THE GUIDE TO ANTI-MONEY LAUNDERING

FIRST EDITION

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Published in the United Kingdom by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

www.globalinvestigationsreview.com

Enquiries concerning reproduction should be sent to: insight@globalinvestigationsreview.com.
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ISBN 978-1-80449-255-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following for their learned assistance throughout the preparation of this book:

Accuracy

Charles River Associates

FTI Consulting Inc

Herbert Smith Freehills

Latham & Watkins LLP

Morgan, Lewis & Bockius LLP

Morgan Lewis Stamford LLC

Orrick, Herrington & Sutcliffe LLP

Sullivan & Cromwell LLP

Venable LLP

Von Wobeser y Sierra, SC

Willkie Farr & Gallagher LLP

Wilmer Cutler Pickering Hale and Dorr LLP

Publisher's Note

The Guide to Anti-Money Laundering is published by Global Investigations Review (GIR) – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing. We tell our readers everything they need to know about all that matters in their chosen professional niche.

Thanks to GIR's position at the heart of the investigations community, we often spot gaps in the literature. *The Guide to Anti-Money Laundering* is a good example. For, despite a greater effort than ever to prosecute and eliminate money laundering by targeting financial gatekeepers, there is still no systematic work tying together all the trends in the area. This guide addresses that.

Its title is a little misleading. In fact, it covers both sides of the coin – trends in both the enforcement of money laundering laws (comprising Part I) and the operation of anti-money laundering regimes and the exigencies of compliance (Part II). Incorporating all of that in the title would have made it a little long (and slightly alarming: '*A Guide to Money Laundering . . .*' sounds quite wrong).

The guide is part of GIR's steadily growing technical library. This began six years ago with the first appearance of the revered GIR *Practitioner's Guide to Global Investigations*. *The Practitioner's Guide* tracks the life cycle of any internal investigation, from discovery of a potential problem to its resolution, telling the reader what to do or think about at every stage. Since then, we have published a series of volumes that go into more detail than is possible in *The Practitioner's Guide* about some of the specifics, including guides to sanctions, enforcement of securities laws, compliance and monitorships. I urge you to get copies of them all (they are available free of charge as PDFs and e-books on our website - www.globalinvestigationsreview.com).

Last, I would like to thank our external editor, Sharon Cohen Levin, for helping to shape our lumpier initial vision, and all the authors and my colleagues for the elan with which they have brought the guide to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at insight@globalinvestigationsreview.com.

David Samuels
Publisher, GIR
August 2023

CHAPTER 3

Recent Trends in Asia-Pacific Money Laundering

Pardeep Khosa and Charles Mo[1]

Introduction

Authorities across the Asia-Pacific region continue to tackle money laundering and the financing of terrorism through enforcement actions and prosecutions while concurrently seeking to amend and update the regulatory regimes to plug gaps and address developments in this area.

In this chapter, we discuss some of the recent enforcement actions and prosecutions in the region and highlight some of the recent trends and developments in regulation and regulatory guidance, which include heightened regulation for digital currencies and an increased emphasis on a risk-based approach to anti-money laundering and countering the financing of terrorism (AML/CFT) measures.

Recent prosecutions and enforcement actions

Regulatory authorities in the region appear to have adopted a strategy that involves regulating and disciplining financial institutions that are on the front line of combating AML/CFT risks.

In Australia, Hong Kong and Singapore, regulatory authorities have publicly imposed significant financial penalties on financial institutions for failing to comply with customer due diligence and reporting requirements.

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Australia

The aim of the Anti-Money Laundering and Counter-Terrorism Financing Act of 2006 (the 2006 Act) is combating money laundering and financing activities. Under the 2006 Act, the Australian Transaction Reports and Analysis Centre (AUSTRAC) is responsible for regulating entities that perform certain designated services that have a geographical link to Australia.

