



REPORT ON THEMED EXAMINATIONS PROGRAMME 2013

**ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM
SUMMARY OF FINDINGS**

**ANGUILLA FINANCIAL SERVICES COMMISSION
2014**

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1 Introduction

- 1.1 In 2013, the Commission continued its themed examinations to assess licensed service providers' compliance with the Anti-Money Laundering and Terrorist Financing ("AML/CFT") legislation consisting of the Proceeds of Crime Act, R.S.A. P98 (as amended) ("POCA"), AML/CFT Regulations, R.R.A, P98-1 (as amended) ("AML/CFT Regulations") and AML/CFT Code 2013 ("AML/CFT Code"). Findings from these examinations evidence that there continue to be significant deficiencies in compliance by licensed service providers with AML/CFT legislative requirements.
- 1.2 This Report highlights areas where licensed service providers' performance is substandard and provides detailed commentary on the specific improvements required. The Commission is releasing the Report to provide further assistance to participants in the financial services industry to understand their obligations under AML/CFT legislation and to underscore the Commission's consistent message to its licensed service providers that their level of compliance with international standards has a direct bearing on the continued sustainability and growth of Anguilla's financial services industry.

2 Scope

- 2.1 The Commission's 2013 AML/CFT examination programme covered a range of financial services providers, including company managers, fund managers/administrators, insurance managers and domestic insurance companies.
- 2.2 Twenty four (24) AML/CFT examinations were conducted between February and October 2013. The Commission's examiners assessed whether licensed service providers were compliant with the AML/CFT legislation. Examiners reviewed and assessed licensed service providers' AML/CFT policies and procedures, staff training and awareness, record keeping, appointments of Money Laundering Reporting Officers ("MLROs") and Money Laundering Compliance Officers ("MLCOs") and reporting of suspicious activity.
- 2.3 Prior to inspection, the licensed service providers completed a questionnaire that covered procedures relating to AML/CFT systems, controls and customer due diligence.
- 2.4 Examiners reviewed, on a sample basis, the records, files and written policies and procedures maintained by the licensed service providers and held discussions with management and staff involved in strategic, operational and compliance matters. Where appropriate, specific areas for improvement were identified and deadlines set for remedial action by licensed service providers.

3 Preliminary Observations

- 3.1 The findings from the 2013 examination programme evidence a number of areas where the majority of the practitioners examined did not achieve an acceptable standard of compliance with the AML/CFT legislative framework. These findings are extremely disappointing, especially as they show minimal general improvement over the past three years despite the fact that the Commission has drawn attention to

AML/CFT requirements in its previous themed examination programme reports and in training sessions. The major areas of substandard performance are outlined in section 4 and required improvements are discussed in section 5.

- 3.2 The Commission's outreach efforts do appear to have contributed to removing one previously identified failing. All practitioners reviewed complied with the requirements to appoint MLROs and MLCOs as well as to secure approval of those appointments from the Commission.
- 3.3 In September 2013, there were significant amendments to AML/CFT legislation - specifically POCA, the AML/CFT Regulations and the AML/CFT Code. New legislation enacted at the same time consists of the Externally and Non-Regulated Service Providers Regulations, 2013 and the Administrative Penalties Regulations, 2013. These amendments and new legislation were introduced in response to recommendations made by the Caribbean Financial Action Task Force in its third round of evaluations.

4 Areas of Substandard Performance

4.1 Due Diligence on Introducers and Intermediaries

- 4.1.1 Licensed service providers failed to conduct risk assessments of introducers and intermediaries in cases where reliance was placed on them to carry out due diligence, as required by section 13 of the AML/CFT Regulations and section 26 of the AML/CFT Code. Further, the lack of documentation of business and customer risk assessments by licensed service providers continues to be an ongoing concern for the Commission. Such documentation is required by sections 10 and 16 of the AML/CFT Regulations.

4.2 Corporate Governance

4.2.1 Manuals

- 4.2.1.1 Some licensed service providers did not document their AML/CFT policies and procedures in manuals, as required by section 16 of the AML/CFT Regulations. In some cases, where the policies and procedures were documented, there was a need for updates in accordance with the "AML/CFT Issues Guide for Procedures Manual" published on the Commission's website and to reflect recent amendments to the AML/CFT legislation.

