Compliance Digest

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AFRASIA bank different

Dear Readers,

Welcome to the July edition of our quarterly Digest in which we bring to you compliance and risk management related articles.

This Digest provides some updates in the Legislations, Regulations, Rules and some recent Supreme Court Judgments.

Following the 4th issue of the MBA Code of Ethics and of Banking Practice (2016 Edition), the Chief Executive of the MBA, Mrs Aisha Timol, has provided an insight of the code.

Moreover, there are some interesting articles on improving investigation through the CDD and EDD process, Panama Papers, Modern-day Slavery and an interview with Mr Yogesh Gokool for a global cognisance.

Finally , you will browse Compliance news and some case studies from various jurisdictions.

We wish you a pleasant and fruitful reading!

Anil Fangoo, CAMS
Head of Compliance & Editorial Team

THE IMPORTANCE OF COMPLIANCE CULTURE IN A BANK

Compliance starts at the top. It will be most effective in a corporate culture that emphasises standards of honesty and integrity and in which the board of directors and senior management lead by example. It concerns everyone within the bank and should be viewed as an integral part of the bank's business activities.

A bank should hold itself to high standards when carrying on business, and at all times strive to observe the spirit as well as the letter of the law. Failure to consider the impact of its actions on its shareholders, customers, employees and the markets may result in significant adverse publicity and reputational damage, even if no law has been broken.

Compliance should be part of the culture of the organisation; it is not just the responsibility of specialist compliance staff. Nevertheless, a bank will be able to manage its compliance risk more effectively if it has a compliance function in place.

A bank should organise its compliance function and set priorities for the management of its compliance risk in a way that is consistent with its own risk management strategy and structures.

Regardless of how the compliance function is organised within a bank, it should be independent and sufficiently resourced, its responsibilities should be clearly specified, and its activities should be subject to periodic and independent review by the internal audit function.

IN THIS ISSUE

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MBA CODE OF ETHICS AND OF BANKING PRACTICE - EDITION 2016

The Mauritius Bankers Association has issued the 2016 Edition of the Code of Ethics and of Banking Practice. This is an important tool in our day-to-day dealing within the bank and with customers. Customers as well have access to this document.

The 2016 Edition is the 4th edition of the MBA Code of Ethics and of Banking Practice. The first version was published in 2007 and had then replaced the one issued by the Bank of Mauritius. It was felt that the Banking Code should reflect the commitment of banks themselves, both in an individual capacity and collectively as an industry, to the standards and norms of international best practice and governance in banking matters.

The Code is a dynamic one and is updated on a regular basis every 3 years at least or as and when new directives and guidelines from the central bank are issued or new practices emerge. As from 2013, a Code of Ethics was also added to the Banking Code to reflect the values expected of bank staff in the conduct of their business, their delivery of services and in their interaction with clients and other stakeholders. A full copy of the Code is available on the MBA website as well as on your bank website. We hope that this will be a useful document in your everyday work and in dealing effectively with your client base.

Aisha Timol (Mrs), Chief Executive of Mauritius Bankers Association

GUIDELINE ON CORPORATE GOVERNANCE

The Bank of Mauritius has issued its revised Guideline on Corporate Governance on 25 May 2016, effective as from 01 June 2016. As a broad highlight, this brings about more **clarity and demarcation on the roles of the Board of Directors and Senior Management;** entrusting **more responsibility to the audit committee and laid more emphasis on the compliance function's independence and stature as well as the internal audit functions.**

We note that the new guideline provides for the assessment of the performance of the senior officers against tangible measurement being the corporate objectives. This makes the guideline more robust, hence calling for proper internal standards within banks to monitor performance across all levels. This further goes in line with the guideline's requirement for the board of directors (or by delegation, its Nomination and Remuneration Committee) to implement a remuneration and incentive system to stimulate staff motivation to achieve the corporate objectives.

The regulator is setting the tone through this guideline on the Management of Conflict and the responsibility starts from the board not in a general aspect but for a framework to be in place and cascaded down to the organisation. We would tend to believe that this would now require banks to focus more on employee compliance and ensures that there is on-ground adherence to Code of Conduct and or Ethics in banks.

The role of the audit committee have also been re-engineered with the following requirements: the external and internal audit plans are to be approved by the audit committee to ensure that they are risk-based; the audit committee to recommend to shareholders the appointment, removal, and remuneration of external auditors; it should also approve the engagement letter setting out the scope and terms of external audit; the Audit Committee shall approve the remuneration of the Head of Internal Audit; the Audit Committee should assess periodically the skills, resources, and independence of the external audit firm and its practices for quality control; the Audit Committee should assess whether the accounting practices of the auditee are appropriate and within the bounds of acceptable practice.

