Jersey Financial Services Commission

JPF Thematic Examination

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JFSC Sensitive

Overview

- Background and examination process
- Findings
- Survey results
- Next steps

Background

› Proposal put forward for SEU thematic examination and agreed in September 2019

Quarter 3 – Jersey Private Funds

To support our automated authorisation process for Jersey Private Funds (JPFs), Designated Service Providers need to provide us with a declaration to confirm that the JPFs they act for are compliant with all applicable requirements for Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT).

On an annual basis, Designated Service Providers also need to file a return for each JPF they act for, declaring their continuing AML/CFT compliance and any non-compliance issues.

Through this on-site examination, we will assess how Designated Service Providers are meeting these obligations.

Entity Selection

- At time of planning there were 42 DSPs and 334 JPFs
- The following have been highlighted as higher risk:
  - Entities which only have a TCB licence who are DSPs
  - JPFs with 1-15 investors
  - Investors from Appendix D2 jurisdictions
  - PEPs
- DSP Selection
  - 22 DSP respondents to survey providing services for 255 JPFs (76%)
  - 6 DSPs selected for in-depth examination visit providing services for 148 JPFs (44%)

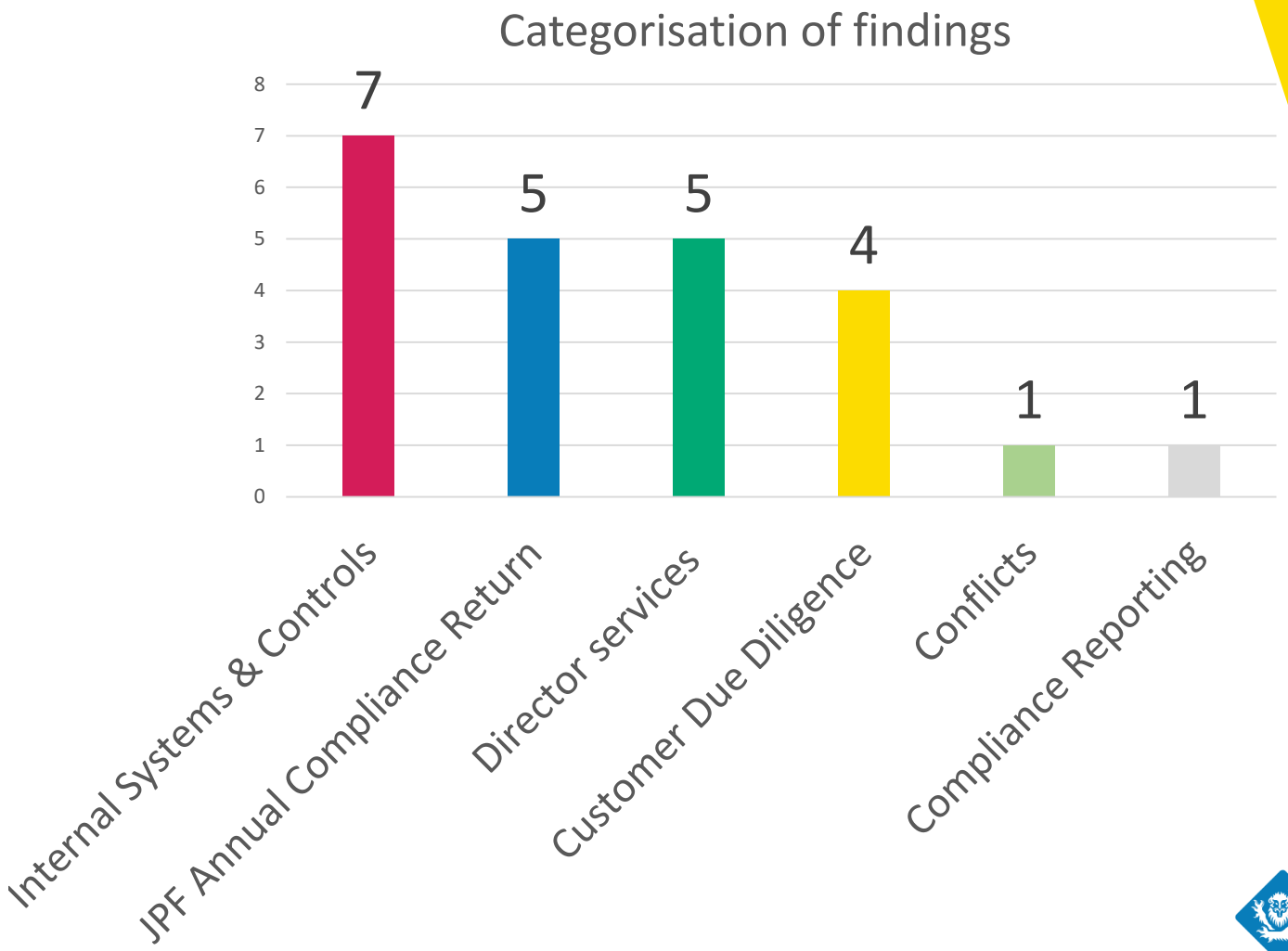
What did we focus on?

