

**GSY Board and Senior Management
AML CTF briefing**



8th July 2015

Comsure



**ADVISING ON THE RISKS
SO YOU CAN FOCUS ON
THE REWARDS**

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Why are YOU here?



Comsure 

Today's programme.....

T
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Y



- AFTERNOON SESSION**
- For the board including: NED'S, Senior Management, the MLRO & Compliance and Risk Personnel. Registration at 1315, Start 1330 - 1530
- Regulatory and AML Risk - UK and EU Issues
 - Compliance risk view vs Regulatory risk
 - Corporate Governance - Company law view vs regulatory expectations
 - The AML Business Risk Assessment and strategy
 - AML, Business Risk Assessment - view vs the Regulatory Director's Assessment
 - The role of the Money Laundering Reporting Officer (MLRO), Nominees Officer / Compliance Officer
 - Expectations of AML, Policy and Procedure Management
 - Essentials of SARs - Your Report in the Dock
 - Control of Travel Risk
 - Sanction Risk



“Those who do not learn from history are doomed to repeat it”

George Santayana quotes



**Directors –
Personal Responsibility**

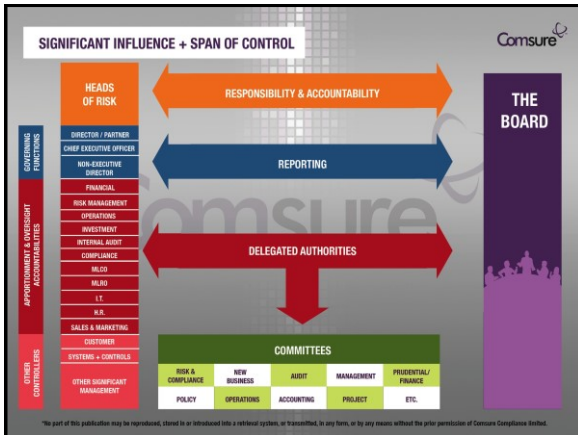


Directors – Personal Responsibility



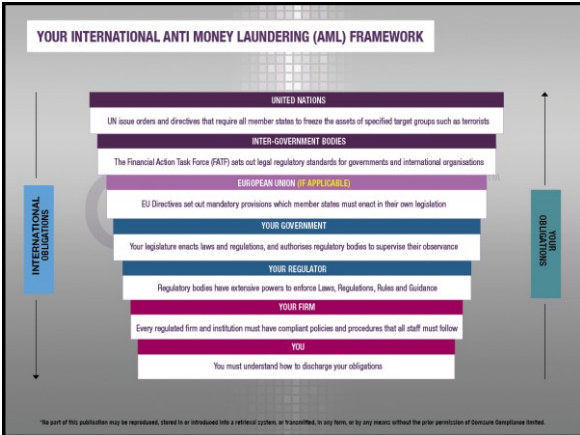
1. You can be the **Strongest** defence or **Weakest** link?
2. You are **personally accountable** under the law and rules
3. You are **personally responsible** for ensuring that you and your organisation do not break the law and / or rules
4. You **must / cannot** place undue reliance upon internal safety nets by delegating elsewhere (relying on someone else)





DRIVERS Environmental AML Risks?





KNOW YOUR “Macro” Guernsey ENVIRONMENTAL AML Risks?

TIER	OFFENCES	Example Penalty	Report Probability	Risks
1	Actual Criminal Property (Primary - Acts/Laws)			CRIMINAL
	• Assisting, Acquiring and Concealing	14yrs	High / Low	
2	• Failure to Disclose	5yrs	High / Med	
	• Tipping Off	5/2yrs	High / Low	
3	Action / Inaction (Secondary Law - the Orders/Regulation)			
	• Breaching the Order / Regs (2 years)	2yrs	High / Low	
4	Action / Inaction (Codes/Handbook/Guidance)			REGULATORY
• Regulatory Action (No Immediate Jail Time!!)	Sanctions	High		

Directors Risk

Kingston Management (Guernsey) Limited

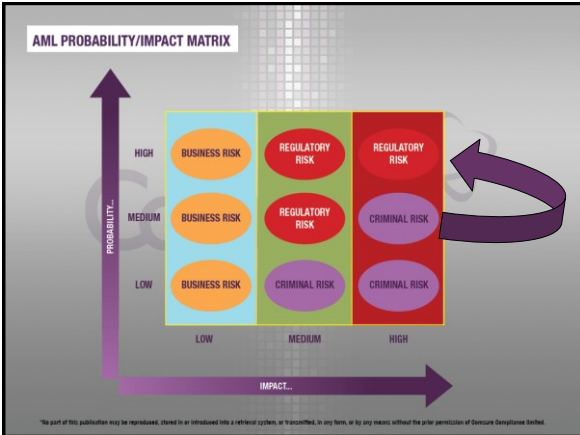
OCTOBER 2010 - The Guernsey Financial Services Commission (the "GFSC") handed out fines totalling £35,000 to three directors of a Guernsey based licensed fiduciary services company and issued a public statement under section 11C of The Financial Services Commission (Bailiwick of Guernsey) Law 1987 (as amended) (the "Financial Services Commission Law").

THIS WAS THE FIRST SUCH REGULATORY ACTION OF ITS KIND IN GUERNSEY

KINGSTON lessons learned

1. ALTHOUGH the issues in this case were largely beyond the directors' control due to the extent of **EXTERNAL CONTROL** over business relationships, the directors were held responsible and fined accordingly.
2. Fiduciaries and any other financial services businesses need to ensure that the board of directors of the company (the "Board")
 - a. **IS FULLY AWARE** of its responsibilities and
 - b. That the directors exercise a **DEMONSTRABLE DEGREE OF CONTROL** (both personal and collective) over its business and client relationships, even if this means coming into direct conflict with the procedures and processes of a wider global group operation.
3. A financial services business must have **ADEQUATE INFORMATION** with which to be able to determine and monitor client relationships and transactions.
4. **IT WILL NOT BE SUFFICIENT** to simply pass blame on to a head office elsewhere; the responsibility rests in Guernsey/Jersey and with the Board.







1. IN 2011 The JFSC considered that all the findings resulting from an examination can, ultimately, be attributed to **whether the board fulfils its responsibilities in an effective manner.**

2. Findings relating to poor corporate governance were identified in five of the six examinations which.....


3.resulted in enforcement action being taken indicating that shortcomings in this area can result in serious consequences including....

4.**BUSINESS FAILURE.**

TRUST COMPANY BUSINESS
ON-SITE EXAMINATION PROGRAMME AND
REGULATORY ENFORCEMENT
DOCUMENT OVERVIEW

The Financial Services Commission's Enforcement Unit grills the tooth fairy about her source of funds.



You have a defence





The Telegraph

Home Video News World Sport Finance Comment Culture Travel Life Women F
Companies Comment Personal Finance ISAs Economics Markets Festival of Business B

HOME » FINANCE » NEWS BY SECTOR » BANKS AND FINANCE

UBS banker John Pottage wins appeal against FSA fine

The City regulator has lost an important test of its powers to punish bankers for alleged supervisory failures.

UBS banker John Pottage wins appeal against FSA fine
The City regulator has lost an important test of its powers to punish bankers for alleged supervisory failures.

