



ENFORCEMENT MODULE

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MODULE	EN: Enforcement
CHAPTER	EN-A: Introduction

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 licensees to comply with its regulatory requirements. The purpose of such measures is to encourage a high standard of compliance by all those authorised by the BMA, thus reducing risk to their customers and the financial system.
- EN-A.1.2 This Module provides support for all other Modules in the Rulebook.
- EN-A.1.3 Investment firm licensees who are also members of the Bahrain Stock Exchange (“BSE”) are reminded that the BSE is also empowered to exercise its own enforcement powers by virtue of the Bahrain Stock Exchange Decree – Law No. 4 of 1987 (the “BSE Law”). Article 14 of the BSE Law lays down a number of penalties which the disciplinary board of the BSE may impose on persons who violate the BSE Law and/or the regulations made thereunder. In appropriate circumstances, the BMA may ask the BSE to consider the exercise of its powers under Article 14 in support of the enforcement objectives of the BMA.

MODULE	EN: Enforcement
CHAPTER	EN-A: Introduction

EN-A.2 Module History

Changes to the Module

EN-A.2.1 This Module was first issued in April 2006, as part of the first phase of Volume 4 (Investment Business) to be released. It is dated April 2006. All subsequent changes to this Module are annotated with the end-calendar quarter date in which the change was made: 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 provided below:

Module Ref.	Change Date	Description of Changes

Evolution of the Module

EN-A.2.3 This Module replaces BMA Circular No. ODG/249/2004 (the “Enforcement Circular”), issued on 22 July 2004.

EN-A.2.4 Guidance on the implementation and transition to Volume 4 (Investment Business) is given in Module ES (Executive Summary).

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

EN-B.1 Application

- 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 4 (Investment Business). Certain Rules, applicable to investment firm licensees, are however contained in Paragraphs EN-B.3.1, EN-B.4.5, EN-B.4.6 and EN-8.1.4.
- EN-B.1.2 With the exception of Chapter EN-9, Chapters EN-1 to EN-10 of this Module are applicable to investment firm licensees. In the case of overseas investment firm licensees, the BMA's enforcement powers apply only to the branch operating in the Kingdom of Bahrain.
- EN-B.1.3 Chapters EN-1, EN-3, EN-4, EN-8 and EN-10 only are applicable to approved persons. Chapters EN-1, EN-3, EN-4 and EN-9 only are also applicable to registered persons.

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

EN-B.2 The 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 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 regulatory 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 described 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 the 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 regulatory 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 an overall consistency in its regulatory 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 in paragraph EN-B.2.3, 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.



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

EN-B.2 The BMA's Approach to Enforcement (Continued)

- EN-B.2.7 Where a significant element of judgment is required to assess compliance with a requirement, then the BMA will usually discuss the matter with the authorised 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 move immediately to one or more of the enforcement mechanisms outlined in this Module. This is more likely to occur in cases where quantitative requirements - such as those relating to capital and/or large exposures – are concerned. In most such cases, though, the BMA also expects to continue an active dialogue with the authorised person concerned, aimed at remedying the contravention.
- EN-B.2.8 Except in the limited circumstances outlined below, the BMA will usually only apply an enforcement measure after the authorised person concerned has been given a suitable opportunity to make representations. In the case of measures described in Chapters EN-6 and EN-7, certain procedures are set out in the 1973 BMA Decree - Law No. (23) of 1973.

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

EN-B.3 Prohibition on Insurance

EN-B.3.1

To help the BMA achieve the purpose of this Module, investment business licensees may not enter into 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.



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

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 out in Chapters EN-1 to EN-5, and EN-8. However, in such cases the BMA may inform (where relevant) an authorised person's external auditors and – in the case of licensees with overseas operations – relevant overseas regulators.

EN-B.4.2 In exceptional circumstances, the BMA may decide to publicise individual cases when the measures set out in Chapters EN-1 to EN-5, and EN-8, are used; it may do so where there is a strong case that doing so would help achieve the BMA's supervisory objectives. In such instances, the BMA will allow the person concerned the opportunity to make representations to 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 measures set out in Chapters EN-1 to EN-5, and EN-8, without identifying the person concerned.

EN-B.4.4 By their nature, the penalties in Chapters EN-6, EN-7, EN-9 and EN-10 inclusive are public acts, once applied. The BMA will in these instances generally issue a public statement explaining the circumstances of the case.

