

## Enforcement and Penalty Framework

The Bank, under the laws it administers, has the authority to take formal enforcement actions against authorised financial institutions or other persons who fail to comply with regulatory standards and other requirements issued pursuant to these laws. Such actions are important to promote good conduct in the financial industry that is aligned with sound financial and business practices, the legitimate interests of consumers and the prevention of crime. Following wider enforcement powers provided under the laws administered by the Bank, the Bank reviewed and strengthened its internal enforcement procedures. These procedures are set out in the Enforcement and Penalty Framework which governs the Bank's decision-making process and its approach in deciding on enforcement actions.

The framework aligns the Bank's enforcement efforts, activities and resources to achieve the Bank's statutory objectives while ensuring that enforcement actions are commensurate with the severity of the wrongdoing and are applied consistently across entities/persons in similar circumstances.

### Enforcement Committee

Enforcement matters are decided by the Enforcement Committee (EC). The EC is chaired by the Governor, and its members consist of two Deputy Governors and five Assistant Governors with responsibilities in the areas of regulation, supervision, legal and enforcement. The EC oversees the implementation of the Bank's enforcement policies and decides on enforcement actions to be pursued in specific cases, which may be administrative, civil and criminal in nature. Under the law, the consent of the Public Prosecutor must be obtained to pursue criminal enforcement actions, that is to prosecute criminals and to compound offences. The EC may delegate its authority to decide on enforcement actions within clearly defined parameters to heads of departments within the Bank that are responsible for administering certain statutory functions of the Bank. In practice, such delegation has been limited to the issuance of warnings and meting out administrative penalties for failures to comply with routine reporting requirements. The vast majority of enforcement decisions were accordingly escalated to the EC for decision.

### Laws currently administered by the Bank:

- Financial Services Act 2013 (FSA)
- Islamic Financial Services Act 2013 (IFSA)
- Money Services Business Act 2011
- Central Bank of Malaysia Act 2009
- Development Financial Institutions Act 2002
- Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)<sup>1</sup>

An important outcome of enforcement actions is to encourage a strong compliance culture among market participants by providing an effective deterrent against future non-compliance. In taking an enforcement action, the EC will consider the likelihood that an enforcement action will achieve this outcome that may also strengthen market discipline, while ensuring that the action is proportionate to the seriousness of the non-compliance. The severity of an action to be taken will be based on a careful examination by the EC of the facts and circumstances of each case, including the seriousness and impact of the non-compliance, the degree of culpability of the financial service providers (FSPs), past record of non-compliances, the effectiveness of remedial measures taken to rectify the non-compliance and the strength of governance arrangements and risk management control functions within an FSP to prevent a recurrence. The EC, having deliberated each case, may recommend action that is supervisory in nature, instead of pursuing an enforcement action. In some circumstances, both

<sup>1</sup> AMLA is jointly enforced with other law enforcement agencies in Malaysia.

supervisory and enforcement actions are taken. Supervisory actions would form part of the Bank's ongoing prudential and conduct supervision of FSPs and may involve supervisory directions issued to an FSP to take certain actions to improve compliance and oversight functions. Such actions must also be monitored by the FSP's board and management, and reported to the Bank.

### Range of supervisory and enforcement actions

Supervisory and enforcement actions are broadly categorised under the Enforcement Framework as actions that are protective or corrective, and actions that are punitive (Table 1).

**Table 1**

#### Nature and Type of Actions

Nature of actions	Type of actions
Protective/corrective	<ul style="list-style-type: none"> <li>• Supervisory letter</li> <li>• Enforceable undertaking</li> <li>• Direction of compliance</li> <li>• Assumption of control</li> <li>• Power to appoint manager</li> <li>• Order to transfer of business, asset and liability</li> <li>• Administrative - order to do or not to do</li> <li>• Administrative - private reprimand</li> <li>• Administrative - order to mitigate</li> <li>• Removal of directors/key responsible persons</li> <li>• Revocation</li> </ul>
Punitive	<ul style="list-style-type: none"> <li>• Administrative - monetary penalty</li> <li>• Administrative - public reprimand</li> <li>• Administrative - remedy/restitution</li> <li>• Civil action</li> <li>• Criminal - prosecution (court)</li> <li>• Criminal - compound</li> </ul>

Source: Bank Negara Malaysia

Protective or corrective actions include actions that aim to encourage prompt remedial measures by FSPs and are generally applied where an errant conduct is determined to be isolated in nature and not representative of broader, systemic compliance or governance failures in an FSP. In these circumstances, the Bank may intervene by requiring the FSP to improve its risk management control functions or issuing a private reprimand as a formal record. A more severe or punitive action might be taken should the non-compliance recur. In more serious cases of non-compliance where an FSP's ability to carry on its business in a sustainable manner is affected, the Bank may take more severe corrective actions including the appointment of a manager to manage the FSP's business, removal of directors or key responsible persons, or the assumption of control by the Bank. These actions generally aim to restore the institution to a sound financial position and ensure its proper management, or support its orderly resolution.

