

CAYMAN ISLANDS.
CLEARLY BETTER BUSINESS.

CIMA INSPECTIONS

Best practices to ensure compliance

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Overview of CIMA's Function

Public Body with four principal functions – Monetary, Regulatory, Cooperative and Advisory

Obligations – S.6 Monetary Authority Law (2016 Revision)

- “ Act in **best economic interests** of the Cayman Islands
- “ Promote and maintain **sound financial system**
- “ Have regard to generally accepted principles of **good corporate governance**
- “ Other obligations include **transparency & fairness, efficiency**, promoting market confidence, facilitating **innovation, consumer protection** and **preventing money laundering** and other crimes

REGULATORY FRAMEWORK

Insurance Law

Insurance Law, 2010

Regulations

- “ Application Forms
- “ Reporting Forms
- “ Capital and Solvency for Class A licensees
- “ Capital and Solvency for Class B, C and D licensees

Monetary Authority Law

Monetary Authority Law (2016 Revision)

Regulatory Handbook

Sets out the policies and procedures to be followed by the Authority in performing its regulatory and co-operative functions

Supplementary regulatory procedures, including those relating to approval and notification of changes

Regulatory Measures

Rule

A clear and precise directive issued to licensees on a subject matter that the Authority considers essential for the prudential supervision of regulated entities and which creates binding obligations on all licensees and for which a breach may lead to the imposition of a fine or regulatory action being taken against the licensee by the Authority pursuant to the exercise of its powers under the regulatory laws.

Monetary Authority Law

Regulatory Measures – Cont'd

Statement of Principle ("SOP")

A general statement by the Authority of the conduct expected of licensees under the Monetary Authority Law and the Regulatory Laws.

Statement of Guidance ("SOG")

Guidance intended to assist licensees to comply with relevant laws, regulations, rules and statements of principles or to describe standards for conduct of business. Guidance contains recommendations on how licensees should operate and represent a measure against which the Authority will assess compliance by licensees. (Becoming firmer?)

Monetary Authority Law

Regulatory Measures – Cont'd

Areas covered include:

- Corporate Governance
- Internal Controls
- Nature, accessibility and retention of Records
- Outsourcing
- Responsibilities of Insurance Managers
- Reinsurance Arrangements

Required filings

- Periodic filings
- Notifications and Requests for Approval
- Business Plan updates

Insurance Manager Obligations

An insurance manager shall use his best endeavours to manage insurance business only for fit and proper insurers.

If the insurance manager:

- a) has concerns regarding the fitness and probity of the insurer;
- b) obtains information or suspects that the insurer is unable or likely to become unable to meet its obligations as they fall due;
- c) obtains information or suspects that the insurer is carrying on or attempting to carry on business in a fraudulent or criminal manner;
- d) obtains information that the insurer is involved in any criminal proceedings, whether in the Islands or abroad;

Insurance Manager Obligations

- e) obtains information about a material change in the nature of the insurer's business that has not been reported to the Authority;
- f) in relation to a class B(i) insurer or class B(ii) insurer, obtains information that the limit on unrelated business is exceeded; or
- g) obtains information or suspects that the insurer is carrying on or attempting to carry on business otherwise than in compliance with applicable law or a condition of its licence;

the insurance manager shall report the same forthwith to the Authority.

Auditor Obligations

If an auditor, in the course of carrying out an audit of the accounts of a licensee, obtains information or suspects that the licensee is:

- a) unable or likely to become unable to meet its obligations as they fall due;
- b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its policyholders or creditors;
- c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- e) carrying on or attempting to carry on business otherwise than in compliance with applicable law or a condition of the licence;

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

Auditor Obligations

An auditor may be disqualified from being an auditor of licensed entities if they fail to observe these requirements, in addition to being liable for a fine of one hundred thousand dollars and to imprisonment for a term of five years.

