

Anguilla Financial Services Commission



REPORT ON THEMED EXAMINATIONS PROGRAMME 2014

*Anti-Money Laundering and Combating Financing of Terrorism
Summary of Findings*

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1 Introduction

- 1.1 In 2014, the Anguilla Financial Services Commission (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. c. P98 (as amended) (“POCA”), AML/CFT Regulations, R.R.A, P98-1 (as amended) (“AML/CFT Regulations”), AML/CFT Code, 2013 (“AML/CFT Code”) and Externally and Non-Regulated Service Providers Regulations, 2013 (“ENRSP Regulations”). Findings from these examinations as well as complaints made to the Commission evidence that there continue to be significant deficiencies in compliance by licensed service providers with AML/CFT legislative requirements.
- 1.2 This Report reviews areas where service providers’ performance is deficient and provides commentary on the specific improvements required. The Commission is releasing the Report to assist participants in the financial services industry to understand their obligations under AML/CFT legislation and to emphasize that the level of compliance by service providers with international standards not only impacts whether they meet the Commission’s fit and proper criteria to maintain a license but also has a direct bearing on the reputation, continued sustainability and growth of Anguilla’s financial services industry.

2 Scope

- 2.1 The Commission’s 2014 AML/CFT examination programme covered a range of licensed financial services providers, including company managers, fund managers and insurance managers/brokers.
- 2.2 Eleven (11) AML/CFT examinations were conducted between March and October 2014. The Commission’s examiners assessed whether service providers were compliant with the AML/CFT legislation. Examiners reviewed and assessed service providers’ AML/CFT policies and procedures, staff training and awareness, suspicious activity reporting (“SARs”), appointment of money laundering reporting and money laundering compliance officers, and record keeping.
- 2.3 Prior to the examination, the 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 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 service providers.

3 Preliminary Observations

- 3.1 The findings from the 2014 examination programme evidence a number of areas that require increased vigilance and overall improvement of compliance with the AML/CFT legislation. These findings were especially evident in certain areas and the

Commission intends to focus on those areas in this report - particularly in section 4 (areas of substandard performance) and section 5 (required improvements).

- 3.2 The Commission also strongly advises that practitioners review the AML/CFT Code, which is an excellent resource for AML/CFT compliance, easy to read with valuable guidance. The Code is a practical and useful document and can be used by practitioners for training of staff and in developing a framework for compliance with the AML/CFT legislation.

4 Areas of Substandard Performance

4.1 Customer Due Diligence (Relationship Information)

- 4.1.1 Eighteen percent (18%) of the licensed service providers examined failed to conduct sufficient customer due diligence, in particular relating to collecting relationship information in accordance with section 11 of the AML/CFT Code. This was particularly so in relation to the service providers documenting the purpose and intended nature of the business.

4.2 Risk Assessments (Business and Customer)

- 4.2.1 These are two distinct risk assessments required to be conducted and documented by licensed service providers. Fifty-five percent (55%) of the service providers examined did not document their business risk assessment while thirty-six percent (36%) did not document their customer risk assessments. Business risk assessments are required under section 16(1)(f) of the AML/CFT Regulations and further elaborated on under section 3 of the AML/CFT Code. Similarly, customer risk assessments are required in accordance with section 10 of the AML/CFT Regulations and further elaborated on under section 10 of the AML/CFT Code.

4.3 Enhanced Customer Due Diligence and Ongoing Monitoring

- 4.3.1 The Report evidences that forty-five percent (45%) of licensed service providers sampled fail to conduct enhanced customer due diligence and any ongoing monitoring on a regular basis. Since 2011, this has been a recurring issue. Reference is made to section 12 of the AML/CFT Regulations.

4.4 Non-Regulated Investment Business

- 4.4.1 Generally, licensed service providers were not vigilant in identifying companies that conduct non-regulated investment business. In cases where such business was identified, there were no policies in place to address this type of business e.g. to ensure registration under the ENRSP Regulations before conducting any business and, if not registered, to terminate the relationship, nor were there efforts made to develop enhanced due diligence procedures to address the risk.

4.5 Introducers/Intermediaries (Systems and Policies)

- 4.5.1 Twenty-seven percent (27%) of licensed service providers did not have policies in place on conducting business with introducers/intermediaries, including where

reliance was placed on those third parties. Reference is made to section 13 of the AML/CFT Regulations. Such policies should be documented in the licensee's Procedures Manual and should be detailed enough so that staff can follow.

5 Required Improvements

In relation to the identified areas of substandard performance, the Commission provides the following commentary to assist licensed service providers to meet their obligations under AML/CFT legislation:

5.1 Customer Due Diligence (Relationship Information)

5.1.1 Undertaking customer due diligence measures is a statutory requirement for service providers. A necessary component of customer due diligence measures is the need to understand the nature of the customer's business and the transactions involved in order to correctly assess the money laundering and terrorist financing risk. This is detailed in the "relationship information" portion of the AML/CFT Code.

