

# Cayman Islands Administrative Fines Regime

## 1 Introduction

- 1.1 Part VIA of the Monetary Authority Act (2020 Revision) (the "**MAA**") gives the Cayman Islands Monetary Authority (the "**Authority**") the power to impose administrative fines for breaches<sup>1</sup> committed by persons (entities and individuals<sup>2</sup>) of provisions prescribed under the MAA, a "regulatory law" (as defined under the MAA) or the Anti-Money Laundering Regulations (2020 Revision) ("**AMLRs**").
- 1.2 The enactment on 26 June 2020 of the Monetary Authority (Administrative Fines) (Amendment) Regulations, 2020 amended Schedule 1 of the Monetary Authority (Administrative Fines) Regulations (2019 Revision) (the "**Regulations**") to extend the Authority's powers to issue administrative fines for breaches of prescribed provisions of the regulatory laws, together with their associated regulations and rules<sup>3</sup> (collectively the "**Administrative Fines Regime**"/"**AFR**").

## 2 The Administrative Fines Regime

- 2.1 The Administrative Fines Regime now affords the Authority the power to issue administrative fines for breaches of the following regulatory laws:
  - (a) Anti-Money Laundering Regulations (2020 Revision) (the "**AML**");
  - (b) Banks and Trust Companies Act (2020 Revision) (the "**BTCA**");
  - (c) Companies Management Act (2018 Revision) (as amended);
  - (d) Directors Registration and Licensing Act, 2014 (as amended) (the "**DRLA**");
  - (e) Insurance Act, 2010 (as amended);
  - (f) Money Services Act (2020 Revision);

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<sup>1</sup> Breach is defined broadly, including a contravention, allowing or not allowing a prescribed state of affairs to exist and engaging or not engaging in prescribed conduct.

<sup>2</sup> Where a breach is shown to have been committed with the consent, connivance, knowledge or neglect of the operator of a fund, that individual may also be subject to an administrative fine.

<sup>3</sup> The Authority's rules, policies and statements of guidance can be found on the Authority's website: <https://www.cima.ky/investment-funds-regulatory-measures>.

- (g) Mutual Funds Act (2020 Revision) (the "**MFL**");
- (h) Private Funds Act, 2020 (the "**PFL**");
- (i) Securities Investment Business Act (2020 Revision) ("**SIBA**").

2.2 The Administrative Fines Regime prescribes the provisions of the regulatory laws which may be subject to administrative fines, together with the category of potential breach (see section 3.1 below).

### **3 Overview of Operative Provisions**

3.1 Breaches of prescribed provisions are categorised as being "minor", "serious" or "very serious" under the AFR. The broad scope of the fines which the Authority can impose under the AFR is determined by the categorisation of the offending. There is a sliding scale of fines from a non-discretionary fixed fine of C1\$5,000 for minor breaches; up to C1\$50,000 for individuals and up to C1\$100,000 for entities for "serious" breaches; and up to C1\$100,000 for individuals and up to C1\$1 million for entities for "very serious" breaches.

3.2 The Authority has six months from becoming aware of a minor breach, or having received information from which the fact of the breach can be reasonably inferred, to impose a fine. There is a two year time limit in respect of the imposition of fines for "serious" or "very serious" breaches.

3.3 The Regulations and CIMA's Enforcement Manual<sup>4</sup> provide for the procedures to be followed where the Authority determines that taking enforcement action pursuant to the regulatory laws is appropriate, either in addition to or instead of the imposition of an administrative fine. The Regulations prescribe the process for provision of a breach notice to a relevant party.

3.4 Upon forming a suspicion or discovery of a serious or very serious breach, the Authority will appoint a team to investigate. Upon conclusion of the investigation, an investigation report will be prepared for the managing director of the Authority who will make a determination as to whether there is sufficient evidence for the Authority to issue a breach notice.

3.5 A breach notice shall be dated and state all of the following:

- (a) the party's name;
- (b) that the Authority proposes to impose a fine on the party for a specified breach that it believes the party committed;
- (c) the prescribed provision for which the fine is proposed to be imposed;
- (d) the nature of the specified breach;
- (e) a summary of the facts and circumstances that the Authority believes constituted the specified breach;
- (f) either:

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<sup>4</sup> The regulatory handbook published by the Authority entitled the Enforcement Manual – The Procedure for Administering Administrative Fines

