

The changing environment for the financial services industry in Anguilla – company management business

by

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Major factors driving changes 1

- Enhanced enforcement of local regulations by FSC – whether rightly or wrongly this is here to stay since these are the rules/law
- Increased pressure from UK government at the behest of G20, EU, OECD and own internal politics motivated by left-leaning politicians and public opinion which continue to give places like Anguilla a bad name
- Greater push towards transparency, call for registers of beneficial ownership for UK OTs and CDs and even a closure of these IFCs by some UK politicians

Major factors driving changes 2

- Bad publicity made worse by Panama Papers leak
- Attacks on tax avoidance schemes - some argue that aggressive tax planning should be criminalized and at a minimum the Panama Papers leak and the ideas that are flowing from it will raise concerns for tax advisors and planners in giving advice to clients
- In August 2016 HMRC announced consultation paper that suggests that tax advisers whose schemes are defeated in UK court might pay a fine of up to 100% of the money lost to the taxpayer

Major factors driving changes 3

- Currently tax avoiders face significant financial costs when HMRC defeats them in court but those who advised on, or facilitated, the avoidance bear little risk – that would change if August proposals enacted in the UK
- OECD Base Erosion and Profit Shifting (BEPS) work continues given a boost by the leak
- Continued competition from jurisdictions which do not face the same pressures as Anguilla including other OTs whose regulators seem to adopt a different approach and whose legislation is slightly different. Seychelles, Belize, Nevis are especially competitive vis a vis Anguilla due to being politically independent

Singular factors that are driving changes

- Clients' refusal to understand the changing environment and adapt to it
- Clients still arguing over the need to adhere to the AML/KYC rules
- Clients still living in the world of the 70s and 80s when companies were incorporated without KYC and AML rules did not exist
- Clients arguing about costs, refusing to pay thus placing financial pressures on service providers who are caught between their duties to comply with the law, enhanced enforcement by the FSC on the one hand and need to survive and pay the bills on the other

Enough about problems, time for solutions 1

- De-risk to survive or perish: the choice is yours
- Be more selective in your clients; the onus is now on service providers to select clients, not just clients selecting service providers – PEPs may become persona non grata
- Consolidate to create economies of scale to address compliance and cybersecurity costs by smaller service providers – it is time to cooperate with our competitors
- Increase your fees – days of cheap and cheerful structures are over; low price service providers and jurisdictions for that matter will go out of business
- Become compliant and transparent– either lose clients or lose license – clients are no longer always right and many may not be worth the risk of having – no client is worth you losing your license, your reputation or your livelihood in Anguilla

Enough about problems, time for solutions 2

- Demand that your larger onshore intermediaries/client feeders be licensed to share compliance costs, reduce risks of hacking
- Reduce media profile – be more discerning/discreet, no social media, perhaps lack of website, more face to face interactions with clients, more bespoke service
- Build your brand through speaking, writing, focus on intellectual capital, reputation, professionalism, personalized service, less on price – price sensitive clients will play less of a role as they should in an increasingly costly environment
- Innovate – to be discussed further in next session

More suggested solutions

- Stop allowing clients to use professional unregulated human and corporate nominees in structures for which your firm is RA/RO – this just increases your risks – the remnants of the Sark Lark must end – no room for the Michael Doyles and Lana Zambas in today's world or CASCADO AG either
- Nonsensical structures such as an Anguilla IBC, with an Uzbekistan UBO, using South African nominee directors/shareholders, introduced by an unlicensed/unregulated UK intermediary, which is trading oil in CIS countries, with a bank account in Latvia can or should no longer be on the books of service providers in this new post Panama Papers era

Key questions we must now ask in this new environment before taking on business

- The service provider has to focus mind on these questions.

How am I going to exercise proper monitoring as required under the AML regime to ensure that the structure is not being used for money laundering or terrorist financing?

Given the complicated nature of the structure, the players involved and the fact that I don't have access to bank statement information or the daily operational activities of the company should I take on this structure?

- If those two questions cannot be answered satisfactorily, then the service provider should, in my opinion, turn down the structure and business

Closing thoughts

- “The future belongs to those who can imagine it, design it, and execute it. It isn’t something you await but rather create.” HH Sheik Mohammed – Ruler of Dubai

- Articles worth reading:

<http://www.caymanfinancialreview.com/2014/01/15/substance-over-form/>

<http://www.caymanfinancialreview.com/2016/08/02/the-shape-of-the-international-financial-services-industry-post-panama-papers-a-view-from-anguilla/>

- Thanks for listening – questions if any