Compliance Digest

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AFRASIA bank different

Dear Readers,

Welcome to the 5th issue of our Compliance Digest which brings to you compliance and risk management related articles.

In this issue, you will have a summary of the Finance (Miscellaneous Provisions) Act 2017, updates in the Guidelines, Rules and some recent Supreme Court Judgements.

In addition to the compliance insight with Mr Mark Andrews, there are some interesting articles on Money Laundering and Terrorist Financing risks and vulnerabilities associated with gold; Block chain Technology; Wealth Management and The Russian Laundromat.

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

We wish you a pleasant reading!

Anil Fangoo, CAMS
Group Head Compliance & Legal & Editorial Team

Compliance Tower of Babel: Are your teams speaking different languages ?

Success in a globalised economy is often rewarded with an increasingly complex landscape of rules, regulations and compliance pitfalls. The demand for new products, lean startup methodologies and agile development processes add to the rapidity of change. Apart from the technological and operational underpinnings, culturally-speaking, responsibility for compliance and associated activities are typically not centralised.

As with the Tower of Babel, growth can cause different groups to speak different languages with respect to compliance. These distinct compliance dialects form silos, whether operational, cultural, or both, inhibiting clear communication and information-sharing across the enterprise. To mitigate compliance and strategic risk across the enterprise, focus on the convergence of these aspects of compliance and their associated operations:

1. **Real-time screening and analytics, to mitigate sanctions-screening and transaction-monitoring risk**—As business functions grow and transactions become more sophisticated, real-time transactional screening has become essential as a preventative solution.

2. **Robust customer risk profiling, enhanced Know Your Customer (KYC) and enhanced due diligence processes**—Creating and enforcing consistent KYC processes and workflows across analyst teams provide a framework for customer risk assessment, whether the customer is local or international.

3. **Automated retroactive monitoring, to provide sanctions-screening coverage and changing customer risk profile escalation**—Retroactive look-back sanctions and transactional screening remain an integral compliance expectation. An effective retroactive screening system should automate re-screening across all lines of business and transaction types, scaling up to give near real-time results.

4. **A centralised compliance system of record, to provide controls, metrics and monitoring across the enterprise**—A collaborative platform for enterprise risk management, customer risk profiling, policy management and dissemination, operational metrics, and predictive analysis provides a resourceful view for executives as well as legal and compliance departments.

IN THIS ISSUE

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RECENT ACTS, REGULATIONS, RULES & GUIDELINES

Summary of the Finance (Miscellaneous Provisions) Act 2017 relating to Banking/Financial Sector

Relevant Acts amended	Main Measures
Bank of Mauritius Act	Purchase and sale of convertible currency will be determined by the Board of BoM.
Banking Act	A new section on 'Granting of licences to issuer of commercial papers' has been included.
	Banks to increase their stated capital to a minimum of MUR 400 million and are given the following timeframe: (a) MUR 300 million by 30 June 2018; and (b) MUR 400 million by 30 June 2019.
	In line with international move towards automatic information exchange, the Income Tax Act has been amended to empower MRA to request from banks and other financial institutions an annual statement of financial statements.
	Statement of Financial transactions (MUR deposits and foreign transactions) to be submitted by banks to the MRA: Customer (individual/société/succession) making a deposit exceeding MUR 500,000 or if the aggregate amount of deposit in an income year exceeds MUR 4 million. Customer (other than an individual/société/succession) making a deposit exceeding MUR 1 million or deposits exceeding MUR 8 million in the aggregate in the preceding year. Customer having bought, sold or transferred, other than local intra-account transfers, foreign currency equivalent to MUR 200,000.
Borrower Protection Act	If the Bank does not send the required notification to the borrower in default of payments and the respective guarantor within 2 months, the Bank will be unable to claim back the instalment(s) due.
	The borrower and guarantor must inform the Bank of any change of place of residence or business.
Income Tax Act	Solidarity levy for any resident individual having a chargeable income plus dividends in excess of MUR 3.5 million.
Financial Services Act	For MRA to exchange information, the bank is to maintain records in relevant form and manner as per MRA's requirements.
	For MRA to exchange information, the bank is to provide information to MRA in respect of such period as determined by MRA.
	MRA to issue directions, instructions or guidelines to comply with "Arrangements for relief from double taxation and for the exchange of information".
	The bank is to submit to the MRA a list of individuals who have been paid in a year dividends exceeding MUR 100,000.
	Submission of statement of assets and liabilities to MRA by individuals deriving net income and exempt income (aggregated with the cost of assets owned by his spouse and dependent children) exceeding MUR 15 million, or owning assets exceeding MUR 50m.
	Statement of Financial transactions (MUR deposits and foreign currency transactions) to be submitted by banks to the MRA.
	Life Insurance Company licensed by the FSC to submit Statement of Financial transactions to MRA.
	Where MRA has reason to believe that a person is using any information and communication technology equipment for business purposes, MRA may request any public operator or service provider licensed under the Information and Communication Technologies Act, information regarding the identity and address of the person using that equipment or information regarding his business transactions recorded digitally.
	Income Exemption Threshold for individuals updated accordingly
	The maximum of members on the board of directors of the FSC has increased from 5 to 7.
	The quorum for meeting of the board of directors has increased from 4 to 5.