The Bank will generally pursue punitive enforcement actions in cases where errant conduct is the result of a deliberate or reckless disregard of regulatory requirements which is compounded by weak controls and governance, or where criminal elements are present. Such actions will also be pursued to provide a credible deterrent where the wrongdoing has wider adverse consequences for public interests. Punitive enforcement actions, which include imposition of monetary penalties, civil or criminal actions, signal the Bank's intolerance of serious non-compliances, particularly those that can undermine the stability of or confidence in the financial system, or the integrity of the financial markets. The law also empowers the Bank to pursue administrative restitution that involves issuing an order to FSPs to compensate depositors and policyholders for their losses.

The Bank takes a strong stance against unlawful conduct or unauthorised or illegal activities. In cases of suspected unauthorised or illegal activity, the Bank will pursue either criminal sanctions or civil actions, or both. Civil proceedings can serve to secure, among other things, compensation for pecuniary gain or loss avoided as a result of the contravention. The Bank may also seek a court order to prevent errant parties from continuing unauthorised activities.

In the enforcement process, FSPs are accorded with an opportunity to provide explanations or highlight mitigating factors which will be considered by the EC in reaching its decision.

### **Monetary penalties**

In imposing monetary penalties for non-compliances with regulatory requirements, the Bank is guided by a structured penalty framework. This framework details out parameters for the computation of initial monetary penalties, and the principles and factors that the EC must have regard to in deciding the final amount of penalty to be imposed for a particular non-compliance.

The amount of initial penalty derived under the penalty framework accounts for aggravating and mitigating factors. This is based on scaling factors applied to a standard starting penalty amount that relates to the maximum fines provided under the laws for a particular non-compliance. Aggravating and mitigating factors include the intent of the offender, history of previous non-compliances, financial gains or losses avoided from the non-compliance and any adverse impact of the non-compliance on the FSP and its customers or on public confidence in the financial system. An FSP's post-conduct behaviour is also factored in the initial determination of the penalty amount. This may include whether an FSP voluntarily reported and provided complete information on the circumstances surrounding the non-compliance to the Bank, and proactively took measures to hold those responsible for the non-compliance to account and prevent similar non-compliances from recurring in future.

The EC may increase or decrease the amount of penalty initially derived from the penalty framework, having regard to additional factors including a consideration of whether the penalty will have a deterrent effect, the extent of its impact on the financial position of the offender and the appropriateness of the penalty in relation to precedents set by the Bank in similar circumstances. Deliberations and decisions of the EC are formally documented and confirmed, and may be reviewed by the Monetary Penalty Review Committee in the event of an appeal against the Bank's decisions in respect of administrative monetary penalties imposed by the Bank. All monetary penalties imposed by the Bank are paid into the Federal Consolidated Fund.

### **Monetary Penalty Review Committee**

As required under the FSA and IFSA, the Bank has established the Monetary Penalty Review Committee (MPRC) whose members are independent of the Bank's executives, to consider appeals relating to the quantum of administrative monetary penalties and pecuniary remedies enforced by the Bank. A person aggrieved by the Bank's decision may file an appeal to the MPRC within 21 days after being notified of the Bank's decision. The MPRC will consider the appeal and it may decide either to confirm the Bank's decision or require the Bank to reconsider the decision in accordance with the findings of the MPRC. More information on MPRC, including its present members, is available on the Bank's website.

### **Transparency of enforcement actions**

The law provides for the Bank, where it thinks necessary, to publish information in relation to any enforcement actions taken. Aggregated information on enforcement actions by the Bank is currently provided in the Bank's annual Financial Stability and Payment Systems Reports. Moving forward, it is recognised that an appropriate degree of transparency around enforcement actions by the Bank beyond what is currently provided, can be helpful to reinforce the deterrent effect of enforcement actions, promote confidence in the financial system and provide information on how the Bank has discharged its responsibilities on a matter of public interest. With these objectives in mind, the Bank will in each case of enforcement actions taken against a firm or individual, specifically consider

whether it is also appropriate to publish information on the actions taken in a particular case. Such information will identify the parties against whom actions have been taken, provide a brief description of the circumstances of the non-compliance and outline the specific actions taken, including any material considerations of the EC in reaching its decision. The Bank generally expects to publish information on enforcement actions taken except where the Bank has reason to believe that the publication would be prejudicial to financial stability, the soundness of an FSP or the interests of depositors and policyholders. This in turn is expected to enhance the efficacy of enforcement actions as a tool to promote financial stability.