



**FINANCIAL SERVICES AUTHORITY**

**ENFORCEMENT POLICY  
&  
GUIDELINES**



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## Preface

This document explains the decision-making process which the St. Vincent and the Grenadines Financial Services Authority (the “Authority”) follows in exercising its statutory powers to take enforcement actions. This document does not apply to the decision-making process of the officers of the Authority nor does it apply to the decision-making process involved in a non-enforcement decision (e.g. the issue of a licence). Furthermore, this document does not apply to the investigative stage of a case, which is not part of the decision-making process.

The Authority is not a judicial body. Court rules and procedures do not apply to the decisions that it takes. The Authority takes administrative decisions in accordance with its statutory powers. In so doing, the Authority will act as supervisor, investigator and decision-maker. It is only the significant enforcement sanctions decision-making process which is the subject of this document.

## Introduction

The St. Vincent and the Grenadines Financial Services Authority (the “FSA” or “the Authority”) applies a risk-based approach to the supervision of its licensees. Where appropriate, the FSA will address contraventions or misconduct by agreement with the licensee or individual(s) concerned through ordinary supervisory processes, and will endeavor to agree to the implementation of a remedial action plan to restore that licensee or individual to compliance as soon as possible.

This may involve an agreement to changes in corporate governance, management and internal controls, or agreement to discontinue some or all of the licensee’s or registrant’s operations or areas of activity, or involve an agreement to amend or add additional licence conditions framed to encourage or ensure compliance. However, such approaches are not always possible.

In such cases, there will be a need for more assertive enforcement action by the FSA, involving the use of its statutory powers. For example, where action by agreement is not considered to be sufficient or appropriate, where co-operation is lacking, or where the contravention or misconduct is of sufficient seriousness.

The FSA will generally seek to use its enforcement powers in relation to more serious or repeated breaches of the law. If a registered or financial entity fails to comply with prudential requirements or with supervisory measures adopted by the FSA, the FSA can, depending on

the infringement, impose enforcement measures and/or efficient, proportionate and dissuasive sanctions

This document explains the FSA's approach to exercising the main enforcement powers, outlined in the relevant specific sector legislation under its scope.

The purpose of this Enforcement Policy is to:

- Explain when and in what circumstances the FSA will consider taking enforcement action;
- Explain how enforcement action is taken by the FSA;
- Encourage effective alignment and coordination of regulatory processes within the FSA; and
- Ensure consistent, proportionate, effective and dissuasive enforcement outcomes.

The Authority's use of its enforcement powers and the Principles will be applied in a flexible manner in any given instance, taking into account legal and factual context. This Guide will not apply where provisions of a specified enactment or registry enactment address matters other than enforcement.

## 1. Principles of Enforcement

'Enforcement' is the use of formal powers to compel compliance or to penalize non-compliance with statutory or regulatory requirements. Enforcement action that is proportionate, effective, and dissuasive enhances the international reputation of St. Vincent and the Grenadines (SVG).

The FSA's use of its enforcement powers is an important component in the delivery of its regulatory objectives, which include inter alia:

- supervising and regulating the operations of financial entities
- promoting stability, public awareness and public confidence in the operations of financial entities
- protection for consumers,
- protecting and enhancing the integrity of the SVG's financial system; and
- reducing financial crimes

Formal enforcement powers are provided by Registry and Specified enactments and the FSA Act. The Authority will exercise those formal enforcement powers in accordance with the following principles:

- The effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and co-operative relationship between the FSA and those whom it regulates;
- Enforcement action will be taken to protect customers from harm;
- The FSA will exercise its enforcement powers on a risk-based approach prioritizing conduct that poses the greater threat to the best interest of customers or reputation of the jurisdiction;
- The FSA will exercise its enforcement powers in order to effect change in behavior, encourage future compliance and to remedy harm;
- The FSA will seek to exercise its enforcement powers in a manner that is fair, transparent, lawful, rational, proportionate, and consistent;
- The FSA will pursue enforcement action that is timely and effective in dissuading licensees and registrants from future contraventions of the laws and regulations of SVG; and

The FSA must consider whether it is appropriate to use its enforcement powers in relation to more serious or repeated breaches of the law. Although, it should be noted that the FSA is able to exercise its enforcement powers in respect of any breach.

