



Jersey Financial Services Commission

Natural Persons undertaking class G - Trust Company
Business ("Sole trader")

Our Ref.: ELC/TCB

30 May 2014

Dear Sir/Madam,

On-Site Examination Feedback

Trust Company Business Codes of Practice ("TCB Codes")

Handbook for the prevention and detection of money laundering and the financing of terrorism ("the AML handbook")

Jersey Financial Services Commission ("the Commission")

Financial Services (Jersey) Law, 1998, ("the Law")

During the course of 2013 and the first quarter of 2014 the Commission conducted nine on-site examinations of natural persons undertaking class G (acting or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company) of trust company business ("sole traders"). The on-site examinations were undertaken as part of the Commission's supervision of registered persons and provided the Commission with valuable knowledge of each sole trader and this particular sector of the finance industry.

The on-site examinations focused upon each sole trader's business acceptance process, risk rating methodology, record-keeping and customer due diligence processes. The Commission also took the opportunity to obtain a high level overview of the activities of the structures to which the sole traders were appointed.

This letter will outline some observations arising from the on-site examinations and the Commission's views on the practices undertaken by the sole traders generally.

Observations

Insurance

It was apparent that in a small number of cases insurance was not held for all directorships.

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The Commission would advise that all directorships provided under a sole trader's registration must be covered by directors and officers insurance and / or, where relevant, professional indemnity insurance. Insurance may be provided by the company to which the sole trader is appointed or under a policy in the name of the sole trader.

The above applies regardless of whether the company to which the sole trader is appointed is dormant, winding down or has yet to start trading.

Resources

The number of appointments held by sole traders varied greatly.

In addition, of the nine sole traders examined, six were employed on a full or part time basis on matters outside of their registration.

The Commission considers the number of engagements an individual undertakes and will challenge individuals to demonstrate that they have sufficient time resource to discharge their duties.

A lack of adequate time resource may compromise the effectiveness of a director in discharging his responsibilities. This is of particular importance where a sole trader is acting on the board of a regulated entity.

The Commission would expect to see an assessment of the time commitment required when taking on additional roles.

Executive vs Non-Executive

In some instances sole traders who were appointed as Non-Executive Directors were also appointed as signatories. Whilst in most instances it was apparent from discussions that in practice these signing powers were very rarely used, where sole traders are asked to authorise transactions, consideration should be given to the impact this may have upon their non-executive status.

In such instances sole traders should have regard to insurance requirements and whether professional indemnity insurance is required in addition to directors and officers insurance.

Business Risk Assessment and Strategy (the "BRA/S")

The BRA/S prepared by sole traders did not always have regard to the anti-money laundering risks associated with those customers to which they provided services. The



Commission would expect a BRA/S to include but not be limited to an assessment of the following AML risks:

- Jurisdiction risk – both in terms of the location of the customer / investors and the location of the activity undertaken by the company.
- The nature of activity undertaken by the company.
- Customer due diligence matters – reliance upon introducers.
- The nature of the customer base – for example, regulated funds vs unregulated funds or private clients vs public companies, listed companies vs private companies.

New Business Acceptance Process

A sole trader should have regard to the manner in which they are able to demonstrate compliance with the AML Handbook and the TCB Codes when taking on new business. The Commission considers that a sole trader should be able to demonstrate that they have had due regard to areas such as the following when accepting an additional directorship:

- The nature of the business of the company to which they are to be appointed.
- Where relying on an introducer arrangement for the purposes of CDD, must hold a written assurance in accordance with the requirements of the Money Laundering Order.
- The sole trader's expertise and how this aligns with the role they are being asked to fulfil.
- Documented risk assessment.
- Evidence of insurance if relying on that provided by the company.
- Review of corporate records and, where relevant, procedures manuals relating to that company.
- Review of any launch documents / prospectus.
- Consideration of any adverse information in the public domain.

CPD

Whilst CPD records were well maintained by those sole traders examined there was evidence of a lack of AML/CFT training being undertaken.

Good practice points

During the on-site examinations the Commission noted the following areas of good practice:

- Regard to conflicts of interest when considering new appointments;



- Conducting additional due diligence over and above reliance upon other regulated service providers;
- Documented evidence of reviews of services providers' AML controls;
- Regular re-assessment of the risk rating of the appointments.

I hope this letter has provided a useful summary of the Commission's observations, along with suggestions as to best practices going forward.

Please do not hesitate to contact me should you have any queries.

Yours faithfully

PP

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