

Industry Seminar – 23 November 2017

Authorisations

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Regulated, registered, authorised or not?

We may not receive many questions regarding the appropriate choice of soft furnishing but the Authorisations unit regularly receive phone calls regarding whether an entity, existing or proposed, falls with the scope of the Bailiwick regulatory requirements.

A large number of the questions concern the interpretation of the Non-Regulated Financial Services Business Law so I would like to provide some guidance in this respect. As a first port of call I would refer you to the decision tree which is available on the Commission's website. This is a very useful first step in any review process.

Slide: Decision tree for Non-Regulated Financial Services Businesses (“NRFSBs”)

When an entity is in scope this is usually quite clear, when it is not the interpretation of these grey areas can be quite challenging. The Commission will not provide legal advice on the interpretation of law and in addition we are also not able to provide commercial advice on how to run or structure a business. What we can do is refer potential applicants to the information on the Commission's website and all the relevant regulations and guidance material.

If any of you find that our general guidance cannot deal with your specific circumstances to your satisfaction, the Bailiwick has a number of consultants and law firms whom are both sources of information and advice. I am aware that there are industry concerns that the Commission will take supervisory or, in extreme cases, enforcement action against entities which should be registered under the Non-Regulated Financial Services Business law but are not. To clarify, the Commission has little to no appetite to take enforcement action when the breaches of the law are of a minor and short term nature.

Slide: Useful Steps

So what steps should be taken?

1. Firstly gather all the available information and guidance material and identify precisely what you plan to do.

2. Secondly engage with industry contacts. A comparison with peers is also often a useful exercise.
3. Document and record your considerations and decision making process to evidence that an assessment against the requirements of the law has been made.
4. Finally, regularly re-assess the decision to ensure that it remains valid if the business model or regulatory regime changes.

It is your responsibility to take reasonable steps to make sure that a proper assessment has taken place and is documented. We may not agree with the conclusion but the Commission will look to see documentary evidence that a reasoned consideration has been undertaken.

Online submissions

The Commission's online submission portal was launched in October 2015 and two years down the line the portal is a vital tool in the Commission's risk based approach to regulation. The portal has two main functions;

1. It can be used to make a variety of notifications to the Commission, for instance a change of name or address. It can also be used to provide information on breaches, complaints and pricing errors or alternatively to request a revocation or surrender. A list of all the available forms is maintained in the FAQ section of the portal.

Slide: PQ Portal Submissions and Notifications

This slide shows the submission history of notifications from industry during the last two years, the steady growth is proof of the growing use of the system.

2. The second function of the portal was the subject of the video clip, the submission of returns from industry to the Commission.

Slide: Online Returns

This slide illustrates the submission of returns and it is easy to see the cyclical nature of these requirements. The peaks coincide with the due dates on the various returns. All the information we collect is considered as part of ongoing supervisory engagement. We are mindful of the resourcing required in industry to provide the information contained in the returns, so constantly review what we request to ensure it remains relevant.

The video clip showed one of the challenges which the Help Desk is faced with and I would like to provide you with some additional information regarding the use of the online submissions portal.

All returns have due dates and will appear on relevant timelines prior to the deadline to allow for the collation and input of data. We are able to see the audit trail of activity on a return so please don't call up and say you have logged on every day for a month when you haven't – we can see when you have logged on.

Slide: Online Submissions per hour

This shows the submission rate of annual returns in the last 5 days prior to the April month end deadline, broken down by time throughout each day. It should be noted that 29 and 30 April were not business days. It is clear to see that submission rates peaked during the final working hour before the deadline. This rush for the finishing line puts pressure on all parties.

Slide: Be prepared!

If the following points could be kept in mind when preparing for a return deadline it will hopefully make the process run more smoothly;

1. First of all please plan ahead and don't leave the submission until the eleventh hour.
2. To be able to use the online portals in the first place you need to complete an online services agreement, you now only need to do this once as the form covers both portals.
3. Make sure that the right portal users within your organisation have the required permissions to prepare and make submissions.
4. Check who is a Super User and ensure that there is more than one portal user who has Super User permissions. A Super User can set permissions for others.
5. Passwords – no one at the Commission can see your password or reset it for you. If you have forgotten your password you will need to click the link yourself.
6. Read the FAQ on the portal, they are accessible to everyone as you don't need to log on to be able to read them.
7. Finally, please make sure you are using the right portal. It sounds obvious but people do try to submit returns through the PQ portal and PQs via the online submissions portal.

The Help Desk is however, only a phone call away. There will be staff to take your call, or call you back if you leave a message. We have our regular callers and whilst it is usually lovely to speak to you do please think about whether you really need to phone up.

The Help Desk team is not only responsible for answering your calls and emails but also the

review of all submissions through the other portal – the PQ portal. This year it is anticipated that submissions of online personal questionnaires, appointments and resignations will exceed 8,700 in total if the current rate continues. In order to help us help you, please could I ask you to read the FAQs, watch the how to videos and speak to your colleagues. It may be that you can answer your own question without the need to call the Help Desk.

The Business Risk Assessment

As the Director General mentioned in his opening speech the Business Risk Assessment is one of the key areas where weaknesses are being identified by my supervisory colleagues. The Authorisations team is the gatekeeper for the Commission and ensuring that a new licensee gets off to the right start is a responsibility we take very seriously.

Slide: Business Risk Assessments

The Business Risk Assessment is one of the pivotal documents that we review, it must demonstrate that the applicant has considered the financial crime risks that its business model is exposed to and taken appropriate measures to ensure that they are managed and mitigated. As alluded to in the video clip we do, on occasion, see a mis-match between the proposed business model and the Business Risk Assessment. A tailored, bespoke Business Risk Assessment with a risk appetite statement is required, a generic off the shelf document is not appropriate.

Getting the correct foundations in place right from the start of operations will help to ensure that the business is run appropriately going forward. The draft Handbook on Countering Financial Crime and Terrorist Financing includes a chapter on the Risk Based Approach and it contains some very useful information to consider when drafting a Business Risk Assessment. The Commission is not prescriptive on the format of the assessment but it must cover the money laundering and financing of terrorism risks separately and include a consideration of whether their concurrent or cumulative effect may raise the firm's overall risk exposure. If so desired these two financial crime risks can be combined with assessments of other risks such as operational, governance and conduct to form an overarching risk assessment which includes a risk appetite statement for the business as a whole.

This assessment should be reviewed and signed off by the board and shared with all relevant staff to ensure that the risk appetite is understood and acted upon by the business as a whole.