1. Mr Pottage was cleared of misconduct by the Upper Tribunal for Financial Services, which hears appeals against FSA penalties.
2. "We think that the actions that Mr Pottage in fact took prior to July 2007 to deal with the **operational and compliance** issues as they arose were reasonable steps," the Upper Tribunal said in its ruling.

CEO...(OR other director)

An incoming CEO needs to carry out and document a detailed "Initial Assessment" of governance and risk management frameworks within 2 or, at most, 3 months.

The FSA has clearly set out, in the Pottage case....

What it expects to form part of a CEO [or other board member] Assessment...

THIS INCLUDES -

Key points expressed in or to be inferred from the decision include:



1. CEOs should be **absolutely clear on their role and remit** when they start their job.
2. **Have they, for instance,**
 - a. Been instructed with a particular focus?
 - b. Does their position as CEO of a business unit within a larger structure circumscribe their powers?
3. CEOs need to carry out **continuous monitoring** of governance and risk management frameworks.
4. CEOs may well not be risk experts and are entitled to **rely on specialists**, although a CEO must **"TRUST BUT VERIFY"** what he is told by such specialists.



Additionally,

The decision provides some useful guidance to firms on risk and control issues:

Risk and Control



1. There is a need for a **risk control framework** to operate properly from **top to bottom**;
2. **Caution should be exercised** as regards self-certification of risk control frameworks;
3. An **overlap between risk and management committees** is completely acceptable and may in fact strengthen the overall structure by permitting easier escalation of risk issues;
4. Consideration should be given to finding a way (subject to privilege issues) of **ensuring that the prominence and length of risk discussions** is recorded in committee minutes; and
5. **MI needs to be assessed as to both form and content**, and redundancy is to be avoided.

**RISK MANAGEMENT
Is an Integral part of the
Corporate Governance Framework.**



**Specifics...
For the**

- Board

and the

- MLRO

- Nominated officer

CHAPTER 2 – CORPORATE GOVERNANCE

Key Regulations	Page
Regulation 15 Ensuring Compliance, Corporate Responsibility and Related Requirements	11

Sections in this Chapter

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2.3.1	Liaise with the Commission	13
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Regulation 15 and Chapter 2

Regulation 15 and chapter 2



- In order to comply with Regulation 15 and chapter 2 of the Handbooks the board must ensure the following is in place
 - Risk Assessment (AML BRA)
 - Policies,
 - Procedures and
 - Associated controls,

Regulation 15



15. (1) A financial services business must, in addition to complying with the preceding requirements of these Regulations –

- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,
- (b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Regulations and such policy shall include provision as to the extent and frequency of such reviews,
- (c) ensure that a review of its compliance with these Regulations is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a financial services business must have regard to the risk taking into account –
 - (i) the size, nature and complexity of the financial services business,
 - (ii) its customers, products and services, and
 - (iii) the ways in which it provides those products and services,





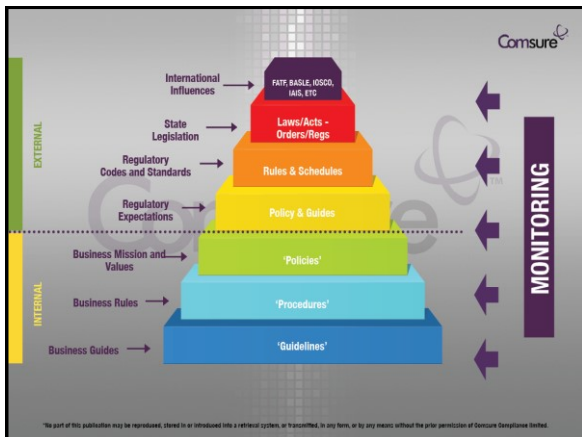
CAVERSHAM

In a landmark decision - the first of its kind in the United Kingdom or any of the offshore jurisdictions - the Royal Court has ruled that the obligation on financial institutions to maintain identification procedures is a continuing obligation.

A single derogation is not permissible, and may lead to prosecution and conviction unless the financial institution can prove it took all reasonable steps and exercised due diligence to avoid committing the offence.

1. Article 2 of the Money Laundering Jersey Order 1999, pursuant to Article 37 of the Proceeds of Crime (Jersey) Law, places financial institutions under an obligation to **MAINTAIN** the following procedures for the purposes of forestalling and preventing money laundering:

-**IDENTIFICATION PROCEDURES**;
-**RECORD-KEEPING PROCEDURES**;
-**INTERNAL REPORTING PROCEDURES**; and
-**TRAINING PROCEDURES**



GFSC SAY

1. Procedures should be written in a manner so that they can be readily understood by the business's front line staff, not an anti-money laundering compliance specialist.
2. businesses need to write their procedures so that they are understood by its users.
3. the procedures should be tailored to the nature and complexity of the business.
4. an element occasionally absent, the decision-making process related to SAR should be documented, readily accessible and most importantly, actually applied.

5. Steve Chandler – Policy Advisor, Financial Crime & Authorisations Division Calum McVean – Senior Analyst, Financial Crime & Authorisations Division Introduction - 8 May 2014. The Commission and the Financial Investigation Unit (FIU) held a co-sponsored seminar entitled 'Suspicious Activity Reporting' ('SAR')

GFSC SAY



- **A DIM VIEW** will be taken of firms who fail to comply with their own systems and controls that are designed to mitigate the risks associated with PEPs, other high risk clients, bribery and corruption.
- Failure to do so means that a firm is working with a blind spot and unable to demonstrate a complete understanding of the risks to which such clients and activities can expose the firm.

SUMMARY OF THE PRESENTATION TO THE GUERNSEY ASSOCIATION OF COMPLIANCE OFFICERS FINANCIAL CRIMES SYMPOSIUM SAMANTHA SHEEN
HEAD OF THE FINANCIAL CRIME & AUTHORISATIONS DIVISION 29 JANUARY 2014

Compliance Risk

Define it.....





GUIDANCE NOTE: COMPLIANCE MONITORING

¹ Compliance Risk (as defined by the Basel Committee on Banking Supervision) the risk of legal or regulatory sanctions, material financial loss, or loss to reputation a [regulated person] may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory organisation standards, and codes of conduct application to its [regulated activities].

Issued: 6 December 2013

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- **CAUSE** = what is the measurable for failure?

and

- **EFFECT** = what is the effect of failing the measurable?

