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STEP Jersey Annual Conference

The offshore regulatory environment

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Introduction



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Agenda

- Mourant Consulting
- Regulatory Landscape: Regulatory / Supervision priorities and expectations
- Regulatory Expectations: A worked example
- Crystal ball gazing

Mourant Consulting

- A global specialist consulting business
- Clients appoint us to collaborate with them as a trusted adviser
- Prevent and detect approach to governance, risk and compliance matters that aims to inspire the confidence of the Regulator
- Enhance the governance, risk and compliance functions for the firms we advise & make this a competitive advantage for them
- We combine substantial regulatory knowledge with expertise in helping financial services clients build long-term strategies to enhance their governance, risk and compliance culture and navigate the regulatory agenda
- Work collaboratively and seamlessly with the law firm – engage Mourant and you can have detailed legal advice and consulting expertise in one package
- Our clients include many of the world's leading financial institutions, as well as regulators and governments in multiple jurisdictions

Mourant Consulting

- Regulator examination support – before, during and after
- Regulator enforcement support
- Risk framework reviews – BRA
- Remediation testing
- Board effectiveness reviews
- AML function reviews
- AML audits
- Compliance effectiveness / CMP
- Authorisation support
- Public sector

Regulatory Landscape

AML Focus

Regulatory Priorities

- Global Regulatory Landscape – FATF
- Evidencing Effectiveness
- MONEYVAL preparation and AML focus
- Exemptions review and Regulatory perimeter
- Principal and Key Person focus
- Supervision priorities
- Cyber security

Regulatory Expectations

A worked example – The BRA

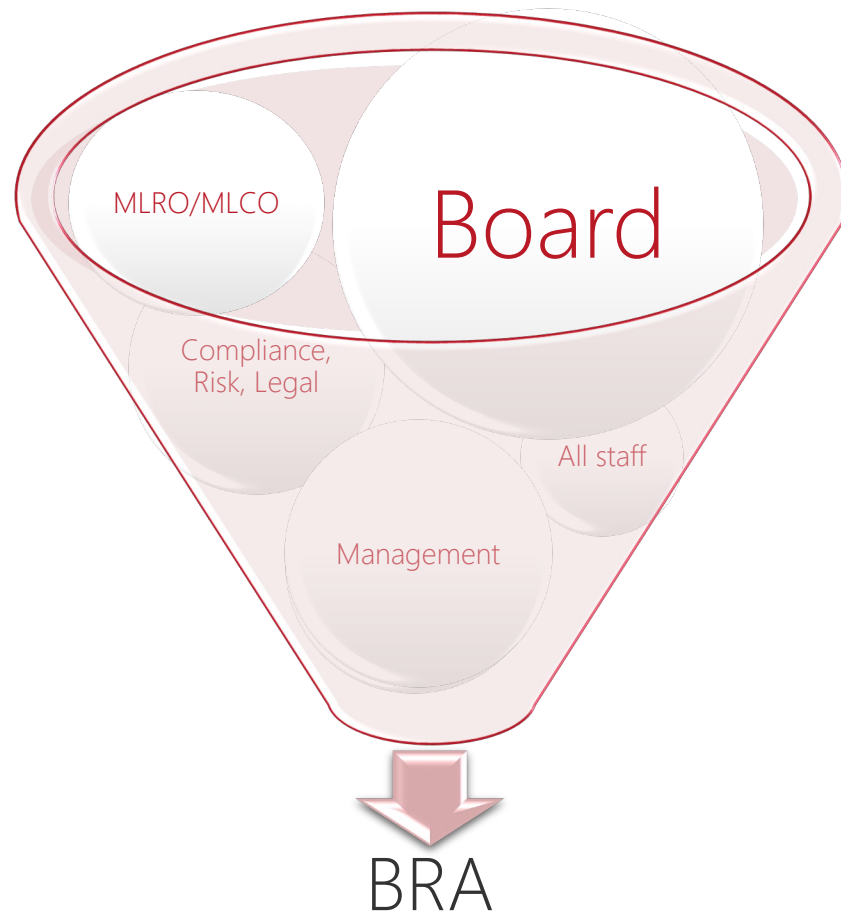
Purpose

- Codes requirement- General BRA, Compliance RA;
- Handbook requirement – AML BRA;
- Ongoing requirement not an annual job;
- Current area of regulatory focus – JFSC thematic; and
- Clearly sound business reasons too if it wasn't a regulatory requirement – helps you perform, make money and stay out of trouble.

