



# **ENFORCEMENT MODULE**



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<b>MODULE</b>	<b>EN:        Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-A:     Introduction</b>

## **EN-A.1      Purpose**

EN-A.1.1      This Module sets out the BMA’s approach to enforcement, and the measures used by the BMA to address failures by authorised persons to comply with its regulatory requirements (whether they be insurance licensees, approved persons or registered persons). The purpose of such measures is to encourage a high standard of compliance by all those authorised by the BMA, thus reducing risk to policyholders and the financial system.

<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-A: Introduction</b>

## EN-A.2 Module History

EN-A.2.1 This Module was first issued in April 2005, together with the rest of Volume 3 (Insurance). It is numbered as version 01. All subsequent changes to this Module are annotated with a sequential version number: Chapter UG-3 provides further details on Rulebook maintenance and version control.

EN-A.2.2 A list of recent changes made to this Module is detailed in the table below:

Module Ref.	Change Date	Description of Changes

EN-A.2.3 This Module does not replace any regulations or circulars in force prior to April 2005.

EN-A.2.4 Guidance on the implementation and transition to Volume 3 (Insurance) is given in Module ES (Executive Summary).

<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-B: Scope of Application</b>

## **EN-B.1 Scope**

- EN-B.1.1 The contents of this Module mostly consist of Guidance material, explaining the different measures that BMA can employ to ensure compliance with Volume 3 (Insurance). Certain Rules, applicable to insurance licensees, are however contained in Paragraphs EN-1.2.1, EN-1.3.4, EN-1.3.5 and EN-5.1.4.
- EN-B.1.2 With the exception of Chapter EN-9, Chapters EN-1 to EN-10 of this Module are generally relevant to insurance licensees. In the case of overseas insurance licensees, the BMA's enforcement powers apply only to the branch operating in the Kingdom of Bahrain.
- EN-B.1.3 In addition, Chapter EN-8 of this Module is relevant to approved persons, whilst Chapter EN-9 is relevant to registered persons.



MODULE	EN: Enforcement Measures
CHAPTER	EN-B: Scope of Application

## EN-B.2 BMA's Approach

- EN-B.2.1 The BMA favours an open, pragmatic and collaborative relationship with authorised persons, within the boundaries set by the law and BMA regulations. Whilst the BMA wishes to avoid a legalistic and confrontational style of supervision, it believes that effective supervision requires effective and timely enforcement of its requirements. Should authorised persons fail to cooperate, then the BMA will use the means described in this Module to achieve compliance.
- EN-B.2.2 In the BMA's view, it is generally neither practical nor effective to prescribe in detail the exact supervisory response for each and every potential contravention. There are a large number of potential contraventions. Moreover, individual circumstances are unlikely to be identical in all cases, and may warrant different responses.
- EN-B.2.3 In deciding any given supervisory response, the BMA will nonetheless consistently assess the individual circumstance of each contravention against the principles set out in this Module. The BMA's overall approach is to take into account:
- (a) the seriousness of the contravention concerned (including the risks posed to customers and other market participants);
  - (b) the compliance track record of the authorised person concerned (including the extent to which a contravention reflects systemic weaknesses or reckless behaviour); and
  - (c) which measures are most likely to achieve the desired result of remedying the contravention.
- EN-B.2.4 Such an approach reduces the risk of inappropriate enforcement actions, by allowing supervisory measures to be tailored to individual circumstances. By taking into account an authorised person's compliance record and attitude, it also creates positive incentives and encourages an open and collaborative approach. By assessing individual cases against the same broad principles, the BMA also aims to achieve overall consistency in its supervisory actions.
- EN-B.2.5 Underlying the BMA's approach outlined in Paragraph EN-B.2.3 is the fundamental principle of proportionality. The enforcement measures contained in this Module are of varying severity, and will be used accordingly in keeping with the BMA's assessment of the contravention. Thus, the BMA will reserve its most serious enforcement measures – such as cancellation of license or withdrawal of “fit and proper” status – for the most serious contraventions.
- EN-B.2.6 In keeping with the proportionality principle, and to the extent consistent with the BMA's enforcement approach described above, the BMA will usually opt for the least severe of appropriate enforcement measures. In most cases, the BMA expects to use a formal warning before resorting to more severe measures. The need for further measures will then usually be dependent on the response of the authorised person concerned.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-B: Scope of Application</b>

