

Compliance Digest

ISSUE 03 | November | 2016



Dear Readers,



Welcome to the 3rd issue of our Compliance Digest, which brings to you compliance and risk management related articles.

In this issue, you will have updates in the Legislations, Regulations, Rules and some recent Supreme Court Judgments.

Moreover, there are some interesting articles on developing a client selection strategy, e-KYC, an overview of the Mauritius Bankers Association, Correspondent Banking and De-risking, the challenge of sanctions and the challenge of combating terrorist financing.

Additionally, we will provide you an insight of the challenges faced by a Head of Compliance of an international bank.

Finally, you will browse some Compliance news around the world.

We wish you a pleasant reading!

Anil Fangoo, CAMS
Head of Group Compliance and Editorial Team

5 STEPS TO AN ANTI-CORRUPTION 'CULTURE OF COMPLIANCE'

A "culture of compliance" is built over time, regardless of its size, industry or location, depending on the commitment of its leadership and the willingness to devote the sustained effort and resources over time to doing business only in lawful and ethical manner.

1. Senior Management Commitment

The central importance of a company's senior management in establishing a culture of compliance is highlighted in 'A Resource Guide to the Foreign Corrupt Practices Act', issued by the U.S Department of Justice and the U.S Securities and Exchange Commission, which observe that within a business organisation, compliance begins with the board of directors and senior executives setting the proper tone for the rest of the company.

2. Effective Standards and Controls

Effective standards and controls, including policies and procedures which have been designed to address the risks that the company is facing in the real world, which are diligently implemented, followed and enforced because of the genuine strong commitment of senior management.

3. Frequent communications from Senior Management

Another key element involves frequent communications from senior management reminding the company's employees of the importance they attach personally to anti-corruption compliance and the corporation's zero tolerance for non-compliance.

4. Regular Compliance Training

Another vital element is regular anti-corruption training compliance training.

5. Ongoing Monitoring and Auditing

A final element is ongoing monitoring and auditing of anti-corruption compliance throughout the corporation to make sure that the company's standards and system of internal controls are being properly implemented, followed and enforced.

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RECENT ACTS, REGULATIONS, RULES & GUIDELINES

Summary of The Finance (Miscellaneous Provisions) Act 2016 - Important amendments for the Banking/Financial Sector

Relevant Acts amended	Main Measures
BANK OF MAURITIUS ACT	<p>BoM will regulate and supervise bank holding companies and monitor intra group transactions and those between the group entities and related parties.</p> <p>BoM will coordinate with the FSC and Statistics Mauritius with a view to harmonizing the rules and practices governing the collecting, compilation and distribution of statistics.</p> <p>BoM to use data maintained at the Mauritius Credit Information Bureau for supervisory purposes and financial stability assessment.</p> <p>BoM has the power to issue instructions without approval of Minister and the instructions shall be published in the Gazette.</p>
BANKING ACT	<p>New definition of banking licence - means either a banking licence or an Islamic banking licence or a private banking licence.</p> <p>“Investment banking business” has been removed from the definition of “bank”.</p> <p>The supervision of credit unions has been removed from the purview of BoM.</p> <p>Financial holding company to comply with such prudential requirements as BoM may specify.</p> <p>BoM can issue guidelines, instructions or directives to ultimate and intermediate financial holding companies incorporated in Mauritius.</p> <p>Bank of Mauritius to refuse an application for a banking licence from a group which already has a banking licence and is predominantly engaged in banking activities.</p> <p>Monthly statements to be furnished to BoM - to obtain relevant information and for carrying out effective consolidated supervision.</p> <p>BoM may carry out an independent valuation of the assets of a bank which holds collateral.</p> <p>It is mandatory for banks to rotate audit firms every 5 years instead of partners in a firm of auditors.</p> <p>Financial institutions can make disclosures to its parent company or head office with regard to its affairs and client portfolio, subject to duty of confidentiality.</p>
CODE CIVIL MAURICIEN	<p>Article 8 amends the Code Civil Mauricien to bring clarification to the application of Article 2202-6 of the Code Civil Mauricien regarding capitalisation of interest. Henceforth, this Article will be subject to Article 1154 which does not allow the capitalisation of interests which are due for less than a year.</p>
FIAMLA	<p>Removal of credit union from the definition of bank and FIU to issue Guidelines to controllers or auditors of credit unions.</p> <p>Reporting to FIU must be done not later than 15 working days from the day on which the bank becomes aware of a transaction which it has reason to believe may be a suspicious transaction.</p>
FINANCIAL SERVICES ACT	<p>Approval of FSC should not be sought for transfer of shares/legal/beneficial interest less than 5%. GBC2 may also invest in investing in any securities listed on a securities exchange licensed under the Securities Act 2005.</p> <p>The bank should apply and receive approval for Investment Banking licence with the FSC. The Investment Banking Licence will allow a bank to conduct the activities of an investment dealer (full service dealer, including underwriting), investment adviser (unrestricted), investment adviser (corporate finance advisory), asset management, distribution of financial services. FSC issued the Draft Investment Banking Rules for consultation on 26 September 2016.</p> <p>Regulations for the setting up of an online centralized Know Your Customer (KYC) database for the non-banking financial services sector.</p>
BUSINESS REGISTRATION ACT	<p>The Registrar of Companies can issue business registration card electronically.</p>
COMPANIES ACT	<p>The Registrar may issue, electronically or otherwise, a certificate of incorporation in such form as the Registrar may determine.</p>
INCOME TAX ACT	<p>New Section pertaining to Unexplained Wealth added - where the Director-General of MRA has reasonable ground to suspect that a person has acquired unexplained wealth of 10 million rupees or more, he shall make a written report to the Agency specifying the full name and address of the person and the sum of the unexplained wealth (as per Good Governance and Integrity Reporting Act 2015).</p> <p>Submission of statement of assets and liabilities to MRA by individuals deriving net income and exempt income exceeding Rs 15m, or owning assets exceeding Rs 50m.</p>