The Guideline formally calls for more stature of the compliance function with a direct reporting into the board or a committee. This can be considered as strengthening the role of compliance as a second line of defense.

The importance of the third line of defense, which is the internal audit function has also been emphasised, and it is noted that the board and management shall contribute by requiring internal auditors to adhere to international professional standards, such as those of the Institute of Internal Auditors; ensuring that the internal audit staff has adequate professional background and training to carry out responsibilities effectively; ensuring that the internal audit reports are transmitted to the board and audit committee without any undue filtering of findings by management.

This Guideline would in no doubt help banks to revisit their existing governance framework for better contribution in the running of the banks. For a better appreciation of the Guideline, readers are directed to the Bank of Mauritius Website.

RECENT ACTS, REGULATIONS, RULES & GUIDELINES

Acts/Regulations/Rules	Reference Numbers
Captive Insurance Act 2015	Act No. 32 of 2015
Captive Insurance (Pure Captive Insurance Business) Rules 2016	GN No. 105 of 2016
Banking (Processing and Licence Fees) Regulations 2015	GN No. 1 of 2016
Companies (Payment of Fees to Registrar) Regulations 2015	GN No. 3 of 2016
Financial Services (Consolidated Licensing and Fees) (Amendment) Rules 2016	GN No. 17 of 2016
Income Tax (Amendment) Regulations 2016	GN No. 27 of 2016
National Identity Card (Extension of Validity Period) (Amendment No. 2) Regulations 2016	GN No. 46 of 2016
Securities (Brokerage Fees for Exchange Traded Funds on Foreign Underlyings) (Amendment) Rules 2016	GN No. 42 of 2016
Securities (Disclosure Obligations of Reporting Issuers) (Amendment) Rules 2016	GN No. 104 of 2016

Available on Supreme Court Website

Photo: Assembly of Mauritius

Photo: Supreme Court of Mauritius

Bank of Mauritius Guidelines	Date of Amendment
Guideline on the Recognition and Use of External Credit Assessment Institutions	March 2016
Guideline on Credit Impairment Measurement and Income Recognition	April 2016
Guideline on Credit Concentration Risk	May 2016
Guideline on Corporate Governance	May 2016
FSC Guidelines	
Guidelines for Advertising and Marketing of Financial Products	April 2016