These designated services include financial services, businesses that trade in bullion and businesses that provide gambling services.[2] According to the 2006 Act, entities that provide these designated services are termed 'reporting entities'.[3] Reporting entities must comply with Part 3 of the 2006 Act, which imposes on them an obligation to provide to AUSTRAC reports on suspicious matters,[4] transactions that are above certain thresholds, international fund transfers and compliance reports.[5]

Reporting entities who fail to comply with these reporting obligations are liable to prosecution under the 2006 Act. AUSTRAC regularly takes enforcement actions against reporting entities for serious and systemic breaches of their obligations under the 2006 Act and seeks significant civil penalties.

Recent enforcement actions include the following:

- On 24 November 2019, AUSTRAC commenced civil penalty proceedings against Westpac after an investigation found that Westpac's oversight of its AML/CFT programme was insufficient. On 21 October, the Federal Court of Australia affirmed a proposed A$1.3 billion settlement between AUSTRAC and Westpac in respect of Westpac's breaches of its obligations under the 2006 Act,[6] including a failure to report to AUSTRAC more than 19.5 million international fund transfers amounting to more than A$11 billion. Westpac also agreed that it had failed to pass on to other banks in the transfer chain information relating to the origin of some of these international fund transfers, which those banks needed to manage their own AML/CFT risks.

2 Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Section 6.

3 ibid., Section 5.

4 ibid., Section 41(1).

5 ibid., Section Part 3 – Reporting obligations.

6 https://www.austrac.gov.au/news-and-media/media-release/austrac-and-westpac-agree-penalty (accessed 21 July 2023).

- On 1 May 2022, AUSTRAC commenced civil penalty proceedings against Crown Melbourne and Crown Perth for alleged serious and systemic non-compliance with the 2006 Act.[7] On 30 May 2023, AUSTRAC, Crown Melbourne and Crown Perth filed joint submissions in those proceedings in which they said that a A$450 million penalty was appropriate, having regard to Crown Melbourne and Crown Perth's admissions that they had contravened the 2006 Act, in that, among other things, they:
  - failed to appropriately assess the AML/CFT risks they faced, and to identify and respond to changes in risk over time;
  - did not have appropriate risk-based systems and controls in their AML/CFT programmes to mitigate and manage the money laundering and terrorism financing risks they face;
  - failed to establish an appropriate framework for board and senior management oversight of their AML/CFT programmes;
  - did not have a transaction monitoring programme that was appropriate to the nature, size and complexity of their business;
  - had an enhanced customer due diligence programme that lacked appropriate procedures to ensure higher risk customers were subjected to extra scrutiny; and
  - did not conduct appropriate ongoing customer due diligence on a range of specific customers who presented higher money laundering risks.[8]
- On 30 November 2022, AUSTRAC commenced civil penalty proceedings in the Federal Court against Star Entertainment Group entities.[9] AUSTRAC has alleged that the Star entities:
  - failed to appropriately assess the AML/CFT risks they faced;
  - did not include in their AML/CFT programmes appropriate risk-based systems and controls to mitigate and manage the risks to which the Star entities were reasonably exposed;
  - failed to establish an appropriate framework for board and senior management oversight of their AML/CFT programmes;

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7 https://www.austrac.gov.au/news-and-media/media-release/austrac-commences-proceedings-federal-court-against-crown-melbourne-and-crown-perth (accessed 21 July 2023).

8 https://www.austrac.gov.au/news-and-media/media-release/austrac-and-crown-agree-proposed-450-million-penalty (accessed 21 July 2023).

9 https://www.austrac.gov.au/news-and-media/media-release/austrac-commences-proceedings-federal-court-against-star-entertainment-group-entities (accessed 26 July 2023).

- did not have a programme to monitor transactions and identify suspicious activity that was appropriately risk-based or appropriate to the nature, size and complexity of the Star entities;
- did not have an appropriate enhanced customer due diligence programme to carry out additional checks on higher risk customers; and
- did not conduct appropriate ongoing customer due diligence on a range of customers who presented higher money laundering risks.