RECENT ACTS, REGULATIONS, RULES & GUIDELINES

Act	Date of Amendment
Banking (Processing and License Fees) Regulations 2016	September 2016
Bank of Mauritius Guidelines	
Guideline on Standardised Approach to Credit Risk	October 2016
FSC Rules	
Draft Investment Banking Rules (for consultation)	October 2016
Insurance (Risk Management) Rules 2016	November 2016
Draft Securities (Preferential Offer) Rules for consultation	November 2016
Regulation of Funeral Scheme Management Business	November 2016
MRA Guidance Notes	
Guidance Notes on Implementation of CRS	September 2016



OECD COMMON REPORTING STANDARD

The Common Reporting Standard (CRS)

The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world. It provides a forum in which governments can work together to share experiences and seek solutions to common problems.

The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. Under CRS, Mauritius Financial Institutions will have to report annually to the Mauritius Revenue Authority (MRA) on the financial accounts held by non-residents for eventual exchange with relevant treaty partners. The first reporting period ends on 31 December 2017 and will have to be made to the MRA by 31 July 2018 for eventual exchange with the relevant treaty partners by 30 September 2018.

Thus financial institutions will have to carry out due diligence procedures to identify reportable financial accounts on residence basis. A distinction is made between individual and entity accounts, between pre-existing and new accounts as well as between low value and high value accounts.

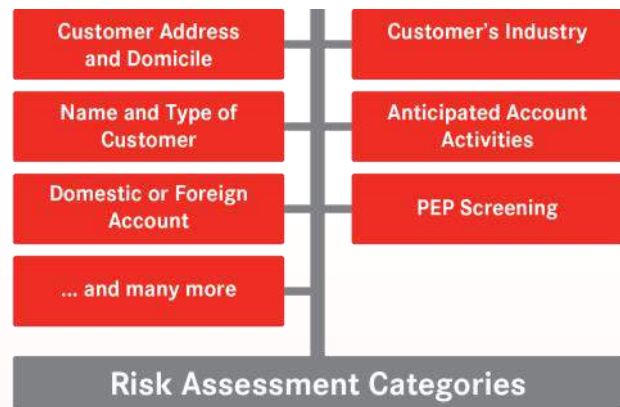
The MRA has issued Guidance Notes for the implementation of CRS and these are available on the MRA website: <http://www.mra.mu/index.php/business-corporation/crs>

