



ENFORCEMENT MANUAL

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**The Enforcement Manual was approved by the Board of
the Financial Services Commission
on 02 June 2020 and issued on 12 June 2020.**

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ACRONYM TABLE

Acronym	Definition
AML/CFT	Anti-Money Laundering / Combating the Financing of Terrorism
DPP	Director of Public Prosecutions
EC	Enforcement Committee
FATF	Financial Action Task Force
FIAMLA	Financial Intelligence and Anti-Money Laundering Act 2002
FIU	Financial Intelligence Unit
FSA	Financial Services Act 2007
IA	Insurance Act 2005
IAIS	International Association of Insurance Supervisors
ICAC	Independent Commission Against Corruption
IOPS	International Organisation of Pension Supervisors
IOSCO	International Organisation of Securities Commissions
MoU	Memorandum of Understanding
MMoU	Multilateral Memorandum of Understanding
POTA	Prevention of Terrorism Act 2002
PPSA	Private Pension Schemes Act 2012
SA	Securities Act 2005
SRO	Self-Regulatory Organisation

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Interpretation

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

"*Board*" means the Board referred to in section 4 of the FSA;

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

"*controller*" as defined under the FSA 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;

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“corporation” as defined under the FSA –

- (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 Enforcement 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 2019, the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) 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 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 of the FSA applies;

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“*Global Business Licence*” as defined under the FSA means a licence issued under section 72(6) and includes a licence issued to an external insurer;

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

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

“*interview*” means attending before the investigator at a reasonable time and place and answering under oath/affirmation questions relating to the investigation;

“*legal consultant*” has the same meaning as under the Law Practitioners Act 1985;

“*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 relevant Acts; and
 - (ii) any institution established to provide any service under the relevant Acts.

“*management company*” means a company holding a Management Licence;

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

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“*officer*” means a member of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial, 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 (or as otherwise specified in section 2 of the FSA);

“*relevant Acts*” is defined in section 2 of the FSA;

“*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 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;

“*SRO*” has the same meaning as in the FSA;

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

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FOREWORD

The cornerstone of any regulatory regime is the extent to which the regulator can ensure that the industry it regulates, abides by the framework of requirements that sets the standards, criteria and obligations of those who wish to conduct financial services.

The Financial Services Commission (the “Commission”) has been assigned the responsibility and the enabling powers for ensuring the proper supervision and regulation of the market conduct in the financial services sector as set out in the Financial Services Act (the “FSA”).

The Commission is wholly committed to engaging with various international standard setting bodies such as the International Organisation of Securities Commissions (the “IOSCO”) for securities; the International Association of Insurance Supervisors (the “IAIS”) for insurance; and the International Organisation of Pension Supervisors (the “IOPS”) for pension, as well as the Financial Action Task Force (the “FATF”) for Anti Money Laundering / Combating the Financing of Terrorism (the “AML/CFT”) purposes.

The Commission is dedicated to proactive supervision and monitoring of the licensed community. The Commission bears in mind the evolution of the financial sector, the fast pace at which products are introduced, the diverse nature of the players in the market and the need for regulation and supervision, whilst providing a regime that will not stifle innovation.

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PURPOSE AND SCOPE

The Enforcement Manual (the “Manual”) provides an overview of the Commission’s approach to enforcement as a credible deterrent tool and the use made of enforcement powers, with particular reference to:

- the general purpose of disciplinary actions;
- the criteria the Commission applies in considering whether to take disciplinary action(s);
- the determining factors when considering the appropriate level of actions including any administrative penalty;
- the factors the Commission will take into consideration for a withdrawal of licence; and
- the publication of enforcement outcomes.

This Manual will serve as a reference tool for the regulated community in respect of the Commission’s enforcement powers and processes.

It is important to highlight, however, that this document is not an exhaustive representation of the Commission’s approach to the exercise of its enforcement powers under the law, nor does it fetter the Commission’s powers to exercise its discretion in particular circumstances of individual cases. Indeed, the Commission has a range of enforcement powers, and a particular enforcement situation may necessitate recourse to several powers. It is, therefore, advised that this Manual is not read in isolation.

Primarily, the enforcement powers of the Commission are provided under the FSA and therefore, extensive reference will be made in this Manual to the FSA. Hence, it is advised that this Manual be read alongside the FSA and the other relevant laws, as applicable.

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The Commission does not intend, by the publication of this Manual, to waive any applicable privileges or protections. In furtherance, this Manual is not intended to, does not, and may not be relied upon to create any rights, be it substantive or procedural and is not enforceable by any party in any matter, civil or criminal.

The Commission encourages any person to whom this Manual is of interest, to seek legal advice, should he have any questions as to the applicability of any legal provision under the relevant laws.

This Manual will be kept under review and may be subject to amendments.

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PART I: ENFORCEMENT FRAMEWORK

Background

- 1.1. Section 5 of the FSA sets out the following statutory objectives of the Commission:
- to ensure the orderly administration of the financial services and global business activities;
 - to ensure the sound conduct of business in the financial services sector and in the global business sector;
 - to elaborate policies which are directed to ensuring the fairness, efficiency and transparency of financial and capital markets in Mauritius;
 - to study new avenues for development in the financial services sector, to respond to new challenges and to take full advantage of new opportunities for achieving economic sustainability and job creation;
 - to ensure, in collaboration with the Bank of Mauritius, the soundness and stability of the financial system in Mauritius; and
 - to work out objectives, policies and priorities for the development of the financial services sector and global business and to make recommendations to the Minister.
- 1.2. The Commission is empowered under the relevant laws to meet the abovementioned statutory objectives. Section 7 of the FSA lays down the administrative sanctions which the Commission may impose. These are backed by other enforcement powers such as the power to give directions, freeze assets and apply for injunctive relief.

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Enforcement

- 1.3. The Enforcement Directorate (“Enforcement”) supports the Commission in meeting its statutory objectives, vision and mission, through the timely and effective use of the Commission’s enforcement powers with due regard to international standards¹.
- 1.4. Enforcement investigates where it appears that licensees or persons who ought to be licensed, have contravened or are contravening or likely to contravene the provisions of any of the relevant laws, licensing conditions or any directions issued by the Commission.
- 1.5. Enforcement is also able to investigate possible breach(es) of the provisions of the FIAMLA by its licensees and/or where the activities of the licensees may cause prejudice to the soundness and stability of the financial system or the reputation of Mauritius or may threaten the integrity of the system.
- 1.6. The relevant laws enable the Commission, the Chief Executive, and/or the EC, to take actions and/or impose sanctions which may include:
 - suspending a licence;
 - revoking a licence;
 - disqualification of officers of a licensee;
 - giving directions;
 - giving warnings;
 - issuing public censure;

¹ For example, The OECD Regulatory Enforcement and Inspections Toolkit presents a checklist of 12 criteria to help officials, regulators, stakeholders and experts assess the level of development of the inspection and enforcement system in a given jurisdiction, or of a particular institution or structure, to identify strengths and weaknesses, and potential areas for improvement. The IOSCO has its Capacity Building Online Toolkit- Enforcement Component. The FATF has issued the following guidance paper- Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement.

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- imposing administrative penalties;
- applying to the Judge in Chambers for freezing assets of the licensee;
- applying to the courts for injunction and restitution orders; and
- with the consent of the Director of Public Prosecutions, prosecuting various offences.

Enforcement Policy & Approach

- 1.7. The Commission's enforcement approach has three broad objectives:
- a. early detection of misconduct and breaches of law;
 - b. the reduction of systemic risk through effective deterrence; and
 - c. the protection of consumers.
- 1.8. Section 5(1)(c) of the FSA empowers the Commission to elaborate policies which are directed to ensuring the fairness, efficiency and transparency of financial and capital markets in Mauritius.
- 1.9. There are three broad underlying principles that underpin the Commission's enforcement policy namely:
- 1.9.1. *Effectiveness and efficiency*
- The Commission will endeavour to ensure that:
- unnecessary or undue delay is avoided;
 - there is provision for a mechanism to determine at an early stage what issues are in dispute and ensure that the process remains focused on those issues; and
 - there is sufficient flexibility to consider each case according to its own merits.
- 1.9.2. *Fairness*

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The Commission will endeavour to ensure that:

- all persons, subject to the exercise of the Commission's powers, are treated fairly;
- there will be a clear separation between officers who investigate the case and the persons responsible to determine whether the Commission should impose sanctions;
- those subject to enforcement action(s) are provided with sufficient information as to the reasons for that/those action(s), and the evidence on which the action(s) is/are based, so as to enable them to understand the Commission's grounds for such action(s);
- those subject to enforcement action(s) are provided with a reasonable opportunity to effectively make representations and present any evidence and arguments that are relevant to the decision in question; and
- decisions to exercise the Commission's enforcement powers are taken by an independent decision making body that is able to take an objective and impartial view of the case.

1.9.3. Transparency, Proportionality and Consistency

The Commission will endeavour to ensure that its powers are exercised in a manner that is transparent, proportionate and consistent. Transparency in enforcement, however, must be understood in its proper context. Investigating misconduct often requires undertaking discreet inquiries.

Transparency in the enforcement context is better understood as a legal requirement of procedural fairness.

- 1.10. The Commission upholds the principles of natural justice. Decision-making processes are intended to be transparent and procedurally fair and provide an reasonable opportunity for representations to be made by those who are

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subjects of enforcement actions and due consideration shall be given to such representations.

- 1.11. In line with these general principles, the Commission will strive at all times to maintain a relationship based on openness and co-operation between itself and those whom it investigates and seeks action(s) against.
- 1.12. Powers are to be exercised judiciously and proportionately and in a manner which does not disrupt or interfere in the business activities of licensees beyond what is reasonably necessary for the achievement of regulatory objectives.
- 1.13. In circumstances where the Commission decides to take disciplinary action(s), the effective use of enforcement powers will play an important role. In this regard, the Commission will seek robust sanctions in order to encourage propriety and compliance with the relevant laws and standards of behaviour as well as to deter future contraventions.
- 1.14. The credibility of any deterrence programme relies on the resolve of those who are responsible for its administration. It is for this reason that the Commission seeks the imposition of sanctions that are effective, proportionate and dissuasive, in order to ensure that the credibility of the regulatory framework is not undermined.
- 1.15. The Commission's effective and proportionate use of its enforcement powers plays an important role in deterring misconduct and maintaining fair and efficient markets, financial services and economies. In this way, it contributes to the protection of consumers and fosters investors' confidence.