## 2. The Objective of Enforcement

The objective of exercising an enforcement power is to change the behavior of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance

The decision to take enforcement action will be determined on a case-by-case basis, taking into account the full circumstances of each case. The following objectives may, amongst others and where appropriate, be considered:

- The level of compliance by the regulated entity;
- The level of compliance by the industry or sector;
- The need to exercise enforcement powers in a manner that is fair, transparent, proportionate, responsive to the issue, and consistent with publicly stated policies, bearing in mind the particular circumstances of the matter;

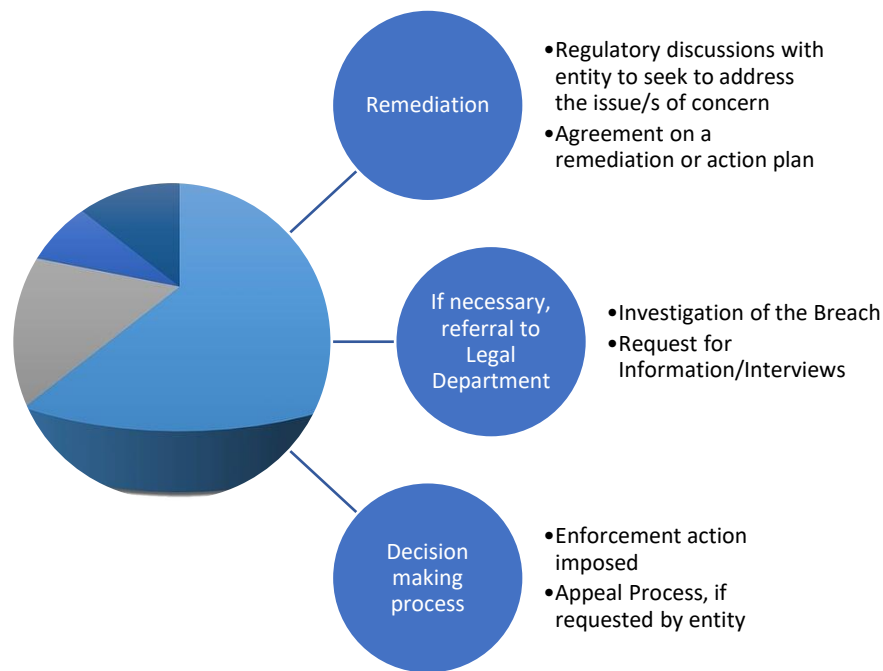
Where a financial entity or other person has failed to comply with the requirements of the FSA Act or other specified enactment and relevant legislation, it may be appropriate to address the matter without the need for formal disciplinary or other enforcement action. The proactive supervision and monitoring of financial entities and an open and cooperative relationship between financial entities and the FSA, will, in some cases where a

contravention has taken place, lead the FSA to decide against taking formal disciplinary action. However, in those cases, the FSA will expect the financial entity to act promptly in taking the necessary agreed remedial action to address the FSA's concerns. If the financial entities fail to undertake such, the FSA may take disciplinary or other enforcement action in respect of the original contravention.

The point at which an Enforcement Decision is taken is reached via a series of stages that are described below. The decision-making process set out in this document is designed to ensure that the final decision taken:

- is one that the Authority is empowered to take;
- is one that is made in accordance with the Authority's regulatory objectives;
- has been arrived at in accordance with the principles of natural justice; and
- is reasonable based on all relevant information before the Authority at the time.

See below, an Overview of the Enforcement Process:



The Authority will not apply its enforcement powers to address every issue of non-compliance with a regulatory obligation. Most issues that arise will be addressed as part of the normal supervisory relationship that exists between the FSA and the entity. Notably, recurring problems may be indicative of a more serious underlying issue with the entity which may require either enhanced supervision or the use of more formal enforcement intervention, or both.

### 3. Enforcement Decision-Making Process

From time to time, there will be a need for the FSA to undertake enforcement action, where:

- action by remediation is not considered to be either sufficient or appropriate;
- the entity or relevant individuals, have failed to deal with the FSA in an open and cooperative manner; and/or
- the contravention, or misconduct, is such that a deterrence response is deemed necessary.

The FSA may use these regulatory sanctions either alone or in addition to any other regulatory sanction/s which it is empowered to impose.

### 4. Referral to Legal Department

If an issue is potentially serious, the matter shall be referred to the FSA's legal department for review and guidance. This will help to ensure that there is consistency in the way in which enforcement actions are taken by the FSA.