RECENT SUPREME COURT JUDGMENTS

Judgments	Summary
THE MAURITIUS COMMERCIAL BANK LIMITED v. HAJEE ABDOULA A. S. [2016 SCJ 304]	<p>This is an application under section 251 of the Insolvency Act 2009 (Act) pursuant to which a secured creditor who is affected by appointment of an administrator may apply to the Court for an order granting leave to him to enforce his security. Les Pailles Limitée and La Digue Limited (Companies) resorted to a deliberate scheme designed to prevent the applicant from enforcing its securities and the court found that “serious prejudice will be caused to the secured creditor (the applicant) if leave is not granted and in the light of the facts of this case this prejudice clearly outweighs any prejudice that could be caused to the other creditors”. The court accordingly granted the applicant leave to proceed to enforce its securities under section 251 of the Act and ordered the respondent not to dispose in any manner whatsoever of the assets of the Companies.</p> <p>Furthermore, note that pursuant to Section 251(4), the court is to proceed and hear the case within seven days of receipt of the notice of objection. This was uploaded on the e-filing system some twenty days outside the prescribed time limit. However, the court has the power to extend the time limit for hearing the application by virtue of the provisions of Section 402(1)(2) and (4) of the Act if the court thinks appropriate and there is no risk of substantial injustice which cannot be remedied by an order of the Court, to validate proceedings in case of “any defect, irregularity or deficiency of notice or time”. The court found it appropriate to declare, pursuant to section 402(2) of the Act that the proceedings were valid notwithstanding “the deficiency of time”.</p>
INEX LIMITED v THE DEVELOPMENT BANK OF MAURITIUS [2016 SCJ 316]	<p>The defendant granted loan facilities to the plaintiff in the sum of Rs 18m pursuant to which, the defendant created a fixed and floating charge on the buildings, plant, machinery and other fixed assets belonging to the plaintiff.</p> <p>The plaintiff could not reimburse the loan in accordance with the terms of the agreement and the loan was rescheduled several times on the plaintiff’s negotiations. The defendant informed the plaintiff that it was compelled to take legal steps to safeguard its interests and appointed a receiver/manager. Pursuant to a further meeting with the plaintiff, the defendant agreed for the plaintiff to settle the outstanding debt together with the receivership costs, failing which, the offer would lapse and the defendant would proceed with the receivership of the plaintiff. Plaintiff subsequently applied for an order restraining the receiver/manager from proceeding with the receivership but subsequently withdrew the application and paid the amount claimed by the defendant. Plaintiff was now claiming that the defendant’s breach of contract caused it to suffer hardship, damage and prejudice. Pursuant to the loan agreement, the defendant had to give sixty days’ notice to the plaintiff prior to recalling the loan.</p> <p>The court held that the initial debt had subsisted all along (each reschedulement had not brought about a “novation” of the contract) and it was only the terms of repayment which had been changed with each reschedulement.</p> <p>Plaintiff failed to prove its case that the loan agreement which it had entered into with the defendant and the computation of interest following its failure to pay the loan as undertaken, is harsh, unconscionable or in breach of the law for any of the reasons invoked by it. Defendant had acted in all fairness to the plaintiff.</p>
MARC BLANCARD M. J. J. v THE MAURITIUS COMMERCIAL BANK LIMITED [2016 SCJ 343]	<p>This was an application for a mandatory injunction. The applicant sought to justify his delay of more than 10 years in lodging the application – the ground being that he had been waiting for the co-respondent to enter the main case. Unexplained and unjustified inordinate delay to initiate an equitable action before the Judge in Chambers defeat such action. The purported explanation from the applicant was therefore unacceptable.</p>
BEEGOO R v INDEPENDENT COMMISSION AGAINST CORRUPTION & ANOR [2016 SCJ 298]	<p>This was an appeal against conviction. The appellant was prosecuted for conflict of interests, in breach of section 13(2) and (3) of the Prevention of Corruption Act, found guilty and sentenced to 3 months’ imprisonment. He took part in the decision of the Tobacco Board to grant a temporary permit to grow tobacco to the applicants who were on the list and that included the appellant’s wife. The conviction and sentence were quashed in view of the recent decision in P.K. Jugnauth v The Independent Commission Against Corruption & Ors [2016 SCJ 187].</p>
ATELIER ETUDE LIMOUSIN & ORS v BPCE INTERNATIONAL ET OUTRE MER & ANOR [2016 SCJ 300]	<p>This case concerned the requirement to furnish security for costs under article 21 and 166 (furnishing of security for foreign litigants) of the Civil Code. Notwithstanding the exemptions laid down in the law, the Court in exercising its equitable jurisdiction has the discretion to order security for costs, even in the case of a foreign plaintiff. The plaintiff who was a foreign national and did not own any immoveable property in Mauritius was bound to provide security for costs.</p>

DEVELOPING A CLIENT SELECTION STRATEGY

Whether a bank is large, small, regional or international, it is imperative to have a stated client selection strategy. A strategy will define which clients are appropriate to engage and retain based on the institution's risk assessment. The strategy will contain attributes such as desired industries, acceptable geographies and range of products which are offered. By developing a client strategy, executive management can clearly define which clients fall inside and which fall outside the acceptable range. In addition, the strategy guides sales and relationship management, informs operation and underwriting, and supports the efforts of compliance and audit.



DESIGNING A CLIENT SELECTION STRATEGY

A well-designed client selection strategy has several components that drive line of business growth. These components define the parameters of a desired client. Each component parameter includes a score which, when compiled, provides an overall score. For example, each parameter is measured using metrics such as high, medium or low risk. Prospective clients who fall outside the acceptable range when scored should not be pursued by the sales teams.

Components may include the following:

- Client size (sales, revenue, asset size)
- Client segment (small businesses, middle market, large corporate, international)
- Products used (varies with treasury management products available, credit, investment banking)
- Country where the client is headquartered and has additional operations (identifies countries which bank policy may not support)
- Client location (in footprint or out of footprint)
- Credit rating (from industry rating agencies as well as internal bank credit ratings)
- Risk rating (as determined by the bank's internal risk rating process)
- Industry (limits industries to those which conform to the bank's risk appetite)
- Reputational risk to the bank (identifies clients who have civil or regulatory violations, offer unusual product, are part of a risky industry or may have underdeveloped policies or inadequate regulatory controls)

Once these parameters are defined, the second line of defense (compliance) can review how each parameter is weighed and the criteria for how each parameter is scored. With parameters defined and scored, the conversation dramatically changes between the second line of defense and the first line of defense (sales and relationship management). It is critical for sales to continually review the strategy once it is in place to monitor changes in the landscape.

Sales management can leverage the strategy to define criteria when creating databases of prospective clients.

These prospect lists are then distributed to the sales teams to begin the sales process. Without a client selection strategy, the sales organisation may bring in relationships with little regard to the bank's risk appetite.

