Nov 2024 – Update on AML requirements and 2024 Biggest cases

Content:

Dear Friends,

We are heading toward 2024 end. Let's review the recent development in FATF standards and lessons from some significant AML cases in 2024 in this newsletter. We will dig deep in some Australian and HK cases in future issues.

Hope that these will shed light on your AML risk management journey.

AA & T Consulting Advisory team

Recent developments on FATF standards

Up to November 2024, the Financial Action Task Force (FATF*) has not made any change in the 40 FATF recommendations since November 2023. One significant update in 2023 was on the travel rule in Recommendation (R.) 15, regarding virtual assets (VA) and VA services providers.

On 28 Oct 2024, FATF launched a public consultation on the proposed changes to FATF recommendations to better align them with measures to promote financial inclusion. FATF invites views and comments on the proposed changes by 6 December 2024.

The revisions focus on R.1 and its Interpretive Note. These proposed revisions aim to better promote financial inclusion through increased focus on proportionality and simplified measures in the risk-based approach, and to give countries, supervisors, and financial institutions greater confidence and assurance when implementing of simplified measures.

** FATF is the global money laundering (ML) and terrorist financing (TF) watchdog that sets international standards to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to bring about national legislative and regulatory reforms in these areas. More than 200 countries and jurisdictions have committed to implement the FATF's Standards as part of a co-ordinated global response to preventing organised crime, corruption and terrorism.*

The FATF would particularly welcome views on the following issues:

- Replacing the term "commensurate" with "proportionate" in R.1 to clarify how these concepts should be applied in the context of a risk-based approach; to set clearer expectations with regard to simplified measures; and to align the FATF's language more closely with that of financial inclusion stakeholders and frameworks.
- Amendments to require supervisors to "review and take into account the risk mitigation measures undertaken by financial institutions/DNFBPs", to avoid overcompliance.
- Replacing "countries may decide to allow simplified measures" with "countries should allow and encourage simplified measures".
- On "non-face-to-face customer-identification and transactions" as an example of potentially higher-risk situations, addition of qualification ("unless appropriate risk mitigation measures have been implemented") to reflect technological advancements in digital identity systems that may reduce the risks associated with non-face-to-face interactions and recognise that in many countries this has become the normal mode of interaction with financial institutions.

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

Biggest AML cases in 2024

Approaching end of 2024, let us review some significant AML cases in 2024. Different sources may have different lists. Here are 4 significant cases from different countries fined more than US$30 m this year:

1. TD Bank – US: US$3 bn fine
2. SkyCity – Australia: A$65 m (US$42.2 m) fine
3. Starling Bank – UK: £29m (US$ 36.8 m) fine
4. Nordea Bank*: fined US$35m in US on operations in Baltic states *(* a global bank headquartered in Helsinki, Finland)*

The details of the cases are set out in App. 1.

These cases showed that basic AML processes like client onboarding scrutiny, sanction countries screening, AML governance structure, policy and procedures, AML systems upgrade, and staff training, are all essential and integral part of the AML processes that are subject to regulators' scrutiny. Any deficiency can have serious non-compliance implications.

Key lessons learnt

1. Board and top management should document their AML resources allocation or system enhancements decisions clearly. These can be subject to regulators' scrutiny. Delays in hiring AML responsible officers or AML system upgrades are not acceptable excuses for non-compliance of AML regulations.

2. Existing AML program, policy and procedures and systems should be regularly and independently reviewed for compliance with current regulatory requirements.

3. Transactions with customers of other institutions (e.g. correspondent banks or parent company) should also be properly scrutinised. Red flags reported on the customer or institution (e.g. Danske Bank) should be duly evaluated.

4. Deficiencies in AML processes are vulnerable to criminal exploitation for laundering billions of dollars and expose institutions to heavy fines and reputational risk.

5. Global institutions can be fined by foreign regulator (e.g. US) on suspicious transactions flowing through their clearing system (e.g. USD). Maintaining a minimum global AML standard for all global business units is essential to manage AML regulatory risks.