AUSTRAC has also employed a range of other enforcement actions where reporting entities failed to comply with their obligations under the 2006 Act. Those actions include issuing infringement notices and remedial directions, and accepting enforceable undertakings under the 2006 Act. (An enforceable undertaking specifies the actions a reporting entity will commence or cease so as to comply with the 2006 Act.[10])

If a reporting entity breaches an enforceable undertaking, AUSTRAC may apply to the Federal Court for an order directing the entity to comply with the undertaking or pay compensation, among other remedies.[11]

The following is a summary of some of the recent enforceable undertakings that AUSTRAC has accepted from its reporting entities:

- On 24 November 2022, AUSTRAC accepted an enforceable undertaking from the ING Bank Australia Group after it self-identified and voluntarily reported shortcomings in relation to its compliance with its anti-money laundering obligations.[12]
- On 17 March 2023, AUSTRAC accepted an enforceable undertaking from PayPal after AUSTRAC identified concerns about PayPal's systems, controls and governance in relation to its reporting of international funds transfer instructions.[13]

10 Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Section 197.

11 ibid., Section 198.

12 https://www.austrac.gov.au/news-and-media/media-release/austrac-accepts-enforceable-undertaking-ing (accessed 21 July 2023).

13 https://www.austrac.gov.au/news-and-media/media-release/austrac-accepts-enforceable-undertaking-paypal (accessed 21 July 2023).

- On 31 May 2023, AUSTRAC accepted an enforceable undertaking from the Bank of Queensland Limited following a compliance inspection by AUSTRAC that identified concerns relating to the adequacy of the bank's AML/CFT systems and controls.[14] As part of the enforceable undertaking, Bank of Queensland was required to employ an external auditor, who will report to AUSTRAC.

Singapore

An approach similar to the one in Australia has been adopted in Singapore.

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA) criminalises money laundering offences and imposes reporting and record retention obligations on financial institutions in Singapore.[15] The Attorney-General's Chambers prosecutes criminal cases of money laundering and failures to comply with reporting and record retention requirements under the CDSA.

In addition, the Financial Services and Markets Act 2022 (FSMA) provides for sector-wide regulation of financial services and markets and related entities. Under the FSMA, the Monetary Authority of Singapore (MAS) is responsible for regulating and taking enforcement actions against Singapore's financial institutions for money laundering.[16] The MAS issues regulations on due diligence and record-keeping obligations pursuant to the FSMA, and failure to comply with these obligations is an offence punishable on conviction by a fine not exceeding S$1 million.[17]

In April 2022, the MAS published an enforcement report covering the period between July 2020 and December 2021,[18] according to which the MAS took the following measures against financial institutions:

- Goldman Sachs (Singapore) Pte was directed to appoint an independent external party to review its remediation measures after a MAS inspection uncovered risk governance deficiencies.

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14 https://www.austrac.gov.au/news-and-media/media-release/austrac-accepts-enforceable-undertaking-bank-queensland (accessed 21 July 2023).

15 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992, Parts 5 and 6.

16 Financial Services and Markets Act 2002, Sections 15 and 16.

17 ibid., Section 16.

18 Monetary Authority of Singapore (MAS), 'Enforcement Report July 2020 to December 2021', pp. 21–22.

- A composition penalty of S$1.1 million was imposed on the Singapore branch of Bank J Safra Sasin Ltd for failing to establish the source of wealth and source of funds of customers who presented a higher AML/CFT risk, and for failing to enquire into the purpose of unusually large or unusual patterns of customer transactions that had no obvious economic purpose.
- A composition penalty of S$1.1 million was imposed on Vistra Trust (Singapore) Pte Ltd for failing to implement adequate procedures during account acquisition to determine whether business contact with trust-relevant parties presented higher AML/CFT risks, and for failing to conduct adequate enhanced customer due diligence for higher risk trust-relevant parties, including (1) the corroboration of the sources of wealth and of funds and (2) obtaining senior management's approval to establish or continue business contact.

