

# Administrative fines: The process and possible responses

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The Cayman Islands Monetary Authority has wide scope to impose administrative fines (as one of several enforcement options) for non-compliance with regulatory obligations by licensees and other regulated entities and individuals. In this Update, we examine the administrative fines process and the steps that can be taken in response to a breach notice.

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## Introduction

Administrative fines may be imposed by the Cayman Islands Monetary Authority (CIMA) in relation to breaches of certain provisions of a wide number of regulatory laws, regulations and rules, as set out in Schedule 1 to the Monetary Authority (Administrative Fines) Regulations (2019 Revision) (as amended, the **Administrative Fines Regulations**).<sup>1,2</sup> The regulatory laws in relation to which administrative fines may be imposed currently include the following:

- Anti-Money Laundering Regulations (2020 Revision), as amended;
- Banks and Trust Companies Act (2021 Revision);
- Companies Management Act (2021 Revision);
- Directors Registration and Licensing Act, 2014, as amended;
- Insurance Act, 2010, as amended;
- Mutual Funds Act (2021 Revision);
- Private Funds Act (2021 Revision);
- Securities Investment Business Act (2020 Revision), as amended; and
- Virtual Asset (Service Providers) Act, 2020, as amended.

## Steps required

To impose an administrative fine, CIMA must follow the process dictated by the Administrative Fines Regulations. CIMA may not impose a fine on a mere suspicion of misconduct, nor can CIMA impose a fine without giving notice to the regulated entity of its intention to do so, and providing an opportunity for the regulated entity to respond.

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<sup>1</sup> Please see our Guide on the [Cayman Islands administrative fines regime](#) for further details.

<sup>2</sup> It should be noted that the Registrar of Companies, Limited Liability Companies and Limited Liability Partnerships also has the power to impose administrative fines in relation to the beneficial ownership provisions of the Cayman Islands beneficial ownership legislation. Please see our Guide on [Cayman's beneficial ownership register regime](#) for further details.

## Early settlement?

One point to be aware of is that CIMA may be willing to resolve a potential fine through voluntary settlement at an early stage (a **discount agreement**). The Administrative Fines Regulations provide CIMA with a discretionary ability to negotiate with a party, to attempt to reach a discount agreement, whether or not CIMA has issued a breach notice. Discounts on potential fines can be between 10% - 40%, depending on the stage at which a potential breach is reported to CIMA.

A person may make a formal written request to CIMA at any time indicating its desire for an early settlement as part of the breach resolution process. The process for such applications and CIMA's response are set out in CIMA's Regulatory Handbook.<sup>3</sup>

It should be noted that a party may not seek leave to appeal against the imposition of a discretionary fine (see below) where a party enters into a discount agreement for that breach and the fine imposed is not more than the sum agreed with CIMA.

## Breach notice

Prior to imposing an administrative fine, CIMA must issue a **breach notice** informing the relevant party of its intention to impose a fine and stipulating (amongst other things) the nature of the specified breach and the amount of the proposed fine.<sup>4</sup> The breach notice must also state matters including:

- the prescribed provision(s) for which the fine is proposed to be imposed;
- a summary of the facts and circumstances that CIMA believes constituted the specified breach;
- either:
  - in relation to a fixed fine, that the fine is fixed at US\$6,100; or
  - in relation to a discretionary fine, the amount of the fine that CIMA proposes to impose;
- the period of time that the regulated entity has to reply to CIMA and make representations in relation to the breach notice (which must not be less than 30 days from the date of the breach notice) (the **reply period**); and
- in relation to a fixed fine only, that the party may give CIMA a rectification notice.

## Rectification notice

Where a breach notice has been given in relation to a fixed fine, the receiving party has 30 days in which to rectify the breach specified in the notice and to provide CIMA with a **rectification notice** certifying that this is the case.

Upon receipt of a rectification notice, CIMA has a duty to consider whether the specified breach was rectified within 30 days of the issue of the breach notice to CIMA's satisfaction. If CIMA is satisfied that the breach was rectified to its satisfaction within that period and, where applicable, any filing extension has been requested and any filing fee has been paid, CIMA shall refrain from imposing the administrative fine in question and give the party notice of its decision.

## Reply to the breach notice

For either a fixed fine or a discretionary fine, the recipient may provide CIMA with a reply to the breach notice within the reply period.

Where the recipient provides a timely reply, CIMA has a duty to:

- reconsider whether it still holds the belief stated in the breach notice, in the light of all matters raised in the reply; and

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<sup>3</sup> Available at CIMA's website. In particular, see the Enforcement Manual (Procedure for Administering Administrative Fines Parts I-III), 2019 [here](#).

<sup>4</sup> A breach notice is not required prior to giving a fine notice where a party entered into a discount agreement with CIMA for the breach and the fine is no more than the amount agreed under that discount agreement.