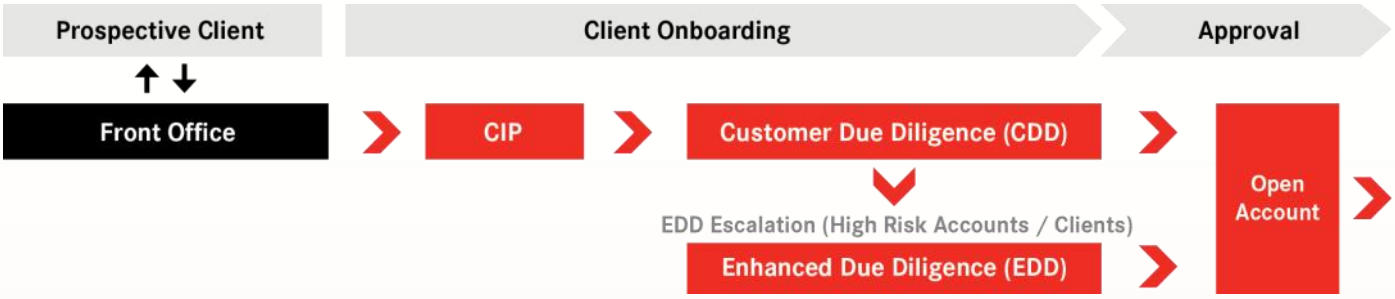
Available on BOM and FSC Website

RECENT SUPREME COURT JUDGMENTS

Judgments	Summary
SATURN INVESTMENTS SARL v WAH BON CHING EDMOND & ORS [2016 SCJ 5]	Plaintiff wishes to (i) assert its rights as an unsecured creditor of Defendant no. 6, GML; (ii) to deny that the Defendants nos. 3, 4 and 5 are secured creditors firstly under a fixed and floating charge under Mauritius laws and secondly under certain share pledge agreements governed by the PRC law which granted them a pledge on the assets of GML in PRC; and (iii) to require the Defendants nos. 1 to 5 to put in escrow the money received on disposal of assets of GML in realising the PRC pledges for eventual distribution pro rata among all the creditors of GML. Court was to look at (a) the validity of the fixed and floating charge under Mauritian Law; (b) the validity of the Chinese pledges under Chinese law; and (c) the alleged joint liability of the Defendants in tort. All of the Plaintiff's claims were dismissed.
BANQUE POPULAIRE DE LA REGION ÉCONOMIQUE DE STRASBOURG V TANGUY A F M H [2016 SCJ 28]	Motion under Art 546 of the Code de Procédure Civile to declare executory in Mauritius a judgment of the Tribunal de Grande Instance de Strasbourg. As there had been an amalgamation between the applicant and Banque Populaire d'Alsace, the applicant was a non-existent entity at the time of the application. Application was set aside.
UBS AG v MCB [2016 SCJ 43]	Application for a stay of Court proceedings in favour of arbitration, contending that the action entered by the respondent was the subject of an arbitration agreement. Respondent failed to show that there was a very strong probability of the arbitration agreement being inapplicable to the dispute and so, judgment was rendered in favour of the applicant.
BALIGADOO U M v SBM [2016 SCJ 44]	Interlocutory judgment on oral evidence which could go "outre et contre" the documents signed by the plaintiff. Plaintiff was not entitled to invoke either "dol" or "fraude" in order to admit any oral evidence for the purpose of establishing the "nullité" of the loan documents signed by her.
ICAC v SAUMTALLY A.S. [2016 SCJ 47]	Making a payment in cash in excess of 500,000 rupees in breach of sections 5 (1) and 8 FIAMLA. As learned Magistrate in the lower court limited herself to the dictionary meaning of "payment" within the meaning of section 5(1) of the Act, the decision of the Magistrate to dismiss the charge was quashed.
BEEHAREE B & ANOR v MCB [2016 SCJ 59]	Sale by levy in respect of two immoveable properties seized by MCB. Court ruled that the lower court rightly rejected the Appellants' view that the seizure was null and void and against the provisions of the Borrowers Protection Act.
ABC BANKING CORPORATION LTD v. GHYARAM K & ANOR [2016 SCJ 91]	Plaintiff claiming from the defendants a sum of Rs 721,088.19 under two finance lease agreements. Judgment in favour of plaintiff, as the defendants having stood as sureties under the agreements, were liable to pay the outstanding balance on the agreements.
FIRST GLOBAL FUNDS LIMITED PCC v TANTULAR R [2016 SCJ 124]	Application for a stay of proceedings on the ground of "forum non conveniens" (court not having jurisdiction to hear the matter). The case had the strongest link and connecting factors with Indonesia. Proceedings were stayed and court ruled in favour of Indonesia as the more appropriate forum.
JOHAR B. H. v. MCB [2016 SCJ 152]	Appeal against decision of lower court to set aside the application to stay the seizure and sale proceedings of two immovable properties of the appellants. Court reaffirmed the decision of the lower court that there was no merit in the application. Appeal was accordingly dismissed.
AULEEAR B. S. v. BANK ONE [2016 SCJ 159]	Bank initiated sale by levy proceedings. Appellant challenged the sale by levy, alleging that the appellant being only a guarantor, the bank should have proceeded against the actual debtor who is primarily liable. The charge instrument made provision for the guarantor to be proceeded against without "benefice de discussion" or "benefice de division", so it was open to the Bank to proceed against the guarantor without first proceeding against the primary debtor.

Available on Supreme Court website

IMPROVING INVESTIGATIONS THROUGH THE CDD AND EDD PROCESS



Regulations and guidance help establish the first line of defense for a bank through a **Customer Identification Program (CIP)** and **Customer Due Diligence (CDD) process**. The CIP regulation establishes minimum standards for each banking customer, but should never be considered adequate information for knowing and understanding a customer's account activities. CIP establishes minimum, risk-based methods for gathering key and discernable information to properly identify their customers. The CDD process builds upon the CIP data, and should be designed to gather additional information, to assist in properly risk rating customers and to identify those banking relationships that pose higher money laundering or terrorist-financing risks. CIP and CDD standards are an important first line of defense for any bank; however, there may be high-risk customers, activities, transaction behaviors, geographies that pose additional risk, and warrant additional due diligence, often termed as Enhanced Due Diligence (EDD).

CUSTOMER IDENTIFICATION PROGRAM

The first step in understanding customers is to identify them. The CIP rule requires four pieces of information that a bank must gather to demonstrate knowledge of its customers: **Name, Date of Birth, Residential or Business address and Identification Number**. Although gathering such information is basic, it *is the responsibility of the bank to build a "reasonable belief that it knows the true identity of each customer"*.

