



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

REGISTRATION AUTHORITY
سلطة التسجيل

Decision Procedures and Enforcement Manual

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Chapter 1 – Introduction

Introduction

- 1.1 This Decisions Procedures and Enforcement Manual (the “Manual”) sets out information on the policies, processes and procedures of the Abu Dhabi Global Market (“ADGM”) Registration Authority in relation to the exercise of its enforcement powers and related decision making.
- 1.2 The Manual contains various policies and procedures and is intended to be both a reference for staff of the Registration Authority as well as to provide guidance to persons operating, or intending to operate, as licensed persons in the ADGM. However, the information in this Manual is general and non-binding. Decisions about particular matters or investigations are made based on the specific facts of the case.
- 1.3 The Manual is not an exhaustive source of the Registration Authority’s policy and procedures on the exercise of its enforcement and disciplinary powers and decision making (refer to the ‘Application’ section below for further detail on the scope of this Manual).
- 1.4 This Manual should be read in conjunction with ADGM’s commercial legislation, in particular, the Commercial Licensing Regulations 2015 (“CLR”). A link to ADGM’s commercial legislation is available [here](#).
- 1.5 The term ‘ADGM’s commercial legislation’ used throughout this Manual refers to the regulations and rules governing the incorporation / registration, licensing, operation and de-registration of all legal entities in the ADGM. This includes but is not limited to the Companies Regulations 2015, Commercial Licensing Regulations 2015, Insolvency Regulations 2015, Data Protection Regulations 2015, Foundations Regulations 2017 and associated rules.
- 1.6 However, it does not refer to ADGM legislation governing the provision of financial services, including anti-money laundering (which is regulated by the FSRA) nor the procedures of the ADGM Courts and arbitration regulations.
- 1.7 Note: this Manual does not cover, include or relate to the use of enforcement powers by the ADGM Financial Services Regulatory Authority (“FSRA”).

Legal Basis

- 1.8 The Registration Authority is established by Article 10 of Abu Dhabi Law No. (4) of 2013 (“ADGM Law”). Further, Article 11 of the ADGM Law sets out the tasks, functions and responsibilities of the Registration Authority, which includes the registration, licensing, control and supervision of licensed persons.
- 1.9 The powers and procedures of the Registration Authority in relation to investigation and enforcement are principally set out in Parts 1, 3 and 4 of the CLR.
- 1.10 Section 45 of CLR requires the Registration Authority to prepare and issue a statement of policy with respect to:
 - a. the imposition of fines, suspensions or restrictions under Part 4 of CLR; and
 - b. the period for which suspensions or restrictions under Part 4 of CLR are to have effect.

1.11 As per section 54 of CLR, the Registration Authority must determine the procedure that it proposes to follow in relation to the following:

- a. a decision which gives rise to an obligation to give a supervisory notice; or
- b. a decision which gives rise to an obligation for it to give a warning notice or decision notice.

1.12 Under this section the Registrar must also issue a statement of its procedure.

1.13 This Manual is issued under section 45 and subsection 54(5) of CLR.

Application

1.14 This Manual is relevant to licensed persons in ADGM and other persons including potential applicants, advisors and interested parties. The Manual sets out:

- a. the Registration Authority's decision making procedure for giving warning notices, decision notices and supervisory notices (collectively referred to as "statutory notices");
- b. the Registration Authority's policy with respect to exercising own initiative action to vary (narrow) the scope of a licence;
- c. the Registration Authority's policy with respect to the imposition of financial penalties under the CLR;
- d. the Registration Authority's policy with respect to suspending, limiting or restricting a licence; and
- e. the Registration Authority's policy with respect to cancellation of a licence.

Purpose

1.15 The purpose of this Manual is to provide readers an understanding of how the Registration Authority operates in relation to the exercise of its enforcement powers and related decision making, as well as its expectations of licensed persons.

1.16 Additionally, this Manual is intended to satisfy the requirements of section 45 and subsection 54(5) of the CLR that the Registration Authority publish statements of policy and procedure regarding the matters set out in the 'Application' section, above.

1.17 The Manual is publically available at www.adgm.com

Updating the Manual

1.18 This Manual will be subject to periodic review and updated as appropriate in the light of any amendments to relevant law, changes in policy and further experience in practice.

1.19 In accordance with subsections 45(7) and 55(7) of CLR, the Registration Authority will publish a draft of any proposed alterations or revisions for public consultation, prior to issuing updates to the Manual.

Defined Terms

- 1.20 Terms used in this Manual and in the CLR, have the same meaning in the Manual as in the CLR, unless stated otherwise.

Statutory Notices

- 1.21 Subsection 54(5) of the CLR requires the Registration Authority to publish a statement of its procedure for the giving of statutory notices. The procedure must be designed to secure, among other things that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence.
- 1.22 The types of statutory notices and related notices, and the principal references to them in the CLR and the Manual are set out in Table 1, below.

Table 1: Summary of statutory and related notices

Notice	Description	CLR reference
Warning Notice	Gives the recipient details about action that the RA proposed to take and about the right to make representations	Section 47
Decision Notice	Gives the recipient details about action that the RA has decided to take. The RA may also give a further decision notice if the recipient of the original decision notice consents	Section 48
Notice of Discontinuance	Identifies proceedings set out in a warning notice or decision notice and which are not being taken or are being discontinued	Section 49
Final Notice	Sets out the terms of the action that the RA is taking.	Section 50
Supervisory Notice	Gives the recipient details about action that the RA has taken or proposes to take, for example, to vary a condition.	Section 54(13)

- 1.23 In the Manual the supervisory notice about a matter first given to the recipient is referred to as the “first supervisory notice” and the supervisory notice given after consideration of any representations is referred to as the “second supervisory notice”.
- 1.24 The requirement in subsection 54(5) of CLR to publish a procedure for the giving of notices does not extend to the giving of a notice of discontinuance or a final notice. Neither of these notices is a statutory notice for the purposes of the Manual; nor is the decision to give such a notice a statutory notice associated decision.
- 1.25 For a list of actions that require the issuance of a warning or decision notice, please refer to **Annex 1**.
- 1.26 For a list of actions that require the issuance of a supervisory notice, please refer to **Annex 2**.

Chapter 2 – Approach to Enforcement

Introduction

2.1 The purpose of this Chapter is to set out how the Registration Authority commences and conducts investigations as well as its approach to the exercise of its enforcement powers and the considerations that apply to the exercise of those powers.

Enforcement Principles

2.2 The Registration Authority's approach to enforcement is based on the following principles:

- a. *Risk Based Approach*: the Registration Authority follows a risk-based approach to the monitoring and enforcement of ADGM's commercial legislation. The risk based approach ensures that the Registration Authority's resources are focused on those areas that it perceives as posing the greatest risk to the achievement of its objectives.
- b. *Acting Decisively*: the Registration Authority acts decisively and swiftly to stop conduct which may cause reputational damage to, or threatens the integrity of, the ADGM, to minimise its effects, and prevent such conduct re-occurring.
- c. *Procedural Fairness and Proportionality*: the Registration Authority takes enforcement action in accordance with its policies and procedures. In the exercise of its enforcement powers the Registration Authority acts fairly, transparently and proportionally.
- d. *Transparency*: the Registration Authority ordinarily publicises outcomes arising from an enforcement action taken, in order to maintain the integrity of the ADGM and deter contraventions. The commencement and progress on investigations will not generally be publicized.
- e. *Cooperation*: the Registration Authority works closely with relevant U.A.E. Government Authorities to ensure the comprehensive, effective and efficient oversight of all non-financial business sectors in ADGM.