A matter will be potentially serious if it creates a risk of harm to customers or to the reputation of SVG. A breach of AML/CFT requirements will always be potentially serious. In cases of uncertainty, the relevant department should discuss the issue with the FSA's Legal Department. If the matter is referred to the Legal Department, the Legal Department and the relevant department that referred the matter will work collaboratively and agree upon the most appropriate course of action. Matters which should be referred for enforcement action include:

- breaches of the Minimum Criteria for Registration/Licensing;
- breaches of minimum solvency/liquidity requirements;
- issues touching upon a person's fitness and propriety;
- significant failures in corporate governance that pose a risk to the effective operation of the business and/or a risk to customers;
- failures to comply with AML/CFT obligations;
- issues relating to the fitness and probity of directors, shareholders, senior management
- failure to implement an agreed remediation plan adequately;
- possible fraud, misrepresentation, or other financial crime;
- repeated failures to submit statutory financial information/statements;
- conducting unauthorized business;
- non-compliance with international sanctions obligations;

- insolvency or where circumstances may require the winding up of the entity on just and equitable grounds; and
- circumstances where a formal investigation may be necessary.

There may be grave or urgent circumstances which present a high level of risk where it will be necessary to refer a matter for enforcement immediately after the issue has been identified. A referral does not operate to suspend on-going supervision and remediation. Enforcement action and supervision/remediation serve different purposes and operate independently of each other. Enforcement action, however, is designed to address the specific failures and to manage them with effective and dissuasive action. Effective remediation by an entity does not preclude the Authority from taking enforcement action with respect to the original failures. Proactive and effective remediation, however, may be a mitigating factor to be taken into account as part of the enforcement process.

The legal department will review the information available and consider:

- whether there is a ‘prima facie’ failure to comply with a regulatory requirement, taking into account relevant statutory obligations & requirements, as well as any guidelines;
- the materiality (gravity) of the breach and its actual or potential impact; and
- whether the matter fits within the enforcement and strategic priorities of the Authority.

The legal department must also review warning and decision notices before they are submitted to the subject of the enforcement action.

## 5. Information Gathering & Investigations

The purpose of an investigation is to allow for the gathering of sufficient information to enable the FSA to determine whether it has reasonable grounds to suspect that a contravention has been, or is being, committed by a registered or financial entity, and accordingly, whether to take such other action as is appropriate in the circumstances. The FSA shall bring the relevant matters to the attention of the registered or financial entity and provide a reasonable opportunity for the entity to respond.

The FSA may appoint an investigator as deemed necessary to assist with investigations. The FSA may request that the person or entity provide any information necessary for the conduct of the investigation. The efficient or delayed response to these requests can be a factor taken into account in determining the sanction to be imposed.



- A request letter shall be sent by the FSA outlining the basis for the request, requested information and a defined timeline for response.
- Once a timeframe has been agreed or set, the FSA would generally only agree to an extension of time for compliance where it can be shown that there are reasonable grounds for doing so.

## 6. Factors to be taken into consideration

The FSA will consider all relevant facts and circumstances of a particular matter under consideration for enforcement action. The FSA considers the following non-exhaustive factors when determining the appropriateness of enforcement actions:

- The nature, seriousness and impact on consumers, the market, and the integrity of the financial system;
- The conduct of the entity following the breach;
- The degree of cooperation shown by the entity during the investigation;
- Action taken by the FSA in similar cases; and
- Action taken by other regulatory authorities in similar cases.

The FSA will also consider the following other factors and associated mitigating factors:

Aggravating factors	Mitigating factors
History of non-compliance	First-time breach
Serious or systemic weaknesses (regulated person)	Reasonable cause explanation for the breach
Whether the violation was willful or negligent	Inadvertent omission
Market impact of the breach	Corrective measures by the entity
Financial gain resulting from the breach	Full and adequate disclosure of the breach
Loss or risk of loss to customers or shareholders	Responsiveness and cooperation
Breach constitutes an offence	Remedial steps taken and their effectiveness

Not all of the factors listed will be relevant to every case and there may be other considerations which are not mentioned in the list but which may be relevant to a particular case.

## 7. No further action

The FSA may decide to discontinue an investigation and take no further action in a number of circumstances, including where:

- the information obtained leads the FSA to conclude that no prescribed contravention has been committed;
- the matter giving rise to concern:
  - is very minor in nature,
  - has been addressed with immediate remedial action, and
  - has been addressed with full co-operation of the entity;
- the FSA considers that resources could be more effectively directed to other uses; and/or
- other policy considerations of the FSA are of relevance.