CUSTOMER DUE DILIGENCE

Establishing an effective CDD program is another cornerstone. Once a bank has established the customer's identity, it is critical for the bank to continue understanding their customers through proper due diligence. The bank should gather these information at account opening, but this is **not limited**: Occupation or type of business; Purpose of the account; Products and services that be utilised; Anticipated activity volumes; International transaction frequency; Nationality or place of formation/incorporation among others. By establishing these basic information, the bank will understand the anticipated activity and other traits (risk factors) that will enable the bank to identify potentially higher risk customers. Whatever the customer initially stated, a risk rating should be assessed using the factors as discussed above, and periodically reviewed for a proper understanding of the individual or business activities.

ENHANCED DUE DILIGENCE

Customers, that pose higher money laundering or terrorist financing risk, present increased exposure to the bank. Those customers rated as higher risk should receive further due diligence to ensure that the company or individual is acting within its legal limits and the sources of those funds are from legitimate sources. The following can be used as guidance in performing the EDD.

1. **Customised EDD**—A customised EDD since each business or individual is unique. While businesses and customers can be compared, one cannot argue that a small hot dog stand business is similar to an international trade business. Therefore, the bank should customise reviews based on the customer's risk profile and account activities;
2. **Review the relationship**—Understanding the entire relationship is crucial. It is best practice to understand the structure of an entity and/or group of entities and identify the beneficial owner(s);
3. **Update Account Profile**—Ideally, a new account packet will contain information explaining the type of account activity that a customer will be doing over the year. This creates a baseline for the bank to compare against. When larger deviations occur, the bank should seek to clarify these differences and update the account information for the next review;
4. **Onsite visitation**—Performing onsite visitations could be one of the best practices to truly understand high-risk customers. Whether onsite or while the customer is at the bank, bank representatives should hold periodic discussions with business owners to see if they are expanding their business or venturing into any new business lines;
5. **Negative New Searches**— A negative new search is an easily performed task that provides somewhat indisputable information. Should any adverse information be discovered, the bank representative should document and escalate same to their compliance department for a secondary review.

Source: ACAMS

GLOBAL INSIGHT WITH YOGESH GOKOOL

Hobby: Karate, Cooking & Eating

Favorite color: Red, Green

Role model: Bruce Lee

Favorite Mauritian Dish: Briani

Dream Car: BMW X3

Motto in Life:

"Always be yourself, express yourself, have faith in yourself, do not go out and look for a successful personality and duplicate it."
…Bruce Lee

Yogesh Gokool is the Senior Executive of the Global Business Unit at AfrAsia Bank Limited. He has over 20 years of experience in financial management gained whilst working for International Financial Services Limited, a leading International Management Company in Mauritius. He also worked for Deutsche Bank (Mauritius) where he headed the fiduciary services division. In 2008, he joined AfrAsia Bank Limited. Yogesh is a member of the Society of Trust and Estate Practitioners (STEP), the Association of International Wealth Management (AIWM) and the Mauritius Institute of Directors (MIoD).

Yogesh is also a black belt 2nd Dan in Jyoshinmon Shorin Ryu Karate.

What are the compliance and/or ethics-related challenges you face most frequently in your current role?

Customer Due Diligence is much more than collating a few identification documents on the Customers. We need to really 'Know Your Client (KYC)'. This is more complicated in Global Business as most of the time, we do not meet the customers physically.

How do you think the bank's compliance policies can be improved and/or better applied, communicated and enforced?

Compliance is the responsibility of all staff of the bank and each Head of Department should ensure that a Compliance Culture continues to prevail. Sales staff/frontliners should be even more compliance conscious as they are the first line of defense.

Will the global sector be affected with the recent amendments made to the Double Tax Avoidance Agreement (DTAA). How can the bank reinvent itself?

The Global Business Sector will definitely be affected. However, different stakeholders/ banks will be affected differently.

We have recently conducted an impact analysis at AfrAsia and the results conclude that we are marginally affected. Without being complacent, the Bank should come up with value added products and services in order to attract a diversified client base to Mauritius and, at the same time, ensure proper substance here.

With regard to the recent leaks on Panama Papers, do you think some or all people who use offshore structures are crooks?

Definitely not.

The Panama Papers reveals the names of Clients and Fiduciaries. A distinction has to be made between the two.

