Personal Questionnaires

Sator Regulatory Consulting Limited

Helen Hatton, Managing Director
Neil Haworth, Senior Consultant
International Standards

What do other jurisdictions do?

What will the new process achieve?
International Standards

FATF Recommendation 23.*

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations.

Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.
To what sectors does Rec 23 apply?

- Banking
- Other deposit-taking business
- Insurers
- Insurance intermediaries
- Collective investment schemes
- Market Intermediaries
- Money or value transfer businesses
- Money or currency changing offices
Evaluation Findings

• Fit and Proper Test not applied to a sufficiently wide group
• Inadequate checks to prevent criminals or their associates from owning/controlling a regulated entity
• Checks relied on evaluating information supplied by the applicant, without adequate independent verification
• No ongoing follow up checks
Strengthened System

- Therefore it is necessary to introduce a strengthened system:-
  - On application
  - On appointment of new shareholders/directors/key persons
  - On an ongoing basis
Fit and Proper Test

Statute needs to permit (or not prevent) regulator to assess persons for:-

• Honesty
• Integrity
• Reputation
• Competence
• Capability
• Financial soundness
Information that will now be requested

• Criminal offences
• Adverse findings or settlement in civil cases (including debt and divorce)
• Involvement in any investigations or disciplinary proceedings (professional body, regulatory, criminal or employer led)
• Any censure, suspension or criticism whether public or private
Information that will now be requested

• Justified complaints related to regulated activities
• Dismissals, including resigning when asked or “compromise” agreements
• Description of role to be undertaken
  – Director or key person
  – Shareholder (what %)
• Why they are suitable to be a director or shareholder and time commitment.
Status of questionnaire

• The Questionnaire is a regulatory return, therefore providing false and misleading information is an offence

• It is confidential between the person and the CBA
New Personal Questionnaire

Guidance Notes

• Advises the Applicant of the process and scope of the Approval process
• Explains what a ‘Key Person’ is and who is caught
• Outlines the obligations placed upon the individual to advise the CBA on changes to circumstances & the communication process
What will the new Questionnaire achieve?

- Demonstrate compliance with international AML/CFT and Core Principle regulatory standards
- Reduce the likelihood of regulated financial services businesses being owned or controlled by organised crime
- Reduce the likelihood of loss to the public from fraud, dishonesty, mismanagement, incompetence, insolvency
- Increase industry standards
What will the new Questionnaire achieve?

• Provide a safeguard to industry – regulators can get wider access to information than potential employers

• Enable the CBA to better understand the skills sets held within firms and make better regulatory decisions

• Extends the regulatory oversight but does not go as far as the tripartite interview system now adopted in US and UK
Information required
General Points

5 sections of the Questionnaire:-
• Personal Details required
• Personal & Business History
• Experience of the Applicant
• Reputation & Character
• Declaration to be signed
Declaration & Check List

• Reminder of Criminal Offence to provide false or misleading information
• Gives authority to the CBA to make enquiries
• Confirmation of responsibilities and accountability under the relevant Law
Routine Correspondence conducted by the CBA

- Acknowledgement
- Enquiries of other regulators
- Past employment record
  - Confirmations that previous posts held are true – title, responsibilities, dates
  - Confirmations that reason for leaving is true
- Qualification check
- Acceptance of Key Person status
Case Study 1

Aidan Piers Barrington-Ward

• 10 years Compliance industry experience
• Well known to the Regulator and industry
• Intelligent & well educated
• No requirement for Compliance Officers to hold specific qualifications but are expected to be experienced
Case Study 1 – continued

- Pre IMF visit – JFSC undertook exercise to make Compliance Officers in the Island ‘Key Persons’

- Requirement for all Compliance Officers to complete Personal Questionnaires

- PQ submitted by Barrington-Ward
Case Study 1 - continued

• Personal Questionnaire stated that qualifications held included :-
  – Certified Public Accountant – University of the State of New York
  – Master of Business Administration Degree in Corporate Finance – University of Rochester
Case Study 1 - continued

• Qualifications found to be forged
• False Declaration – Criminal Offence
• Demonstrates his word could not be relied upon and his integrity flawed
• Banned from holding any position within the Finance industry
• Public statement made warning that firms who employed him without JFSC approval would be committing Criminal Offence
Case Study 2

