Anguilla Financial Services Commission

ANNUAL REPORT 2014

ANGUILLA'S LICENSING AND REGULATORY BODY FOR THE FINANCIAL SERVICES INDUSTRY

OUR MISSION

To enhance the safety, stability and integrity of Anguilla's financial system and contribute to Anguilla being a premier financial centre, through appropriate regulation and legislation, judicious licensing, comprehensive monitoring and good governance.

CHAIRMAN'S REPORT

The Commission's tenth year was a real marker in many ways, most of which are drawn out in either the Governor's or Director's sections of this Report; however, an area I wish to set out relates to the theoretical question of the "grip" of a regulatory regime.

Regulation can be extremely detailed, setting out every rule in comprehensive text, it can leave no space for interpretation or flexibility, it can be cast in a manner that drives through a standard approach and delivers a completely level playing field. Alternatively, it can restrict itself to setting out its requirements at a principles level, keeping to higher order concepts and standards and leave the members of the financial services industry to find sensible ways of meeting those standards which may well vary as different folk determine the right way to meet the over-arching standard in their particular business.

There are, without doubt, advantages and disadvantages to either kind of regime. Principles-based systems can leave smaller or less developed sector members feeling unsupported, unclear and unled about what comprises best practice or how various higher order principles can be met in certain circumstances. On the other hand, detailed rules-based systems can bog down business and encourage a box ticking mentality which reduces staff capability to flex procedures to focus more attention on higher risk matters or indeed less attention on lower risk matters. Anguilla is fortunate in generally being a principles-based jurisdiction but one which moves to more prescription in certain critical control areas.

During this year, Commission staff have undertaken a robust on-site examination programme. A common theme has been to find weaknesses in governance standards, operational policies and procedures, particularly in regard to anti-money laundering. Through next year and 2016, the Commission compliance supervision programme will get tougher, moving on from its approach of earlier years to guide and coach, to issuing timetables for remediation, until by late 2016/early 2017 administrative penalties will be applied to those persons who are found to fail in their obligations.

It therefore may be helpful to set out, in overview, the first of the obligations on firms with regard to preventing and forestalling money laundering and terrorist financing, a Business Risk Assessment. The Proceeds of Crime Act and associated Regulations and Code are considerably more detailed, and have been explained in detail in numerous industry training events, but it is hoped a short overview of what should be in a Business Risk Assessment might assist senior management of regulated businesses to understand where to focus and get this first important protection in place.

A core requirement of the Proceeds of Crime Act is that a registered person must carry out a Business Risk Assessment. This document should represent an honest and candid assessment of the vulnerabilities within a business by which money launderers and terrorist financiers could achieve their goals.

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The document firstly should consider the factors which might "let the launderers in", for example it could consider how the business meets its clients, how instructions are received, where clients come from, whether mail is received in English or a foreign language, what kind of products and services are provided, and how those products and services are used. The Business Risk Assessment might include useful factual information to help build a profile of the business, for example the numbers of clients and how many clients have been identified as Politically Exposed Persons or been given High, Medium or Low risk ratings in the Customer Risk Assessments. The Business Risk Assessment could also examine what geographical and industry sectors customers come from, what sort of assets are held and whether shares tend to be held directly, through nominees or in bearer form.

At this stage a company management business following this kind of approach to conducting its Business Risk Assessment might find that its overall Business Risk Assessment is High Risk, for example due to a significant proportion of its clients exhibiting one or more of the following indicators of a High Risk client:

- shareholding through bearer shares where the custodian relationship has broken down and immobilisation cannot be confirmed;
- association with a country identified on the Transparency International Bribery and Corruption Index;
- involvement of one or more PEPs;
- association with a country identified on FATF lists;
- conducting a high risk business such as arms, oil, gas, mining;
- non-face to face business introduced through an intermediary.

Some lesser proportion of its clients might be Medium Risk, for example due to shareholding being through bearer shares, but successfully immobilised in a reputable independent custodian; and/or being non-face to face business, but the introducer is well known, trusted and has a good track record in providing CDD information on request.

A small proportion of clients might be Low Risk, for example due to the clients being locally resident, long term known and using the companies for known, legitimate trading activities.

The next vital part of a Business Risk Assessment must consider these various risks and note down the strategies by which the business manages those risks. This section is often referred to as "Mitigating Controls" or "Risk Controls" and is important to think about. Where no suitable control can be applied to an identified risk, the business should decline or exit that particular client.

The Mitigating Controls section of the Business Risk Assessment of course varies considerably from firm to firm and is difficult to put into an example. However, suggestions on how risks can be managed generally might include:

- maintaining subscriptions to jurisdictionally relevant search engines, such as World Check, Factiva, or Bankers Trust;
- a robust monitoring programme to ensure CDD is kept up to date;
- only using regulated introducers and intermediaries from jurisdictions with equivalent AML/CFT regimes;
- maintaining a strict programme of test calling for CDD information from accepted introducers and intermediaries;
- entering into robust Enhanced Due Diligence checks for all High Risk clients, including obtaining evidence on source of wealth and source of funds.

The stated strategies must be reflected in the working practices of the firm and the Commission staff in the course of their compliance examinations will check that these are reliably carried out in addition to assessing whether they are sufficiently comprehensive.