In addition, knowing and understanding how compliance has developed its client selection strategy will enable compliance to support and refine the strategy. Sales management can offer input as the client selection strategy is developed to identify components of higher risk. A well-defined strategy identifies which clients are desired and also allows the second line of defense to ensure compliance with regulations and regulatory guidance.

IMPLEMENTING A CLIENT SELECTION STRATEGY

Once a client selection strategy has been developed, it is imperative to quickly implement it. Sales management uses this opportunity to communicate the importance of the strategy, develop the tools sales will use to identify clients and define an escalation process for policy exceptions. Reporting tools will be developed to show adherence to the strategy. The audit teams, as the third line of defense, can request the client selection strategy document prior to launching a review. The strategy demonstrates to audit teams that the line of business has a plan to pursue desired clients, segments and industries and shows a deliberate business growth and expansion plan which is supported by compliance.

The last major step in implementing the client selection strategy is to create reporting tools which will measure the effectiveness of and adherence to the strategy.

In summary, the benefit of developing a client selection strategy is to define how sales will adjust new client prospecting to align with the institution's risk appetite and strategy. The strategy provides the sales organisation a road map with guardrails to guide new client acquisition. With a client selection strategy in place, the sales team can pursue clients who fit the bank's risk appetite. Desirable clients are onboarded and undesirable clients are not pursued. This ultimately leads to a reduction in exposure to the risk of regulatory violations or illegal activities.

ELECTRONIC KNOW YOUR CUSTOMER (E-KYC): ANTI-MONEY LAUNDERING IN THE DIGITAL ERA

KYC is one of the required processes imposed on banking and financial institutions and certain types of reporting entities under the anti-money laundering law (AML law). For banking and financial institutions, they need to comply with both the KYC process under AML law and the criteria issued by the supervising regulator.

Banks and other Financial institutions are now moving in the digital era whilst adopting innovative style. E-KYC is a new revolution which enable completion of the KYC process online with direct authorization of the customer. The key objective of e-KYC is to reduce turnaround time and paper work. This new concept would be a boon for the banking and financial services sector. With e-KYC, customers can actually open an account and complete the KYC formalities online in real time, which will be much simpler and less time consuming.

The key requirements for e-KYC are:-

1. **Concept** - The e-KYC procedures must have the same standards as the KYC procedures usually conducted where the relationship is established face-to-face. Account opening for deposit acceptance or fund acceptance can only be available for 'individual customers';
2. **Permissible method/technology** - Banks and financial institutions must use the method that can replace face-to-face interaction, by ensuring that the staff can interview and observe the customers behavior on a real-time basis;
3. **Electronic document and electronic signature** - KYC documents in the form of electronic data and electronic signature under the law on electronic transactions can be accepted;
4. **Verification of customers' information and identification documents** - For account opening via the bank's/financial institutions' electronic device, the verification must be done by using system of relevant government authorities that verifies address and ID cards;
5. **Record Keeping** - Banks and other financial institutions must keep the information and KYC documents or their copies, as well as images, sound recordings and transactions logs, in accordance with the record keeping period under the law.

The Bank of Thailand has introduced a new regulation to facilitate the Know-Your-Customer (KYC) process by using an electronic means (e-KYC) for account opening for deposit acceptance or fund acceptance from public. It has set out in its financial sector master plan that it will cooperate with relevant government entities to support the access and data connection to the civil registration and the interconnection among financial institutions and e-payment service providers. The relevant authorities will together stipulate e-KYC policies from all aspects, e.g. legal and IT infrastructure in order to facilitate electronic transactions and services.

Source: Global Compliance News

Mauritius Bankers Association (MBA)

The Mauritius Bankers Association Limited (MBA) regroups all banks licensed and authorized to conduct banking business in Mauritius. In 1967, MBA was first established and consisted of five banks namely Bank of Baroda, Barclays Bank, D.C.O, Habib Bank Ltd, The MCB and The Mercantile Bank. Now over the years, its membership has increased to all banks operating in Mauritius.

The Objectives of the MBA are:

The protection, development and representation of the rights and interests of its members and the support of the interests of its members in their relations with Governmental or other public institutions; the provision of a platform to facilitate the study of all questions and problems relating to the business of banking and finance; the establishment and promotion of conditions conducive to competitive, responsible and profitable banking and finance business; the encouragement of the study of questions affecting the science of banking and finance and any other field related to the banking and finance business.