4.2.2 Training

- 4.2.2.1 Although there was a general increase in the familiarity of staff of licensed service providers with AML/CFT legislation, there were cases where staff in key positions were not familiar with the AML/CFT legislation, contrary to the requirements of section 19 of the AML/CFT Regulations.

4.3 Analysis of Customer Due Diligence

- 4.3.1 Some licensed service providers failed to make sufficient inquiries about their customers on a risk sensitive basis as required by section 10 of the AML/CFT Regulations.

4.4 Enhanced Due Diligence

- 4.4.1 In some cases, enhanced due diligence was not conducted in areas of higher risk of money laundering, as required by section 12 of the AML/CFT Regulations.

5 Required Improvements

In relation to the identified areas of substandard performance, the Commission provides the following description of the improvements that must be implemented by industry participants to bring their compliance practices up to international standards:

5.1 Due Diligence on Introducers and Intermediaries

- 5.1.1 Several company managers and trust companies rely on introducers and intermediaries to apply customer due diligence measures with respect to their customers. Most critically, in most cases company managers and trust companies have not visited the offices of their introducers and intermediaries nor reviewed their policies and procedures and method of conducting business and/or researched their jurisdiction's level of regulatory compliance with AML/CFT legislation.
- 5.1.2 There is a statutory requirement that risk assessments be carried out on introducers and intermediaries when reliance is being placed on them to apply customer due diligence measures. This assessment should include a review of introducers' and intermediaries' method of conducting business to ensure that it is in line with service providers' projected business risk. Service providers need to be aware that they remain liable for any failure by introducers and intermediaries to apply appropriate customer due diligence measures.
- 5.1.3 A disregard for vigilant and ongoing scrutiny of the operations of the introducers and intermediaries exposes the jurisdiction to possible reputational damage as introducers and intermediaries, predominantly overseas agents, effectively replace company managers and trust companies as the main gatekeepers of entry to the jurisdiction.
- 5.1.4 Therefore, it is incumbent on service providers to actively manage their relationships with their introducers and intermediaries, including determining the extent to which the introducers and intermediaries in turn rely on third parties and whether they are involved in the offering of risky products. A careful review of the introducers' and intermediaries' websites should offer some insight into their businesses.
- 5.1.5 AML/CFT legislation places much emphasis on the documentation of risk assessments and evidence that the introducer and intermediary is a regulated person if there is to be reliance. Where there is no face-to-face interaction with the introducer or intermediary or where the introducer or intermediary relies on third parties, in most

cases further information and mitigating procedures are required to know the customer.

- 5.1.6 It must be noted that amendments to section 13 (Reliance on Introducers and Intermediaries) of the AML/CFT Regulations effected in September 2013 specifically state that a service provider when relying on an introducer or intermediary to apply customer due diligence shall immediately obtain from the introducer or intermediary, the customer due diligence information. Reference is made to the Guidelines for Introduced Business amended in December 2013. Some service providers are still struggling to meet this statutory requirement.

5.2 Corporate Governance

- 5.2.1 Responsibility for compliance by service providers lies with directors and senior management. An effective compliance system should include the following:

- 5.2.1.1 Procedures and Policies including sound risk management procedures;

- 5.2.1.2 Committed resources, expertise and continuous training;

- 5.2.1.3 Ongoing monitoring based on a risk-sensitive approach; and

- 5.2.1.4 A watchful eye and perceptiveness concerning AML/CFT.

- 5.2.2 Key personnel (particularly directors, MLROs and MLCOs) ought to be familiar with Anguilla's specific AML/CFT legislation, guidance and codes and ensure that such knowledge is passed on to their staff.

- 5.2.3 Personnel of licensed service providers should always remain alert, trained and knowledgeable concerning AML/CFT policies and procedures in order to be effective as gatekeepers in safeguarding the reputation of both the jurisdiction and the local financial services industry.

5.3 Analysis of Customer Due Diligence

- 5.3.1 Most service providers obtained adequate information covering identification and verification of identity. However, proper analysis of due diligence information is a fundamental step in understanding the customer, its business and where the risk lies. It enables adequate risk profiling of customers and appropriate allocation of resources for monitoring and updating information on a risk sensitive basis.