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- 1.16. The publication of enforcement actions is also very important in promoting compliance and demonstrating that there are real consequences for failure to adhere to relevant laws.
- 1.17. The principles outlined above underline the Commission's approach to the exercise of its enforcement powers. In addition:
- 1.17.1. the effectiveness of the regulatory regime depends to a significant extent on the degree to which the regulated community is open and cooperative with the Commission; and
 - 1.17.2. the Commission will take appropriate measures to deter future non-compliance by others, to remove wrongdoers from the financial services sector, or impose restrictions on their licences in order to bring them into compliance, to eliminate any financial gain or benefit from the non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 1.18. Enforcement will maintain regular ongoing dialogue with the supervisory areas of the Commission in order to address issues early, where appropriate. Having a holistic overview of a licensee also provides greater insight into whether a matter may merit a referral for enforcement action(s).

Liaison with other bodies

- 1.19. The Commission works with other regulatory bodies and law enforcement agencies, both domestically and internationally. The Commission's objective includes ensuring that issues of concern are taken forward by the most relevant authority. The Commission has signed several MoUs for the exchange of information with local authorities and international regulatory authorities. These

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MoUs are instrumental in furthering mutual co-operation in enforcement matters between the Commission and its counterparts.

- 1.20. At all times, the Commission aims to act in a manner consistent with international best practices as set out by the international standard setters to which the Commission is a member.

The IOSCO Multilateral Memorandum of Understanding, signed by all members of the IOSCO, is recognised as an international benchmark for enforcement related co-operation and information exchange to combat cross-border fraud and other securities violations.

Settlement

- 1.21. One of the Commission's objectives through enforcement is to ensure compliance with regulatory requirements. To this end, the Commission will be introducing a Settlement Framework as a means to achieve timely and proportionate outcomes in appropriate circumstances.
- 1.22. Early settlement has many advantages as it can result, for example, in the saving of the Commission and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. Settlement can be effective in securing a variety of outcomes and remedies, including the imposition of remedial plans designed to strengthen systems and controls and risk mitigation strategies, or other undertakings not always readily available in civil judicial frameworks.
- 1.23. Settlement relies, however, on the acceptance of responsibility on the part of the contravener.

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- 1.24. The Commission, therefore, considers that it is in the public interest for matters to settle, in a timely manner and settle early, if possible.
- 1.25. The possibility of settlement does not, however, change the fact that enforcement action remains one of the tools available to the Commission to secure its statutory objectives. The Commission seeks to change the behaviour not only of those subject to the immediate action, but also of others who will be alerted to the Commission's concerns. There will be no distinction between the actions taken following settlement agreement and actions taken by the Enforcement Committee (the "EC").
- 1.26. In each case, the Commission must be satisfied that its decision is the right one, both in terms of the immediate impact on the subject of the enforcement action(s) but also in respect of any broader message conveyed by the action(s) taken.

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PART II – INVESTIGATIONS

2. *Investigation*

- 2.1. The Chief Executive is vested with the power to order an investigation. This power is granted in the particular circumstances set out in the relevant laws (see further below) and gives Enforcement the ability to investigate matters of concern.
- 2.2. An investigation is conducted where the Chief Executive has reasonable cause to believe that a licensee has committed, is committing or is likely to commit a breach of any of the relevant laws, conditions of the licence, or any direction issued by the Commission, and that the conduct of the licensee may have caused prejudice to the soundness and stability of the financial system of Mauritius or the reputation of Mauritius. Investigations, therefore, focus on activities that may constitute either statutory breaches or, more generally, a breach of obligations that could undermine investor protection or the orderly administration of financial services and global business activities. The Commission also has the power to deal with instances of market abuse and money laundering to ensure compliance by licensees in these areas.
- 2.3. An investigation consists of obtaining and analysing information gathered mainly on business premises of licensees, including information gathered from any program, data or server and any file, document or record held electronically in any computer or other electronic device of the licensee. Information may also be gathered through written requests or during interviews.
- 2.4. The power of the Commission to conduct investigations into the activities of its licensees is derived from section 44 of the FSA. In the context of an investigation, the definition of '*licensee*' has a wide scope and encompasses, but is not limited to, any person who has been a licensee; any person who is a present or past officer,

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partner or controller of the licensee; any person who ought to have been licensed under the FSA; and an SRO².

- 2.5. Once an investigation is commenced, an investigation team, comprising of staff of the Commission and where appropriate and/or necessary, external professional experts, will be established.
- 2.6. An investigation might not be necessary in all cases. Where the Commission has sufficient information and material, then the Chief Executive may utilise the relevant power afforded to him under the FSA to take action or he may refer the matter to the EC for any action it deems fit. This may happen in circumstances where there has been an inspection or other routine consideration of information or where material has been provided by the licensee.

Inspection vs. Investigation

- 2.7. An onsite inspection conducted under section 43 of the FSA is one of a number of supervisory tools utilised by the Commission to thoroughly understand the business models, culture and drivers of behaviour within the firms that are licensed. An inspection is also a tool to ascertain the extent of a licensee's compliance with requirements of relevant laws and conditions of licence or such other standards as may be set out in the relevant laws.
- 2.8. An investigation may follow from an inspection. However, the absence of an inspection does not preclude the commencement of an investigation.
- 2.9. Additionally, the Commission is not obliged to commence an investigation if there is sufficient information to initiate enforcement action.

² Section 44 (7) (c) of the FSA

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Starting the process

- 2.10. The Chief Executive may order that an investigation is conducted into the business or any part of the business of a licensee or its associate³ where there is reasonable cause to believe that the licensee has been, is or might be in breach of legal provisions, licensing conditions and/or directions issued by the Commission and that these breaches might seriously impact on the soundness and stability of the financial system of Mauritius, the reputation of Mauritius or may threaten the integrity of the system.
- 2.11. The ultimate aim is to ensure compliance with relevant laws applicable to financial services. However, it is recognised that in order to credibly deter misconduct, a clear and transparent enforcement process is necessary to deal with wrongdoers.
- 2.12. The Commission may consider issues that are strategic priorities for example, anti-money laundering, corporate governance, among others. Therefore, if a suspected breach or contravention of a relevant law falls within a priority area, this may influence the decision as to whether or not to investigate and/or take enforcement action(s).
- 2.13. The Commission will, however, not investigate and/or take enforcement action(s) only in strategic priority areas. The Commission may also investigate and/or take enforcement action(s) where there are issues of particular significance in a market, consumer protection or financial crime context, or in situations that the Commission believes are necessary to achieve credible deterrence. The decision to investigate and/or take action(s) is considered on a case by case basis.
- 2.14. The Commission may be alerted to information about a contravention (past, present or potential) in a number of ways, including, but not limited to:

³ Section 44 (1) of the FSA

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- at application stage where a serious regulatory concern has been identified about the applicant (s);
- as a result of offsite or onsite monitoring of the licensee;
- following complaints received from aggrieved parties or members of the public;
- correspondence from other local organisations and/or overseas counterparts concerned with corporate administration/money laundering;
- as a result of press reports; and/or
- information from a whistleblower or other intelligence.

2.15. The Commission will assess on a case by case basis whether to commence an investigation after considering all of the available information. Factors which will be taken into consideration include, but are not limited to:

- the extent of any loss or risk of loss to consumers;
- the nature and extent of any false or misleading information that may have been supplied by the licensee;
- the seriousness of suspected breaches of the relevant laws;
- the risk that the licensee's business may have been used to facilitate financial crime and/or money laundering;
- the risk that the licensees' conduct poses to the regulatory system as a whole;
- the conduct and financial status of the licensee as a whole;
- impact on the reputation of Mauritius; and
- the impact that intervention by way of investigation may have on the licensees' business and their customers.

2.16. In addition, the Commission may have regard to:

- the compliance history of the person concerned, for example, if the breach is of a minor nature but forms part of a series of minor breaches this might be an indication of more fundamental issues, indicating that the licensee's overall conduct may need to be addressed;

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- the ability and extent to which remedial action will rectify the contravention;
- the extent to which senior management is suspected to have been involved in the misconduct or the breach; and
- whether another agency, domestic or international, may be better placed to take the matter forward.

Unauthorised activity

2.17. Section 14 of the FSA provides that no person shall carry out, or hold himself out as carrying out, in Mauritius, any financial services without a licence issued by the Commission. Any person who contravenes this requirement, shall commit an offence and shall on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 8 years.

2.18. Unauthorised activity is a matter of serious concern for the Commission. Unauthorised activity often poses a significant risk to consumer protection and to the integrity and reputation of Mauritius.

2.19. The Commission may exercise its investigation powers in dealing with suspected unauthorised activities. In such cases, the Commission will seek to confirm whether or not a regulated activity has been carried out without licence, authorisation or approval, as the case may be, and, if so, the scope of that activity and whether other related contraventions have occurred. It will seek to assess the risk to consumers' assets and interests arising from the activity as soon as possible.

Authorisation of investigator(s)

2.20. An investigator, who is authorised in writing by the Chief Executive, may be any staff of the Commission or any other person appointed by the Commission to

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conduct an investigation; either jointly or separately. The investigator may be assisted by a team.

- 2.21. If a member of the investigation team has a conflict of interest (actual or potential) in any matter under investigation, he is required to disclose the conflict to the Chief Executive. The Chief Executive will assess the nature of the conflict and the impact thereof on the investigation in deciding whether to include that member as part of the investigation team.