Looking forward

A review of recent AML cases and regulatory developments showed a dilemma. On one hand, FATF found its standards may have caused unnecessary hassle for normal financial businesses and conducted public consultation on more financial inclusive measures. On the other hand, AML cases showed billions of funds were laundered in the financial systems.

Though the trend on AML fines may be reducing this year*, the criteria in determining fine are still unclear. The judge in the recent SkyCity case in Australia also raised the matter in its judgement: "...that the profit and benefit SCA (SkyCity) derived from the contravening conduct is not able to be calculated meaningfully." It is difficult to understand why with experts in the casino and the regulator, both cannot determine net benefits it could derive from its activities and thus a fair basis for the fine.

At present, quantitative analyses usually focus on funds confiscated and fines. Analysis on the benefits from new AML regulations as compared to the additional costs incurred by ordinary citizens/customers and financial institutions on compliance are generally not available. Looking forward, such quantitative researches on the benefits and costs of new regulations will help resolve the dilemma on over/under regulation.

** Fines for concluded court cases raised by the regulator AUSTRAC were A$1.3 bn for 2022, A$450 m for 2023 and A$65 m for 2024.*

How can AA & T Consulting help?

If you need any help on your AML processes, feel free to email us at advisory@aathk.com..

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

Appendix 1 – Details of significant AML cases in 2024

1. TD Bank – US: US$3 bn fine

On 10 October 2024, the US Department of Justice (DOJ) announced that TD Bank agreed to pay $3 billion for settlement over charges on its repeated failure in detecting money-laundering activities.

The Bank is a member of TD Bank Group and a subsidiary of The Toronto-Dominion Bank of Toronto, Canada, a global systemically important bank.

The enforcement news from the Financial Crimes Enforcement Network (FinCEN) revealed that:

- In Sep 2013, FinCEN already issued a Civil Money Penalty Order to TD Bank relating to failures to file suspicious activity reports (SARs) associated with its involvement in the Scott Rothstein Ponzi scheme.
- TD Bank failed to implement and maintain an effective AML Program.
- It also failed to ensure sufficient staffing and resources to the BSA (Bank Secrecy Act) Officer and experienced staff to clear backlogs.
- It lacked effective oversight over high-risk operations and high-risk jurisdictions.
- It has inadequate policy, procedures and internal controls and delayed system upgrade over its AML processes over a long period. Its approach to transaction monitoring was wilfully deficient and created significant gaps in reporting suspicious activity.
- There were transactions related drug cartel and other illegal scheme passed through the bank's system.

For more details, please refer to the Consent Order imposing civil money penalty released by FinCEN: https://www.fincen.gov/sites/default/files/enforcement_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf

Key Lessons Learned:

Murphy's Law, "If anything can go wrong will go wrong"

- ✓ This is a classic example of Murphy's Law for AML processes, i.e. failures in nearly all AML processes. Management should arrange reviews on all AML control measures, including policy and procedures, system upgrade, staff training, staff resources, governance structure etc. timely before occurrence of any non-compliance incident.
- ✓ Board and top management should not make decisions on AML resources allocation or system enhancements lightly (being flat budget and delayed in this case). These decisions can be root cause on AML deficiencies and will be subject to future regulatory scrutiny.
- ✓ Delays in hiring AML responsible officers or AML system upgrades are not acceptable excuses for non-compliance of AML regulations.
- ✓ Money launders can organise scheme tailored for a bank's AML process deficiencies to launder billions of funds, which can also result in billions in penalty for the bank.
- ✓ Avoid repeated offences; it can be a factor in determining the penalty.
- ✓ AML fines can be above billion. It is worth taking preventive measures on various AML processes rather than incurring costs in remediation measures (in addition to fines) after non-compliance is identified by regulators.

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

2. SkyCity Case – Australia: A$65 m or US$42.2 m fine

In June 2024, the Federal Court of Australia ordered SkyCity Adelaide Pty Ltd (SkyCity) to pay the $67 million penalty for its breaches in AML/CTF Act 2006 between 7 December 2016 and 14 December 2022 (the Relevant Period).

