BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Enforcement Approach



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Introduction

Bank Negara Malaysia (BNM) plays a key role in ensuring stability and safeguarding the integrity of Malaysia's financial system. To this end, BNM is empowered with regulatory powers and responsibilities under the laws, including powers to take supervisory and/or enforcement actions against those who breach the applicable laws and policies.

BNM's enforcement approach is closely associated to its regulatory and supervisory functions. Supervisory actions, normally applied during the course of supervisory oversight, intend to be more preventive or corrective in nature, while enforcement actions are taken to signal BNM's intolerance for serious breach and disregard for compliance with laws and regulations that protect consumers and the financial system.

The laws currently administered by BNM are:

i. Central Bank of Malaysia Act 2009 (CBA 2009)
ii. Financial Services Act 2013 (FSA 2013)
iii. Islamic Financial Services Act 2013 (IFSA 2013)
iv. Development Financial Institutions Act 2002 (DFIA 2002)
v. Money Services Business Act 2011 (MSBA 2011)
vi. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA 2001)
vii. Currency Act 2020 (CA 2020)

This "Enforcement Approach" document aims to provide an overview of BNM's overall enforcement approach and process against acts committed by authorised or regulated persons in breach of regulatory standards and requirements. For a complete understanding, this document should be read together with the relevant laws under BNM's purview.

The Enforcement Committee (EC) is authorised by BNM to consider and decide on matters of enforcement in accordance with BNM's Enforcement and Penalty Framework (EPF). The EPF serves to ensure consistency, proportionality and transparency in enforcement decisions taken by BNM.

In deciding on enforcement actions, BNM is guided by the following enforcement objectives:

i. to **encourage** a strong culture of compliance and responsible conduct in the financial industry by providing an effective deterrence against future breach;
ii. to **protect** the legitimate interests of stakeholders; and
iii. to **strengthen** market discipline through the disclosure of enforcement actions.

In deciding on appropriate enforcement actions, BNM considers relevant factors holistically to determine whether the enforcement action:

i. is commensurate with the seriousness of the breach;
ii. acts as a credible deterrent against future breach; and
iii. is consistent with past actions taken against wrongdoers in similar circumstances.

BNM publishes its enforcement decisions on our website, as well as policies which serve to explain the factors considered by BNM and any actions taken by wrongdoers to remedy the breach.

BNM's enforcement framework and policies are subject to regular reviews as part of continuous efforts to improve the efficacy of enforcement actions.



Enforcement Committee (EC)

The EC derives its power through delegated authority from the Governor under the respective legislations. It is responsible for implementation of BNM's enforcement policies and decides on enforcement actions to be pursued.

The members of the EC comprise the Deputy Governors and the relevant Assistant Governors with responsibilities in regulation, supervision and enforcement matters.

The EC performs its functions and exercises its delegated powers to ensure:

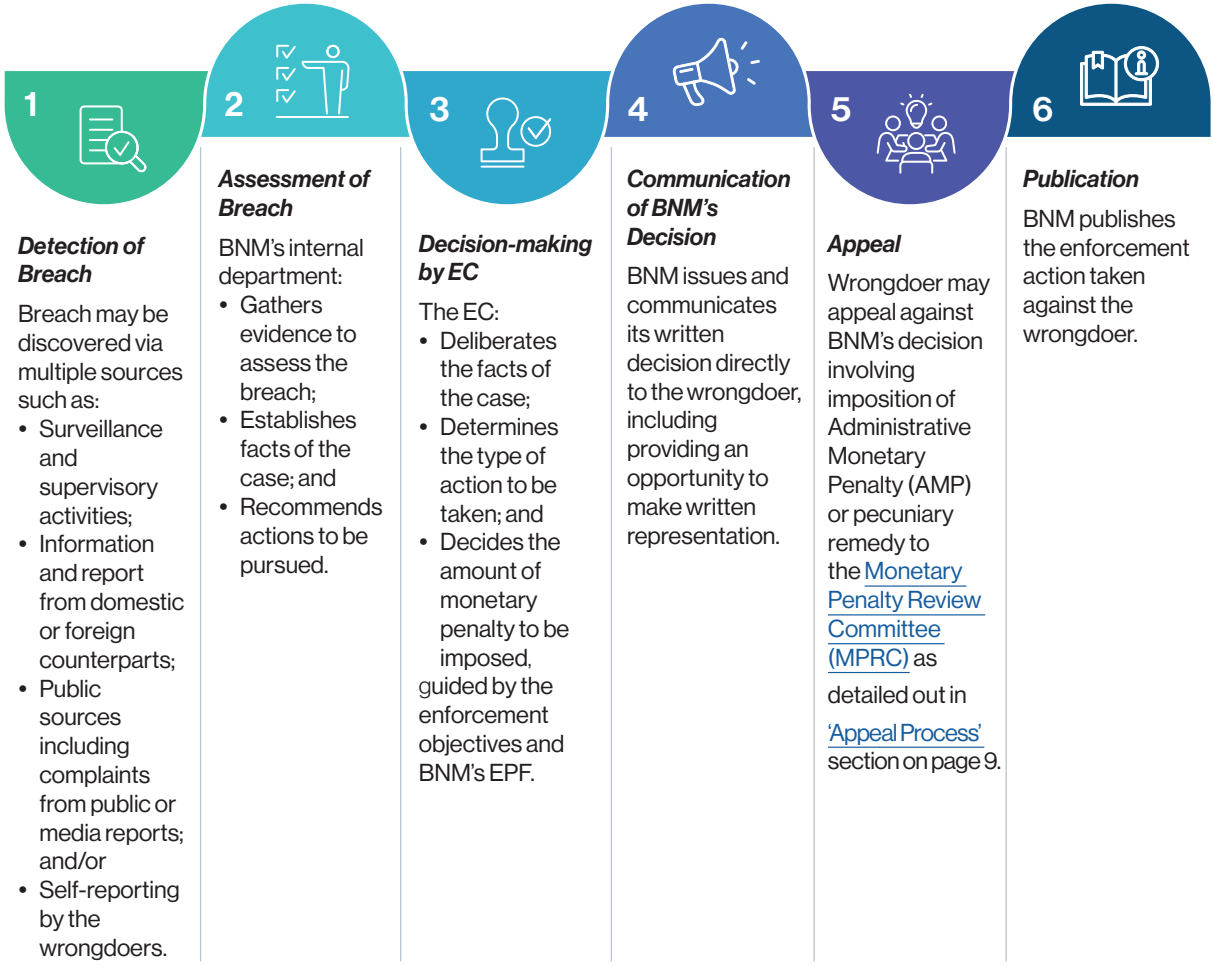
i. enforcement actions are taken in line with BNM's enforcement objectives and approach; and
ii. application and implementation of BNM's enforcement powers are consistent and proportionate.

In discharging its role, the EC, guided by the Enforcement and Penalty Framework (EPF), may decide whether to take enforcement actions pursuant to the laws administered by BNM, or approve recommendations to be made to the Attorney General's Chamber (AGC) in relation to an investigation conducted under BNM's purview, having regard to relevant facts and circumstances and BNM's enforcement objectives.

In adherence to the principle of good governance, members of the EC who have any direct or indirect interest concerning the wrongdoer must declare such interest. Accordingly, they should abstain from participating in the deliberation process to maintain transparency, fairness and ethical standards in the decision-making process.

The overall enforcement process is as follows:

Diagram 1: Overview of BNM's Enforcement Process





Enforcement and Penalty Framework (EPF)

Enforcement Actions

BNM employs a range of enforcement actions (Appendix I), to signal BNM's intolerance of a breach that can undermine the stability and integrity of the financial system or impact the public's confidence in the financial system.