Summary of the Finance (Miscellaneous Provisions) Act 2017 relating to Banking/Financial Sector (continue)

Companies Act	Definition of International Accounting Standards amended to cover Islamic Accounting Standards.
	New definition on 'Islamic banks' and 'Islamic financial institutions' added.
	Information concerning nominee shareholders of companies will only be provided by the Registrar if required by beneficial owner, for investigation or if ordered by court/Judge in Chambers.
	The share register maintained by the company with respect to each class of shares must state (a)(i) the names, in alphabetical order, and the last known address of each person who is, or has within the last 7 years been, a shareholder; (ii) where the shares are held by a nominee, the names in alphabetical order and the last known addresses of the persons giving to the shareholder instructions to exercise a right in relation to a share either directly or through the agency of one or more persons "the beneficial owners or the ultimate beneficial owners"
	Details of the BO/UBO holding 25% shares and above must be lodged with the Registrar within 14 days. Definition of BO/UBO has been provided
	Islamic FIs/Banks may adopt accounting standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions.
	Content of Annual Report has been amended to include: (i) completed and signed financial statements and group financial statements (ii) a report on corporate governance (iii) a consolidated financial statement in Mauritius for exemption under IFRS.
Sale of Immovable Property Act	The sale of immovable property will be restricted for 2 years at the request of the debtor in case the property is the sole residence of the debtor and that the borrower is made redundant on economic grounds.
	The value of the property seized should not be less than half of the market value which should be determined by an independent valuer appointed by the creditor. The cost of appointing an independent valuer shall be borne by the creditor.
	An inscribed or judgment creditor may ask for the transfer of rights and duties in respect of a debt in case of collusion, fraud or negligence on the part of the creditor or any financial institution, legal advisor and their agents.
Public Debt Management Act	Outstanding amount of public debt shall not exceed 65% of Gross Domestic Product (GDP) (previously 60%)
	At the end of each fiscal year (to be specified), percentage of public debt shall be reduced so as not to exceed 60% (previously 50%).
	The Minister may execute, in the name and on behalf of the Government, any instrument required to be executed for the purpose of guaranteeing, wholly or partly, the repayment of any money borrowed by the regional Government, local Government or any public enterprise or any institution providing services to the Government, or to any public sector entity, which he considers to be in the public interest for any purpose except current expenditure.
Financial Reporting Act	Following entities shall prepare financial statements in compliance with the International Public Sector Accounting Standards (IPSAS) issued by IFAC: • Agricultural Marketing Board • Central Electricity Board • Central Water Authority • Irrigation Authority • Mauritius Broadcasting Corporation • Mauritius Meat Authority • Mauritius Ports Authority • Mauritius Sugar Terminal Corporation • National Transport Corporation • Road Development Authority • Rose Belle Sugar Estate Board • State Trading Corporation • Sugar Insurance Fund • Sugar Planters Mechanical Pool Corporation • Waste Water Management Authority
	Wholly-owned subsidiaries will not have to implement requirements of the National Code of Corporate Governance if same are already applied by the holding company.
	Every public interest entity to adopt and report on corporate governance in accordance with the National Code of Corporate Governance

RECENT ACTS, REGULATIONS, RULES & GUIDELINES

Bank of Mauritius Guidelines	Effective Date/ Amendment Date
Guidance notes on Anti-Money Laundering and Combatting the Financing of Terrorism for Financial Institutions (Amendment)	July 2017
Guideline on the computation of loan to value ratio for residential commercial property loans (Amendment)	July 2017
Guideline for banks licensed to carry on private banking business	July 2017
FSC Rules/Regulations	
Securities (Preferential Offer) Rules 2017 (New)	July 2017
New procedures for the creation of cells (New)	July 2017

Available: BOM and FSC websites

Procedure for the creation of cells

The FSC Mauritius (the Commission) has introduced the following new procedures for insurance companies with the aim of streamlining the application process for approval of creation of cells under section 7(2) of the Protected Cell Companies Act 1999, as well as to achieve greater transparency, consistency and efficiency in the approval process:

- ***Application Form for creation of cell***

  All applications for approval with respect to the creation of cell will henceforth be required to be submitted in accordance with the Application Form uploaded on the FSC's website. The Application Form will enable applicants to provide the comprehensive information required by the Commission for its assessment of the application.

