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UNDER REVIEW

1 SUPERVISION OF COMPLIANCE WITH THE HANDBOOK

1.1 INTRODUCTION

1. The failure of a person carrying on a financial services business (a “**relevant person**”) to comply with the requirements of the Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”) could lead to criminal sanctions, as set out in [Article 37](#) of the Proceeds of Crime (Jersey) Law 1999 (the “**Proceeds of Crime Law**”). However, [Article 37\(10\)](#) of the Proceeds of Crime Law also provides a relevant person with a defence to the commission of an offence of failure to comply with the requirements of the Money Laundering Order, where that person is able to demonstrate that it has taken “all reasonable steps and exercised due diligence to avoid committing the offence”.
2. Failure to comply with relevant legislation, including the Money Laundering Order, or Regulatory Requirements that are set in Part 1 of the Handbook could also lead to regulatory action. The course of action taken by the Commission will depend on the nature of the failure and the circumstances in which it arose. The three options available to the Commission are described in more detail later in this section. In summary:
 - Where failings identified are considered less serious, with reference to all available information, the Commission will work in partnership with a relevant person to rectify those failings. (Section 1.6.1.)
 - Where failings identified are serious, the Commission will consider whether it is appropriate for it to exercise its enforcement powers. (Section 1.6.2.)
 - Alternatively, or in addition to enforcement action taken by the Commission, the matter may be referred to the Attorney General. The Commission’s policy on referral to the Attorney General is set out in Section 2.

1.2 DEMONSTRATING COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS

3. Requirements of the Money Laundering Order and Regulatory Requirements set in the Handbook fall into two categories: unequivocal requirements that necessitate definitive action (such as requirements relating to record keeping and reporting suspicious activity) and requirements that are established by way of high-level principles, the latter permitting flexibility as to the way in which a relevant person may achieve compliance with those high level principles.
4. As set out in Section 1 of Part 1 of the Handbook, the soundly reasoned application of provisions contained within the Guidance Notes will provide a good indication that a relevant person has complied with the Money Laundering Order and Regulatory Requirements set in the Handbook. However, the flexibility provided by high-level principles enables a relevant person to determine the measures most appropriate for its circumstances, and to implement different measures to those set out in the Guidance Notes, so long as it can demonstrate to the Commission, or if necessary to the Royal Court (in the case of a requirement of the Money Laundering Order), that such measures also achieve compliance with the Money Laundering Order and Regulatory Requirements set in the Handbook.
5. Where flexibility is provided as to how to implement requirements of the Money Laundering Order or Regulatory Requirements set in the Handbook, for example, as to the level of customer due diligence information to obtain and verify, and as to the intensity of relationship and transaction monitoring, the overriding objective for a relevant person will be to demonstrate that the measures it has implemented are appropriate to the money laundering and terrorist financing risk that has been properly identified by the relevant person.

1.3 POLICY ON DEVIATIONS FROM REGULATORY REQUIREMENTS

6. In all circumstances, a relevant person must comply with legal requirements, including those set out in the Money Laundering Order.
7. In exceptional circumstances, where strict adherence to a Regulatory Requirement set in the Handbook would produce an anomalous result, a relevant person may apply to the Commission in advance to consider any appropriate variance from that Requirement.
8. A variance will be affected - as appropriate - through the attachment of a condition to a relevant person's permit under [Article 7\(5\)](#) of the Collective Investment Funds (Jersey) Law 1988 (“CIF(J)L”), certificate under [Article 8B\(6\)](#) of the CIF(J)L, registration under [Article 11](#) of the Banking Business (Jersey) Law 1991, permit under [Article 7](#) of the Insurance Business (Jersey) Law 1996, registration under [Article 10\(6\)](#) of the Financial Services (Jersey) Law 1998, or registration (or deemed registration) under [Article 17\(3\)](#) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

1.4 NOTIFICATION OF ISSUES TO THE COMMISSION

9. Principle 6 of each of the Codes of Practice (the “Codes of Practice”) for business that is regulated under the regulatory laws¹ (Principle 5 in the case of the Codes of Practice for Money Service Business) requires a relevant person to deal with the Commission and other authorities in an open and co-operative manner. In particular, the Principle requires a relevant person to immediately notify the Commission of any matter arising that the person considers to be material to the requirements placed on it, or any of its employees, to be fit and proper.
10. Specific circumstances which the Commission requires to be reported include:
 - The breakdown of administrative or control procedures relevant to any of the relevant person's activities (including breakdowns of computer systems or other accounting problems) resulting, or likely to result, in failure to comply with one or more requirements of relevant legislation, including the Money Laundering Order or Regulatory Requirements set in the Handbook.
 - Any event arising that makes it impracticable for a relevant person to comply with one or more Regulatory Requirements of the Handbook.
 - Any other matter arising that is likely to be material to the Commission's supervision of the relevant person or any of its employees. For example, suspicious activity reports relating to substantial assets, terrorist financing, breach of sanctions or to high profile persons, such as politically exposed persons.