## **EN-B.2 BMA's Approach (continued)**

- EN-B.2.7 Where a significant element of judgment is required to assess compliance with a requirement, the BMA will usually discuss the matter with the person concerned, before using one of this Module's enforcement mechanisms. This is likely to be the case, for example, with respect to requirements for adequate systems and controls. Conversely, where there are clear-cut contraventions of BMA requirements, then the BMA will usually resort immediately to one or more of these enforcement mechanisms. This is more likely to occur in cases where quantitative requirements - such as those relating to capital adequacy - are concerned. In most such cases, though, the BMA also expects to continue an active dialogue with the person concerned, aimed at remedying the contravention.
- EN-B.2.8 Except in the limited circumstances outlined elsewhere in this Module, the BMA will usually only apply an enforcement measure after the person concerned has been given a suitable opportunity to make representations.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-B:</b>	<b>Scope of Application</b>

### EN-B.3 Prohibition on Insurance

**EN-B.3.1** To help the BMA achieve the purpose of this Module, insurance licensees may not enter or make a claim under a contract of insurance that is intended to, or has the effect of, indemnifying them from the financial penalties provided for in this Module.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-B: Scope of Application</b>

## **EN-B.4 Publicity**

EN-B.4.1 The BMA will not as a matter of general policy publicise individual cases when it uses the measures described in Chapters EN-2 to EN-5, and EN-8. However, in the case of overseas insurance licensees, the BMA will normally inform the licensee's home regulator of any such enforcement measures taken.

EN-B.4.2 In exceptional circumstances, the BMA may decide to publicise individual cases when the measures set out in Chapters EN-2 to EN-5 and EN-8, are used, where there is a strong case that doing so would help achieve the BMA's supervisory objectives. In such instances, the BMA will usually allow the licensee or individual concerned the opportunity to make representations to the BMA before a public statement is issued.

EN-B.4.3 Without prejudice to the above policy, the BMA may from time to time publish aggregate information on its use of enforcement measures, without identifying the licensees or individuals concerned.

**EN-B.4.4** If a financial penalty is imposed on an insurance licensee under the provisions of Chapter EN-5, and it is subject to the requirements of Module PD (Public Disclosures), then it must disclose in the manner prescribed by Module PD the amount of any financial penalties imposed by BMA, together with a factual description of the reason(s) given by the BMA for the penalty. (See Chapter PD-2.)

**EN-B.4.5** Insurance licensees subject to a BMA enforcement measure (with the exception of formal requests for information) must inform their external auditors of the fact.

EN-B.4.6 By their nature, the penalties in Chapters EN-6, EN-7 and EN-9 inclusive are public acts, once applied. The BMA will in these instances generally issue a public statement explaining the circumstances of the case.



<b>MODULE</b>	<b>EN:</b>	<b>Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-1:</b>	<b>Formal Requests for Information</b>

## **EN-1.1 Procedure for Formal Information Requests**

- EN-1.1.1 As part of its on-going supervision, the BMA may make specific ad-hoc requests for information, beyond the regular reporting or notifications specified in Module BR (BMA Reporting). Recipients of such requests are bound to respond to such requests under the terms of their license (see Paragraph BR-4.2.1).
- EN-1.1.2 To clearly identify such ad-hoc requests, they will always be made in writing, under the signature of a Director or more senior official of the BMA. They will include the statement, “This is a formal request for information as defined in Chapter 1 of Module EN (Enforcement)”; and will state the deadline by which the information is to be communicated to the BMA.
- EN-1.1.3 Failure to respond to such formal requests within the deadline set will be viewed as a significant breach of supervisory requirements and may result in a formal warning or other enforcement measure, as decided by the BMA depending on the circumstances of the case.
- EN-1.1.4 The deadline set in the request will vary depending on individual circumstances. A recipient may submit a case for an extension to the deadline; it should do so as soon as possible if it believes that an extension will be required, and in any event prior to the passing of the original deadline. Unless otherwise directed by BMA, the original deadline remains valid pending consideration by BMA of a request for an extension. The BMA will respond within five business days of receiving such a request.
- EN-1.1.5 The above procedures do not prevent individual BMA supervisors from making oral requests for information as part of their day-to-day interaction with licensees. The BMA expects licensees to maintain their cooperative response to such requests; however, in the interests of clarity, the BMA will not view failures to respond to oral requests as a breach of supervisory requirements.