Joint Investigations and Investigations to assist foreign regulators⁴

- 2.22. Where a matter requires a joint investigation with a foreign regulator, information is exchanged in accordance with the laws and regulations of the respective countries, and also in accordance with any bilateral or multilateral agreements pertaining to the exchange of information. The evidence obtained through this process may establish that a breach of the relevant laws has occurred.
- 2.23. At the request of its overseas counterparts, the Commission may require a licensee and its associates:
- (1) to provide specified information or documents;
 - (2) to produce specified information or documents; or
 - (3) to give to the Commission such assistance in connection with those enquiries, including by answering questions in an interview, as the Commission may specify.
- 2.24. The information contained in a request from an overseas counterpart, the request itself, and the identity of the foreign regulator are confidential information and may only be disclosed with the foreign regulator's prior consent⁵.

⁴ Sections 6, 87, 83 of the FSA

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Referrals to other agencies

- 2.25. Where appropriate, the Commission will closely co-operate with and make arrangements for onward referral of matters to the Commissioner of Police, the Financial Intelligence Unit (“FIU”), the Independent Commission Against Corruption (“ICAC”) and other bodies who have the responsibility for investigating crime and misconduct.
- 2.26. The Commission will set out, in a separate document, the considerations to which it has regard, when dealing with matters of financial crime, or matters that may be of mutual interest to the Commission and one or more of the other law enforcement agencies in Mauritius.
- 2.27. Where appropriate, the Commission will, on a best endeavour basis, ensure that it will expedite referrals to the law enforcement agency(ies) with the most appropriate functions and powers in order that consideration can be given by that agency to:
- a. whether a criminal investigation may be carried out;
 - b. whether criminal proceedings may be initiated; or
 - c. whether to initiate or bring to an end any such investigation or proceedings, or of facilitating a determination of whether it or they should be initiated or brought to an end.
- 2.28. The Commission further recognises that in certain cases concurrent or parallel investigations by different agencies may be the appropriate, effective and efficient way to address the issues.

⁵ Paragraph 11 of the IOSCO MMoU; Article 5 of the IAIS MMoU

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Findings of an investigation

- 2.29. Once the investigation has reached its conclusion, a report will be prepared as soon as practicable, in which the findings and recommendations will be set out. The investigator will then submit this report to the Chief Executive and to the Board in line with section 44 (5) of the FSA.
- 2.30. The investigation might find that:
- a) There has been no breach of the relevant laws, directions or licensing conditions;
 - b) The breach(es) may be rectified having regard to the compliance history of the persons under investigation; or
 - c) The breach(es) is/are of such gravity that this may warrant the imposition of administrative sanctions and / or referrals to other authorities.
- 2.31. Following an investigation, the Chief Executive may consider whether to refer the matter to the EC for such disciplinary actions as it deems fit. The Chief Executive may also issue directions, or take such other action that he deems appropriate, or may take no action and close the matter.
- 2.32. Where the breach(es) is/are of such a gravity that may warrant the imposition of administrative sanctions, the person(s) under investigation may be invited to give reasons why the matter should not be referred for action(s), by way of a “show cause” letter.
- 2.33. Following receipt of any response(s) to the show cause letter, the Chief Executive may refer the matter to the EC. The ensuing referral letter will be accompanied by relevant documents. The Chief Executive may proceed with such referral if a response is not received within the time limit given.

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2.34. Where the Chief Executive determines that enforcement action is not required, the Commission reserves the right to take those matters into consideration, should future contraventions occur.

Powers of investigators

2.35. Powers of an investigator include the powers to inspect⁶, namely to:

- Examine, and make copies of or take extracts from, any document or thing that he considers may be relevant;
- Retain any document or thing it deems necessary; and
- Direct a person who is or apparently is an officer or employee of the licensee to give information about any document or thing that he considers may be relevant to the inspection.

2.36. An investigator may request all types of documents for the purposes of the investigation, irrespective of the form in which the information is (hard or soft version).

2.37. Additionally, the investigator may seize any document, article, object or any electronically stored information which the investigator deems necessary. The medium of storage of the information is not material.

2.38. The power to request information applies to information, records or documents required for the Commission to carry out its functions under a relevant Acts or any other enactment including the FIAMLA.

2.39. An investigator may direct the licensee, or any of its officers, its employees, and its associates or any witness:

⁶ Section 43 of the FSA

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- to produce to the investigator, at a reasonable time and place specified in the direction, any specified document or other thing that may afford such evidence and that is in his possession or under his control;
 - to give explanations or further information about any documents or things produced; or
 - to attend before the investigator at a reasonable time and place and answer under oath, questions relating to the investigation.
- 2.40. In certain circumstances, the investigator may accept copies of documents from a licensee. In such a case, the investigator shall ascertain that the copies of documents submitted by the licensee are certified true copies of the originals.
- 2.41. If the Chief Executive is of the view that any document or information supplied needs to be verified or authenticated, then he may require that the costs be incurred by the person supplying the information.
- 2.42. Section 94 of the IA also makes provisions for the request of information. The Chief Executive may require a licensee or registered person by way of notice in writing to provide to the Commission at such times or intervals, at such place and in respect of such periods such information or document as may be specified in the written notice.
- 2.43. In addition, the IA empowers the Chief Executive to require a report by a skilled professional nominated or approved by the Commission. The powers under the IA extend to include any person who, in the opinion of the Chief Executive, appears to be in possession of any information or document requested.
- 2.44. Section 29 of the IA also allows the Commission to request information from an insurer on shareholding, nominee of a shareholder or any person according to whose instructions and directions a shareholder exercises, or normally exercises,

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his rights as a shareholder. In the event that the insurer or any person mentioned above fails to comply with the request to furnish such information as requested by the Commission, it would be committing an offence liable to a fine not exceeding 500,000 rupees and to imprisonment not exceeding 2 years.

2.45. Section 122 of the SA makes provision for the Chief Executive to give directions to persons for the purpose of obtaining information. Such directions may be given to:

- a) a person registered as the holder of securities;
- b) a person whom the Commission has reasonable grounds to suspect that he –
 - is the holder of securities;
 - has a beneficial interest in securities; or
 - has acquired or disposed of securities, whether directly or through a nominee, trustee or agent; or
- c) any other person, to furnish information which the Chief Executive may, in furtherance of the objects and functions of the Commission, provide to any –
 - securities exchange, clearing and settlement facility;
 - public sector agency;
 - international organisation;
 - foreign supervisory institution; or
 - law enforcement agency.

2.46. Where the information or document requested is not in the possession of the person who was required to produce it, that person shall state, to the best of his knowledge and belief, where the document can be found.

Use of information gathering and investigation powers

2.47. As is evident from the above, the Commission, through the Chief Executive, exercises various powers under the FSA and other relevant laws, to gather

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information and appoint investigators. The Commission will decide on a case by case basis which powers, individually or in combination, will be the most appropriate to use having regard to all the circumstances.

2.48. Information may, however, also be provided to the Commission voluntarily. For example, licensees may at times commission an internal investigation or a report from a Professional Adviser and decide to share a copy of this report with the Commission.

2.49. Other investigative powers include the power to:

- **Administer oath, affirmation or declaration**

The investigator can administer oath, affirmation or declaration to a person who is to be interviewed. The point of an oath or affirmation is to impress on the person the importance of truthfulness.

- **Summon any licensee, or its officers, employees and associates, or any witness necessary for the conduct of the investigation.**

The investigator can summon any such person so as to gather information that will assist the investigation.

Answering questions (“Interviews”)

Compelled or Voluntary

2.50. For reasons of fairness, transparency and efficiency, the Commission may use its compelled powers to require the production or provision of information and documents, assistance, such as answering questions (interviews) under oath. However, it will sometimes be appropriate not to use these powers and instead, seek such information, documents or answers on a voluntary basis. The

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Commission considers on a case by case basis which form of interview is appropriate.

- 2.51. A person required to answer questions under oath has no entitlement to insist that this should be on a voluntary basis.
- 2.52. Similarly, a person who is requested to answer questions on a purely voluntary basis is not entitled to insist that he be served with a requirement. A person who is asked to answer questions voluntarily is not obliged to do so at that time.
- 2.53. It may not be appropriate for the Commission to use its powers to compel information from third parties who have no professional connection with the financial services industry, such as victims of the alleged fraud or misconduct. In such instances, Enforcement may consider obtaining information on a voluntary basis.

Answering questions under oath ("Interview") procedures

- 2.54. An individual who is required or asked to answer questions may be accompanied by a law practitioner⁷ if he/she so wishes. The Commission will explain to the individual the basis and format of the interview (compelled or voluntary), and what use, if any, can be made of any answers in proceedings against him/her.
- 2.55. In line with international practice, increased efficiency, the accountability of everyone involved, transparency and accuracy, it is intended that compelled interviews will be recorded in a stable form from which transcripts can be easily produced. The interviewee may be provided with a copy of the transcripts of the interview upon request.

⁷ As defined under the Law Practitioners Act 1985

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Interviews in response to a request from overseas counterparts

- 2.56. Where the Commission has commenced an investigation⁸ further to information or request from an overseas counterpart, it may allow a representative of that counterpart to attend any interview conducted for the purposes of the investigation. A representative may be allowed to submit questions to the investigators who may put those questions to the person being interviewed.
- 2.57. However, the Commission may only use this power if it is satisfied that any information obtained by the overseas counterpart as a result of the interview will be subject to safeguards so as to preserve the protection against self-incrimination⁹.

Notice of an Investigation

- 2.58. Usually, the person/s under investigation will be notified at the appropriate time. The notification will usually include:
- The formal decision to investigate with the grounds for the investigation;
 - The formal appointment of the investigator;
 - The fact that a team will assist the investigator; and
 - The date of the commencement of the investigation.
- 2.59. The Notice of an Investigation would usually be addressed to the Board of Directors, if any, of the entity under investigation.
- 2.60. In certain circumstances, there may be compelling reasons not to give prior Notice of an Investigation. The reasons may include, but are not limited to, where there are grounds to believe that documents may be tampered with or destroyed or

⁸ In compliance with section 44 of the FSA

⁹ In accordance with relevant MoUs

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where investors' funds may be at risk or when the investigation may otherwise be prejudiced or because of the urgency of the situation.