- ***Introduction of processing and annual fees in respect of cells***

  The Financial Services (Consolidated Licensing and Fees) Rules 2008 (the 'Rules') have been amended to introduce a fee structure for processing annual fees in relation to Protected Cell Companies ('PCCs') conducting activities provided for under the Insurance Act 2005.

  Henceforth, applicants for an insurance business licence under the Insurance Act, intending to be structured as PCCs should apply under the corresponding new licence code as described in the Rules. Upon application for a licence, such applicant will pay the applicable processing fee which includes the creation of the first cell, and after being licensed, the PCC will pay the required processing fee in respect of every additional cell it will create. In the same vein, PCCs will henceforth pay fixed annual fees (as well as variable annual fees, as applicable) depending on their structure and number of cells.

  The new fee structure was effective as from 01 July 2017.

Source: FSC website

RECENT SUPREME COURT JUDGEMENTS

Judgments	Summary
AUCHOMBIT N D v SBM BANK (MAURITIUS) LTD [2017 SCJ 112]	This was an application under section 64 of the Banking Act 2004 (**Act**). The late father of the applicant withdrew Rs 632,767.84 from their joint account without her knowledge on 30 December 2014 and the amount was transferred to another account. He passed away on 10 February 2015. The applicant wished to have particulars and documentation relating to the transfer of money from the Senior Citizen's savings account to any other account and to obtain statement of accounts of her late father's account for the last 3 years. The court referred to the case of Li Soop Hon Li Tung Sang & Co Ltd v Barclays Bank PLC & Ors [2014 SCJ 242] in which there was strong prima facie evidence of a fraud committed by the co-respondent and therefore, disclosure was warranted in the light of "pending and contemplated court proceedings and that the disclosure of the information is necessary". The Court did not find that there was a strong prima facie evidence of any fraud in the present matter. Section 64 of the Act which deals with confidentiality, provides for instances where the duty of confidentiality shall not apply. These are found under section 64 (3)(a) to (n) of the Act and for the purposes of this application, section 64 (3)(c) of the Act was applicable. The applicant was therefore only entitled to information about the transaction from the joint account she held with her late father Mr. Soorooj Parsad Auchombit and not to the other prayers.
MAURITIUS COMMERCIAL BANK LTD v LESAGE R & ORS [2017 SCJ 230]	This case concerned the issue of res judicata. The law governing the issue of *autorité de la chose jugée* or *res judicata* can be read in Article 1351 of the Civil Code as follows: *"L'autorité de la chose jugée n'a lieu qu'à l'égard de ce qui a fait l'objet du jugement. Il faut que la chose demandée soit la même ; que la demande soit fondée sur la même cause ; que la demande soit entre les mêmes parties, et formée par elles et contre elles en la même qualité."* In the absence of any appeal against a judgment, the said judgment stood good and had "*l'autorité de la chose jugée*" even if it contained a misdirection. The question for the Court was whether the Privy Council quashed the whole judgment delivered on 30 June 2010 by the Supreme Court or whether the Board quashed the judgment quoad Mr. Lesage only since he was the only appellant. The rule in France is that one must analyse the judgment of the Cour de Cassation to determine whether a cassation is «*totale ou partielle*» since it is for the Cour de Cassation itself to determine the extent of the cassation and to say whether a decision of the lower court is being quashed wholly or partly. The Court applied the same principle here. An analysis of the judgment delivered by the Privy Council showed that the judgment did not contain the equivalent of the words "*dans toutes ses dispositions*" used by the Cour de Cassation when quashing a decision of a French court of appeal. In these circumstances, the Court held that it could not be inferred that the Privy Council had quashed the whole judgment of the Supreme Court.
S & A CONSTRUCTION PROJECT SERVICES LTD & ANOR v BANQUE DES MASCAREIGNES & ANOR [2017 SCJ 129]	The case concerned an appeal against the judgment of a learned Judge of the Commercial Division of the Supreme Court setting aside the appellants' application for an order enjoining the respondents in this appeal (also respondents in the application) to communicate to the appellants certified copies of cheques issued by the co-respondent in this appeal (also co-respondent in the application) with respect to "dubious" payments made by the co-respondent. Three preliminary objections were raised by the co-respondent. The application was based on the stated provisions of the Banking Act. The applicant also indicated that he was basing his application on equitable principles. The Court referred to the case of I.T. Rostom v D. Bheenuck and Others [2013 SCJ 464] where it was held that what was not made an issue before the Court below could not be raised for the first time on appeal. The third limb of the preliminary objection therefore succeeded and the appeal was set aside.