MODULE	EN: Enforcement Measures
CHAPTER	EN-2: Investigations

## EN-2.1 BMA Policy

- EN-2.1.1 The BMA uses its own inspectors to undertake on-site examinations of licensees as an integral part of its regular supervisory efforts. In addition, the BMA may commission special investigations of insurance licensees in order to help it assess their compliance with Volume 3 (Insurance). Such investigations may be carried out either by the BMA's own officials, by duly qualified experts appointed for the purpose by the BMA ("Appointed Experts"), or a combination of the two.
- EN-2.1.2 Failure by insurance licensees to cooperate fully with the BMA's inspectors, or its Appointed Experts, will be treated as demonstrating a material lack of cooperation with the BMA which will result in other enforcement measures being considered, as described elsewhere in this Module.
- EN-2.1.3 The BMA may appoint an individual or a firm as an Appointed Expert. Examples of Appointed Experts are reporting accountants, expert witnesses and independent actuaries. The appointment of Appointed Experts is not necessarily indicative of a contravention of BMA requirements or suspicion of such a contravention. For instance, an Appointed Expert may typically be commissioned to provide an expert opinion on a technical matter.
- EN-2.1.4 Appointed Experts report in a form and within a scope defined by the BMA, and are solely responsible to the BMA for the work they undertake in relation to the investigation concerned. The report produced by the Appointed Experts is the property of the BMA. The cost of the Appointed Experts' work must be borne by the licensee concerned.
- EN-2.1.5 In selecting an Appointed Expert, the BMA will take into account the level of fees proposed and aim to limit these to the lowest level consistent with an adequate review of the matters at hand, given the qualifications, track record and independence of the persons concerned. Because the cost of such investigations are met by the licensee, the BMA makes only selective use of Appointed Experts, when essential to supplement BMA's other supervisory tools and resources.
- EN-2.1.6 The BMA will not, as a matter of general policy, publicise the appointment of Appointed Experts, although it reserves the right to do so where this would help achieve its supervisory objectives. Both the Appointed Experts and the BMA are bound to confidentiality provisions restricting the disclosure of confidential information with regards to any such information obtained in the course of the investigation.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-2: Investigations</b>

## EN-2.2 Procedure for using Appointed Experts

- EN-2.2.1 All proposals for Appointed Experts require approval by an executive director or more senior official of the BMA. The appointment will be made in writing, and made directly with the experts concerned. A separate letter is sent to the licensee, notifying them of the appointment. At the BMA's discretion, a trilateral meeting may be held at any point, involving the BMA and representatives of the licensee and the Appointed Experts, to discuss any aspect of the investigation.
- EN-2.2.2 Following the completion of the investigation, the BMA will normally provide feedback on the findings of the investigation to the insurance licensee concerned.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-3: Formal Warnings</b>

## **EN-3.1 BMA Policy**

- EN-3.1.1 The BMA may issue formal warnings to licensees or individuals where it reasonably believes that these are required to achieve its statutory objectives.
- EN-3.1.2 Formal warnings are clearly identified as such and represent the BMA's first level of formal enforcement measure. They are intended to clearly set out the BMA's concerns to a licensee or individual regarding an issue, and should be viewed by a recipient with the appropriate degree of seriousness.
- EN-3.1.3 As indicated in Paragraph EN-B.2.7, the BMA will usually discuss concerns it may have prior to resorting to a formal enforcement measure, especially where a significant element of judgment is required in assessing compliance with a regulatory requirement.
- EN-3.1.4 Where such discussions fail to resolve matters to the BMA's satisfaction, then it may issue a formal warning. Failure to respond adequately to a formal warning will lead the BMA to consider more severe enforcement measures. However, more severe measures do not require the prior issuance of a formal warning – depending on its assessment of the circumstances, the BMA may decide to have immediate recourse to other measures. Similarly, there may be circumstances where the BMA issues a formal warning without prior discussion with the licensee or person concerned. This would usually be the case where a clear-cut compliance failing has occurred.
- EN-3.1.5 When considering whether to issue a formal warning, the criteria taken into consideration by the BMA include the following:
- (a) the seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to the licensee's policyholders and other stakeholders;
  - (b) in the case of an actual contravention, its duration and/or frequency of the contravention; the extent to which it reflects more widespread weaknesses in controls and/or management; and the extent to which it was attributable to deliberate or reckless behaviour; and
  - (c) the extent to which the BMA's supervisory objectives would be better served by issuance of a formal warning as opposed to another type of supervisory action.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-3: Formal Warnings</b>

## **EN-3.2 Procedure for Issuing Formal Warnings**

- EN-3.2.1 Proposals to issue formal warnings are carefully considered against the criteria listed in Paragraph EN-3.1.5 above. They require approval of a Director or more senior BMA official, and include the statement “This is a formal warning as defined in Chapter 3 of Module EN (Enforcement Module)”.
- RM-3.2.2 Depending on the issue in question, recipients of a formal warning may be required to respond to the contents of the notice. Where no such response is required, recipients may nonetheless respond should they wish to do so.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-4: Directions</b>

