

Enforcement Regime *(Actions and Statistics)*

Gary Wilson
Deputy Director, Enforcement



Outline

- Categories of contraventions
- Enforcement actions prior to 2007
- Statistics on contravention matters before Enforcement Committee



Outline

- Enforcement Committee actions
- Administrative penalties
- Summary and review



Categories of contraventions

- **Investment Business**

(e.g. Mutual Funds Act 1996, Segregated Portfolio Companies Regulations 2005)

- **Banking & Fiduciary Services**

(e.g. Banks & Trust Companies Act 1990, Company Management Act 1990)



Categories of contraventions

- **Insurance**

(e.g. Insurance Act 1994, Insurance Regulations 1995)

- **Insolvency Services**

(e.g. Insolvency Act 2003, Insolvency Regulations 2004)

- **AML Legislation**

(e.g. AML Regulations (2008), AML Code of Practice 1999 (2008))



Enforcement action prior to 2007

Before the Enforcement Committee was constituted, any enforcement decisions and actions were made at the Board level.



Enforcement action prior to 2007

2004	
Directives	5
Protection Orders	2
Warning Letters	9

2006	
Directives	3
Non-Compliance penalty	1
Advisory Notice	1
Warning Letters	28

2005	
Directive	1
Protection Orders	1
Appoint Inspector	1
Revoke Licence	1
Restore to Company Register	1
Appoint Liquidator	1
Warning Letters	5



Enforcement action January 2007 onwards

- The Enforcement Committee (“EC”) of the Financial Services Commission was constituted, and commenced a review of enforcement matters in January 2007.
- In 2007-08, some 188 matters altogether were brought before the EC.



Matters before EC in 2007-08

Investment Business

- 2007 – 4 cases
- 2008 – 14 cases



Matters before EC in 2007-08

(Common Breaches – Investment Business)

- Failure to seek recognition as a Fund
- No license, and licensee contraventions
- Failure to notify FSC of segregated portfolios



Matters before EC in 2007-08

Banking & Fiduciary Services

- 2007 – 8 cases
- 2008 – 44 cases



Matters before EC in 2007-08

(Common Breaches – Banking and Fiduciary Services)

- Failure to seek FSC approval change of director
- No license, and license contraventions
- Failure to seek FSC approval transfer of shares
- Failure to keep adequate records (e.g. intermingling of funds).
- Operating a subsidiary without prior FSC approval.



Matters before EC in 2007-08

Insurance

- 2007 – 9 cases
- 2008 – 27 cases



Matters before EC in 2007-08

(Common Breaches - Insurance)

- Dealing with unlicensed insurers.
- Operate domestic insurance business without license.
- Failure to notify FSC of material changes.
- Failure to file audited financial statements.



Matters before EC in 2007-08

Insolvency Services

- 2007 – No cases
- 2008 – 1 case



Matters before EC in 2007-08

(Common Breaches - Insolvency Services)

- Numerous contraventions of Insolvency Act 2003, as well as 7 further contraventions of other statutes.



Matters before EC in 2007-08

AML Legislation

- 2007 – 6 cases
- 2008 – 15 cases



Matters before EC in 2007-08

(Common Breaches - AML Legislation)

- Lack of internal control system
- Non-appointment of Reporting Officer
- Failure to perform risk assessment duties
- Failure to comply with other duties and responsibilities



EC actions 2007-08

Administrative Penalty

2007	2
2008	23

Appointment of Examiner

2007	1
2008	4

Advisory Notices

2007	1
2008	0

Issue Public Statements

2007	1
2008	2

Issue Directives

2007	2
2008	6



EC actions 2007-08

Referrals to DPP

2007	0
2008	1

Revocation of License

2007	22
2008	0

Warning Letters

2007	5
2008	26

Appointment of Liquidator

2007	0
2008	1



Administrative Penalties

- In 2007-08, the EC imposed an administrative penalty in 25 separate matters.
 - Total amount proposed \$200,000
 - Amended amount imposed \$127,500
 - Total collected to date \$94,500
 - Outstanding \$33,000.00 relates to recent matters.



Summary

- Myth that EC is draconian and arbitrary in its decisions. In fact, the FSC is objective and fair in its regulation of industry (188 matters before EC, only 96 required action of which 25 were financial penalties).
- Statistics show that workload of EC is growing steadily.



Summary

- EC has a positive and active role to play in good regulation of industry.
- FSC continues to work in partnership with financial industry to enhance BVI reputation as a well regulated jurisdiction.
- Efforts continue to ensure we meet international standards and best practices.



Questions