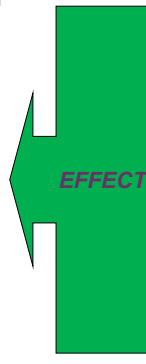
ENVIROMENTAL MEASURES and TRIGGERS


- *Laws, Regulations / Orders,*
- *Rules (e.g. codes),*
- *Related self-regulatory organisation standards*
- (EG. AIC Code of Corporate Governance for Jersey-domiciled member companies)
- *Codes of conduct applicable to a firms activities (PPs)*



RISK IMPACT of Failing the Measures

- *Risk of:-*
- *LEGAL sanctions,*
- *REGULATORY sanctions,*
- *Material FINANCIAL loss, or*
- *Loss to REPUTATION*






CMP


COMPLIANCE MAPPING PROGRAMME

COMPLIANCE MONITORING PROGRAMME




3.6 Monitoring the Effectiveness of Policies, Procedures and Controls 23

Risk monitoring – monitoring the effective operation of a financial services business’ policies, procedures and controls;



Jersey Financial Services Commission



Jersey Financial Services Commission

For the attention of the Chief Executive, or equivalent, of regulated persons

From the office of the Director General

Telephone +44 (0) 1534 820011

E-mail advisers@comsure.org

Our Ref: JF/1548

4 December 2013

GUIDANCE NOTE: COMPLIANCE MONITORING

DOCUMENT OVERVIEW

1	Introduction	1
2	Compliance Monitoring	1
3	Approach to Compliance Monitoring	2
	Legislative and Regulatory Requirements	3
	Controls	4
	Risk Assessment	4
	Compliance Monitoring Programme	4
	Testing	5
	Reporting	6
	Remedial Action	7
4	Benefits of Compliance Monitoring	7
5	Conclusion	8

The Commission considers Compliance Monitoring to be an integral part of a regulated person's risk management framework in relation to compliance risks. Whilst there are similarities and a commonality with other activities, it enables the Commission to have more confidence that Compliance Risk is being proactively and appropriately managed within regulated persons and that issues requiring notification are being made to the Commission in a timely manner.

The Jersey staff, during the past 18 months, the Commission has observed that the quality of Compliance Monitoring has an significantly improved against process and frequency appears to be improving in most regulated persons.

For those reasons, and to assist regulated persons, the Commission has published a Guidance Note on Compliance Monitoring which outlines an approach to Compliance Monitoring and provides examples of internal good and poor practice.

Given the issues management, including the Board, are responsible for the effective management of risk within a regulated person, the Commission expects senior management to be actively engaged in the Compliance Monitoring process. This should include the approval of a Compliance Monitoring Plan and ensuring the timely completion of any resulting remedial actions.

1. Compliance Risk (as defined by the Panel Committee on Banking Supervision) is the risk of legal or regulatory breaches, administrative errors, or loss to reputation if a regulated person may suffer as a result of failure to comply with any regulatory, other, internal and regulatory supervisory conditions, and codes of conduct applicable to its regulated activities.

**The Compliance list (not exhaustive)
What would be included in the CMP
list?**

E.g. what laws, regulations?

The regulatory system can be shown as the:-

1. Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999
2. Disclosure (Bailiwick of Guernsey) Law 2007
3. Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations 2008
4. Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007
5. Terrorism and Crime (Bailiwick of Guernsey) Law 2002

1. Legal Sanctions (UN/EU)

2. AML handbook

3. GFSC Codes of conduct

4. Underlying GFSC guides and policies (Inc. dear CEO) that are issued in support of the above and

6. Associated relevant statutory obligations (other relevant laws) that impact

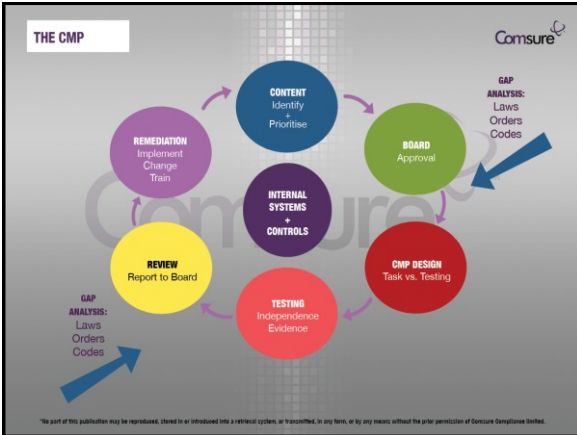
6. the performance of a regulated entity and its activities
or

7. the undertakings in providing services to its clients

Also



- 7. other legislation, such as the Corruption Law
- 8. Depending on your activities the relevant legislative and regulatory requirements may also include overseas financial service business requirements.
- and
- 9. Your contracts including the constitutive documents and prospectuses of funds.



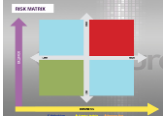
**Start building the
AML Business Risk Assessment**



To Start an
AML Business Risk Assessment
AML supervised firms should undertake a



Money Laundering Threat Assessment



To do so, you need to understand what
Money Laundering is?

The Chancellor of the Exchequer SAID...⁽⁵⁾

In October 2015, at the Commonwealth Finance Ministers' Meeting held in Jamaica, the Chancellor of the Exchequer stated that:



- ✓ "we must recognise that money laundering is associated with all types of crime – from fraud to extortion, arms smuggling to kidnapping.
- ✓ It is quite artificial to draw a distinction between drug related crimes and other crimes.
- ✓ In Britain we have responded to the shifting threat by passing legislation to cover the proceeds of all indictable offences.
- ✓ There is no moral difference between drug trafficking and other serious offences, the risks from both are great, and this applies as much to fiscal offences as any other crime.
- ✓ **All crimes should mean ALL crimes.**
- ✓ Who is the victim is irrelevant.

AML supervised firms



What are your
ML/TF (AML)
CRIME EXPOSURE
Risks?



Rule 30 Notes >

What is a Business Risk Assessment? >

What is a business risk assessment?

Introduction

Regulation 3 of the AML/CFT Regulations requires a business to carry out and document a suitable and sufficient business risk assessment ('BBA').

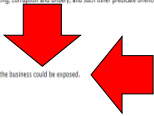
A BBA is an important tool used to identify, assess and decide how a business will mitigate its risk exposure to the particular types of financial crime risks to which it could be exposed.

Other benefits gained from performing a BBA are listed in Chapter 3 of the AML/CFT Handbook.

The term 'financial crime' is used in this guidance to describe money laundering, terrorist financing, corruption and bribery, and such other predicate offences as are listed in Chapter 1 of the Handbook.

Identification of Financial Crime Risks

The first step to undertaking a BBA is in determining the potential financial crime risks to which the business could be exposed.



Horizontal lines for notes.

Criminal risks

1. SANCTIONS

- 1. People
- 2. Activity
- 3. Country

2. ABC

- a. PEP
- b. 3rd parties
- c. Intermediaries (obliged person)

3. FRAUD –

- a. Tax
- b. Insider dealing / market abuse

Horizontal lines for notes.

Sanction Matters



Horizontal lines for notes.

Sanctions Programs and Country there are a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

TRADE

COUNTER NARCOTICS SANCTIONS

INDIVIDUAL

NON-PROLIFERATION SANCTIONS

COUNTRY SANCTIONS
E.G. IRAN, SYRIA, CUBA

COUNTER TERRORISM SANCTIONS

FCIA > UN, EU and Other Sanctions

UN, EU and Other Sanctions

FCIA

Organogram

News **Introduction**

Handbook and Regulations for FSBs

This information has been prepared to assist firms in their development of appropriate and effective compliance arrangements in relation to sanctions. Please note that the information on this webpage is supplemental to, and is not intended to supersede any of, the requirements of any applicable legislation relating to sanctions, the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing ("FB Handbook") or the Handbook for Legal Professionals, Accountants, and Estate Agents on Countering Financial Crime and Terrorist Financing ("FB Handbook") (collectively the "Handbooks"), nor is it intended to supersede any information or requirements stipulated by the States of Guernsey, Alderney or the Chief Pleas of Sark.

