

The Onsite Inspection Regime – Key Issues from Onsite Inspections

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Overview

- Statutory Objectives of the Commission
- Overview of 2009 Inspections
- Findings



Overview

- Recommendations
- Going forward
- Conclusions



Statutory Objectives

- Mandate of the Commission includes:
 - Protecting the interests of the general public.
 - Ensuring the financial services industry complies with domestic and international regulatory standards.



Statutory Objectives cont'd

- The Onsite Inspection of Licensees ensures that:-
 - Licensees remain fit and proper.
 - Risks are being adequately mitigated.



Statutory Objectives cont'd

- High standards of business operations are being maintained.
- Laws, regulations, etc. continue to be adhered to.



Overview of 2009

- In 2009, the Commission conducted inspections of licensees that fall under four regulatory Divisions – Insolvency, Investment Business, Insurance Business and Banking & Fiduciary Services.



Overview of 2009

- Inspections were tailored in their scope and focus. Where feasible, joint inspections that covered multiple, related licensees were conducted to minimize interruptions to the operations and to maximize the use of resources for both parties.



Overview of 2009

- A total of 46 inspections conducted in 2009; the following is a breakdown of the total by Division:
 - 24 – Banking & Fiduciary Services
 - 10 – Investment Business
 - 9 – Insurance Business
 - 3 – Insolvency



Findings – Investment Business

- Failures against Best Practice, including the following:
 - Absence of fund administration manuals.
 - Limited involvement of directors in day to day activities.



Findings – Investment Business

- Lack of training of staff in fund administration functions.
- No formal process to carry out internal assessments of employee performance.



Findings – Insurance Business

- The following contraventions are, from onsite inspections, the most frequent.
 - Use of unlicensed insurers (sections 4 – 6 of the Insurance Act, 2008).
 - Lack of proper books and records (section 52 of the Insurance Act, 2008).



Findings – Insurance Business

- Deficiencies against International Best Practice and prudential standards.
 - Claims not adequately documented and/or processed in a timely manner.



Findings – Insurance Business

- New business, renewals and existing files do not have:
 - evidence of policy documents being issued to clients;
 - evidence of proposals being signed by clients; and
 - evidence of compliance checklists being completed.



Findings – Insolvency

- Four primary contraventions revealed in relation to Insolvency Practitioners are:
 - Failures in filing Notices of Appointment (section 188 of the Insolvency Act, 2003);
 - Failure to provide notification of joint overseas appointments (section 483 of the Insolvency Act, 2003);



Findings – Insolvency

- Absence of new case acceptance procedures (Insolvency Code of Practice Chapter V, section 3.2);
and
- Procedures in relation to AML and Ethics are deficient or are not adhered to (AML Regulations, 2008 and Insolvency Code of Practice, Chapter IV, refer).



Findings – Banking & Fiduciary Services

- Deficiencies in Best Practice include:
 - Corporate Governance; and
 - Compliance (Employment Undertakings).



Findings – Banking & Fiduciary Services

- Contraventions include:
 - Audit engagement letters (section 171 of both the Banks and Trust Companies Act, 1990 and Company Management Act, 1990); and
 - Client File Review (AMLTF Code of Practice, 2008).



Findings - General

- AML/CFT Training
 - Section 48 of the AMLTF Code of Practice, 2008 and section 16 of the Anti-money Laundering Regulations, 2008.
 - ★ No testing of training.
 - ★ Inadequate scope of training.



Findings - General

- AML/CFT Training
 - Employees unfamiliar with their personal liability for failure to report suspicions.
 - Training logs not maintained in many cases.



Findings - General

- Complaints Handling
 - No written procedures in place for complaints or significant .
 - Section 48 of the Regulatory Code.



Findings - General

- Guidance Notes on Complaint Management at Appendix E of Provisional Guidance Notes to Compliance Regime.



Findings - General

- Business Contingency Plan
 - Formally assessed as Best Practice, with the exception of Insolvency Practitioners.
 - Insolvency Practitioners have been required under the Insolvency Code of Practice, Chapter V, sections 2 and 3.
 - A requirement under section 27 of the Regulatory Code.



Findings - General

- Customer due diligence records and client file reviews.
 - Inadequate and/or incomplete.
 - Transaction monitoring?



Findings - General

- No Terms of Business Agreements in place in all cases.
- Breaches of the BVI Business Companies Act, 2004 – maintenance of Registers of Directors and Registers of Members.



Recommendations

- Embed a positive compliance culture from the top
- Review and update manuals regularly
- Train staff



Going forward...

- Compliance Officers are reminded of their reporting obligations to the Commission. Section 47 and 48 of the Regulatory Code, refer.



Conclusions?



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THANK YOU!

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