

# Topical Intermediary Issues

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# TOPICAL ISSUES

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- Professional Indemnity Insurance
- Gearing
- RATS
- AML

# Professional Indemnity Insurance

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## Following Alternate case:

- Consultation Paper proposed restitutionary power in event of failure of P.I. Insurance.
- Concern expressed about proposal. Agreed to withdraw proposal from current IMIL changes.
- Will be issuing separate Consultation Paper.



# Professional Indemnity

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- Developments

Considering a three pronged approach.

- P.I. education.
- Policy terms and conditions – e.g. notification provisions.
- P.I. restitutionary powers considered in context of general review of Commission's restitutionary powers.



# Gearing

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- Gearing or leveraging in simple terms means borrowing money in order to invest more and enjoy proportionately higher returns.
- Success hinges on being able to borrow money at a cheaper rate than the investment will yield.

# Gearing

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- When the cost of borrowing exceeds the rate of yield not only do your losses increase proportionately but your lender will still expect to be paid the agreed repayment instalments.
- The use of gearing substantially increases the risk profile of what might otherwise be a relatively low risk investment.



# Commission Surveys

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## Recent Commission Surveys

- Your co-operation has been much appreciated.
- Good News.
- Gearing was popular 2000 to 2003. Very few new cases.
- Gearing was recommended by very few intermediaries.
- Gearing was recommended to relatively few customers.



## Commission Surveys

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- Many have now matured or repaid the borrowed proportion of the investment.
- Bad News.
- Those that failed – failed badly.
- Allegations of inappropriate or insufficient advice.
- Allegations of inappropriate clients.
- Alternate case – failure to inform P.I. insurers – policy voided.





## The Future

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- Inclusion of gearing information in Annual Return to enable Commission to monitor situation.
- Issue guidance about issues which should be considered when advising clients about geared products.



## Retirement Annuity Trust Schemes (RATS)

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- Increased demand following Norwich Union withdrawal
- New products being marketed
- Only covered by IMIL and regulations if including an insurance wrapped investment
- Not covered by Protection of Investors law
- Trustees covered by Fiduciary law
- No current specific regulation of sales activity



## Potential RATS mis-selling risks

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- Sales to low net-worth individuals
- High level of charges
- Annuity payments not guaranteed for life
- Inappropriate advice regarding transfers from other schemes.
- Gearing
- Illustrations
  - Investment growth assumption
  - Level of charges
- Choice of investment funds
  - Too few?
  - Too many?



# Amendments to the Bailiwick's Framework for Countering Money Laundering and Terrorist Financing ("AML")

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## Timetable

- Consultation ended 11 June 2007.
- Legislation, Regulations and Handbook due to be issued mid August 2007.
- Industry presentations October 2007.
- To become effective 1 January 2008.



# AML

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## What are the changes?

- Amendments to Proceeds of Crime Law.
- Replacing Criminal Justice (Proceeds of Crime) Regulations 2002 to 2007 Regulations.
- Replacing AML Guideline Notes with New Handbook.



# AML

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## The Handbook

### Combination of:

- Commission Rules - subject to regulatory action.
- Guidance - ways of complying with rules.  
- not intended to be exhaustive.



# AML

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## Risk Based Approach

- Low Risk Customers – reduction/simplification of procedures.
- High Risk Customers – higher level/frequency of monitoring.



# AML

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## Responsibilities of the Board

- Explicit responsibilities of intermediary boards to review AML compliance.
- Requirement to discuss AML at board level at appropriate intervals.
- AML responsibilities must be taken seriously, cannot simply identify all customers as low risk.





# AML

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## General Insurance – Commercial and Personal Lines

- Provided assessed as low risk, receipt of funds can be considered as satisfactory means of verifying identity.
- Payments (e.g. return of premium/payment of claims) additional verification not required in certain special circumstances.