JFSC Expectations:

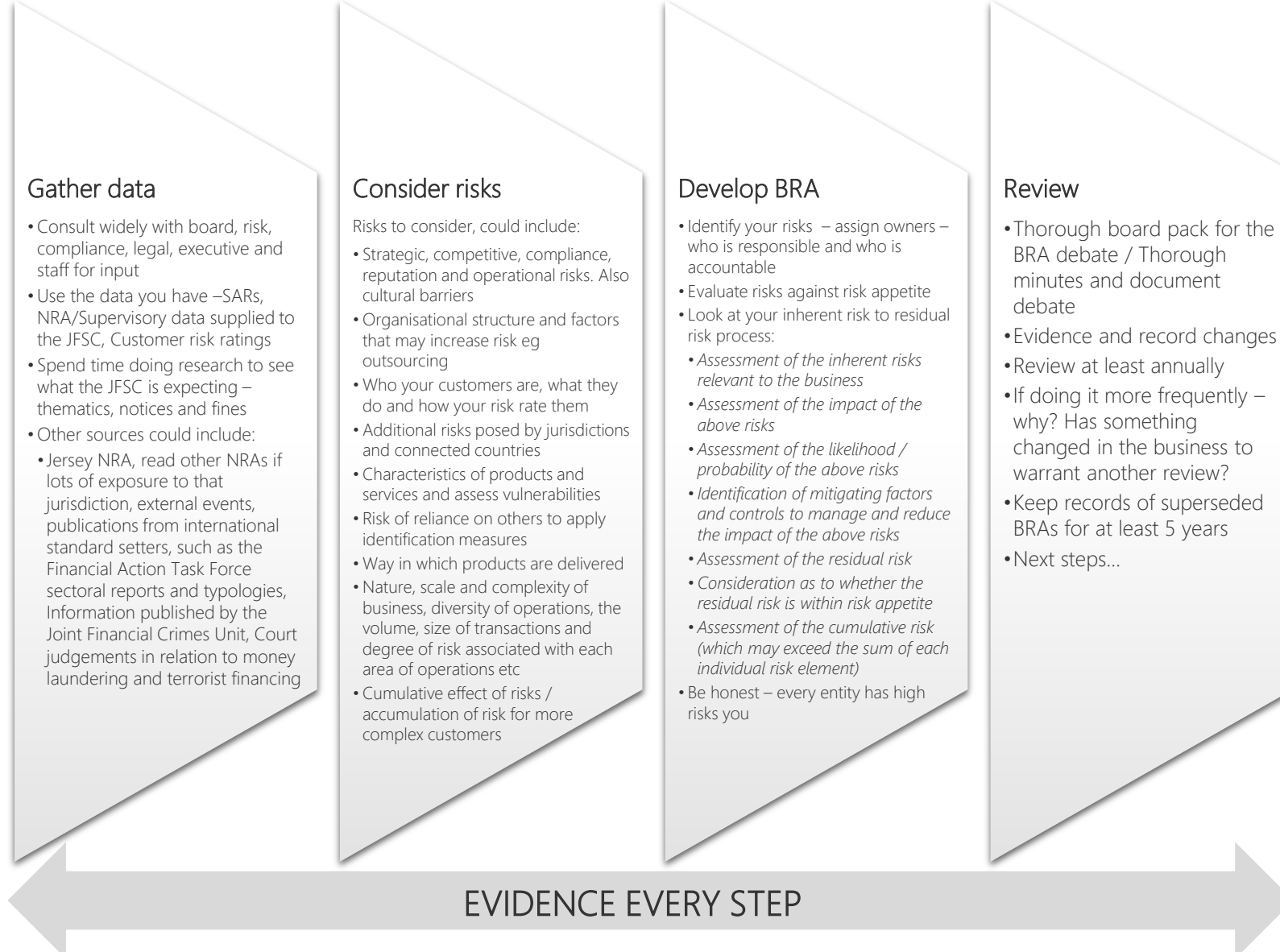
- Review regularly – living and breathing document;
- Exec led not just Legal, Risk & Compliance- partnership approach. Goes to culture;
- Review off back of major events or macro developments – i.e NRA, Covid, war in Ukraine;
- Genuine review not go through the motions! Map to the CMP;
- Evidence - both good document and good process (board pack, board minutes) and risk framework too; and
- Consider in conjunction with your Financial crime strategy and risk appetite.

BRA Responsibilities



- Handbook states: “The Board must conduct and record a business risk assessment in respect of the supervised person”;
- Board have overall accountability of the BRA;
- Board is assisted by MLCO and MLRO; and
- Involve all members of the Management Board – Have a BRA Board champion.