Enforcement process

2.2 When taking enforcement action, the Registration Authority will generally adopt the enforcement process described in this Manual. The enforcement process consists of the following elements:

- *Receipt of allegation;*
- *Assessment of allegation;*
- *Investigation;*
- *Decision making;*
- *Warning Notice;*
- *Representations;*
- *Decision Notice; and*
- *ADGM Courts.*

2.3 A diagram of the Registration Authority's Enforcement Process is set out at **Annex 3**.

Receipt of allegation

2.4 The Registration Authority becomes aware of complaints, allegations of misconduct, suspected contraventions of ADGM’s commercial legislation or matters that warrant investigation or enforcement action in a number of ways, including:

- a. reports of misconduct or complaints from members of the public or other ADGM firms;
- b. the Registration Authority’s monitoring operations;
- c. referrals from the FSRA and other regulatory or law enforcement authorities; and
- d. reports submitted by licensed persons as required under ADGM’s commercial legislation.

Complaints

2.5 The scope of this Manual covers complaints received by the Registration Authority regarding licensed persons, that are made by third parties in relation to ADGM’s commercial legislation, as follows:

- a. any conduct by or dissatisfaction with a licensed person¹;
- b. any alleged contravention of ADGM’s commercial legislation;
- c. any conduct that causes, or may cause, damage to the reputation of the ADGM.

2.6 A person wishing to lodge a complaint with the Registration Authority should do so in writing. Complaints can be lodged:

- a. By emailing the complaint to: monitoring@adgm.com;
- b. By posting the complaint to:
Registration Authority,
Abu Dhabi Global Market
PO BOX 111999,
Abu Dhabi, U.A.E.; or
- c. By delivering the complaint to: The Registration Authority, Level 3, ADGM Authorities Building, Al Maryah Island, Abu Dhabi.

2.7 When a complaint is received, the Registration Authority will send a written acknowledgement to the complainant which will include the contact details of the relevant team responsible for managing the complaint.

2.8 All complaints lodged with the Registration Authority are held in confidence and in accordance with ADGM’s commercial legislation, including the Data Protection Regulations 2015.

¹ Except in relation to obligations pursuant to the ADGM Employment Regulations 2015, which are not within the scope of this Decision Procedures & Enforcement Manual.

- 2.9 However, to assess a complaint properly, the Registration Authority may need to contact third parties including the person who is the subject of the complaint. Where the Registration Authority contacts third persons it will not disclose the identity of the complainant without the prior written consent of the complainant.

Referrals

- 2.10 Referrals or allegations of misconduct arise both from other departments within the Registration Authority, or from the FSRA and other government or regulatory authorities.

Assessment of allegation

- 2.11 The assessment of allegations of suspected misconduct or contraventions of the ADGM's commercial legislation is a core aspect of the Registration Authority's monitoring and control function. Every allegation, regardless of the source, is assessed to determine whether an investigation should take place.
- 2.12 The Registration Authority's Monitoring & Enforcement Department is responsible for assessing complaints and allegations of misconduct, and the Department Head decides whether a matter should be investigated.
- 2.13 The Registration Authority may request further information from the complainant or source of an allegation to help it assess the allegation. The licensed person that is the subject of an allegation may also be contacted to obtain further information.
- 2.14 At the assessment stage the Registration Authority generally obtains information voluntarily. However, as per section 29 of CLR, the Registration Authority does have non-investigative information gathering powers, which may be used at the allegation assessment phase if necessary.
- 2.15 To ensure consistency and transparency in determining whether to commence an investigation, the Registration Authority considers allegations against certain criteria. The application of the criteria depends on the particular circumstances of a matter and include:
- a. whether the Registration Authority has jurisdiction in relation to the alleged misconduct;
 - b. the seriousness of the alleged misconduct, its duration and whether it is ongoing;
 - c. the nature of the alleged misconduct including whether it was deliberate, reckless, routine or minor;
 - d. the effect of the misconduct, including whether it resulted in a benefit to a person, or detriment or loss to others;
 - e. the compliance history of the licensed person, and likelihood of cooperation;
 - f. the likelihood of the alleged misconduct being proven, and if so, the remedies available;
 - g. the person's conduct after the alleged misconduct, including whether they brought it to the Registration Authority's attention;

- h. whether another authority has sought the Registration Authority's cooperation, or is able to take its own action against the alleged misconduct;
- i. whether the alleged misconduct is by nature a commercial dispute and if so, whether the complainant is able to take their own action (and has the resources) to seek relief; and
- j. whether the alleged misconduct undermines or damages the integrity, transparency, confidence in, or reputation of, the ADGM.

2.16 Not every allegation of misconduct received by the Registration Authority will result in an investigation. This may occur where, for example, the facts and contraventions are not in dispute and the licensed person has confirmed at an early stage that it is willing to resolve an issue by way of settlement; or where the matter can be investigated sufficiently without the need to exercise formal powers beyond the Registration Authority's information gathering powers.

2.17 Based on the assessment of the alleged misconduct against the criteria set out at paragraph 2.15 (above), the Head of the Registration Authority's Monitoring & Enforcement Department will determine what action will be taken or recommended to the relevant decision maker.

2.18 The range of actions that may follow the assessment of an allegation of misconduct vary depending on the facts and circumstances and may include:

- a. taking no further action;
- b. referring the alleged misconduct to another authority;
- c. commencing an investigation;
- d. taking immediate enforcement action; or
- e. taking other action such as a private warning or enforceable undertaking.

Investigation

2.19 Following the assessment of an allegation, the Registration Authority may decide to commence an investigation.

2.20 Where the Registration Authority decides to commence an investigation it will not generally disclose to any party that an investigation has commenced or is ongoing, except for the Person who is the subject of an investigation, unless the disclosure is likely to prejudice or frustrate the investigation.

2.21 Following a decision to commence an investigation, the Registration Authority will decide whether it is appropriate to appoint investigators under sections 30 and 31 of CLR.

2.22 Where the Registration Authority's Monitoring & Enforcement Department decides to investigate a matter it may exercise the Registration Authority's power to require information.

Information Gathering Powers

2.23 Under section 29 of CLR, the Registrar may, by written notice given to a licensed person, require him to:

- a. provide specified information or information of a specified description; or
- b. produce specified documents or documents of a specified description.

2.24 The Registration Authority will provide a reasonable period for compliance with the requirement to give information. The period of time will depend on the circumstances of a particular case. Where the giving of prior notice may prejudice a case, the Registration Authority may require the giving of information immediately.

2.25 Section 29 also provides the Registrar with powers to require any information provided to be verified and any document to be authenticated in such manner as it requires.

2.26 This information gathering power applies to licensed persons (including a person who was at any time a licensed person but who has ceased to be a licensed person). However, the Registration Authority may also impose requirements on a person who is connected with a licensed person.

2.27 A connected person is connected to a licensed person if he is or has at any relevant time been a member of the licensed person's group, or is a controller of the licensed person, or is a member of a partnership of which the licensed person is a member.

Appointment of Investigators - general

2.28 The Registrar may decide to appoint investigators if it appears that there is good reason for doing so. In determining whether there is "good reason" in a particular case, the Registration Authority takes into consideration the same assessment criteria that it applies when considering allegations of misconduct (see 'Assessment of allegations' section, above).

2.29 Section 30 of CLR specifies that an investigator may conduct an investigation into the following:

- a. the nature, conduct or state of the business of the licensed person;
- b. a particular aspect of that business; or
- c. the ownership or control of a licensed person.

2.30 In addition, the investigator appointed may, by given written notice to a person, extend the scope of the investigation to include the affairs of related businesses of the person.

2.31 Furthermore, the power conferred under section 30 of CLR also includes that an investigation may look into the business carried on by a former licensed person or the ownership or control of a former licensed person.

2.32 Furthermore, following the appointment of an investigator, the Registrar may by direction given to the investigator, extend the investigation to additional matters.

Appointment of investigators – particular cases

2.33 Section 31 of CLR allows the Registration Authority to appoint investigators where it appears to it that there are circumstances suggesting that a person may have committed a contravention of any enactment or subordinate legislation where such contravention is punishable by a fine.

