change the obligations of the licensee.

17. When will the Commission seek a freezing order from the Judge in Chambers?

This may occur where there are reasonable grounds to suspect that a person has committed or is committing an offence under the relevant Acts (relevant

Acts - defined in the Manual) or has been involved in a financial crime so as to protect the assets held by that person from being dissipated.

18. How is the Enforcement Committee composed?

The Enforcement Committee consists of 2 members appointed every year by the Board and not more than 2 employees being of a grade not lower than Executive¹ and who are not involved in investigations of the licensee under section 44 of the FSA, as designated by the Board.

19. How is a Decision Notice different from a Warning Notice?

A Warning Notice is a notice given by the Committee informing of:

- The action(s) that the Committee proposes to take;
- The reasons for the Committee's proposed action(s);
- The material which the Committee considered in arriving at the proposed action; and
- Inviting representations from the subject of the proposed action.

A Decision Notice is a notice given by the Committee to inform of the following:

- The action that the Committee has decided to take following consideration of any representations made;
- The date on which such action shall take effect;
- The reasons for the Committee's action; and
- The material on which the Committee relied in deciding to take the action.
- Details of how to exercise the right to apply to the Financial Services Review Panel (the "Review Panel") to challenge the decision of the Committee and the time limit and procedure for such an application.

All Decision Notices will be served on the recipient as soon as is reasonably practicable and it will also contain

¹ Section 52(2)(b) of the Financial Services Act states "Executive", however in the current structure of the Financial Services Commission, this is equivalent to senior manager.

20. What are the criteria taken into consideration when taking enforcement action?

In general terms, the criteria include but are not limited to:

- The precise nature and seriousness of the conduct in question;
- The behaviour of the licensee after the conduct came to light or was identified;
- The previous regulatory record of the licensee; and
- Action taken by other regulatory authorities.

21. What are the grounds for revocation of a Global Business licence?

The grounds for revocation of a Global Business Licence under section 74(5) of the FSA are as follows:

- where it is necessary to protect the good repute of Mauritius as a centre for financial services;
- to prevent or mitigate damage to the integrity of the financial services industry; and
- to protect the public in general.

22. Which applications are not heard by the Review Panel?

The Review Panel cannot hear applications against a decision of the Commission regarding granting of licence, conduct of investigation or self-regulatory organisations².

23. What are the powers of the Review Panel?

The Review Panel can administer oath, affirmation or declaration. The Review Panel may proceed in the absence of a party. Furthermore, it can adjourn proceedings.

24. Who are the parties to the proceedings before the Review Panel?

The aggrieved party and the Commission are the parties to the proceedings before the Review Panel.

² Part VII of the FSA

25. What are the determinations which the Review Panel may reach?

On hearing the application for review, the Review Panel can either:

- confirm, amend or cancel a decision made by the Enforcement Committee;
- remit the matter to the Commission as the case may be, for reconsideration in accordance with any directions or recommendations of the Review Panel;
or
- make such order as it deems appropriate.

26. What course of action is available where the licensee wishes to challenge the determination of the Review Panel?

Where any party is not satisfied with the determination of the Review Panel, it can apply to the Supreme Court for a judicial review of the determination.

27. What is the policy of the Commission on the publication of enforcement actions?

The Commission will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including censures and any other matters which the Commission considers relevant to the conduct. The publication of enforcement outcomes is consistent with the Commission's commitment to open and transparent processes and its objectives.

28. In which circumstances may the Commission deem it fit not to publish specific information/action?

The Commission has the discretion not to publish specific information/action. This may be in instances where it is not in the public interest to do so.