- (i) in relation to a fixed fine, that the fine is fixed at five thousand (CI) dollars; or
    - (ii) in relation to a discretionary fine, the fine the Authority proposes for the specified breach;
  - (g) that the party may give the Authority a reply within the reply period; and
  - (h) that, for a fixed fine, the party may give the Authority a rectification notice.
- 3.6 There will be a 30 day opportunity to reply to the breach notice and to rectify a minor breach to the Authority's satisfaction. If written representations are received in time from the recipient of the breach notice then the Authority must reconsider the matter in light of the information in the representations. If the Authority concludes that an administrative fine is not appropriate, this decision will be communicated to the recipient of the breach notice within fifteen days after the end of the reply period.
- 3.7 During its investigation, the Authority may contact the relevant parties in writing (using "**Investigation Letters**"). Relevant parties will be allowed to make representations to any matters outlined in the Investigation Letters. The standard to which the Authority will operate throughout this process of imposing a discretionary fine will be on the *balance of probabilities*.
- 3.8 If the Authority receives no reply or representations within the period specified in the breach notice, the Authority will consider the allegations or matters detailed in the breach notice to be undisputed and the Authority may then proceed to issue a fine notice. If a person has committed more than one breach, a breach notice or fine notice may refer to multiple breaches. The fine notice will contain details of the breach, the final fine amount and the terms of payment. A fine notice is final, subject only to a person's statutory appeal rights.
- 3.9 For "minor" breaches, if the Authority is not satisfied the breach has been rectified, it is required to impose the fixed fine. Fines for ongoing minor breaches can also be applied at intervals on a continuing basis, up to a CI\$20,000 cap. For "serious" or "very serious" breaches, the Authority has the discretion whether to impose a fine, and in what amount, up to the cap for the relevant category. The Authority may also, but need not, negotiate with a party to attempt to reach a discount agreement with the party, whether or not the Authority has given a breach notice (see section 7 below).
- 3.10 Breach notices and fine notices will be sent by email to the last given email address which the Authority has on record for:
- (a) a company, trust or partnership - the registered office and each of the directors, trustees or general partners; and
  - (b) an individual - the individual's email address.
- It is therefore, the responsibility of all persons that are subject to the Authority's regulatory or supervisory oversight to ensure that their contact information (including email address) is accurate and up-to-date.
- 3.11 Where a breach is a statutory offence (i.e. non-compliance under a regulatory law), the imposition of an administrative fine by the Authority will not preclude prosecution for that offence (or be limited by the penalty for that offence), and likewise any prosecution will not preclude the imposition of administrative fines under the AFR.

3.12 The following table summarises these operative provisions:

Breach Category	Fine CI\$	Discretion	Timelines for imposing and responding to a Breach Notice from the Authority
<b>Minor</b>	5k – Initial Fine	Non-Discretionary	<p>(a) <b>Within 6 months</b> from the date on which the Authority "<i>became aware of the commission of the breach...or having received information from which the fact of the breach can be reasonably inferred</i>" to impose a fine. A "breach notice" must:</p> <p>(i) afford a period not less than 30 days to reply; and/or</p> <p>(ii) in relation to a fixed fine (i.e. minor breach) the party may give the Authority a "rectification notice" stating that the breach was rectified within 30 days after receipt of the breach notice.</p> <p>(b) Where a breach notice relates to a fixed fine and the Authority is not satisfied the breach was rectified within 30 days of issue of the breach notice, the Authority is required to impose the fixed fine.</p> <p>(c) For discretionary fines the Authority may exercise its discretion under the MAA and issue a "fines notice" in accordance with the Regulations, or alternatively give notice of a decision not to impose a fine within 15 days of the end of the relevant reply period.</p>
	+ a continuous discretionary basis fine (until remedied or discharged in full)	Capped at 20k	
<b>Serious</b>	<50k - Individual	Discretionary	<b>2-year</b> limitation period from the date on which the Authority " <i>became aware of the commission of the breach...or having received information from which the fact of the breach can be reasonably inferred</i> " to impose fines for any breach prescribed as serious or very serious. The amount of the fine will depend on the nature of the breach and the discretion of the Authority. Response time as specified in the breach notice (not less than 30 days from issuance of breach notice). Upon receiving a reply, the Authority is obliged to reconsider the circumstances of the breach and its decision to impose a fine.
	<100k - Corporate		
<b>Very Serious</b>	<100k - Individual	Discretionary	
	<1m - Corporate		

## 4 The Enforcement Principles

- 4.1 The Regulations and the Enforcement Manual provide for the procedures to be followed where the Authority determines that taking enforcement action pursuant to the regulatory laws is appropriate, either in addition to or instead of the imposition of an administrative fine, which procedures include:
- (a) the criteria that the Authority must adopt when issuing breach notices, considering or reconsidering matters, if there is cause, and imposing discretionary fines (see section 5 below);
  - (b) when a party may apply to the Management Committee of the Authority to review an original decision to issue a fine notice for a fixed fine; and
  - (c) when a party may apply to the Grand Court for leave to appeal against the original decision upon receipt of a fine notice for a discretionary fine.
- 4.2 The MAA also sets out principles which the Authority must consider when making a decision whether or not to impose a discretionary fine, in the following order of importance:
- (a) the need to promote and maintain a sound financial system in the Islands;
  - (b) the disgorgement principle;
  - (c) the disciplinary principle; and
  - (d) the deterrence principle.
- 4.3 These principles prevail over the criteria set out in the Regulations (see below). According to the MAA:
- (a) "**deterrence principle**" means the need to deter financial services businesses and others from breaching prescribed provisions;
  - (b) "**disciplinary principle**" means the need to punish intentional, reckless or inappropriately negligent breaches of prescribed provisions; and
  - (c) "**disgorgement principle**" means the principle of ensuring:
    - (i) licensees under regulatory laws and those connected with them do not gain (including by avoiding losses) from breaching prescribed provisions; and
    - (ii) persons mentioned in paragraph (i) disgorge all such gains.

