

# News

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## Louvre Trust (Guernsey) Limited, Derek Paul Baudains Bachelet, Haidee Louise Stephens, Julian Dai Lane, Ch Tracy

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18th June 2019

Public Statements

**The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (the “Financial Services Co**

**The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick “Fiduciaries Law”);**

**The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) |**

**The Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Fin**

**Louvre Trust (Guernsey Limited) (the “Licensee” or the “Firm”)**

**Mr Derek Paul Baudains (“Mr Baudains”)**

**Mr Jonathan Ross Bachelet (“Mr Bachelet”)**

**Ms Haidée Louise Stephens (“Ms Stephens”)**

**Mr Julian Dai Lane (“Mr Lane”)**

**Mr Charles Peter Gervais Tracy (“Mr Tracy”) (together “the Directors”)**

On 18 June 2019 the Guernsey Financial Services Commission (“**the Commission**”) decided:

- To impose a financial penalty of £70,000 on the Licensee under section 11D of the Financial Services (

- To impose a financial penalty of £8,400 on each of Mr Baudains and Ms Stephens under section 11D of the Financial Services Commission Law;
- To impose a financial penalty of £7,000 on Mr Lane under section 11D of the Financial Services Commission Law;
- To impose a financial penalty of £5,600 on each of Mr Bachelet and Mr Tracy under section 11D of the Financial Services Commission Law and
- To make this public statement under section 11C of the Financial Services Commission Law.

The Commission considered it reasonable and necessary to make these decisions having concluded that the Licensee failed to ensure compliance with the Regulations, the Handbook, the Code of Practice - Corporate Servicing and the minimum criteria for licensing set out in Schedule 1 of the Fiduciaries Law.

## **BACKGROUND**

In 2007, the Licensee was established in Guernsey. It was licensed under the Fiduciaries Law on 3 April 2007.

Mr Baudains is a director of the Licensee and was appointed from 20 December 2007.

Ms Stephens was a director of the Licensee from 20 December 2007 to 3 September 2018.

Mr Bachelet is a director of the Licensee and was appointed from 1 January 2014.

Mr Lane was a director of the Licensee from 27 October 2011 to 5 September 2018.

Mr Tracy was a non-executive director of the Licensee from 20 December 2007 to 5 December 2016.

The Commission conducted an on-site visit to the Licensee between 25 April 2016 and 5 May 2016 (the 2016 visit).

The purpose of the 2016 visit was to carry out a financial crime risk assessment of the Firm. In doing so (and other things) a selection of customer files.

During the 2016 visit and the subsequent investigation the Commission identified serious failings in re compliance with applicable anti money laundering / countering the financing of terrorism related regulations.

The issues fell broadly into the following categories:

1. The Licensee did not always identify all high-risk factors when risk assessing its clients;

2. The Licensee did not always adequately risk assess a client relationship at the outset and/or failed to risk assessment required by the Regulations and the Handbook;
3. The Licensee failed on multiple occasions to obtain adequate due diligence on client business relationships;
4. The Licensee did not always adequately monitor customer relationships;
5. The Licensee failed to comply fully with Instruction 6 of 2009;
6. The Licensee failed to maintain adequate board minutes, records of its customers, and the rationale high-risk transaction;
7. The Licensee failed to have adequate policies, procedures and controls to forestall, prevent and detect financing;
8. The Licensee unintentionally misled the Commission in its written response to the findings of the 2017 investigation;
9. The Directors, during the periods when they were directors of the Licensee, failed to consider the Licensee's compliance with the Regulations and the Handbook or review the Licensee's compliance with the Regulations and the Handbook at appropriate intervals;
10. The Directors also failed to ensure that the Commission was advised of material failures to comply with the Regulations and the rules in the Handbook, and of any serious breaches of the Licensee's policies, procedures or controls;
11. The Licensee and the Directors failed to comply fully with the minimum criteria for licensing under the Regulations.

## **FINDINGS**

The Commission's investigation found:

### **The Licensee did not always identify all high-risk factors when risk assessing its clients**

The Licensee failed on a significant number of occasions to identify all high-risk factors in high-risk client countries and high-risk activities. Identification of these high-risk factors would have led to a more accurate risk assessment.

### **The Licensee did not always adequately risk assess a client relationship, and/or failed to carry out adequate due diligence**

The Licensee failed on a number of occasions to identify client relationships as high-risk. The Licensee failed to obtain adequate due diligence on client business relationships.

periodic ongoing reviews of its client risk assessments, including a high-risk client that was not reviewed.

These failures in respect of client risk-assessments meant that the Firm was not able to ensure that its processes for identifying, forestalling, preventing and detecting money laundering and terrorist financing were appropriately aligned to the appropriate risk-rating.

### **The Licensee failed on multiple occasions to obtain adequate due diligence on client business relationships**

As a result of the 2016 onsite visit, the Licensee reviewed its entire client base and identified subjects that required remediation (the “**verification subjects**”). The Licensee concluded that 28% of its verification subjects required remediation, with just over a quarter of the high-risk verification subjects requiring remediation. This evidences that there were failures in the Licensee’s duty to have adequately conducted and reviewed client due diligence and enhanced due diligence.

