

Engaging with an Offshore Regulator Is Anybody There?

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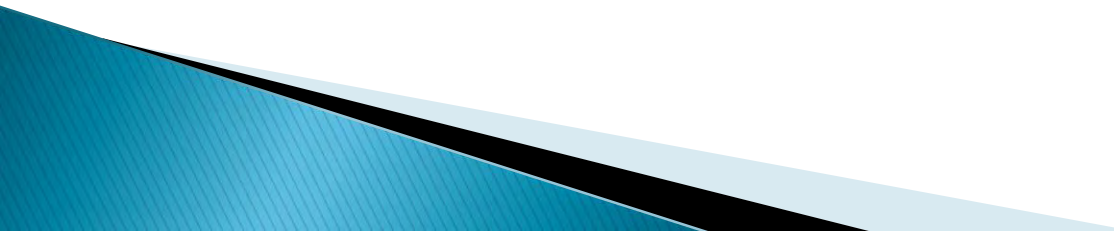
Offshore Financial Centres

| Africa | Asia & Pacific | Europe | Middle East | Western Hemisphere | |
|------------|------------------|---------------|-------------|----------------------|-------------------------|
| Djibouti | Cook Islands | Andorra | Bahrain | Anguilla | St Lucia |
| Liberia | Guam | Campione | Israel | Antigua | St Vincent & Grenadines |
| Mauritius | Hong Kong | Cyprus | Lebanon | Aruba | Turks & Caicos |
| Seychelles | Japan | Dublin | | Bahamas | United States |
| Tangier | Labuan | Gibraltar | | Barbados | Uruguay |
| | Macao | Guernsey | | Belize | West Indies |
| | Marianas | Isle of Man | | Bermuda | |
| | Marshall Islands | Jersey | | BVI | |
| | Micronesia | Liechtenstein | | Cayman Islands | |
| | Nauru | London | | Costa Rica | |
| | Niue | Luxembourg | | Dominica | |
| | Philippines | Madeira | | Grenada | |
| | Singapore | Malta | | Monserrat | |
| | Tahiti | Monaco | | Netherlands Antilles | |
| | Thailand | Netherlands | | Panama | |
| | Vanuatu | Switzerland | | Puerto Rico | |
| | Western Samoa | | | St Kitts & Nevis | |

Jersey Financial Services Commission

Guiding Principles (Article 7)

In exercising any of its functions the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to –

- a. the reduction of the **risk to the public of financial loss due to dishonesty, incompetence or malpractice by** or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - b. the protection and enhancement of the **reputation** and integrity of Jersey in commercial and financial matters;
 - c. the best economic interests of Jersey; and
 - d. the **need to counter financial crime** both in Jersey and elsewhere.
- 

Reputation is everything...

“Bluntly put if there is a Citibank problem in London, it is a Citibank problem, if there is a Citibank problem in Jersey the situation tends to be that it is first and foremost a Jersey problem, at least in the eyes of the media, and secondly a Citibank problem.”

John Harris, Director General

September 2015



Restitution

Commission may petition the Royal Court under:

Article 26 of the Financial Services (Jersey) Law 1998.

Pursuant to Article 26(1) the Commission has the ability to apply to the Royal Court for **protective orders** in respect of the activities of a registered person. By Article 26(2) on an application under 26(1), the Court may order restitution in certain defined circumstances.

Most likely to be of relevance is a contravention of Article 39L:

Knowingly or recklessly making a statement, promise or forecast which is misleading false or deceptive or dishonestly concealing material facts for the purposes of inducing another to exercise or refrain from exercising rights conferred by an investment.

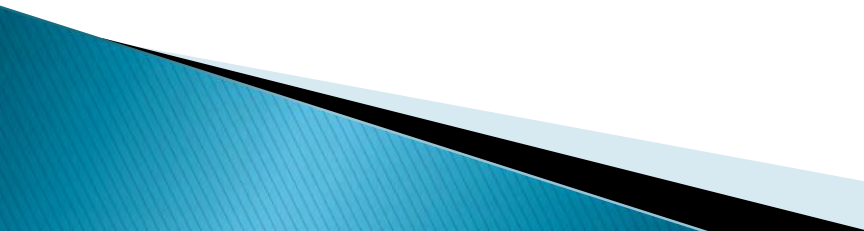
* Also applies in the event the regulated entity enters into a transaction with a person who was induced to enter into the transaction as a result of a contravention of Article 39L by a third person.

Jersey Financial Services Commission v Alternate Insurance
Services Limited, Clark & Le Fustec [2007 JLR 95]

Mis-selling of portfolios of traded endowment policies.

Retail investors lost life savings. Some investors did not even appreciate they had taken out loans to fund the investment.

Gearing made investment high risk when presented as low risk.



Dissemination of Information & Intelligence

Legal Gateways in Regulatory Laws

See Article 38 of the Financial Services Law.

Memoranda of Understanding:-

- ▶ Multilateral
- ▶ Bilateral
- ▶ Local

Financial Crime Information Network



The Power of Direction

Article 23(1) of the Financial Services Law:

“If it appears to the Commission in relation to financial service business that ...

it is in the best interests of ... persons who transacted or may transact financial service business with a registered person ...

it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters ...

The Commission may, whenever it considers it necessary, give by notice in writing, such directions as it may consider appropriate in the circumstances.”



ANDREW NORMAN CRAWFORD FLEMING



Equity Trust (Jersey) Limited

- Speculative Eastern European property development.
 - Commission took unprecedented action to have funds wound up under powers in Collective Investment Funds (Jersey) Law 1998, as amended
 - Investors voted against winding up
 - Catastrophic losses
 - Investors self certified sophisticated when in reality majority were retail
 - New Trustee and Manager appointed brought action against Equity as former manager and trustee
 - Use of litigation funder
 - Offer made to unitholders and investors
- 