

Meeting Regulatory Challenges



Introduction

This brochure explores some of the regulatory challenges being experienced by the finance industry and sets out the areas where Baker & Partners are most commonly assisting firms in meeting those challenges.

The finance industry in Jersey has always been innovative and fast paced, though never more so than we are experiencing currently. Firms are increasingly having to be swift and sure of foot with the capacity to adapt to and absorb a seemingly never ending degree of regulation, local and international reporting requirements and change. The perils of failure can be severe, ranging from public statements and reputational damage, employment restrictions, fines and costly remediation.

Knowing when to seek regulatory assistance and choosing the right firm, can be key deciding factors in managing or mitigating the risks of business.

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Public Statements – Censure Trends

Under the various regulatory laws¹, the Jersey Financial Services Commission (“the Commission”) has the power to issue public statements under a prescribed set of circumstances.

The most commonly occurring circumstances are to make public a) restrictions being placed on an individual’s ability to work in the finance industry b) contraventions of Codes of Practice c) details of those conducting unauthorised financial services business.

A review of the public statements issued over the past five years is illustrative in highlighting the most common areas of failure and helps to understand if there are any underlying causal factors that could help inform businesses going forward.

Whilst the list of issues identified is extensive (for example ineffective MLRO functions, inadequate handling of SARs, poor customer take on, lack of accounting records, poor annual review process, lack of regard for compliance functions, poor record keeping, poor administration and so on), the clear overarching failure is the lack of a robust corporate governance framework. Were these companies to have developed systems and controls properly mapped to all key regulatory, legal and reporting requirements, assigning key responsibilities and having in place robust reporting to an effective board prepared to constructively challenge, there would have been a different outcome in each case. Either the issues wouldn’t have arisen in the first place, or they would have been identified and dealt with swiftly and effectively.

¹ Financial Services (Jersey) Law 1998, as amended; Banking Business (Jersey) Law 1991, as amended; Collective Investment Funds (Jersey) Law 1988, as amended; Insurance Business (Jersey) Law 1996, as amended.

Establishing such a framework is only the starting point. It needs to be stress tested at regular intervals, certainly through a firm’s own compliance regime and advisably on a periodic basis by an independent regulatory specialist firm. Such an independent review can provide a forward thinking board with the comfort that the firm’s framework is working effectively and/or will identify areas of risk or weakness with a methodology for implementing required improvement. It also demonstrates to the Commission that regular ‘health checks’ are already in place often lessening the intrusion of Commission-led onsite examination activity.

JFSC Business Plan – Industry Challenges

The Commission’s own extensive business plan provides further challenges to Industry as the Commission seeks to stay abreast of International requirements and developments, managing the various standard setting reviews as well as improving its own supervisory methodology.

Examples of challenge in this area are MiFID II (Markets in Financial Instruments Directive), Basel III, beneficial ownership register enhancements, Funds regime three phase overhaul, cyber and information security, implementation of Island wide Moneyval action plans and preparation for the National Risk Assessment. On the supervisory front, Industry will also now be risk assessed by the Commission under a new model which may trigger the need for further internal reviews within firms.

For those firms with a multi-jurisdictional footprint in Guernsey, Isle of Man and Gibraltar, further work in certain areas may be needed. For example the Guernsey Financial Services Commission has plans for introducing consumer credit legislation, a pensions review as well as insurances codes of business and a revision of regulatory Laws and the AML/CFT Handbook.

The Isle of Man Financial Authority is focusing on the development of a more sophisticated risk based capital and solvency regime, the introduction of a group supervision framework, additional conduct of business requirements as well as enhanced governance and enterprise risk requirements.

Gibraltar has continued at pace with its legislative reform programme with them transposing a number of EU directives including Transparency, UCITS V, Mortgage Credit, Audit Directive and Regulation, Market Abuse, Depositor Guarantee Scheme and Payment Accounts.

Services

Baker & Partners is regularly approached by firms and regulators requiring assistance on a wide range of matters, whether they be pure regulatory, legal, or compliance and risk focussed. The below is a summary of the services most commonly requested:-

- AML/CFT compliance
- International sanctions compliance
- Financial regulation
 - Board requested skilled person reports
 - Commission required skilled person and inspector reports
 - Regulatory change compliance monitoring, assurance and oversight programmes
 - Business risk assessments, manuals, policies and procedures
 - Managing regulatory relationships
 - Regulatory examination
 - General health checks
 - Prudential- including ICAAP and stress testing
 - Bespoke training (board specific and staff)
 - Due diligence, complex customers on boarding and remediation support
- Corporate governance
- Civil and criminal fraud

- Mergers, acquisitions and new business development
- Data protection
- License applications

Training

The requirement to have competent staff fully trained to fulfil the requirements of their job descriptions and roles threads all through the Regulatory Laws, Codes of Practice and the AML/CFT framework. The Regulatory Laws require principal and key persons to be competent, both initially and on an ongoing basis. Indeed individuals have had employment restrictions placed upon them by the Commission, quite publicly, based on a lack of competence being proven. The Codes of Practice then set out detail as to the level and appropriateness of ongoing training required.

The Money Laundering (Jersey) Order, 2008 made under the Proceeds of Crime (Jersey) Law, 1999 is prescriptive in its requirement to provide employees with training and indeed to maintain adequate procedures for monitoring and testing the effectiveness of that training.

Additionally the Handbook² sets out even further detail on the tailoring of the required training. The board, the MLRO and MLCO, relevant employees (and non-relevant employees) all have separate mention as to the type of training they are required to have and how its provision may be suitably demonstrated. A 'one size fits all' scenario is not adequate.

These collective requirements and the repercussions if firms get it wrong, provide additional challenges for boards. This is particularly so given the fast changing international and local environment, continual product development and indeed the increasing sophistication of money laundering and terrorist financing techniques.

Many firms are consequently trending towards a tailored and holistic approach to fulfilling their training needs, where solutions delivered in consultation with us, focus on the actual needs of the different parts of the business. This facilitates a

² Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business

different methodology and content when providing training to the board or for example the MLRO, to say, the employees.

The below is an example agenda for face to face training, provided by Baker & Partners, that would be tailored to meet both board specific and broader employee needs.

Training Agenda

1. Financial Crime and key challenges
2. Terrorist Financing
3. Typologies
4. Governance
5. Lawyer led: A Corporate's legal responsibilities
6. Role of the MLCO and MLRO
7. Outsourcing of certain AML/CFT requirements
8. Upcoming changes MLD4
9. Criminal Finance Act
10. Recent concerns, risks and dangers
11. Financial Crime – What's on the horizon?
12. What banks are doing and what this will mean for businesses

International Capabilities

In addition to working closely with local institutions, Baker & Partners is also experienced in working with firms in the other Crown Dependencies and Gibraltar as well as the UK and Internationally.

Baker & Partners has also supported overseas governments and companies on a number of jurisdictional asset recovery cases.

Conclusion

Baker & Partners' regulatory team now brings together extensive risk, compliance and regulatory services alongside its legal specialists, all providing significant commercial experience of Jersey's and other offshore financial services centres as well as Internationally, under one efficient offering.

The firm is regularly instructed by financial institutions, individuals and regulators to advise and act in an array of often highly complex and challenging situations.

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