Notice of appointment of investigators

2.34 Section 32(2) of CLR requires the Registration Authority to give written notice of the appointment of an investigator (under section 30 or 31) to the person who is the subject of an investigation. This written notice must specify the provisions under which the investigator is appointed and the reason for his appointment.

2.35 However, where the Registration Authority believes that the notification of an investigation would be likely to result in the investigation being frustrated, the Registration Authority may decide not to give it.

2.36 Section 32(7) of CLR enables the Registrar to control the scope and conduct of the investigation by issuing directions to the investigator.

2.37 Where there is a subsequent material change in the scope or conduct of an investigation and it is likely to significantly prejudice the person(s) subject to the investigation if not made aware of the change, the Registration Authority must give the person(s) written notice of the change.

2.38 Where the Registration Authority decides to discontinue an investigation without taking any action, the Registration Authority is not required to notify the person(s) subject to the investigation that it is being discontinued. However, in cases where person(s) have been notified that they are subject to an investigation and the Registration Authority has decided to discontinue the investigation, it generally will confirm this to the person(s) concerned when considered appropriate to do so.

Investigation powers

2.39 An investigator appointed under sections 30 and 31 of CLR has additional powers over and above the information gathering powers described in paragraphs 2.23 to 2.27 above. Investigators' powers are set out at sections 33 and 34 of CLR.

2.40 In support of an investigation, an investigator may require the person who is the subject of an investigation (or any connected person) to:

- a. attend before the investigator at a specified time and place and answer questions; or
- b. otherwise to provide such information as the investigator may require.

2.41 Further, an investigator may also require any person to produce any specified documents or documents of a specified description.

2.42

Enforcement of information gathering and investigative powers

2.43 The Registration Authority will enforce compliance with its information gathering and investigative powers where required by seeking orders in the ADGM Court.

2.44 Section 37 of CLR allows the Registration Authority to apply to the Court for the issuance of a search warrant in order to enforce compliance with information requirements. An application to the Court will be made in circumstances where there are reasonable grounds for believing that either:

- c. a person on whom an information requirement has been imposed has failed to comply with it; and
- d. the required information or documents are located on the premises specified in the warrant; or
- e. the premises specified on the warrant is the premises of a licensed person;
- f. the premises contains information or documents on which an information requirement could be imposed; and
- g. if such a requirement were to be imposed it would not be complied with, or the documents or information would be removed, tampered with or destroyed.

2.45 A warrant under section 37 of CLR authorizes the person executing it to enter the premises specified in the warrant, to search the premises and take possession of any documents or information appearing to be of a kind in respect of which the warrant was issued, to require any person on the premises to provide an explanation of any document or information appearing to be relevant, and to use such force as may reasonably be necessary.

Retention and return of documents

2.46 Any document of which possession is taken under section 37 may be retained so long as it is necessary to retain it.

Obstruction of the Registration Authority

2.47 The Registration Authority expects that licensed persons and individuals that are subject to investigation to cooperate fully with the Registration Authority.

2.48 However, as per section 39 of CLR, if a person fails to comply with a requirement imposed under the Registration Authority's information gathering and investigation powers, the person imposing the requirement may certify that fact in writing to the ADGM Court. If the Court is satisfied that the person has failed to comply, it may treat the person as if he were in contempt.

2.49 Furthermore, conduct intended to obstruct the Registration Authority in exercising its investigative powers includes:

- a. falsifying, concealing, destroying or otherwise disposing of documents;
- b. causing or permitting the falsification, concealment, destruction or disposal of documents;
- c. providing false or misleading information; or
- d. recklessly providing information which is false or misleading.

2.50 Any person who carries out the conduct set out in paragraph 2.49 commits a contravention under sections 39(3) and 39(4) of CLR and shall be liable to a fine. Where such contraventions are committed the Registration Authority will, take action accordingly, which may include additional action in respect of licensed persons.

2.51 Any person who intentionally obstructs the exercise of any rights conferred by a warrant, commits a contravention under section 39(6) of CLR and the Registration Authority will, where appropriate, take action accordingly.

Conclusion of an investigation

2.52 The Registration Authority will conclude an investigation when it determines to take no further action in response to an allegation or suspected contravention of the commercial legislation subject of the investigation, or all remedies imposed as a result of an investigation are concluded and fulfilled.

Chapter 3 – Decision Making

Introduction

- 3.1 The purpose of this Chapter is to set out the Registration Authority’s approach to decision making in respect of enforcement investigations and the Registration Authority’s exercise of its disciplinary powers.
- 3.2 The types of decisions to be made by the Registration Authority vary from deciding whether to commence an investigation to taking own-initiative action to cancel a licence. Depending on the type of decision, the person subject to the decision may have the right to refer the matter to the ADGM Court.

The Decision Maker

- 3.3 The principal decision maker at the Registration Authority is the Registry Decisions Committee (“RDC”) (described in more detail in the next section, below).
- 3.4 In particular, the RDC takes decisions on whether to give a statutory notice, i.e. a warning notice, decision notice or supervisory notice.
- 3.5 Decisions regarding statutory notices are referred herein as a ‘statutory notice associated decision’. Statutory notice associated decisions include decisions:
- a. to set or extend the period for making representations;
 - b. on whether the Registration Authority is required to give a copy of the statutory notice to any third party and, if so, the period for the third party to make representations;
 - c. on what information about a decision notice, final notice or supervisory notice it considers appropriate for the Registration Authority to publish; and
 - d. on whether to refuse access to Registration Authority material, relevant to the relevant statutory notice, under section 53 of CLR.
- 3.6 In each case the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law and the Registration Authority’s priorities and policies.
- 3.7 The Registration Authority will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision maker.

The Registry Decisions Committee

- 3.8 The RDC is an executive committee of the Registration Authority. It exercises decision making powers on behalf of the Registration Authority and is accountable to the Registration Authority CEO for its decisions.
- 3.9 The RDC is made up of members of the Registration Authority’s senior management. The members are appointed and removed by the Registration Authority CEO. The RDC is supported by the staff of the Registration Authority.

The Operation of the RDC

- 3.10 The RDC meets as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means. The RDC meets in private.
- 3.11 The RDC ordinarily meets as a full committee.
- 3.12 The RDC will not seek to invite a member to join a committee meeting to consider a matter in which he has a potential conflict of interest. If a member of the RDC has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the Chair of the RDC.
- 3.13 If the Chair considers it reasonable and appropriate, he will require the member of the RDC who has disclosed the conflict to stand down from consideration of that matter.

General procedures

- 3.14 The RDC follows the procedure described here, subject to that the Committee will conduct itself in the manner the RDC Chair considers appropriate in order to enable the RDC to determine matters under consideration fairly and efficiently.
- 3.15 Each member of the RDC present is entitled to vote on the matter under consideration. The Chair of the meeting votes as a member of the RDC and will have the casting vote in a deadlock.
- 3.16 The RDC Chair shall decide the matters relating to the arrangements for an RDC meeting, including its timing, in accordance with the RDC Terms of Reference.
- 3.17 If the RDC considers it relevant to its consideration, it may ask Registration Authority staff to explain or provide the following:
- a. additional information about the matter (which Registration Authority staff may seek by further investigation); or
 - b. further explanation of any aspect of the Registration Authority staff recommendation or accompanying papers.
- 3.18 The RDC has no power under the CLR to require persons to attend before it or provide information. It is not a tribunal and makes decisions based on all relevant information available to it.