MONEY LAUNDERING AND TERRORIST FINANCING RISKS AND VULNERABILITIES ASSOCIATED WTH GOLD

Gold has been used in various cultures since antiquity as a medium for exchange or payment. Even with the modern use of paper currencies, precious metals remain an alternative means of payment due to their high intrinsic value and ease of exchangeability. Today, gold is also used as a vehicle for money laundering and terrorist financing.

The nature and size of the gold market, being highly reliant on cash as the method of exchange and the anonymity generated from the properties of gold, make tracking of its origins very difficult. As such, gold is very enticing to criminal groups who wish to hide, move or invest their illicit proceeds. Given the limited level of industry oversight and licensing requirements, cash-for-gold businesses have the potential to provide criminal groups with a continuous supply of untraceable gold commodities from various sources. Transactions in cash -intensive businesses can easily be falsified or co-mingled with the proceeds of crime, while purchased gold can be used to make untraceable gold-based payments for illicit goods and services.

Individuals who have a need to launder cash, especially those involved in organised crime, are very willing to participate in the cash-for-gold business because there is a high propensity to make profits and in most jurisdictions there is little governance or oversight of this type of activity. People with no criminal history are also prepared to undertake this activity even if they suspect that the underlying purpose of the activity is ML.

Gold and its vulnerabilities:

Gold can be traded anonymously and transactions are difficult to trace and verify	Many transactions involving gold occur anonymously, with little to no record identifying the seller or purchaser of gold. This means that law enforcement agencies have little to assist them to identify what the source of the gold is/the identity of the person who sold it. It may be difficult to refute false claims about the source of gold due to the challenges in correctly identifying gold.
Gold is a form of global currency and acts as a medium of exchange in criminal transactions	Particular ethnic groups operating international *hawala*[1] networks have been found to use gold as a medium to settle outstanding balances (although such use of gold is not an illegal activity in itself).
Investment in gold provides reliable returns	Since gold is less volatile than most commodities and equity indices, there is a bias for money laundering syndicates to prefer cash or precious metals such as gold when conducting transactions especially international transactions.
Gold is easily smuggled and traded – both physically and virtually	The majority of money laundering and predicate offences relating to the gold market are associated with international and domestic trading. In the physical sense, it is easy to melt gold bullion and convert it into different forms to disguise the fact that it is gold, such as souvenirs, wrenches, nuts, belt buckles, etc. Gold in these forms is easier to conceal from border authorities and its value can

Some examples are:- major drug syndicates paid their workers bonuses in gold and drugs. Some drug syndicates trade do not use banking transaction but rather use gold to exchange value in corrupt deals. A case occurred in May, where a Sinaloa Cartel used gold sales to move drug trafficking profits from USA back to Mexico.

In relation to ML/TF, the trends and patterns within jurisdictions and internationally in the gold sector need to be identified and the extent to which terrorist groups are moving or raising funds through it need to be gauged. From a regulatory perspective, controls relating to all aspects of the gold continuum (from production to retail), and information such as financial/commodity flows and customer details are worth to be enquired into.

Source: FATF, Insightcrime

COMPLIANCE INSIGHT WITH MARK ANDREWS

Mark is an associate of the Chartered Institute of Bankers with over 40 years' experience in the UK corporate, investment and retail banking sectors. He is an international consultant and an accredited Master Trainer in the external training faculty at the world's largest trade finance bank. Mark is a frequent lecturer in Financial Crime Modeling, Risk Management and development of Risk-Based Approach to AML/CFT. He has trained extensively in the UK, USA, South America, Europe, Africa, Asia and the Middle East.

International Banks have been de-risking their portfolio of customers. However, it appears that regulators are not so keen that de-risking is the right way forward. According to you, what are the downsides to de-risking, and how could de-risking better be implemented by Financial Institutions?

This is an interesting topic and one that we debated at length during the recent Keynes Training 2 day AML course. The main danger is that, from a regulatory viewpoint, wholesale de-risking by FI's – such as withdrawing completely from a sector to avoid the associated AML risks – is being interpreted as heavy-handed and unnecessary by some regulators. In the UK, the FCA has stated publicly that it does not believe indiscriminate embargoes are either appropriate or necessary and may well cause consumer protection and/or competition issues. From a Financial Institutions' viewpoint this intentionally critical pronouncement means greater care has to be taken in the future to document the rationale for de-risking and to ensure each case is judged on its individual and not as part of a group, merits.

Do you think electronic AML solutions that rely on Distributed Ledger Technologies (DLT) are feasible, and would any of them be an indispensable part of the AML Program of a Bank in the near future?

Yes they are and yes they could, with three caveats. First, it will probably need government prompting to compel banks to do so, secondly, there are still some significant reservations about the security of the system and access to it and thirdly, I don't think it will happen in the immediate future.