## 8. Decision making

When the FSA is proposing to exercise its regulatory enforcement powers, a notice (*depending on the nature of the action, a warning notice or decision notice*) must be given to the subject of the action. The person to whom a warning notice or decision notice is given has a right to make representations on the FSA's proposed decision.

In cases where the Authority is reasonably satisfied that it is both consistent with its regulatory objectives and functions, and it is appropriate to do so, the Authority may hold a meeting with the person who or which is the subject of an intended enforcement action to discuss the nature of the breach or non-compliance by the person and the intended action to be taken by the Authority. Following such a meeting, a documented remediation plan may be agreed to by the person concerned.

A person who receives a decision notice has a right to refer the matter to the Tribunal established under the FSA Act within prescribed time limits. Where a matter has been referred to it, the Tribunal will determine whether the action was appropriate for the FSA to take in relation to that matter.

## 9. Enforcement Powers

The functions of the Board of Directors of the Authority are to determine the policy objectives and strategy of the Authority. The Board has delegated to the Executive Director, the power to exercise the various enforcement powers in the Registry and Specified Enactments. Notwithstanding, enforcement decisions which may have a significant impact on the operations of a licensee or registrant should be referred to the Board for approval, such as:

- Warnings
- Directives
- Administrative penalties
- Removal of Directors/Personnel
- Referral for Criminal Prosecution
- Referral for Civil Prosecution
- Enhanced monitoring
- Suspension & Revocation
- Early Intervention
- Winding up

The Executive Director makes the decision regarding what action, if any, is to be taken in respect of such matters that are referred to her/him. If enforcement action is to be considered, the relevant department will prepare a report on the matter for decision by the Executive Director. This will include a summary of the facts and matters under review; the views of the relevant department; legal advice and analysis; and setting out the various options with a recommendation as to the most appropriate outcome.

In particularly serious cases which may impact upon issues of financial stability, the matter shall be referred to the Board. If the Executive Director determines that enforcement action is warranted, the enforcement procedures will commence and a Warning Notice will be issued to the entity concerned.

## Warnings

Where, upon consideration of the evidence, the FSA considers that the matter does not warrant enforcement action, but there are nonetheless reasonable grounds to suspect a prescribed contravention has occurred, the FSA may, in appropriate circumstances, issue a Warning.

The purpose of issuing a Warning is to afford a reasonable opportunity to the entity and individuals concerned to make written representations to the Authority before a final decision is made in respect to the proposed enforcement action.

A Warning will be issued in writing notifying the regulated entity that the FSA considers that it has not complied with certain regulatory requirements, and calling upon the regulated entity to rectify the matter(s) identified.

Prior to the issuance of a Warning, the FSA will outline in writing to the regulated entity the basis upon which the FSA is minded to issue a Warning and the regulated entity will be afforded an opportunity to respond. If the Authority receives no response or representations

within the specified period, the Authority may regard the allegations and conclusions set out in the Warning as undisputed.

Warnings may be issued in a number of circumstances, including where:

- the matter giving rise to concern is minor in nature;
- immediate remedial action has been taken;
- full co-operation has been received; and
- considerations supporting another enforcement approach do not apply.

If a Warning is issued it will form part of the regulated entity's compliance record. Where further suspicions of prescribed contraventions occur, the prior issuance of a Warning may influence the FSA's decision as to whether to commence an investigation against a regulated entity. Warnings will also be considered cumulatively, taking into account the date on which the Warning was issued.

## Directives

Where, in the opinion of the Authority, certain directives need to be imposed as a matter of urgency on an entity, the Authority can impose directives to take effect immediately. The Authority must in the Notice imposing the directives, state the reasons for the decision and afford the entity the opportunity to make representations.

This enforcement power can be tailored to address specific circumstances. The relevant factors in choosing this option, subject to specific statutory criteria, include:

- The effect upon the general operations of the entity;
- The effectiveness of the directive, restriction, or condition to address the issue; and
- The likelihood of compliance and the capacity to monitor that compliance.

## Administrative Penalties

Administrative penalties will be used to address late statutory filings (Financial Statements) generally and will also be used to encourage timely provision of information to the Authority and overall compliance. When setting the amount of any penalty, consideration will be given to the penalties outlined in the relevant sector specific legislation, the resources of the entity, the need to deter other entities for similar conduct or practices and the action taken by the FSA in previous similar cases as well as any other circumstances.