## 5 General criteria in relation to both the imposition of a fine and the amount of the fine

- 5.1 The Regulations set out the criteria the Authority shall consider for exercising discretion when:
- (a) issuing breach notices;
  - (b) considering or reconsidering matters following receipt of a reply notice from a recipient of a breach notice; and

(c) imposing discretionary fines.

5.2 The criteria referred to in the Regulations are, amongst other matters:

- (a) the nature and seriousness of the breach;
- (b) the degree of the party's inadvertence, intent or negligence in committing the breach;
- (c) if the breach is a continuing one, its duration;
- (d) the measures or precautions the party took to prevent the breach;
- (e) the measures or precautions that a reasonable person in the party's position, acting prudently and exercising due diligence, would have taken to prevent the breach;
- (f) whether or not the breach was due to:
  - (i) reasonable reliance on information given to the party; or
  - (ii) a cause beyond the party's control, including, for example, someone else's act or default or an accident;
- (g) the degree of difficulty in detecting the breach;
- (h) evidence of intent by the party to conceal the breach or mislead the Authority;
- (i) the party's conduct after becoming aware of the breach, including, for example —
  - (i) whether and how quickly the party brought the breach to the Authority's attention; and
  - (ii) the party's efforts to remedy the breach or prevent its reoccurrence;
- (j) any financial or other damage or loss or other harm done or caused by the breach, including, for example, to:
  - (i) the party's creditors, customers, investors, policyholders or shareholders;
  - (ii) financial markets; or
  - (iii) the performance of the Authority's functions;
- (k) whether, before or after the breach, there was a change to the party's business or affairs that affects or may affect the consequences of the breach for the party, including, for example, the party's ability to pay a fine;
- (l) if the Authority has imposed a fine on the party in similar circumstances to the breach, the amount of that fine; and
- (m) the party's history of compliance, in the five years before the breach, with the AML and similar laws in other jurisdictions.

- 5.3 In deciding the amount of the fine, the criteria also include:
- (a) the following in relation to the party:
    - (i) any circumstances of mitigation that may exist;
    - (ii) resources and ability to pay; and
    - (iii) financial hardship;
  - (b) potential adverse financial consequences on third parties of imposing a fine in the amount proposed; and
  - (c) a circumstance that aggravates, or may tend to aggravate, the breach or its effects.

## 6 **Publicity and Confidentiality**

The Authority considers the enforcement of the regulatory laws, the regulations and rules to be a matter of substantial public importance. Accordingly, full details of administrative fines imposed including a person's name, provisions breached, the amount of the fine imposed, the date of each individual breach, a summary of facts supporting the breach, and any further relevant information, will all normally be published by the Authority.

## 7 **Discount Agreements**

- 7.1 The Authority and the person on whom a penalty is to be imposed may, prior to or after receiving a breach notice for a proposed discretionary fine, but prior to issuance of a final notice for a discretionary fine, seek to agree the amount of any financial penalty and other terms. This procedure allows the Authority to apply a discount, up to a set maximum (see section 7.4 below), to a fine that it would otherwise expect to impose on a person after considering the breach and other relevant factors. Where the Authority and the person agree the terms of an early settlement, the Authority and the person will enter into a discount agreement. The settlement discount does not apply to the disgorgement principle.
- 7.2 If a person requests the early settlement of an administrative fine, the process is as follows:
- (a) the person makes a formal written request to the Authority for an early settlement, addressed to the managing director of the Authority. The Authority expects that the person will admit the breach and/or breaches in this correspondence, and submit any mitigating factors upon which the person wishes to rely. This is the "Early Settlement Request";
  - (b) the Authority, within 21 days following receipt of the Early Settlement Request, will write to the person acknowledging receipt and requesting any relevant information in relation to the breach, with a clear deadline for submission. This is the "Early Settlement Response". The Authority will provide the person with a reasonable timeframe to submit the requested information. This timeframe will usually be no more than 30 days, and extensions will not usually be granted except in exceptional circumstances;
  - (c) the Authority, once satisfied that full and frank information has been provided in response to the Early Settlement Response, will then schedule a settlement meeting with the person at an agreed upon date and time. The fully executed discount agreement is binding on the Authority and the person; and

- (d) the terms of the early settlement will usually be published, save for exceptional circumstances and at the discretion of the Authority. The public release will provide an account of the admitted breaches and all relevant details including, amongst other things, the name of the person, the breaches, investigations summary and the fines imposed, including any discount applied.