Warning notices and first supervisory notices

- 3.19 If Registration Authority staff consider that action is appropriate, they will make a recommendation to the RDC that a warning notice or a supervisory notice should be given.
- 3.20 A warning notice is issued in relation to proposed disciplinary action such as imposing a fine, suspending a licence or imposing a restriction on the carrying on of a controlled activity by a licensed person. Whereas supervisory notices are issued in relation to supervisory actions, namely varying a licence or imposing or varying a requirement. For a full list and description of warning, decision and supervisory notices, please refer to **Annexes 1 and 2** of this Manual.

3.21 The RDC will consider whether it is right in the circumstances to give a statutory notice, having regard to the following considerations:

- a. Whether the material on which the recommendation is based is adequate to support it – the RDC may seek additional information about or clarification of the recommendation from Registration Authority staff; and
- b. Whether the action recommended is appropriate in the circumstances.

3.22 If the RDC decides that the Registration Authority should give a warning notice or a first supervisory notice:

- a. The RDC will consider and agree on the wording of the warning notice or first supervisory notice, and will ensure that the notice complies with the relevant provisions of the CLR;
- b. The RDC will make any relevant statutory notice associated decisions; and
- c. The RDC Secretariat will ensure that the relevant Registration Authority staff make appropriate arrangements for the notice to be given.

Representations

3.23 A warning notice or first supervisory notice will specify the time allowed for the recipient to respond in writing to the Registration Authority, which may not be less than 14 business days.

3.24 The recipient of a warning notice or a first supervisory notice may request an extension of the time allowed for making representations. Such a request must normally be made within seven business days of the notice being given.

3.25 If a request is made, the RDC will decide whether to allow the extension, and if so, how much additional time is to be allowed for making representations. In reaching its decision the RDC will take into account all relevant factors including any factors outside the control of the firm or individual that would impact on their ability to respond within the period set out in the warning notice or first supervisory notice, as well as comments from the relevant Registration Authority staff.

3.26 The RDC Secretariat will notify the relevant Registration Authority staff of the decision and ensure that the Registration Authority staff notify the relevant party in writing.

3.27 If the recipient of a warning notice or a first supervisory notice indicates that he wishes to make oral representations, the RDC Secretariat, in conjunction with the RDC Chair, will fix a date or dates for a meeting at which the RDC will receive those representations.

- a. the Chair will ensure that the meeting is conducted so as to enable:
- b. the recipient of the warning notice or first supervisory notice to make representations;
- c. the relevant Registration Authority staff to respond to those representations;
- d. the RDC members to raise with those present any points or questions about the matter;

- e. the recipient of the notice to respond to points made by Registration Authority staff or the RDC

but the Chair may ask the recipient of the notice or Registration Authority staff to limit their representations or response in length or to particular issues arising from the warning notice or first supervisory notice.

3.28 The recipient of the warning notice or supervisory notice may wish to be legally represented at the meeting, but this is not a requirement.

3.29 Where the Chair deems appropriate, he may ask those present at the meeting for oral representations to provide additional information in writing after the meeting. If he does so, he will specify the time within which that information is to be provided.

3.30 The RDC will not, after the Registration Authority has given a warning notice or a first supervisory notice, meet with or discuss the matter whilst it is still ongoing with the Registration Authority staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

Decision notices and second supervisory notices

3.31 If no representations are made in response to the warning notice or first supervisory notice, the Registration Authority will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply.

Default Procedure

3.32 If the Registration Authority receives no response or representations within the period specified in a warning notice, the RDC may regard as undisputed the allegations or matters in the notice and a decision notice will be given accordingly.

3.33 If the Registration Authority receives no response or representations within the period specified in a first supervisory notice, the Registration Authority will not give a second supervisory notice. If the action:

- a. took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any proceedings on a referral to the ADGM Courts);
- b. was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any proceedings on a referral to the ADGM Courts);
- c. was to take effect when the matter was no longer open for review, it takes effect when the period to make representations (or for referral to the ADGM Courts, if longer) expires, unless the matter has been referred to the Court.

Representations

3.34 In any case in which representations are made, the RDC will consider whether it is right in the circumstances to give the decision notice or a second supervisory notice (as appropriate) according to the following approach:

- a. the RDC will consider the material before it;
- b. the RDC will consider any representations made (whether written, oral or both) and any comments by Registration Authority staff or others in respect of those representations; and
- c. Decide whether to give the notice and the terms of any notice given.

3.35 If the RDC decides that it should give a decision notice or a second supervisory notice:

- a. the RDC will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the notice complies with the relevant provisions of the CLR;
- b. the RDC will make any relevant statutory notice associated decisions, including whether the Registration Authority is required to give a copy of the notice to a third party; and
- c. the RDC Secretariat will ensure that the relevant Registration Authority staff make appropriate arrangements for the notice to be given.

3.36 If the RDC decides that the Registration Authority should not give a decision notice or a second supervisory notice the RDC Secretariat will notify the relevant Registration Authority staff and ensure those staff notify the relevant parties in writing.

Discontinuance of Registration Authority action

3.37 Registration Authority staff responsible for recommending action to the RDC will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a notice of discontinuance to a person to whom a warning notice or decision notice has been given. The decision to give a notice of discontinuance does not require the agreement of the RDC, but Registration Authority staff will inform the RDC of the discontinuance of the proceedings.

Final Notices

3.38 If the Registration Authority has given a person a decision notice and the period for referral to the ADGM Court lapses, then the Registration Authority will issue a final notice.

Court proceedings

3.39 A decision by the RDC to give a decision notice or supervisory notice may lead to a referral to the ADGM Courts under the CLR. The conduct of the proceedings before the courts is not a matter for the RDC.

Chapter 4 – Enforcement

Introduction

- 4.1 The purpose of this Chapter is to set out the Registration Authority’s approach to the exercise of its enforcement powers and the considerations that it applies.
- 4.2 The Registration Authority has several remedies available to it, in order to achieve its objectives. This includes, the imposition of fines, the imposition of limits or restrictions on a licence, and suspending a licence to carry on controlled activities.
- 4.3 The Registration Authority will follow the policy and procedures set out in this Manual in relation to the use of enforcement powers. The Registration Authority does not have criminal jurisdiction, hence, should criminal conduct be identified, it will be referred to the relevant law enforcement agency.

Fines

- 4.4 This section sets out the Registration Authority’s approach in relation to the imposition of fines under section 41 of CLR.
- 4.5 Under section 41(1) of CLR, if the Registration Authority considers that a licensed person has contravened a relevant requirement imposed on the person, it may impose on him a fine in respect of the contravention.
- 4.6 Under section 41(2) of CLR, if the Registration Authority considers that a person has committed a contravention of an enactment or subordinate legislation, it may impose on him a fine of an amount not exceeding the maximum specified for such contravention in the relevant enactment or subordinate legislation.

Purpose of fines

- 4.7 The purpose of imposing fines on persons is to promote compliance with the Regulations and achieve the Registration Authority’s objectives by:
- a. penalising persons who have committed contraventions;
 - b. deterring persons that have committed or may commit similar contraventions; and
 - c. depriving persons of any benefit they may have gained as a result of their contraventions.

Determining the appropriate amount of a fine

- 4.8 Under section 45(2) of CLR, to determine the amount of a fine to be imposed under section 41, the Registration Authority must have regard to the following factors:
- a. the seriousness of the contravention in question in relation to the nature of the relevant requirement or provision of the Regulations contravened;
 - b. the extent to which the contravention was deliberate or reckless; and

- c. whether the licensed person against whom action is to be taken is an individual.

4.9 In addition to having regard to the factors in paragraph 4.8 above, where the Registration Authority decides that a fine is appropriate, further considerations may also be relevant to determining the amount of that fine. The following paragraphs set out a non-exhaustive list of factors and considerations that the Registration Authority will consider to determine the amount of fines.