Breaches of AML/CFT requirements are considered to be very serious by the Authority. If the Authority determines that an administrative penalty is appropriate in such a case, it will only

be in exceptional circumstances that anything other than substantial administrative penalties would be imposed. The Authority will consider the relevant facts, circumstances and impact of each breach. In such instances the Authority will be guided by the procedure set out in the AML/CFT (Administrative Penalties) Regulations.

### Removal of Directors/Personnel

The FSA may prohibit an individual from performing governance and senior managerial roles in relation to financial entities in a specific regulatory sector. The standard of conduct expected of individuals who are directors or individuals who perform functions relating to a regulated activity are set out in the relevant specified enactment and the Codes of Conduct issued by the Authority, addressing issues of Corporate Governance.

The Authority may take into account some or all of the following matters when considering whether to remove a director:

- The person is deemed to be unfit to be concerned in the management of a company
- Whether it is desirable, in the public interest, to remove the person;
- Whether the conduct was deliberate, reckless, negligent, or inadvertent;
- The impact of the conduct, including risks to the entity, customers, and stakeholders;
- The length of time since the conduct occurred;
- Whether the individual was knowingly involved in a contravention by a financial entity of a requirement imposed on it by or under a specified enactment, or the AML/CFT Regulations;
- The position, activity or role occupied by the individual;
- The nature and activities of the financial entity concerned;
- Whether the individual provided false or misleading information to the Authority or made inadequate disclosure;
- Whether the conduct was dishonest, fraudulent or criminal;
- Whether the conduct showed the individual lacked competence to perform the tasks required in the role;
- The need to deter that person from repeating the misconduct; and
- The need to deter others.

The person can be removed and disqualified from:

- Being a director, secretary, or other officer of any or a specified company;
- Participating or being involved in the management, formation, or promotion of any or a specified company;
- Being an Auditor of a specified company
- Being a liquidator of any or a specified company

### Referral for Criminal Prosecution

If a suspected breach of a specified enactment gives rise to a concern that a criminal offence may have been or is being committed, the FSA will consider the circumstances of each case on its merits and may decide to pursue matters which constitute both a prescribed contravention and a criminal offence via the criminal courts. In deciding whether to pursue criminal proceedings, the Authority will refer to the Office of Director of Public Prosecution/National Prosecution Service for guidance.

### Referral for Civil Prosecution

If a suspected breach of a specified enactment gives rise to a concern that a civil offence may have been or is being committed, the FSA will consider the circumstances of each case on its merits and may decide to pursue matters which constitute both a prescribed contravention and a civil offence via the civil courts. In deciding whether to pursue civil proceedings, the Authority will refer to the Attorney General's Chambers for guidance.

### Enhanced monitoring

Enhanced monitoring refers to the increased oversight and scrutiny of financial institutions, in response to heightened risks, emerging threats, or serious concerns. This intensified monitoring aims to ensure that financial entities are adhering to regulatory standards, managing risks appropriately, and operating in a sound and prudent manner. Enhanced monitoring typically involves a deeper level of analysis, more frequent inspections, and may include more stringent requirements for reporting, risk management, and governance. Enhanced monitoring is a proactive regulatory tool to maintain the integrity and stability of financial entities, especially when risks are elevated or when financial institutions are deemed to be operating in potentially detrimental ways.

The goals of enhanced monitoring include to:

- Maintain financial stability by identifying and mitigating risks early
- Prevent systemic crises

- Ensure that financial institutions comply with regulatory standards and ethical practices
- Protect consumers by increasing scrutiny which can help safeguard consumers against risky financial practices
- Promote public confidence by demonstrating that the Authority is actively monitoring and addressing potential risks.

## Suspension & Revocation

These enforcement options will only be taken if all other options are inappropriate. The FSA recognizes that because suspension and revocation of a license brings the business of a financial entity to a halt, its impact is likely to be severe. For this reason, suspension or revocation will usually only be applied in the most serious cases. However, each decision will be taken on a case-by-case basis. The relevant factors to be considered in exercising this enforcement action include:

- The probability of future compliance with the minimum licensing criteria, including any conditions on the licence;
- The impact on policyholders, depositors, clients or other stakeholders of the financial entity; and
- Conduct in breach of the Act is so serious in nature that continued licensing of the financial entity is not consistent with the Authority's responsibilities.

