

Article

Cayman Islands Administrative Fines Regime for Insurance Licensees

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The Monetary Authority (Administrative Fines) (Amendment) Regulations, 2020 (the “Amendment Regulations”) came into force on 26 June 2020. The Amendment Regulations serve to amend Schedule 1 of the Monetary Authority (Administrative Fines) Regulations (2019 Revision) (the “Fines Regulations”) and extend the scope of the fines which may be levied by the Cayman Islands Monetary Authority (the “Authority”) for breaches of a range of Cayman Islands regulatory laws; such breaches are categorised as minor, serious or very serious.

Pursuant to the Monetary Authority Law (2020 Revision), the Authority may impose administrative fines under the Fines Regulations pertaining to breaches committed under the following laws and regulations:

- Anti-Money Laundering Regulations (2020 Revision);
- Banks and Trust Companies Law (2020 Revision);
- Companies Management Law (2018 Revision) (as amended);
- Directors Registration and Licensing Law, 2014 (as amended);
- **Insurance Law, 2010 (as amended);**
- Money Services Law (2020 Revision);
- Mutual Funds Law (2020 Revision);
- Private Funds Law, 2020; and
- Securities Investment Business Law (2020 Revision).

It is therefore important that all persons regulated under these laws, including insurance managers and their client (re)insurers, understand and comply with all filing deadlines, ongoing notification obligations and maintain appropriate systems and controls in accordance with applicable regulatory laws and the Authority guidance issued from time to time.

The Authority has the ability to issue administrative fines as follows:

Category of breach	Cayman Dollars	US Dollars
Minor	CI\$5,000	US\$6,100
Serious (individual)	CI\$50,000	US\$61,000
Serious (corporate)	CI\$100,000	US\$122,000
Very Serious (individual)	CI\$100,000	US\$122,000
Very Serious (corporate)	CI\$1,000,000	US\$1,220,000

It should be noted that where a breach committed by a corporate entity is shown to have been committed with the consent, connivance, knowledge or neglect of an individual, that individual may also be subject to an administrative fine as well as the corporate entity.

Insurance licensees should familiarise themselves with (amended) Schedule 1 of the Fines Regulations which sets out the prescribed provisions under each regulatory law, a breach of which may give rise to a regulatory fine, and the category of fine (minor, serious or very serious) in each case. Some examples in relation to the Insurance Law, 2010 (as amended) and the applicable capital and solvency regulations include but are not limited to the following:

INSURANCE LAW, 2010			
Insurance Law, 2010	Section 8(1)	<ol style="list-style-type: none"> 1. Failure of a licensee to carry on insurance business only in accordance with the information given in its approved licence application and business plan. 2. Failure of a licensee to seek the prior written approval of the Authority for any change to the approved business plan or in the information supplied in the application. 3. A licensee — <ol style="list-style-type: none"> (a) opening outside the Islands a subsidiary, branch, agency or representative office or changing its name; or (b) where it is an insurer other than an external insurer conducting insurance business — <ol style="list-style-type: none"> (i) other than long term business, amalgamating with any one or more insurers or, (ii) other than in the normal course of business, transferring its insurance operations or any part thereof, or accepting transfer of the insurance operations or any part thereof from another insurer, without the prior written approval of the Authority. 4. Failure of a licensee that is required to have a place of business in the Islands to maintain in the Islands such resources, including staff and facilities, books and records as the Authority may consider appropriate, having regard to the nature and scale of the business. 	Very serious
Insurance Law, 2010	Section 8(2)	<p>Failure of an insurer to —</p> <ol style="list-style-type: none"> (a) maintain a margin of solvency in accordance with the prescribed solvency requirements; (b) maintain adequate arrangements for the management of risks, including the reinsurance thereof where appropriate; (c) maintain capital in accordance with the prescribed capital requirements; (d) authorize at least one person resident in the Islands and approved by the Authority to accept on its behalf service of process in any legal proceedings and any notices required to be served on it; (e) where it is a member of an insurance group, inform the Authority of any activity or transaction undertaken or proposed by another member of the group that could reasonably be expected to have a material effect on the insurer; (f) where it is an external insurer, be responsible for all contracts of domestic business issued by any branch or subsidiary and also for all acts, omissions and liabilities of such branch or subsidiary activity; or (g) maintain an effective system of governance as approved by the Authority. 	Very serious
Insurance Law, 2010	Section 8(4)	<p>Failure of a class B insurer that is established as a segregated portfolio company under Part XIV of the Companies Law (2020 Revision) to, in respect of each segregated portfolio —</p> <ol style="list-style-type: none"> (a) maintain the prescribed margin of solvency; (b) unless waived by the Authority, comply with section 9(1)(a) (<i>audited financials</i>) and (c) (<i>certification of solvency</i>); and (c) cause each submission under paragraph (b) to be prepared using the same financial year end. 	Very serious