In total, between July 2020 and December 2021, the MAS collected S$2.4 million in composition penalties from four financial institutions after its inspections discovered severe deficiencies in these financial institutions' AML/CFT controls.[19]

Hong Kong

The Hong Kong Monetary Authority (HKMA) also regularly takes public enforcement action against financial institutions that have failed to comply with the applicable laws and regulations relating to AML/CFT.

The Organized and Serious Crimes Ordinance (Cap. 455), the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) criminalise money laundering.

Further, the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) imposes due diligence and record-keeping requirements on financial institutions and designated non-financial business and professions, which include accounting professionals, estate agents, legal professionals and trust or company service provider licensees.

Under the AMLO, the HKMA as a relevant authority is empowered to publish guidelines on customer due diligence and record-keeping.[20] Failure to comply with these guidelines is not a criminal offence but the HKMA is empowered to take enforcement actions, such as issuing a public reprimand or ordering

19 MAS, 'Enforcement Report July 2020 to December 2021'.

20 Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), Section 7(3).

a financial institution to pay a financial penalty not exceeding HK$10 million or three times the amount of profit gained or costs avoided, whichever is greater, in respect of any contravention of due diligence or reporting requirements.

The following is a summary of the HKMA's press releases on selected enforcement actions:

- On 23 September 2022, the HKMA announced that it had imposed a pecuniary penalty of HK$11 million against the Hong Kong branch of Cathay United Bank Company, Limited. An investigation and disciplinary proceedings conducted by the HKMA revealed that the bank had:
    - deficient controls relating to the conduct of customer due diligence in respect of high-risk situations between April 2012 and February 2016; and
    - failed to take all reasonable measures to ensure that proper safeguards were in place to prevent the contraventions and to mitigate money laundering or terrorist financing risks.

On 31 January 2023, the HKMA announced that it had imposed a pecuniary penalty of HK$4 million against the Hong Kong branch of Westpac Banking Corporation.[21]An investigation and disciplinary proceedings conducted by HKMA under the AMLO found that there had been control lapses leading to delays in Westpac completing periodic reviews of its customers between June 2016 and May 2017. Westpac had also failed to establish and maintain effective procedures for carrying out its duties to periodically review its customers.

China

In contrast with Australia, Hong Kong and Singapore, enforcement actions in China seemed to be increasingly focused on individuals (and not, for example, financial institutions).

The AML/CFT regime in China is contained in the Criminal Law, the Anti-Money Laundering Law and the Counter-Terrorism Law (together, the Laws), as well as the regulations and rules that China's central bank, the People's Bank of China (PBC), publishes for financial institutions and certain

21 https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/01/20230131-11/ (accessed 21 July 2023).

non-financial institutions (the latter include real estate developers and real estate agents, dealers in precious metals and stones, accounting firms, law firms and notaries, and company service providers).[22]

Under the Laws, the PBC is the supervisory authority for AML operations by financial institutions. The PBC investigates and takes enforcement actions in respect of violations of AML/CFT regulations and procedures.[23]

The PBC's Rules for Anti-money Laundering by Financial Institutions state that the PBC may issue a warning and an order to a financial institution to correct any failure to establish internal AML/CFT mechanisms, to meet reporting requirements or to comply with other regulations published by the PBC. Failure to make corrections within the time limit specified by the PBC may lead to the imposition of a fine not exceeding 30,000 yuan. Additionally, the senior executives of institutions immediately accountable for such conduct may be disqualified from holding any position in the financial industry if the circumstances are serious.[24]

On 30 January 2023, the PBC published the 'China Anti-Money Laundering Report 2021', which is a summary of the efforts China took to tackle AML/CFT in 2021. The Report discloses a number of trends.

First, the PBC reported that, between 2019 and 2020, the volume of suspicious transaction reports grew by 57.96 per cent to 2.586 million[25] and, between 2020 and 2021, the volume of suspicious transaction reports grew by a further 47.52 per cent to 3.816 million.[26]

Second, the rate of enforcement actions against corporate entities decreased between 2020 and 2021.