### **The Licensee did not always adequately monitor customer relationships**

Since 2008 the Licensee has failed to always effectively monitor its business relationships, with insufficiently identified potential risks that the legal structures could be used to launder money or finance terrorism. In particular:

- the Licensee failed to conduct additional scrutiny of a transaction that, on the same day, saw assets being transferred in a complex arrangement which, increased the value of the assets involved in the transaction by €4.5million;
- the Licensee failed to effectively scrutinise the movement of millions of US dollars between jurisdictions and interest-free loans, whilst also failing to identify this as a high-risk relationship;
- the Licensee failed to effectively scrutinise the source of funds for a transaction involving a high-risk client, leading to a decision to authorise the transaction. At the time of the transaction the Firm had concerns that the source was a sanctioned entity, but due diligence to confirm the legitimate source of funds was not received until after the transaction;
- the Licensee failed to raise the risk assessment of a client from medium to high-risk until after the 2016 onsite visit, despite the fact that the client was under investigation for criminal matters and had been charged in 2013 with criminal offences.

The Licensee did not always correctly risk rate its client risk assessments. A number of client business relationships were rated as medium-risk at the time of the 2016 onsite visit, yet re-rated to high-risk after the 2016 onsite visit, following the remediation of the risk assessments as part of a remediation programme. The Licensee’s failure to identify these clients as high-risk was due to a failure to adequately monitor these business relationships as required under a risk-based approach, which increased the potential for money laundering and terrorist financing to occur undetected, and increased the reputation risk to the finance centre.

### **The Licensee failed to comply fully with Instruction 6 of 2009**

In 2009, the Commission issued Instruction Number 6 requiring licensees to review policies, procedure existing customers to ensure that the requirements of regulations 4 and 8 of the Regulations and each Handbook were met. Licensees were required to satisfy themselves that customer due diligence information was held in respect of each business relationship by close of business on 31 March 2010. Where a licensee failed to meet the deadline they were required to terminate the business relationship.

The large volume of the Firm's verification subjects that had customer due diligence deficiencies (28%) had failed to comply with Instruction Number 6.

### **The Licensee failed to maintain adequate records**

The Firm failed to keep adequate records, including (but not limited to) failing to:

- keep customer due diligence and enhanced due diligence as required by the Regulations and the Handbook;
- record or retain any documentation recording its compliance officer's rationale for a decision to approve a business relationship;
- keep accurate records of board minutes for a client company that the Firm administered.

### **The Licensee failed to have adequate policies, procedures and controls to forestall, prevent and detect terrorist financing**

The Directors failed to establish effective policies and procedures for assessing the adequacy and effectiveness of the Firm's policies and procedures with the Regulations and the Handbook. The Firm failed to have a formal Compliance Monitoring Program until 2014. The CMP introduced in 2014 still required significant improvements to be made to it as late as November 2014. The introduction of the Regulations that required the Licensee to have an effective CMP in place. The Licensee restricted the Firm's ability to monitor its capacity to forestall, prevent and detect money laundering and terrorist financing.

The Directors failed in their duty to review the Firm's compliance with the Regulations and the Handbook to ensure that appropriate and effective policies, procedures and controls were in place.

### **The Licensee misled the Commission in its written response to the 2016 onsite visit**

The Licensee and the Directors unintentionally misled the Commission surrounding the timing of the Firm's actions to ascertain whether funds were sourced from a sanctioned entity. The Licensee and the Directors provided information to the Commission for the purpose of justifying the Firm's actions in respect of authorising a dividend payment. The Directors acted without due diligence and sound judgement.

### **The Licensee failed to comply fully with the Fiduciaries Law**

The Commission concluded that the Licensee had failed to comply fully with the Fiduciaries Law, specifically 3(2)(a), (b) & (e) of the minimum criteria for licensing set out in Schedule 1 to that Law. The Licensee failed to:

- with prudence, integrity, professional skill appropriate to the nature and scale of its activities, and in bringing the Bailiwick into disrepute as an international finance centre; and
- with diligence, competence, soundness of judgement, or with a knowledge and understanding of the obligations undertaken.

The Commission also concluded that the Directors all failed to comply fully with the Fiduciaries Law, specifically the minimum criteria for licensing set out in Schedule 1 to that Law. The Directors each failed to act with sound judgement, or with a knowledge and understanding of the legal and professional obligations to be undertaken.

### **Aggravating factors**

The contraventions and non-fulfilments of the Licensee and the Directors in this case are serious, and pose a significant risk of financial crime.

Through its systemic failings the Licensee had potentially enabled specific structures that it administered that could be used for money laundering or terrorist financing.

The potential to facilitate the movement of substantial amounts of funds, unhindered around the globe, was a matter of serious concern to the Commission. The Firm has acted in a manner that could bring the Bailiwick into disrepute.

The Licensee's and the Directors' omission to instigate a formal CMP until January 2014, and the informal programme when it was introduced, meant the Firm was unable to identify the serious systemic weaknesses in its controls prior to the 2016 onsite visit. It is an essential role of the board of a regulated entity to implement and monitor controls to forestall, prevent and detect money laundering and terrorist financing in order to protect against a serious detrimental effect on the reputation of the Licensee and the Bailiwick as an international financial centre.

### **Mitigating factors**

At the request of the Commission the Licensee instigated a Risk Mitigation Programme, which among other things included fundamental changes to the policies, procedures and controls for forestalling, preventing and detecting money laundering and terrorist financing. A complete customer due diligence review was also conducted. An updated CMP has been implemented. In August 2018 training had been completed for all staff on the effective completion of client risk assessments. The Licensee has strengthened its risk and compliance team and undertaken additional risk-rating.

At all times the Directors and the Licensee co-operated fully with the Commission. The Licensee and the Directors' cooperation at all stages of the process, and this has been taken into account by applying a 30% discount in setting the fine.

The financial penalties imposed on each of the Directors have been calculated to take account of the p  
director of the Licensee, and their respective responsibilities.

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