Under examination

Mirza Manraj explains the workings of regulatory inspections in the BVI and Cayman Islands

Regulatory inspections have become increasingly important in ensuring that there is an ecosystem for managed growth of businesses in the global financial services industry. They also allow for jurisdictions and products to remain competitive and attractive to clients who are looking for reliable, tried and tested regimes that can bolster their commercial aims. This article offers regulated entities and their senior management an overview of how regulatory inspections work in the British Virgin Islands (BVI) and the Cayman Islands.

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The major regulators

The Financial Services Commission (FSC) in the BVI and the Cayman Islands Monetary Authority (CIMA) in the Cayman Islands are the principal financial services regulators that are tasked with supervising, monitoring and regulating the industry in these jurisdictions.

Other important competent authorities that aid in good regulatory governance in the BVI are the Financial Investigation Agency, the International Tax Authority, the Attorney-General's Chambers, the Office of the Governor and the Royal Virgin Islands Police Force. Similarly, in the Cayman Islands, other competent authorities are the Financial Reporting Authority, the Department of International Tax Cooperation, the Attorney-General's Chambers, the Office of the Governor and the Royal Cayman Islands Police Force.

Both the FSC and CIMA can liaise with their domestic sister regulators as part of regulatory investigations.

Initial meeting

The FSC/CIMA will notify an entity in advance of an inspection and will explain whether it will be themed or general in nature. The subject of an inspection may include: anti-money laundering and countering financing of terrorism (AML/CFT) policies and procedures; client due diligence (CDD) and on-going monitoring documentation; outsourcing of AML/CFT compliance functions; employee training and awareness; assessing risks and the application of risks to various categories of relevant business activities; oversight of compliance functions, internal reporting, audit functions, record keeping policies and procedures; updating CDD and enhanced CDD procedures and sanctions compliance; information technology; and data protection, to name just a few.

Having ear-marked who will be subject to the inspection, the FSC/CIMA will request documentation for a pre-inspection review. The information can relate to both the entity (largely to do with its own business and operational procedures) and any underlying clients.

In preparing the agenda for the inspection, the FSC/CIMA will set an introductory meeting for all senior managers to attend, including directors, compliance officers, money laundering reporting officers and legal counsel. This meeting usually sets the tone for how the inspection will proceed. Based on what was requested as part of the pre-inspection material, if senior management sense that there have been any shortcomings in the regulated business operations of the entity then they should use this meeting to be upfront with the FSC/CIMA and to discuss how and why the incident in question occurred and what measures are being, or have been, put in place to curb any potential breaches.

Desk-based review

After the introductory meeting, the actual 'desk-based' review will commence. During this stage, the FSC/CIMA may ask the senior management team various specific questions based on their observations of the policies, procedures and files that they are reviewing against the factors that they are examining. Senior management should be fully prepared to provide suitable responses.

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The FSC/CIMA may also request additional documentation or information and, if any of this is kept outside of the jurisdiction, the entity should be able to access it as quickly as possible. There are cases in which, for various reasons, entities may not be fully prepared or do not have all their documents or information ready for the inspection, and in some cases the senior management team may not have been well briefed on the focus of the inspection. Entities should try to avoid such pitfalls at all costs as they can cause significant delays during the inspection process.

After the inspection, the FSC/CIMA will have a closing meeting with the entity's senior management team to explain various findings against each of the criteria that were assessed. The regulators will likely give a view on how the entity performed during the inspection and what their overall impression of the regulated business was. Senior management should use this as an opportunity to ask questions about any practical requirements the FSC/CIMA may have of the entity.

Follow-up actions

After the closing meeting, the FSC/CIMA will circulate a draft inspection report for the entity to review with its legal counsel and to provide written feedback within a certain timeframe.

The draft report will typically cover various factual matters that the FSC/CIMA will have observed from the desk-based review and any deficiencies that have been identified. It will also include the FSC's/CIMA's recommendations on how to remedy any weaknesses identified and any timetable within which they must be addressed. Finally, the draft will include the reporting timeframe to the FSC/CIMA to ensure that the entity is complying with all of the findings of the report. The entity's response to the report can set out its views on the findings as well as dispute any of them.

It is important that the entity takes legal advice throughout the process and not only thoroughly understands the law and regulations to which it is subject but also explores various practical solutions that can be implemented to comply with any directions that have been provided in the draft report. As such, legal counsel needs to be involved to guide the process and ensure that full and comprehensive submissions are provided to the FSC/CIMA in response to the draft report.

The FSC/CIMA will then study the filed submissions and will issue the final inspection report that will have the scores for the entity under the various categories assessed. To the extent that a non-compliant score is achieved under a particular category, the FSC/CIMA will likely prescribe a timeframe for the deficiency to be resolved. If the entity does not proactively deal with the deficiency, this could lead to an enforcement action. For example, the regulator can issue a warning letter, impose administrative penalties or even revoke an entity's licence or regulatory status. Directors and other senior staff may also bear personal liability in certain circumstances. Therefore, it is very important that entities take regulatory inspections seriously.

Inspiring trust

Results of an inspection, whether domestic, regional or international, are interwoven. They provide tangible and credible evidence of official supervision by a prescribed regulator and can inspire international confidence and viability to customers. A well-regulated, supervised and monitored financial services industry inspires trust and confidence in the services and products it offers.

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