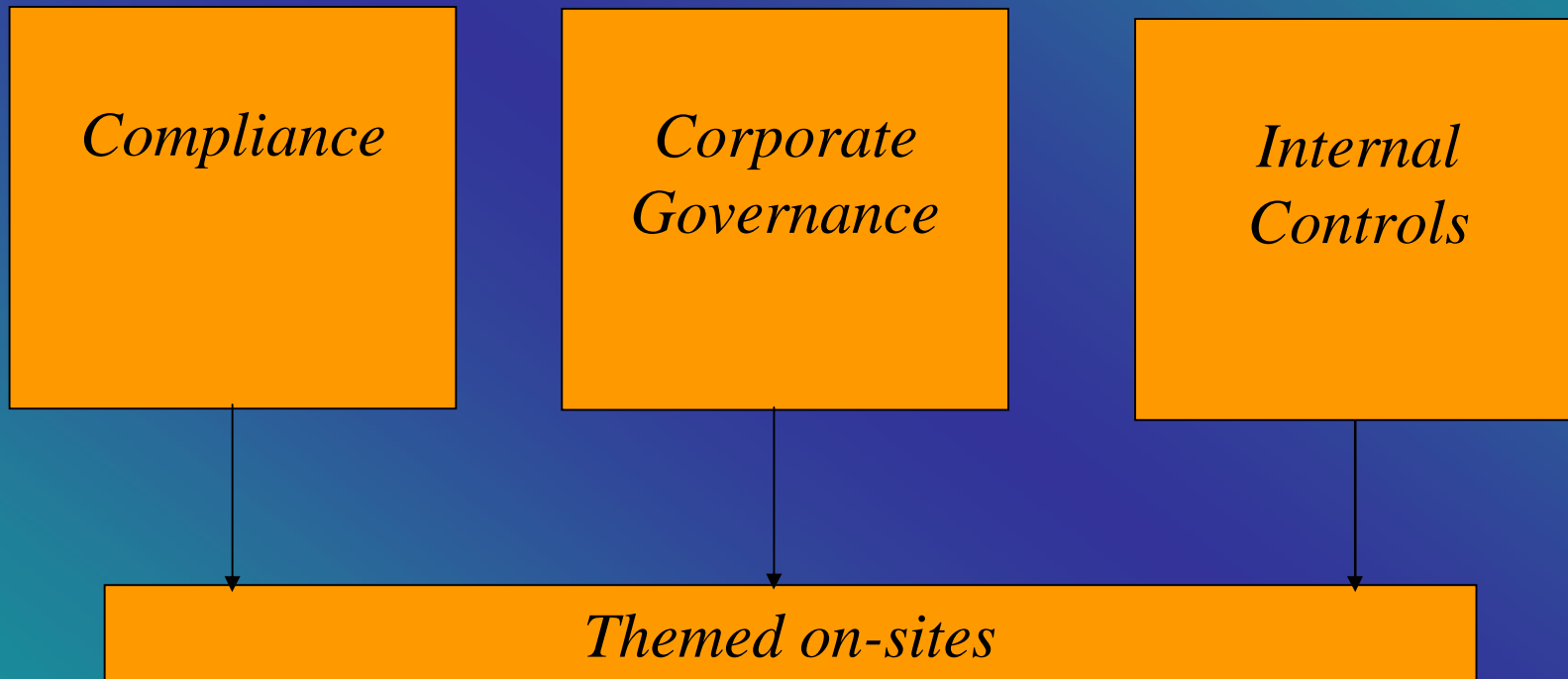
# Legal and Regulatory Compliance

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# Three Year Programme of Change

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## Current requirements

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- Schedule 4, para 6 (5) and (6)
  - Accounting records
  - Systems and Controls
  - Resources
- Code of Conduct for AIRs
- Conduct of Business Rules
- No specific requirement for a Compliance Officer



## Problems Encountered

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- Inadequate systems and controls
  - Lack of written procedures and poor implementation
  - Non-compliance with the Codes and Regulations
  - Weak or ineffective AML procedures
  - Inaccurate and erroneous submissions to the Commission
- Non-compliance with Schedule 4, para 4
  - Lack of two individuals “effectively directing” the business
  - Poor or ineffective oversight of AIRs
- Inadequate accounting records
  - Lack of compliance with solvency requirements



# The Risks

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- Lack of Procedures and Controls
  - Staff are unclear about what to ask or advise clients
  - Incomplete or inadequate facts and information is obtained
  - Advice is unstructured or inappropriate
  - Information flows (between client and/or insurer) is poor
  - Service quality and efficiency is inadequate
  - Files are incomplete
  - PI cover is inappropriate or inadequate
  - Accounting records are incomplete – financial position is unclear
  - Board have insufficient information on which to act



# The Solution

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- **Clear Board Responsibility**
  - Allocation of duties between directors
  - Covering operational, financial and strategic aspects
  - Board-level responsibility for Compliance
- **Clear written procedures**
  - Covering all aspects of the operation
  - Including both internal and outsourced functions
  - Including reviewing and reporting procedures
  - Easy to understand and follow
  - Compliance function to ensure procedures are followed



## New Compliance Requirements

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- All licensees to put in place a compliance function
- Board responsibility for compliance
- Compliance function can be outsourced or in-house, but must be skilled and experienced with clear remit
- All conflicts (e.g. client facing, family member) must be addressed through appropriate procedures and controls
- Requires Commission Approval





## The role of the Compliance Officer

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- To ensure that stated procedures address all legal and regulatory requirements on an ongoing basis
- To ensure that stated procedures are followed in practice by staff and management on a day to day basis
- To identify and rectify procedural breaches, including initiating additional controls where necessary
- To report to the Board on a regular basis to ensure that they are aware of, and can respond to, any issues of non-compliance with procedures.



# The Compliance Function

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- Written scope of services (e.g. Job Description, or Service Agreement)
- Risks must be managed and mitigated:
  - Client facing Compliance Officer
  - Family member acting as Compliance Officer
  - Outsourced Compliance Officer
- Where risks exist, the Commission will look to the licensee to demonstrate that they have been mitigated.