## **EN-4.1 BMA Policy**

- EN-4.1.1 The BMA may issue Directions to licensees or individuals where it reasonably believes that these are required to achieve its statutory objectives.
- EN-4.1.2 The types of Directions that the BMA may issue in practice vary and will depend on the individual circumstances of a case. Generally, however, Directions require a licensee or individual either to undertake or to stop certain specific actions in order to address or mitigate certain perceived risks. They may also include restrictions on a licensee's activities until those risks have been addressed – for instance, a ban on the writing of new business.
- EN-4.1.3 The BMA is conscious of the powerful nature of a Direction and, in the case of a licensee, the fact that it subordinates the role of its Board and management on a specific issue. The BMA will carefully consider the need for a Direction, and whether alternative measures may not achieve the same end. Where feasible, the BMA will try to achieve the desired outcome through persuasion, rather than recourse to a Direction.
- EN-4.1.4 In considering whether to issue a Direction, the criteria taken into consideration by the BMA include the following:
- (a) the seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to the licensee's customers, market participants and other stakeholders ;
  - (b) in the case of an actual contravention, its duration and/or frequency of the contravention; the extent to which it reflects more widespread weaknesses in controls and/or management; and the extent to which it was attributable to deliberate or reckless behaviour; and
  - (c) the extent to which the BMA's supervisory objectives would be better served by issuance of a Direction as opposed to another type of supervisory action.





<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-4: Directions</b>

## **EN-4.2 Procedure for Issuing Directions**

- EN-4.2.1 Proposals to issue Directions are carefully considered against the criteria listed in Paragraph EN-4.1.4 above. They require approval of an Executive Director or more senior official of the BMA, and include the statement “This is a formal Direction as defined in Chapter 4 of Module EN (Enforcement)”.
- EN-4.2.2 The subject of the Direction will normally be given 10 business days from the Direction’s date of issuance in which to make representations to the BMA concerning the actions required. This must be done in writing, and addressed to the issuer of the original Direction. Should a representation be made, the BMA will make a final determination, again normally within 10 business days of the date of the representation. Where urgent action is required, the BMA may reduce the period allowed for representations.
- EN-4.2.3 In extreme circumstances, where the BMA believes that immediate action is required to prevent real damage to Bahrain’s financial markets, its users or to policyholders of the licensee concerned, it may not be practical to allow a right of representation. In such cases, the BMA must state a justification for the withdrawal of the right to make representations.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-5: Financial Penalties</b>

## **EN-5.1 BMA Policy**

- EN-5.1.1 The BMA may on a very selective basis impose financial penalties on licensees. Their use is generally limited to situations where major breaches of regulatory requirements have taken place and a licensee has failed to respond in an acceptable manner to the concerns expressed by the BMA. Financial penalties are thus normally preceded by the issuance of a formal warning and/or Direction.
- EN-5.1.2 The level of financial penalty applied is determined by the nature of the contravention and the amount of additional supervisory attention and resources taken up by a licensee's behaviour. The maximum penalty, however, is capped at BD 20,000. The BMA intends that the impact of a penalty should derive more from its signalling effect than from the actual amount of money involved.
- EN-5.1.3 As indicated in Paragraph EN-B.4.4 above and as required by Module PD (Public Disclosure), the BMA requires disclosure by those licensees subject to the requirements of Module PD, of any financial penalties served on them, together with a factual description of the reasons given by the BMA for applying the penalty. In addition, in the case of all insurance licensees, the BMA may publicise the issuance of a financial penalty notice, by way of its website or through other means, where there is a strong case that doing so would help achieve BMA's supervisory objectives. In such instances, the BMA will usually allow the licensee concerned the opportunity to make representations to the BMA before a public statement is issued.
- EN-5.1.4 In assessing whether to serve a financial penalty notice, the BMA takes into account the following criteria:
- (a) the seriousness of the contravention, in relation to the requirement(s) concerned;
  - (b) the duration and/or frequency of the contravention, and the extent to which it reflects more widespread weaknesses in controls and/or management;
  - (c) the extent to which the contravention was deliberate or reckless;
  - (d) the licensee's past compliance record and conduct following the contravention; and
  - (e) the scope of any other action taken by the BMA or other supervisors against the licensee, in response to the compliance failures in question.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-5: Financial Penalties</b>