Clients also offshore their assets for genuine and legitimate reasons: to mitigate their investment/ political/ legal risks which include currency risks as well as to have an exposure to different asset classes

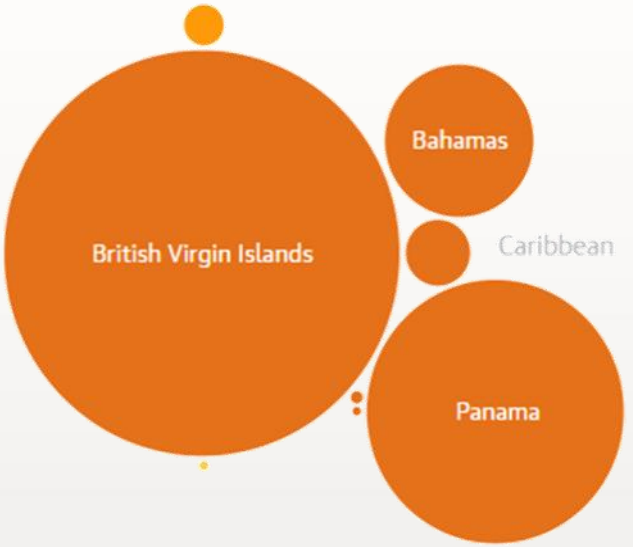
Who is your favorite candidate likely to win the US Presidency Election 2016? Hillary Clinton or Donald Trump?

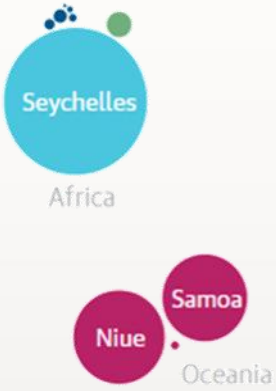
Hillary Clinton!

THE PANAMA PAPERS

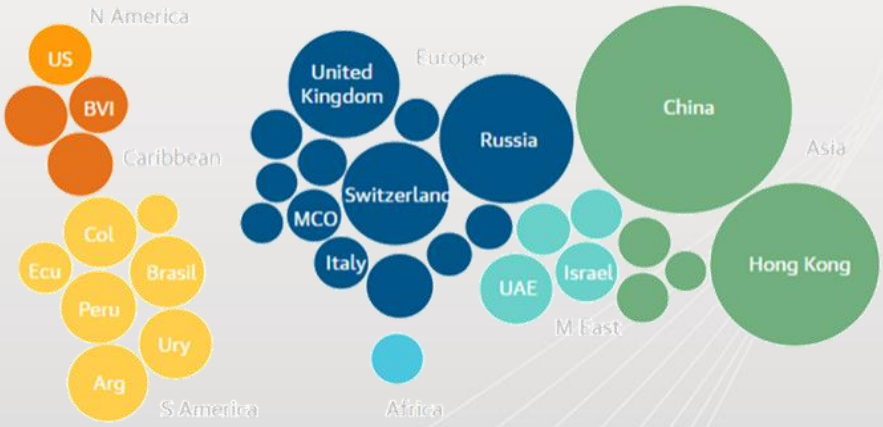
The Panama Papers are an unprecedented leak from the database of the world's fourth biggest offshore law firm, Mossack Fonseca. Mossack Fonseca is a Panama-based law firm whose services include incorporating companies in offshore jurisdictions. It administers offshore firms for a yearly fee and other services include wealth management. Mossack Fonseca's fingers are in Africa's diamond trade, the international art market and other businesses that thrive on secrecy.

The records were obtained from an anonymous source by the German newspaper Süddeutsche Zeitung, which shared them with the International Consortium of Investigative Journalists (ICIJ). **The files show how Mossack Fonseca clients were able to launder money, dodge sanctions and avoid tax.** Twelve national leaders among 143 politicians, their families and close associates from around the world are also known to have been using offshore tax havens.





Source: Guardian graphic | Data obtained by Sudddeutsche Zeitung and distributed by the ICIJ (http://www.theguardian.com/news)



Furthermore ICIJ reports that a 2015 audit found that **Mossack Fonseca knew the identities of the real owners of just 204 of 14,086 companies** it had incorporated in Seychelles, an Indian Ocean archipelago often described as a tax haven. Documents show that banks, law firms and other offshore players have often failed to follow legal requirements that they make sure their clients are not involved in criminal enterprises, tax dodging or political corruption. In some instances, the files show that offshore middlemen have protected themselves and their clients by concealing suspect transactions or manipulating official records. Mossack Fonseca works aggressively to protect its clients' secrets and furthermore it is **related to more than 200,000 companies** for which the firm acted as registered agent. Often used lawfully to anonymously hold property and bank accounts, these companies were registered in a range of tax havens and the map shows the **most popular locations** among its clients. The British Virgin Islands held more than 100,000 companies.