Investigation authorisation

- 2.61. An investigator must show his authorisation to the person being investigated or from whom information is sought. As far as is practicable, the investigator shall seek a written acknowledgement from the person to whom the authorisation has been shown.

Inform the entity under investigation of its obligations

- 2.62. As a matter of best practice, the investigator will inform the licensee of its duties at the start of the investigation under the relevant laws as well as a reminder that hindering an investigation is a criminal offence.

Duty of confidentiality

- 2.63. The investigator has a duty of confidentiality with regards to the information that has been acquired during the course of the investigation. The investigator may not disclose the information except in way(s) permissible under section 87 of the FSA.
- 2.64. As mentioned earlier in this Manual, the Commission may be required to share confidential information with its international counterparts, and law enforcement agencies. The Commission adheres to international best practices and applicable laws in this regard. The IOSCO and the IAIS MMoUs cater for confidentiality.
- 2.65. As a signatory to various MMoUs and MoUs, the Commission is committed to incorporate international standards within the local laws falling under its purview. These:

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- (1) empower the Commission to obtain, secure or disclose confidential information where required for lawful regulatory purposes; and
- (2) place the Commission at par with the other financial services regulators who are MMoU signatories and restrict the disclosure of sensitive information, to what is required for lawfully ensuring compliance with, and enforcement of applicable financial services and criminal legislation.

Safe keeping

2.66. Usually investigators require certified true copies of documents that are of significance to the investigation. Where original documents are obtained or seized, the investigators will ensure the safekeeping and retention of same.

Rights of Persons under Investigation

2.67. Verification of the investigators' identity: A person under investigation is entitled to verify the identity of the investigator.

2.68. Information about the purpose of the investigation: The authorisation letter usually gives an indication of the purpose of the investigation to assist both parties during the investigation process. This is to enable the person under investigation to make available the requisite documentation and furnish answers pertaining to the subject matter under investigation.

2.69. Any licensee, or its officers, employees and associates, or any witness necessary for the conduct of the investigation and any other person under investigation or its officers, employees and associates, or any witness may be assisted by a law practitioner or legal consultants.

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- 2.70. The person under investigation is expected to assist in the investigation process and to provide the required information in a timely manner. A person who intentionally obstructs and/or gives false or misleading information; and/or fails to answer questions; and/or is deliberately 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 he/she may on conviction be liable to a fine not exceeding 500,000 rupees and imprisonment for a term not exceeding 5 years.
- 2.71. Persons under investigation have a duty to respond to requests for information and documents in a timely manner and comply with the deadlines set. Careful consideration will be given to any questions that are not answered and if there is an explanation (a reasonable excuse or reasonable cause) for such a refusal. Any attempt to tamper with, falsify or destroy evidence that may be of relevance to an investigation will be taken very seriously. Tampering with evidence could, among other things, be in the form of unauthorised amendment, destruction, falsification, concealment or disposal of any document, information stored on a computer, or other device or other thing. Any person found tampering or who has tampered with the evidence, who knows or ought reasonably to know that the document, information or thing is relevant to an on-site inspection or an investigation under a relevant Act, shall commit an offence.

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PART III - STANDARDS

3. *Standards applicable to investigators*

- 3.1. A number of standards apply to both investigators and persons under investigation. Adherence to these standards will help ensure that the investigation is conducted in a reasonable and courteous manner.
- 3.2. An investigator must take reasonable steps to collate all information that can be relevant to the investigation. Therefore, all documents and evidence that could substantiate either a breach or non-occurrence of a breach or that the person has acted in good faith, are material. The investigator should at all times keep an open and independent mind about guilt, innocence or extent of any possible culpability, and ensure that the presumption of innocence is respected at all times. It is also important that the investigator bears no predisposition for preference or partiality at any time during the investigation process.
- 3.3. An investigator will at all times behave with professionalism and courtesy to those under investigation and all parties involved in any investigation.
- 3.4. All endeavours will be made to investigate expeditiously. However, 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. Examples of circumstances that may lead to lengthy or protracted investigations include, but are not limited to:
 - multi-jurisdictional investigations; and
 - non-cooperation or failure to provide documents/explanation by the persons under investigation, including access to the requisite IT infrastructure.

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Behaviour expected of persons under investigation

- 3.5. The person under investigation is expected to provide precise answers openly and honestly and where possible, to support answers with the relevant supporting documentation.
- 3.6. It is important that the person shows a willingness to co-operate with the investigation and assist the investigator¹⁰. Co-operation can take a variety of forms including but not limited to informing investigators of a particular matter, furnishing relevant documents, and not obstructing the investigator in the performance of his duties.
- 3.7. The Commission can request information from its licensees. It is expected that the person under investigation will respond in a timely manner and meet any deadlines set, in order that the investigation is not delayed.
- 3.8. It is the responsibility of the person under investigation to provide information and material in a format that is easily accessible and comprehensible.
- 3.9. The persons under investigation are expected to treat investigators with professionalism and courtesy.

¹⁰ Section 44(8)(b) of FSA - Any person who intentionally obstructs an investigator, when acting in the execution of his powers under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

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PART IV - POWERS OF THE COMMISSION - ENFORCEMENT ACTIONS

4. *Powers of the Commission*

4.1. A number of powers and functions of the Commission can be delegated to the Chief Executive, under section 10 of the FSA.

Directions

4.2. The Chief Executive has the power to give directions to a licensee/person, including an officer of a licensee¹¹. Directions may include but are not limited to the following:

- Where there is a contravention of a relevant law, the direction may require the licensee to do a specified act, or refrain from doing a specified act, for the purpose of:
 - a) remedying the effects of the contravention;
 - b) compensating persons who have suffered loss because of the contravention; or
 - c) taking such measures as may be necessary to ensure that contraventions do not occur.
- Compliance with the whole or a specified part of any enactment;
- Compliance with any relevant guideline or such other similar instruments issued by the Commission or an SRO;
- Requiring an auditor approved by the Commission to audit the records of the licensee, at the expense of the licensee, and give the report to the Commission;
- Appointing a specified person to a specified office including the office of director of the licensee for a period specified in the direction;

¹¹ Section 46 of the FSA

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- Abiding by any undertaking given under the FSA; or
 - Establishing compliance programs, internal controls, corrective advertising or changes in the management of a licensee.
- 4.3. Directions may also be issued to:
- require a report to be prepared by a person approved by the Commission on the licensee's affairs, at the expense of the licensee; or
 - remove or take steps to remove a specified officer or employee of the licensee from office or employment, or ensure that a specified officer or employee of the licensee does not take part in the management or conduct of the business of the licensee except as permitted by the Commission.
- 4.4. The above direction must not be issued unless the Chief Executive is satisfied that:
- the licensee has contravened a relevant law and that the officer or employee of the licensee was concerned in the contravention; or
 - the officer or licensee has contravened a relevant law or has been knowingly involved in financial crime.
- 4.5. Directions may be given under various laws such as the:
- FSA;
 - SA;
 - IA; and
 - PPSA.
- 4.6. Under the FSA, 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 provision of the relevant laws, 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

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- A direction is necessary or desirable to protect the interests of consumers of financial services and clients of a licensee or any other licensee concerned¹².
- 4.7. 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. The licensee will be granted the opportunity to make representations as soon as practicable but not later than 7 days from the date of the direction.
- 4.8. The Chief Executive may also, under section 126 of the SA, in certain circumstances, direct a person to:
- do a specific act or refrain from doing a specific act for the purpose of compensating persons who have suffered loss because of a contravention of this Act, any regulations made under this Act or any FSC Rules by the person; or
 - comply with the rules of a securities exchange, a clearing and settlement facility or an SRO.
- 4.9. With respect to the insurance sector, the power to issue directions is provided under section 93 of the IA.
- 4.10. The licensee/person to whom a direction is to be addressed must be given a reasonable opportunity to make written representations. This is a means by which the person/licensee could “*show-cause*” as to why the direction ought not to be given as proposed.
- 4.11. After assessing the representations, the Chief Executive may decide to close the matter where the representations are deemed satisfactory or else, proceed with issuing the direction. Directions issued may specify the time or time period by

¹² Section 46 (1) of the FSA

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which it has to be complied with. However, a direction may also be revoked at any time by written notice to the licensee.

4.12. Careful consideration will be given to all the steps taken by licensees in compliance with the directions, and the Chief Executive may deem that:

- Full compliance has taken place in which case the Chief Executive may revoke the Direction by way of a written notice;
- Partial compliance has occurred in which case where the Chief Executive will notify the licensee of those matters which have been satisfactorily remedied and those matters which remain outstanding. The Chief Executive may in these circumstances refer the matter to the EC or to the Police; or
- There has been no compliance in which case the Chief Executive will notify the firm of its non-compliance and refer the matter to the EC for consideration of the appropriate actions it deems fit to take or he may refer the matter to the Police. There will be situations in which the Chief Executive has made a request to a licensee for rectification of matters or to cease certain practices. In cases where the licensee may not be in a position to comply with such requests either immediately or within a reasonable period of time, the Commission may be prepared to accept a written undertaking from the licensee to comply with the request within a fixed period of time in the future.

Enforceable Undertakings¹³

4.13. Section 51 of the FSA vests the Commission with the power to accept a written enforceable undertaking which it considers necessary or desirable in the pursuit of its regulatory functions.

¹³ Section 51 of the FSA

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- 4.14. Undertakings from licensees will only be accepted in circumstances where it would be unreasonable to expect compliance by the licensee due to factors which are beyond the control of the licensee or would place an undue burden on the licensee in achieving immediate compliance. The burden will be on the licensee to demonstrate that it would be appropriate to accept an undertaking and that by doing, so there would be little or no risk to investors.
- 4.15. Such undertakings should be in writing and must clearly set out what the licensee is expected to do or desist from doing as well as setting a clear date for compliance. The undertaking must be published in the Government Gazette or made available to anyone who asks for it.
- 4.16. Where an undertaking is not complied with, the Commission may apply to a Judge in Chambers for an order as set out under section 51(4) of the FSA.