Diagram 2: Types of Enforcement Actions

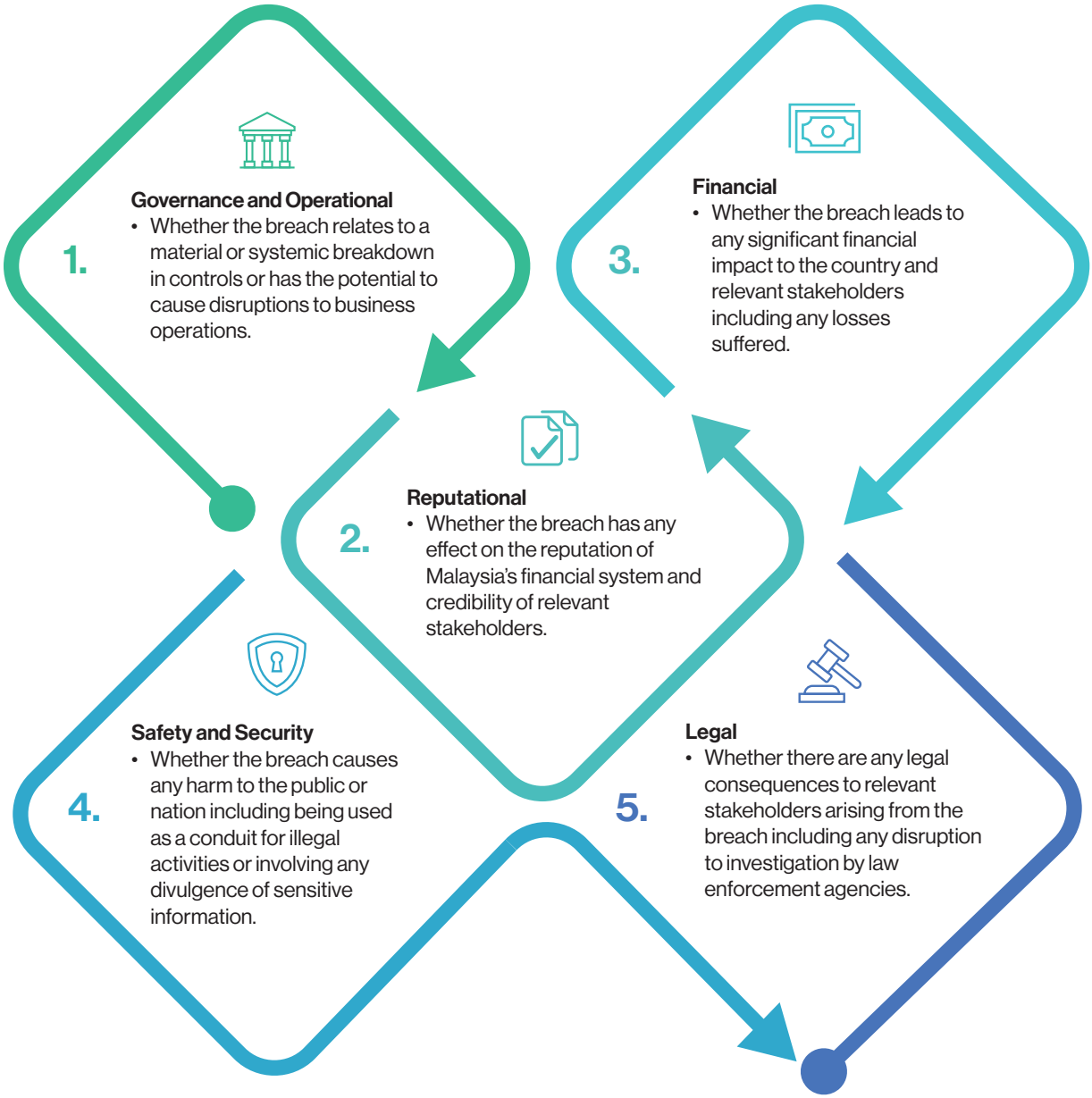
- Administrative monetary penalty (AMP)
- Instruction to remedy[1] breach
- Compound[2]
- Civil action
- Reprimand
- Criminal prosecution

[1] For example, BNM may instruct the wrongdoer to remedy any breach and/or make necessary payments including for losses suffered, to other persons who may have been aggrieved by the breach.

[2] With the consent of the Public Prosecutor.

The **seriousness of the breach** is one of the key considerations assessed by BNM in determining the appropriate action to be taken. Seriousness is ascertained by assessing the direct impact of the breach from different perspectives, as elaborated in Diagram 3.

Diagram 3: Examples of Factors Considered in Determining Seriousness of Breach



BNM considers the differences in complexity and severity of each case before recommending any enforcement action to ensure it is consistent with BNM's enforcement objectives. For cases where the impact is assessed as significant and serious, more punitive enforcement actions would be considered.