## **EN-5.1 BMA Policy (continued)**

- EN-5.1.5 Examples of the types of compliance failings that may lead to the serving of a financial penalty notice include (but are not limited to):
- (a) failures to address persistent delays and/or significant inaccuracies in regulatory reporting to the BMA;
  - (b) repeated failures to respond to formal requests for information from the BMA, within the deadlines set;
  - (c) the submission of information to the BMA known to be false or misleading; and
  - (d) major failures in maintaining adequate systems and controls in accordance with BMA requirements, subjecting policyholders and other customers to significant risk of financial loss.
- EN-5.1.6 The imposition of a financial penalty does not preclude the BMA from also using other enforcement measures to remedy the same violation (for instance, a Direction).



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-5: Financial Penalties</b>

## **EN-5.2 Module FC (Financial Crime)**

- EN-5.2.1 In addition to the general circumstances set out in Section EN-5.1, a financial penalty of up to BD 20,000 may be applied by the BMA, in cases where an insurance licensee fails to comply with any of the requirements of Module FC (Financial Crime).
- EN-5.2.2 As with the imposition of financial penalties in response to breaches of other supervisory requirements, the BMA will apply financial penalties with respect to Module FC, based on the criteria set out in Paragraph EN-5.1.4. Financial penalties applied under this Section are also subject to the same disclosure requirements as described in Paragraph EN-B.3.4 above.
- EN-5.2.3 A failure to comply with the Module FC that warrants a financial penalty would not trigger also a financial penalty under Section EN-5.1.
- EN-5.2.4 Any financial penalties applied by the BMA as regards the implementation of its Module FC, are without prejudice to the criminal sanctions available to the Bahraini courts under the Decree – Law No. 4 of 2001, with respect to the prevention and prohibition of the laundering of money. As with other financial penalties, the imposition of a financial penalty with regards to breaches of the Module FC does not prevent the BMA from also using other enforcement measures to remedy the same violation (for instance, a Direction).



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-5: Financial Penalties</b>

### **EN-5.3 Procedures for Issuing Financial Penalties**

- EN-5.3.1 A written financial penalty notice will be addressed to the Chief Executive Officer of the licensee concerned. This written notification will describe the contravention concerned, the BMA's evidence supporting a financial penalty, and the factors justifying the level of penalty proposed. Only an Executive Director or more senior member of the BMA management may sign the notification.
- EN-5.3.2 The licensee has 15 business days from the notification's date of issuance to submit any representations it wishes to make to the BMA, in writing and addressed to the issuer of the original notification. If the licensee decides not to submit representations, it has 30 calendar days from the notification's date of issuance in which to pay the penalty.
- EN-5.3.3 Should the licensee make representations challenging the proposed penalty, the BMA has 15 business days from the issuance of those representations in which to re-examine the facts of the case and its conclusions. If the BMA confirms application of a penalty, payment is required within 30 calendar days of the second notice being issued. However, the licensee has the right to lodge a further written appeal within those 30 days, addressed to H.E. The Governor. In such cases, H.E. The Governor makes a final determination within 15 business days of the date of the written appeal. If H.E. The Governor confirms application of a penalty, then payment is required within 30 calendar days of H.E. the Governor's written confirmation.
- EN-5.3.4 Failure to pay a penalty within the required deadlines will be considered a breach of BMA supervisory requirements, and will also result in other measures being considered, as described elsewhere in this Module.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-5: Financial Penalties</b>

## **EN-5.4 Addressing a Compliance Failure**

- EN-5.4.1 Payment of a financial penalty does not by itself absolve a licensee from addressing the compliance failure concerned. The BMA will expect the licensee to address the contravention within a reasonable timescale, to be agreed on a case-by-case basis. Failure to do so will result in other measures being considered.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-6: Administration</b>