It is very hard to discover where the money comes from because real owners usually hide behind nominees, people with no real control and no assets in the company who simply lend their signature. A small sample of about **13,000 owners from all over the world**, recently compiled by Mossack Fonseca, gives some indication. China and Russia top the list.

Disclaimer from The International Consortium of Investigative Journalists (https://panamapapers.icij.org/):
Nonetheless it is important to highlight that there are also legitimate uses for offshore companies and trusts. There are many legitimate reasons for doing so. Business people in countries such as Russia and Ukraine typically put their assets offshore to defend them from "raids" by criminals, and to get around hard currency restrictions. Others use offshore for reasons of inheritance and estate planning. We do not intend to suggest or imply that any persons, companies or other entities included in the ICIJ Offshore Leaks Database have broken the law or otherwise acted improperly.

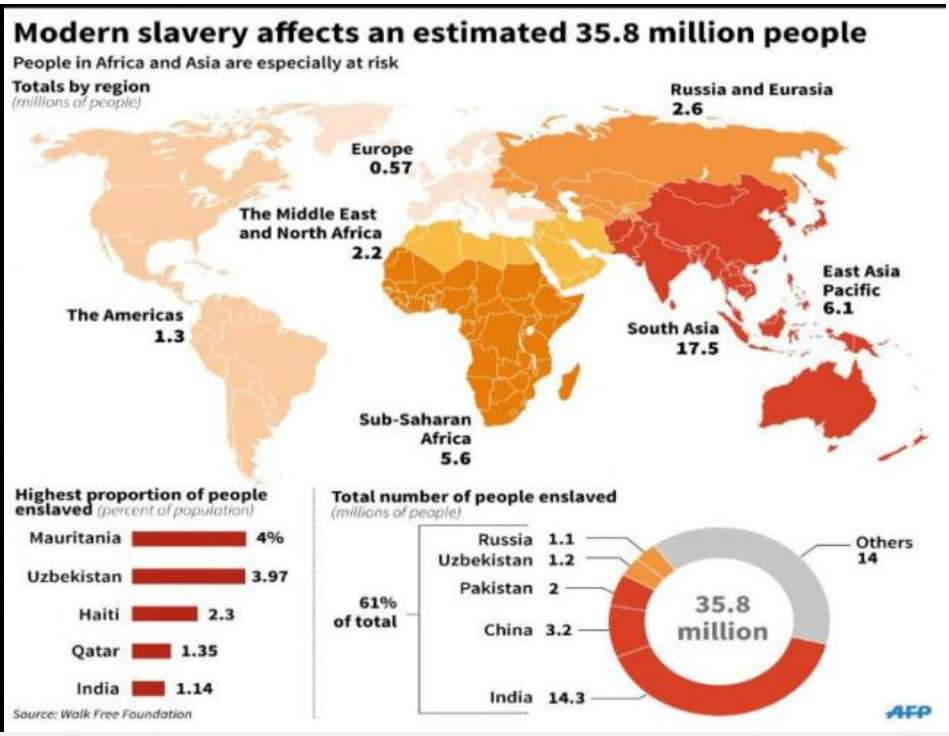
Source: Guardian graphic | Data obtained by Sudddeutsche Zeitung and distributed by the ICIJ (http://www.theguardian.com/news)

MODERN-DAY SLAVERY IS A BILLION-DOLLAR INDUSTRY SO WHY AREN'T WE FOLLOWING THE MONEY TRAIL?

**Forcibly drugged, a young mother is compelled to have sex with dozens of strangers, never knowing whether it is day or night outside the dimly light walls of an inescapable Indonesian brothel. Her baby crying at the foot of the bed; born as a product of modern slavery.*

**Miles away, a teenage boy forgoes his education and childhood to painstakingly pick cocoa on a plantation under the scalding Ivory Coast sun, fulfilling the debt obligation left by his father who died in the very same field just weeks before.*

**As the sun sets over Yemen, an innocent boy or girl as young as five is taking the vow of marriage alongside a man as old as his or her grandfather, after which the child will be taken to their matrimonial bed for the first time.*



You may think slavery is a bygone problem, or maybe you thought slavery might be happening now—only somewhere else. However, modern-day slavery is a current problem around the globe. The worst offenders include Mauritania, Uzbekistan, Haiti, Qatar, India, Pakistan, the Democratic Republic of the Congo, Sudan, the Central African Republic and to a certain extent even the US. Though some of these countries lack the fundamental infrastructure to support government efforts to combat this wrongdoing, every region and state in the world play an integral role as a source, transit or destination point in the global slave trade.