The Authority's Supervisory Role

It is the duty of the Authority:

- to maintain a general review of insurance business in the Islands; and
- from time to time to examine by way of scrutiny of regular returns, on-site inspections or auditors reports, or in such other manner as the Authority may determine, the affairs or business of any licensee, for the purpose of general review, or for the purpose of satisfying itself that applicable laws and regulations, including the Proceeds of Crime Law, are being complied with, and that the licensee is carrying on business in a fit and proper manner.

The Authority's Supervisory Role

The Authority is entitled at all reasonable times:

- to have access to such books, records, vouchers, documents, cash and securities of any licensee; and
- to request any information, matter or thing from any person who it has reasonable grounds to believe is carrying on insurance business in contravention of the Insurance Law.

The Authority may in writing authorize any person, at the expense of the licensee, to examine the affairs or business of any licensee or other person carrying on insurance business and to report to the Authority the results of the examination.

The Authority's Supervisory Role

Three components:

- “ Off-site monitoring
- “ On-site monitoring
- “ Enforcement

Off-site supervision

Review of filings

Prudential meetings, in most cases annually, to discuss

- “ operations, performance and future strategies
- “ ensure compliance with legislation and regulations
- “ the financial situation of the licensee

On-site supervision

To identify any area of non-compliance with applicable laws and regulatory measures, or any weakness in compliance, corporate governance structure or business operations that require corrective action by management

Fact finding

- “ Including discussion with external auditors

Discussions with management

- “ Initial Meeting: *To discuss scope*
- “ During Inspection: *To reach agreement on accuracy*
- “ Closing Meeting: *To present conclusions to Management and provide opportunity to respond*

Draft Inspection Report

- “ Sent in draft to allow opportunity for response and comment on the accuracy of the findings within the report

Final Inspection Report

Inspection Report

To inform the Authority, and the licensee's directors and management, of matters requiring attention, and the priority to be given to these matters.

Requirements will be divided into:

- “ Matters Requiring Immediate Attention (*High Priority*)
- “ Matters Requiring Attention (*Medium or Low Priority*)

Follow-up and on-going monitoring

- “ Action Plan
- “ Monthly progress reports
- “ 6 to 12 months normally allowed to address Medium and Low Priority items

Administrative Fines Regime

- “ New powers under **2016 Amendment Law**. Regulations still to be finalised.
- “ Breaches to be categorised as **minor, serious** or very **serious**
- “ Breach of this law, a regulatory law, or money laundering regulations (S.42A)
- “ Fine can be imposed even if breach itself **not an offence**

- **“Minor”** breach . fixed \$5,000 (6 month expiry of power to fine). Up to \$20,000 for continuing breaches.
- **“Serious”** breach - limit \$50,000 individual or \$100,000 corporate body (2 year expiry of power to fine)
- **“Very Serious”** breach - limit \$100,000 individual or \$1,000,000 corporate body (2 year expiry of power to fine)

Administrative Fines Regime

S.42F in making decisions in respect of ‘serious’ or ‘very serious’ breaches, the authority shall consider:

The prescribed criteria, after applying any prescribed relative weight.

The following principles:

- i. first, the need to promote and maintain a sound financial system in the Islands;
- ii. secondly, the disgorgement principle;
- iii. thirdly, the disciplinary principle; and
- iv. fourthly, the deterrence principle.

Parallels to the UK Financial Services and Markets Act 2000

Rights of appeal against a fine

S.42H.(b) Regulations may provide for appeals against CIMA's decisions in respect of administrative fines.

Enforcement Powers under the Insurance Law

S.23 The Authority may give directions if *of the opinion* licensee committing (or about to commit) unsafe or unsound act or course of conduct. If directions breached then power to impose fines.

S.24 if *of the opinion* there has been breach of law, conduct detrimental to public interest, AML concerns or business not conducted in fit and proper manner etc. then extensive powers under **S.24(2)** including to revoke licence, impose conditions, and removal of directors.

Rights of Appeal

Application to CIMA for reconsideration - S.24(3) within 7 days of decision to revoke license under S.24(2)(c).