In your opinion, how far will Blockchain technology be part of the Banking sector, and will it be significantly important in an AML Program of a Bank?

Difficult to judge. There is a lot of talk but less action and this is not a new topic. My instincts tell me Distributed Ledger Technology will have to be launched first to prove the concept. I can envisage Blockchain being used as an application for data storage and exchange but I am less convinced that financial transactions will happen any time soon. Swapping stored data carries less intrinsic risk than facilitating real time payments.

Furthermore, do you view Blockchain as a potential threat to Banks as Financial Intermediaries in the future?

Probably not in the immediate future and probably not completely – although nobody thought ATM's would catch on when they were first introduced. Regulating the financial system and ensuring an effective clearing and payments process means someone has to regulate the participants. I doubt that Blockchain can be made to work without the banks being the driving force so they will probably retain a pivotal role. It may change the way we all do business in due course though.

BLOCK CHAIN TECHNOLOGY - HOW BLOCKCHAIN COULD CHANGE THE WORLD?

Blockchain is a method of recording data - a digital ledger of trans actions, agreements, contracts and anything that needs to be independently recorded and verified as having happened. It is constantly growing as 'completed' blocks are added to it with a new set of recordings. The blockchain has complete information about the addresses and their balances right from the genesis block to the most-recently completed block. The big difference is that this ledger is not stored in one place, it is distributed across several, hundreds or even thousands of computers around the world. And everyone in the network can have access to an up-to-date version of the ledger.

To use conventional banking as an analogy, the blockchain is like a full history of banking transactions. Bitcoin transactions are entered chronologically in a blockchain just the way bank transactions are. Blocks, meanwhile, are like individual bank statements.

How blockchain works?

A blockchain-based registry would not only remove the duplication of effort in carrying out KYC checks, but the ledger would also enable encrypted updates of clients' details to be distributed to all banks in near real-time. The ledger would also provide a historical record of all documents shared and compliance activities undertaken for each client. This record could be used as supporting evidence for a bank, in case regulators ask for clarification. The use of a distributed ledger system, such as a blockchain, could automate processes and thus, reduce compliance errors.

The sharing of customer information is already starting to take place. For example, SWIFT recently established its KYC Registry, with 1,125 member banks sharing KYC documentation. However, this amounts to only 16 per cent of the 7000 banks in their network. Given the expectation that banks will increase their use of blockchain applications in areas such as transaction settlement and payment systems, the use of common distributed ledger for KYC checks might also offer the opportunity to link many banks to enforce compliance. For instance in the Netherlands, Dutch banks are partnering with Innopay in an attempt to enrol a number of other banks in a common digital identity service. The ability of computer systems to make use of and exchange nformation, combined with application of smart contracts, could be used to automate some aspects of the compliance process. Transactions, for example, could only be permitted to occur with parties for whom adequate KYC and supporting evidence exists on the blockchain.

Given the diversity of Blockchain application, the technology can be simultaneously subject to multiple laws and regulations, depending on how it is perceived, e.g. financial regulations for virtual currency, securities law for equity, property law for commodities, or contract law for smart contracts. The Board of Investment (Mauritius) states that, any piece of legislation should take into consideration the various applications of Blockchain, or apply the relevant laws in a suitable framework such as Regulatory Sandboxes which are increasingly being used. "It is expected that the recent Regulatory Sandbox Licensing scheme implemented in Mauritius [will] be used to address some of the roadblocks faced by ventures in launching and commercialising disruptive applications," said James Duchenne, co-founder of Volt Markets.

According to the Harvard Business Review, blockchain is a foundational technology. It has the potential to create new foundations for our economic and social systems. But while the impact will be enormous, it will take decades for blockchain to seep into our economic and social infrastructure. The process of adoption will be gradual and steady, not sudden, as waves of technological and institutional change gain momentum.

Source: http://www.bbc.com/news/business-35370304
https://hbr.org/2017/01/the-truth-about-blockchain
https://bitcoinmagazine.com/articles/republic-mauritiuss-regulatory-sandbox-could-attract-blockchainstartups/
http://www.investmauritius.com/Newsletter/2017/January/article1.html

QATAR DIPLOMATIC CRISIS - HOW IT MAY IMPACT US

It is the biggest political crisis to hit the Middle East in years. Qatari nationals are now officially on notice to leave neighboring countries after a diplomatic freeze of the nation by key allies and neighbors namely Saudi Arabia, the United Arab Emirates, Egypt, Bahrain and Yemen.

Why? Saudi Arabia led an air, land and sea blockade by Arab countries, in an attempt to get Qatar to cut its alleged connections with terrorism and distance itself from Iran.

