

AML SUPERVISION AND ENFORCEMENT

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WHAT IS THE DIFFERENCE BETWEEN SUPERVISION AND ENFORCEMENT?

1. CIIPA monitors registered firms that are carrying on relevant financial business. That is referred to as “supervision” but supervision can be taken to mean registration, supervision and enforcement. CIIPA also works to support firms with training and outreach.
2. In relation to monitoring or supervision, in the more limited sense of the word, this entails both:
 - a. offsite monitoring which is essentially information gathering; and
 - b. inspections which are a specific process and usually conducted at the firm’s offices to give a greater insight into the business and controls.
3. If supervision reveals weaknesses in controls or unmanaged risks, it may result in a determination that your firm is in breach of the Anti-Money Laundering Regulations (“the Regulations”). Depending on the breach, circumstances and your initial response, CIIPA may commence enforcement proceedings in these cases.

WHAT ARE THE METHODS OF ENFORCEMENT?

4. Where a breach of the Regulations has occurred and the matter cannot be resolved, there are two options:
 - a. Referral to the Director of Public Prosecutions (“DPP”) for prosecution
 - b. Administrative fines imposed by CIIPA

HOW WILL I KNOW MY FIRM IS SUBJECT TO ENFORCEMENT?

5. CIIPA will communicate with you as clearly as possible; you should read all communications carefully. Typically, any enforcement will be preceded by an inspection or other communications, but at the start of the enforcement proceedings you will be issued a **Breach Notice**.
6. The Breach Notice will include details of the provisions of the Regulations that CIIPA has determined your firm has breached and the proposed action e.g. fine.

WHAT IS A BREACH NOTICE?

7. A Breach Notice is issued in accordance with the Regulations and will include the following:
 - a. Date of Notice
 - b. Name of the Firm to which it applies
 - c. That a fine is proposed
 - d. Provision of the Regulations determined to have been breached
 - e. Nature of the Breach
 - f. Summary of the facts
 - g. Whether the fine is a minor or discretionary fine and the proposed amount
 - h. How to reply or rectify
8. You will be given at least 30 days in which to reply or rectify the breach.

9. If you send evidence of rectification CIIPA will confirm within 15 days of receiving whether it considers the breach to have been rectified.

WHAT IS A FINE NOTICE?

10. After expiry of the reply period given in the Breach Notice, if your firm has not rectified or provided a response that leads CIIPA to reconsider its determination, CIIPA will issue you a **Fine Notice**.

11. The Fine Notice will restate the information provided in the Breach Notice and further add:

- a. The fine amount and date payable
- b. In the case of a discretionary fine, the reasons for determining the amount of the fine.

HOW MUCH IS A MINOR FINE?

12. \$5,000 and \$5,000 for each continuing breach up to a maximum of \$20,000.

HOW MUCH IS A DISCRETIONARY FINE?

13. For a serious breach the fine maximum amount is \$50,000 for an individual and \$100,000 for a firm.

14. For a very serious breach the fine maximum amount is \$100,000 for an individual and \$1,000,000 for a firm.

15. CIIPA has discretion as to the actual amount of the fine up to these maximums but that discretion must be exercised taking account of relevant factors and:

- a. Three Principles- Disgorgement, Punitive and Deterrence (see Regulation 55V)
- b. Criteria set out in Regulations 55X and 55Y, including consideration of the nature and seriousness of the breach and your firm's inadvertence, intent or negligence in committing the breach.

WHAT ARE MINOR, SERIOUS AND VERY SERIOUS BREACHES?

16. The categories of breaches and consequent fines are set out in Schedule 2 of the Regulations and in summary are:

<i>Minor</i>	<i>Serious</i>	<i>Very Serious</i>
Failure to provide information (Reg 53A)	Failure to implement controls (Reg 5 except (b))	Failure to implement controls for identification and recordkeeping (Reg 5(b))
Failure to Allow Onsite Visit (Reg 55M)	Failure to register (Reg 55F)	
Providing false information (Reg 55O)		

WHAT IS A DISCOUNT AGREEMENT?

17. At various stages in the process, including prior to issuance of the Breach Notice, CIIPA may seek to impose a discounted fine where your firm cooperates, concedes and rectifies the breach.

CAN I DISPUTE A FINE?

18. Yes, in the case of a minor fine you can apply to the Council of CIIPA to review the decision.

19. In the case of a discretionary fine, you can appeal to the Grand Court against the fine decision of CIIPA.

20. In both cases you must apply or appeal within 30 days of receiving the Fine Notice.

WHO BENEFITS FROM THE FINES PAID?

21. All fines belong to Government and are levied by CIIPA in order to punish and deter breaches of the Regulations.

WHAT HAPPENS NEXT?

22. If you wish to make an enquiry to CIIPA, please feel free to contact us at admin@ciipa.ky or 749-3360.

F E M I N A L