## **EN-6.1 BMA Policy**

- EN-6.1.1 Subject to the approval of H.E. The Governor, in certain circumstances, the BMA may assume the administration of a licensee. These circumstances are where:
- (a) the licensee has become insolvent;
  - (b) the licensee's liquidity or solvency are in jeopardy;
  - (c) the licensee's continued activity is detrimental to the rights of policyholders; or
  - (d) the licensee commits serious contravention of the provisions of the Insurance Legislation or Volume 3 (Insurance).
- EN-6.1.2 Where the BMA assumes the administration of a licensee, the licensee concerned may appeal to H.E. The Governor and, subsequently, the courts, in order to challenge its administration by the BMA.
- EN-6.1.3 The BMA views the administration of a licensee as a very powerful sanction, and will generally only pursue this option if less severe measures are unlikely to achieve its supervisory objectives.
- EN-6.1.4 The BMA is not under any obligation to administer a licensee. Faced with the circumstances described, the BMA may pursue other courses of action, if it considers that these are more likely to achieve the supervisory outcomes sought. Because an administration is likely to send a negative signal to the markets about the status of a licensee, other supervisory actions may in fact be preferable in terms of protecting the interests of those with a claim on the licensee.
- EN-6.1.5 The criteria used by the BMA in deciding whether to seek an administration of a licensee include the following:
- (a) the extent to which the interests of the policyholders and others who have a claim on the licensee would be best served by the administration of the license, for instance because of the potential impact on the reputation of the licensee arising from an administration;
  - (b) the extent to which other supervisory actions could reasonably be expected to achieve the BMA's desired supervisory objectives (such as restrictions on the licensee's operations, including limitations on writing new business and asset disposals);
  - (c) the extent to which the liquidity or solvency of the licensee is in jeopardy; and
  - (d) the extent to which the licensee has contravened the conditions of the Insurance Legislation, including the extent to which the contraventions reflect more widespread or systemic weaknesses in controls and/or management.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-6: Administration</b>

## **EN-6.2 Procedure for Implementing an Administration**

- EN-6.2.1 All proposals for assuming the administration of a licensee are subject to a thorough review by the BMA of all relevant facts, assessed against the criteria outlined in Paragraph EN-6.1.5 above. After being assessed at the Executive Director level, proposals are submitted to H.E. the Governor for his approval.
- EN-6.2.2 Once approved by H.E. The Governor, a formal notice of administration is issued to the licensee concerned and copies posted in every place of business of the licensee. As soon as practicable thereafter, the notice is also published in the Official Gazette and in local newspapers. The term “in administration” should be clearly marked in all the insurance licensee’s correspondence and on its website, next to the insurance licensee’s name.
- EN-6.2.3 Normally, advance notice of the implementation of an administration will be given to the licensee to allow for an appeal to be made. However, there may be circumstances where this may not be appropriate, in which case an appeal can still be made by the license after the administration takes effect. Following the administration taking effect, the licensee has 10 business days in which to appeal to H.E. The Governor. If H.E. The Governor refuses the appeal, the licensee has a further 10 business days from the date of the refusal in which to lodge an appeal at the courts. So as to reduce the potential damage of an administration order being applied and then withdrawn on appeal, where feasible, the BMA will give advance notice to a licensee’s Board of its intention to seek an administration, and allow the Board the right of appeal prior to an administration notice being formally served.





<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-7: Cancellation of License</b>

## **EN-7.1 BMA Policy**

- EN-7.1.1 Under certain circumstances, the BMA has the right to cancel an insurance licensee's license or curtail the scope of its permitted activities. These include cases where a licensee has:
- (a) contravened the conditions of its license;
  - (b) fails to start business within six months from the date of the license;
  - (c) ceases to carry out the licensed activity in the Kingdom; or
  - (d) grossly violated the provisions of the Insurance Legislation and Rulebook.
- EN-7.1.2 An example of the curtailment of the scope of the permitted activities of an insurance licensee is to remove the permission to effect contracts of insurance, which would have the effect of restricting the firm's activities to "running off" exiting business.
- EN-7.1.3 The BMA will only propose the cancellation of the firm's license once it is satisfied that there are no longer any regulated activities for which it is necessary to keep the authorisation in force. In situations where it is necessary to keep the authorisation in force, for example where there are existing policyholder liabilities that have not been transferred under a portfolio transfer to another insurance licensee, the BMA will generally take alternative action, such as to place the firm in administration (in accordance with the procedures in Section EN-8.2) and only consider the cancellation of the license after other options such as the transfer of all or part of the portfolio to other insurers have been considered and, where appropriate, implemented.
- EN-7.1.4 Where the BMA proposes to cancel a firm's license, it must provide the licensee concerned reasonable time to object to the proposed cancellation.
- EN-7.1.5 The criteria used by the BMA in assessing whether to seek cancellation of a license include:
- (a) the extent to which the interests of the policyholders and others who have a claim on the licensee would be best served by the cancellation of the license;
  - (b) the extent to which other supervisory penalties could reasonably be expected to achieve the BMA's desired supervisory objectives;
  - (c) the extent to which the transfer of all or part of the existing portfolio has, or could be, transferred to other insurance licensees as a going concern;
  - (d) the extent to which it is not possible to continue the operations under administration or new management, for instance because of insolvency or the presence of systemic fraud; and
  - (e) the extent to which the licensee has been involved in financial crime or other criminal conduct.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-7: Cancellation of License</b>

