

500000 fine demonstrates importance of effective and consistent AML

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In a recent judgment^[1] the Royal Court (**Court**) has imposed a hefty £550,000 fine on a firm for failing to ensure that, in practice, its AML policies and procedures were being applied effectively and consistently.

Coming on the heels of last year's fine in the *Abu Dhabi* case^[2], and with the UK's FCA having announced on 16 March 2021 that it is prosecuting a UK bank for alleged AML failings^[3], it is clear that ensuring compliance with AML requirements remains an area of close regulatory focus.

The facts

In April 2010 LGL Trustees Ltd (**LGL**), a Jersey-based trust company, was approached to establish and administer a Jersey limited partnership for the Angolan State. The limited partnership was to be managed by Quantum Global, a Swiss based investment business 95%-owned by 'Mr B'. Mr B had strong political connections with the son of the then-Angolan president.

LGL established the partnership and incorporated two Jersey companies to act as limited and general partner. The former (owned by the National Bank of Angola (**NBA**)) held 98% of the partnership's equity, and the latter (owned by Quantum Global) held the rest.

LGL rated the business as "*very high risk*". It was told that the source of funds was US\$1.6 billion transferred from the Angolan Federal Reserve to an account with HSBC for real estate investment purposes. LGL obtained a signed letter from the NBA's governor confirming this, and verified that the money held with HSBC belonged to NBA.

The Court noted that the fees payable to the general partner were "*colossal*", but that it was not clear what the general partner was doing for these fees (others down the chain were managing the real estate). The Court noted "*obvious questions*" arose around the level of these fees, the lack of transparency in the structure and how the risk of kick-backs could be disregarded, and

that "[i]f these questions had been considered and satisfactory answers required before proceeding, it is probable that LGL would not have taken on this business at all".

During a meeting in September 2010 to discuss what was needed for consent to be given to establish the above structure, the JFSC noted LGL would need to consider further the alleged connection between Mr B and the Angolan president's son. LGL provided various reassurances to the JFSC. Consent was subsequently given to incorporate the companies.

The Court noted that there were subsequently a number of "red flags":

- LGL learned in May 2011 that HSBC was concerned about Mr B's involvement, given a press article noting a history of corruption amongst Quantum structures' management and the risk of "skimming" of funds due to Mr B's connection with the president's son.
- HSBC declined to open a bank account for the Partnership. No account having been opened elsewhere by August 2011, LGL's compliance officer recommended terminating the relationship – but was overridden.
- In June 2011 an LGL director visited Mr B, and was seemingly satisfied with Mr B's denial of the allegations about him in the press. LGL did not inform the JFSC of either the skimming allegations or HSBC's concerns, nor did it file a SAR.
- On 19 December 2012 LGL's compliance officer circulated a press article stating that Mr B had been convicted in Switzerland in July 2011 of "*repeated qualified criminal mismanagement*". LGL raised the conviction with Quantum Global, which minimised its significance; no explanation was given for its non-disclosure. LGL made no further enquiries (e.g. seeking a copy of the judgment) nor did it update the JFSC.

In 2013 LGL submitted applications to the JFSC to establish a further structure involving Mr B. The JFSC raised concerns as to fees and (having become aware of his conviction) Mr B's involvement. LGL defended these points, but apologised to the JFSC for not disclosing the conviction after obtaining a copy of the Swiss judgment – but nonetheless persisted with the application.

In 2014 LGL became aware of JFSC concerns arising out of HSBC's refusal to take instructions from Quantum Global. In January 2016 JFSC Supervision visited LGL and identified a lack of CDD for members of the board of NBA. Shortly afterwards, LGL began making plans to remove the structure from Jersey.

The charges

The charges concerned breaches by LGL of Article 11 of the *Money Laundering (Jersey) Order 2008 (MLO)* (failure to maintain appropriate and consistent AML policies and procedures) and Articles 3 and 13 of the MLO (failure to apply identification measures).

LGL pled guilty, but challenged the proposed fine. It contended the prosecution's starting point of £1.2 million was disproportionate and that it should be £1 million (before reductions for mitigation).

The decision

The Court emphasised that "[a]t the heart of anti-money laundering regulation is the requirement that financial services businesses must have in place, **and must follow**, effective procedures to ensure that they avoid being mixed up in money laundering" (emphasis added). Whilst the Court accepted that the failings "were not systemic", it noted "[d]ue diligence is an ongoing process" and so the failings were not "one-off" (even if relating to just one structure).

The Court made clear that there was "no suggestion" that any of the funds provided by Angola were of suspicious origin or that the investments into which the funds were placed were themselves suspicious. The money laundering risk "related to the possibility of corrupt misuse of funds diverted from the Jersey investment structure that LGL was administering".

The Court took note of LGL's failure to respond to red flags, and that the directors seemed "determined to continue with the business". It noted the risk of "corrupt diversion" was clear but not addressed, with LGL's minuted description of such payments representing possible "leakage" (with which LGL seemed comfortable) being "close to an acceptance as to what might occur with these very substantial fees after they were paid".

In setting the starting point for the fine, the Court made clear it must "bring home the importance of complying with the requirements of the [MLO] both to the directors and the shareholders of LGL", and that its focus was therefore on the "conduct, not on the size [or means] of the company". As LGL's misconduct was more serious than that in *Abu Dhabi*, the Court set a starting point of £1.2 million (as against £800,000 for that bank).

The Court reduced the fine by one third as LGL's early guilty plea "was of value", and reduced it further to reflect LGL's "complete" cooperation and to ensure LGL would not breach its prescribed ANLA ratio. Interestingly, the Court also reduced the fine to account for the "injustice" of current directors/shareholders bearing the full burden of the actions of past directors/shareholders.

Ultimately the Court imposed a fine of £550,000^[4], and ordered that LGL contribute £50,000 to the prosecution's costs.

Commentary

There are a number of points to take away from this judgment.

First, it is crucial that a firm ensures that its policies and procedures are effective in practice

(not just on paper), and that it identifies and assesses AML risk objectively.

Second, the Court reduced the fine substantially to allow for LGL's guilty plea and for its cooperation. This illustrates the benefits in recognising shortcomings and cooperating with the authorities.

Third, the Court was not deterred from imposing a fine by the fact the failings related to one client structure only. Firms must therefore ensure their AML controls are being applied effectively across their entire business – for, as this judgment shows, the cost of failing to do so can be high.

[1] <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2021%5DJRC058.aspx> and <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2021%5DJRC053.aspx>

[2] See our briefing here: <https://www.ogier.com/publications/jersey-royal-court-imposes-fine-for-inadequate-aml-policies-and-procedures>

[3] <https://www.fca.org.uk/news/press-releases/fca-starts-criminal-proceedings-against-natwest-plc>

[4] The fine was levelled for the first count (concerning Article 11 MLO), with no separate fine imposed for the second count (concerning Articles 3 and 13 MLO).

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