Suspension

- 4.17. Another power of the Chief Executive is the power to suspend a licence. The grounds for a suspension are set out in section 27 of the FSA, namely where there are reasonable grounds to believe that the suspension is necessary to protect the integrity of the financial services industry, to protect the interests of the clients of the licensee or to protect the good repute of Mauritius as a financial services centre.
- 4.18. Before suspending a licence, prior notice must be given to the licensee of the intention to suspend as well as the reasons for the suspension. The licensee would usually also be given an opportunity to make representations on the matter.
- 4.19. However, if there are reasonable grounds to believe that a delay in suspending a licence, may cause prejudice to the clients of the licensees or to the public or to the

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financial services industry, the licence can be suspended immediately. In these circumstances, the licensee will have an opportunity to make representations as soon as practicable, but not later than 7 days from the date the licence is suspended.

- 4.20. Where a licence has been suspended, the licensee shall still maintain all of the obligations of a licensee and is required to comply with all directions the Commission may give, until the suspension of the licence is cancelled.¹⁴
- 4.21. Where a licence is suspended, public notice of the suspension will be given.
- 4.22. The Commission may also suspend the licence of a holder of a Global Business Licence without giving any notice where it intends to revoke the licence of the licensee. However, in such circumstances, prior to deciding whether to revoke the licence, the Commission will give an opportunity to the licensee to make representations in writing.

OTHER POWERS AVAILABLE TO THE COMMISSION

Injunctions

- 4.23. Injunction is a prerogative writ and in simple terms, it means that one of the parties to a certain action must either do something or refrain from doing something.
- 4.24. Injunctions are applied for and granted by the Judge in Chambers where applications for injunctions may have to be dealt with and the appropriate order issued at very short notice. The Judge in Chambers has the appropriate set up to deal with urgent matters.

¹⁴ Section 27(5) of the FSA

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4.25. Under section 49 of the FSA, upon an application from the Commission, a Judge in Chambers can direct a person to do or refrain from doing a specific act for the following purposes:

- preventing a contravention of the relevant laws;
- compelling any person to comply with a lawful request, direction or instruction made, issued or given by the Commission under the relevant laws;
- remedying the effects of a contravention;
- preserving the assets of a licensee;
- compensating persons who have suffered loss because of a contravention; and
- ensuring that the person does not commit further contraventions of the relevant laws.

4.26. In assessing whether an application for an injunction is an appropriate measure, the Commission will consider all relevant circumstances and may take into account a wide range of factors, which include but are not limited to:

- The nature and seriousness of a contravention or expected contravention of a relevant requirement. The seriousness of a contravention or potential contravention will include considerations of:
 - i. whether the losses suffered or assets at risk are substantial;
 - ii. whether consumers have suffered significant loss or are at risk; and
 - iii. risk of damage to the reputation of the financial services and the jurisdiction.
- The disciplinary record and general compliance history of the person who is the subject of the possible application.
- whether the person has previously given any undertakings to the Commission not to do a particular act or engage in particular behaviour and is in breach of those undertakings.

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Other relevant circumstances include:

- whether the conduct in question can be adequately addressed by other disciplinary powers, for example public censure or administrative penalties; and/or
- whether there is information to suggest that the person who is the subject of the possible application is involved in financial crime.

Freezing of Assets

4.27. The freezing of assets is a legal process which prevents a person from dissipating their assets so as to frustrate a potential judgment for payment of funds. Freezing orders have the effect of securing and restraining some or all of the assets, essentially preserving them until further order is made by the Court and/or the funds to be distributed.

4.28. Freezing orders may be granted by the Judge in Chambers upon an application by the Commission pursuant to section 50 of the FSA.

4.29. This may occur where there are reasonable grounds to suspect that a person (“the suspect”) has committed or is committing an offence under the relevant laws or has been involved in a financial crime.

4.30. A freezing order may:

- a) prohibit the suspect or any other person acting on his behalf or any person holding assets on his behalf from disposing, transferring or pledging any of his assets or make any withdrawal from any account or deposit at any bank or financial institution;

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- b) attach to any person named in the order, all moneys and other property due or owing, or belonging to, or held on behalf of the suspect;
 - c) require the suspect to make a full disclosure within such time as may be specified in the order, of all his possessions, and the nature and source of such possessions;
 - d) require any person named in the order to make a full disclosure of all moneys and property held on behalf of the suspect; or
 - e) require the opening, in the presence of a person authorised by the Commission, of any safe deposit box held on behalf of the suspect.
- 4.31. In cases where an order is made under (a) and (b) above, the Commission may give public notice of the order unless such notice is believed to obstruct the conduct of any investigation. The Commission may also give notice to all those concerned who hold or may be vested with property belonging to the suspect. Where a notice is published, any person who allows, procures or facilitates the disposal of money or property of the suspect shall be committing an offence in so doing. However, a Judge in Chambers may allow reasonable amounts to be withdrawn for the subsistence of the suspect.

A Cease Trade order under the SA

- 4.32. The Commission may order a securities exchange to be closed for securities transactions. This may happen where it is thought that the orderly transactions on a securities exchange can be or is affected by an emergency or a natural disaster or an economic or financial crisis.

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4.33. However, before such order is made, the Commission shall consult the securities exchange except where it would be impracticable, undesirable or inexpedient to do so. The Commission will determine the duration of such an order and may give directions to the securities exchange during such period. Furthermore, the Commission may order any person to cease any activity in respect of trading in securities or any specific securities, where the Commission has reasonable suspicions that there may be a breach adversely affecting the interests of investors.

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PART V - THE ENFORCEMENT COMMITTEE

5. *The Commission's policy in relation to administrative sanctions*

5.1. Regarding the imposition of administrative sanctions on its licensees¹⁵, the Commission may proceed in the following ways:

- a) in due course, by agreeing to settle the matter with the individual or firm subject of the investigation; or
- b) referring the matter to the EC.

5.2. The Chief Executive will also consider the seriousness of the breaches committed by the licensee on a case by case basis in order to take such course of conduct as he may deem appropriate.

Referral

5.3. Referral to the EC is made by the Chief Executive. In accordance with section 53 (1) of the FSA, referral may take place where there is reasonable cause to believe that a licensee:

- has contravened any relevant law, any direction or order issued under a relevant law or any condition of the licence;
- is carrying out his business in a manner which threatens the integrity of the financial system of Mauritius or is contrary or detrimental to the interest of the public;
- has committed a financial crime;
- no longer fulfils any condition or criteria specified under the relevant law for the grant of a licence;

¹⁵ As defined under section 53(11) of the FSA

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- no longer carries out the business activity for which it is licensed;
- has failed to commence business within 6 months from the date on which it is licensed; and/or
- is not a fit and proper person.

5.4. In considering whether a matter will be referred to the EC, the Chief Executive will take into consideration a number of factors, including, but not limited to:

- The precise nature and seriousness of the breach;
- The behaviour of the licensee during and/or after the investigation;
- The previous regulatory record of the licensee;
- Guidance issued by the Commission on technical matters;
- Action taken by the EC in similar previous cases;
- Action taken by other regulatory authorities; and
- Such other information as may be deemed relevant.

Establishment of the EC

5.5. The EC is an internal independent committee of the Commission set up by the Board pursuant to section 52 of the FSA. The purpose of the EC is to exercise the disciplinary powers of the Commission under section 7(1)(c) of the FSA in relation to matters referred to it by the Chief Executive of the Commission.

Composition of the EC

5.6. Pursuant to section 52(2) of the FSA, the EC comprises of:

- 5.6.1. 2 members appointed every year by the Board of the Commission;

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- 5.6.2. not more than 2 employees being of a grade not lower than Executive¹⁶ and not involved in investigations of the licensee under section 44 of the FSA, designated by the Board;
- 5.6.3. such other person having the necessary expertise as may be co-opted by the EC.
- 5.7. The Board of the Commission shall designate, from the members appointed under section 52(2)(a) of the FSA, a Chairperson and a Vice-Chairperson.
- 5.8. All members of the EC shall be entirely separate from the Enforcement Directorate of the Commission. This will ensure that the members are not involved, at any level, in the investigative process of the Commission.

Co-opted member

- 5.9. It is to be noted that a person co-opted by the EC in accordance with section 52(2)(c) of the FSA will assist the EC in discharging its functions, to provide such technical assistance as may be required by the EC and such other duties as may be provided in the terms of reference set out by the EC.
- 5.10. The co-opted person shall have no conflict of interest in relation to the matter being considered by the EC and will be required to swear an oath of confidentiality under Part I of the Third Schedule to the FSA.

¹⁶ Section 52(2)(b) of the FSA states “Executive”, however in the current structure of the Commission, this is equivalent to a senior manager.

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Immunity and protection

- 5.11. In line with section 88 of the FSA, no action shall lie against the members of the EC and its secretariat for anything done or omitted to be done in the performance, in good faith, of their functions, or the exercise, in good faith, of their powers, under a relevant law, as may be applicable.
- 5.12. In addition to provisions of the Public Officers' Protection Act 1957, a co-opted member benefits from the same immunity and protection afforded to members of the EC under section 88 of the FSA.

Managing conflict of interest

- 5.13. The EC members shall be at all times impartial and objective concerning any matter under their consideration. They shall also ensure that they have no conflict of interest in relation to any matter before the EC. In case a member finds himself in a conflicting situation, he shall disclose the conflict of interest to the EC and shall recuse himself from all discussions of the EC regarding the matter.

The Secretariat

- 5.14. The EC shall be assisted by a secretariat which will, *inter alia*, arrange for meetings, prepare minutes, implement the decisions of the EC and well as keep its records. The Secretariat is also mandated by the EC to sign statutory notices and other correspondences to be issued for and behalf of the EC.