## **EN-7.2 Procedure for Cancellation of License**

- EN-7.2.1 All proposals for cancelling a license are subject to a thorough review by the BMA of all relevant facts, assessed against the criteria outlined in Paragraph EN-7.1.4 above. After being assessed at the Executive Director level, proposals are submitted to H.E. The Governor for approval.
- EN-7.2.2 Once approved within the BMA, a formal notice of cancellation is issued to the licensee concerned. The notice of cancellation will describe the factual circumstances of the contraventions concerned, and the BMA's rationale for the proposed cancellation, as measured against the criteria outlined in Paragraph EN-9.1.4 above.
- EN-7.2.3 The licensee has 30 calendar days from the date of the notice in which to lodge an appeal. The appeal should be addressed to the Board of the BMA, and copied to H.E. the Governor of the BMA.
- EN-7.2.4 If an appeal is lodged, the Board of the BMA will make a final ruling within 60 calendar days of its date of issuance.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8: Cancellation of “Fit and Proper” Approval</b>

## **EN-8.1 BMA Policy**

EN-8.1.1 Chapter AU-3 of Module AU (Authorisation), specifies that approved persons must be assessed by the BMA as “fit and proper” to hold such a position. The Chapter specifies various factors that the BMA takes into account when reaching such a decision.

EN-8.1.2 The BMA is conscious of the impact that assessing someone as not “fit and proper” may have on an individual approved person. Such assessments are carefully reviewed in the light of all relevant facts. The criteria used in reaching a decision include the following:

- (a) the extent to which the factors set out Chapter AU-3 have not been met;
- (b) the extent to which the person has deliberately or recklessly breached requirements of the insurance legislation or Volume 3 (Insurance);
- (c) the person’s past compliance record and conduct following any such breaches;
- (d) the length of time since factors indicating a lack of fitness or propriety occurred; and
- (e) the risk the person poses to licensees and their policyholders.

EN-8.1.3 Amongst other matters, the BMA will normally consider as grounds for the revocation of approved person status the following events affecting the approved person:

- (a) the conviction by a court, whether in Bahrain or elsewhere, for a crime affecting honesty;
- (b) a declaration of bankruptcy by a court of law;
- (c) a court ruling that the approved person’s legal capacity is totally or partially impaired; or
- (d) the sanction by a professional body of a fine, suspension, expulsion or censure.

### **EN-8.1.4**

**Insurance licensees must inform the BMA immediately it becomes aware of any of the events listed in Paragraph EN-8.1.3, affecting one of its approved persons.**

EN-8.1.5 If the BMA has grounds for considering that an individual is no longer fit and proper to continue to hold their existing controlled function(s), it will revoke the approved person status granted to that individual. The individual will then be required to resign from each of the controlled functions to which this revocation applies. This revocation does not automatically preclude them from applying to hold other controlled functions in the future, but will be taken into account in considering new requests from insurance licensees that pertain to that individual.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8: Cancellation of “Fit and Proper” Approval</b>

## **EN-8.1 BMA Policy (continued)**

- EN-8.1.6 Depending on the seriousness of the situation, the BMA may impose further measures, which may include disqualification from:
- (a) holding any controlled function;
  - (b) performing any function in relation to any regulated activity carried out by a licensed firm; or
  - (c) being a controller of any licensed firm.
- EN-8.1.7 In assessing evidence, the BMA applies a lower threshold than is applied in a criminal court of law, reflecting the administrative nature of the sanction. The BMA may also take into account the cumulative effect of factors which, when considered individually, may not in themselves be sufficient to justify an adverse “fit and proper” finding.
- EN-8.1.8 The BMA may also take into account the particular function being undertaken in the licensee by the individual concerned, and the size and nature of the licensee itself, particularly when assessing the suitability of a person’s experience or qualifications. Thus, the fact that a person was deemed “fit and proper” for a particular position in a particular firm does not necessarily mean he would be suitable in a different position or in a different firm.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-8: Cancellation of “Fit and Proper” Approval</b>