7.3 The decision to agree to early settlement and the level of the discount applied must take account of some key factors including:

- (a) a clear determination of the amount of the financial penalty that the Authority would otherwise have expected to impose on the person had the administrative fines procedure been taken through to its conclusion;
- (b) the Authority's satisfaction with the person's progress and/or plans at remediating the breaches; and
- (c) the person's level of cooperation with the Authority during the breach investigation.

7.4 The Authority may reduce the usual fine by a stipulated percentage subject to the stage at which the early settlement was initiated by the person; and based on the established criteria presented in table below:

Stage	Discount	Description
1	Up to 40%	Stage 1 refers to the period preceding the Authority's discovery of the breach. Essentially, this applies to cases where the Authority becomes aware of the breach solely because the person advises the Authority of the breach.
2	Up to 30%	Stage 2 refers to the period from the commencement of the breach investigation by the Authority until, but not including, the date on which the breach notice for the proposed discretionary fine is issued to the person.
3	Up to 20%	Stage 3 refers to the period from the end of Stage 2 until the expiration of the period (including any extensions granted) allowed to the person for providing written representations in response to the breach notice for the proposed discretionary fine. In cases where these representations are submitted to the Authority prior to the set deadline, Stage 3 will end on the date on which the Authority is in receipt of the written representations.
4	Up to 10%	Stage 4 refers to the period from the end of Stage 3 until, but not including the date on which the fine notice for the discretionary fine is issued by the Authority.

7.5 Where the person enters into a discount agreement, that person may not appeal against the decision of the Authority to issue the fine or the fine amount, if the fine is no more than the amount agreed to in the discount agreement.



7.6 In the event that a discount agreement cannot be agreed by all parties, the breach will be dealt with in accordance with the Regulations and the Enforcement Manual.

## **8 Examples of the application of the AFR**

Non-exhaustive examples of breaches of the Regulations and the scale of the associated administrative fine are set out in the Schedule below.

## **9 Conclusion**

9.1 The expansion of the AFR reflects the Cayman Islands commitment to promoting and maintaining a sound financial system with a proportionate regulatory overlay to the jurisdiction's existing laws and rules. While the AFR introduces new fines for failures to comply with prescribed registration, reporting and procedural requirements of the regulatory laws, their associated regulations and the rules issued by the Authority, the underlying obligations and on-going requirements of such laws, regulations and rules remain unchanged, so these matters should not be new to operators of Cayman Islands entities subject to these laws and rules.

9.2 The AFR however reinforces the need for all promoters and operators of Cayman Islands entities, and their service providers, subject to these regulatory laws and rules to ensure that they are fully aware of and understand their obligations including (but not limited to):

- (a) licensing and registration criteria, including filing deadlines;
- (b) the Authority's rules and notification obligations (e.g. updates or changes to business plans, directors and officers, legal or beneficial ownership, registered and principal offices, auditors, offering materials, and licensing or registration information); and
- (c) maintaining appropriate systems and controls.

9.3 Maples Regulatory & Compliance team can assist by providing regulatory calendars, monthly or annual updates, reporting matrices and training.

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## Schedule

### Non-Exhaustive Examples of Administrative Fines for breaches of the AFR<sup>5</sup>

#### The Private Funds Act, 2020 (as amended and together with Associated Regulations and Rules)

Description of Breach	Nature of breach/Administrative fine
Failure of an operator to ensure compliance with the PFL	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of a private fund to register with the Authority within 21 days of accepting capital commitments or before accepting any capital contributions	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of a private fund to pay annual registration fee	"minor" – fine of US\$6,100
<p>Failure of a private fund which:</p> <p>(a) makes any change, or becomes aware of any change, that materially affects any information submitted to the Authority as part of its registration or otherwise; or</p> <p>(b) changes its registered office or the location of its principal office,</p> <p>to file details of the change with the Authority, within twenty-one days after making the change or becoming aware of the change, as the case may be.</p>	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a private fund to have its accounts prepared by an auditor approved by the Authority in accordance with the International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction and to send such audited accounts to the Authority in such manner as the Authority directs and within six months of the end of the financial year of the fund or within such extension of that period as the Authority may allow.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities

<sup>5</sup> This is not an exhaustive list of breaches which are subject to administrative fines.