Proceedings

- 5.15. The EC shall conduct its proceedings as it deems fit in accordance with section 53 of the FSA.

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Quorum

5.16. The EC meets as frequently as may be necessary depending on the nature of the matter under consideration. The required quorum for each meeting is three (3) members. The EC conducts its meetings in private.

Written request for additional information

5.17. The EC may make written requests to the Commission for additional information including clarifications and further evidence or documentation. Such additional information will be submitted in writing by the Commission to the EC.

Notices issued by the EC

5.18. The EC issues the following two (2) distinct notices according to section 53 of the FSA:

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

5.18.1.1. When, following consideration of a matter, the EC intends to impose an administrative sanction under section (7)(1)(c) of the FSA against a licensee, it shall issue a Warning Notice, by registered post, to the licensee stating –

- (a) the intention of the EC to impose an administrative sanction;
- (b) the type and terms of the administrative sanction(s); and
- (c) the right of the licensee to make written representations to the EC within such time as the EC deems appropriate in the circumstances, but not exceeding 21 days from the date of the Warning Notice.

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5.18.1.2. The Warning Notice will include a copy of all documentary evidence on which the EC has relied in forming its intention to impose the administrative sanction(s).

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

5.18.2.1. Where, after considering the written representations under section 53(2)(c) of the FSA or where no written representations are received within the time specified in the Warning Notice and the EC decides to impose an administrative sanction, it shall issue a Decision Notice to the person stating the type and the terms of the administrative sanction(s).

5.18.2.2. The Decision Notice will also contain the following information:

- (a) The reasons for the decision of the EC to impose the administrative sanction(s); and
- (b) the possibility to make an application to the Review Panel for a review of the decision of the EC and the modalities for such an application.

5.18.2.3. In the event where an administrative penalty has been imposed, the Decision Notice will also include:

- (a) how and when such penalty may be paid;
- (b) any applicable conditions for payment of such penalty; and
- (c) a statement that an administrative penalty is a civil debt and may be recovered by the Commission as such in a Court of competent jurisdiction.

5.19. As per their Terms of Reference, the Secretariat of the EC is mandated by the EC to sign and issue both the Warning Notice and the Decision Notice for and on behalf of the EC.

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Service of the Notices

- 5.20. The Warning Notice as well as the Decision Notice (the “Notices”) will be sent by registered post to the licensee at its last address as provided to the Commission for the purposes of its register of licensees or alternatively the residential address of the directors. In the case of individuals, the Notices will be issued to the business address or alternatively to the residential address as per the Commission’s records.
- 5.21. Where a licensee wishes to elect domicile at the office of an Attorney or Counsel, the EC will have to be duly notified by the licensee, his/her Attorney, Counsel or any person mandated by him/her that the Notices are to be issued to the office of the Attorney or Counsel, as may be applicable.
- 5.22. Where a Notice is returned undelivered, the EC shall effect a substituted service for the Notice by way of publication of an abridged version of the Notice in two daily newspapers of wide circulation in Mauritius as well as on the website of the Commission.

Written Representations

- 5.23. The recipient of a Warning Notice may make representations to the EC in accordance with section 53(2) of the FSA.
- 5.24. Any such representations must be made in writing and sent to the EC’s Secretariat at the following address: Enforcement Committee Secretariat, FSC House, 54 Cybercity Ebene, before the time limit imposed by the EC, but not later than 21 days from the date of the Warning Notice.
- 5.25. The EC may reduce the 21 days’ period where it determines that to do so would be in the interest of the public, the clients of the licensee or potential clients,

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depositors, investors, consumers of financial products, as the case may be, or the reputation of Mauritius as a financial centre.

Request to extend time limit to make representations

5.26. The EC will only consider requests to extend the period for the submission of the written representations on good cause.

Default procedure

5.27. Where no written representations have been submitted within the prescribed time limit and no request has been received from the licensee to extend this period, the EC will consider that the breaches set out in the Warning Notice are undisputed and proved.

Post Representations

5.28. If new evidence comes to the knowledge of the EC after the issue of the Warning Notice, the EC may discontinue the Warning Notice issued and may issue a supplemental Warning Notice encompassing all the new facts and matters. Where a supplemental Warning Notice is issued, the recipient will be given an opportunity to make further written representations.

The decision making process

5.29. Following the issue of the Warning Notice and consideration of the written representations, if any, the EC may decide:

- to take no action;

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- that the particular circumstances of the case are capable of rectification by the licensee. The EC will refer the matter back to the Chief Executive with reasons as to why remedial steps should be considered;
- to refer the matter back to the Chief Executive or the Commission for any further evidence that is required; or
- that it will give a Decision Notice to the licensee concerned.

Publication of decisions of the EC

- 5.30. Any decision of the EC may be published in such form and manner as the Chief Executive may determine.
- 5.31. The Commission reserves the discretion not to publish information if in its opinion such publication would be detrimental or prejudicial to the interests of consumers.

Third party considerations

- 5.32. The Commission will give careful consideration to the interests of third parties to any Warning and/or Decision Notice that may be issued by the EC. There may be occasions where matters set out in a Notice, identify a person (a third party) other than the person to whom the notice is given, and in the opinion of the Commission is prejudicial to that third party. In these circumstances, the EC will consider whether it is appropriate to afford that party an opportunity to make representations to the EC, as to matters that relate to the third party.

Referral to the Financial Services Review Panel ('Review Panel')

- 5.33. Where the recipient of a Decision Notice wishes to challenge the decision of the EC, it may, within 21 days of the issue of the Decision Notice, apply to the Review

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Panel specifying the reasons for review of the decision in accordance with section 53 of the FSA.

- 5.34. This application for review must be made in writing to the Review Panel to the attention of the Secretariat at the following address:

“Financial Services Review Panel, FSC House, 54 Cybercity, Ebène.”

- 5.35. Whilst a statutory deadline of 21 days has been set for making an application for review, the Review Panel may consider an application that has been made after the prescribed delay in circumstances set out in section 53(5) of the FSA. However, the applicant must satisfy the Review Panel that his inability to do so was due to illness or any other reasonable cause that restrained him from making a timely application.

- 5.36. The Review Panel may suspend the implementation of the decision of the EC following application of the person aggrieved by the decision. However, the Review Panel will hear the Commission in deciding to suspend the decision of the EC.

- 5.37. The Review Panel may either confirm, amend or cancel the decision of the EC or remit the matter to the EC for reconsideration.

- 5.38. Any determination of the Review Panel shall be published in such form and manner as the Review Panel thinks fit.

Judicial Review

- 5.39. If the licensee wishes to challenge the determination of the Review Panel, the licensee may apply to the Supreme Court for a judicial review of the determination.

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PART VI- ADMINISTRATIVE SANCTIONS

6. General Criteria

- 6.1. The Chief Executive and the EC may take the following actions:
- revocation of a licence;
 - disqualification of officers of a licensee;
 - disqualification of the licensee from holding a licence or a licence of a specified kind for a specified period;
 - private warning;
 - issue a public censure; and/or
 - impose administrative penalties.

Additionally, the Chief Executive may also suspend a licence, issue directions, refer the matter to the EC or take any other such action as he deems 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 nature and severity of the breach(es).

- 6.2. In determining whether to take disciplinary action(s) in respect of conduct regard will be given to a number of factors on a case by case basis (these factors should not be considered as an exhaustive list) which include but are not limited to:
- A. The precise nature and seriousness of the conduct in question for example:
- whether the conduct was deliberate or reckless;
 - the duration and frequency of the conduct which in respect of a licensee will include when the conduct was identified by senior management or the directors of the firm;
 - the amount of any benefit gained or loss avoided as a result of the conduct;

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- whether the conduct reveals serious or systemic weaknesses of the licensees' management or internal controls systems;
 - the impact of the conduct / breach on the market place and whether public confidence in the markets has been damaged;
 - the loss or risk of loss caused to consumers or other market users;
 - the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the conduct; and
 - whether the conduct as a whole is part of a series of incidents which, if considered individually, may not necessarily justify disciplinary action(s), but which do so when taken collectively.
- B. The behaviour of the licensee after the conduct came to light or was identified, for example:
- how quickly the licensee made the Commission aware of the conduct in question;
 - the degree of co-operation shown by the firm or individual during any investigation by the Commission;
 - any remedial steps taken by the licensee since the conduct was identified, including compliance with any directions made by the Chief Executive, identifying whether consumers have suffered loss and were compensated, whether disciplinary action against the staff involved has been taken, whether systemic failures have been addressed; and whether the licensee has taken action designed to ensure that similar problems do not arise in future; and
 - the likelihood that the same type of contravention will recur if no disciplinary action is taken.
- C. The previous regulatory record of the licensee for example:

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- whether the licensee has previously given any undertakings to the Commission or other regulatory agency not to do a particular act or engage in particular behaviour;
- whether the Commission (or any previous regulator) has previously taken any disciplinary or other action in respect of a licensee, or has previously requested the licensee to take remedial action, and the extent to which that request for remedial action has been complied with; and
- the general compliance history of the licensee, such as previous private warnings¹⁷ or concerns raised in previous correspondence.

D. Action taken by other regulatory authorities for example:

Where other regulatory authorities propose to take action in respect of the conduct which is under consideration, the Commission will consider whether the action by those other authorities would be adequate to address the Commission's concerns, or whether it would be appropriate for the Commission to take its own action(s).

Procedure by which administrative sanctions are determined

- 6.3. There may be certain situations where a Decision Notice is not proceeded with and in this respect it would only be proper and in the interests of natural justice and in line with international best practices that any party who is the subject of an existing Warning Notice be informed of any decision by the EC not to proceed with any administrative action(s) previously contemplated.
- 6.4. In these situations, the EC may issue a notice to the licensee, highlighting the above.