SkyCity admits that during the Relevant Period:

a. its AML/CTF Programs did not meet the requirements of the AML/CTF Act and AML/CTF Rules; and

b. it did not carry out adequate customer due diligence (CDD) with respect to 56 Higher Risk Customers and 65 SCEG Channel Customers (i.e. Customers channelled by SkyCity Entertainment Group Limited (SCEG), SkyCity's ultimate parent company), resulting in 121 contraventions of section 36(1) of the AML/CTF Act.

These contraventions made SkyCity vulnerable to criminal exploitation and exposed the Australian community and financial systems to ML/TF risk.

Its breaches included failure to implement adequate customer due diligence and ongoing monitoring procedures that allowed high-risk customers to move millions of dollars through the casino, making it difficult to track the source and ownership of the funds.

For more details, please refer to:

a) Judgement of the case: https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0664

b) Facts disclosed by AUSTRAC: https://www.austrac.gov.au/sites/default/files/2024-06/SkyCity_Statement_of_agreed_facts.pdf

Key Lessons Learned:

This and the other high-profile casino (Crown) cases in Australia reflect the lack of awareness and/or determination in implementing sufficiently effective AML control measures in their business processes.

- ✓ Casinos and other high-risk businesses must have robust AML/CTF programs in place to mitigate the risk of ML and TF.
- ✓ These programs must include effective customer due diligence, ongoing monitoring, and reporting procedures.
- ✓ Businesses must be aware of the potential consequences of failing to comply with AML/CTF regulations, including significant fines and reputational damage.
- ✓ It is important to have a culture of compliance within the organisation, with clear policies and procedures in place.
- ✓ Regular training and awareness programs should be conducted for staff to ensure they understand their AML/CTF responsibilities.
- ✓ Independent audits of AML/CTF programs should be conducted regularly to identify and address any weaknesses.

Overall, the SkyCity case highlights the importance of strong AML/CTF compliance and the serious consequences of non-compliance. Businesses must take proactive steps to ensure they are meeting their AML/CTF obligations and protecting their reputation, instead risking heavy fines, reputation risks and suspension of license.

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

3. *Starling Bank – UK: £29m or US$ 36.8 m fine*

In Oct 2024, the Financial Conduct Authority (FCA) in UK fined Starling Bank Limited, a digital bank, £28,959,426 for financial crime failings related to its financial sanctions screening. It also repeatedly breached a requirement not to open accounts for high-risk customers.

Starling grew quickly, from 43,000 customers in 2017 to 3.6 million in 2023. However, measures to tackle financial crime did not keep pace with its growth.

When the FCA reviewed financial crime controls at challenger banks in 2021, it identified serious concerns with the AML and sanctions framework in Starling. The bank agreed to a requirement restricting it from opening new accounts for high-risk customers, but it failed to comply and opened over 54,000 accounts for 49,000 high-risk customers between September 2021 and November 2023.

In January 2023, Starling also became aware that its automated screening system had, since 2017, only been screening customers against only a fraction of the full sanctions list. A subsequent internal review identified systemic issues in its financial sanction framework. Starling has since reported multiple potential breaches of financial sanctions to the relevant authorities.

For more details, please refer to the press release by FCA on this case:
https://www.fca.org.uk/news/press-releases/fca-fines-starling-bank-failings-financial-crime-systems-and-controls

Key lessons learned:

- ✓ Financial crime controls should be sufficiently enhanced to keep pace with business growth.
- ✓ Automated screening system should be reviewed from time to time to ensure that it covers the full list of sanctioned individuals and entities.
- ✓ Thorough review of remediation measures should be implemented in independent party to avoid repeated breaches of regulations
- ✓ Failure of AML processes can result in heavy fines and reputational risks. Early prevent measures should be implemented to minimize such risk.

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

4. *Nordea Bank: fined US$35m in the US*

In Aug 2024, Nordea Bank Abp agreed to pay $35 million in penalties as part of a settlement with the New York State Department of Financial Services for significant compliance failures with respect to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) requirements and the bank's failure to conduct proper due diligence of its correspondent bank partners.