The MBA consists of 20 members

ABC Banking Corporation Ltd	AfrAsia Bank Ltd	Bank of Baroda Ltd	Bank One Ltd	Banque Des Mascareignes Ltee
Banyan Tree Bank Ltd	Barclays Bank Mauritius Ltd	Century Banking Corporation Ltd	Deutsche Bank (Mauritius) Ltd	Habib Bank Ltd
HSBC Bank (Mauritius) Ltd	Investec Bank (Mauritius Ltd)	MauBank Ltd	PT Bank Maybank Indonesia	SBI (Mauritius) Ltd
SBM Bank (Mauritius) Ltd	Standard Bank (Mauritius)	Standard Chartered Bank (Mauritius) Ltd	The Hong Kong and Shanghai Banking Corporation Limited	The Mauritius Commercial Bank Ltd

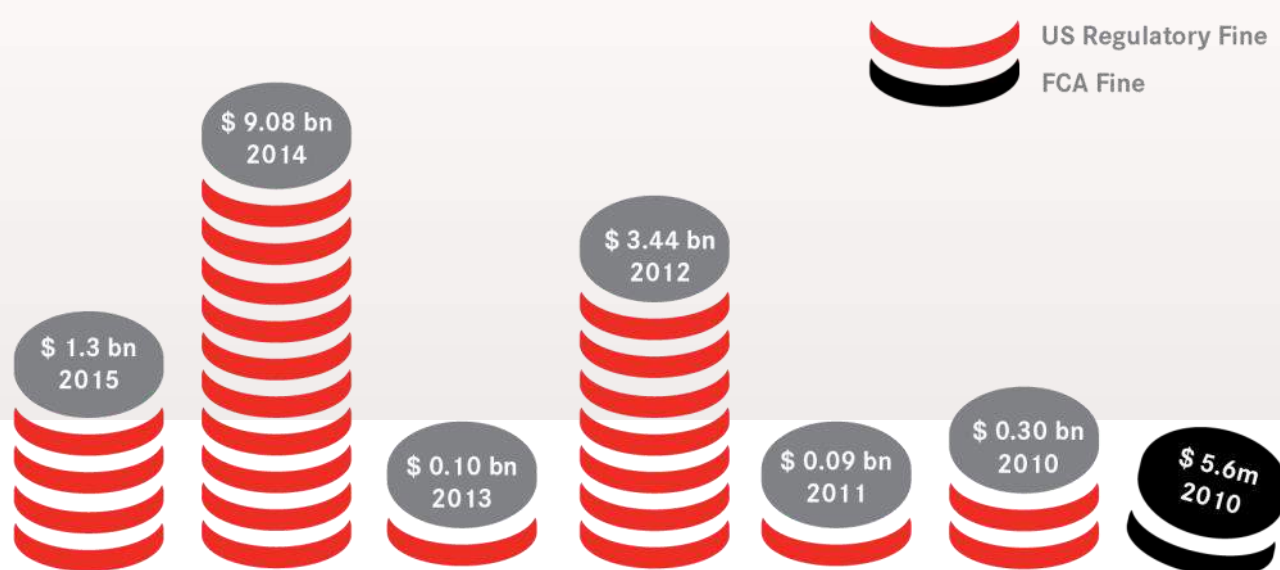
The MBA often provide trainings for bankers to adapt to the new changes in the market, amongst which are Financial Crime Prevention Compliance; Understanding Derivatives; Customer Service in the Banking Sector; and Cyber Security Breach/Attacks for Banks.

Source: MBA Website

FACING THE CHALLENGE OF SANCTIONS

Banks are struggling to comply with changing regulations coming from every direction. But one of the most overwhelming challenges is complying with sanctions imposed on rogue individuals or institutions. The US, EU and UN maintain separate sanctions lists, and doing business with an entity on one of those lists risks serious implications – namely astronomical fines, regulatory penalties, a bloodied reputation and public criticism. Sanctions aim to achieve domestic and foreign policy goals set by national governments and international bodies, such as **diminishing the power of regimes considered to be a security threat or oppressive to their subjects, cutting off international criminals from the financial system or preventing the proliferation of weapons of mass destruction**

Most sanctions-setting bodies (OFAC/UN/EU/UK) publish lists that allow organizations to determine whether a specific transaction is prohibited because it involves a sanctioned party and banks must know which individuals, entities and countries are subject to sanctions. Furthermore these lists are subject to change at any time and therefore banks must ensure they are using current information. The Office of Financial Sanctions Implementation (OFSI) helps to ensure that financial sanctions are properly understood, implemented and enforced in the UK. Below is a summary of financial sanctions fines for financial institutions in UK between 2010 and 2015. (<http://pwc.blogs.com/deals/2016/01/uk-financial-sanctions.html>):



The initial challenge is at the customer onboarding stage. It is imperative that a tight distinction be drawn between sanctioned individuals/entities and politically exposed persons (PEPs). Identification of a potential customer as a PEP creates the need for enhanced due diligence, both at account opening and during the life of the business relationship. However, if a customer is identified as being designated under a sanctions regime, it is a very different matter. A lot will depend on the regime under which the customer is designated, but if it is one that covers the jurisdiction in which the bank operates then the bank cannot do business with him/her.

Any identification of designation will be a major red flag and it is important to fully investigate the nature of the sanctions regime in question and why the applicant concerned is designated thereby. Further to investigation, **escalation to senior management for a decision is essential.** However, where relevant, **a suspicious activity report should be submitted and the bank should refuse to do business with such sanctioned parties.**

Another difficulty is that many of those subject to sanctions have developed sophisticated means of hiding their interest in assets that should, for example, be frozen. This follows the layering process used in money laundering, utilizing front companies, proxy account holders and placement of the assets in jurisdictions with less than perfect controls. It is therefore very difficult to establish the involvement of a sanctioned individual or company in any business relationship. **It is thus important for banks to have proper KYC process in place, to properly record and document the identification of beneficial owners and conduct effective screening of the names.**

In-depth risk assessment, combined with diligent customer and UBO identification and regular client screening with a good quality name checking solution help in minimizing the chances of doing business with sanctioned customers.

