



**THEMED INSPECTIONS PROGRAMME 2012:
ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM
A SUMMARY OF FINDINGS**

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1 Introduction

- 1.1 The Anguilla Financial Services Commission (“the Commission”) is indeed concerned with the effective implementation of the revised regime for anti-money laundering and combating the financing of terrorism (“AML/CFT”) by licensed service providers.
- 1.2 In 2012, the Commission continued its themed on-site inspections to assess the extent to which licensees are operating in accordance with their obligations under the AML/CFT legislation, i.e. the Proceeds of Crime Act 2009 (“POCA”), the Anti-Money Laundering and Terrorist Financing Regulations 2009 (“the Regulations”) and the Anti-Money Laundering and Terrorist Financing Code 2009 (“the Code”).
- 1.3 This paper provides industry with a summary of findings. It does not present an exhaustive list of all risks that may be associated with non-compliance with legal and regulatory obligations. Also, not all licensed service providers face all the issues described below. However, the observations made reflect areas of risk that have been noted by the Commission as relevant and are provided for general guidance.

2 Scope

- 2.1 The Commission's on-site inspection programme covered a range of financial services businesses, including company managers, trust companies and insurance companies.
- 2.2 Thirteen on-site inspections were undertaken between March and October 2012. Inspectors assessed whether service providers conducted customer risk assessments and whether their policies and procedures involved a risk based approach. Inspectors also reviewed service providers' AML/CFT policies and procedures, staff training and awareness, appointment of money laundering reporting officers ("MLROs"), money laundering compliance officers ("MLCOs"), compliance officers ("COs") and record keeping.
- 2.3 Prior to inspection, the service providers were asked to complete a preliminary off-site questionnaire, with emphasis on risk assessments.
- 2.4 Inspectors reviewed, on a sample basis, the records, files and written procedures maintained by the service providers and held discussions with management and staff involved in strategic, operational and compliance matters. Where appropriate, specific areas for improvement were identified with service providers and deadlines set for remedial action.

3 Preliminary Observations

- 3.1 As in 2011, the Commission found a significant number of areas where service providers exhibited a low level of compliance with the AML/CFT legislation, with only a minority of those inspected achieving acceptable standards. The findings are based upon a relatively small sample and the Commission acknowledges that they may not be representative of the financial services sector as a whole. The areas of sub-standard performance are outlined in section 4.
- 3.2 Most service providers' record keeping policies conformed to the current AML/CFT legislative requirements. However, there were some service providers who kept correspondence and supporting documentation in a form that could not be made available on a timely basis when requested by the Commission.
- 3.3 Although most service providers complied with the requirement to appoint "MLCO/MLRO/CO", the majority of these appointments had not been submitted for approval by the Commission.

4 Areas of Substandard Performance

- 4.1 Some service providers continued to fail to document AML/CFT policies and procedures adequately, notably in relation to customer due diligence.
- 4.2 A relatively small number of service providers completed a formal risk assessment and implemented a risk based approach in relation to customers, products and services and geographical location.

- 4.3 Although most service providers requested the appropriate identification and verification information for customers at the start of the relationship, there was a lack of ongoing monitoring.
- 4.4 Some relevant service providers' staff continue to demonstrate inadequate knowledge of the AML/CFT legislation.

5 Required Improvements

Based on inspection findings, the Commission considers the following improvements necessary:

5.1 Customer Due Diligence

- 5.1.1 Section 10 of the Code indicates that there are several components of customer due diligence. These components include: (1) identification information; (2) verification information; (3) relationship information which includes the nature and type of the business, source of funds and source of wealth. A fourth component involves customer risk assessment, which includes risk profiling and rating. The Commission expects that the process of risk assessments will include checks for politically exposed persons ("PEPs") and banned individuals, as well as persons associated with FATF high-risk and non-cooperative jurisdictions. Further, the Commission expects service providers' policies and procedures to encompass a risk based approach, thus requiring enhanced due diligence in cases where the risk is perceived to be higher and updating customer due diligence on a risk sensitive basis.
- 5.1.2 Most service providers provided appropriate identification and verification information. In those cases where service providers had requested source of funds (by no means a universal practice), the information obtained was so vague that it required further amplification. With a risk based approach, a request for a source of wealth document may be relevant in high risk situations detailing the net worth of key principals of the customer.
- 5.1.3 The Commission also considers the nature and type of business a critical component of customer due diligence and one which should be detailed in the application document or business plan.
- 5.1.4 Reliance on third parties was examined in the 2011 Themed Inspection Report. It was noted that third parties (intermediaries and introducers) based overseas applied only customer due diligence measures, with the customer due diligence in most cases being held with the third parties. However, in order to conduct customer risk assessment, service providers should request customer due diligence information from the third parties. Further, since the liability to apply customer due diligence measures rests with the service provider, it is incumbent that service providers satisfy themselves that third parties are "regulated" or "foreign regulated persons" and consent to be relied on.