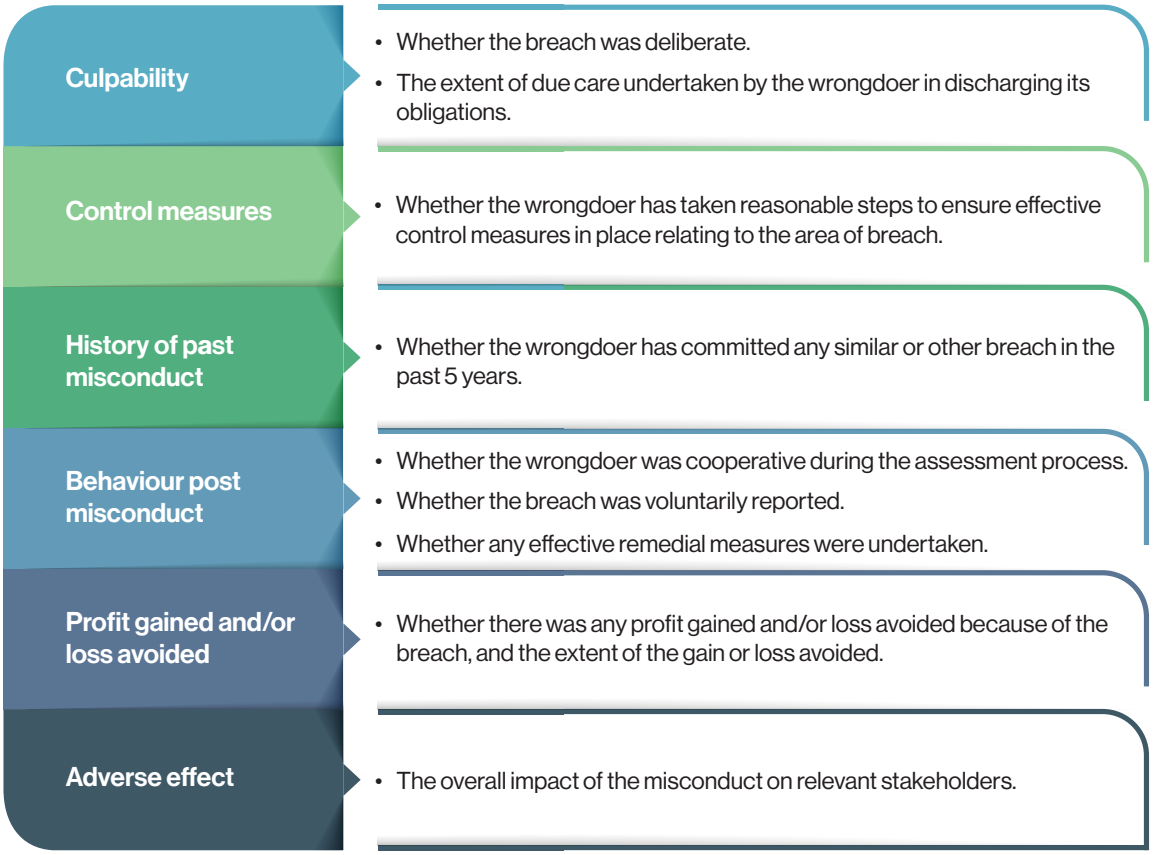
Monetary Penalties

BNM may impose a monetary penalty as a punitive action for a breach, which may be in the form of AMP or compound. In imposing the monetary penalty, BNM is governed by the relevant provisions under the respective laws that stipulate the amount of the maximum penalty that can be imposed on wrongdoers.

BNM upholds a fair, proportionate and consistent approach in determining the monetary penalty. Several factors are considered in computing the amount of the penalty imposed, including:

i. the nature of the breach, to determine the standard starting point for calculation of the penalty. A higher standard starting point would apply to a breach of a more serious nature;
ii. aggravating or mitigating factors based on the facts of the case (see below); and
iii. other overriding factors that may warrant a reduction or increase in the amount of the penalty, having regard to BNM's enforcement objectives. Examples of such factors include financial hardship and the deterrent effect of the proposed penalty.

Diagram 4: Examples of Considerations of Aggravating and Mitigating Factors



Before arriving at the final AMP amount, other factors may be considered by BNM to ensure that all areas relating to the breach are taken into account. This includes whether the penalty:

i. effectively deters the wrongdoer and other potential wrongdoers against future breach of a similar nature;
ii. holds the wrongdoer to the same standard of consequences for breach as that applied to wrongdoers in similar circumstances; and
iii. will affect the wrongdoer's financial ability to continue its day-to-day business in a manner that can adversely impact public interests.

All monetary penalties imposed should be paid[3] by the wrongdoer within the prescribed statutory timeline. BNM may offer alternative payment arrangements in the forms of:

i. Early settlements
The wrongdoer may opt to pay a reduced penalty amount for early resolution of cases if no representation is made.

ii. Flexible payment arrangement
Upon request, the wrongdoer may be offered an option to pay in instalments or allowed an extended deadline to settle the penalty.