Failure of a private fund to, in respect of each financial year of the private fund, submit an annual return (FAR) in the prescribed form.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a private fund to maintain its records in an accessible manner and in accordance with the rules, statements of principle and guidance issued by the Authority.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a private fund to have appropriate and consistent procedures for the purposes of proper valuations of its assets, which will ensure that valuations are conducted in accordance with the requirements in the PFL.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a private fund to ensure that valuations of the assets of the private fund are carried out at a frequency that is appropriate to the assets held by the private fund and, in any case, on at least an annual basis.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
<p>Failure of a private fund to ensure that valuations of its assets are performed by:</p> <ul style="list-style-type: none"> <li>(a) an independent third party that is appropriately professionally qualified to conduct valuations in a non-high risk jurisdiction; or</li> <li>(b) the manager or operator of the private fund, or a person who has a control relationship with the manager of the private fund, provided that: <ul style="list-style-type: none"> <li>(i) the valuation function is independent from the portfolio management function; or</li> <li>(ii) potential conflicts of interest are properly identified and disclosed to the investors of the private fund; or</li> </ul> </li> <li>(c) an administrator not falling under paragraph (a) who is appointed by the private fund.</li> </ul>	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a private fund which did not have the valuation of its assets performed by an independent third party to have its valuations verified by an auditor or independent third party, where the Authority so requires.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure to perform cash monitoring duties under the PFL.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities

Failure of a private fund to comply with a request by the Authority to provide the Authority with such documents, statements or other information in respect of the fund as the Authority may reasonably require in connection with the Authority's functions under the PFL.

"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities

**The Mutual Funds Act (2020 Revision) (as amended and together with Associated Regulations and Rules)**

Description of Breach	Nature of breach / Administrative fine
Failure of a mutual fund to comply with the licensing or registration requirements of the MFL and that carries on or attempts to carry on business in or from the Islands.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of mutual fund, carrying on or attempting to carry on business in or from the Islands, to file with the Authority a current offering document that complies with the requirements of the MFL and the rules.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of a mutual fund to file an amended offering document or amended prescribed details with the Authority within twenty-one days of becoming aware of any change that materially affects any information in the offering document filed with the Authority or in the prescribed details of the offering document or the prescribed details of a master fund that is without an offering document filed with the Authority.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a mutual fund to pay its annual registration fee	"minor" – fine of US\$6,100
Failure of a mutual fund which changes its registered office or the location of its principal office, to inform the Authority.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a mutual fund to have its accounts audited annually by an auditor approved by the Authority in accordance with the International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction and to send such audited accounts to the Authority in such manner as the Authority directs and within six months of the end of the financial year of the fund or within such extension of that period as the Authority may allow.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
A person other than a regulated mutual fund or a mutual fund referred to in section 4(4) of the MFL representing in any way that the person is carrying on or attempting to carry on business in or from the Islands as a mutual fund.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities

## Rule on the Cancellation of a Licence or Certificate of Registration of Regulated Mutual Funds

Description of Breach	Nature of breach / Administrative fine
<p>Failure of a mutual fund to make an application to the Authority for the cancellation of a licence or certificate of registration when the fund intends to cease to carry on, or has ceased to carry on, business as a fund pursuant to the Mutual Funds Act within:</p> <p>(a) 21 days from the date the fund ceases to carry on business; or</p> <p>(b) before December 31 of the year the fund ceases to carry on business.</p>	<p>"minor" – fine of US\$6,100</p>
<p>Failure of a mutual fund that has never carried on business to make an application to the Authority for the cancellation of a licence or de-registration within 21 days from the date of the resolution that has been passed by the operators, shareholders or unit holders.</p>	<p>"minor" – fine of US\$6,100</p>
<p>Failure of a mutual fund to pay the licence surrender fee or submit all documentation as prescribed in order to cancel its licence or certificate of registration.</p>	<p>"minor" – fine of US\$6,100</p>

## Mutual Funds (Annual Returns) Regulations (2018 Revision)

Description of Breach	Nature of breach / Administrative fine
<p>Failure of a regulated mutual fund to complete and submit accurate and complete returns for:</p> <p>(a) the fund containing the particulars set forth in the schedule to the regulations to the Authority; or</p> <p>(b) each sub-fund in its structure if the fund has sub-funds in its structure,</p> <p>in such manner as the Authority may from time to time direct, within six months after the end of the financial year to which it relates or within such extension of that period as the Authority may allow.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of the operator of a regulated mutual fund to ensure that the fund complies with the above paragraphs</p>	<p>"minor" – fine of US\$6,100</p>

## Rule on the Segregation of Assets – Regulated Mutual Funds

Description of Breach	Nature of breach / Administrative fine
<p>Failure of a regulated mutual fund to:</p> <ul style="list-style-type: none"> <li>(a) segregate and account for separately from any assets of any service provider the fund's portfolio of assets, excluding cash or the failure of the fund to ensure that any service provider that holds or manages the fund's portfolio of assets complies with this Rule; or</li> <li>(b) the fund containing the particulars set forth in the schedule to the regulations to the Authority; or</li> <li>(c) ensure by contract that any service provider that holds or manages the fund's portfolio of assets is regulated by the Authority, or by a Recognised Overseas Regulatory Authority, or by another regulator approved by the Authority.</li> </ul>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of the operator of a fund to ensure that the fund establishes, implements and maintains (or to oversee) strategies, policies, and procedures to ensure compliance with the above Rules, consistent with the fund's offering document, and appropriate for the size, complexity, and nature of its activities and investors.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>