Those inside the country are now contemplating what life might look like under diplomatic isolation which is an almost imaginable predicament for a wealthy country, yet one that relies almost solely on imported food.

Qatar Airlines, a major global airline, together with other airlines such as Etihad, Emirates, Fly Dubai, have suspended their flights in and out of Doha. Moreover, Qatar Airlines is no longer allowed to use the airspace above Saudi Arabia, Egypt, Bahrain and the United Arab Emirates. Detours to Africa and North America are to be expected resulting in a raise fuel costs, flight times and potentially ticket prices

If the Middle East is affected by any kind of instability, the rest of the world would most probably face an a rise in oil prices, and the longer prices stay high, the more likely it is that it will cost more to fill up tanks. So far, oil and gas markets have been taking the crisis in their stride.

The UAE central bank regulated its own banks to stop dealing with 59 individuals with links to Qatar and to carry out enhanced due diligence on their activities with six Qatar lenders. Meanwhile, Reuters also reported that the crisis hit the supply of dollars available in Qatar, making it harder for the population of expatriates to send money home.

Qatari banks have been borrowing abroad to fund their activities. Their foreign liabilities amounted to 451 billion riyals (USD 124 billion) in March 2017 from 310 billion riyals at the end of 2015. So any extended disruption to their ties with foreign banks could be awkward, though the government of the world's biggest natural gas exporter has massive financial reserves which it could use to support them. Banks from the United Arab Emirates, Europe and elsewhere have been lending to Qatari institutions.

The Emir of Qatar, Sheikh Tamim bin Hamad al-Thani, has since then called for dialogue and held in an interview that: "The time has come for us to spare the people from the political differences between the governments.". He further rejected the accusations whereby Qatar is financing extremist groups and supporting terrorism.

Source: http://www.bbc.com/news/world-middle-east-14702609
http://edition.cnn.com/2017/06/06/middleeast/qatar-middle-east-diplomatic-freeze/index.html
http://uk.businessinsider.com/qatar-impact-banks-uk-gas-supplies-2017-6?IR=T
http://www.express.co.uk/news/world/832311/Qatar-news-updates-Gulf-crisis-latest-Doha-sanctions-Saudi-Arabia-UAE-LIVE

WEALTH MANAGEMENT—A HIGH LEVEL FORM OF PRIVATE BANKING

Private banking business is defined as the business of offering banking and financial services and products to high-net-worth customers, including but not limited to, an all-inclusive money-management relationship. The BOM Guidelines for banks licensed to carry on Private Banking Business set out the regulatory and supervisory framework that would be applicable to any bank licensed to carry on private banking business. The primary difference between private banking and wealth management is that private banking does not always deal with investing clients' assets. Private Banking offers banking services, asset management, and brokerage and presents some simple tax consulting services. On the other hand the **wealth manager provides consulting services in areas such as asset allocation, asset structuring, tax planning, estate planning, pensions, philanthropy, family arbitrage, art, real estate, and the relocation of families and their companies.** Wealth management works on the principle "save and invest" followed by growth, which ensures protection from inflation and returns on investment and the target market are normally High Net Worth Individuals (HNWIs) with more than $1 million in financial assets.

Wealth Management strategy and service excellence also attract PEPs (Politically Exposed Persons) and clients who pose higher money laundering risk to banks due to the larger amounts they have available (to deposit or invest) and their source of wealth or source of fund. Hence, the implementation of a strong AML policy for wealth management is critical for banks and financial institutions throughout the world and it must be an ongoing process. The comprehensive AML policy for HNWIs shall include three components (i.e., risk identification [identification of various risk], mitigating measures [measures to control/mitigate the identified risks] and governance [validation of the mitigating controls/factors]). Some of the red flags observed in wealth management relationships that need to be addressed in the AML Policy are:

- Incomplete know your customer (KYC) information
- Account opened without documentary evidence for source of wealth
- Account for HNWIs with third-party power of attorney (POA) operation
- Unclear source of wealth for high-risk nationals and PEPs
- Business account for HNWIs with multilayer ownership structure or third-party POA
- Offshore entities located in jurisdictions with weak AML regime
- Non-documentation of processes and inadequate systems
- Failure by investment managers to monitor market performance of the investment products and update their customers (HNWIs) to benefit from their investments

Source: ACAMS, International Finance Magazine

WEALTH MANAGEMENT—A HIGH LEVEL FORM OF PRIVATE BANKING

To mitigate the aforementioned risks, the first line of defense (wealth management business unit) that includes the investment advisors must be responsible for:

- Implementing an effective KYC standard by adopting sound customer identification and verification procedures to protect the institution from legal, regulatory and reputational risk
- Adoption of enhanced KYC measures where required (for nonresident customers, POA operated accounts, nationals of high-risk countries and PEPs) and documentary evidence for source of wealth must be mandatory
- Identifying beneficial owners of legal entities and inquire for the purpose of establishing companies with complex ownership structure involving multiple entities or investment holding entities
- Providing quality advice to their clients to manage relevant economic risk, political and environmental changes and social consequences to the investment portfolio

The second line of defense (AML and compliance) must be responsible for:

- Promoting a sound risk culture by regularly testing the risk awareness of the business unit and the controls placed to mitigate risk
- Addressing the queries or issues raised by the investment advisors
- Provide regular training on risk identification to promote compliance culture
- Regular transaction monitoring and review the performance of the transaction monitoring system
- Ongoing due diligence of high risk accounts (NGO accounts, nonprofit organisations and PEPs)

The above risks and mitigating measures must be regularly reviewed independently by the bank's internal audit

The bank's management and board of directors must be responsible for the following:

- Risk tolerance of the bank
- Fostering a strong and enduring control culture and risk awareness throughout the institution
- Approve the AML policy for the bank
- Approve onboarding of high-risk clients
- Consider the options for "transfer of risk" to third parties such as insurance companies.

Due to the extensive exposure to HNWIs, including PEPs, financial institutions require to the execution of an exclusive and robust AML program for wealth management**. The key risk factors that could have a negative impact on the institution's operational procedures need to be mitigated.**

THE RUSSIAN LAUNDROMAT

The Russian Laundromat, simply called the Laundromat, is a complex system for laundering more than $20 billion in Russian money stolen from the government by corrupt politicians or earned through organised crime activity. It was designed to move money from Russian shell companies into EU banks through Latva and used the added feature of getting corrupt or uncaring judges in Moldova to legitimise the funds. The system used just one bank in Latvia and one bank in Moldova but 19 banks in Russia, some of them controlled by rich and powerful figures including the cousin of Russian President Vladimir Putin. The scheme was unearthed in 2014 by the Organised Crime and Corruption Reporting Project (OCCRP).

The Laundromat was designed to create the illusion of business activity to explain the source of the money, backed by a court which signed off on the transactions to make them legitimate. The businesses, however, were phantom companies shielding the real owners. A typical transaction began with two companies, often based in the United Kingdom and with their true ownership obscured in the offshore mists of a tax haven. The companies sign a bogus contract in which one agrees to lend the other large sums, although no money ever actually changes hands. It is likely that both companies are owned by the same owner but that ownership is hidden behind "proxy" figures. The tax haven of choice in this operation was Belize, and the sums involved in each transaction were huge, ranging from US$ 100-800 million. The contracts in each case stipulated that the debt was guaranteed by companies in the Russian Federation, almost always run by a Moldovan citizen. This Moldovan gave the operation access to the courts in Moldova, which would ultimately permit the movement of the dirty money into the legitimate banking system.

The next step was for the "borrowing" company to refuse to repay the debt to the "loaning" company, thereby shifting the debt to the Russian companies who had guaranteed the loan. The "loaning" company then would take the matter to court in Moldova where a judge would issue an order "certifying" the debt as real and ordering the Russian company to pay. Then the Russian company would transfer dirty money into an account set up by the "loaning" company. For every case, the money was sent to an intermediary bank called Moldindconbank—an institution connected to one of the country's most powerful businessmen. Finally, the money was wired to the "loaning" company's account, which was always at the Latvian-based Trasta Komercbanka. Once it is in Latvia, voila! It is in the European Union, backed by a court order and clean and ready to use.

The below image is used to illustrate the above example:

The Laundromat opened for business on 22 Oct 2010, when a British company called Valemont Properties Limited filed in a court in the Moldovian capital of Chisinau against the guarantors of a loan it has made with another UK company (Seabon Limited). The holders of that guarantee were a Moldovan man, Andrei Abramov and 2 Russian companies: OOO Laita M and OOO Spartak.

More than 20 judges in 15 Moldovan courts helped launder the money. Over three years, they issued more than 50 court orders certifying about US $20 billion in debt. Moldovan law enforcement believes that more than 90 companies registered in the Russian Federation were involved in the Laundromat system, making thousands of transfers into bank accounts in Maldova and from there, onward to offshore companies.

The ownership (directors and shareholders) of some of these companies were citizens of Moldova and Ukraine. They appear to be proxies, fronting for the real people behind the money schemes. For example, company OOO Proffstandard (main shareholder is Ruclan Siloci aged 31 from Causeni, a small town 70 km from the Moldovan capital), a Russian company, listed with four other commercial entities in Moldovan courts with a debt of half a billion US dollars to the Scottish company, Westburn Enterprises Limited.