¹⁷ Section 7(1)(c)(i) of the FSA

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Types of sanctions that may be imposed

Private warnings

- 6.5. There may be cases where notwithstanding concerns regarding the behaviour of a licensee or its officers, it is not appropriate, having regard to all the circumstances of the case, to impose any of the other range of disciplinary sanctions at their disposal. In these cases, the licensee or officer will be aware that:
- they are at risk of being subject to the wider range of disciplinary sanctions;
 - but in the particular circumstances of the case, it is proposed to give the firm or individual a private warning; and
 - that the private warning will be a matter of record and could be used by the Commission in considering the appropriate disciplinary action(s) should there be any future transgressions.
- 6.6. The imposition of a Private Warning may be considered where the matter giving cause for concern is minor in nature or degree, or where the licensee or officer has taken full and immediate remedial action and cooperated with the Commission. However, it is worth highlighting that full and immediate remedial action, cooperation, and/or compliance with any Direction issued by the Chief Executive do not in themselves mean that the Commission is in any way fettered in its discretion to impose any other appropriate sanction.
- 6.7. In relation to both licensees and officers the form of the Private Warning will set out the matters under paragraph 6.6.
- 6.8. Where a Private Warning is given to an officer of a licensee, the licensee will also be informed of the same.

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Consideration of Private Warnings in subsequent disciplinary proceedings

- 6.9. The Commission takes the view that Private Warnings do not become spent. However, the age of any warning is a factor to which regard may be given in any future consideration of action.
- 6.10. Private Warning may be considered cumulatively even where they relate to specific or discreet areas of business particularly as they may be indicative of a licensee's compliance culture. Where private warnings have been issued to different subsidiaries of the same parent group these may be considered cumulatively.

Public censure

- 6.11. The Commission takes the view that the public censure of a licensee or its officer is serious where it potentially impacts the integrity and reputation of the licensee or officer concerned. Consideration may be given to the following factors on a case by case basis, including but not limited to:
- Where there has been a serious breach of the trust relationship that a licensee or its officer has with its clients;
 - Where the licensee's or officer's misconduct has caused financial loss to its clients;
 - Where the licensee's or officer's misconduct is serious in nature or degree and it is in the public interest that such conduct should be made known to the wider community;
 - Where the licensee or officer has a poor disciplinary record and or compliance history for example they have been the subject of a previous private warning in relation to the same or similar behaviour;

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- The Commission's approach in similar previous cases: the Commission will always strive to achieve a degree of consistency in approach to imposition of the sanctions at its disposal.

Disqualification

Factors to be considered when determining whether to disqualify an officer/a licensee:

6.12. Seriousness of the offence

Disqualification of an officer/a licensee is a serious sanction which therefore has to be commensurate with the seriousness of the misconduct.

6.13. Consideration will also be given to:

- the nature of the breach committed;
- whether any other administrative sanctions might be better suited to address the misconduct;
- the person acted on his/her own or with others;
- the expectations of such a person in his/her role (e.g any duty of care and/or position of influence);
- the impact of this misconduct;
- personal gain (e.g whether the officer acted out of personal interest and the value of the profits made by the officer to the detriment of the licensee and of the clients);
- gains to the licensee; and/or
- quantum of loss suffered by the various stakeholders.

Factors to be considered when determining the 'specified period' for disqualification

6.14. When determining the length of the 'specified period', the factors that will be considered include, but are not limited to:

- The seriousness of the breach;

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- Whether the person has been subject to regulatory action before by the Commission/other regulators;
- The repeated nature of the breach/ offence - for instance if that person has already been disqualified before for an offence and that after the lapse of the specified period, he commits an offence of the same nature;
- The quantum of unlawful gains;
- The loss/ damage caused to the consumers as a result of his actions/ omissions; and
- The market in which the licensee operates.

Administrative Penalties

Purpose

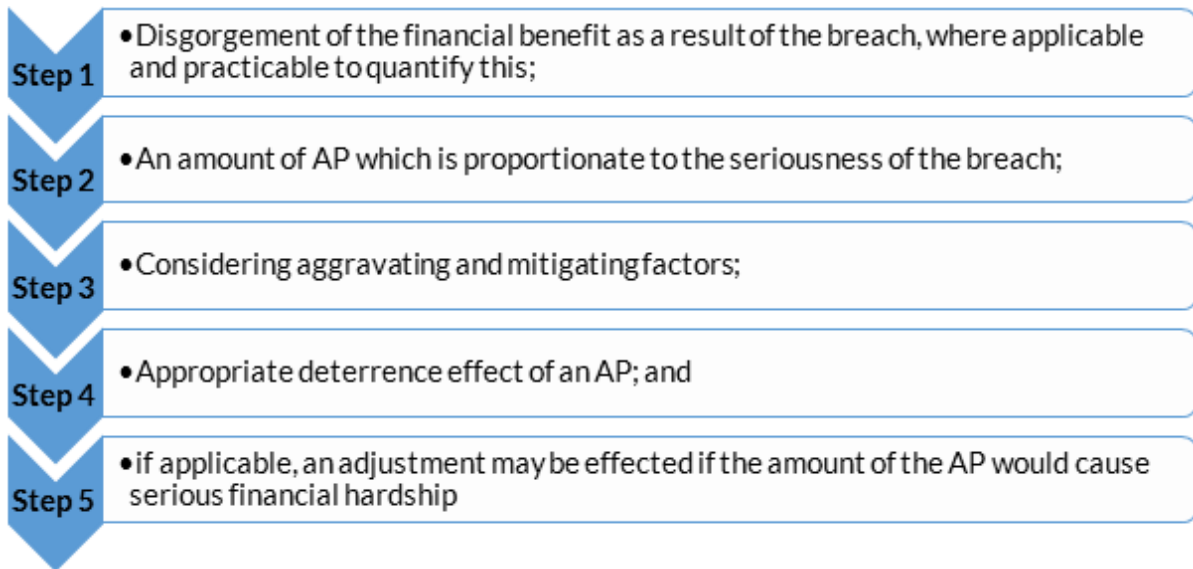
- 6.15. The principal objective of an Administrative Penalty¹⁸ (AP) is to leverage and encourage compliance with regulatory requirements in order to protect the consumers of financial services and to ensure the soundness of the financial system of Mauritius. Responsiveness, proportionality, fairness and equity, deterrence, punishment and reparation for damage caused are some of the necessary elements of an effective AP.
- 6.16. To ensure appropriate use of this particular type of sanction, the Commission has established overarching principles, based on which APs will be imposed for contraventions of regulatory requirements prescribed under the relevant laws.
- 6.17. 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.

¹⁸ Section 7(1)(c)(v) of the FSA

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- b) Disgorgement: The amount of the AP will seek to ensure that a licensee does not directly benefit financially from any breach or wrongdoing 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.

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



6.19. Further details of the 5-Steps approach are set out in the **Administrative Penalty Regulatory Framework** which is published on the Commission’s website.

Revocation of licence

6.20. The main circumstances in which consideration will be given to revoking a licence are where there are very serious concerns about a licensee and the way its

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business is or has been conducted such that the Commission considers that the licensee should no longer be able to operate in any capacity in the financial services industry.

6.21. The circumstances that will be considered in deciding whether to revoke a licence, include where:

- the licensee appears not to be a fit and proper person to carry on a regulated activity because:
 - a) it has not conducted its business in compliance with the Commission's regulatory standards;
 - b) it was involved in financial crimes;
 - c) it has not exercised due skill, care, and diligence in carrying on one or more, or all, of its regulated activities;
 - d) it has breached the requirements imposed on it by or under the relevant laws and rules; and/or
 - e) failed to comply with Directions issued by the Chief Executive and the breaches are significant in number and/or in their individual seriousness.
- the risk that the licensee's business may be used or has been used to facilitate financial crime, including money laundering.
- it appears that the interests of consumers are at risk because the licensee appears to have failed to comply with its regulatory requirements to such an extent that it is desirable that it is precluded from holding a licence in the future.
- the extent of any loss, or risk of loss, or other adverse effect on consumers including the possibility that the licensee may have to pay significant amounts of compensation to consumers.

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- the conduct of the licensee is such as to call into question the good repute of Mauritius as a financial services centre.
- the risk that the licensee's conduct or business presents to the financial system as a whole and to confidence in the financial system.
- the licensee's material and financial resources appear inadequate for the scale or type of licensed activity it is carrying on
- there is evidence that the licensee and or its officers have submitted to the Commission, inaccurate or misleading information so that the Commission becomes seriously concerned about the licensee's ability to meet its regulatory obligations.

6.22. The nature and extent of any false, misleading or inaccurate information provided by the licensee will be taken into consideration. This includes matters such as:

- the impact of the information on the licensee's compliance with its regulatory requirements, the licensee's suitability to conduct certain types of regulated activities, or the likelihood that the licensee's business being used in connection with financial crime; and/or
- whether the licensee has provided the Commission with any information that appears to have been given in an attempt to knowingly mislead the Commission rather than through inadvertence.

6.23. The IA provides for additional grounds for revocation as follows:

- the licensee has ceased the business for which it was licensed;
- the licensee has failed to commence business within 6 months from the date on which it was licensed;

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- there exists a ground which, under any provision of the IA and FSC Rules would have prevented the licensee from being licensed;
- the licensee has failed to satisfy an obligation to which it is subject by virtue of the IA and FSC Rules;
- the licensee is unable to meet its financial obligation or the solvency margin;
- the business of the licensee is not being carried on in accordance with sound insurance principles;
- the licensee is contravening or has contravened any of the provisions of the IA or any conditions imposed on its licence or any directions given by the Commission under the IA, regardless that there has been no conviction for an offence in respect of such contravention;
- the licensee, or any of its directors or officers responsible for its management has been convicted of an offence under the IA or an offence relating to a financial crime under any other enactment whether in Mauritius or elsewhere;
- the licensee proposes to make or has made a composition or arrangement with its creditors or goes into receivership or liquidation, is wound up or is dissolved; or
- an insurer, being a foreign company, has ceased to be authorised to issue insurance policies, or contracts of a particular description, in the country where it has its head office.

Mitigation

- 6.24. Mitigating factors should be considered when deciding the appropriate sanction(s). It does not follow that the absence of a mitigating factor will serve to increase it.

