



The Obligations of regulated entities in respect of maintaining AML/CFT defences

The Ten Essential Responsibilities

Practical issues

Where it all goes wrong

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Overview

- **The Obligations of regulated entities in respect of maintaining AML/CFT defenses**
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The FATF has recently upgraded its 40+9 recommendations to new standards

- Entitled the “New 40” these now include AML, CFT and PF.
 - Anti Money Laundering
 - Combating the Financing of Terrorism and
 - Financing the Proliferation of Weapons of Mass Destruction
- Very importantly, predicate offences (eg the proceeds of which are deemed to be money laundering) now must include fiscal offences. As you know, this is already the case in Anguilla.



The Ten Essential Responsibilities

1. Conduct a Business Risk Assessment
2. Institute Policies and Procedures
3. Conduct Customer Due Diligence
4. Establish Source of Funds and Source of Wealth
5. Establish and understand the commercial rationale for the structure (remembering tax advice)
6. Risk Rate your clients (remembering PEPs and country risk)
7. Appoint an MLRO/MLCO
8. Train your staff (board to receptionist)
9. Monitor Transactions and Review files
10. Make suspicious activity reports (SARs)



The Ten Essential Responsibilities

- This is of course a simplified list. Within item 2 (“Institute Policies and Procedures”) many issues need to be covered. However, the list above is designed to assist you focus on the first priorities which registered persons should ensure are in place as a matter of urgency, if they are not yet wholly embedded.
- The current responsibilities of registered persons are, of course, to comply with the regime in place in Anguilla. However, regulatory examinations to date show that there is a relatively low level of compliance. More attention and resource must be paid to meeting regulatory obligations.



Regulatory Practice

- The FATF is a body under the OECD umbrella. It is no coincidence that OECD initiatives on tax compliance harmonise with FATF standards.
- It is no coincidence that the Peer Group Review on tax practices involves onsite examinations which seek evidence of effectiveness of the regime, and no coincidence that FATF Evaluations follow the precise same standard.
- The Commission MUST evidence effectiveness to both sets of reviewers.
- Where the Commission's regulatory examinations show low levels of compliance, the Commission MUST evidence that it has used "proportionate and dissuasive sanctions" to increase levels of compliant behavior in the industry.



Regulatory Practice

- Step 1 - Anguilla passed revised law in 2009, and introduced AML/CFT Code in 2009 also upgrading existing guidance that had been in place for some time.
- Step 2 - The Commission and FIU have run numerous training sessions.
- Step 3 - The Commission has conducted various visits but during 2011 commenced its first formal round of onsite examinations, again providing reports to each entity but this time publishing its themed findings in the format of a “Dear CEO” letter – this should be taken as an industry warning.



Regulatory Practice/continued

- Step 4- The next step is to commence a second formal round of examinations. Whilst firms with minor failures will be given time to rectify their affairs, firms showing major deficit or firms that despite previous examinations have done little to improve, will suffer tightening of regulatory grip.
- This is normal regulatory practice and required behavior of the Commission if the Island is to secure good evaluation ratings when the FATF commences their fourth round of assessments in 2013.



Regulatory Practice/continued

- This process of introducing law, outreach through training, early round visits, disseminating findings, a Dear CEO letter, and moving to more formalized demanding of compliance, combined with enforcement, is the standard progress of regulation.
- Businesses must raise their standards and take their regulatory obligations seriously.
- The businesses that have done so, responsibly and willingly, have a right to expect that the Commission will force less compliant businesses to similarly invest – to secure the collective investment of protecting the reputation of the Island.



Practical Issues

- I gather there are a number of key practical issues facing the industry currently.
- Incorporation Centre Model The model in much of the Caribbean is largely that of incorporation centre (rather than full services administration). Many businesses in the region sell only registered office services and in addition to the limited view of activities such a reduced level of service provides, further distance themselves from the beneficial owner by “selling” to overseas agents – who often forward sell again, before finally a business is involved that actually faces the clients. This is a high risk low reward business model for you and for the jurisdiction.



Practical Issues/the Incorporation Centre Model/continued

- The more successful centres do not favour registered office only business, insisting on provision of nominee shareholders, company secretary and director services with associated full service administration.
- The “full service” model generates greater fees, provides higher levels of employment and feeds the associated industries of banking, accounting, legal services, information technology, equipment sales, etc etc. In addition to being a far more valuable generator in the economy, the “full service” model, vitally reduces the AML/CFT/PF Risk, but also provides you with an income sufficient to manage compliance properly.



Practical Issues/the Incorporation Centre Model/continued

- Although POCA permits you to rely on an introducer to **collect** the KYC information, it does not offer any exemptions from the rest of the AML/CFT regime. Indeed where you use an intermediary you are required to conduct additional risk assessments on it, satisfy yourself as to its policies and procedures, and test them at regular intervals. Further, if they fail, to provide the information when called upon to do so, you are still responsible at law.
- You should take particular care in this area and specifically not have agreements which limit their obligation to provide you with the KYC information to circumstances when compelled by law or court order. The information must be available to you at any time should you wish to call for it.



Awareness of AML/CFT/PF – in house training

- The Board of all regulated persons must ensure that they, as individuals, and all their staff are properly trained in AML issues. Correspondence and general discussion with the industry, together with the themed examination findings indicates there is a low level of readiness in the industry.



Practical Issues/continued

Awareness of AML/CFT/PF – in house training

- If you are not sure my statement is fair – quickly run off the ten essential obligations in your own mind.
- If you can do so successfully, go back to the office and ask your staff to list them.
- All your reputation rests on the answer of your weakest colleague.
- All this island's reputation rests on the firm with the weakest colleague.
- You owe it to the legislature, the Commission, your business, yourselves and your community to have strong defences in the AML/CFT/PF area.



Where it all goes wrong

Typical failures in my experience:-

- Businesses fail to identify their client is high risk.
- Businesses do risk rate their clients but fail to treat high risk ones differently to normal risk.
- Businesses identify their client low risk and fail to notice changes in behavior that render them high risk.
- Directors do not value the compliance function and see it as a “prevention of business” unit – start thinking of it as your insurance policy – something that preserves the value of what you have got.



Where it all goes wrong/continued

- Directors override internal controls to facilitate pushy or profitable clients.
- Directors employ weak, box tickers in vital compliance roles, where added strength and independence is needed, the employee is a yes man.
- Businesses simply don't know what their clients are up to.