5.1.2 Guidance can be found in the AML/CFT Code following section 11, under item (xv) under "Relationship Information": "*Relationship information (ie information on the business relationship, or proposed business relationship), is the information necessary to enable a service provider to fully understand the nature of the customer's business, or proposed business and the rationale for the business relationship. This will include information on the source of the customer's funds and, in higher risk relationships, the source of the customer's wealth.*"

5.1.3 Examinations have shown that most licensed service providers do not understand the nature of their customers' businesses. Further, there is rarely evidence on file to show that they conducted the necessary research and/or collected information in order to ascertain and understand the nature of the business. Licensees are required to ascertain the business their customers are carrying on, which often can be effected by a simple Google search or else a request to the customer for evidence of the business being conducted.

5.1.4 Additionally, licensed service providers should, but often did not, understand the structure of the customer's company. Evaluating the structure of the company requires an understanding of what the company is established to do and/or what the customer is trying to achieve. If there are unnecessary complexities in the corporate structure and unclear connections to entities incorporated in other jurisdictions, then service providers are required to investigate and determine valid business reasons for the complexity.

5.2 Risk Assessments (Business and Customer)

5.2.1 Business Risk Assessments

5.2.1.1 The Commission's onsite examinations evidenced that many licensed service providers do not adequately analyze the risks to their businesses of money laundering and terrorist financing. This exposes service providers to possible enforcement action as well as the jurisdiction to reputational

damage. An overall concerted effort to conduct proper risk analysis resulting in risk mitigation strategies and greater oversight and management of risks is needed for the jurisdiction to remain competitive and compliant with international standards.

5.2.1.2 Business risk assessments evaluate the vulnerability of the business of the service provider itself to money laundering and terrorist financing. Service providers, therefore, must consider a wide range of risks including regulatory and operational risks that may affect the business. One operational risk that should be flagged is conducting business with companies introduced by introducers/intermediaries. Questions that service providers should be asking include:

- What is the nature of the business of these companies?
- How much and how thorough is the due diligence being conducted by the introducer/intermediary on whom reliance is placed?
- Why are these customers using the introducer/intermediary?
- Are these customers compliant with the AML/CFT legislation?
- Is my staff sufficiently trained to identify due diligence issues with these companies?

In most cases, the Commission's expectation is that a service provider with many customers having businesses not conducted locally would be at high risk from money laundering and terrorist financing. If at a high risk from money laundering and terrorist financing, the service provider should identify the nature of the specific risks through a customer risk assessment, conduct enhanced due diligence (see paragraph 5.3 below) and mitigate the risk where appropriate.

5.2.1.3 The Board of the service provider should ensure that the service provider has an approved and documented strategic plan that commits resources for AML/CFT staffing and training and periodic evaluation of the effectiveness of the service provider's AML/CFT policies and procedures.

5.2.2 Customer Risk Assessments

5.2.2.1 Customer risk assessments are necessary to assess the risk that customers may be involved in money laundering or terrorist financing. Customer profiling, a vital part of customer risk assessments, requires the service provider to ask probing questions of the customer and about the business the customer is involved with.

5.2.2.2 Essentially, an information gathering process is critical to assess the accuracy of the responses provided by the customer. Examiners noted that most service providers collected independent verification of identity and address of customers, including beneficial owners and controllers along with any third parties on whose behalf the customer is acting. However, other information relating to the business including the volume of transactions, the details of the activities and their purpose, the source of funds and, in high risk cases, the source of wealth, was not collected. The importance of this information cannot be over emphasized. Service

providers that fail to collect such information produce customer risk assessments that are unsatisfactory, incomplete and erroneous and expose themselves to disciplinary sanctions and the jurisdiction to reputational risk.

- 5.2.2.3 Both business and customer risk assessments require regular updating as new risks emerge. Service providers should have policies and systems in place to determine when and how often reviews/updates are done. The frequency of reviews/updates is impacted by factors such as unusual customer profiles, new business relationships, higher risk business and sanction regimes affecting other countries.