### ***Suspension***

- The FSA may, by notice in writing, served on the licensee, suspend a license for a specified period, until the occurrence of a specified event, or until prohibitions, requirements, or specified conditions are complied with.
- Suspension effectively halts the ongoing operation of a regulated financial services business in SVG.
- The provision or continuation of the relevant operations, by the financial services business, during the period of suspension of the license is not permitted. However, it should be noted that the licensee remains a licensee, for the purposes of the law, throughout the suspension period.

### ***Revocation***

- The FSA may, by notice in writing, served on the licensee, revoke a license.
- Revocation effectively halts the ongoing operation of a regulated financial services business in SVG.

- The provision or continuation of the relevant operations, by the financial services business is not permitted.

### ***Conduct of business post-suspension/post-revocation***

- **POST SUSPENSION**

- During the period of suspension, the licensee must not carry on, or hold itself out as carrying on, business of the description to which the licence relates.
- The suspension of a licence is a regulatory sanction that is applied because of regulatory non-compliance or the licensee's behavior. The lifting of a suspension of a licence will not expunge the suspension from the individual, or entity's regulatory history with the FSA.
- The FSA reserves its right to take the suspension into account should regulatory concerns arise in the future.

- **POST REVOCATION**

- A decision to revoke a licence does not come into effect until after the end of the period in which an appeal can be brought against that decision.
- Once a licence has been revoked, it is no longer possible to legally conduct business, or engage in activities for which a licence is required.
- The FSA has the power to impose other regulatory sanctions upon those who engage in unlawful business.
- The revoking of a licence is a regulatory sanction and is applied because of regulatory non-compliance.
- The FSA reserves its right to take the revocation into account should regulatory concerns arise in the future in relation to the licensee or persons connected with the licensee.

### **Early Intervention**

The FSA may take early intervention measures where there is information which suggests that the regulated entity is failing or likely to fail. Early intervention measures shall be executed by the Resolution Authority and include the appointment of a temporary administrator.

### **Winding Up**

A registered or financial entity may be wound up by the Court on the grounds that include that the Court is of the opinion that it is just and equitable that it be wound up. The Authority may present a petition to wind up a registered or financial entity on grounds that include that



the registered or financial entity has failed to satisfy a statutory obligation placed upon it by the law. The winding up of a registered or financial entity is one of the most serious options available as it terminates all relationships and crystallizes all entitlements and liabilities. It is only likely to be used when there are no viable or appropriate alternatives. The relevant factors to be considered in deciding whether to exercise this option include:

- Whether the registered or financial entity is insolvent;
- Whether there is an effective operating board of directors that has undertaken or can be expected to undertake corrective action in a timely manner;
- Whether there are breaches of the law that are so serious that the continued existence of the entity is not in the interests of customers;
- Whether there is a risk that the ongoing operations of the entity may adversely affect the interests of stakeholders, for example where there is a risk that funds belonging to depositors or investors may be misappropriated; and
- The risk to the reputation of SVG as a reputable financial centre.

## 10. Appeals

The following enforcement actions carry a right to appeal to the FSA Tribunal:

- (a) Imposition of directions, restrictions and conditions;
- (b) Imposition of a civil penalty;
- (c) Injunctions;
- (d) Removal of individual directors and senior officers; and
- (e) Revocation of licence and cancellation of registration.

Any appeal shall be dealt with in the manner set out in the Financial Services Authority Act. An appeal is commenced when the entity serves a notice of appeal on the FSA. The decision of the Authority remains effective unless there is an order by the FSA Tribunal.

There is a right of appeal to the Court on a question of law arising from a decision of the Tribunal, and a further appeal from the Court to the Court of Appeal, with leave. Appeals against the exercise of powers to seek injunctions or winding-up orders are dealt with through the usual Court processes.

## 11. Review Of Policy and Guidelines

The Authority shall periodically review and reassess the adequacy of these Policy and Guidelines annually and obtain the approval of the Board of Directors for any proposed changes to the Policy and Guidelines.

Document Control Information

<b>Prepared / Amended/ Updated by</b>	Geshell Peters	<b>Signature</b>	<b>Issue Date</b>  19 February, 2025
<b>Reviewed by</b>	Carla James		
<b>Approved by</b>	Board of Directors		