

INSIGHTS INTO EVERYDAY LIFE OF A COMPLIANCE OFFICER IN THE LIECHTENSTEIN FINANCIAL MARKET

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I. INTRODUCTION

*“My Mama always said: Life was like a box of chocolates. You never know what you’re gonna get”*¹. Like Forrest Gump’s one, the everyday life of a compliance officer is full of surprises but what is certain is their ability to be qualified as a business killer or as an everyday hero. So, who are they?

There are as many definitions of compliance officer as there is sand in the sea and depending on the countries or laws, they may have even different names². At the end they are the officers that ensure that the company they work for, complies with the applicable legal and regulatory requirements. To ensure that they do their tasks best, strong requirements on their curriculum are made: they must have deep knowledge in questions of prevention and control of money laundering, organized crime and terrorism financing. As well as advanced knowledge on the data protection regulations and be of course aware about the latest developments in these fields. Finally, they must be independent in their activity, remuneration and the way they are rewarded. Once you got the right profile and in the right position, it’s time to enjoy the different facets of the compliance officer.

II. COMPLIANCE OFFICER – A SOURCE OF INFORMATION

Ignorantia legis non excusat. Ignorance of the law is no excuse, and the compliance officer knows it. That is why he or she will visit numerous conferences and symposia, subscribe to a diversity of newsletters to be always up to date, to know about the latest amendment in the law or regulation, to follow up on the latest regulators’ guideline or directive, to learn about the latest geopolitical move resulting in new (smart) sanctions against a country, business fields, individuals, and companies.

The compliance officer will also be monitoring the media in search for a new fraud scheme, a compromised client or negative news related to their company or group. They will be following up on the latest technical or software development to optimize their way of working, ensure better results and suggest to the responsible colleague to acquire a new IT-solution. The compliance officer will be often questioned about their opinion on an issue or circumstances of a case and, of course, their assessment on a particular business case.

III. COMPLIANCE OFFICER – A SECOND LINE OF DEFENSE

The compliance officer acts then as a supervisor when checking the business profile of a prospect/client prepared by the front officer or relationship manager. The compliance officer will be strict and challenging as the business profile represents the basis for the ongoing monitoring of the business relationship and transactions. He or she knows that the minimum data depends on the individual risk classification and also that third-party evidence from trusted independent sources may be necessary. Further the officer will carefully assess the source of the client’s wealth, mainly coming

¹ Forrest Gump is a 1994 American movie directed by Robert Zemeckis and written by Eric Roth, starring among others Tom Hanks.

² Alone in the German speaking countries we find at least the following names: Geldwäschebeauftragter (acc. to EBA-Guidelines), Sorgfaltspflichtbeauftragter (Liechtenstein Due Diligence Act and Due Diligence Ordinance), Compliance Responsible Officer (EBA-Guidelines) ...

from family and generational wealth or generated from income, sales, and business activity. The source of funds that will be brought to your company – usually constituting one of the sources that make up the total assets – will be also closely inspected. Their activity as the second line of defense also takes place when the officer monitors the risks of the onboarded business relationship, including transactions processed during the business relationship. Transactions and facts are compared with the business profile of the client (so-called profile conformity check), and if not given, the compliance officer will proceed with a simple clarification. He or she will request that the front-office obtains and evaluates additional information, eventually get supporting documentation to ensure that the background of the deviating transaction is now traceable and understandable. In case of suspicion of money laundering, predicate offenses of money laundering, organized crime and terrorism financing, the compliance officer will have to proceed with and in-depth clarification including obtaining further documents to eliminate suspicions. If he or she doesn't succeed with the suspicion's elimination, a FIU report must be filed (see *infra*, VI.)

IV. COMPLIANCE OFFICER – A COUNSELOR/PSYCHOLOGIST

Knowing that the obtained information must be evaluated and documented, the compliance officer will have to show strength: What is the significance of the delivered documents, are our questions answered? Can the information or transaction be traced with it? Basically, does the information enable an expert third party to make a reliable assessment of compliance with the relevant provisions? After seeing the first documents sent to them, the compliance officer will repeat himself: we work mainly in English or German. For important documents, we need a certified translation from a recognized translation agency. And here again he or she will assess the origin of the documentation, check the sources (internal/external, official, trusted, from privately managed directory or appropriate database...), the presence of a date, visa, stamp, signature, and verify the form (original, copy from original, certified copy, apostilled...). Finally, a particular attention will be given to the currentness of the document to ensure that current situation is reflected. On specific contracts such as loan agreements the compliance officer will of course verify that the legal form of the entities, date and place of signature, period of validity and subject matter are clearly stated, but also that a repayment date, an interest rate and a detailed, respective determinable purpose of the loan are stated.