## **EN-8.2 Procedure for Cancellation of “Fit and Proper” Approval**

- EN-8.2.1 An adverse finding will result in the BMA taking one or more of the actions outlined in Section EN-8.1. All adverse findings have to be approved by an Executive Director of the BMA. Once approved, a notice of intent is issued to the Board/senior management of the licensee and copied to the person concerned, setting out the circumstances and the basis for the BMA’s proposed adverse finding. The licensee has 30 calendar days from the date of the notice in which to make written representations, addressed to the Executive Director concerned, failing which a final notice is issued by the BMA. During this 30-day period, the person is suspended from the controlled function(s) specified in the notice (but not from performing other functions for the licensee, unless specified in the notice), and the licensee must immediately contact the BMA to discuss how the controlled function will be filled in the interim.
- EN-8.2.2 If representations are made, then the BMA has 30 calendar days from the date of the representation in which to consider any mitigating evidence submitted and make a final determination. The person remains suspended from the controlled function during this period.
- EN-8.2.3 All proposals for issuing an adverse “fit and proper” finding are subject to a thorough review by the BMA of all relevant facts, assessed against the criteria outlined in Paragraph EN-8.1.2 above. In some instances, it may be appropriate for the BMA to request the licensee or person concerned to provide further information, in order to help reach a decision.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-9: Cancellation of Registration</b>

## **EN-9.1 BMA Policy**

- EN-9.1.1 Paragraph AU-2.3.1 of Module AU (Authorisation) requires persons wishing to carry on the business of an actuary or loss adjuster in the Kingdom of Bahrain to be registered as such by BMA. A condition of registration is that actuaries and loss adjusters have relevant expertise and hold professional qualifications from a relevant, recognised professional body. In addition, actuaries and loss adjusters must satisfy BMA that they are generally suitable to operate as such. The suitability of actuaries and loss adjusters is determined in accordance with Sections AU-4.1 and AU-4.2. If the BMA is satisfied that they meet the necessary requirements, they will be granted registration.
- EN-9.1.2 Should the BMA not be satisfied of the suitability of an actuary or loss adjuster, it has the right to cancel their registration.
- EN-9.1.3 Where the BMA proposes to cancel the registration of an actuary or loss adjuster, it must provide the actuary or loss adjuster concerned reasonable time to object to the proposed cancellation.
- EN-9.1.4 Amongst other matters, the BMA will normally consider as grounds for the revocation of registration the following events affecting an actuary or loss adjuster:
- (a) the conviction by a court, whether in Bahrain or elsewhere, for a crime affecting honesty;
  - (b) a bankruptcy declaration by a court of law;
  - (c) a court ruling that the actuary's or loss adjuster's legal capacity is totally or partially impaired; or
  - (d) the sanction by a professional body of a fine, suspension, expulsion or censure.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-9: Cancellation of Registration</b>

## **EN-9.2 Procedure for Cancellation of Registration**

- EN-9.2.1 All proposals to cancel a registration are subject to a thorough review of all relevant facts and must be approved by an Executive Director of the BMA.
- EN-9.2.2 Once approved within the BMA, a notice of intent is issued to the registrant concerned, setting out the basis for the decision. The notice of intent will describe the factual circumstances and the BMA's rationale for the proposed cancellation.
- EN-9.2.3 The registrant has 30 calendar days from the date the notice in which to appeal the decision. The appeal should be addressed to the Executive Director that has approved the proposal for cancellation.
- EN-9.2.4 If representations are made, then the BMA has 30 calendar days from the date of the representation in which to consider any mitigating evidence submitted and make a final determination.



<b>MODULE</b>	<b>EN: Enforcement Measures</b>
<b>CHAPTER</b>	<b>EN-10: Punitive Measures</b>

## **EN-10.1 Overview**

- EN-10.1.1 The Penal Code, Amiri Decree No.15 of 1976 of the Kingdom of Bahrain, imposes punitive measures where fraudulent acts are committed. This section provides an overview of some fraudulent acts, related to insurance licensees that may be punishable under the Penal Code. What follows is not a complete list of possible punitive measures, nor is it a substitute for reading the Penal Code.
- EN-10.1.2 Licensees, their directors and employees should also be aware of the criminal sanctions provided for under other relevant Bahraini Laws, such as the Decree No. 4 of 2001, with respect to the prevention and prohibition of the laundering of money.
- EN-10.1.3 In all cases to do with criminal sanctions, the BMA can only refer the matter to the Office of the Public Prosecutor. The BMA has no authority to apply such sanctions without recourse to the courts.
- EN-10.1.4 Examples of fraudulent acts for which a director, manager, official, agent or representative of any insurance licensee may be subject to penalty under the Penal Code include:
- (a) making false or misleading statements with fraudulent intent; and
  - (b) omission, with fraudulent intent, to make any statement or any entry in the books or accounts of an insurance licensee.