4X Labs

The Changing Compliance Landscape for Money Changers

AN OVERVIEW IN

JURISDICTIONS

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EXECUTIVE SUMMARY

Money changers live in a changing compliance landscape where national issues affect both laws and enforcement efforts. Anti-money laundering (AML) and counter terrorist financing (CFT) laws are the main compliance obligations for money changers, in addition to licensing requirements.

Indonesian money changers have to cope with growing enforcement of the local currency as legal tender amid tightening anti-terrorist enforcement. Thailand is determined to root out corruption and toughening its stance on enforcement of anti-money laundering measures. Malaysia faces market volatility and criticism in the lack of successfully prosecuted money laundering cases. India is facing growing repercussions of its bad loans from public bank which could make money changers a target for criminal activity.

Singapore is experiencing higher volatility in its currency and stricter enforcement action. Australia and New Zealand both face calls to initiate phase two reforms of money laundering and terrorist financing reforms. Hong Kong is caught up in the growing capital outflows from China as its economy slows down and greater financial penalties for money laundering.

This white paper is brought to you by 4xLabs. After reading through this white paper carefully, money changers will have a better understanding of the pertinent regional issues that affect their business compliance and understand how a professional money changer software can help in navigating the tricky legal terrain of AML / CFT compliance.

OVERVIEW

FINANCIAL ACTION TASK FORCE

An important global body that sets standards for AML/CFT measures is the Financial Action Task Force (FATF) which was established in 1989 and headquartered in Paris. Money laundering was an important financial issue in 1989 and it spurred the creation of this organisation. After the major 9/11 terrorist attacks, counter terrorist financing was added as another key focus of FATF. The recent spate of terrorist attacks renewed its focus to counter terrorist financing.

FATF sets the global policy for AML/CFT to bring about a coordinated global effort to tackle these key issues in nations around the world. Australia held the presidency in 2015 and made important progress globally on action taken against terrorist financing. South Korea is the current president in 2016 and is focusing on helping countries to enhance their counter terrorist financing efforts.

The FATF Plenary brings together various member countries thrice yearly to set policies called Recommendations. The FATF Secretariat monitors the actual implementation of these Recommendations and identify new threats to the financial system.

Countries that are weak in their AML/CFT implementation would be called upon publicly by the FATF Plenary to make the necessary progress. For instance, Japan was called upon in 2014 for its lack of AML/CFT progress since its commitment in 2008.

FATF maintains a list of nations that is officially known as High Risk and Non Cooperative Jurisdictions. Once countries are on this list, they are penalized by other jurisdictions with higher banking transaction cost. Most of the jurisdictions covered by this white paper have at some time been placed on this list. Under the guidance of the FATF, however, the general global trend is towards tougher compliance enforcement under the AML and CFT, so as to be taken off this grey list.

The FATF's decision making body, the FATF Plenary, meets three times per year.
FATF Plenary in seccion, February 2012

MAIN LAWS GOVERNING COMPLIANCE FOR MONEY CHANGERS

Before we move into the details and peculiarities of each jurisdiction, here is an overview of compliance laws in each jurisdiction. These laws are mainly focused on the responsibilities of money changers to do Know Your Client (KYC) checks which essentially requires money changers to conduct identity verification for their clients in accordance to AML/CFT measures.

These eight jurisdictions are indexed according to the complexities as surveyed by professional service firm TMF Group. A higher index represents a less complex jurisdiction.

No.	Jurisdiction	TMF Complexity Index	Main Regulator	Official Names For Money Changers	Main Law(s) For Money Changers
1	Indonesia	2	Bank Indonesia (BI)	Non-Bank Money Exchange Provider (Non Bank KUPVA)	BI Regulation Number 16/15/ PBI/2014 dated 11 September 2014
2	Thailand	9	Bank of Thailand (BOT)	Authorized Money Changers	Exchange Control Act (B.E. 2485) Ministerial Regulation No. 13 (B.E. 2497)

3	Malaysia	15	Bank Negara Malaysia (BNM)	Money Services Business (MSB)	Money Services Business Act 2011
4	India	25	Reserve Bank Of India (RBI)	Authorized Money Changer (AMC)	Foreign Exchange Management Act 1999
5	Singapore	42	Monetary Authority of Singapore (MAS)	Money Changing Business	Money-changing and Remittance Businesses Act (2013 Amendment)
6	Australia	87	Australian Transaction Report and Analysis Centre (AUSTRAC)	Money Exchange Business/ Cash Dealer	Financial Transaction Reports Act 1988 (2015 Amendment)
7	Hong Kong	89	Custom & Excise Department	Money Services Operators (MSO)	Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Chapter 615
8	New Zealand	91	Department Of Internal Affairs (DIA)	Money Changers	Anti-Money Laundering and Countering Financing of Terrorism Act 2009

In other words, Indonesia is the most complex and New Zealand has the most straightforward legal environment.

The main laws listed here would provide guidelines to the basic regulations money changers must adhere to such as licensing fees, amounts that trigger enhanced record keeping AML/CFT laws, suspicious transaction reporting and other relevant regulatory requirements.

All these should be second nature to existing money changers, and anyone looking to enter the industry should examine these laws carefully. Hence, the minute details are not covered in this white paper. Besides these main regulators, businesses should also be aware that there are other regulators which are introduced in the following sections.