Source: <https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>, <http://www.acams.org/>



Valérie HOUBERT is the Directrice de la Conformité (*Head of Compliance*) et des Contrôles Permanents at Banque des Mascareignes Ltee.

She has over 10 years of experience in Banking and in the Compliance field. Prior to joining Banque des Mascareignes this year, she has worked as Head of Legal and Compliance and MLRO at Standard Chartered Bank Mauritius Limited.

She is currently chairing the Mauritius Bankers Association Compliance Committee.

Tell me about your experience and the main challenges as Head of Compliance of an International Bank

Working as Head of Compliance of an International Bank has its advantages and challenges. Being part of an International Bank, the compliance culture and the control framework are already well established as per international standards at the Group level and embedded in the Group policies and procedures, which is a clear advantage. In my opinion, the main challenge remains the 'customisation' of the Group norms and policies to the local context of Mauritius without diluting their effectiveness and ensuring that the essence of the international standards is captured locally.

What do you think are the major issues challenging the banking system in Mauritius regarding AML/KYC

I believe the regulatory framework regarding AML / CFT and KYC is very much in place in Mauritius. The major issues remain the implementation of these norms in the banking system and the alignment to new businesses and products in the global business sector and also to the digital era in banking.

According to you, what constitute an effective compliance program

Compliance risk has become one of the most significant ongoing concerns for financial-institutions in the last decade and a key priority for senior management. Nowadays the Compliance function is no longer seen as the advisor of the bank on statutory rules and regulations, but as an active contributor in the overall risk management framework of the bank in order to protect the interests of all its stakeholders and ensure the sustainability of the bank. As such, an effective compliance program comes with a strong compliance culture within a bank which can only exist where there is a sense of ownership by all staff and partnership between Compliance and the Business.

In conformity with FIAMLA 2002 and Regulations, do you think all banks have the requisite tools for combating money laundering and terrorist financing

Banks have implemented many tools for combating money laundering and terrorist financing in Mauritius since the enactment of FIAMLA in 2002, especially with regards to transaction monitoring and suspicious activities reporting. But AML/CFT measures can't be static and need to evolve in line with new trends of money laundering and terrorist financing. Banks need to anticipate new types of crimes such as cyber-crimes and find new ways and tools to combat same.

CORRESPONDENT BANKING AND 'DE-RISKING'

Correspondent banking relationships allow financial institutions to provide a number of services to their clients including payments across jurisdictions and in various currencies as well as being an invaluable service in international trade. Suffice to say that correspondent banking is a key cog to international finance.

There is currently a lot of concern among regulators, international organizations such as the Commonwealth, a number of small island developing states and some specific businesses of the risk that correspondent banking services may no longer be available to them. This has led to a keen interest from a number of stakeholders in the banking and finance industry globally.

The trend in correspondent banking services can be summarized as follows:

- Some banks are able to maintain correspondent banking relationships
- Other banks are being cut off from networks
- The availability of correspondent banking for some transactions will narrow

From both a business and compliance perspective, there is **evident and growing pressure to ensure adherence to norms set by correspondent banking service providers** and these include the very **operational and time consuming KYC of clients of correspondent banks**. While some correspondent banks are able to comply with what is referred to as KYCC, those who are stretched and cannot comply risk being cut off from correspondent banking services.



In most cases, **correspondent banks would need to pass some tests and fit definite criteria** before correspondent banking services are allowed and these include stringent internal controls on payments and KYC. Correspondent banks are now used to receiving regular visits from representatives of correspondent banks and be grilled on various aspects of the correspondent bank's controls.

In most cases correspondent banks take into consideration a number of factors before engaging or disengaging from certain relationships and these generally include the risk-reward trade-off. It can safely be assumed that **increasing regulatory pressure on compliance through hefty fines, capital/liquidity costs and anti-money laundering/terrorism financing to be some of the most important drivers of the risk in the choice-making.**

This state of matter has led to the concept of 'de-risking' which has the potential of turning into actual macro-economic issues for certain jurisdictions as well as a head ache for certain banks as they risk being cut off altogether from the international banking system.

The consequences of 'de-risking' can be very damaging if followed globally as it can endanger financial stability, especially of small states, and hinder economic growth/development goals as well as much needed financial inclusion. Additionally, it can have the perverse consequence of driving transactions which have no criminal background into a parallel unregulated system with the end result that criminal organizations, not to mention terrorists, could actually benefit.

The bottom line is the rising expenses and this has led to regulators such as:

- (i) the US Treasury Department educating financial institutions as to what constitutes activities related to sanctions,
- (ii) better AML/CFT frameworks,
- (iii) the Financial Stability Board having developed an action plan on correspondent banking and
- (iv) the Financial Action Taskforce clarifying the concept of "knowing your customer's customer".