In 2020, the PBC imposed administrative penalties totalling 526 million yuan on 614 reporting institutions and imposed fines totalling 24.68 million yuan on 1,000 individuals who violated the PBC's regulations.[27]

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22 Notice of the General Office of the People's Bank of China on Strengthening the Anti-Money Laundering Supervision Work on Designated Non-Financial Businesses and Professions, 2018 (see http://www.pbc.gov.cn/fanxiqianju/135153/135173/3587072/index.html (in Mandarin) (accessed 26 July 2023)).

23 Anti-Money Laundering Law of the People's Republic of China, Chapter II read with Article 7 of the Rules for Anti-Money Laundering by Financial Institutions.

24 Rules for Anti-Money Laundering by Financial Institutions, Article 20.

25 id.

26 China Anti-Money Laundering Report 2021, p. 3 (http://www.pbc.gov.cn/fanxiqianju/resource/cms/2023/02/2023020114280231831.pdf (in Mandarin) (accessed 26 July 2023)).

27 China Anti-Money Laundering Report 2020, p. 3.

In 2021, the PBC imposed administrative penalties totalling 321 million yuan on 401 institutions for money laundering violations and imposed fines totalling 19.36 million yuan on 759 individuals.

Third, although enforcement actions against corporate entities decreased between 2019 and 2021, prosecutions of individuals for money laundering-related offences (specifically concealing the proceeds of crime) increased significantly:

- In 2020, 23,838 individuals were prosecuted, 16,328 of whom were convicted at first instance.[28]
- In 2021, 47,025 individuals were prosecuted, 31,883 of whom were convicted at first instance.[29]

Recent government guidance

Enforcement actions taken recently show that money laundering remains a pressing concern in the region. Alongside a proactive approach to enforcing AML/CFT requirements, regulators have also taken steps to close loopholes through amendments to key legislation and regulations.

Australia

The Australian legislature is intending to reform the 2006 Act. A 2016 statutory review of the 2006 Act by the Attorney-General's Department (the 2016 Statutory Review) found that the scale, structure and density of the Act impeded the ability of regulated entities, such as small businesses, to understand and to comply with their AML/CFT obligations under the 2006 Act.[30]

On 20 April 2023, the Australian government announced that it was commencing a public consultation on proposed amendments to the 2006 Act. On the same day, the Attorney-General's Department released the first of two consultation papers on the proposed reforms. The Attorney-General's Department intends to release the second paper later in 2023.[31]

The purpose of the proposed reforms, broadly, is threefold. The first to simplify the 2006 Act and streamline the operation of the AFL/CFT regime under the Act.

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28 ibid., p. 6.

29 China Anti-Money Laundering Report 2021, p. 6 (Paragraph 5(4)).

30 ibid., p. 3.

31 https://www.austrac.gov.au/consultations/consultation-proposed-amlctf-legislation-reforms (accessed 21 July 2023).

The 2016 Statutory Review found the structure of the 2006 Act to be confusing. Under the Act, the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (the Rules) provide that an AML/CFT programme must comprise a Part A and a Part B. According to the Rules, Part A must set out the practices that regulated entities should adopt for the purpose of identifying, mitigating and managing money laundering and terrorism financing risks, and Part B must set out requirements for a regulated entity's due diligence procedures.[32]

The consultation paper proposes that these Parts be streamlined into a single requirement to develop, implement and maintain an AML/CFT programme. It also proposes simplifications to the customer due diligence obligations on regulated entities.[33]

The second aim of the proposed reforms is to update Australia's AML/CFT regime to comply with global standards by extending it to cover what the Consultation Paper calls 'tranche-two entities'; so named because the proposed reforms represent the second tranche of reforms to Australia's AML/CFT regulations.