## Rule on the Contents of Offering Documents – Regulated Mutual Funds

Description of Breach	Nature of breach / Administrative fine
Failure of a regulated mutual fund to include the information outlined at subparagraphs (i) to (xxii) of the Rule on the Contents of Offering Documents in its offering document.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of the operator of a fund to ensure that the fund establishes, implements and maintains (or to oversee) strategies, policies, and procedures to ensure compliance with the above Rules, consistent with the fund's offering document, and appropriate for the size, complexity, and nature of its activities and investors.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities

## Rule on the Calculation of Asset Values – Regulated Mutual Funds

Description of Breach	Nature of breach / Administrative fine
<p>Failure of a regulated mutual fund to:</p> <ul style="list-style-type: none"> <li>(a) establish, implement and maintain a NAV Calculation Policy<sup>6</sup> that ensures the fund's NAV is fair, reliable, of high quality and verifiable;</li> <li>(b) ensure that the NAV Calculation Policy complies with the requirements of this Rule;</li> <li>(c) to ensure that the NAV Calculation Policy requires the fund to value the securities within its portfolio(s) using Market Prices<sup>7</sup>;</li> <li>(d) justify and identify any weaknesses in any Pricing Models<sup>8</sup> employed;</li> <li>(e) ensure that any Pricing Model is capable of practical implementation by the relevant Service Providers;</li> <li>(f) require the fund's relevant Service Providers<sup>9</sup> to apply the NAV Calculation Policy and any Pricing Models consistently, unless there is satisfactory reason not to do so, in which case such derivations must be disclosed in the fund's offering document and agreed by the Operators<sup>10</sup> in advance of the determination or production of the NAV;</li> <li>(g) ensure that the fund's offering document explicitly describes the potential limitations and conflicts of the NAV Calculation Policy, and any material involvement by the fund's investment manager or advisor in the pricing of the fund's portfolio, or otherwise in the calculation, determination or production of the NAV;</li> <li>(h) ensure that the NAV of a fund is calculated by a Service Provider that is independent of the fund's investment manager/advisor and operators,</li> </ul>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>

<sup>6</sup> NAV Calculation Policy means the pricing and valuation practices, policies, and procedures to calculate a fund's NAV that are established and maintained in accordance with the requirements of this Rule.

<sup>7</sup> Market Price means the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal or most advantageous market at the NAV calculation date that is directly observable and in a market accessible by the fund.

<sup>8</sup> Pricing Models include any pricing models or determination methods used to value Hard-to-Value Securities, where "Hard-to-Value Securities" means assets or liability for which there is no Market Price which is required to be measured at fair value

<sup>9</sup> Service Provider includes a fund's administrator, auditor, custodian, investment manager / advisor, Operator, prime broker, promoter, or registrar, or any of their delegates with responsibility for the fund's portfolio or operations.

<sup>10</sup> Operator means the directors of a fund that is a company, the general partner(s) of a fund that is a partnership, the trustee of a fund that is a unit trust, and the managing member(s) of a fund that is an LLC.

competent, and able to adhere to the NAV Calculation Policy and any relevant Pricing Models, save where:

- (i) prices are provided or sourced by the investment manager/advisor or Operators the manager/advisor or Operator must also provide any supporting information that is used to determine the prices; and
  - (ii) the Service Provider must take steps that are reasonable and proportionate to the risk of material error or bias to verify the facts on which the prices are determined and the appropriateness of the provided price to the extent reasonably possible;
- (i) to ensure that the NAV reports are addressed directly to the fund's investors; or
  - (j) ensure the Operators approve and review, at least annually, the NAV Calculation Policy and any Pricing Models of the fund.

## Directors Registration and Licensing Act, 2014

Description of Breach	Nature of breach / Administrative fine
Acting as a director of a covered entity without being registered under the DRLA.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of an applicant who has submitted an application for registration to the Authority to, in the time prescribed, cease to act as a director of a covered entity if, for any reason, the application for registration is refused.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of each registered director to pay to the Authority the prescribed annual fee.	"minor" – fine of US\$6,100
Failure of a registered director to, on or before the 15th January in each calendar year, provide the Authority with the required registration information in the prescribed form.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a registered director to inform the Authority if there is any change in the information provided to the Authority for the registration of a director, within twenty-one days of the change.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a natural person being a professional director to hold a valid licence issued under the DRLA.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
Failure of a corporate director appointed as a director of a covered entity acting in that capacity without being licensed as a corporate director under the DRLA.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities

## Securities Investment Business Act (2020 Revision)

Description of Breach	Nature of breach / Administrative fine
<p>A person carrying on or purporting to carry on securities investment business unless that person holds a licence or registration granted under the SIBA or is exempt from holding a licence or registration.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>Failure of a registered person to notify the Authority within twenty-one days after any material change in the information filed by the registered person in its application or annual declaration.</p>	<p>"minor" – fine of US\$6,100</p>
<p>Failure of a registered person to:</p> <ul style="list-style-type: none"> <li>(a) file with the Authority, on or before the 15th day of January in each year, an annual declaration in such form as the Authority may approve; or</li> <li>(b) pay to the Authority the prescribed annual fee at the time of the filing of the declaration.</li> </ul>	<p>"minor" – fine of US\$6,100</p>
<p>Failure of a licensee or a registered person to separately account for the funds and property of each client and for the licensee's or registered person's own funds and property.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>Failure of a licensee to have its accounts audited annually, or at such other time as the Authority may require, by an auditor who is a member of:</p> <ul style="list-style-type: none"> <li>(a) the Institute of Chartered Accountants in England and Wales;</li> <li>(b) the Canadian Institute of Chartered Accountants;</li> <li>(c) the Chartered Association of Certified Accountants;</li> <li>(d) the American Institute of Certified Public Accountants; or</li> <li>(e) any other professional body or institute approved by the Authority.</li> </ul>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>Failure of a licensee to forward to the Authority:</p> <ul style="list-style-type: none"> <li>(a) the auditor's or the licensee's audited accounts for the financial year just ended; or</li> </ul>	<p>"minor" – fine of US\$6,100</p>

<p>(b) a certificate of compliance with the provisions of the SIBA and any regulations made under the SIBA or the MAA, signed by the licensee or if a company, a director of the licensee, within six months of the end of a licensee's financial year.</p>	
<p>Failure of a registered person which is a company incorporated under the Companies Act (2020 Revision), to have a minimum of:</p> <p>(a) two directors who are individuals; or</p> <p>(b) one corporate director,</p> <p>each of whom is complying with the DRLA.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person which is an exempted limited partnership registered under the Exempted Limited Partnership Act (2018 Revision), to have a minimum of two directors (or equivalent officers) appointed in respect of its general partner (or where the general partner is itself an exempted limited partnership registered under the Exempted Limited Partnership Act (2018 Revision) at the level of the ultimate general partner).</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person which is a foreign company registered under Part IX of the Companies Act (2020 Revision), to have a minimum of two directors (or equivalent officers).</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person which is a limited liability company formed and registered under the Limited Liability Companies Act (2020 Revision), to have a minimum of two managers complying with the DRLA.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person which is a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2017, to have a minimum of two managing partners.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person to notify the Authority of any alteration made in the senior officers of a registered person within twenty-one days of the alteration.</p>	<p>"minor" – fine of US\$6,100</p>
<p>A person knowingly or recklessly providing any information to the Authority which is false or misleading in a material particular.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>

## Securities Investment Business (Registration and Deregistration) Regulations, 2019

Description of Breach	Nature of breach / Administrative fine
<p>Failure of an applicant for registration as a registered person under the SIBA to submit to the Authority:</p> <p>(a) the completed application form;</p> <p>(b) any other information requested by the Authority for the purposes of assessing the application; or</p> <p>(c) the registration fee.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>Failure of a registered person that ceases to carry on any regulated activity of the SIBA to apply to the Authority for deregistration.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of an applicant, prior to applying for deregistration, to ensure that:</p> <p>(a) the relevant fees are paid;</p> <p>(b) the applicant's required annual declarations have been submitted; or</p> <p>(c) the applicant has no outstanding queries from, or regulatory filings with, the Authority.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of an applicant for deregistration to submit to the Authority, all or any of the following:</p> <p>(a) written notice of the applicant's intention to deregister in accordance with the SIBA;</p> <p>(b) the fee for deregistration;</p> <p>(c) a certified copy of the resolution of its senior officers which indicates the date on which the registered person has ceased to carry on, as a business, the relevant regulated activities of the SIBA; and</p> <p>(d) an affidavit in accordance with the SIBA.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a registered person that ceases to carry on securities investment business to apply to the Authority for deregistration.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>

## Anti-Money Laundering Regulations (2020 Revision)

Description of Breach	Nature of breach / Administrative fine
<p>A person carrying out relevant financial business, forming a business relationship or carrying out a one-off transaction without maintaining appropriate procedures, having regard to the money laundering and terrorist financing risks and the size of that business, as prescribed under section 5(a) of the AML.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A person carrying out relevant financial business, forming a business relationship or carrying out a one-off transaction without complying with the identification and record-keeping requirements of Parts IV and VIII of the AML.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>A person carrying out relevant financial business, forming a business relationship or carrying out a one-off transaction without taking appropriate measures from time to time for the purpose of making employees aware of:</p> <ul style="list-style-type: none"> <li>(a) the procedures under section 5(a) of the AMLRs which are maintained by the person and which relate to the relevant financial business in question; and</li> <li>(b) the enactments relating to money laundering, terrorist financing, proliferation financing and targeted financial sanctions.</li> </ul>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A person carrying out relevant financial business, forming a business relationship or carrying out a one-off transaction without providing employees from time to time with training in the recognition and treatment of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering, terrorist financing or proliferation financing, or whose assets are subject to targeted financial sanctions applicable in the Islands.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A person carrying out relevant financial business, forming a business relationship or carrying out a one-off transaction without designating an Anti-Money Laundering Compliance Officer.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A person carrying out relevant financial business, keeping anonymous accounts or accounts in fictitious names.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>