Slavery generates at least $150 billion annually for those who deal in the exploitation of human beings. Only drug trafficking is estimated to have a higher overall profit margin. Of the estimated 36 million people enslaved in the world today, the International Labor Organisation (ILO) reports that 26% are under the age of eighteen and 45% are men and boys. Of those, the industries that mostly contribute to the trafficking of human beings are domestic work, agriculture, construction, manufacturing and entertainment.

Even though legislations were already in place to try to curtail slavery, the multibillion-dollar industry continued to operate almost entirely by cash, continued to make billions of profit annually and continued to make its way into financial institutions. Yet, no one was making consistent strides to confiscate the profits and prosecute the ringleaders.

2015 saw an unparalleled spike in legislative and enforcement efforts specifically focused on ridding the world's supply chains of products tainted by coerced labour. The UK Modern Slavery Act 2015 and the Federal Acquisition Regulations Anti-Trafficking Provisions—both issued in 2015 place affirmative obligations on most larger businesses to evaluate the risk associated with and disclose steps taken to end suspected human trafficking or coerced labour in their supply chains.

Financial Action Task Force (FATF) has also included human trafficking as part of the list of predicate crimes involved in money laundering.

What remains surprisingly unfamiliar to many decision makers, investigators and organisations working to combat slavery is that access to the global financial system can be used as an effective instrument.

In the regulated global financial system, there has been a long precedence of systemic requirements of customer due-diligence, an established culture of KYC process and transaction monitoring. Financial sectors have teams of professionals, training resources and powerful infrastructures dedicated to identify illicit sources of funding and criminal activity within their clientele.

Using financial systems as an instrument to help fight against modern-day slavery presents a unique catalyst in addressing this global issue. Suspicious activity identified by a financial institution in the KYC process/customer due diligence process can be drawn to the attention of the national Financial Intelligence Units (FIU) through the filing of a Suspicious Transaction Report (STR). The FIU can then initiate the involvement of the relevant law enforcements agencies.

Source: The Guardian/Thomson Reuters

Money laundering a larger issue than thought for Germany

A survey commissioned by the Finance Ministry in Berlin, Germany has revealed that more than €100 billion is alleged to be laundered in Germany every year. According to the survey transactions in property, cars and art works, are estimated to involve between 15,000 and 28,000 cases of money laundering each year, this figure only includes the ones that were brought to court. In addition, the survey also highlighted the gambling and catering sectors as problematic and noted that a large proportion of that money allegedly comes from abroad which is attributed to Germany's attractive financial situation.

Source: Deutsche Welle, 21 April 2016

Couple convicted of drug trafficking scam and Medicare fraud

A Kentucky doctor and his wife, the president of a medical clinic, were accused of making millions of dollars by unlawfully prescribing large amounts of prescription drugs. He was convicted by a jury of conspiracy to commit drug trafficking, illegal distribution of controlled substances, healthcare fraud and money laundering. His spouse was convicted of conspiracy to commit drug trafficking, two counts of maintaining a premise for drug distribution, money laundering charges as well as healthcare fraud. The couple are reported to be appealing the convictions.

Source: Kentucky.com, 19 April 2016.

Former private banker charged with money laundering

A former wealth planner at the Singapore office of a Swiss bank has been charged with money laundering. The charges are believed to be in connection with a case involving a development fund. It is reported that prosecutors claim that the accused might have concealed or disguised the benefits from criminal conduct. Authorities in Malaysia, Switzerland, the U.S. and Luxembourg are reportedly examining claims that the development fund was used to funnel money to politically-connected individuals. According to reports, the Swiss estimate that about US$4 billion may have been misappropriated from state companies in Malaysia.

Source: SCMP.com, 22 April 2016.

Britain plans crackdown on money laundering

The British government has announced proposals to crack down money laundering. The measures reportedly include improving reporting of suspicious activities, and a new offence of illicit enrichment could be brought in for public officials who have had a significant and unexplained increase in wealth. Reportedly the proposed changes, subject to a six-week consultation, also include new powers to be able to designate a company as of money-laundering concern, requiring banks, lawyers and accountants to take special measures when dealing with them.

Source: Reuters, 21 April 2016.