Amid all these positive actions, there is still a perception among correspondent banks that 'de-risking' will not end so soon and there remains a persistent feeling that we have not seen the last of it.

FACING THE CHALLENGE OF COMBATING TERRORIST FINANCING

While different from money laundering, terrorists often exploit similar weaknesses in the financial system. Terrorist cells exercise several methods to raise and “clean” their money, ranging from illegal activities like organized fraud or narcotics, to legitimate funding sources, including charitable organizations or legitimate businesses. It is a well-known fact that “funding is the lifeblood of terrorist organizations” and funds are used broadly for:

- Operations & Coordination Innovation
- Propaganda and recruitment Salaries and member compensation
- Training of new recruits Social services

Terrorist financing threat must be looked at on two levels:

Organizational level - The flow of funds to and from organisations must be closely monitored. Charitable activity in the region, especially in Syria and other high risk countries, should be considered a challenging and a sensitive red flag requiring enhanced due diligence (EDD);

Individual Operative level - Individual group members coming from Iraq, Syria and other high risk countries would be more inclined to be engaged in money services business (MSB) transactions and hawala activity (underground banking activity).

The best chance to prevent terrorists from succeeding is to disrupt their ability to raise, move, store and access money and identifying terrorist financing is one of the biggest challenge banks are facing. **In order to protect themselves, it is crucial that banks ensure a high degree of transparency and have adequate control and procedures in place that enable them to know the person with whom they are dealing.** The basic steps of adequate CDD measures for new and existing customers are the appropriate identification of a customer and/or beneficial owner, the verification of the identity of the customer or beneficial owner, as well as the collection of information on the customer's purpose and nature of the business relationship.

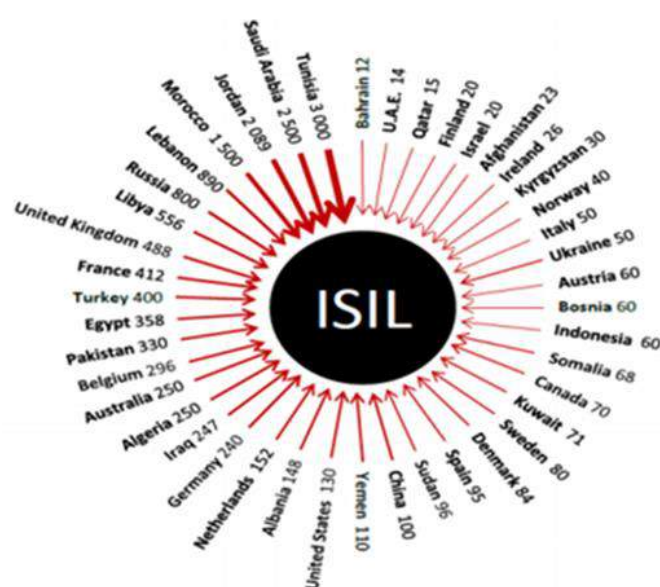
Proper continuous screening of customers and payment transactions is also essential.

Furthermore, proper staff training, detecting and reporting terrorist financing red flags is the most effective way to combat terrorist financing and stop the flow of funds.

Financial Action Task Force (FATF)’s report highlights measures to disrupt **Islamic State in Iraq and the Levant** (ISIL, or sometimes referred to as ISIS) financing, for example:

- Request countries to proactively identify individuals and entities for inclusion in the UN Al Qaida Sanctions Committee list;
- Share practical information and intelligence at an international level, both spontaneously and on request, to effectively disrupt international financial flows;
- Suppress ISIL’s proceeds from the sale of oil and oil products, through a better identification of oil produced in ISIL-held territory;
- Detect ISIL fundraising efforts through modern communication networks (social media).

Foreign terrorist fighters (FTFs) continue to be a relatively small, but important source of funding for ISIL. According to US government information, as of December 31, 2014, at least 19,000 FTFs from more than 90 countries have left their home countries to travel to Syria and Iraq to join ISIL.



Breakdown of FTFs by country of origin (Source: FATF Paper – FINANCING OF THE TERRORIST ORGANISATION ISLAMIC STATE IN IRAQ AND THE LEVANT (ISIL))

Source: ACAMS, International Monetary Fund, FATF

Wells Fargo CEO to forfeit \$41 Million in performance pay after sales scandal

The longtime chief executive of Wells Fargo agreed on Tuesday 27/09 to forfeit \$41 million in performance pay three weeks after the bank acknowledged that for at least five years, thousands of low-level employees set up sham accounts to meet sales quotas. The San Francisco-based bank has repeatedly apologized for the scheme and had fired 5,300 employees for misconduct and put in place more stringent internal controls. But that has not been enough for lawmakers, who have been pushing for the company's top leaders to give back the millions of dollars in bonuses they earned while the irregularities were occurring. In early September, Wells Fargo was fined \$185 million by regulators after it discovered that thousands of employees were setting up unauthorized accounts, including credit cards and checking accounts, that customers had not requested. In some cases, the customers were charged various fees for accounts they did not know existed.