William Carden

• Application to register under the Jersey Investment Business Law
• Requirement to be qualified to undertake the giving of advice
• Requirement to make full application (including fees) by registration date
• Failed to make correct application (no fee paid)
• JFSC directed Carden to cease giving advice and requested written confirmation of compliance of this instruction
• Information came to light via member of staff that criminal record may exist
• Carden failed to confirm that he had ceased business
Case Study 2 - continued

• Investigations confirmed that Carden had been charged but not convicted of insurance payment fraud

• Personal Questionnaire completed by Carden had stated that he had not been subject to any previous investigation etc. and no qualifications held

• Enquiries by the JFSC discovered that he continued to be an agent to various investment related service providers
Case Study 2 - continued

• False Declaration – Criminal offence
• Failed to meet competence and integrity requirements
• Public Statement made advising the public that Carden was not authorised to carry out investment business and JFSC authority required for any registered business to employ him.
Case Study 3

RM

• Long standing Accountant, Associate of the Institute of Bankers and the Institute of Accountants

• 100% share holder of small Trust Company which employed 3 other staff
Case Study 3 - continued

• Investigations discovered that no qualifications or memberships were held
• False Declaration – Criminal Offence
• Failed integrity test
• RM banned from employment in Financial Services Sector – business required to be wound up by appointed Liquidator
Case Study 4

- Pippa Harbour
- Appointed managing director of a bank in island Guernsey, approved by that regulatory authority.
- PH is also appointed MD in neighbouring island of Jersey, JFSC carries out full PQ checks (in G it was the responsibility of the licence holder)
Case Study 4

• Enquiries find that passport is false, no qualifications are held and claimed employment history is wholly false
• No such person as Pippa Harbour exists
• Outcome: Criminal Prosecution for obtaining pecuniary advantage (eg salary) by deceit; regulatory life ban; public censure of bank for failing to conduct effective staff vetting.
Will my employers know my past?

- It should be filled in and submitted by the applicant.
- Any clarification questions will be made directly between the CBA and the applicant (not via the bank).
- If the CBA identifies something that may render the applicant not acceptable a procedure will be followed ......
Procedure for refusal

• The CBA will write to the individual applicant and set out why, on the basis of the information received, an applicant does not appear to meet the fit and proper test.

• The applicant will be invited to respond explaining why either the information is incorrect, or why it should be treated more leniently.
Procedure for Refusal

• The CBA will make its decision and communicate this to the applicant.
• No detailed information regarding the refusal will be given to the regulated entity.
• The regulated entity will simply be referred to the applicant for explanation.
• Any regulatory decision and the reasons for it is private to the individual (unless it generates sanction which become public)
Less clean cut decisions

• The case studies shared earlier were hard in the sense of their impact on the individual but easy in the sense of the reasonableness of the regulatory response.

• Some decisions are harder and need more thoughtful reflection which must revolve around the question of whether the matter impacts a person’s f&p status to be a pp
Harder Decisions
Relevant or Irrelevant?

• Convictions for beating people up?
• Track record of bad debt?
• Convictions for drinking and driving
• Convictions for driving whilst disqualified and uninsured?
• Convictions for paedophile offences?
• Convictions for drugs offences?
• Struck off – say as an accountant?
Even Harder Decisions
Individual – v- licenceholder?

• The excellent, absolutely clean, vibrant marketing director, joining three other vibrant marketing guys in a firm that has already failed to meet regulatory standards

• No one in the business has any experience of risk management, financial control or corporate governance
Even Harder Decisions

Individual – v – licenceholder?

• The excellent, young newcomer, in fact the nephew of the managing director.
• No director experience, joining rotted firm that has major regulatory problems
• CBA wants a seasoned professional to help pull the firm around into good conduct and who can stand up to major shareholder MD
Regulatory work is not easy and not likely to be popular!

The strengthened PQ process is all about driving up standards in the industry.

And using regulatory access to restricted information to protect the reputation of your market.
The AML/CFT handbook also requires that regulated firms vet their staff.

What checking do you do?

Do you obtain and check qualifications?

Do you check resume information?

References may not be worth much but previous employers are entitled to confirm dates of employment and job titles – these are matters of fact, not opinion.
AML/CFT Handbook

Does your contract of employment include a clause which invalidates the contract if the candidate supplied false and misleading information?

Is it gross misconduct to have provided false information?

Are you making job offers subject to regulatory approval?

Look to your procedures.
QUESTIONS?