Seriousness

4.10 The Registration Authority has regard to the seriousness of the contravention in relation to the nature of the requirement contravened. In considering the seriousness of the contravention, the following list of factors may be relevant:

- a. the duration and frequency of, and the period that has elapsed since, the contravention;
- b. if the person is (or was) a licensed person – whether the contravention happened because:
 - i. of weak corporate governance arrangements;
 - ii. of absent or weak policies and procedures regarding relevant licence conditions and/or requirements; or
 - iii. inadequate resources (including staffing);
- c. if the person is (or was) a licensed person and the firm's shareholders, officers or senior management were aware of the contravention – whether they took any steps to stop or prevent the contravention, the adequacy of any steps and when the steps were taken;
- d. the effect or potential effect of the contravention on the following:
 - i. the integrity, transparency and efficiency of the ADGM; and
 - ii. confidence in the ADGM by participants and potential participants of the ADGM; and
 - iii. the reputation of the ADGM;
- e. any loss or risk of loss caused to clients, customers and other affected people;
- f. whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
- g. the scope for any potential financial crime to be caused or facilitated by the contravention; and
- h. whether publically available guidance or published materials raised concerns about the conduct constituting the contravention.

Deliberate or reckless

4.11 The Registration Authority has regard to the extent to which the contravention was deliberate or reckless. If the contravention was deliberate or reckless, the Registration Authority is likely to impose a larger fine on the person than would otherwise be the case.

4.12 In this regard, the Registration Authority considers the following:

- a. whether the breach was intentional, in that the person concerned intended or foresaw that their actions would or might result in a contravention;
- b. whether the person concerned knew that their actions were not in accordance with internal procedures;
- c. whether any steps were taken in an attempt to conceal the misconduct;
- d. whether the contravention was committed in such a way as to avoid or reduce the risk that the contravention would be discovered;
- e. whether the decision to commit the contravention was influenced by a belief that it would be difficult to detect;
- f. whether the contravention occurred more than once, and if so, how often; and
- g. whether reasonable professional advice was obtained before or during the contravention and was not followed or responded to appropriately. Obtaining professional advice does not remove a person's responsibility for compliance with relevant requirements.

4.13 Factors tending to show that a contravention was reckless include:

- a. the person knowing that there was a risk that their actions or inaction could result in a contravention but failing to mitigate that risk adequately; and
- b. the person knowing that there was a risk that their actions or inaction could result in a contravention but failing to check if they were acting in accordance with relevant internal procedures.

Whether the person is an individual

4.14 The Registration Authority has regard to whether the person on whom the fine is to be imposed is an individual. In determining the amount of a fine to be imposed on an individual, the Registration Authority takes the following into account:

- a. that individuals may not have the resources of a firm;
- b. that enforcement action may have a greater effect on an individual than on a firm; and
- c. that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a firm.

4.15 The Registration Authority also considers whether the person's position or responsibilities are such as to make a contravention committed by the person more serious and whether a larger fine should therefore be imposed.

Effect on third parties

4.16 The Registration Authority has regard to the effect of the contravention on clients, customers or third parties.

- 4.17 The Registration Authority considers a contravention to be more serious where it results in a loss, or the risk of loss, to clients, customers or third parties or if it had an effect on particularly vulnerable people, whether intentionally or otherwise.

Deterrence

- 4.18 The Registration Authority's policy is that deterrence is one of the main purposes of taking enforcement action. That is, deterring persons who have committed contraventions from committing further contraventions, and deterring others from committing similar contraventions.
- 4.19 The Registration Authority has regard to the need to ensure that any fine imposed has the appropriate deterrent effect. In this regard, the Registration Authority considers the extent to which it is necessary to impose a fine of an appropriate amount in order to ensure that the deterrent effect of the action is not diminished.

Financial gain or loss avoided

- 4.20 To the extent possible, the Registration Authority will seek to deprive a person who commits a contravention of the amount of any benefit gained or loss avoided by that person as a result of their contravention.
- 4.21 Accordingly, if the person has made a profit or avoided a loss, the Registration Authority will impose a fine consistent with the principle that a person who commits a contravention should not benefit from the contravention, subject to the prescribed maximum penalty under CLR.
- 4.22 Further, in taking into consideration the amount of any financial advantage gained by a person who committed a contravention, the Registration Authority has regard to the need to ensure that the amount of the fine acts as a deterrent to the person (and to others).

Subsequent conduct

- 4.23 The Registration Authority takes into consideration the conduct of the person after the contravention in determining the amount of the fine, including, for example, the following:
- a. the conduct of the person in bringing (or failing to bring) the contravention quickly, effectively and completely to the attention of the Registration Authority;
 - b. the degree of cooperation the person showed during the investigation of the contravention;
 - c. any remedial steps the person has taken in relation to the contravention, including whether they were taken on the person's own initiative or that of the Registration Authority. Remedial steps might include, for example:
 - i. correcting any misleading statement or impression;
 - ii. recruiting new staff to enhance or increase resources;
 - iii. ascertaining whether clients or customers suffered loss and compensating them if they have;

- iv. if appropriate, taking disciplinary action against, or providing additional training for, staff involved in the contravention; and
- v. introducing or improving policies, procedures or systems and controls to reduce the likelihood of the contravention arising in future; and
- d. whether the person has complied with any requirements or decisions of the Registration Authority in relation to the contravention.

4.24 That the person has fully cooperated in the investigation of the contravention by the Registration Authority is a consideration tending to reduce the amount of the fine.

4.25 Generally, a licensed person is given recognition for being open and cooperative with the Registration Authority. The assessment of the level of cooperation offered by a person depends on the particular circumstances of the matter. A licensed person can demonstrate cooperation in many ways including, promptly reporting a contravention, taking responsibility for the matter and being open and communicative with the Registration Authority, taking steps to limit damage and being proactive in bringing the matter to an early conclusion.

Disciplinary record and compliance history

4.26 The Registration Authority takes into consideration a person's disciplinary record and compliance history in determining the amount of the fine, including, for example:

- a. the person's general compliance history;
- b. whether the Registration Authority has previously taken any disciplinary action resulting in adverse findings against the person;
- c. whether the Registration Authority has previously taken action against the person under sections 13 or 14 of CLR (own initiative action); and
- d. whether the Registration Authority has previously given the person a notice under section 43 (fines, suspensions and restrictions).

4.27 The disciplinary record of a person could lead to the Registration Authority imposing a larger fine than otherwise might be appropriate: for example, the fine might be increased if the person has committed similar contraventions in the past or been warned about similar misconduct. In assessing the relevance of the person's disciplinary record and compliance history, generally the older the contravention is, the less significant it is regarded as being.

Maximum penalty

4.28 The CLR prescribes the maximum level of financial penalty for contraventions of relevant requirements under the Regulations. The prescribed levels refer to the standard fines scale set out in the Commercial Licensing Regulations 2015 (Fines) Rules 2015. In determining the appropriate amount of a fine, notwithstanding all other considerations, the Registration Authority shall not exceed the prescribed maximum penalty.

Settlement discount

- 4.29 In the event that the Registration Authority and the person concerned agree on the action to be taken in a particular case, it is possible that any fine imposed on the person will be reduced to take account of the settlement that has been reached.
- 4.30 However, any settlement discount applied relates only to the punitive element of the fine and not to an amount included to deprive the person concerned of any profit made, or loss avoided, as a result of their contravention or to any restitution or compensation payable under the terms of the settlement.

Serious financial hardship

- 4.31 Where a person claims that payment of a fine proposed by the Registration Authority will cause them serious financial hardship, the Registration Authority will consider whether to reduce the proposed fine based on the following considerations:
- a. the person provides verifiable evidence that payment of the proposed fine would cause them to suffer serious financial hardship; and
 - b. the person provides full and timely disclosure of the verifiable evidence and cooperates fully with any enquiries the Registration Authority may make about their financial position.
- 4.32 It is the responsibility of the person concerned to satisfy the Registration Authority that payment of the proposed fine would cause them to suffer serious financial hardship. It is not the Registration Authority's responsibility to establish that the person has the means to pay the proposed fine.
- 4.33 However, in some cases, even where a person has demonstrated that a proposed fine would cause serious financial hardship, the Registration Authority may consider the contravention to be so serious that it is not appropriate to reduce the proposed fine.
- 4.34 Such circumstances include, providing false or misleading information the Registration Authority, deliberate and repeated breaches of licensing requirements or where previous action by the Registration Authority has not been successful in bringing about a change in behavior by the person involved.