Handbook and Regulations for Prescribed Businesses

For further information regarding sanctions legislation and the associated obligations, please refer to the sanctions webpage of the States of Guernsey which can be accessed at:

<http://www.gov.gg/sanctions>.

FCIA PD

Online Services Portal

Amendments

Business from Sensitive Sources Notices

From time to time, changes to applicable legislation, the Handbooks or requests for clarification received by the Commission will warrant the amendment of this webpage. It is therefore recommended that firms monitor the Commission's website for news about any updates to this webpage.

Instructions

CHAPTER 14 – UN, EU AND OTHER SANCTIONS

Applicable Legislation

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 Appendix K
<http://www.guernseylegalsources.gg/article/98999/Terrorist-Asset-Freezing-Bailiwick-of-Guernsey-Law-2011>

The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011
<http://www.guernseylegalsources.gg/article/93433/Afghanistan-Restrictive-Measures-Guernsey-Ordinance-2011>

The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011
<http://www.guernseylegalsources.gg/ContentHandler.ashx?tab=724358&g=0>

The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011
<http://www.guernseylegalsources.gg/ContentHandler.ashx?tab=78298&g=0>

The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013
<http://www.guernseylegalsources.gg/article/108694/Al-Qaida-Restrictive-Measures-Guernsey-Ordinance-2013>

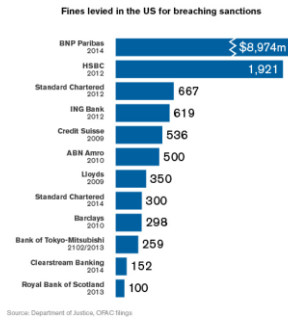
The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013
<http://www.guernseylegalsources.gg/ContentHandler.ashx?tab=84805&g=0>

The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013
<http://www.guernseylegalsources.gg/article/109720/Al-Qaida-Restrictive-Measures-Sark-Ordinance-2013>

SANCTIONS –

The Gatekeepers are worried –

Between 2011 and 2013 OFAC issued 64 civil penalties and enforcements, totalling more than US \$1,36 billion



LATEST FINE

Commerzbank pays \$1.45bn for US sanctions and AML breaches

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Commerzbank, Germany's second biggest lender, has paid US\$1.45bn to US authorities for violations of US sanctions and the Bank Secrecy Act (BSA). Under a consent order with the New York Department of Financial Services, the bank will engage a monitor for two years to oversee remediation of its BSA/AML and OFAC (Office of Foreign Assets Control) compliance programmes, policies and procedures.

To read the rest of this article please log in below.



Remember sanctions are a moving target.....



Latest News

24 March 2015	New EU Sanctions against Al Qaida	Comsure	"X14" MARCH
19 March 2015	UN Sanctions Notice - Updated 19 March 2015		
16 March 2015	Ukrainian Sanctions Order - Amendment to list of persons, entities and bodies (Annex 1)		
16 March 2015	EU Legislation (Sanctions - Belarus) (Library Order 2015)		
16 March 2015	EU Legislation (Sanctions - Libya) (Amendment) (Library Order 2015)		
16 March 2015	EU Legislation (Sanctions - Zimbabwe) (Library Order 2015)		
11 March 2015	EU Sanctions Order - Amendment to list of natural and legal persons, entities or bodies (Annex 8)		
10 March 2015	Syria Sanctions Order - Amendment to list of natural and legal persons, entities or bodies (Annex 8)		
10 March 2015	New EU Sanctions against Syria		
6 March 2015	Ukrainian Sanctions Order - Amendment to list of persons, entities and bodies (Annex 1)		
5 March 2015	Somalia Sanctions Order - Amendment to list of natural and legal persons, entities or bodies (Annex 8)		
4 March 2015	New EU Sanctions against Somalia		
4 March 2015	New EU Sanctions against Belarus		
4 March 2015	Central African Republic Sanctions Order - Amendment to list of persons and entities (Annex 8)		
27 February 2015	EU Legislation (Sanctions - Iran) (Library Order 2015)	"X12" FEBRUARY	
27 February 2015	Commonly Used Persons (Maintaining a Freeze of Funds in Relation to Mr. Al-Husseini and Associated Persons) (Renouveau) (Library Order 2015)		
20 February 2015	New EU Sanctions against Syria		
20 February 2015	Al Qaida Sanctions Order - Amendment to list of persons, entities or bodies (Annex 1)		
18 February 2015	EU Legislation (Sanctions - Côte d'Ivoire) (Amendment) (Library Order 2015)		
17 February 2015	Ukrainian Sanctions Order - Amendment to list of natural and legal persons, entities or bodies (Annex 1)		
16 February 2015	New EU Sanctions against Iran		
16 February 2015	New EU Sanctions against Ukraine		
10 February 2015	EU Legislation (Sanctions - Tunisia) (Library Order 2015)		
4 February 2015	Al Qaida Sanctions Order - Amendment to list of persons, groups and entities (Annex 1)		
3 February 2015	EU Legislation (Sanctions - Côte d'Ivoire) (Library Order 2015)	"X8" JANUARY	
2 February 2015	New EU Sanctions against Tunisia		
27 January 2015	New EU Sanctions against Ivory Coast		
27 January 2015	Syria Sanctions Order - Amendment to list of persons, entities or bodies (Annex 8)		
19 January 2015	Al Qaida Sanctions Order - Amendment to list of persons, groups and entities (Annex 1)		
16 January 2015	EU Legislation (Sanctions - South Sudan) (Library Order 2015)		
16 January 2015	EU Legislation (Sanctions - Sudan) (Library Order 2015)		
14 January 2015	Money Laundering and Weapons Development (Directives) (Draft) (Library Order 2015)		
1 January 2015	EU Legislation (Sanctions - Ukraine) (Amendment) (Library Order 2014)		
1 January 2015	EU Legislation (Sanctions - Yemen) (Library Order 2014)		

Key factors to consider



Proportionate Systems and Controls



In order to assist institutions in achieving proportionate systems and controls, this guidance is divided into the following areas:

- 1 Implementing policies and procedures regarding sanctions
 - 2 Providing staff training in sanctions matters
 - 3 Risk assessing sanctions vulnerabilities
 - 4 How to screen customers to prevent sanctions breaches
 - 5 How to make customer screening more effective
 - 6 Systems for investigating a match
 - 7 Action required on discovering a confirmed or potential target match
 - 8 Information you may be required to provide
 - 9 Obtaining a licence
 - 10 International Obligations
- Appendix: Examples of good and bad practice



BANKING BUSINESS

THEMED EXAMINATION PROGRAMME 2014: AML/CFT AND FINANCIAL SANCTIONS SUMMARY FINDINGS

Issued: August 2014



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Good:



1. Quality and coverage of the BRA.
2. Staff awareness and training.
3. Screening at the point of customer take-on.
4. Screening of transactions.