Contrition

- 6.25. The absence of contrition would not have any impact on the setting of a pecuniary penalty. On the other hand, the absence of contrition can have an effect on the period of a disqualification, where it is indicative of a risk of re-offending.

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Cooperation with the Regulator

- 6.26. Cooperation goes beyond merely adhering to the standards ordinarily expected of licensees. Cooperation can take a variety of forms including making the investigators or his team aware of a particular matter, furnishing relevant documents, and not obstructing the investigator in the performance of his duties.
- 6.27. It can also include providing information or giving evidence against others who are involved in misconduct and making early admissions in relation to his/her own involvement.

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PART VII – ENFORCEMENT AND THE GLOBAL BUSINESS REGIME

7. Enforcement and the Global Business Regime

7.1. Parts VIII (Powers of the Commission) and IX (Enforcement Committee and Financial Services Review Panel) of the FSA do not apply to holders of a Global Business Licence, except if a person/entity holder of a global business licence also holds a licence, authorisation, approval or registration for the conduct of a financial services activity under a relevant law.

Grounds to initiate an inquiry

7.2. The holder of a Global Business Licence may be subject to an inquiry which can be initiated in the following circumstances:

- If the person has committed a breach or is likely to commit a breach of the relevant laws, any condition of its licence or any direction issued by the Commission; or
- If the person is carrying or is likely to carry out any activity which may cause serious prejudice to the soundness, stability, integrity and reputation of the financial system of Mauritius.

Who can be the subject of an inquiry?

7.3. The following persons may be the subject of an inquiry¹⁹:

- A corporation holding only a Global Business Licence;
- Any person who has held only a Global Business Licence; and

¹⁹ Section 75 of the FSA

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- A present or past officer, or controller of the holder of a Global Business Licence.

Appointment of an inquirer

7.4. The Chief Executive may designate a person(s) to act as inquirer(s) to conduct an inquiry²⁰.

Notice of Authorisation

7.5. A person duly designated to conduct an inquiry will show his written authorisation to the person, on request.

Obligations of persons under inquiry

7.6. A corporation holding only a Global Business Licence shall, when so required by the Commission in exercising its general powers of supervision, furnish all such information and produce such documents as may be required of him by the Commission in order to ensure and monitor compliance with the relevant laws.

Powers of inquiry

7.7. During the course of an inquiry, the Chief Executive may, by notice:

- request the production of any document to be inspected at such reasonable time and place;
- take copies of or extracts from, any document so produced; and
- issue directions.

²⁰ Section 75(3)(a) of the FSA

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Offences

- 7.8. It is a criminal offence²¹:
- to fail to produce a document to be inspected following a request by the Chief Executive and after having been duly notified in that respect;
 - to obstruct the Chief Executive or the inquirer/s from taking copies or extracts of the document produced; and
 - to fail to comply with a direction issued by the Chief Executive with respect to the provision of information and/or documents for the purposes of the inquiry.

Completion of the inquiry

- 7.9. In line with section 75(5) of the FSA, the Chief Executive shall send a report to the Board of the Commission together with his observations, comments and recommendations.

REVOCAATION

Grounds

- 7.10. 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/or
 - to protect the public in general.

²¹ Section 75(6) of the FSA

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Modus

- 7.11. Prior to revoking a Global Business Licence, the Commission may suspend it. The corporation holding the Global Business Licence will be duly notified as to why its licence is being revoked. Following notification by the Commission, the holder of the licence is allowed to make representations in writing, to “show cause” why its licence should not be revoked.

Service of documents

- 7.12. Where a licensee is the holder of a Global Business Licence or is an Authorised Company within the meaning of sections 71 or 71A of the FSA respectively, the proper address for the service of any documents is the address of the Management Company / Registered Agent of the company which was provided to the Commission.

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PART VIII - FINANCIAL SERVICES REVIEW PANEL

8. Role of Financial Services Review Panel ('Review Panel')

- 8.1. The Review Panel's function is to review any decision made by the EC, the Commission or a regulatory organisation under a relevant law or such other body or organisation as may be provided under a relevant law.
- 8.2. The aggrieved licensee can make an application to the Review Panel to review any decision of the EC with which it is not satisfied. However, the Review Panel cannot hear applications against a decision of the Commission regarding granting of licence, conduct of investigation or self-regulatory organisations.

Powers and duties

- 8.3. 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.
- 8.4. For the purpose of a hearing, a person may be summoned to appear before the Review Panel to give evidence or produce documents in his possession.

Composition and Schedule of Meeting

- 8.5. The Review Panel consists of a Chairperson, a Vice-Chairperson and the Financial Secretary or his representative. The Chairperson is a barrister-at-law of not less than 5 years standing and is appointed by the Minister while the Vice-Chairperson shall be the Solicitor-General or his representative. All members of the review Panel take the oath of confidentiality. The Review Panel sits on an ad-hoc basis and 2 members constitute a quorum.

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- 8.6. When reviewing a particular decision, the Review Panel may nominate such other person having relevant experience in business, finance or law and that person shall be deemed to be a member of the review Panel.
- 8.7. The members of the Review Panel have an obligation to disclose personal interests in any matter before the Review Panel where they or any person related to them by blood or marriage has a pecuniary or other material interest. The disclosure should be made in writing to the Chairperson or, where the Chairperson is concerned, to the other members.
- 8.8. Also, the member must not take part in any such deliberations of the Review Panel, unless approval of the other members is obtained.

Conduct of reviews and proceedings

- 8.9. The Commission is a party to proceedings before the Review Panel concerning its decisions. Any party to the proceedings may be represented by counsel or attorney or other representative duly authorised.
- 8.10. Hearings are held in public unless otherwise directed by the Review Panel. The Chairperson determines the place and time of hearings. Proceedings are made in consistency with the rules of natural justice and procedural fairness.
- 8.11. Offences in relation to the proceedings of the Review Panel entails, on conviction, a fine not exceeding 100,000 rupees and imprisonment for a term not exceeding 3 years.

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Determination of Review Panel

- 8.12. The decision of the Review Panel cannot be changed or set aside except as agreed by the Review Panel or between parties to the proceedings, with the consent of the Review Panel.
- 8.13. On hearing the application for review, the Review Panel can either:
- confirm, amend or cancel a decision made by the EC, Commission or SRO;
 - remit the matter to the EC, Commission or SRO, 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.
- 8.14. The decision of the Review Panel shall be determined by the majority of members and such determination must be in writing, stating the reasons and other factors on which it is based. The determination must be served to each party to the proceedings and must be published as the Review Panel thinks fit.

Judicial Review (Supreme Court)

- 8.15. 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.

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PART IX – PUBLICATION OF ENFORCEMENT RELATED INFORMATION

9. General policy on publication of enforcement actions

- 9.1. This section describes how the Commission and/or Enforcement may comment publicly on investigations, enforcement actions and other formal decisions, subject to any independent determinations by the Review Panel or Court.
- 9.2. The Commission will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including public 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.
- 9.3. In all cases the Commission retains the discretion to take a different course of action, where it furthers the Commission's achievement of its objectives or is otherwise in the public interest to do so. For example, the Commission may decide to publish information at an earlier stage than suggested by the general policy, where circumstances justify this.

Commencement and conclusion of investigations

- 9.4. The Commission will generally not publish information about the commencement, conduct or conclusion of the investigations.

Commencement of proceedings

- 9.5. Information about matters before the EC, is not normally published prior to the issue of a Decision Notice. The reasons for this include the facts that:

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- submissions in relation to a matter before the EC are confidential and made in private;
- EC hearings are held in private; and
- the release of information by the EC prior to a full and complete consideration of all submissions and facts may be contrary to the Commission's objectives or this may not be in the public interest.

Publications of Outcomes and Actions

- 9.6. One of the most effective means of ensuring deterrence and protecting consumers is in publicising actions taken. Publication is a tool deployed by many regulators and international organisations to allay public concerns and deliver key messages. The financial services industry is entitled to know of the behaviours and activities that they must seek to avoid, and consumers are entitled to be informed about those who engage in poor practices so that they may exercise appropriate caution.
- 9.7. Publication also allows persons who face sanction(s) to demonstrate, where applicable, that by accepting responsibility, they are learning from their mistakes and are taking or have taken appropriate remedial steps.
- 9.8. The Commission will generally make public any decision made by the EC, unless it relates to a private warning.
- 9.9. If the person who is a subject of the decision exercises its right of review, then the Commission may publish that fact. When the review has been heard and determined, the Commission will publish the decision which will include the publication of any notice of decision.

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The Review Panel determinations

- 9.10. The FSA requires all of the Review Panel's hearings to be heard in public unless the Review Panel orders otherwise or its rules of procedure provide otherwise. The Review Panel may exercise its discretion not to make public any determinations it may make. Where it does determine to publish, the Review Panel will usually publish this in the Gazette. The Commission will also publish the determinations on its website.

Publication of settled enforcement actions

- 9.11. In line with international standards and practice, the Commission expects to publish appropriate details of settled enforcement matters, to ensure that stakeholders and the general public are informed about relevant matters. Settlement Agreements in themselves will however not be published.
- 9.12. The Commission may be ordered, or required by law, not to publish certain information regarding a settlement. For example, disclosure may not occur if a third party has commenced proceedings in the courts in respect of the same conduct and the publication of any part of settlement may prejudice that party's case in the courts. However, the fact that a third party has commenced proceedings does not preclude the Commission from publishing its settlement decision.

Publication of suspensions

- 9.13. The Commission will generally publish information about suspensions imposed under sections 27 and 74(6) (a) of the FSA.

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Content of Publication

9.14. The Commission will take into consideration any privileged or sensitive information when considering the content of its publications. In doing so, it will also consider the possibility that any publication may also potentially affect the interests of a third party.

Mode of Publication

9.15. Publication may take any one or more forms including, for example, a media release, a statement on the Commission website, and any other suitable medium as determined by the Commission or prescribed by the relevant laws.