- DSP duties and responsibilities under JPF Guide (DSP Duties)
- Policies and procedures surrounding DSP Duties and ensuring JPF compliance with JPF Guide and AML/CFT requirements
- DSP and JPF BRA and CRA
- JPFs compliance with JPF Guide and AML/CFT requirements
- Steps undertaken by DSP to be able to provide the JPF annual compliance return
- Compliance monitoring, testing and reports

Statistics

- 6 DSPs (1 TCB only, 5 TCB and FSB)
- 18 out of 148 JPFs selected (2-4 per DSP)
- 32 investor files for in-depth review
- 23 findings

Findings


Categorisation of findings
8
7
6
5
4
3
2
1
0
7
5
5
4
1
1
Internal Systems & Controls
JPF Annual Compliance Return
Director services
Customer Due Diligence
Conflicts
Compliance Reporting

Internal Systems and Controls - 5 DSPs had 7 findings

- Board did not understand DSP role and JPF Guide or AML/CFT requirements
- Lack of training
- Inadequate policies and procedures
- Unacceptable delays
- Lack of agreements documenting DSP services and not providing services contracted to provide
- Reviews and record keeping

JPF Annual Compliance Return – 5 DSPs had 5 findings

- No or inadequate testing or reviews
- JPF was not compliant with AML/CFT requirements
  - MLRO/MLCO not appointed
  - Policies and procedures not adopted and/or followed
- Inadequate promoter checks
- Incorrect investor numbers submitted

Director Services - 5 DSPs had 5 findings

- Majority of cases DSPs or DSP group companies provided directors to JPFs
- JPF directors did not understand and did not apply AML/CFT requirements to JPF
- JPFs non-compliance with AML/CFT requirements
- JPFS not compliant with JPF Guide

Customer Due Diligence - 3 DSPs had 4 findings

- DSP's CRAs on JPFs did not adequately reflect the risk
- Misunderstanding of % of ownership and control
- Shortcomings regarding records of source of funds and higher risk investors

Conflicts - 1 DSP had 1 finding

- Conflicts not adequately recorded
- JPF Board had not ensured DSP provided contracted services
- Services provided by DSP led to JPF being non-compliant with statutory obligations and regulatory requirements

Compliance Reporting - 1 DSP had 1 finding

- Schedule of services included quarterly compliance reporting
- There was no quarterly compliance reporting
- No explanation was offered why services not provided
- Board included directors provided by DSP or DSP group companies

Good Practice

- Annual compliance checklist tabled to DSP Board before JPF Return filed
- DSP Board reviewed and ensured JPF Return accurate and correct
- BRA refers to the role of DSP and duties imposed by JPF Guide
- DSP reviewed policies and procedures to meet JPF Guide and AML/CFT requirements

JFSC Expectations

JPF Board Minutes

- Compliance reports as a standard agenda item
- Appointment of MLRO and MLCO clearly recorded
- JPF Board reviews services DSP provides
  - Complies with DSP Duties of JPF Guide
  - Services are being delivered adequately and effectively

All relevant individuals receive training on JPF Guide and Section 14 of AML/CFT Handbook

Survey - Statistics

- 22 DSPs acting for 260 JPFs
- 256 apply Jersey AML/CFT standards
- 237 Jersey JPFs/23 non-Jersey JPFs
- 59 JPFs are alternative investment funds
- 81% of JPFs are limited partnerships

Survey – JPF Corporate Governance (1)

Number of DSPs	Yes	No
Since assuming the role as DSP, do the Board minutes of the DSP make reference to JPFs and the DSP role?	15	7
Do the compliance reports of the DSP make reference to JPFs and the DSP role?	12	10
Does the business risk assessment of the DSP have a section(s) dedicated to JPFs and the DSP role?	6	16

Survey – JPF Corporate Governance (2)

Number of DSPs	Yes	Partially	No
Do the DSP's policies and procedures cover the DSP role and responsibilities as set out in Part G of the JPF Guide?	13	8	1

Number of DSPs	Yes	Partially	No	N/A
If the DSP has a registration as a Fund Services Business under the FSJL are the same policies and procedures used for JPFs as public funds (save for any modifications for the DSP role)?	15	2	2	3
If the DSP has a registration as a Fund Services Business under the FSJL, do the same staff provide services to JPFs as public funds?	18	1	-	3

Survey – JPF Directors

"Whilst there is no explicit requirement for the mind and management of a JPF (including a non-domiciled JPF) to be in Jersey, the JFSC would ordinarily expect, in the majority of cases, for one or more Jersey resident directors to be appointed to the board of a JPF's governing body"

- 72% of JPFs have Jersey resident directors provided by the DSP
- Almost half of the JPFs have Jersey resident directors not provided by the DSP
- Approximately 40% are Class G directors

Survey – JPF Testing & JPF AML/CFT Outsourcing

Number of DSPs	Yes	Partially	No
Does the DSP test whether the JPFs it provides services to (as the DSP), comply with the JPF Guide (noting the obligations imposed on the DSP by the JPF Guide, particularly Part G, paragraph 6)?	14	6	2

- Expectation was that JPFs outsource AML/CFT to the DSP
- 96% of respondents indicated JPFs outsourced aspects of AML/CFT compliance to the DSP

Survey – JPF AML/CFT Equivalence

Particularly important as FATF update their "black" and "grey" lists about 3 times per year.

Number of DSPs	Yes	No
When the DSP undertakes a customer risk assessment on the JPFs, is it assessed whether AML/CFT standards equivalent to Jersey standards are applied by the relevant JPFs?	19	3

Of the three that said "no"

- Two act for Jersey JPFs
- The AML/CFT measures are conducted by the DSP.

Survey – JPF product

Number of DSPs	Increase	Same	Decrease
Over the next 12 months, does the DSP anticipate the number of JPFs it provides services to will remain the same, increase or decrease?	17	4	1

Supervisory Risk Data shows the number of JPFs as at 31 December each year as:

Year	Number of JPFs
2017	79
2018	204
2019	309
2020	372
2021 (20/04)	446

Conclusions

- Policies and procedures not adequate or effective
- JPF annual compliance return filed when JPF not compliant
- DSP didn’t have effective systems and controls to be able to give declarations.

Next Steps

- JPF Guide Review
- Amendment of JPF Documents
  - Applications
  - Notifications
  - JPF annual compliance return
- Recommend follow up visit to see if lessons learned

Questions?

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