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

MODULE	EN: Enforcement
CHAPTER	EN-1: Formal Requests for Information

EN-1.1 Procedure

- EN-1.1.1 As part of its on-going supervision, the BMA may specifically request information or temporary reporting from an authorised person. Recipients of such requests are bound to respond to such requests under the terms of their authorisation. Such requests are in effect a type of Direction.
- EN-1.1.2 To clearly identify such requests, they will always be made in writing, under signature of a Director or more senior official of the BMA; will include the statement “This is a formal request for information as defined in Chapter EN-1 of the BMA Rulebook”; 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 regulatory requirements and will incur 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, but will in all cases be reasonable. A recipient may submit a case for an extension to the deadline, providing the request is made before the original deadline has passed. The BMA will respond before the original deadline has passed; if it fails to do so, then the requested extension will apply. Whilst waiting for a reply, the recipient must assume that the original deadline will apply.
- EN-1.1.5 The above procedures do not prevent individual BMA supervisors making oral requests for information as part of their day-to-day interaction with authorised persons. The BMA expects authorised persons 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 regulatory requirements.

MODULE	EN: Enforcement
CHAPTER	EN-2: Investigations

EN-2.1 Legal Source

- EN-2.1.1 Article 82 of the BMA Decree – Law No. 23 of 1973 (“BMA Law”) empowers the BMA to order investigations of licensees, in order to help it assess a licensee’s compliance with the provisions of the BMA Law. Such investigations may be carried out either by its own officials or auditors appointed for such a purpose by the BMA. Article 83 requires licensees to make available to the BMA’s inspectors its books and other records, and to provide all relevant information within the time limits deemed reasonable by the inspectors.
- EN-2.1.2 Article 87 of the BMA Law provides for criminal sanctions where false or misleading statements are made to the BMA, or an investigation by the BMA is otherwise obstructed (see Section EN-10.3).



MODULE	EN: Enforcement
CHAPTER	EN-2: Investigations

EN-2.2 BMA Policy

- EN-2.2.1 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 licensees in order to help it assess their compliance with BMA requirements. 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-2.2.2 Failure by 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-2.2.3 The BMA may appoint an individual or a firm as an Appointed Expert. Examples of Appointed Experts are reporting accountants, lawyers and expert witnesses. 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-2.2.4 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 (but is usually shared by the BMA with the firm concerned). The cost of the Appointed Experts' work must be borne by the licensee concerned.
- EN-2.2.5 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-2.2.6 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.

MODULE	EN: Enforcement
CHAPTER	EN-3: Formal Warnings

EN-3.1 BMA Policy

- EN-3.1.1 The BMA may issue formal warnings to authorised persons 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 formal enforcement measure. They are intended to clearly set out the BMA's concerns to a person regarding an issue, and should be viewed by the recipient with the appropriate degree of seriousness.
- EN-3.1.3 As indicated in Section EN-B.2, the BMA will usually discuss concerns 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 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 therefore include the following:
- (a) the seriousness of the actual or potential contravention, in relation to the requirement(s) concerned and the risks posed to 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 Formal Notice as opposed to another type of regulatory action.

MODULE	EN: Enforcement
CHAPTER	EN-3: Formal Warnings

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 Section EN-3.1. They require approval of a Director or more senior BMA official, and include the statement “This is a Formal Warning as defined in Chapter EN-3 of Volume 4 of the BMA Rulebook”.
- EN-3.2.2 Depending on the issue in question, recipients of a Formal Warning may be required to respond to the contents of the Warning. (In other cases, recipients may also respond should they wish to.) Given its nature, there is no provision for recipients to challenge the issuance of a Warning.

MODULE	EN: Enforcement
CHAPTER	EN-4: Directions

EN-4.1 BMA Policy

- EN-4.1.1 The BMA may issue Directions to authorised persons under supervisory powers granted to it by the BMA Decree – Law No. 23 of 1973 (“BMA Law”). These powers are broad in nature, and effectively allow the BMA to issue whatever Directions it reasonably believes 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 an authorised person to undertake or to stop 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 acceptance of new customers.
- 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 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 regulatory action.



MODULE	EN: Enforcement
CHAPTER	EN-4: Directions

EN-4.2 Procedure for Issuing Directions

- EN-4.2.1 Proposals to issue Directions are carefully considered against the criteria listed in Section EN-4.1. 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 EN-4 of the BMA Rulebook”.
- 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 notification. 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 customers, 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.

MODULE	EN: Enforcement
CHAPTER	EN-5: Financial Penalties

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 Notice 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 Section EN-5.4, the BMA requires disclosure by licensees in their annual reports 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, the BMA may publicise the issuance of a financial penalty notice, 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 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's requirements, subjecting depositors and other customers to significant risk of financial loss.
- EN-5.1.5 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 regulators against the licensee, in response to the compliance failures in question.

MODULE	EN: Enforcement
CHAPTER	EN-5: Financial Penalties

EN-5.1 BMA Policy (Continued)

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).