Tranche-two entities are non-financial and high-risk professions, including lawyers, accountants, auditors, trust and company service providers, real estate agents, and dealers in precious metals and stones, fine art, antiques, collectibles, yachts and luxury cars. These professions are considered to be particularly vulnerable to misuse and exploitation by transnational, serious and organised crime groups and terrorists because of the nature of the services they provide.[34]

If ratified, the proposed amendments would subject tranche-two entities to six key regulatory obligations, which involve additional due diligence, reporting and registration requirements, as follows:[35]

- *Customer due diligence*: Regulated entities must verify a customer's identity before providing a designated service, and understand the customer's risk profile.

32 Australian Government, Attorney-General's Department, 'Modernising Australia's anti-money laundering and counter-terrorism financing regime: Consultation paper on reforms to simplify and modernise the regime and address risks in certain professions' (April 2023), p. 6.

33 ibid., p. 7.

34 id.

35 ibid., p. 25.

- *Continuing customer due diligence*: Regulated entities must conduct continuing customer due diligence throughout the course of the business relationship, including transaction monitoring and enhanced customer due diligence.
- *Reporting*: Regulated entities must report to AUSTRAC all 'suspicious matters', cash transactions of A$10,000 or more, all instructions for the transfer of value sent into or out of Australia and annual compliance reports. All persons must report cross-border movements of monetary instruments above the threshold of A$10,000 or the foreign equivalent.
- *Developing and maintaining an AML/CFT programme*: Regulated entities must identify the risks they face in providing designated services to customers and develop and maintain an AML/CFT programme that includes systems and controls to mitigate and manage those risks.
- *Record-keeping*: Regulated entities must make and retain certain records that can assist with the investigation of financial crime or that are relevant to their compliance with the AML/CFT regime for seven years, and ensure they are available to law enforcement, if required.
- *Enrolment and registration with AUSTRAC*: Regulated entities must enrol with AUSTRAC if they provide a designated service. In addition, remittance service providers and digital currency exchange providers must register with AUSTRAC to permit additional checks to ensure that criminals and their associates are kept out of these sectors.

Third, the proposed reforms are intended to further regulate digital currency exchanges in Australia. In 2018, the Financial Action Task Force (FATF) published amendments identifying digital currency exchange services as posing a high risk of facilitating money laundering within criminal networks. The FATF published amendments to its standards to require countries to impose AML/CFT obligations on digital currency exchange services.

The proposed reforms to the 2006 Act are intended to adopt the standards that the FATF published in 2018 and apply the existing regulations to the following services:

- exchanges between one or more other forms of digital currency;
- transfers of digital currency on behalf of a customer;
- safekeeping or administration of digital currency; and
- provision of financial services relating to an issuer's offer or the sale of a digital currency (e.g., initial coin offerings where start-up companies sell investors a new digital token or cryptocurrency to raise money for projects).

China

The FATF published China's FATF Mutual Evaluation Report in April 2019.[36] The Report highlighted the vulnerabilities in China's AML/CFT regime, including insufficient regulation of the non-bank payment sector and non-financial businesses and professions.[37]

The PBC's Measures for the Supervision of Anti-Money Laundering and Counter-Terrorist Financing of Financial Institutions (the 2021 Measures) came into effect on 1 August 2021. The 2021 Measures are intended to address the vulnerabilities identified in the 2019 Report.

In broad terms, there are two aspects to the 2021 Measures. First, they expanded the list of applicable entities, which now include loan companies, asset management subsidiaries of commercial banks, non-banking payment institutions, insurance agents and brokers.

Second, the 2021 Measures reinforce the PRC's risk-based approach through the 'Guidelines on Self-Assessment of Money Laundering and Terrorist Financing Risk for Legal-Person Financial Institution' (the Self-Assessment Guidelines). These Guidelines provide financial institutions with general principles, factors and methods for conducting self-assessments to ascertain AML/CFT risks. The objective of these assessments is to aid financial institutions in establishing comprehensive internal control systems and risk management policies.[38]

Under the 2021 Measures, the following financial institutions in China are required to conduct self-assessments of AML/CFT risks in line with the Self-Assessment Guidelines:

- developmental institutions;
- securities, fixed income and investment funds;
- insurance companies; and
- trusts and asset managers.[39]

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36 Financial Action Task Force (FATF), 'Anti-money laundering and counter-terrorist financing measures, People's Republic of China, Mutual Evaluation Report' (April 2019) (https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-china-2019.html (accessed 21 July 2023)).