1.5 SUPERVISION OF COMPLIANCE WITH THE RISK-BASED APPROACH

11. The increased emphasis that is placed on risk management in the Money Laundering Order and Handbook requires the Commission to obtain a greater understanding of the business that is conducted by relevant persons, and of the risks they may face. It is unlikely that two businesses will adopt the same risk management system, even where operating in very similar environments and the Commission's supervisory staff will need to be able to understand and assess the adequacy of different approaches to risk management, and to determine whether a specific approach has been adopted based on a sound risk-based judgement. As a result, the Commission provides training to staff so that they have the necessary expertise to undertake such assessments, and that a consistent supervisory approach is maintained.
12. The Commission's approach to the supervision of compliance with the Handbook will focus on the quality and effectiveness of a relevant person's risk management arrangements: the business' assessment of its money laundering and terrorist financing risks; the action taken to

¹ The regulatory laws are the Collective Investment Funds (Jersey) Law 1988, Banking Business (Jersey) Law 1991, Insurance Business (Jersey) Law 1996 and the Financial Services (Jersey) Law 1998.

manage and minimise these risks; the adequacy of risk management resources; and the Board's oversight of these arrangements.

13. Information collected through examinations is also an important factor in enabling the Commission to assign and maintain an overall risk rating for each relevant person.

1.6 DEALING WITH FAILURE TO COMPLY WITH REQUIREMENTS

1.6.1 Less serious failings

14. Where a relevant person can demonstrate that an appropriate risk-based approach has been implemented (in areas where a relevant person is able to determine the measures that are most appropriate for its circumstances), that it has an effective compliance mechanism, but where it has made a misjudgement in good faith in a particular area, or where minor instances of non-compliance have arisen, e.g. in verification of a customer's identity, the Commission will not consider such matters to be serious failings with the resultant action set out in Section 1.6.2. However, this does not negate liability for failure to implement an adequate approach through negligence or recklessness, or the failure of a risk-based process that was not adequately designed or implemented.
15. Where failings are identified (which are other than serious), normal supervisory practice will result in the Commission assisting the relevant person to rectify those failings through the agreement and implementation of an action plan. As part of this process, where the Commission is not satisfied that a relevant person has complied with specific requirements of relevant legislation, including the Money Laundering Order, or Regulatory Requirements set in the Handbook, the Commission will set out why it believes the measures applied to be inadequate, and provide the business with an opportunity to demonstrate otherwise.

1.6.2 Serious failings

16. Where the nature of the failings identified by the Commission is considered serious, the Commission will consider whether it is appropriate for the Commission to exercise its enforcement powers. These include, but are not limited to, enhanced supervision, the issue of a condition of registration, the issue of a direction (including directions that stop individuals from working in the financial sector), revocation of a registration/licence and the issue of a public statement. Further information about the use of the Commission's enforcement powers can be found on the Commission's website - [enforcement guidance](#).
17. In the event that the Commission considers that the use of its enforcement powers alone is not an appropriate response given the significance of the failings identified, the Commission will refer the matter to the Attorney General. The Commission's policy on referral to the Attorney General is set out in Section 2 of this Part.

1.7 FEEDBACK

18. In order to assist relevant persons with the application of a risk-based approach, the Commission will provide regular updates on the good and not-so-good practices that it sees when it conducts supervisory examinations.
19. The Commission will do this through updates to the Guidance Notes set out in the Handbook, through industry seminars, through discussions with individual businesses, and through the publication of summaries highlighting matters identified during themed supervisory examinations. Findings from themed examinations may be found on the Commission's website. See: www.jerseyfsc.org/banking_business/on_site_thematic_examinations/index.asp and www.jerseyfsc.org/trust_company_business/on_site_thematic_examinations/index.asp.

2 CRIMINAL SANCTIONS FOR NON-COMPLIANCE

2.1 REFERRAL OF NON-COMPLIANCE WITH STATUTORY REQUIREMENTS TO THE ATTORNEY GENERAL

1. The policy of the Commission is that, if it should come across an apparent breach of legislation in the course of its supervision, including as a result of an onsite examination, the Commission will refer it to the Attorney General if the breach is considered to be sufficiently serious. It should be stressed, however, that a decision on whether to prosecute a breach will be a matter solely for the Attorney General.
2. The Commission will generally regard a breach of legislation as sufficiently serious where it poses a threat to clients or potential clients or to the reputation of the Island and/or where it casts doubt on the integrity, competence or financial standing of a relevant person or of its principal persons (or equivalent). It will also be relevant if the breach appeared to be deliberate or premeditated rather than accidental, or if the person (individual or body corporate) has failed to report a material breach to the Commission.
3. Failure, inability or refusal to cooperate with the Commission to rectify a breach, and a history of past breaches or poor regulatory compliance (which may give grounds to believe that the breach is likely to be repeated and/or is part of a systemic failure), will also be taken into account.
4. The above list of relevant factors is not intended to be exhaustive. But it should be enough to indicate that referrals to the Attorney General by the Commission will be judged on their merits on a case-by-case basis and will not be made on every occasion a breach of legislation is identified.
5. Relevant persons and their directors should however be in no doubt that they put themselves at potential risk if they do not take adequate steps to ensure that they are compliant with legislation.

2.2 CODE ON THE DECISION TO PROSECUTE

6. When considering suspected criminal breaches of legislation, the Attorney General will apply the principles set out in the [Code on the Decision to Prosecute](#). The purpose of the Code is to ensure that fair and consistent decisions are made concerning the decision to prosecute. Whilst each case is unique and will be considered on its own merits, there are general principles set out in the Code which apply in all cases.