Appeal to Court - S.34 *gives right to appeal to Grand Court against any decision of the Authority, other than to present winding up petition or appoint receiver/controller.*

Enforcement Handbook

If Authority is of the view that enforcement action should be taken, the following stages will be followed:

Stage 1 – Preliminary findings

- “ Detail given of contravention and request for remedial action.
- “ The Authority will promptly address contraventions with licensee and/or its directors with written request for timely proposals for remedial action and timetable for completion.

Enforcement Handbook

If Authority is of the view that enforcement action should be taken, the following stages will be followed:

Stage 2 – Recommendations for Remedial Action

- “ The Authority will make recommendations for corrective action within a prescribed period a failure to implement will lead to Stage 3. In exceptional circumstances Stages 1 & 2 can be simultaneous.
- “ The Authority may place licensee on regulatory watch list, ask directors to confirm in writing that acknowledge recommendations, appoint external auditor to audit or investigate.

Enforcement Handbook

If Authority is of the view that enforcement action should be taken, the following stages will be followed:

Stage 3 – Non-Compliance with Recommendations

In the event that recommendations for remedial action not complied with satisfactorily

- “ Authority will take appropriate action with or without notice to Licensee. May include issuing specific directions, requiring audit or investigation at cost of licensee, impose or expand restrictions.
- “ Continued non-compliance and matter passes to Compliance Division.

Enforcement Handbook

The Authority's powers to take regulatory enforcement action include those that it may exercise using a warning notice and notice of decision procedure, and those that may be exercised without notice.

The purpose of a warning notice is to give reasonable notice to the person affected to make representations prior to the Authority finalising its decisions. The Authority will make every reasonable attempt to resolve any issues or concerns prior to issuing Warning Notices where timely resolution of the issues and concerns does not appear likely.

The licensee will have an opportunity to respond to the Warning Notice and the intended action that the Authority indicates that it will take. Having considered the response, the Authority will then issue a Notice of Decision.

Judicial Review – What is it?

- “ Review by the Grand Court of the lawfulness of a) rules, regulations or other subordinate legislation or **b) a decision, action or failure to act in relation to the exercise of a public function.**
- “ JR is a **remedy of last resort** and may be used when there is no right of appeal or when all other avenues have been exhausted.

Judicial Review – When does it apply?

- “ There must be a **decision** by a **public body** or other body exercising public law functions
- “ An applicant must have standing to progress a JR application, and the Court will consider whether the applicant has **sufficient interest** in the matter to which the application relates
- “ Application for JR must be filed **promptly** and in any event within **3 months** after the grounds to make the claim first arose

Judicial Review – What are the grounds?

- “ **Illegality** . decision maker misdirects itself in law, exercised power wrongly or acts beyond its powers
- “ **Irrationality** . irrelevant considerations by decision maker or failure to take into account relevant considerations - ~~is~~ where no **reasonable decision maker** could have come to that decision
- “ **Procedural Impropriety** . decision maker did not adhere to established procedures or failed to adhere to principles of natural justice
- “ **Proportionality** . decision was not proportionate
- “ **Overarching consideration** . duty to give reasons

Judicial Review – Remedies

- “ **Mandatory Order** - to require public body to carry out its legal duties
- “ **Prohibiting Order** . to restrain a public body from acting beyond powers
- “ **Quashing Order** . to set aside a decision
- “ **Declaration** . sets out rights or legal position, but not imposed by Court
- “ **Injunction** . often an interim remedy to prevent public body acting
- “ **Damages** . only available in limited circumstances

Cayman Islands Constitution

S.19 Lawful Administrative Action

- 1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.
- 2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

Cayman Islands Constitution

- “ May apply to Grand Court if government breaches or threatens rights.
- “ Must apply within one year of the decision or act.
- “ Court has power to grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.+
- “ Not a substitute for Judicial Review and NOT a basis for circumventing the Judicial Review 3 month time limit.

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