In 2016, the Panama Papers leak exposed Nordea's role in helping hundreds of its customers create tax-sheltered companies using offshore accounts. The activity at Nordea's former branch in Vesterport, Denmark further implicated the bank in the flow of illicit funds with entities connected to the Russian Laundromat, the Azerbaijani Laundromat, and the Hermitage Capital Allegations.

The Department's subsequent investigation revealed that the bank's AML safeguards at its high-risk, former Baltic Branches, failed to adequately compensate for the increased risk level, leaving the bank vulnerable to money laundering and the flow of suspicious transactions.

Moreover, Nordea consistently failed to properly implement compliance initiatives, exposing the bank to elevated financial crime risk.

Compounding these weaknesses, the bank formed relationships with high-risk banking partners (e.g. Danske Bank, Bank of Cyprus), further exposing it to additional money laundering risks and making it possible for the bank to facilitate financial crimes.

It was also found that the bank's transaction monitoring system was inadequate, and some typologies were manually monitored, leading Nordea itself to acknowledge that its overall AML risk was "critical."

The combination of deficient AML controls, an unsophisticated transaction monitoring apparatus, and a decentralised global compliance program created a set of circumstances that exposed Nordea's financial channels to a high risk of criminal abuse. Nordea's relationships with U.S. banks imported those risks to the New York financial system.

For more details, please refer to the Consent Order issued by New York State Department of Finance Services in respect of the Nordea Bank case:
https://www.dfs.ny.gov/system/files/documents/2024/08/ea20240827-co-nordea.pdf

Key lessons learned:

Murphy's law is also applicable in this case.

- ✓ Nordea's AML controls were deemed insufficient to address the risks associated with high-risk customers and transactions. It also failed to implement effective customer due diligence (CDD) procedures, transaction monitoring systems, and suspicious activity reporting processes. These fundamental AML processes should be implemented and monitored from time to time.
- ✓ Despite previous actions and alerts, Nordea continued to exhibit weaknesses in its AML program. Remedial actions should be implemented timely to avoid continuous failures.
- ✓ Senior management and board oversight are essential to the overall governance over the AML process. There should be a strong compliance culture in the leadership to monitor ML and TF risks in the banking business.
- ✓ Failure of AML processes can result in heavy fines and reputational risks. Early preventive measures should be implemented to minimize such risk.

If you want to learn more in implementing preventive measures in AML processes as described above, please contact AA&T Consulting at advisory@aathk.com.

Contact us: AA & T Consulting Services Ltd, *Unit 9, 17/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, HK*
Email: advisory@aathk.com; Tel.: +852 9181 8659 (HK); +61 452 371 753 (Australia)
Website: HK: www.aathk.com; Aus. www.aataus.com

Appendix 2: References of information used

1. Financial Action Task Force (FATF)
   a) What is FATF?
      https://www.fatf-gafi.org/en/the-fatf/who-we-are.html
   b) FATF Publication: Public Consultation on AML/CFT and Financial Inclusion – proposed changes to FATF Standards (28 Oct 2024)
      https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/R1-INR1-INR10-INR15-Public-Consultation-Oct-24.html
   c) FATF Publication: Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers (27 Jun 2023)
      https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2023.html

2. TD Bank case: Consent Order imposing civil money penalty released by FinCEN:
   https://www.fincen.gov/sites/default/files/enforcement_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf

3. SkyCity Case:
   a) Judgement of the case:
      https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0664
   b) Facts disclosed by AUSTRAC: https://www.austrac.gov.au/sites/default/files/2024-06/SkyCity_Statement_of_agreed_facts.pdf
   c) List of enforcement actions taken by AUSTRAC (including concluded court proceedings):
      https://www.austrac.gov.au/lists-enforcement-actions-taken

4. Starling Bank case:
   a) Press release by FCA: https://www.fca.org.uk/news/press-releases/fca-fines-starling-bank-failings-financial-crime-systems-and-controls
   b) Final notice to the bank by FCA: https://www.fca.org.uk/publication/final-notices/starling-bank-limited-2024.pdf

5. Nordea Bank case: Consent Order issued by New York State Department of Finance Services:
   https://www.dfs.ny.gov/system/files/documents/2024/08/ea20240827-co-nordea.pdf