Insurance Law, 2010	Section 12(1)	<p>1. A licensee issuing shares totalling more than ten per cent of the authorised share capital of a company that is a licensee under this Law, without the prior approval of the Authority.</p> <p>2. A licensee transferring or disposing of in any manner, issued shares totalling more than ten per cent of the issued share capital or total voting rights of a company that is a licensee under this Law, without the prior approval of the Authority.</p>	Serious
Insurance Law, 2010	Section 21(2)	<p>Failure of an insurance manager to report to the Authority if the insurance manager in respect of any insurer for or with whom the insurance manager is managing insurance business —</p> <p>(a) has concerns regarding the fitness and probity of the insurer;</p> <p>(b) obtains information or suspects that the insurer is unable or likely to become unable to meet its obligations as they fall due;</p> <p>(c) obtains information or suspects that the insurer is carrying on or attempting to carry on business in a fraudulent or criminal manner;</p> <p>(d) obtains information that the insurer is involved in any criminal proceedings, whether in the Islands or abroad;</p> <p>(e) obtains information about a material change in the nature of the insurer's business that has not been reported to the Authority;</p> <p>(f) in relation to a class B(i) insurer or class B(ii), obtains information that the limit on unrelated business is exceeded; or</p> <p>(g) obtains information or suspects that the insurer is carrying on or attempting to carry on business otherwise than in compliance with —</p> <p>(i) this Law or the Regulations; (ia) Part XVIIIA of the Companies Law (2020 Revision), Part 12 of the Limited Liability Companies Law (2020 Revision) or Part 8 of the Limited Liability Partnership Law, 2017;</p> <p>(ii) the Monetary Authority Law (2020 Revision);</p> <p>(iii) the Anti-Money Laundering Regulations (2020 Revision); or</p> <p>(iv) a condition of its licence.</p>	Serious
Insurance Law, 2010	Section 38	A person knowingly making, issuing or permitting to be made or issued any representation about or description of the person's insurance business, by whatever form or method, that is misleading or likely to be misleading to the public.	Serious
INSURANCE (CAPITAL AND SOLVENCY) (CLASSES B, C, AND D INSURERS) REGULATIONS (2018 REVISION)			
Insurance (Capital and Solvency) (Classes B, C, and D Insurers) Regulations (2018 Revision)	Regulation 9(1)	Failure of a Class B insurer, Class C insurer or Class D insurer to keep solvency equal to or in excess of the total prescribed capital requirement, unless otherwise approved by the Authority.	Very serious
Insurance (Capital and Solvency) (Classes B, C, and D Insurers) Regulations (2018 Revision)	Regulation 9(2)	Failure of a licensee to meet with the Authority and present a remedial action plan to the Authority where the capital of a licensee falls below the prescribed capital requirement but is greater than minimum capital requirement	Very serious

Criteria for imposition of fines

For minor breaches, unless the Authority can be satisfied that the breach has been rectified, fines are non-discretionary. For breaches that are either serious or very serious, fines are discretionary (the maximum amounts are set out in the table above). Discretionary fines will be dealt with by the Authority as enforcement actions which may result in the imposition of an administrative fine and/ or other enforcement action available under the relevant regulatory law. In determining whether to impose a discretionary fine and the amount of such fine, the Authority will aim to remove any financial benefit or avoidance of loss derived directly from the breach and will impose a financial penalty reflecting the nature and seriousness of the breach. There is a list of subjective and objective discretionary fine criteria set out in the Fines Regulations. The Authority will also consider any mitigating or aggravating circumstances, the person's resources

and ability to pay and any adverse impact upon third parties due to the imposition of an administrative fine. Details can also be found in [the Authority's Enforcement Manual – The Procedure for Administering Administrative Fines](#).

Fine process

The Authority has a time period of six months from when it becomes aware of a minor breach, or two years from when it becomes aware of a serious or very serious breach to impose a fine. For such purposes, the Authority is deemed to have become aware of a breach when it first received information from which the breach can be reasonably inferred.

Prior to imposing a fine, the Authority will issue a breach notice outlining the nature of the breach, the amount of the proposed fine and the period within which the person is required to respond, which must be not less than 30 days after the date of the breach notice. If the breach notice is in relation to a fixed fine for a minor breach, the person may provide the Authority with a rectification notice confirming that the breach was rectified within 30 days after receipt of the breach notice.

At the end of the reply period, the Authority will consider the details of any reply or rectification notice provided and determine the amount of the discretionary fine or whether to impose the fixed fine as applicable. If the Authority decides to impose a fine it will issue a fine notice in accordance with the Fines Regulations. The Authority must also provide notice of a decision not to impose a fine within 15 days of the end of the relevant reply period.

Further reviews/appeals

A person may apply to the Authority for an internal review of a decision to impose a fine notice relating to a fixed fine within 30 days of receipt of the notice. The Authority's Management Committee is then required to consider the application within 20 days of receipt and provide a notice of its decision within 10 days after making a decision on the application.

A person may apply to the Grand Court of the Cayman Islands for leave to appeal against a decision by the Authority to impose a discretionary fine within 30 days after receiving the fine notice. The Grand Court may grant leave to appeal if the person has grounds for seeking judicial review of the decision or the decision was made with a lack of proportionality or was not rational. After hearing the appeal, the Grand Court may (i) affirm, set aside or vary the original decision; or (ii) set aside the original decision and remit the matter back to the Authority for its reconsideration, subject to such directions as the Grand Court sees fit.

Assistance with Enforcement Actions

The Fines Regulations were introduced in part as a response to perceived shortcomings identified in Cayman's regulatory enforcement regime resulting from recent Caribbean Financial Action Task Force evaluations. It was suggested that the Authority should be given more "teeth" to deal with breaches of regulatory laws and, now that they have them, there will be some pressure on the Authority to be seen to take enforcement action where non-compliance has been identified. Indeed it is mandatory in the case of all minor non-discretionary fines.

Given the serious nature of these regulations and the potential for significant financial sanction should any breach notices not be adequately addressed or fines not be successfully appealed, we anticipate that clients (including insurance managers) will need guidance and assistance in navigating the process. For this reason Conyers have formed a team of regulatory experts from our corporate and litigation departments to provide the necessary assistance.

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