MODULE	EN: Enforcement
CHAPTER	EN-5: Financial Penalties

EN-5.2 Money Laundering Regulation

- EN-5.2.1 In addition to the 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 a licensee fails to comply with any of the requirements in Module FC (Financial Crime).
- EN-5.2.2 As with the imposition of financial penalties in response to breaches of other regulatory requirements, the BMA will apply financial penalties with respect to the regulations set out under Module FC (Financial Crime) on a very selective basis only. The same criteria set out in Section EN-5.1 will be taken into account by the BMA when considering imposing a financial penalty. Financial penalties applied under this Section are also subject to the same disclosure requirements as described in Section EN-5.1.
- EN-5.2.3 A failure to comply with the requirements in Module FC (Financial Crime) that warrants a financial penalty would not trigger an additional financial penalty under Section EN-5.1.
- EN-5.2.4 Any financial penalties applied by the BMA as regards the implementation of its regulations set out under Module FC (Financial Crime), 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 regulation in Module FC (Financial Crime) does not prevent the BMA from also using other enforcement measures to remedy the same violation (for instance, a Direction).

MODULE	EN: Enforcement
CHAPTER	EN-5: Financial Penalties

EN-5.3 Procedure for Financial Penalties

- EN-5.3.1 A written financial penalty notice will be addressed to the Chief Executive Officer or General Manager 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's 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 a final 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's regulatory requirements, and will also result in other measures being considered, as described elsewhere in this Module.



MODULE	EN: Enforcement
CHAPTER	EN-5: Financial Penalties

EN-5.4 Remedying a Compliance Failure

- EN-5.4.1 Payment of a financial penalty does not by itself absolve a licensee from remedying 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.

MODULE	EN: Enforcement
CHAPTER	EN-6: Administration

EN-6.1 Legal Source

- EN-6.1.1 Article 93 of the BMA Decree – Law No. 23 of 1973 (“BMA Law”) empowers (but does not oblige) the BMA to assume the administration of a licensee in certain circumstances, subject to the approval of the Minister of Finance. These circumstances are where:
- (a) the licensee has become insolvent;
 - (b) its liquidity or solvency are in jeopardy;
 - (c) its continued activity is detrimental to the rights of depositors; or
 - (d) it commits serious contraventions of the provisions of the BMA Law.
- EN-6.1.2 Article 94 of the BMA Law provides that where the BMA assumes the administration of a licensee, the licensee concerned may appeal to the Minister of Finance and, subsequently, the courts, in order to challenge its administration by the BMA.
- EN-6.1.3 Articles 95 to 99 of the BMA Law set down the operating parameters of an administration.

MODULE	EN: Enforcement
CHAPTER	EN-6: Administration

EN-6.2 BMA Policy

EN-6.2.1 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-6.2.2 Although Article 93 of the BMA Law specifies the circumstances in which the BMA may pursue an administration, it does not oblige the BMA 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-6.2.3 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 market, its users and those 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 asset values arising from an administration;
- (b) the extent to which other regulatory actions could reasonably be expected to achieve the BMA's desired supervisory objectives (such as restrictions on the licensee's operations, including limitations on 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 BMA Law, including the extent to which the contraventions reflect more widespread or systemic weaknesses in controls and/or management.

MODULE	EN: Enforcement
CHAPTER	EN-6: Administration

EN-6.3 Procedure for Implementing an Administration

- EN-6.3.1 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 Section EN-6.1. After being assessed at Executive Director level, proposals are submitted to H.E. the Governor and subsequently the Minister of Finance for their respective approvals.
- EN-6.3.2 Once approved by the Minister of Finance, 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 bank’s correspondence and on its website, next to the bank’s name.
- EN-6.3.3 Article 94 of the BMA Law allows a licensee 10 days following the administration taking effect in which to appeal to the Minister of Finance. If the Minister refuses the appeal, the licensee has a further 10 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.

MODULE	EN: Enforcement
CHAPTER	EN-7: Cancellation of License

EN-7.1 Legal Source

- EN-7.1.1 Article 66 of the BMA Decree – Law No. 23 of 1973 (“BMA Law”) empowers the BMA to cancel a license under certain circumstances. These include cases where a licensee has:
- (a) contravened the conditions of its license;
 - (b) repeatedly violated the provisions of the BMA Law; or
 - (c) failed to follow BMA regulations regarding the merger or other major restructurings of its operations.
- EN-7.1.2 Article 66 of the BMA Law also requires the BMA to give the licensee concerned reasonable time to object to any proposed cancellation of its license.



MODULE	EN: Enforcement
CHAPTER	EN-7: Cancellation of License

EN-7.2 BMA Policy

EN-7.2.1 The BMA generally views cancelling a license as appropriate only in extreme circumstances, when faced with the gravest of contraventions or when left with no other reasonable means of successfully addressing the regulatory failings in question.