Source: *The Washington Post*: 28 September 2016

US Banks use Brexit as a 'handy excuse' to move senior staff

A number of US banks have been hiring senior staff on the Continent instead of in London following the UK's vote to leave the EU. In an interview with the *Financial Times*, headhunter DHR International said that Brexit has prompted plenty of organisations to accelerate existing plans to move staff. Stéphane Rambosson, who heads DHR's European financial services team, said: "For some Brexit is that handy excuse for getting on with the unpleasant task of moving jobs outside London. Companies can make savings of up to 40 per cent through cutting costs by moving these roles outside of London to cities such as Warsaw, Lisbon or Dublin." He added that hiring for senior positions in corporate and investment banking in Paris and Frankfurt was "part of the first step in expanding their presence in mainland Europe" and that: "UK candidates are increasingly making it clear that they are willing to move out of London to roles elsewhere in Europe — whilst firms are instructing us to fill roles overseas that might previously have gone to London."

Source: *Financial News*: 28 September 2016

U.S may consider lifting sanctions on Afghan warlord

The United States may consider lifting sanctions on one of Afghanistan's most notorious warlords after a peace accord was signed in the Afghan capital on Thursday, according to U.S. official.

Afghan president Ashraf Ghani formalized the controversial arrangement with Gulbuddin Hekmatyar in a deal the government hopes will lead to more peace agreements. Surrounded by hundreds of Afghan officials, many former warlords and rivals themselves, Ghani signed a pact that opens the door to the militant faction of Hezb-i-Islami, led by

Hekmatyar, playing an active role in politics. A controversial figure from the insurgency against the Soviets in the 1980s and the civil wars of the 1990s, Hekmatyar has been designated a "global terrorist" by the United States, which has been leading an international military mission in Afghanistan for the past 15 years. As part of the deal, the Afghan government agreed to lobby international organizations to lift sanctions on Hekmatyar and Hezb-i-Islami.

A U.S. official told the Reuters that they 'will seriously consider any sanctions delisting request put forward by the government of Afghanistan and if the security council deems the sanctions imposed on certain individuals to be outdated and no longer in the interest of Afghan peace and stability, then they will need to reconsider these measures'.

The U.S. Embassy, the United Nations, and other international organizations have publicly praised the accord as a step toward resolving the conflict in Afghanistan.

Source: *Reuters*: 29 September 2016.

Whistleblower Gets \$17 Million in Second-Biggest SEC Award

The U.S. Securities and Exchange Commission is giving a \$17 million award to a former company employee who gave information that helped advance an agency investigation. Whistleblowers are eligible for an award if they voluntarily provide the SEC with unique information that leads to a successful enforcement action. The awards can range from 10 to 30 percent of the money collected on sanctions beyond \$1 million. By law, the SEC doesn't reveal the identity of the whistleblowers. The agency issued a \$30 million award -- the largest ever -- in September 2014. So far this month, the regulator has announced awards totaling more than \$26 million to five individuals. The program, which started in 2011, has awarded more than \$85 million to 32 whistleblowers.

Source: *Bloomberg*: 29 September 2016

India-based Telefraud Scam Involved Banks, U.S. Monetary Instruments

U.S. officials on Thursday accused more than 60 individuals and companies in the United States and India with bilking as much as \$250 million from thousands of Americans and using banks, remittances, prepaid cards and hawala transfers to launder the profits.

Source: *ACAMS*: 27 October 2016

U.S. House Lawmakers Seek Renewal of Counterterrorist Financing Panel

A pair of U.S. lawmakers will soon push for the counterterrorism panel they lead to be reauthorized for another six months to consider whether additional legislation is required to choke off funds to Islamic State and other blacklisted groups.

Source: *ACAMS*: 31 October 2016



SUMMARY OF THE LAST ISSUE - COMPLIANCE DIGEST ISSUE NO. 2

The Compliance Digest Issue No.2 is available through this [link](#).

In the second issue of the Compliance Digest, readers were able to grasp:

- An update in the Legislations, Rules , Guidelines and recent Supreme Court Cases
- An insight of the MBA Code of Ethics and of Banking Practice by the Chief Executive of the Mauritius Bankers Association, Mrs Aisha Timol
- Global Insight by Yogesh Gokool
- Articles on Modern-Say slavery, the Importance of CDD and EDD process and also The Panama Papers
- A glimpse of the global news on the financial industry around the world.

ACHIEVEMENT OF THE BANK

In October 2016, AfrAsia Bank Limited celebrated its nine years of existence in the Banking Industry.

Moreover, AfrAsia Bank Limited has been awarded the best Mauritian Bank from Global Brands Magazine (UK) for:

- Most Innovative Treasury Services;
- Best Financial and Investment Solutions Provider;
- Best Credit Card Rewards Program

Compliance Digest is a newsletter issued by the Compliance Department of AfrAsia Bank Limited. Compliance Digest is issued quarterly and provides updates and important compliance and risk management issues.

The editors welcome ideas for articles in future issues. Please send your ideas or submissions to Anil Fangoo at Anil.Fangoo@afasiabank.com or to Khusboo Puryag at Khusboo.Puryag@afasiabank.com;



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