V. COMPLIANCE OFFICER – A PROTECTOR/SUBJECT MATTER EXPERT

Suddenly during the day, the international situation changes, and a country decides to invade its neighbor country on the European continent. The international community reacts with a certain determination and put in place embargos as well as sanctions against the country-aggressor. Liechtenstein is obliged since its adhesion to the United Nations 1990 to implement nationally the resolutions (sanctions) passed by the United Nations Security Council. According to its foreign policy priorities, Liechtenstein may decide to also implement the sanctions of the European Union. The legal basis for domestic implementation is the Law on Enforcement of International Sanctions (ISG). The effective implementation is carried out by ordinances, which the compliance officer analyzes to ensure the correct application within the company.

Even though on the European territory the aggression of a sovereign country by another did not let other countries cold, such as the United States of America and they also decide, unilaterally, to set

further sanctions on the country-aggressor, individuals, corporates, and nations which support it. Since payment processors can prohibit payment transactions in US dollars, financial institutions and financial intermediaries may refuse to work again with a company that do not comply with the Office of Foreign Assets Control (OFAC) sanctions. The compliance officer will now study the specifics of the US export control and foreign policy and hope that nobody in the company will fail to comply with these sanctions, since it may result in a criminal conviction and a substantial fine, without forgetting additional regulatory enforcement action against the company and/or its employees.

Now the compliance officer has daily stand-ups with colleagues to ensure a consistent implementation and comprehension of the Liechtenstein, Swiss, European, and US-American sanctions related to these military actions. He or she has also reviewed the company's parameters for the transactions and sanctions screening and is in close contact with the authorities.

VI. COMPLIANCE OFFICER – A CONTACT PERSON FOR THE FIU

Thanks to their immaculate reputation and recognized professionalism, the compliance officer has a good relationship with the enforcement authorities in Liechtenstein. It does not matter if it's about combating the money laundering, predicate offenses to money laundering, organized crime, or terrorism financing, or implementing international financial sanctions, he or she will rely on the Financial Intelligence Unit (FIU), which is the central authority in Liechtenstein for combating the money laundering and to enforce sanctions. Because he or she once presented the new company/entity to the FIU during a personal meeting and since then had annual meetings to assess the performance of the collaboration with the agents of the FIU, the compliance officer knows exactly, when they must report a transaction to the FIU³, when to execute or not a transaction⁴ and when to freeze the assets within the company, when he or she has suspicion of terrorism financing⁵. The compliance officer will in general not let the contracting part, beneficial owner and third part know about their report to the FIU, since there is an information ban policy⁶. But he or she is not afraid about reporting the transaction or relationship since the officer knows that there is an exemption from all civil and criminal liability⁷, if it turns out that the report was not justified (and as long as he or she did not act intentionally to harm the reported person or entity). Their collaboration with the FIU is further necessary as the authority may request them to transmit on a short notice all the information/data the company holds about a client⁸.

VII. COMPLIANCE OFFICER – A LIABLE PERSON

It is already late, and the business day of the compliance officer is coming to an end, but he or she must remain alert as they are liable for their (non)actions. They remember of a colleague, who was

³ Art. 17 Liechtenstein Due Diligence Act (DDA) together with annex 3 of the Due Diligence Ordinance (DDO).

⁴ Art. 18 DDA.

⁵ Art. 18a DDA.

⁶ Art. 18b DDA.

⁷ Art. 19 DDA.

⁸ Art. 19a DDA.

convicted for failing to report a suspicious transaction to the Swiss FIU (MROS)⁹. They also keep in mind the large media coverage and the long working hours of the legal and compliance teams of company, when an OFAC sanctioned oligarch wanted to repay a loan by selling USD securities, and that the bank refused to proceed with the transaction because of the newly implemented OFAC sanctions against the said oligarch¹⁰. Finally, they still think about their colleague, Head of Legal & Compliance, convicted for the serious breach of due diligence of his bank solely due to his position (supervisor of 90 employees). Even if the serious violations committed through omissions did not fall within his personal area of responsibility and he had no knowledge of the events, and even though the bank's auditing company had examined the said suspicious transactions and business relationships on behalf of Swiss Financial Market Authority (FINMA) for the relevant period and there was no violation of regulatory law by the bank and its employees¹¹... On their way home they remember that they should sign a tailormade D&O insurance contract to mitigate risks for personal liability.

VIII. CONCLUSION

The everyday life of a compliance officer in the Liechtenstein financial industry is versatile like a chocolate box but also challenging and exciting. They are working together with the first line of defense to ensure that the company they work for comply with the applicable legal and regulatory requirements and see many another business days. Compliance officers are everyday heroes, who protect companies and secure Liechtenstein's good reputation as an internationally recognized financial center.

Let's take care of them.

⁹ Decision 2C_192/2019 dated 11.03.2020 of the Swiss Supreme Court.

¹⁰ Decision 4A_659/2020 dated 06.08.2020 of the Swiss Supreme Court.

¹¹ Decision 2C_747/2021 dated 30.03.2023 of the Swiss Supreme Court.