The scheme involved many fictitious companies/shell companies (21 core group companies) in Russia that exist only on paper and whose ownership cannot be traced. Most of these companies were registered in the UK, Cyprus and New Zealand. The companies appeared to be owned by proxies standing in for hidden owners. Even directors and shareholders of the companies were fake. Between 2011 and 2014, 21 shell companies fired out 26,746 payments from their various Trasta Komercbanka and Moldindconbank accounts. The $20 billion went via the global financial systems to 96 countries, passing almost without obstacle into some of the world's biggest banks. It includes bigger nations such as the US, UK, Germany, France and China and smaller ones like Slovenia and Taiwan.

Source: Organised Crime and Corruption Reporting Project (OCCRP)

EY Comply from Ernst & Young helps asset managers automate compliance process

Asset management firms continue to feel the pressure of a post-financial crisis environment, evidenced by increasing regulation, escalating compliance costs and overall margin compression.

EY found that three-quarters of fund managers cite regulatory compliance as the main cause of declining margins. And while most fund managers saw their people and tech costs increase, 61 percent said they also feel pressure to reduce these costs.

To address these challenges, asset managers need to automate their compliance processes and stay ahead of regulatory demands. EY's new global regulatory reporting service – EY Comply – helps them do just that. This platform addresses asset management firms' top regulatory needs by:

- Utilising a team of regulatory advisors to **interpret and implement regulatory updates**
- **Aggregating data** and **conducting immediate data quality checks** to identify issues early
- **Enriching** the firm's data, arming it with a powerful tool set to further **validate and check for thoroughness, accuracy and veracity**, and checking all calculations to key markers.

Source: Corporate Compliance Insights: 11 July 2017

Mexican Traffickers Turn to China and Hong Kong to Disguise Profits

U.S. law enforcement officials are increasingly focusing their attention on the use by Mexican drug cartels of shell companies and corporate bank accounts in China and Hong Kong to launder proceeds from narcotics sales.

Source: ACAMS: 13 July 2017

BNP Paribas faces fresh accusations over involvement with Rwandan genocide

Banks have been used to having mud slung at them over the past decade for rigging markets, ripping off customers, committing fraud, and generally flouting the law. But there is one activity that they really do not want to be associated with—complicity in war crimes.

At the end of June, however, three French non-governmental organisations (NGOs) filed a legal action against BNP Paribas, alleging that France's largest bank was complicit in genocide, war crimes, and crimes against humanity during Rwanda's 1994 genocide.

The suit alleges that in June 1994 Banque Nationale de Paris (BNP)—as the bank was known before its merger with Paribas in 2000 to become BNP Paribas—"participated in financing the purchase of 80 tonnes of arms," including AK-47 rifles, ammunition, hand-grenades, and mortars, that "served to perpetrate the genocide" despite the fact "that the bank could not have doubted the genocidal intentions of the authorities of the country for which it authorised".

Source: Compliance Week: 18 July 2017

EU extends economic sanctions against Russia by six months

The European Council has unanimously agreed to extend economic sanctions targeting the Russian economy by 6 months, until 31 January 2018. The extension is a result of the failure to fully implement the Minsk Agreements. The sanctions, originally introduced in July 2014 in response to Russia's actions in Ukraine, focus on the financial, energy and defence sectors, as well as dual -use goods.

Source: Global Compliance News: 03 July 2017

Bitcoin technology faces split, may create clone virtual currency

NEW YORK (Reuters) - Bitcoin's underlying software code could be split on 01 August to create a clone called "Bitcoin Cash," potentially providing a windfall for holders of the digital currency.

The initiative is being led by a small group of mostly China-based bitcoin miners - who get paid in the currency for contributing computing power to the bitcoin network - who are not happy with proposed improvements to the currency's technology.

"This is somewhat like a stock split," said Jeff Garzik, chief executive and co-founder of Bloq, a blockchain company. "You go to sleep with 100 bitcoins and wake up in the morning with 100 bitcoins plus 100 'Bitcoin Cash', a new token."

Source: Reuters: 01 August 2017

SUMMARY OF THE LAST ISSUE - COMPLIANCE DIGEST ISSUE NO. 4

The Compliance Digest Issue No.4 is available at this link.

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

- An update in the Legislations, Rules , Guidelines and recent Supreme Court Cases
- Articles on Money Laundering through the physical transportation of cash; How widespread is tax evasion, Trump presidency impact sanctions on Russia and Cloud computing
- An insight of the Code of Corporate Governance for Mauritius (2016)
- A glimpse of the global news on the financial industry around the world

Achievement of the Bank

AfrAsia Bank Limited has been awarded Best Corporate Bank in Mauritius by the Banker Africa - East Africa Award 2017

Compliance Digest is a newsletter issued by the Compliance Department of AfrAsia Bank Limited on a quarterly basis 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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