Suspend, Limit or Restrict Licence

- 4.35 This section sets out the Registration Authority's policy in relation to it suspending a licence to carry on a controlled activity or imposing limitations or restrictions in relation to the carrying on of a controlled activity by the person, under section 42.
- 4.36 Under section 42(1) of CLR, if the Registration Authority considers that a licensed person has contravened a relevant requirement imposed on the person, it may:
- a. Suspend, for such period as it considers appropriate, any licence which the person has to carry on a controlled activity; or
 - b. Impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a controlled activity by the person as it considers appropriate.

- 4.37 Section 42(2) of CLR states that the period for which a suspension or restriction is to have effect may not exceed 12 months.

Scope of suspension or restriction

- 4.38 Under section 42(3), a suspension may relate only to the carrying on of an activity in specified circumstances.
- 4.39 Under section 42(4), a restriction may, in particular, be imposed so as to require the person concerned to take or refrain from taking, specified action.
- 4.40 Having regard to the circumstances of the case, the Registration Authority may suspend or restrict a licensed person from carrying on a controlled activity. The Registration Authority considers that suspending a licence to carry on controlled activities is more restrictive and therefore more serious than imposing a restriction or limitation in relation to the carrying on of a controlled activity.
- 4.41 Whether the Registration Authority imposes a suspension or restriction will depend on the facts of the matter, such as risk of harm to clients or customers, the need to protect the integrity of the ADGM and ensure confidence of participants.

Determining the period for a suspension or restriction

- 4.42 Under section 45(2) of CLR, to determine the period for which a suspension or restriction is to have effect, the Registration Authority must have regard to the following factors:
- a. the seriousness of the contravention in question in relation to the nature of the relevant requirement or provision of the Regulations contravened;
 - b. the extent to which the contravention was deliberate or reckless; and
 - c. whether the licensed person against whom action is to be taken is an individual.

- 4.43 In this regard, the considerations that the Registration Authority will consider are set out in paragraphs 4.10 to 4.27 (above).

Suspensions, restrictions and other action

- 4.44 In appropriate cases, the Registration Authority may take other action against a person such as imposing a fine, in addition to imposing a suspension or restriction in relation to the same contravention.

Chapter 5 – Settlement

Introduction

- 5.1 This Chapter sets out the Registration Authority's policy regarding settlement of enforcement actions.
- 5.2 Settlement of an enforcement action has many advantages for both the Registration Authority and the person who is the subject of the action. Settlement avoids the need for further disciplinary proceedings and is thus time and resource effective for both the Registration Authority and persons who are the subjects of enforcement actions.
- 5.3 Settlement discussions may be initiated by either the Registration Authority or the person concerned. Generally, the Registration Authority publicises the details of the settlement of an enforcement or disciplinary action.

Approach to settlement

- 5.4 Under a settlement, a person against whom enforcement action is being or may be taken agrees to the imposition of a financial penalty or other enforcement outcome and to waive any rights to contest the financial penalty or other enforcement outcome. A settlement requires the agreement of both the Registration Authority and the person. A settlement is intended to bring the matters subject to the settlement to conclusion.
- 5.5 Before engaging in settlement discussions, the Registration Authority satisfies itself that taking enforcement action is in the public interest and appropriate in the circumstances of the matter.
- 5.6 The terms of the settlement of an enforcement action vary depending on the circumstances of the matter. The Registration Authority settles only if the agreed terms of the settlement result in an acceptable policy and regulatory outcomes.

Timing

- 5.7 Settlement discussions can be held at any stage of the enforcement process, including at an early stage, provided the Registration Authority is satisfied that it understands the full nature and extent of the misconduct or issue. Therefore, settlement discussions may be more likely to occur following the issuance of a warning notice. This is to enable the person to understand the Registration Authority's concerns and what it considers to be the appropriate action.
- 5.8 However, the Registration Authority is unlikely to settle a matter through negotiation after a decision notice has been given to the person.
- 5.9 Where the Registration Authority decides to exercise a disciplinary power, it must give the person a decision notice. Accordingly, the Registration Authority must give the person a decision notice where the terms of a settlement include disciplinary action. A person who receives a decision notice has the right to refer the matter to the ADGM Courts. However, if settlement has been reached, the Registration Authority expects the person concerned to waive their referral rights.
- 5.10 Settlement discussions should also take place in a timely and diligent manner. The Registration Authority will set appropriate timetables for settlement discussions to ensure that the discussions do not delay or shift focus away from the formal enforcement process.

Decisions regarding proposed settlements

- 5.11 If settlement discussions between Registration Authority staff and the person concerned result in a proposed settlement, the Registration Authority's staff will document the proposed settlement and refer the matter to the Registration Authority decision maker.
- 5.12 Only a formal decision by the Registration Authority decision maker binds the Registration Authority to a settlement.
- 5.13 Once the decision maker receives a recommendation from the Registration Authority staff or the RDC the decision maker decides whether to (i) settle the matter, (ii) recommend other terms, or (iii) decline to settle the matter.

Terms of settlements

- 5.14 The Registration Authority only accepts settlements where the person subject to the enforcement action accepts that it contravened relevant requirements and admits relevant facts regarding those contraventions in the settlement. When it agrees to the terms of a settlement the Registration Authority ensures that those terms are consistent with the Registration Authority's objectives.

Fines and early settlement

- 5.15 Where the Registration Authority considers that a person has been open and cooperative and has demonstrated a commitment to settling an enforcement matter as early as possible, the person should be given appropriate recognition.
- 5.16 Where a fine is imposed on a person as a result of an early settlement, the amount of the fine payable by the person should generally be less than if the fine had been imposed on the person at a later stage in the enforcement process. Accordingly, the Registration Authority may reduce the fine payable by a person to reflect the stage of the enforcement process at which settlement was reached.
- 5.17 Where a fine includes an element to deprive a person of any profits they made or losses they avoided as a result of their contravention, there is no reduction in respect of that part of the fine. Similarly, no reduction will be applied to any restitution or compensation payable to clients or customers under the settlement agreement.
- 5.18 Where the Registration Authority is prepared to agree to a discounted fine through settlement, the settlement agreement will contain a statement as to the appropriate penalty and any discount agreed. In any public statements regarding the settlement, the Registration Authority will disclose the appropriate fine and the amount that is actually payable as a result of the settlement.

Publicity

- 5.19 The Registration Authority generally publicises the outcome of a settlement, including the names of the persons who were subjects of the enforcement action and the key terms of the settlement. Such a public statement ensures transparency and accountability in the settlement of enforcement actions.

- 5.20 However, the Registration Authority is mindful of the sensitivity of confidential information that may be provided as part of settlement negotiations and takes this into consideration when deciding on the information to be published.

Third party rights

- 5.21 Where a decision notice has been given to a person following the settlement of an enforcement action with that person, the Registration Authority is required under section 52 of CLR to consider the effect of the decision on third party rights.
- 5.22 Generally, if a decision notice identifies a third party a copy of the notice must be given to the third party unless it is impractical to do so. Third parties have the right to make representations and ultimately can refer the matter to the ADGM Courts.
- 5.23 It is therefore important that any settlement reached with the Registration Authority takes account of the position of any third party.