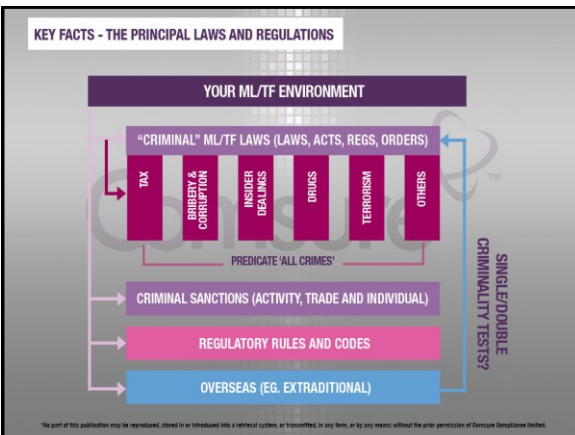
Requiring Further Focus:



1. Automated re-screening of customers.
2. Senior management understanding of screening arrangements.
3. Coverage of financial sanctions risks in the BRA.
4. Screening system user access controls and IT change governance.
5. Staff procedures for discounting potential target matches.
6. Compliance monitoring.

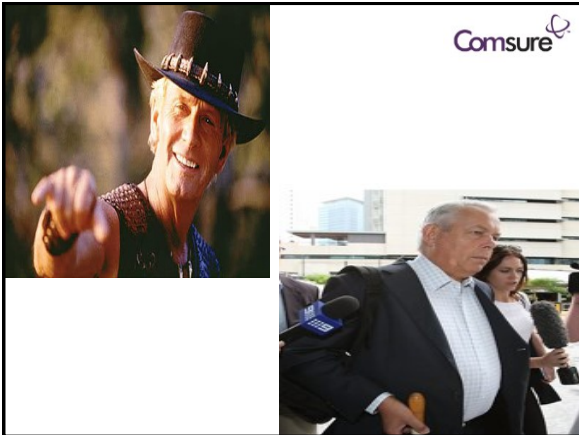


**ALSO
Be Aware of
Global
Criminal Liability Risks**



What have these gentlemen in common....





What else does this case tell us?

The **CRIMINAL**
tax evader
NO JAIL...!!!!



The **FACILITATOR**
of the crime
GOES TO JAIL...!!





Jersey has an obligation to play its role in
the international community on white-collar crime.

"It is a legitimate aim in a democratic country to prevent crime,
and offences such as tax fraud and money laundering are
particularly prone to be committed across international
boundaries,"

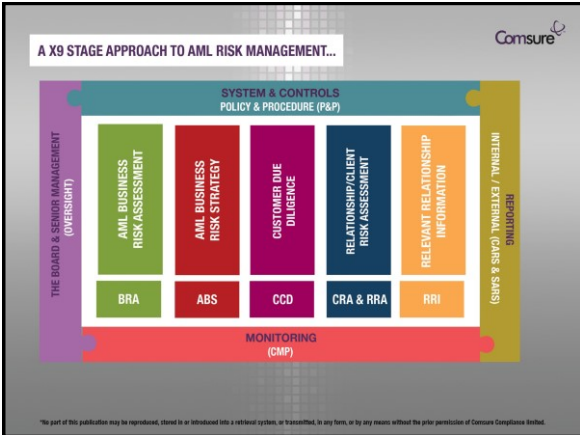
" ... The objective of the law is clear, namely to extradite to
foreign countries those properly accused of extradition
crimes."

Jersey magistrate - Bridget Shaw



AML
Management and Control
and
Systems and Controls.
(SYSC)

THE PILLARS OF CONTROL

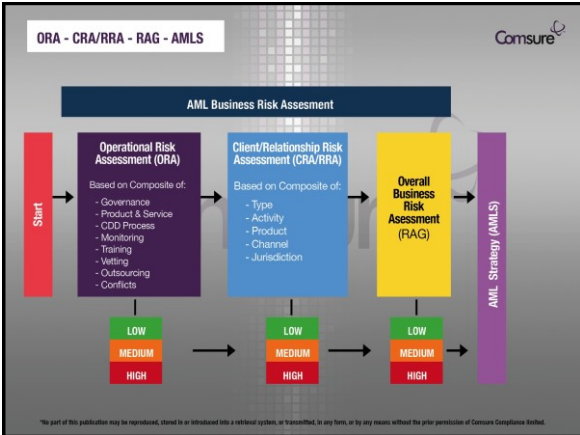


AML Business Risk Assessment

vis-à-vis

The Relationship [Client] Risk Assessment [CRA/RRA]

What makes up a BRA



GFSC say....

Comsure

- In particular they contain new obligations relating to carrying out risk assessments in relation to a
 - FINANCIAL SERVICE BUSINESS AS A WHOLE
 - and
 - each business relationship it has with a customer (regulation 3),

Investment Business
Supervision Examination Programme 2013
Summary Findings

Comsure

Business Risk Assessment ("BRA")

To ensure compliance with the requirements of the IB Codes and AML Handbook, a Registered Person must ensure it has assessed the risks faced by its business, documented these risks and provided details of how these risks are monitored and controlled. The AML Handbook requires that the Board's assessment of the Registered Person's risk must be assessed on an on-going basis. Examples of risks that a Registered Person may wish to consider are, but are not necessarily limited to:

- Country Risk;
- Market Risk;
- Operational Risk;
- Liquidity Risk;
- Regulatory/Compliance Risk;
- Legal Risk;
- Reputational Risk;
- Financial Risk;
- Fraud/Criminal Risk;
- Key Person Risk; and
- New Product Risk.

To fully comply with the requirements of the IB Codes, a Registered Person's risk assessment should be holistic and not focused only on addressing the requirements of the AML Handbook. Such holistic risk assessments may be documented separately from the BRA.

GFSC SAY



- Firms are expected to review their **BUSINESS RISK ASSESSMENT** in a way which evidences their awareness of both **PROSPECTIVE AND ACTUAL CHANGES** that have taken place, be it a change in
 - Outsourcing provider,
 - Products and services or
 - Client composition.

SUMMARY OF THE PRESENTATION TO THE GUERNSEY ASSOCIATION OF COMPLIANCE OFFICERS FINANCIAL CRIMES SYMPOSIUM SAMANTHA SHEEN HEAD OF THE FINANCIAL CRIME & AUTHORISATIONS DIVISION 29 JANUARY 2014

GFSC SAY



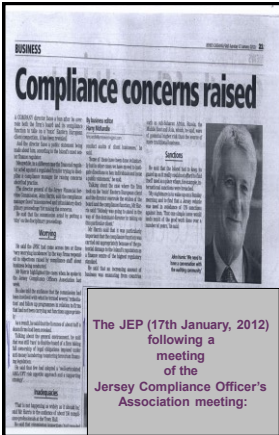
- Firms should be able to explain
 - how they have undertaken their business assessment review,
 - and
 - describe how they have arrived at the decision whether to vary that assessment, or not.

SUMMARY OF THE PRESENTATION TO THE GUERNSEY ASSOCIATION OF COMPLIANCE OFFICERS FINANCIAL CRIMES SYMPOSIUM SAMANTHA SHEEN HEAD OF THE FINANCIAL CRIME & AUTHORISATIONS DIVISION 29 JANUARY 2014

**AML strategy
3 times**



12. Taking into account the conclusions of the business risk assessment and **strategy** the Board must organise and control its affairs effectively and be able to demonstrate the existence of adequate systems and controls (including policies and procedures) to counter money laundering and financing of terrorism. (See [Section 2.4](#)).



