



## **Public Statement**

**Herald Trust Company Limited and affiliated members, namely:**

**Herald Management Services Limited;**

**Herald Trustees Limited;**

**Herald Employment and Recruitment Services Limited;**

**Herald Sports & Entertainment Limited;**

**Herald Corporate Director (No 2) Limited;**

**Herald Trustee Services Limited;**

**Herald Corporate Director (No 1) Limited;**

**Herald Nominees Limited**

**(together, "Herald Jersey")**

**Financial Services (Jersey) Law 1998, as amended (the "FS(J)L")**  
**Codes of Practice for Trust Company Business (the "Codes")**

The Jersey Financial Services Commission (the "**Commission**") issues this public statement pursuant to Article 25 of the FS(J)L.

### **1. Introduction**

- 1.1 Herald Jersey is presently authorised by the Commission to conduct Trust Company Business as defined in the FS(J)L.
- 1.2 The Commission conducted an onsite examination at Herald Jersey's offices in November 2011.
- 1.3 As a result of the onsite examination the Commission required Herald Jersey to carry out a remediation programme. In addition, Herald Jersey were required to appoint a reporting professional pursuant to Article 32(4) of the FS(J)L. The reporting professional was required to:
  - 1.3.1 review and report on Herald Jersey's systems and controls in compliance with the FS(J)L, subordinate legislation and Jersey's AML/CFT regime;
  - 1.3.2 undertake a sample review of 50 customer files to look at Herald Jersey's compliance with Jersey's regulatory and AML/CFT regimes; and
  - 1.3.3 assess the effectiveness of Herald Jersey's administration of customer entities; the appropriateness and effectiveness of the periodic reviews undertaken; which included the appropriateness and effectiveness of Herald Jersey's scoring process in assessing and documentation of risks presented by customers and customer structures.



- 1.4 The reporting professional issued its report to the Commission (the **“Competent Persons Report”**) on 31 August 2012.
- 1.5 Whilst the Competent Persons Report was being compiled, the Commission received information which identified a customer entity, and certain related entities (**the “Customer Entity”**), being administered by Herald Jersey possibly having received funds from a company managed in the United Kingdom that may have been connected to a fraud. In March 2012 the Commission commenced a separate investigation into Herald Jersey’s administration of the Customer Entity (**the “Investigation”**).
- 1.6 Herald Jersey have co-operated fully with the Commission throughout the course of the Competent Persons Report and the Investigation. The Commission further recognises that the current Board of Herald Jersey has taken robust action in order to remediate its position as set out in Section 4 below

## **2 Summary of Findings**

### **2.1 The Competent Persons Report**

- 2.1.1 File review summaries found certain areas which the Competent Person consistently identified as weak and evidenced a failure of compliance with the AML/CFT requirements, namely:
  - 2.1.1.1 CDD was out of date;
  - 2.1.1.2 source of funds were not sufficiently evidenced;
  - 2.1.1.3 source of wealth was not sufficiently evidenced;
  - 2.1.1.4 a lack of evidence to demonstrate that CDD had been sufficiently evaluated;
  - 2.1.1.5 inadequate evidence on file of enhanced CDD being undertaken on Politically Exposed Persons (“PEPs”) or high risk jurisdictions clients;
  - 2.1.1.6 inadequate evidence of updated CDD and risk assessments;
  - 2.1.1.7 the expected activity profile was not correct or missing; and
  - 2.1.1.8 there was no, or little, control by Herald Jersey of the risks associated with registered office only business and the issuance and on-going oversight of powers of attorney.



