



04-October-2019

REF: AML-2019/6

REGULATORY REMINDER ENFORCEMENT

1.0 INTRODUCTION

1.1 While the Financial Services Commission (**Commission**) has signalled that it will be taking an educative approach in the first instance, it is worth bearing in mind that failure to comply with the requirements of the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 (**MLFTA**), the AML Guidelines and the information and other requests of the Commission are offenses which carrying significant penalties.

2.0 THE COMMISSION'S POWER

2.1 The Commission has certain powers under Financial Services Commission Act, 2010-21 (**FSC Act**) and MLFTA to tackle non-compliance. This guidance covers the more common situations and is not intended to be an exhaustive list.

2.2 The Commission may use the following powers, or a combination of them, to both encourage compliance and respond to non-compliance:

- (i) inspect or examine a financial institution (**FI**)¹;
- (ii) issue a penalty²;
- (iii) reject or remove persons who are not fit and proper³;
- (iv) refuse, suspend or cancel an institution's registration⁴;
- (v) issue a request for information⁵;
- (vi) seize the management and control of an institution⁶; or
- (vii) institute criminal proceedings against directors & officers.

¹ Sec 31 MLFTA and Sec 14 FSCA

² In accordance with MLFTA

³ Sec 6 (3), 6B and 6C FSCA

⁴ Sec 6 (3) and Sec 8 (1) (c), Sec25(1) (b) FSCA and Sec 35 MLFTA

⁵ Sec 10 (2) FSCA

⁶ Sect 8 (1) (d) FSCA

2.3 In instances where there is a breach of the FSC Act, MLFTA and the AML/CFT Guidelines the Commission may issue a directive or a warning letter or penalty or institute court proceedings.

3.0 DIRECTIVES⁷

3.1 The Commission may issue directives demanding cessation of an action or the institution of an action, as seems appropriate, in instances where it appears that a FI is in contravention of the legislation and the *AML/CFT Guidelines*.

4.0 WARNING LETTERS

4.1 The Commission will generally issue a warning letter to:

- (i) tell a FI about the breaches the Commission identified;
- (ii) formally warn a FI that it has breached the FSC Act, MLFTA or guidelines;
- (iii) tell a FI the actions it needs to take;
- (iv) give a FI a time period to correct the breaches;
- (v) inform a FI that the Commission may follow up to check its compliance; or
- (vi) tell a FI what will happen if further breaches are found.

4.2 The Commission is not required to send warning letters before it issues penalties or start investigations.

4.3 The Commission will move straight to issuing a penalty if any of the following apply:

- (i) the breaches are serious;
- (ii) the breaches are throughout the institution;
- (iii) the breaches are deliberate; or
- (iv) the institution has not complied with a notice requiring information.

4.4 The Commission will not normally issue a second warning letter for a second breach or the same non-compliance and may respond with other appropriate action. In specific circumstances, the Commission may issue a second warning letter if a FI has made

⁷ Sec33- Sec36 MLFTA & Sec 37MLFTA

significant efforts to address the areas set out in the original warning letter and there are some minor administrative issues that still need to be addressed.

- 4.5 In the event that the Commission⁸ determines that a second instance of the same breach is deliberate i.e. where the Commission has provided guidance to the FI on how to correct the failures but the FI has not done so; the Commission may issue a penalty.

5.0 APPROPRIATE PENALTIES

- 5.1 The penalties the Commission issues must be appropriate; i.e. they must be “effective, proportionate and dissuasive”. Accordingly, the Commission’s penalties shall:

- (i) be fair, and take into account past behaviour;
- (ii) be proportionate to the seriousness of the breach or offence;
- (iii) remove any financial gain or competitive benefit of non-compliance; and
- (iv) be sufficient to act as a deterrent to non-compliance.

6.0 LIABILITY OF AN OFFICER TO A PENALTY

- 6.1 The Commission may impose a penalty directly to an officer if they are knowingly involved in a breach. In the event more than one officer is responsible for a breach, the Commission may impose penalties on any, or all of them. The penalty will be appropriate to the severity of the breach.

7.0 NOT PAYING A PENALTY

- 7.1 If a FI does not pay, the Commission may:
- (i) reconsider the institution’s fit and proper status;
 - (ii) refuse, suspend or cancel the institution’s registration; or
 - (iii) initiate court action to recover pecuniary penalties & costs.

8.0 SANCTIONING FACTORS⁹

- 8.1 In issuing sanctions, the nature, seriousness and impact of the contravention will be considered. Specific consideration may include:
- (i) whether the contravention was deliberate, dishonest or reckless;
 - (ii) the duration and frequency of the contravention;

⁸ Sec 36 MLFTA – Pecuniary penalties

⁹ Sec 33-36 MLFTA - Sanctions

- (iii) the amount of any benefit gained or loss avoided due to the contravention;
- (iv) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;
- (v) the extent to which the contravention departs from the required standard;
- (vi) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;
- (vii) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (viii) whether there are a number of smaller issues which individually may not justify administrative sanction, but would be justified when taken collectively; or
- (ix) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed.

9.0 SUSPENDING OR CANCELLING A LICENCE OR REGISTRATION¹⁰

9.1 The Commission may suspend or cancel an existing registration for the same reasons that the Commission refuses to register a FI in instances where:

- (i) the directors, managers and senior officers or any other individuals who manage or control the financial institution are not fit and proper persons to manage or control the financial institution;
- (ii) the financial institution has failed to comply with or contravened a guideline issued;
- (iii) the financial institution has failed to comply with a directive given;
- (iv) the financial institution is otherwise contravening or has contravened the FSC Act, the MLFTA or its governing legislation; or
- (v) the financial institution does not respond to a request for information by notice to the Commission's satisfaction.

9.2 In the event of a suspension, the Commission will inform the length of the suspension and what the FI needs to do to have its registration re-instated. The FI will not be able to undertake relevant activity during the period of the suspension.

¹⁰ Section 35 MLFTA

10.0 REVIEWS AND APPEALS

10.1 The FI institution will generally be given a right to be heard prior to the cancellation or suspension of its license. The Commission will notify the FI when a decision is made and of its right of appeal pursuant to section 34 (3) of MLFTA.