The JEP (17th January, 2012) following a meeting of the Jersey Compliance Officer's Association meeting:



.....'it is still "rare" to find the board of a firm taking full ownership of legal obligations imposed under the anti money laundering / countering terrorism financing legislation.'

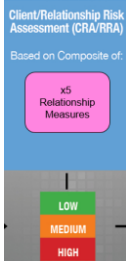
.....'few had adopted a well articulated AML/CFT risk appetite approach and a supporting strategy.'





- CDD 1 – Collect ID
- CDD 2 – Start Assessing the Risk
- CDD 3 – Determine the risk
- CDD 4 – Collect more [RRI AKA. "The profile"]
- CDD 5 – Verify the ID & RRI
- CDD 6 - Ongoing Monitoring + Revisit Risk
- CDD 7 – Record Keeping
- CDD 8 – Reporting Internal and External

What are the Measures of RRA / CRA



Client/Relationship Risk Assessment (CRA/RRA)

Based on Composite of:

- Type
- Activity
- Product
- Channel
- Jurisdiction



How often?

Regularly review any risk assessment



- Regulation 3(2)(b) states that
-a financial services business must regularly review any risk assessment carried out under subparagraph (a) (prior to the establishment of a business relationship)....
-so as to keep it up to date and,
-where changes to that risk assessment are required, it must make those changes.

Also remember



- From time to time the Commission issues
 - Business from Sensitive Sources Notices,
 - Advisory Notices,
 - Instructions and Warnings
- These highlight potential risks arising from particular sources of business.
- This information, which is updated as necessary, together with sanctions legislation applicable in the Bailiwick, must be taken into consideration when seeking to create a relationship risk profile.



GFSC say...

GFSC Onsite teams have noted



- That customer risk reviews, in some instances, **ARE NOT** being conducted with sufficient scrutiny and analysis to
-DETAIL WHAT the actual risks are to the business and
-HOW THE BUSINESS will use this analysis of the risks to implement EFFECTIVE, SPECIFIC risk mitigation controls.
- In some instances, once the good work has been done at the outset of a business relationship, **subsequent reviews rate low in a Board's priority** and more focus is placed on gaining new business.

GFSC Onsite teams have noted



- It is of critical importance that businesses address
 - changes to a customer's risk profile during the ongoing life cycle of a client/customer.
- Failure to do so leaves businesses vulnerable to criminal/terrorist exploitation, which can affect
 - the business,
 - its controllers and
 - the Bailiwick as a finance centre.



Confluence of Risk Factors – Client Risk Characteristics

Risk In The Round vis-a-vis Targeted Risks

The assessments themselves should reflect a consideration of risk "in the round" and whether a possible confluence of risk factors could occur, warranting controls to mitigate the escalated ML/TF risk.

GFSC SAY



- When assessing ML risks based on a client's risk characteristics, FIRMS
-Will not only look at each risk factor individually, but
-Also look at the picture that those factors present collectively in order to determine the possible exposure to which a firm might be exposed.


GFSC SAY - Risk in the Round



- **Confluence or "risk in the round"** occurs where....
-Factors which often seem unrelated have interdependencies that contribute to a level of risk exposure that is higher than would otherwise be the case when each of those factors is considered in isolation.
- Comsure [N.B] - Break any link in the chain!!!
Spot the higher risk and examine it




As a minimum
What makes a
CLIENT RELATIONSHIP a
HIGHER Risk?



1. Limited services
2. Customer, or some other person, is not physically present for identification purposes
3. Customer has a "relevant connection" to an "enhanced risk state"
4. Customer, or some other prescribed person, is a PEP
5. Relevant person provides a correspondent banking service to a bank outside JERSEY/GUERNSEY
6. Customer is a non-resident
7. Customer is provided with private banking services
8. Customer is a personal asset holding vehicle
9. Customer is a company with nominee shareholders or issues bearer shares.




RECENT FCA FINE re Higher Risk



The Financial Conduct Authority imposes £2.1m fine and places restriction on Bank of Beirut after it misled the regulator

Published: 05/03/2015 Last Modified: 06/03/2015



The Bank of Beirut (UK) Ltd (Bank of Beirut) has been fined £2.1m by the Financial Conduct Authority (FCA) and stopped from acquiring new customers from high-risk jurisdictions for 126 days. In addition, the FCA has fined two approved persons at the bank.

Concerns about the culture within Bank of Beirut became apparent following supervisory visits to the firm in 2010 and 2011. In particular, the regulator believed too little consideration was being given to the risk that the firm be used for financial crime. Bank of Beirut was required to take a number of actions to address these concerns.

Anthony Willis, the former compliance officer at the Bank of Beirut, and Michael Allin, the internal auditor, have been fined £19,600 and £9,900, respectively. Willis and Allin failed to deal with the regulator in an open and cooperative way when responding to queries about the actions taken to mitigate financial crime risk.

the FCA's Final Notice on the Bank of Beirut,



- "The [FCA] imposes on Bank of Beirut:
- (1) a £2.1 million fine and
- (2) a restriction for a period of 126 days, in respect of its regulated activities only, that Bank of Beirut may not acquire new customers that are resident or incorporated in high risk jurisdictions.
- For the purposes of this **restriction only**,
 - **HIGH RISK JURISDICTIONS** are defined as countries which have a score of 60 or below in **Transparency International's Corruption Perceptions Index.**"



The role of the Money Laundering Reporting Officer ("MLRO") & Deputy & nominated officer



Reporting matters

Reporting matters

8 Corporate Governance and Systems and Controls

8.1 The summary findings ranked below have been drawn from all findings across all types of examinations conducted in 2013:

Category	Number of businesses	bp	Rank
Suspicious activity reporting ("SAR") procedures	22	52	1
Business risk assessment and strategy	18	43	2
Conflicts of interest	16	36	3
Compliance monitoring of operational performances	14	36	4
Compliance function	15	34	5
Evaluation of SARs by the MLRO	13	31	6
General systems and controls	13	31	6
MLRO reporting of SARs to the Joint Financial Crimes Unit (the "JFCU")	10	24	8
Business acceptance systems and controls	10	24	8
Customer risk management procedures	8	19	10
Customer profiling	7	17	11
Politically Exposed Persons ("PEPs")	6	14	12
Delegated functions of the board	6	14	12
Compliance resourcing	6	14	12
Corporate Governance	6	14	12

SAR + Compliance Arrangements

- When reviewing their compliance arrangements, businesses are required to assess the appropriateness and effectiveness of these measures, which in this instance includes those which they have in place to comply with the requirements relating to SAR.
- further improvements are required to address some of the following shortcomings identified:

* Steve Chandler – Policy Advisor, Financial Crime & Authorisations Division Cathal McVean – Senior Analyst, Financial Crime & Authorisations Division Introduction - 8 May 2014, the Commission and the Financial Investigation Unit ("FIU") held a co-sponsored seminar entitled "Suspicious Activity Reporting" ("SAR")

- a) **Absence of reference** to the importance of reporting attempted transactions or relationships from some SAR policies and procedures,
- b) **Little reference** in procedures to reporting in relation to terminated business where suspicions are formed and in particular, where that closure is initiated by the customer.
- c) **Reviews of SAR processes** is left out of the overall review of the business's compliance arrangements.
- d) **Outsourcing arrangements omit measures** to ensure that the provider is aware of the SAR obligations in the Bailiwick.
- e) **Failure to have a process in place to facilitate reporting back** to the MLRO by outsourcing providers where suspicions are formed arising from the services being performed.
- f) **Overly complex procedures** with numerous checkpoint stages which end up discouraging SAR by the staff.