- 5.3.2 Analyzing customer due diligence information at the beginning of the relationship, and continually updating it, requires service providers to be tenacious in their efforts to find and record information. Evidence of all searches, e.g. Google and WorldCheck, should be retained in the service provider's records even where no adverse information is discovered. Additional information is often required to understand the type of business, products and services offered by customers and the jurisdictions in which they operate.

- 5.3.3 Examiners found in most cases that analysis of information, or at least any evidence of that analysis, was absent even when customer due diligence was collected. Also, in some cases when risk assessments were conducted, the analysis of risk was not sufficiently detailed. Service providers' records generally did not evidence sufficient questioning to ensure that information and knowledge were garnered to support appropriate risk management techniques.
- 5.3.4 The Commission notes that, although AML/CFT legislation requires that service providers observe the minimum requirements of application of due diligence measures, the Commission's position is that there is a more general responsibility, to the jurisdiction and their fellow service providers, to be observant and exercise due caution in order to protect the jurisdiction's reputation which is at risk should the service provider fail to identify and address illicit activities by a client. This may require service providers to put in place procedures which, on occasion, exceed the basic minimum, such as implementing enhanced due diligence measures.

5.4 Enhanced Due Diligence

- 5.4.1 In cases where there is a higher risk of money laundering or terrorist financing, increased customer due diligence and ongoing monitoring is required. Examiners noted cases, evidenced from information available, which should have alerted service providers that the identified risk was not appropriately assessed. Service providers should ensure that all relevant risks are captured and monitored to ensure correct risk assessment is possible and that higher risk rated customers have enhanced due diligence measures applied.
- 5.4.2 The Commission has noted at least one case where a service provider appears to have been unaware of the implications of "shadow" directorship and unidentified control persons and how such arrangements could defeat requirements for ensuring that directors and shareholders are fit and proper persons. Some application of perception and judgment is required to identify individuals who behave like directors or control persons but are not listed on corporate documents.
- 5.4.3 Another possible indication of abuse of the financial system is where entities have changed names on multiple occasions and/or changed ownership or made significant changes to business plans over relatively short periods of time. While not necessarily indicating misbehavior, such events may well warrant additional enquiry. This should include determining the true activities or nature of the business, where they are being conducted and whether they are consistent with the business plan. Claims by the principals of entities that the company has been inactive may require specific verification, including for example an internet search to identify any publicly available website or other activity involving the company on social media. In any event, unusual patterns of transactions which have no "apparent economic or visible lawful purpose" are always a cause for concern.
- 5.4.4 International standards now require the identification of local PEPs and the application of enhanced customer due diligence on not only local PEPs but also on family members and close associates of local PEPs. In small, close-knit jurisdictions like Anguilla, where theoretically large portions of the population could be subject to enhanced due diligence, customer due diligence in these circumstances ought to be

conducted on a risk-sensitive basis, with appropriate judgment and a balanced approach being used so that the process is not unnecessarily disruptive and unduly burdensome.

6 Final Comments

- 6.1 The required improvements described in this Report are necessary to support the Government of Anguilla's commitment that the jurisdiction comply with and promote the international standards established by the Financial Action Task Force in combating money laundering and the financing of terrorism.
- 6.2 Although there has been improvement in some areas as compared to 2012, a number of areas continue to require significant improvement. Industry practitioners should diligently comply with the corrective actions described in section 5 of the Report.
- 6.3 The Commission gradually has increased the rigour of its regulatory activities in support of ensuring compliance with the AML/CFT legislation. Over the past several years, the Commission has provided a full educational programme to service providers on compliance issues and has more recently offered specific post examination guidance in relation to identified deficiencies. Although compliance with AML/CFT requirements has improved as a result of these efforts, the improvements have been slow and uneven. Therefore, in July 2014, the Commission informed its licensed service providers that the FSC intends to escalate its regulatory approach by imposing appropriate regulatory sanctions when inadequate compliance by licensees with AML/CFT legislation is encountered.

Anguilla Financial Services Commission

1 October 2014