Chapter 6 – Own-Initiative Action

Introduction

- 6.1 The purpose of this Chapter is to set out the Registration Authority's policy on the exercise of its powers to take action on its own-initiative.
- 6.2 The CLR enables the Registration Authority to take the following actions on its own-initiative:
- a. vary a license to carry on controlled activities;
 - b. cancel a license to carry on controlled activities; or
 - c. impose requirements on a licence to carry on controlled activities.
- 6.3 Circumstances may arise as part of the Registration Authority's supervision of a licensed person, or issues may arise during an enforcement investigation, which prompt the Registration Authority to consider taking own-initiative action.
- 6.4 Additionally, where a licensed person applies for a variation of a licence, the Registrar may impose on that person such requirements, taking effect on the variation of the licence, as the Registration Authority considers appropriate.
- 6.5 The Registration Authority exercises its power to take own-initiative action when it considers it appropriate to do so in pursuit of one or more of its statutory objectives. The decision whether to take own-initiative action is based on the information available to the Registration Authority at the time the decision is made on a case by case basis.

Variation or cancellation of licence

- 6.6 Section 13 of CLR details the power of the Registrar to vary or cancel a licence to conduct controlled activities on its own-initiative, which is referred to as own-initiative variation power.
- 6.7 The Registration Authority's power under this section is the power to:
- a. vary the licence by:
 - i. adding a controlled activity to those to which the licence relates;
 - ii. removing a controlled activity from those to which the licence relates; or
 - iii. varying the description of a controlled activity to which the licence relates; or
 - b. to cancel the licence.

Grounds for taking own-initiative variation power

- 6.8 Section 13(1) of CLR sets out the grounds for the Registration Authority to exercise own-initiative variation power. The grounds are as follows:
- a. the person is failing, or is likely to fail, to satisfy the conditions of licence applicable to him;

- b. that person has failed, during a period of at least 12 months, to carry on a controlled activity to which the licence relates; or
- c. it is desirable to exercise the power in the interests of the ADGM.

6.9 The Registration Authority may exercise own-initiative variation power if it is satisfied that the grounds in section 13(1) apply.

6.10 In circumstances where a licensed person has ceased carrying on controlled activities for a significant period of time (at least 12 months) and in particular, where the person is non-responsive, it may be a relatively routine matter for the Registration Authority to cancel that person's licence, along with own-initiative de-registration considerations.

6.11 In other cases, where a licensed person is carrying on controlled activities, then to vary, impose restrictions or cancel a licence may have serious consequences for that person. Accordingly, the Registration Authority takes own-initiative action, particularly in respect of cancelling a licence, only where it has serious concerns regarding a licensed person.

6.12 Having regard to the grounds specified under CLR, examples of circumstances where the Registration Authority might consider it appropriate to cancel a licensed person's licence include:

- a. if it is found that a licensed person provided false or misleading information to the Registration Authority during the licensing process;
- b. if a licensed person appears to be failing, or is likely to fail to satisfy, relevant licensing criteria under ADGM's commercial legislation;
- c. if a licensed person carrying on a controlled activity repeatedly fails to lodge filings with the Registration Authority as and when it is required to do so;
- d. if a licensed person knowingly provides misleading or false information in any filings lodged with the Registration Authority; or
- e. if a licensed person fails to pay fees to the Registration Authority as required, or renew its licence on or before its expiry.

6.13 Depending on the circumstances, the Registration Authority may initially vary a licensed persons' scope of licence or impose requirements. However, where that action does not resolve the Registration Authority's concerns, the Registration Authority may then decide to cancel the licence.

Requirements

6.14 Section 14 of CLR details the power of the Registrar to impose requirements on a licensed person on its own-initiative, which is referred to as own-initiative requirement power.

6.15 The Registration Authority's power under this section is the power to impose on a licensed person such requirements as the Registration Authority considers appropriate, where a person has applied for a variation of a licence. The own-initiative requirement power is a power to:

- a. impose a new requirement;
- b. vary a requirement imposed by the Registration Authority; or

- c. cancel a requirement.

6.16 A requirement may be imposed to as to require the person concerned to take specified action or so as to require the person concerned to refrain from taking specified action. A requirement may also extend to activities which are not controlled activities.

6.17 Under section 15(5) of CLR, a requirement may be expressed to expire at the end of such period as the Registration Authority may specify, but the imposition of a requirement that expires at the end of the specified period does not effect the Registration Authority's power to impose a new requirement.

Grounds for taking own-initiative requirement power

6.18 Section 14(2) sets out the grounds for the Registration Authority to exercise own-initiative requirement power. The grounds are as follows:

- a. the person is failing, or is likely to fail, to satisfy the conditions of licence applicable to him;
- b. that person has failed, during a period of at least 12 months, to carry on a controlled activity to which the licence relates; or
- c. it is desirable to exercise the power in the interests of the ADGM.

6.19 The Registration Authority may exercise own-initiative requirement power if it is satisfied that the grounds in section 14(2) apply.

6.20 When deciding whether to take own-initiative requirement power on a licensed person, the Registration Authority takes into account the effect of the powers exercised and seeks to ensure that any requirement imposed is proportionate to the objective the Registration Authority is seeking to achieve by taking action.

6.21 In the course of monitoring of licensed persons or during the enforcement process, the Registration Authority might consider it appropriate to agree formally or informally with a licensed person on certain steps required to resolve the Registration Authority's concerns.

6.22 However, in some cases the Registration Authority forms the view that it is appropriate to take own initiative action to ensure that its concerns are satisfied. Such action is likely to be necessary where the Registration Authority:

- a. has serious concerns about a licensed person or about the way its business is being conducted;
- b. is concerned that there will be serious consequences if the licensed person fails to take the steps required by the Registration Authority; or
- c. considers that the action will demonstrate the importance that the Registration Authority attaches to the need for the firm to satisfy the Registration Authority's concerns.

Own-initiative power procedure

6.23 Where the Registration Authority decides to take own initiative action, it informs the licensed person of that action by written notice. That written notice is called a first supervisory notice.

- 6.24 The Registration Authority will also generally give a licensed person an opportunity to make representations before the action is taken.
- 6.25 The Registration Authority may extend the period allowed under the notice for making representations. After having considered any representations made by a licensed person, regardless of whether the Registration Authority decides to proceed or not proceed with the exercise own-initiative power, it must give the licensed person a written notice. That written notice is called a second supervisory notice.
- 6.26 Details on the Registration Authority's decision making process is set out in Chapter 3 of this Manual.
- 6.27 In some circumstances, a variation of a licence or the imposition or variation of a requirement, may be expressed to take effect immediately if the Registration Authority reasonably considers that it is necessary to do so. In these circumstances, the licensed person will not have the opportunity to make representations.
- 6.28 A decision to exercise own-initiative action on an immediate basis depends on the circumstances of the matter. However, examples of the circumstances where the Registration Authority may consider such action include:
- a. where there is information to suggest that clients or customers of a licensed person have been harmed or are at significant risk of harm;
 - b. where there are serious problems regarding the licensed person and/or its controllers, which raise concerns about the licensed person's ability to continue its operations or meet its conditions of licence; or
 - c. where a licensed person has provided false or misleading information to the Registration Authority in a material way.
- 6.29 Where the Registration Authority decides to take immediate own-initiative action, it provides an opportunity for the licensed person to make representations promptly after the power has been exercised.

Chapter 7 – Publicity

Introduction

7.1 This Chapter sets out the Registration Authority’s policy on publicity in relation to statutory decision making and the exercise of its investigation and enforcement powers. Specifically, the policy covers the following:

- a. general policy on publicity of enforcement actions;
- b. ongoing investigations or enforcement matters;
- c. publication of warning notices;
- d. publication of decision notices and supervisory notices;
- e. proceedings in the ADGM Court;
- f. publication of settlements; and
- g. actions taken by the Registration Authority on its own-initiative.