HSBC V SHAH

Shah vs HSBC Private Bank (UK) Limited [2012] EWHC 1283

Some Messages for MLROs

The English High Court has delivered judgment in the long-running dispute between HSBC Private Bank and a former customer of HSBC, Mr. Jayesh Shah. Mr. Shah had claimed that money laundering reports filed by HSBC about some of his accounts led to damage to Mr. Shah's business interests causing him financial loss in excess of US\$300m and Mr. Shah sought to recover these monies from HSBC. The ruling raised particular issues under the English Proceeds of Crime Act, 2002 and while this legislation is not on all fours with equivalent money laundering legislation in Ireland, the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010, the judgment provides interesting reading for MLROs in Ireland, and in particular about the internal processes and practices that should support the money laundering reporting regime.

ITV REPORT 7 July 2015 at 10:54am

Jersey financier struck off

A senior Jersey Trust company worker has been banned from working in the finance industry after an investigation found she had breached the codes of conduct for practising finance in the island.

47-year-old Michelle Jardine was responsible for investigating suspicious activity and money laundering but the Jersey Financial Services Commission found evidence she wasn't carrying out proper checks in the paperwork of up to 19 people.



Key failings:



- 1. Overseas directors which made up the board of STM were very remote to the compliance function/staff in Jersey;
- 2. The Board of STM met irregularly and infrequently and compliance matters were not considered in any depth at board meeting that did take place; and
- 3. There was a prioritisation of business development over compliance.

The non-processing of internal SARs



- Between October 2010 and March 2012, internal SARs relating to 19 individuals or entities were filed by employees of STM Jersey with STM Jersey's MLRO- Of these
-only three were acknowledged by the MLRO as having been received,
-sixteen had no receipt issued.
-Some of the SARs were not properly considered by the MLRO while some were not even considered by the MLRO at all.
-None of the internal SARs were externalised to the States of Jersey, Joint Financial Crimes Unit.

The Investigation concludes



- 1. The MLRO **deliberately misled** STM Jersey's board on the matter of the filing of internal SARs by failing to inform the Board that the SARs had been made.
- 2. The corporate governance exercised at STM Jersey, with particular reference to the oversight of the MLRO and compliance function at STM Jersey, was deficient:
- 3.there was **no effective monitoring by the board** of STM Jersey of the MLRO function or reporting of SARs filed internally or externally

4. Action taken by STM Jersey



STM Jersey have taken the following actions:-

- 4.1.1. The MLRO has been dismissed for gross misconduct;
- 4.1.2. The Managing Director has stood down and a new Managing Director has been appointed;
- 4.1.3. Two new local directors have been recruited and appointed to the board;
- 4.1.4. A new MLRO has been recruited and appointed;
- 4.1.5. A new MLCO has been recruited and appointed;
- 4.1.6. A new Compliance Officer has been recruited and appointed;
- 4.1.7. New processes and procedures have been put into place tightening up STM Jersey's compliance function and its interaction with the board of STM Jersey; and
- 4.1.8. A remediation programme has been put in place by STM Jersey to rectify the issues identified in the Investigation, which will be closely monitored by the Commission for implementation in accordance with specific timelines.



Public Statement
Mrs Michelle Jardine ("Mrs Jardine")
 (From 23 November 2012)
 The Mill House, Ballingdon, Wyke, Withshire, United Kingdom, BA11 0QF
 Financial Services (Jersey) Law 1998, as amended (the "FSJL")



- Mrs Jardine was STM Jersey's Money Laundering Reporting Officer ("MLRO") between May 2010 and March 2012.
- She also acted as STM Jersey's Money Laundering Compliance Officer ("MLCO") between October 2010 and June 2011.

The Jersey Financial Services Commission (the "Commission") issues this public statement pursuant to Article 21 of the FSJL.

Following an investigation into the fitness and propriety of Mrs Jardine, in respect of her conduct as a former Foreign Person and Key Person of STM Jersey (limited and participating members, PO Box 205, 3rd Floor, Windward House, La Route de la Liberation, St Helier, Jersey JE1 8R ("STM Jersey")), it appears to the Commission to be reasonable and necessary to issue Mrs Jardine with directions under Article 23 of the Law preventing her from engaging in any employment with any regulated person as defined under the Law, without having first applied to and obtained the prior written approval of the Commission. Mrs Jardine has been issued with equivalent directions under each of the other regulatory laws¹. The directions shall remain in force until such time as Mrs Jardine satisfies the Commission that there are no longer any grounds justifying the directions, in which case the directions may be withdrawn or varied.

The reasons for the directions arise from Mrs Jardine's conduct as follows:

- 1 Mrs Jardine was STM Jersey's Money Laundering Reporting Officer ("MLRO") between May 2010 and March 2012. She also acted as STM Jersey's Money Laundering Compliance Officer ("MLCO") between October 2010 and June 2011.
- 2 In her role as MLRO at STM Jersey, Mrs Jardine failed to process (namely, acknowledge receipt of submission; consider content; and externalise where relevant) 15 internally filed SARs relating to 19 individuals or entities, some of which had been filed with her some 20 months previous.

The reasons for the directions arise from Mrs Jardine's conduct as follows:



1. In her role as MLRO at STM Jersey, Mrs Jardine failed
2.to process [namely, acknowledge receipt of submission; consider content; andexternalise where relevant]
 - 15 internally filed SARs relating to 19 individuals or entities, some of which had been filed with her some 20 months previous.
3. In her role as MLCO/MLRO at STM Jersey, Mrs Jardine failed
4.To deliver full and complete STM Board compliance reports that provided the status of all internal and external SAR reporting.

There is no statutory guidance as to what may constitute a conflict of interest [CI].

But there is a statutory duty to avoid conflict of interest [CI].



Conflicts Includes

- Compliance Officer
- MLRO,
- Nominated Officer,

Horizon Jersey & its Directors and Senior Mangers Failed because of Conflicts of interests & Failing to demonstrate

.....**Integrity**
&
.....**Competence**



Public Statements



When: November 2013
July 2014
January 2015

How many: 1 - Horizon
5 - Directors and Employees

THE FACTS.....




