GIBRALTAR FINANCIAL SERVICES COMMISSION

TCSPs – Thematic Review

Systems of Controls for Anti-Money Laundering and Combating Terrorist Financing

Structure for today

What we want to cover

- Background
- Methodology
- Findings
- Best and poor practice
- Next steps
- Questions and comments

Background

Thematics

- Early 2017 – revised approach to supervision of Financial Crime risks
- Integral part of GFSC's supervisory and risk management approach to deliver objectives
- Regulatory tool to assess a risk(s) across sector

Background

TCSPs

- Risks identified within National Risk Assessment published in April 2016
- Guidance issued by International Bodies such as the FATF
- Analysis arising from the data submitted within the Financial Crime Return for the 2016 reporting period.

Methodology (RBA)

Desk based

- 27 reviews

On-site

- 26 visits

Findings

The positive

- Improvement over the years
- Showing a greater understanding of ML/TF risks - Majority of firms have sound awareness of their obligation in the management of ML/TF risks
- All firms complying with record keeping requirements – keeping records for five years post termination of business relationship

Findings

However…

Still room for significant improvement…

Findings

Customer Due Diligence

- Not conducting adequate CDD on source of wealth and particularly source of funds, to a level of plausible verifiability. Additionally, information not documented
- Management of local trading companies with local individuals where insufficient CDD is conducted due to an over-reliance on knowing a person within a small jurisdiction
- Proposed nature of business of clients not adequately identified and verified where appropriate
- EDD not being applied where required e.g. PEPs are not being classified as high risk relationships
- CDD not completed prior to establishing a business relationship
- The use of unknown third party entities or individuals providing nominee shareholdings - lack of documented rationale/oversight

Findings

Ongoing Monitoring

- Not undertaking ongoing monitoring in line with their own risk methodology i.e. client risk reviews are not completed when scheduled
- Gaps in ongoing monitoring, notably for client companies where directorships are not provided
- Unable to evidence ongoing CDD, including where there is inactivity in the company and it is unclear as to the client company's purpose

Findings

Risk Assessments

- Risk based approach applied at inception of business relationship, however, not applied when conducting periodic reviews.
- Risk profiles did not include all of the four key risk elements (i.e. Customer, Product, Interface and Country).
- Not factoring the risks posed by the geographic location of where the client company is trading as detailed in section 6.2.4 of the AMLGN under Country Risk.

Findings

Other

- New POCA requirements have not been fully implemented into firms' processes and procedures e.g.
  - Employee screening
  - Domestic PEPs
  - Independent Audit
- Not evidencing that policies and procedures were being applied effectively; and some firms were unable to evidence that all policies and procedures were adequately documented
- Deficiencies in submitted 109 Compliance Reports including:
  - Responses are too generic or reference made to the firms' manuals is not precise enough to allow a comprehensive assessment
  - Incomplete or inadequate responses
  - A lack of justification to those requirements which the firm believes are not applicable
  - A lack of assessment and action plan to address any issues identified

Best and Poor Practices

6 cases

1. CDD – onboarding of corporate client from non-EEA state
2. CDD – eligible introducers
3. CDD on previously known clients
4. Foreign and domestic PEPs
5. Ongoing Monitoring – property holding company
6. Ongoing Monitoring – Power of Attorney

Best and Poor Practices

Case scenario 1

CDD – onboarding of corporate client from non-EEA state with nominee shareholder

Good

- Evidence of UBO documented in client file
- Documented rationale for use of third party nominee
- CDD on all UBOs
- Dec of trust kept in safe custody
- ECDD and ongoing monitoring

Poor

- No dec of trust in place to support legal ownership
- No verification of regulatory status of nominee shareholder from other jurisdiction + no DD
- No documented rationale for use of third party nominee shareholder when firm is itself authorised to provide this service

Best and Poor Practices

Case scenario 2

CDD – eligible introducers

Good

- CMA dated and signed by all relevant parties
- Certified documentation obtained for non face-to-face clients
- Organigram maintained for more complex structures
- Risk profiles capture all four risk elements
- Firm has suitable agreement with eligible introducer to rely on CDD

Poor

- Foreign language documents are not translated
- Expired documentation not updated
- CMA with introducer/intermediary and not the client
- Undated/unsigned CMA
- No verification of whether eligible introducer is keeping to international standards on CDD

Best and Poor Practices

Case scenario 3

CDD on previously known clients

Good

- Enhanced CDD applied
- PEP register maintained and regularly reviewed by Board
- PEP relationship treated as high risk client
- Enhanced ongoing monitoring applied
- System in place to monitor

Poor

- Estimated annual turnover not documented
- Expired CDD documentation not updated
- CDD not undertaken on UBO
- Client onboarded prior to completion of KYC process

Best and Poor Practices

Case scenario 4

Foreign and domestic PEPs

Good

- Open source and intelligence database conducted and onboarding and during client relationship
- Individuals screened against sanctions lists for TF purposes
- Source of wealth and funds on all clients obtained to a level of plausible verifiability
- Risk profiled with four risk elements and monitored in proportion to risk profile
- Individuals and entities screened for sanctions

Poor

- Standard or simplified CDD undertaken
- Client profiled as low or medium risk
- Relationship not monitored to the extent required
- No open source checks done at inception or during course of relationship
- Local PEPs not classified as such and not monitored commensurate to risk posed

Best and Poor Practices

Case scenario 5

Ongoing Monitoring – property holding company

Good

- Evidence of ownership maintained
- Information kept on use of property
- Nature of the activity factored into the company's risk assessments and ensuring that the risks are commensurate with the expected/proposed business.

Poor

- Evidence of source of funds (rental income) coming onto the company not kept.
- No verification of whether the incoming funds are in line with the stated indented purpose of the company
- Lack of contact with client over prolonged period of inactivity or material change in activity and rational to support this is not provided
- No transaction monitoring

Best and Poor Practices

Case scenario 6

Ongoing Monitoring – Power of Attorney – yacht owning

Good

- PofA with specific purpose and timescale
- Monitoring of activity undertaken through PofA
- Foreign language PofA is translated or where not translated, has been reviewed by at least two native language speakers
- KYC/CDD is conducted on the third party who will be operating the vessel and the individual is screened against sanctions lists for TF purposes.

Poor

- PofA issued with open scope and time
- No log maintained of all active PofAs
- PofA not returned when expired
- No follow up with holder of PofA whether still being used

Next steps

- Thematic Review Report
- Individual firm feedback

- Follow up supervision

Questions

Comments