37 ibid., Paragraphs 42–43.

38 People's Bank of China, 'Measures for the Supervision and Administration of Anti-Money Laundering and Counter-Terrorist Financing by Financial Institutions', Chapter 2 (in Mandarin) (http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4232926/index.html (accessed 21 July 2023)).

39 id.

The Measures also list other financial institutions that do not need to employ the Self-Assessment Guidelines but are still subject to the PBC's supervisory powers. These institutions fall into the following categories:

- finance companies of enterprises groups;
- finance leasing companies;
- auto financing companies;
- consumer financing companies;
- money broker companies;
- finance houses; and
- wealth management subsidiaries of banks.[40]

Hong Kong

On 7 December 2022, the Legislative Council of Hong Kong passed the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022. The amended Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the Amended AMLO) introduces the following:

- a licensing regime for virtual asset service providers, subjecting them to the fit-and-proper test currently faced by other financial sectors and bringing them within the AML/CFT requirements of the Amended AMLO (including requirements on customer due diligence and record-keeping); and
- a two-tiered registration regime for dealers in precious metals and stones, subjecting registrants engaging in cash or non-cash transactions at or above HK$120,000 to the AML/CFT obligations stipulated in the Amended AMLO.

The Amended AMLO is being brought into effect in phases in 2023 to provide industries with sufficient time to prepare for the new regulatory requirements. The registration regime for dealers in precious metals and stones came into effect in April 2023 and the licensing regime for virtual asset service providers came into effect in June 2023.

Singapore

The Financial Services and Markets Act 2022 (FSMA) was passed in April 2022 and is expected to come into force in phases during the second half of 2023 and into 2024. The FSMA is intended to consolidate various Acts relating to the financial sector in Singapore. Before the FSMA, many of the MAS's powers

40 id.

relating to AML/CFT measures were derived from the Monetary Authority of Singapore Act 1970 and the Payment Services Act. These powers will now be housed under the FSMA.[41]

The MAS's AML/CFT regulatory scope has been increased under the FSMA. This increase in scope has largely been directed at digital payment tokens and digital payment token services. Persons who carry on a business of digital token services in Singapore will now be regulated as a new class of financial institutions under the FSMA.[42] Under this new regime, any individual or partnership carrying on a business of providing any type of digital token service in Singapore must be licensed, whether or not the services are provided in Singapore or overseas.[43]

These digital token service providers must comply with the applicable licensing requirements, as well as the MAS's general powers under Part IV of the FSMA; these include the power to conduct AML/CFT inspections[44] and the power to compel the disclosure of a copy of any information requested by an AML/CFT authority.[45]

In addition, in 2022 the MAS issued 'MAS Notice 626 (Amendment) 2022' (MAS Notice 626) and 'MAS Notice PSN02' (together, the Notices),[46] which updated the MAS's regulation of banks and digital payment token service providers.

MAS Notice 626 directs banks to adopt a risk-based approach in preventing money laundering and terrorism financing. Banks have to identify, assess and understand their money laundering and terrorism financing risks in relation to:

> *(a) its customers;*
> *(b) the countries or jurisdictions its customers are from or in;*
> *(c) the countries or jurisdictions the bank has operations in; and*
> *(d) the products, services, transactions, including digital token transactions, and delivery channels of the bank.*[47]

41 Financial Services and Markets Act 2002, Part 4.
42 ibid., Part 4, Division 2.
43 ibid., Section 137.
44 ibid., Subdivision 5.
45 ibid., Part IV, Division 2, Subdivision 2.
46 See Monetary Authority of Singapore Act, Section 27B.
47 MAS, Notice 626 (Amendment) 2022 (1 March 2022), at [4.1] (https://www.mas.gov.sg/-/media/mas-media-library/regulation/notices/amld/notice-626/mas-notice-626-last-revised-on-1-march-2022-4.pdf (accessed 21 July 2023)).