Laos makes move to toughen up its AML policies

It was announced that the Bank of the Lao PDR (BOL) Anti-Money-Laundering Intelligence Unit has signed a memorandum of understanding with the Registration and Management of Enterprises Department of the Ministry of Industry and Commerce. It is reported that in the past few years, the unit has signed MoUs on data exchange with several government bodies including the State Inspection Authority. In addition, the BOL cooperates with various countries in technical areas, including Myanmar, Cambodia and several other developing countries within the region.

Source: National multimedia.com, 22 April 2016.

Historic Referendum: BREXIT

On 23 June 2016, the UK has voted to leave the European Union in the historic referendum, to take a greater control of its economy and its borders. The results of this referendum was 51.9% in support of an exit (17,410,742 votes) and 48.1% (16,141,241 votes) to remain.

The UK had joined the precursor of the EU in 1973 and decided to leave the EU after 43 years. The outcome of the British referendum had an immediate impact on the global financial markets. The value of the British Pound was battered by more than 11%, stocks pushed down in Asia and banks took some of the biggest hits to their share price. Lloyds Banking Group was down 21%, RBS and Barclays by 18%, Standard Life was down 17% and Aberdeen Asset Management by 11%.

The referendum results, which prompted the resignation of the Prime Minister David Cameron, will see the UK formally exit a host of legal agreement with the European Union, including bloc-wide pacts on the exchange of financial data and the implementation of rules to fight money laundering and terrorist finance.

The decision comes as the EU weighs proposals to build in the wake of a series of deadly terrorist attacks in France, Belgium and Denmark throughout 2015.

Source: ACAMS

SOME RECENT INTERESTING CASE STUDIES FROM VARIOUS JURISDICTIONS

CASE 1: WIRE TRANSFERS

Facts:

A Private Banker recruited a foreign client as a customer even though he never met the individual. The client had no legitimate source of wealth and his occupation on the account opening form was listed as a gas station attendant. Accommodating every request of the client, the accounts were opened in both domestic and international branches. Over the course of time, the client processed several wire transfers – some as large as 7 figures.

Results:

The customer turned out to be a Mexican drug trafficker, not a gas station attendant. The Private Banker received 10 years in jail for not reporting the unusual/suspicious activity of his client and falsifying bank records. The bank was fined $36 Million. This was the first time a bank's AML policy was used in money laundering prosecution. The prosecution confirmed with the bank that the Private Banker received annual AML training.

Lesson:

The Private Banker was convicted because the court believed he was "willfully blind" to the unusual/suspicious activity processed by the client .

CASE 2: CASH TRANSACTIONS

Facts:

A 24-year old female, reported to be a student has over a period of one year, deposited into her own accounts and that of a third party, cash ranging from a few thousands to three thousands, all in small denomination bank-notes. The source of cash was advised to be winnings from casinos. The explanation could hardly account for the bank-notes of small denominations and was not consistent with the customer background as a student.

Results:

A Suspicious Transaction Report (STR) was raised and reported. Police enquiries revealed that the customer was associated with a drug dealer.

Lesson:

Due care must be exercised by front-liner staff, especially cashiers/tellers when dealing with cash transactions involving bank-notes of small denominations and ensure transactions commensurate with profile of customer.

CASE 3: CREDIT CARDS

Facts:

4 members of a family—a mother and 3 daughters, frequently make use of credit cards with repayment made a few days after transactions well before the due date.

Results:

A Suspicious Transaction Report (STR) was raised and reported. Police enquiries revealed that the family was in control of 35 credit cards (principal and supplementary cards). It was discovered that Money Launderers were paying cash to the Credit Cardholders to get gambling chips which were later changed back to a casino cheque.

Lesson:

Proper due-diligence must be carried out by Banks prior to opening of account(s) and prior to providing banking products and services. Moreover, continuous monitoring of accounts and transactions is important.

SUMMARY OF THE LAST ISSUE - COMPLIANCE DIGEST ISSUE NO. 1

The Compliance Digest Issue No.1 is available through this link.

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

- An understanding of the concept of Compliance - as to what Compliance actually is;
- An update in the Regulations, Guidelines and Rules: (i) The Good Governance and Integrity Reporting Act 2015; (ii) FATF statement issued on 19/02/2016 and (iii) amendments in the BOM Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism;
- A guidance on Beneficial Ownership (BO) - the definition and identification of Beneficial Owner and the multiple implications that surround not knowing the beneficial ownership, doing business with the bank;
- A summary on the challenges and opportunities emanating from sanctions lifted on Iran;
- A glimpse of the global news on the financial industry around the world.

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@afrasiabank.com or to Khusboo Puryag at Khusboo.Puryag@afrasiabank.com.

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