General policy on publicity of enforcement and disciplinary actions

7.2 Publicity about enforcement action improves the understanding of licensing standards among licensed persons and potential users of the ADGM, it deters other persons from engaging in similar misconduct, and demonstrates how the Registration Authority uses its disciplinary and enforcement powers to meet its statutory objectives.

7.3 The Registration Authority’s general policy is to publicise enforcement and disciplinary actions, providing information, statements and/or notices in the form and manner it regards as appropriate and most effective.

7.4 However, the Registration Authority retains discretion regarding the approach to publication and in particular, the timing of publications of enforcement or disciplinary action, depending on the circumstances of a particular matter and in order to best advance ADGM’s interests.

Publicity about ongoing matters

7.5 The Registration Authority’s general policy is not to publicise the fact that it is or is not investigating, or considering enforcement action about a matter.

7.6 However, in certain circumstances the Registration Authority will make exceptions to this policy and make a public announcement about an ongoing investigation or enforcement action. The Registration Authority will consider a public announcement if it will:

- a. assist in maintaining the integrity of and confidence in ADGM or the Registration Authority;

- b. protect the public, for example by announcing unlicensed conduct by a person who is under investigation by the Registration Authority;
- c. prevent and restrain conduct which may cause damage to the reputation of the ADGM, for example to alert licensed persons that certain conduct is under investigation to stop and deter others from engaging in similar conduct; or
- d. assist the investigation itself, for example by encouraging witnesses to come forward.

7.7 The Registration Authority may also make a public announcement about a matter under investigation if it has become the subject of public speculation or rumour, if it is considered that doing so will contain or prevent further speculation.

Publication of warning notices

7.8 Under section 51(1) of CLR, neither the Registration Authority nor a person to whom a warning notice is given or copied may publish the notice or any details concerning it.

7.9 Such a disclosure is a contravention under section 51(12) of CLR and the Registration Authority will, where appropriate, take action accordingly.

Publication of decision notices and supervisory notices

7.10 Under sections 51(5) and 51(6) of CLR, the Registration Authority must publish such information about the matter to which the decision notice or supervisory notice relates, as it considers appropriate.

7.11 However, under section 51(7) of CLR, the Registration Authority may not publish information if, in its opinion, publication of the information would be:

- a. unfair to the person with respect to whom the action was taken (or proposed to be taken);
- b. detrimental to the interests of participants of the ADGM;
- c. detrimental to the interests of the ADGM.

7.12 Generally, the Registration Authority's policy is to publish decision notices and supervisory notices after any relevant period for referral has expired and the matter has not been referred to the ADGM Court.

7.13 The Registration Authority may make exceptions to this policy where it considers it appropriate to publish a decision notice or supervisory notice at an earlier stage. In these circumstances, the publication will highlight the right of review and time limit for review of the person to whom the notice relates.

7.14 Such circumstances where the Registration Authority may consider it appropriate to publicise a notice at an earlier stage are where doing so will advance the interests of the ADGM and / or to protect the public.

- 7.15 Under section 51(2) of CLR, a person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Registrar has published the notice or those details.
- 7.16 Such a disclosure is a contravention under section 51(12) of CLR and the Registration Authority will, where appropriate, take action accordingly.

Publication about proceedings

- 7.17 Section 98 of the ADGM Courts, Civil Evidence, Judgements, Enforcement and Judicial Appointments Regulations 2015, provide that matters will be heard in public unless otherwise directed by the ADGM Courts. As publicity about proceedings is subject to such directions, the Registration Authority generally does not make any public statement about the commencement of proceedings until the ADGM Courts has given directions about publicity.
- 7.18 The Registration Authority's general policy is to make public statements about the outcome of enforcement proceedings in the ADGM Courts, unless the ADGM Courts directs otherwise. However, the Registration Authority retains discretion to not publicise the outcome of proceedings, or to not do so immediately, where it considers appropriate, such as where publication would not be in the public interest or be prejudicial to the interests of clients and customers.

Publication of settlements

- 7.19 The Registration Authority's approach to publicity in respect of settlement is set out in Chapter 5 of this Manual.

Publication of own-initiative action

- 7.20 The Registration Authority may take action on its own-initiative against licensed persons under sections 13 and 14 of CLR. Further details about the Registration Authority's policy and procedure on own-initiative action is set out in Chapter 6 of this Manual.
- 7.21 Where the Registration Authority exercises its power to take action on its own-initiative it must give a statutory notice under sections 19 and 20. Therefore the Registration Authority's approach to publicising own-initiative action follows the policy set out in paragraphs 7.10 to 7.16 (see '*Publication of decision notices and supervisory notices*' section, above).
- 7.22 Where the Registration Authority exercises its power to take action on its own-initiative, the licensed person to which that action relates has the right to refer the matter to the ADGM Court. Where a referral is made to the Court, the Registration Authority follows its policy in relation to publication of matters subject to proceedings, as set out in paragraphs 7.17 and 7.18 (see '*Publication about proceedings*' section, above).

Disclaimer

This Manual provides information on the Registration Authority's policy and processes on decision making and enforcement. This is only a guide and should be read together with the relevant legislation, in particular, ADGM Commercial Licensing Regulations 2015 and any other relevant regulations and enabling rules (which may change over time without notification). Further advice from a specialist professional may be required.

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Annex 1 – Warning Notices and Decision Notices

Section of the CLR	Description
18(1)(a)	When the Registrar is proposing to grant a licence but to exercise its power under section 10(5)(a) or (b)
18(1)(b)	When the Registrar is proposing to grant a licence but to exercise its power under section 14(1) in connection with the application for a licence
18(1)(c)	When the Registrar is proposing to vary a licence on the application of a licensed person but to exercise its power under section 10(5)(a) or (b)
18(1)(d)	When the Registrar is proposing to vary a licence but to exercise its power under section 14(1) in connection with the application for variation
18(3)(a)	When the Registrar is deciding to grant a licence but to exercise its power under section 10(5)(a) or (b)
18(3)(b)	When the Registrar is deciding to grant a licence but to exercise its power under section 14(1) in connection with the grant of the licence
18(3)(c)	When the Registrar is deciding to vary a licence on the application of a licensed person but to exercise its power under section 10(5)(a) or (b)
18(3)(d)	When the Registrar is deciding to vary a licence on the application of a licensed person but to exercise its power under section 14(1) in connection with the variation
18(3)(e)	When the Registrar is deciding to refuse an application made under this Part
20(1)	When the Registrar is proposing to cancel a licensed person's licence otherwise than at the person's request
20(2)	When the Registrar is deciding to cancel a licensed person's licence otherwise than at the person's request
43(1)(a)	When the Registrar is proposing to impose a fine on a person (under section 41)
43(1)(b)	When the Registrar is proposing to suspend the licence of a licensed person or impose a restriction in relation to the carrying on of a controlled activity by a licensed person (under section 42)
44(1)(a)	When the Registrar is deciding to impose a fine on a person under section 41 (whether or not of the amount proposed)
44(1)(b)	When the Registrar is deciding to suspend a licence or impose a restriction under section 42 (whether or not in the manner proposed)

Annex 2 – Supervisory Notices

Section of the CLR	Description
19(4)	When the Registrar is proposing to vary a licence or to impose or vary a requirement, or varies a licence or imposes or varies a requirement, with immediate effect
19(7)(a)	Having considered any representations made by a licensed person, when the Registrar is deciding to vary the licence, or impose or vary the requirement, in the way proposed
19(7)(b)	Having considered any representations made by a licensed person, when the Registrar is deciding if the licence has been varied or the requirement imposed or varied, not to rescind the variation of the licence or the imposition or variation of the requirement
19(8)(b)	Having considered any representations made by a licensed person, when the Registrar is deciding to vary the licence or requirement in a different way, or impose a different requirement

Annex 3 – Registration Authority Enforcement Process Flow Diagram