EN-7.2.2 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 market, its users and those who have a claim on the licensee would be best served by the cancellation of the license;
- (b) the extent to which other regulatory penalties could reasonably be expected to achieve the BMA's desired supervisory objectives;
- (c) the extent to which the licensee has contravened the conditions of its license and/or the BMA Law, including the seriousness, duration and/or frequency of the contravention(s) concerned, and the extent to which the contraventions reflect more widespread or systemic weaknesses in controls and/or management;
- (d) the extent to which the licensee has been involved in financial crime or other criminal conduct; and
- (e) the licensee's past compliance record and conduct following the contravention(s).

MODULE	EN: Enforcement
CHAPTER	EN-7: Cancellation of License

EN-7.3 Procedure for Cancellation of License

- EN-7.3.1 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 Section EN-7.2. After being assessed at Executive Director level, proposals are submitted to H.E. The Governor for approval.
- EN-7.3.2 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 Section EN-9.2.
- EN-7.3.3 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-7.3.4 If an appeal is lodged, the Board of the BMA will make a final ruling within 60 calendar days of its date of issuance.



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

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 BMA law or Volume 4 (Investment Business);
- (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

An investment firm licensee 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 investment firm licensees that pertain to that individual.

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

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.

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

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.



MODULE	EN: Enforcement
CHAPTER	EN-9: Cancellation of Registration

EN-9.1 BMA Policy

- EN-9.1.1 Rule AU-1.3.1 of Module AU (Authorisation) requires persons wishing to carry on the business of an administrator in the Kingdom of Bahrain to be registered as such by BMA. Registered administrators are not allowed to undertake regulated investment services and are not categorised as licensees: the registration requirement exists simply to ensure that those acting as administrators satisfy certain basic suitability criteria.
- EN-9.1.2 These basic criteria are contained in Chapter AU-4. Should a registered administrator, in the opinion of the BMA, cease to satisfy one or more of these criteria, then the BMA has the right to cancel that person's registration.
- EN-9.1.3 Where the BMA proposes to cancel the registration of a registered person, it must provide the person concerned reasonable time to object to the proposed cancellation.
- EN-9.1.4 Amongst other matters affecting a person's compliance with the registration criteria contained in Chapter AU-4, the BMA will normally consider as grounds for the revocation of registration the following:
- (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 person's legal capacity is totally or partially impaired; or
 - (d) the sanction by a professional body of a fine, suspension, expulsion or censure.



MODULE	EN: Enforcement Measures
CHAPTER	EN-9: Cancellation of Registration

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 stated in 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.



MODULE	EN: Enforcement
CHAPTER	EN-10: Criminal Sanctions

EN-10.1 Overview

- EN-10.1.1 The BMA Decree – Law No. 23 of 1973 (“BMA Law”) provides for a number of criminal sanctions in cases where certain of its provisions are contravened. This Section provides a summary of those sanctions most relevant to licensees, their directors and employees. What follows is not a complete list of all sanctions provided for in the BMA Law, nor is it a substitute for reading the Law and being fully aware of its provisions.
- 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 – Law 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 Public Prosecutor. The BMA has no authority to apply such sanctions without recourse to the courts.

MODULE	EN:	Enforcement
CHAPTER	EN-10:	Criminal Sanctions

EN-10.2 BMA Policy

- EN-10.2.1 Because of their criminal status, and their provision for custodial sentences, the sanctions provided for under the BMA Law are viewed by the BMA as very powerful measures, to be pursued sparingly. In most situations, the BMA will seek to address regulatory failures through administrative sanctions, as outlined in preceding Sections, rather than by pursuing the criminal sanctions outlined here.
- EN-10.2.2 Where, however, the nature of the offence is such that there is strong evidence of a reckless or intentional breach of the BMA Law relevant to the following Articles, then BMA will usually refer the matter to the Office of Public Prosecutor.



MODULE	EN:	Enforcement
CHAPTER	EN-10:	Criminal Sanctions

EN-10.3 Article 87

- EN-10.3.1 Article 87 of the BMA Law provides for a term of imprisonment of up to two years, and/or a fine of up to BD 5,000, without prejudice to any other penalty prescribed in any other law, in case of conviction of a director, manager, official, agent or representative of any licensee who:
- (a) makes false or misleading statements with fraudulent intent;
 - (b) omits, with fraudulent intent, to make any statement or any entry in the books or accounts of the banking firm;
 - (c) obstructs the performance of the auditor's duties; and
 - (d) obstructs an investigation conducted by inspectors appointed by the BMA.



MODULE	EN:	Enforcement
CHAPTER	EN-10:	Criminal Sanctions

EN-10.4 Article 88

- EN-10.4.1 Article 88 provides for a term of imprisonment of up to six months, and/or a fine of up to BD 1,000, for any director, manager or official responsible for the direction or management of a licensee, who deliberately neglects to ensure the implementation of the provisions of the BMA Law.