5.3 Enhanced Customer Due Diligence and Ongoing Monitoring

- 5.3.1 If a customer is assessed to be a high risk, the service provider must apply enhanced due diligence measures and in addition to normal ongoing monitoring efforts, undertake enhanced ongoing monitoring in accordance with section 12 of the AML/CFT Regulations.
- 5.3.2 It must be emphasized that ongoing monitoring is the sole responsibility of the service provider. Ongoing monitoring is defined in section 4(5) of the AML/CFT Regulations and includes the scrutinising of transactions undertaken *“throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service provider’s knowledge of the customer and his business and risk profile and.....undertaking reviews of existing records”*.
- 5.3.3 Examiners noted that, in cases where customers were involved in business activities that were deemed of a high risk of money laundering and terrorist financing, the service providers generally did not conduct any enhanced customer due diligence and risk assessment.
- 5.3.4 Examiners compared nature of business information obtained from licensed service providers examined with information the examiners obtained through further research. They found that, in some cases, the nature or purpose of one or more of their customers’ businesses, as represented by the customer, differed significantly from the actual business being conducted. This is disturbing and certainly shows that service providers have failed to conduct ongoing monitoring.

5.4 Non Regulated Investment Business

- 5.4.1 In May 2012, the Commission wrote to licensed company managers and trust companies to gather information to assess the extent of activity within Anguilla related to advising, managing or dealing in investments. Our letter identified a regulatory gap that allows Anguillan IBCs to carry on non-domestic investment business without regulatory supervision. In the Commission’s letter, we identified the regulatory gap as a significant risk to the reputation of Anguilla. Reference is made to the consultation paper published on the Commission’s website in February 2014.
- 5.4.2 The ENRSP Regulations came into force in 2013 and extended to include Anguilla incorporated companies conducting non-regulated, non-domestic investment business, which must be registered as NRSPs. If such a business is not registered under the

ENRSP Regulations and engages in business, it will be non-compliant with section 152E of POCA. The Commission's expectation is that such circumstances will result in the licensed service provider immediately terminating its relationship with that company.

5.4.3 As of 31 December 2014, the Commission had received only two applications from non-regulated investment businesses. The low number of applications does not align with the actual number of Anguilla-incorporated non-regulated investment businesses. It is apparent that licensed service providers have failed to conduct appropriate customer due diligence and ongoing monitoring to identify and confirm accurately the type of business being conducted by the companies they incorporate - including companies incorporated by overseas agents on behalf of licensed service providers - and to assess the risk of such business.

5.4.4 As a result of this failure by licensed service providers, the Commission has received numerous complaints since late 2014 about non-regulated investment business, often businesses dealing in, or offering facilities to others to deal in, foreign exchange or binary options contracts. The Commission responded by publishing a general "Investor Alert" in December 2014, and many specific Investor Alerts subsequently in relation to investment businesses operating contrary to section 152E of POCA. The reputation of Anguilla has undoubtedly been damaged by the association of these businesses with Anguilla, much of which could have been avoided if licensed service providers had conducted appropriate enhanced due diligence and ongoing monitoring.

5.5 Introducers/Intermediaries (Systems and Policies)

5.5.1 The use of introducers or intermediaries impacts the overall business risk of service providers. Licensed service providers must be able to evidence that their Board of Directors reviewed and approved policies and procedures for conducting business with introducers and intermediaries. Licensed service providers would be advised to enter into an agreement with any introducer/intermediary upon which they place reliance (i.e. a regulated introducer/intermediary) detailing the obligations of the introducer/intermediary to provide required due diligence information, both pre-incorporation and, if applicable, to enable the service provider to conduct effective ongoing monitoring. The procedures for conducting business with introducers/intermediaries should be documented in the AML/CFT Procedures Manual so that staff is familiar with the process.

5.5.2 Some service providers have created a form capturing relevant customer due diligence information required from the introducer/intermediary which is important in customer risk profiling, assessments and ongoing monitoring. This is to be commended.

5.5.3 The Commission expects, in cases where there is a consistent pattern displayed by an intermediary of poor quality of customer due diligence information and problematic customers, that the relationship be terminated. The Commission reminds service providers that they, and not the intermediary, are liable under AML/CFT legislation for a failure to conduct appropriate customer due diligence.

6 Final Comments

- 6.1 In 2014, the Commission began to impose administrative penalties in accordance with the Administrative Penalties Regulation, 2013. Two penalties were assessed and paid in 2014 for failure to complete risk assessments and profiles by stipulated dates and for failure to submit an action plan and take corrective action regarding the AML/CFT deficiencies identified in the examination reports.
- 6.2 The Commission will continue to impose administrative penalties where necessary to address failures to comply with AML/CFT legislation. It is the intention of the Commission to publish on its website future administrative penalties showing the service provider's name, the date the administrative penalty was imposed, the nature of the violation and amount. In addition, where the failure to comply is significant or as a result of inadequate attention to compliance with AML/CFT legislation, the Commission will consider taking other disciplinary action including referral to the Attorney General recommending charges under POCA.
- 6.3 The Commission expects that service providers will make every effort to comply with AML/CFT Legislation.

Approved by the Board

Anguilla Financial Services Commission

22 March 2016