Diagram 5: Applicability of BNM's Payment Arrangements

Payment Arrangements	Applicability
Early settlements	Applicable for payment of AMP imposed under FSA 2013, IFSA 2013 and DFIA 2002.
Flexible payment arrangement	**Instalment** Applicable for payment of AMP imposed under FSA 2013, IFSA 2013, DFIA 2002, MSBA 2011 and AMLA 2001. **Extended deadline** Applicable for payment of AMP and compound imposed under FSA 2013, IFSA 2013, DFIA 2002, MSBA 2011 and AMLA 2001.

[3] Payments for AMP and compounds are paid into the Federal Consolidated Fund.



Appeal Process

The Monetary Penalty Review Committee (MPRC) is an independent committee legislated under section 238 of the FSA 2013 and section 249 of the IFSA 2013 to consider appeals from aggrieved persons (individual or institution) against the AMP or pecuniary remedy imposed by BNM. This provides an avenue for an aggrieved person to appeal to the MPRC against administrative enforcement actions taken by BNM under the FSA 2013, IFSA 2013, DFIA 2002 and CA 2020. Nevertheless, AMLA 2001 carries criminal penalties, with no AMP or pecuniary remedy. Checks and balances are ensured through the powers vested in the Public Prosecutor on the offer to compound by BNM as a competent authority.

The members of MPRC are appointed by the Minister of Finance from among the independent non-executive directors of BNM or other external persons.

An appeal to the MPRC must be filed within 21 days after the aggrieved person has been notified of BNM's decision to impose an AMP or pecuniary remedy. The detailed procedure to file an appeal to the MPRC is set out in the Appeal Manual on BNM's website.

After considering the appeal, the MPRC may either confirm BNM's decision or require BNM to reconsider and reach a decision in accordance with the findings of the MPRC.

The MPRC will inform the aggrieved person of the outcome of the appeal.



Publication of Enforcement Actions

Since 2019, all enforcement actions taken are published on BNM's website. The public notice sets out to reinforce the deterrent principle of enforcement actions and promote confidence in the financial system. In promoting transparency of enforcement actions, the public notice contains the facts of the case, aggravating and mitigating factors taken into consideration in deciding the penalty amount and remedial measures taken by the wrongdoer.

In an exceptional circumstance, BNM may delay or depart from the publication of enforcement actions to balance the benefits of disclosure with the need to maintain stability in the financial sector. BNM would consider whether the publication would be prejudicial to soundness of the financial institution, interests of depositors and/or the stability of the broader financial system and public interest.

BNM also publishes an analysis and summary of overall enforcement actions by type of breach and sectors in its Annual Report. BNM continues to regularly review the contents of its public notices and general publications to uphold an appropriate level of transparency in enforcement actions that serves the objectives of financial stability, financial integrity and consumer protection.

Appendix 1: Statutory Provisions

Diagram 6: Statutory Provisions of BNM's Enforcement Actions

Types of enforcement action	Provisions under the statutes						
	CBA 2009	FSA 2013	IFSA 2013	DFIA 2002	MSBA 2011	AMLA 2001	CA 2020
Administrative monetary penalty	S98	S234(3)(b)	S245(3)(b)	S106A(3)(b)	S75(2)(b)	-	S48(1)(c)
Compound	S89	S253	S264	S113	S88	S92	S57(2)
Reprimand	-	S234(3)(c)	S245(3)(c)	S106A(3)(c)	S75(2)(e)	-	-
Remedy	-	S234(3)(e)	S245(3)(e)	S106A(3)(e)	S75(2)(d)	-	-
Civil action	-	S239	S250	S106E	S76	S22(2)	-
Criminal prosecution	S90	S255	S266	S114A	S89	S93	S58

Appendix 2: Glossary

aggravating factors	Refers to facts or circumstances that reflect a higher degree of seriousness and may warrant the penalty computation to be increased.
authorised or regulated persons	Includes an individual, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organisation, association or group of persons, whether corporate or unincorporated who are subject to the regulatory standards and requirements by BNM. This also comprises licensed and approved institutions as well designated non-financial businesses and professions (DNFBPs) and non-bank financial institutions (NBFIs).
mitigating factors	Refers to facts or circumstances that reflect a lower degree of seriousness and may warrant the penalty computation to be decreased.
pecuniary remedy	Refers to monetary compensation that is awarded to another person who has been aggrieved by the wrongdoer.
representation	Refers to the wrongdoers' written submission in exercising their right to be heard and defend themselves against BNM's decision.
stakeholder	Includes financial market participants, consumers, public at large, regulators and law enforcement agencies.
standard starting point	Refers to the base amount applicable to compute the penalty amount before considering other factors.
wrongdoer	Refers to an individual or an institution that has breached BNM's applicable laws and policies.