## 2.2 The Investigation

2.2.1 As a result of the Investigation the Commission has found the following:

2.2.1.1 the mind and management of the Customer Entity was controlled by the UK resident beneficial owners and not the Herald Jersey directors appointed to the board of the Customer Entity;

2.2.1.2 Herald Jersey was reactive and not proactive in its administration of the Customer Entity;

2.2.1.3 Herald Jersey did not question and properly understand the nature of the activities in which the Customer Entity was involved and lacked knowledge, experience and competency to administer the Customer Entity;

2.2.1.4 Herald Jersey allowed payments to be made by the Customer Entity to acquire assets without knowing or assessing that adequate funds would ultimately be available to complete the transaction;

2.2.1.5 Herald Jersey overly relied on the Customer Entity's ultimate beneficial owners instructions and did not challenge the rationale for acquiring certain assets;

2.2.1.6 Herald Jersey allowed the Customer Entity to receive loans from a UK incorporated company whose beneficial owners were the same as the Customer Entity, without having first entered into formal loan agreements with the UK company;

2.2.1.7 Herald Jersey did not fully understand the source of funds which flowed into the Customer Entity from the UK company;

2.2.1.8 Herald Jersey did not fully consider all information available to it, which included possible adverse information made available to it from third parties, regarding the ultimate source of funding received by the Customer Entity;

2.2.1.9 Herald Jersey allowed the Customer Entity to receive funds into its bank account without any knowledge as to the remitter details. Of further concern is the fact that these funds were paid out the following day as part payment to acquire assets in the Customer Entity's name.

2.2.1.10 Herald Jersey failed to keep adequate books and records for the Customer Entity;



- 2.2.1.11 Herald Jersey allowed the Customer Entity to enter into consultancy agreements to receive advisory/consultancy services without any evidence to support that the persons appointed were the best candidate(s) or suitably qualified to act in those roles;
- 2.2.1.12 Herald Jersey failed to properly monitor consultants appointed to act for the Customer Entities;
- 2.2.1.13 between June 2007 and November 2009, the Customer Entity loaned one of its beneficial owners €1,170,000.00 to repay expenses incurred by them which should have been borne by the Customer Entity. No formal documented rationale was found/could be provided to account for why a loan was given to the ultimate beneficial owner and not just a straight repayment of the expenses; and
- 2.2.1.14 the Customer Entity's last formal recorded board meeting was in November 2009. As of this date the company still had significant investments in certain property development projects. At this time the Customer Entity owed Herald Jersey significant fees. Despite an on-going fiduciary duty to act in the best interests of the client entity Herald Jersey took the decision to halt all work on the Customer Entity until their fees had been paid. The impact of that decision was that investments were placed in jeopardy.

### **3 Breaches of the Codes**

- 3.1 The Codes were first issued by the Commission on 27 November 2000 and have been subject to revision. The Codes establish 7 core principles for the conduct of Trust Company Business. Those identified by the Commission as having been breached by Herald Jersey are as follows:-
  - 3.1.1 Principle 2: A registered person must have the highest regard for the interests of its customers. Specifically, the Commission regards the following elements of Principle 2 to have been breached by Herald Jersey in that it:
    - 3.1.1.1 failed to act with due skill, care and diligence;
    - 3.1.1.2 failed to exercise its power or discretion for a proper purpose and was not able to evidence, in writing, all decisions made;
    - 3.1.1.3 failed to identify conflicts of interest present within the business; and
    - 3.1.1.4 failed to ensure that adequate procedures were implemented to ensure that regular reviews at appropriate intervals were



conducted in respect of the trust company business services, which it provides to its customers.

3.1.2 Principle 3: A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems. Herald Jersey failed to:

3.1.2.1 exercise an adequate level of Corporate Governance; and

3.1.2.2 maintain adequate internal systems and controls.

#### **4 Action taken by Herald Jersey**

4.1 As a result of the Investigation, and working with the Commission, Herald Jersey have taken the following actions:

4.1.1 certain directors have stepped down and two new local directors have been recruited and appointed to the Board, together with a new Non-Executive Chairperson;

4.1.2 Herald Jersey has, in conjunction with an external resource, undertaken a review of its processes and procedures and effected changes where required which is anticipated to have resulted in strengthening Herald Jersey's systems and controls;

4.1.3 'cradle to grave' reviews of a significant proportion of customer files have been initiated by Herald Jersey with significant progress being made to remedy any customer due diligence deficiencies identified as a result of those reviews;

4.1.4 a remediation programme has been put in place by Herald Jersey to rectify the issues identified as a result of the Competent Persons Report and the Investigation, which will be closely monitored by the Commission.

#### **Jersey Financial Services Commission**

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