MAS Notice PSN02 directs digital payment token services to employ a risk-based approach to preventing money laundering and terrorism financing.

To supplement efforts to detect AML/CFT risks, on 9 May 2023, the Singapore Parliament passed the Financial Services and Markets (Amendment) Bill. This Bill provides the legal framework for the Collaborative Sharing of Money Laundering/Terrorism Financing Information and Cases (COSMIC). COSMIC is a platform through which six of Singapore's major banks can share information about customers to mitigate money laundering and other financial crime risks.[48]

Finally, in 2023, amendments to the CDSA were passed to increase corporate exposure to criminal liability for money laundering offences. These amendments include the introduction of two new criminal offences: rash money laundering and negligent money laundering.

The introduction of two new money laundering offences means that corporate entities are liable to criminal prosecution for negligently continuing with a transaction despite the presence of red flags that are noticeable by an ordinary, reasonable person; or for rashly carrying out a transaction despite having some suspicions but failing to make further enquiries to address those suspicions.[49] Any company that commits such an offence shall be liable on conviction to a fine not exceeding S$1 million or twice the value of the benefits from the criminal conduct in respect of which the offence was committed, whichever is higher.[50]

International cooperation

International cooperation is already a large part of the continued development of AML/CFT regulation, and it is likely that it will continue to be an important part of AML/CFT efforts as money laundering schemes continue to become more complex.

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48 '"Financial Services and Markets (Amendment) Bill" – Second Reading Speech by Mr Alvin Tan, Minister of State, Ministry of Culture , Community and Youth & Ministry of Trade and Industry, and Board Member of MAS, on behalf of Mr Tharman Shanmugaratnam, Senior Minister and Minister-in-charge of the Monetary Authority of Singapore, on 9 May 2023' (https://mondovisione.com/media-and-resources/news/financial-services-and-markets-amendment-bill-second-reading-speech-by-mr/ (accessed 21 July 2023)).

49 Ministry of Home Affairs, press release, 'Amendments to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act and the Computer Misuse Act' (18 April 2023).

50 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill, Amendment of Section 55A(6).

The Asia/Pacific Group on Money Laundering (APG) is an FATF-style regional body that adopts the FATF's standards and assessment methodology. It conducts mutual peer reviews to determine the levels of compliance of member countries with international AML/CFT standards. In this role, it aids the FATF in ensuring that its policies are implemented globally. Forty-one countries in the Asia-Pacific region are already members of the APG.

Further, 28 countries in the Asia-Pacific region have established financial intelligence units that are compliant with the requirements of the Egmont Group, which fosters and facilitates information exchanges for the purposes of combatting financial crime.

Apart from these international initiatives, countries have also internal information-sharing practices as part of their domestic AML/CFT regimes. For example, Singapore's FSMA now expressly provides that at the request of a foreign AML/CFT authority, the MAS may transmit any information in the possession of the MAS to that authority.[51] AUSTRAC has negotiated exchange instruments with foreign intelligence units in multiple countries in the region, including China, Hong Kong, India, Malaysia, Singapore.[52]

Conclusion

Enforcement action and regulatory activity with regard to AML/CFT risks will continue to grow in the Asia-Pacific region; consequently enforcement actions against financial institutions will continue apace.

Further, as new regulations emerge, companies will need to be increasingly proactive in ensuring that their due diligence and reporting procedures remain compliant. In particular, this is so that jurisdictions continue to develop risk-based approaches to AML/CFT obligations, under which companies will be required to assess the AML/CFT risks they face and employ the required safeguards according to the applicable regulations. In light of this, keeping up to date with developments in legislation and regulations is more important than ever.

51 Financial Services and Markets Act 2002, Section 20.

52 https://www.austrac.gov.au/partners/international-partners/exchange-instruments-list (accessed 21 July 2023).