

# Best to be prepared



John Harris, director general of the Jersey Financial Services Commission, revealed the failings of some Jersey regulated businesses to the Jersey Compliance Officers Association

**T**HIS year has already been a busy one for The Jersey Financial Services Commission. There are new codes of conduct for funds, a consultation for civil penalties (fines) and a 'Dear CEO' letter reminding firms to be open and honest in their annual declaration.

All these follow the public notice on Trustcorp Services Limited and its affiliated members and John Harris (the director general of the Jersey Financial Services Commission) publically revealing to the Jersey Compliance Officers Association the failings of some Jersey regulated businesses.

#### John Harris public disclosure

As the Jersey Evening Post reported on 17 January 2012, following a meeting of the Jersey Compliance Officers Association, John Harris was quoted as saying:

*'...it is still rare to find the board of a firm taking full ownership of legal obligations imposed under the anti-money laundering/countering terrorism financing legislation...few had adopted a well-articulated AML/CFT risk appetite approach and a supporting strategy.'*

Mathew Beale, managing director, Comsure Compliance Limited, looks at the task of managing compliance risk in the Island's industry



#### Trustcorp Services Limited and affiliated members (Trustcorp) public statement (31 January 2012)

In its public statement, the JFSC summarises its findings as follows:

*'Corporate governance exercised by the principals, with particular reference to the trust company business services that were provided to those entities that were subject to the Commission's Investigation, was seriously deficient: there was no effective span of control.'*

*'The lack of effective corporate governance was a significant factor, resulting in a number of key failings, including, but not limited to, breaches of the FS (J) L and the Codes.'*

#### Annual declaration: 16 March 2012

The JFSC warned in its 'Dear CEO' letter about the annual declaration registered persons must complete each year. The JFSC stated:

- Where the Commission identifies material failures, which were not identified and disclosed by the registered person, this will be considered a major weakness in its corporate governance regime and will be dealt with accordingly

- Given the level of importance the Commission places on the annual declaration and the usefulness for the board in reviewing the performance and compliance of the registered person in the period, the Commission expects the board to devote the appropriate resource to this valuable exercise.

#### Civil penalties: 3 April 2012

The JFSC have issued a consultation that introduces the concept of civil penalties. In doing so, the Commission will have the power to impose civil penalties on specified registered persons for serious, uncorrected or recurring breaches of the Codes of Practice.

#### Fund codes: 2 April 2012

Further to these two general updates, the collective fund industry has also had the bar raised. The Commission has published Codes of Practice for Certified Funds (the 'Codes'). These Codes have been prepared and issued for the purpose of establishing sound principles and providing practical guidance in respect of any certified fund, and any provision of the Collective Investment Funds (Jersey) Law 1988 (CIF (J) L) or any Regulations or Order made under it. Furthermore, the requirements are arranged under eight fundamental principles which are further described, explained and delimited, as the case may be, in the Codes.

#### Consequences of breaching the codes

As shown in the Trustcorp case, failure to comply with the Codes will represent grounds for the JFSC to take enforcement action and use its regulatory powers. In regard to a certified fund, in a serious case, this could result in the winding up of the certified fund and revocation of its certificate.

It should also be noted that failure to follow the Codes will not itself render any person liable to proceedings, or invalidate any transaction. The Codes, however, will be admissible in evidence if it appears to a court to be relevant to any question arising in court proceedings, and can be taken into account in determining any such question.

#### Time to act

With these developments it's clearly time for directors and senior managers to revisit their compliance and risk frameworks.

To begin with, I would suggest working through the checklist below. It provides the key steps a Jersey registered

person must implement to demonstrate it is organising and controlling its affairs effectively for the proper performance of its business activities, as well as demonstrating the existence of adequate risk management systems.

#### Good practice checklist

There are six, non-exhaustive areas that are critical to managing compliance risk:

- **Compliance risk accountability and responsibilities:** Firms should have a clear and meaningful understanding of what compliance risk means, communicating this to all relevant staff and being clear as to which employees and functions are involved in managing compliance risk. Further, all directors, senior employees, employees and other related parties must be formally advised of their accountability and responsibility.

- **Compliance culture:** Firms should have a clear understanding of the characteristics of the desired compliance culture and behaviours.

- **Governance:** This is a crucial area given the reliance that the JFSC places on senior management and the role that risk management functions, such as compliance, play in helping senior management to meet the challenges arising from principles-based regulation.

- **Compliance risk assessment process:** The compliance risk assessment is an important driver of the compliance work programme and can be an important determinant of how resources are used.

- **Compliance monitoring:** Compliance monitoring has become a central component within the work plan for managing compliance risk at most firms and there has been an increase in resource dedicated towards this activity.

- **Evaluating compliance performance:** Firms should attempt to measure the effectiveness of their efforts to manage compliance risk.

#### Summary

It is essential to get it right when managing compliance risk, high-level controls and business and regulatory risks – particularly where civil (including fines), criminal actions, public statement, loss of employment and other such regulatory tools can be deployed by the JFSC.

Following this paper's basic checklist will offer firms and their directors (including NEDs) a strong blueprint and foundation for any assessment of standards. What is most important is that the assessments are performed in an objective manner; so that you and your stakeholders can be assured that the risks are being managed appropriately and continue to be monitored on an ongoing basis.

And for us at Comsure, the old adage 'hope for the best, prepare for the worst' is always the motto of the day.