- 1. **Film Co**
- 2. **Media Fund**
- 3. **Bid Co**
- 4. **Horizon director**
- 5. **Structure X**

- 1. Services provided to private fund structures including **Film co**
- 2. Customers invested in **Film Co** direct through shareholding **OR** through investing in a **Media Fund**
- 3. **Film Co's** AIM listing suspended
- 4. Acquisition of **Film Co** by **Bid Co**
- 5. **Bid Co** beneficially owned by **Horizon director**
- 6. **Film Co's** equity acquired for 1p per share and CLN's for 55p
- 7. **Structure X** set up - funded by customers to purchase **Film Co's** CLN's for £1
- 8. Moneys not passed to **Structure X** but went direct to **Bid Co** to pay off **Film Co's** creditors
- 9. **Film Co** into liquidation just 1 month after **Bid Co** acquired it
- 10. Valuation to customers made no reference to serious financial difficulty



**Treharne
as COO**



4 Summary of Findings

4.1 The Commission has already concluded that HTJL breached all seven principles of the Codes of Practice for Trust Company Business, including failing to conduct business with integrity, failing to ensure conflicts of interest were managed and failing to act in the best interests of customers. As a director and Chief Operating Officer of HTJL from May 2018, Mr Treharne bears significant responsibility for these failings.

4.2 Mr Treharne, as Chief Operating Officer, shares responsibility for the following:

- 4.2.1 a confused and ineffective corporate governance structure;
- 4.2.2 a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
- 4.2.3 a failure to realise a Horizon services company was conducting unauthorised financial services business;
- 4.2.4 a lack of transparency over fees levied to customers; and
- 4.2.5 a failure to manage risk and to identify and address issues facing HTJL.

Mr Treharne's conduct lacked integrity and competence.

INTEGRITY & COMPETENCE


**Noding
as KEY PERSON**

4.3 Mr Noding failed to ensure appropriate controls were in place. There was no effective monitoring or reporting of HTJL's business operations. Consequently, Mr Noding shares responsibility for the following:

- 4.3.1 a confused and ineffective corporate governance structure;
- 4.3.2 a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
- 4.3.3 a failure to realise a Horizon services company was conducting unauthorised financial services business;
- 4.3.4 a lack of transparency over fees levied to customers; and
- 4.3.5 a failure to manage risk and to identify and address issues facing HTJL.

This conduct lacked competence.

COMPETENCE




**Jersey Financial
Services Commission**


Public Statement

Mr James Nicholls ("Mr Nicholls"), born 27 February 1967.

Former employee of Horizon Trustees (Jersey) Limited (in liquidation) ("HTJL")
Financial Services (Jersey) Law 1998, as amended (the "FSJL")



Mr Nicholls



1. Mr Nicholls frequently acted as Chairman of meetings in which it was resolved to invest customer monies in Structure X.
2. The Commission's investigation revealed that the minutes and resolutions were executed in the following circumstances:

Mr Nicholls



- 3. The decisions to invest were based purely on an instruction issued by a colleague;
- 4. Little, if any, consideration had been given to the key documents associated with the investments;
- 5. No bespoke consideration had been given to the interests of the customers;
- 6. The investments were made in the knowledge the monies were not to be remitted to Structure X but would be transferred directly to the Bid Co. for the purposes of discharging the Film Co.'s creditors;

Mr Nicholls



- 7. The minutes and resolutions authorising investments in Structure X were taken from a bank of pro-forma precedents, bore little or no resemblance to the facts and therefore presented a false record.
 - 8. The circumstances in which the investments were authorised by Mr Nicholls revealed a failure to discharge the function of a professional fiduciary.
- 9. The JFSC view is that Mr Nicholls's conduct lacked ????.**



Mr Nicholls's conduct lacked competence.

Directors take home

How to protect yourself

1. Appreciate that the environment has changed beyond recognition
2. Judgment-led regulation
3. Corporate Citizenry expected of Financial services
4. You will not be judged by the standards of your peers but by a regulator with no comparative experience
5. Cannot always hide behind the firm – it is all about personal liability
6. If imposing a big fine on an institution is politically unacceptable because it leads to substantial job losses, the **PRINCIPAL PERSON / KEY PERSON** penalty is the only way the regulator can "send a message"
7. Firms distance themselves even from **PRINCIPAL PERSON / KEY PERSON** when there is an issue
8. Your entire personal resources could be at stake

To do

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Job Description <ol style="list-style-type: none"> a. Up to date b. Accurate c. Precise and Specific 2. Know the rules 3. Know the cases 4. Review your reporting lines and governance 5. The problem of the whistleblowing subordinate | <ol style="list-style-type: none"> 1. Do not turn a blind eye 2. Have the uncomfortable conversations now and not with the regulator!!! 3. Insurance cover for legal and investigative costs 4. Contemporaneous record of decisions (C.Y.A) <ol style="list-style-type: none"> a. If in doubt document it but sensibly b. NB - "If it's not documented, it didn't happen" |
|--|--|

Key Regulatory RED FLAGS

In 2014 what should an
AML supervised firms BOARD
have checked off with compliance &
evidenced in their minutes....?

13 red flags.....

- | | |
|--|--|
| 1. Corporate Governance and Systems and Controls | 9. Compliance Function. |
| 2. Delegated functions of the board. | 10. Compliance Resourcing |
| 3. Business Risk Assessment and Strategy | 11. Compliance Monitoring |
| 4. Conflicts of Interest | 12. Customer risk management systems and controls. |
| 5. Business Acceptance Systems and Controls. | 13. Customer Profiling. |
| 6. General systems and controls, policies and procedures | 14. Politically Exposed Persons |
| 7. Suspicious Activity Reporting Procedures | |
| 8. Evaluation of SARs and Reporting to the JFCU | |

Common failures leading to enforcement action

(...as reported by a regulatory enforcement director)

8 Common failures leading to enforcement action



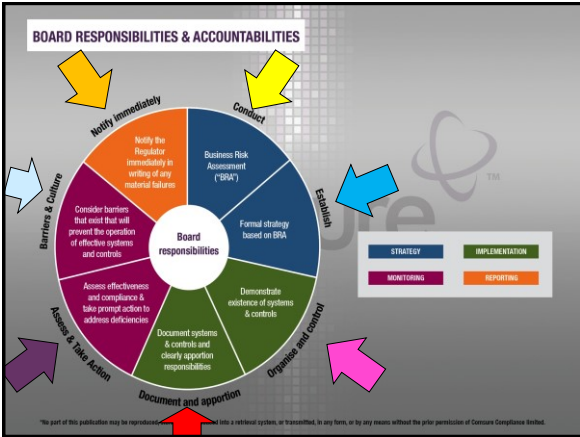
1. Culture of the business
2. A dysfunctional board led by a dominant individual (often associated with a weak and ineffective compliance function)
3. Too many roles being concentrated in a single person
4. Conflicts of interest and the (lack of) management of them
5. Shadow directors (e.g. dominant shareholder controlling day to day activities)
6. Financial instability
7. Complex structures not fully understood by board and/or staff
8. Ineffective NEDs with little understanding of the business and no contribution to corporate governance.



Summary and Close









Comsure

“Those who do not learn from history are doomed to repeat It”

George Santayana quotes

Comsure 

FINISH ANY QUESTIONS...?



**managing the risks
so you can focus
on the rewards**





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**managing the risks
so you can focus
on the rewards**





There's more to business best practice than just risk avoidance **Comsure** 

In business life, more and more emphasis is placed on Compliance, and often this can be put down as a chore and a necessary evil.....

At Comsure we do not think this should be the case.....

We believe that compliance isn't just about risk avoidance its about helping your business operate more efficiently and more successfully.

www.comsuregroup.com



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