5.2 Customer Risk Assessments

- 5.2.1 Only a small percentage of the service providers sampled conducted risk assessments of customers. Risk profiling and rating are required by service providers under section 10 of the Code.
- 5.2.2 Service providers must take into account the following risks: customer, product, delivery and country. Analysis of these risks allows the service provider a better understanding of the inherent threats to its business.
- 5.2.3 Inspectors found that customer risk assessments required significant analysis and review of the customer due diligence information to effectively determine appropriate risk profiling. Some service providers, although having the necessary policies and procedures detailing customer risk assessments, engaged in a tick box process without proper analysis. This resulted in a seriously flawed process.

5.3 Training and Awareness

- 5.3.1 A small number of service providers' staff was familiar with the current AML/CFT legislation. Inspectors found that in some cases where the key principal of the institution was familiar with the AML/CFT legislation, there was no knowledge sharing or training of staff whose duties directly relate to the AML/CFT process. Also, MLCOs based overseas - although trained - were not familiar with the AML/CFT legislation in Anguilla.
- 5.3.2 The Commission is making every effort to provide support to the industry by conducting training seminars in collaboration with two industry groups. To date, one such training seminar (foundation event) was held in January 2013, with three sector specific seminars to follow.
- 5.3.3 The Commission notes that the Code has incorporated guidance which can serve as a handbook for many service providers. The Code can supplement procedures manuals and assist with training of staff.

5.4 MLCO/MLRO/CO

- 5.4.1 In accordance with sections 20 and 21 of the Regulations, a service provider is required to appoint a MLCO/MLRO approved by the Commission. Although most service providers appointed MLCOs/MLROs, these appointments had not been submitted to the Commission for approval.
- 5.4.2 In accordance with section 27 of the Financial Services Commission Act, R.S.A. c. F28, a licensee is to appoint a CO approved by the Commission. Although most service providers appointed COs, these appointments again had not been submitted to the Commission for approval. Reference is made to the "Guidelines on the Role and Approval of Compliance Officers" published under the "Publications" section of the Commission's website.

- 5.4.3 A key task of the MLCO is to ensure that AML/CFT risk is understood and managed. Thus an AML/CFT procedures manual (maintained to current status) is important. Constant review of products and procedures and testing of systems and controls is necessary to ensure compliance.
- 5.4.4 The Commission places great importance on MLROs/MLCOs/COs as they must be highly skilled senior individuals within the institution, interacting with the board of directors, senior management and employees. These individuals are to be vigilant and proactive in their roles as gate keepers of the licensee.

5.5 Corporate Governance

- 5.5.1 AML/CFT risks are constantly changing and thus Boards of Directors and Senior Management have to be dynamic in their approach. Directors and Senior Management must engage strategically and operationally in managing and controlling risks. Thus, risk assessments systems should be understood, challenged and reviewed for further improvement by Directors and Senior Management.
- 5.5.2 Directors are encouraged to set an affirmative and firm tone concerning compliance, ensuring that such an outlook filters down throughout the organization.
- 5.5.3 The advantages of AML/CFT risk management are important and should not be underestimated. They build public trust and confidence in the institution as well as reducing the possibility of legal and regulatory sanctions.

6 **Final Comments**

- 6.1 Based on the service providers inspected and compared to 2011, the level of compliance with the AML/CFT legislation has not shown significant improvement.
- 6.2 The Commission notes that Anguilla as a jurisdiction has committed to adhering to international standards and those established by the Financial Action Task Force in combatting money laundering and the financing of terrorism. Accordingly, the Commission will ensure that the AML/CFT legislation is complied with as it moves towards a regulatory sanction regime.

Anguilla Financial Services Commission
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