- if the breach notice was for a discretionary fine, consider the matters raised in the reply to the extent they are relevant for exercising fine discretions.

The reply period is a critical juncture for a regulated entity, during which the entity should consider the breaches identified by the breach notice and determine what the response will be; whether that will be early settlement or a reply which may question CIMA's stated basis for the imposition of a fine as well as the amount of any proposed fine.

Upon receipt of a breach notice, it is therefore important to take note of the stated reply period and ensure that the deadline by which a reply must be provided to CIMA is not missed. The receiving party may also wish to obtain legal advice on next steps, if it has not done so already.

### **Fine decision**

Following receipt of any rectification notice, reply or expiry of a stated reply period, CIMA will make a final decision regarding a proposed administrative fine stated in a breach notice, including the amount of any fine and the period within which it is to be paid. CIMA will convey this information through a **fine notice**.

For a fixed fine, a fine notice must include:

- the party's name;
- that CIMA has imposed a specified fine on the party;
- the amount of the fine;
- when the fine is required to be paid;
- the prescribed provision for which the fine is imposed;
- a description of the breach;
- if a reply was given during the reply period, the reasons the reasons why CIMA still holds the belief stated in the breach notice;
- if a rectification notice was given within the reply period, the reasons why CIMA is not satisfied that the breach was rectified within 30 days of issue of the breach notice; and
- that the party may, within 30 days after receiving the fine notice, apply to CIMA's Management Committee to review the decision to impose the fine.

For a discretionary fine, a fine notice must include:

- the party's name;
- that CIMA has imposed a specified fine on the party;
- the amount of the fine;
- when the fine is required to be paid;
- the prescribed provision for which the fine is imposed;
- a description of the breach;
- the reasons for the way in which the fine discretions were exercised; and
- that the party may, within 30 days after receiving the fine notice, apply to the Grand Court for leave to appeal against the decision to impose the fine, its amount or both.

### **Internal review of fixed fines**

A party which has received a fine notice relating to a fixed fine may apply to CIMA's Management Committee to review the original decision. An application for review must be made in the prescribed form and within 30 days after receiving the notice.

Following receipt of an application for review, the Management Committee has 20 days to reconsider the original decision and decide whether to affirm it or set it aside. As part of this process, the Supervisory Head of the division of CIMA that made the original decision may make written representations to the Management

Committee, but shall not otherwise participate in any discussion, decision, debate or vote of the Management Committee concerning that review.

Notice of a decision must be given to the applicant within 10 days of a decision being made on the application. If the Management Committee affirms the original decision, the notice of decision must also state:

- the reasons for the decision; and
- that the party may apply to the Grand Court for judicial review of the same (see below).

However, if the Management Committee sets aside the original fine decision, that decision is deemed never to have been made.

### **Appeal against discretionary fines**

A party which has received a fine notice relating to a discretionary fine may apply to the Grand Court of the Cayman Islands for leave to appeal against the original decision within 30 days after receiving the notice.

The Grand Court may only grant leave to appeal if:

- the party has grounds for seeking a judicial review of the decision; or
- the decision was made with a lack of proportionality or was not rational.

Where a party seeks leave to appeal, CIMA may seek an order that the appellant provide sufficient security for costs and for the appeal proceedings to be stayed until security is provided. This is something a regulated entity should bear in mind when considering whether to commence an appeal.

An appeal may only be decided on the evidence on which CIMA exercised the relevant fine discretions. After hearing the appeal the Grand Court may affirm, set aside or vary the original decision, or set aside the original decision and remit the matter to CIMA for reconsideration subject to such directions as the Court considers fit.

If the Grand Court affirms the original fine decision, or varies it in a way that a fine is still imposed:

- the Court's decision is deemed to have always been the original decision; and
- the Court may, at CIMA's request, give judgment against the appellant for all or any part of the fine owed and for interest.

Should the Court decide to set aside the administrative fine and not remit the matter to CIMA for reconsideration, both the fine and interest are deemed to have never been owing.

As noted above, a party may not seek leave to appeal where it entered into a discount agreement for the breach and the fine is not more than the amount agreed with CIMA.

### **Appeal to the Grand Court against decision to uphold a fixed fine**

A similar procedure applies where a recipient has received a notice that the Management Committee has upheld an original decision relating to a fixed fine. However, the Administrative Fines Regulations do not expressly provide for a strict 30-day time period, so caution should be exercised regarding the procedure and any timings if a recipient intends to appeal such a decision.

## Contacts

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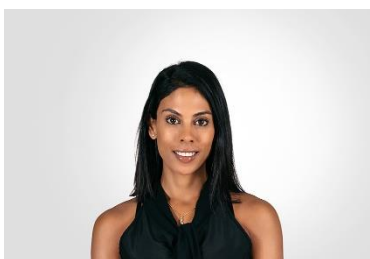
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