BRA Process



Gather data

- Consult widely with board, risk, compliance, legal, executive and staff for input
- Use the data you have –SARs, NRA/Supervisory data supplied to the JFSC, Customer risk ratings
- Spend time doing research to see what the JFSC is expecting – thematic, notices and fines
- Other sources could include:
 - Jersey NRA, read other NRAs if lots of exposure to that jurisdiction, external events, publications from international standard setters, such as the Financial Action Task Force sectoral reports and typologies, Information published by the Joint Financial Crimes Unit, Court judgements in relation to money laundering and terrorist financing

Consider risks

- Risks to consider, could include:
- Strategic, competitive, compliance, reputation and operational risks. Also cultural barriers
 - Organisational structure and factors that may increase risk eg outsourcing
 - Who your customers are, what they do and how your risk rate them
 - Additional risks posed by jurisdictions and connected countries
 - Characteristics of products and services and assess vulnerabilities
 - Risk of reliance on others to apply identification measures
 - Way in which products are delivered
 - Nature, scale and complexity of business, diversity of operations, the volume, size of transactions and degree of risk associated with each area of operations etc
 - Cumulative effect of risks / accumulation of risk for more complex customers

Develop BRA

- Identify your risks – assign owners – who is responsible and who is accountable
- Evaluate risks against risk appetite
- Look at your inherent risk to residual risk process:
 - *Assessment of the inherent risks relevant to the business*
 - *Assessment of the impact of the above risks*
 - *Assessment of the likelihood / probability of the above risks*
 - *Identification of mitigating factors and controls to manage and reduce the impact of the above risks*
 - *Assessment of the residual risk*
 - *Consideration as to whether the residual risk is within risk appetite*
 - *Assessment of the cumulative risk (which may exceed the sum of each individual risk element)*
- Be honest – every entity has high risks you

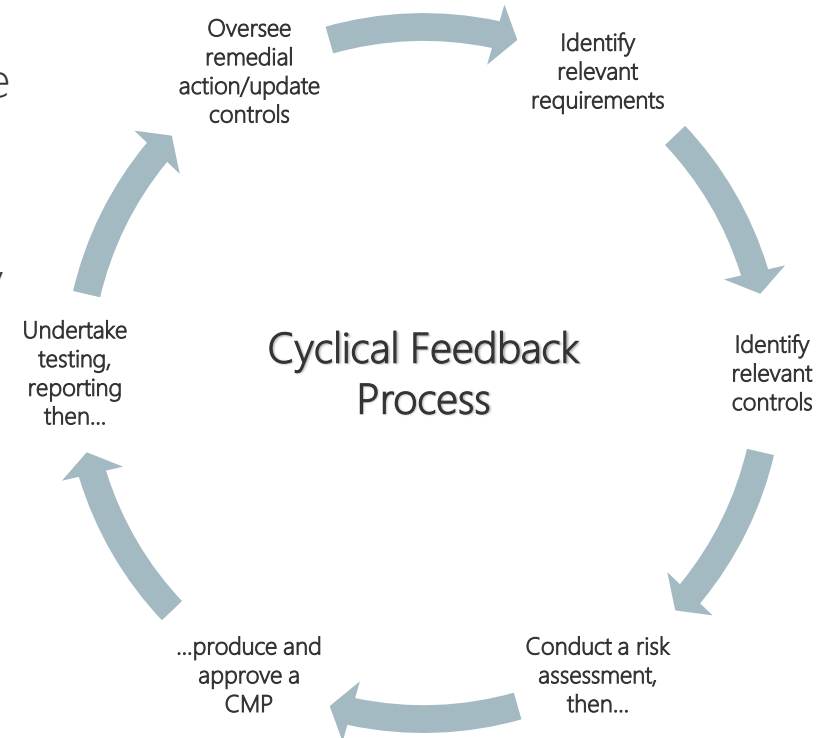
Review

- Thorough board pack for the BRA debate / Thorough minutes and document debate
- Evidence and record changes
- Review at least annually
- If doing it more frequently – why? Has something changed in the business to warrant another review?
- Keep records of superseded BRAs for at least 5 years
- Next steps...

EVIDENCE EVERY STEP

Top Tips and Next steps

- Also consider Financial Crime BRA and Compliance BRA;
- Map the CMP to the BRA and the local regulatory framework;
- Cover the requirements first, then extend to relevant standards/best practice;
- Ensure all Board/Senior Management discussions around the CMP are documented;
- Scrutinise and challenge the CMP before approval;
- Ensure the Board receives a report on CMP findings and any remedial action;
- Assess whether planned remedial action will actually be effective;
- Oversee remedial action and ensure it is completed timeously;
- Notify the JFSC of any material failures;
- Roll out the BRA to staff for awareness and training; and finally
- Ensure you have a procedure that documents the risk assessment methodology and states a copy of the BRA can be provided to the JFSC when requested (common finding).



The Future

Mourant Consulting – Crystal ball gazing

- Current regulatory hot topics – AML, BRA, Board Effectiveness, Sanctions
- Future:
 - Culture assessments
 - Cyber
 - Regulatory perimeter – VASPs, Family offices, Exemptions
 - ESG
 - Consumer harm
 - Prudential and conduct
 - Post Brexit related changes



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