



BENEFICIAL OWNERSHIP CASE EXAMPLE

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Introduction



- In 2018, a search warrant was executed on the offices of companies within the Alliance network by Personnel from the Financial Investigations Division (FID), the Constabulary Financial Unit (CFU) and Fraud Squad of the Counter-Terrorism and Organised Crime Division of the Jamaica Constabulary Force, the Major Organized Crime and Anti-Corruption Agency (MOCA) and the Major Investigation Division (MID).

Introduction Cont'd.



During the search several financial documents were seized and subsequently analysed by the FID and investigators from the CFU.

Preliminary Findings

- Preliminary analysis conducted on the documents revealed that AFL and Alliance Investment Management Limited (AIML) possibly breached Section 22A (2) of the Bank of Jamaica Act, Sec 10 (1) (c) of the Banking Service Act and Regulation 3 (1) of the Proceeds of Crime Act.

Breach- Bank of Jamaica Act S22 A(2)

- No person shall carry on the business of buying, selling, borrowing or lending foreign currency or foreign currency instruments in Jamaica unless he is an authorized dealer.

Breach-Banking Service Act (10)(1)(c).

- Except under and in accordance with the provisions of this Act and any regulations made under this Act, a person shall not
 - (a) issue or cause to be issued advertisements for deposits;
 - (b) solicit deposits in any other manner from members of the public; The Banking Services Act, 2014 [No.] 23
 - (c) engage in activities involving the taking of deposits in any manner**

Breach-POCA Regulation 3(1)

3.—(1) Subject to the provisions of these Regulations, it shall be the duty of a financial institution to make a report to the designated authority, either on its own initiative or in response to a request made to it by the designated authority, in relation to any cash transaction involving the prescribed amount being carried out by any person with that institution.

Breach-POCA Regulation 3(1)cont'd.

"prescribed amount" means in relation to—

- (a) a money transfer and remittance agent or agency, five thousand dollars or more;
- (b) cambios and *bureaux de change*, eight thousand dollars or more;
- (c) any other financial institution, fifteen thousand dollars or more,

in the currency of the United States of America or an equivalent amount in Jamaican currency or any other currency.

Corporate Structure

Alliance Financial
Limited

Robert Chin
Director/ Shareholder
500 Ordinary Shares

Peter Chin
Director/ shareholder
500 Ordinary Shares

Charges

- Peter Chin and Robert Chin, the principals of Alliance Financial Services Limited (AFSL) and (AIML) were charged for breaches of the BOJ Act, the Banking Services Act and the (POCA).



Charges Cont'd.



- AFL and Peter Chin were charged with carrying on the business of lending foreign currency without being an authorised dealer under Section 22A (2) of the BOJ Act. in relation to more than 20 foreign currency loans, totaling approximately US\$8 million, to various entities.

Charges Cont'd.



- Robert and Peter Chin were charged jointly with breaching Section 10 (1) (c) of the Banking Services Act, for accepting deposits without the requisite license from the BOJ relating to a series of deposits in excess of US\$7.5 million over a three-year period from 2014 to 2017.

Charges Cont'd.



- Additionally, AIML was charged with **'Failure to file Threshold Transaction Reports'** – breaching Section 3 (1) of the POCA. This relates to failing to file cash transactions exceeding, USD 15,000.00 (or its equivalent in any other currency) to the Designated Authority, that is, the Chief Technical Director of the (FID).



COURT DECISION

- (AFL) was fined a total of \$21.4 million in the Kingston and St Andrew Parish Court for various breaches of the BOJ and Banking Services acts.
- The company was fined \$50,000 or nine months on each of the 28 counts of breaches of the BOJ Act.
- And it was fined \$2,500,000 or 12 months on each of the eight counts of breaches of the Banking Services Act.
- The company was given two working days within which to pay the fine.
- The company had pleaded guilty to several counts of financial crimes in January.

Court Decision

- Arising from the guilty plea, the charges against Peter and Robert Chin were dropped after AFL pleaded guilty to multiple regulatory breaches of the BOJ Act, and the Banking Services Act.

Implications

- Fragmentation Alliance group
- Panic in financial sector
- Inconvenience to investors
- Loss in share value- reduced sale price
- Increased regulatory monitoring

Implications Cont'd

- Closure of the business
- Subsequent sale of business
- Directors/shareholders barred from similar activities
- Reputational damage

Points to Note

- Use of proxy
- Use of cumulative preference shares

Questions

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Answers

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