<p>A person carrying out relevant financial business in or from the Islands forming a business relationship, or carrying out a one-off transaction, with a shell bank.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>
<p>Failure of a person carrying out relevant financial business, who receives a notice in writing, requiring the person to provide such documents, statements or any other information as the Authority may reasonably require in connection with the exercise of its functions, to comply with that notice within the period and in the manner specified in the notice.</p>	<p>"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities</p>

## Banks and Trust Companies Act (2020 Revision)

Description of Breach	Nature of breach / Administrative fine
A person carrying on banking business transactions from within the Islands without a valid licence granted by the Authority authorising the person to carry on such business.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
A trust company carrying on trust business as a trust company from within the Islands without a valid licence granted by the Authority.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
<p>Failure of a controlled subsidiary to which the BTCA applies to:</p> <ul style="list-style-type: none"> <li>(a) register with the Authority;</li> <li>(b) file with the Authority an annual declaration at the time of registration declaring: <ul style="list-style-type: none"> <li>(i) the name of the controlled subsidiary;</li> <li>(ii) the name of the licensee of which the controlled subsidiary is a subsidiary;</li> <li>(iii) the names of the directors and senior officers of the controlled subsidiary; and</li> <li>(iv) that the controlled subsidiary is a controlled subsidiary to which subsection 5(3) of the BTCA applies.</li> </ul> </li> </ul>	"minor" – fine of US\$6,100
<p>A licensee:</p> <ul style="list-style-type: none"> <li>(a) ceasing to have a principal office in the Islands;</li> <li>(b) changing its principal office in the Islands without the prior approval of the Authority;</li> <li>(c) ceasing to have an authorised agent in accordance with the BTCA; or</li> <li>(d) changing its agent (or, where the licensee has appointed two individuals to be its agent, either of them) without the prior approval of the Authority.</li> </ul>	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
<p>The holder of a class "B" licence:</p> <ul style="list-style-type: none"> <li>(a) taking deposits from any person resident in the Islands, other than another licensee, or an exempted</li> </ul>	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities

<p>or an ordinary non-resident company which is not carrying on business in the Islands;</p> <p>(b) investing in any asset which represents a claim on any person resident in the Islands, other than as permitted under the BTCA;</p> <p>(c) carrying on any business in the Islands other than one for which the class "B" licence has been obtained without the written approval of the Authority;</p> <p>(d) which is not a subsidiary or branch of a bank licensed in a country or territory outside the Islands carrying on business in the Islands without having such resources (including staff and facilities) and such books and records as the Authority considers appropriate having regard to the nature and scale of the business.</p>	
<p>Failure of a holder of a licence to pay the prescribed annual fee</p>	<p>"minor" – fine of US\$6,100</p>
<p>A company which is a licensee under the BTCA:</p> <p>(a) issuing shares in that company; or</p> <p>(b) transferring or disposing of issued shares in that company,</p> <p>without the prior approval of the Authority.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a licensee to maintain the net worth required under the BTCA.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A person other than a licensee under the BTCA using or continuing to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which a person is carrying on business from within the Islands, whether or not such business is carried on in the Islands, without the approval of the Authority.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>Failure of a licensee incorporated under the Companies Act (2020 Revision) to have its accounts audited annually or at such other times as the Authority may require by an auditor.</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>
<p>A licensee incorporated under the Companies Act (2020 Revision) opening a subsidiary, branch, agency or</p>	<p>"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities</p>

representative office outside the Islands without the prior written approval of the Authority.	
A licensee incorporated under the Companies Act (2020 Revision) changing its name without the prior written approval of the Authority.	"minor" – fine of US\$6,100
Failure of a licensee to inform the Authority of any change in holdings that affects the composition of the licensee's economic group, including any new entities forming part of the licensee's economic group, within forty-five days of the occurrence of the change.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a licensee holding a Trust Licence to obtain and maintain adequate professional indemnity insurance, or have in place other appropriate arrangements to cover risks, in respect of its trust business.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure by a licensee to have two or more directors.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
Failure of a licensee to apply to the Authority for its written approval of the appointment of a director or other senior officer before appointing the director or other senior officer, unless it is exempt from such a requirement by the Authority.	"serious" – fine of up to US\$61,000 for individuals and US\$122,000 for entities
A licensee carrying on business in a manner detrimental to the public interest, the interest of its depositors or of the beneficiaries of any trust, or other creditors.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
A licensee contravening the BTCA.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities
A licensee or any director or officer of a licensee knowingly or wilfully supplying false or misleading information to the Authority.	"very serious" – fine of up to US\$122,000 for individuals and US\$1.2 million for entities