TRACKING OFFICIAL DESIGNATIONS

The main regulators of each jurisdiction determine the official names of money changers. Money changers should be aware of their official designation because this will allow them to see if they are affected by changes to the law. For instance, Australia's Financial Transaction Reports Act 1988 regulates both bullion sellers and cash dealers.

The knowledge that you are known as a 'cash dealer' would indicate if future amendments would apply to you. The regulator, AUSTRAC, also refers to money changers as 'money exchange business' and this knowledge is useful when periodic circulars are released.

Lastly, the main legal instrument that empowers the regulator are presented for you here. However, this may not be the only law that matters to money changers. Depending on the nature of the offense, money changers are also subjected to criminal laws. This white paper is not meant to be a comprehensive overview of the compliance requirements, but serves as a guideline on compliance for money changers. The recent developments of each jurisdiction that are worth noting for money changers is also highlighted. If you have any concerns, you should consult your legal advisers.

TRIGGERING AMOUNTS FOR RECORD KEEPING

Different jurisdictions have their own sensitivities regarding the amount which triggers record keeping for AML/CFT purposes. These amounts are set to deter and detect money laundering and yet not burden money changers with too much administrative work. This is a fine balance that is adjusted periodically.

No.	Jurisdiction	Local Currency (As of 03 May 2016)	USD or Equivalent (As of 03 May 2016)	Documents Needed	Effective Date
1	Indonesia	~ IDR $329,874, 925925	$25,000 (Previous: $100,000)	Document supporting underlying transaction such as health treatment and school tuition fees	28 Aug 2015
2	Thailand	~ THB $174,712	$5,000	Passport or other travel documents	11 Aug 2004
3	Malaysia	MYR$3,000	~ USD$759	Particulars of customers and duplicate copy of identification documents	26 Aug 2011
4	India	R$50,000	~ USD$753	Identity Proof	1 Jul 2013
5	Singapore	SGD$5,000	~ USD$ 3,714	Identity Card or Passport with full name, address, date of birth and nationality	1 Jan 2006
6	Australia	AUD$ 10,000	~ USD$ 7,539	1. Financial transaction document 2. Account and Signatory Information (identity)	12 Dec 2008
7	Hong Kong	HKD$8,000	~ USD$ 1,031	Identity Card and record of transaction	20 Dec 2006
8	New Zealand	NZD$ 10,000	~ USD$ 6,981	Identity and source of funds	30 Jun 2013

GUIDELINES FOR IDENTIFYING RISK

These guidelines are meant to help money changers identify money laundering (ML) activities and are not meant to be comprehensive. Money changers need to understand that money laundering comes in the three stages of placement, layering and integration.

Placement is the introduction of illegal money from its source into the financial system. Layering is the separation of the illegal money from its source. Integration is the introduction of the 'clean' money back into the financial system.

Money changers should know that they are most vulnerable to being targeted by criminals at the placement stage. Criminals might smuggle foreign currencies and present them at money changing outlets to introduce or 'place' illegal money into the financial system.

This will expose money changers to legal liabilities. However, money changers can safeguard themselves by spotting common tell tale signs such as:

Problems with Identification

If customers are exchanging money above the trigger amount, they will have to produce their passport or national identification document.

If money changers encounter issues where such customers are unable to produce valid identification documents and corresponding verification details or if they can't recognize the person in the photo as the client standing in front of them, there is reason to suspect illegal activity.

Strange Behaviour

If a client is being overly friendly or aggressive, then it might be a sign of money laundering. For instance, a client might threaten a money changer verbally when asked for identification documents.

Conversely, a client might provide small gifts such as food or gift vouchers to gain favour and get money changers to waive checks.

Comfortable with High Fees

Another sign of possible suspicious activity is if a money changer is aware that their rates are significantly higher than most of the money changers for a particular currency pair, yet the client is comfortable to exchange a significant amount of money with them regularly without complaints.

Other reasons that can trigger suspicion could be the type of currency the client is interested in exchanging, the nationality of the customer and even the mode of currency delivery. Money changers have to assess each situation accordingly to determine what constitutes a suspicious transaction.

If there is any reason to be suspicious of clients, money changers are required to report them to the local authorities in accordance to accepted local regulatory reporting standards.

HIGHLIGHTS OF EACH JURISDICTION

Each legal jurisdiction has their own current challenges which would alter their compliance landscape. The daily operational challenges of a money changer are many and this white paper breaks down the implications for you. This will allow you to be more agile in responding to the changing compliance landscape and get ahead of the regulatory curve.

The relevant sections of the laws on AML/CFT which money changers should be aware of are also highlighted.

INDONESIA

Current Compliance Landscape

Money laundering in Indonesia is a significant problem due to weak regulatory controls, insufficient law enforcement and the presence of corruption. Compounding the problem is the fact that Indonesia is vulnerable to smuggling and illegal activities due to its geographic location with its land mass being surrounded by water which makes it hard to patrol. This naturally makes financial institutions and money changers a target for money laundering, however Indonesia has been working towards greater compliance in line with the recommendations set out by FATF.

Indonesia is toughening its stance on compliance when it comes to regulatory reporting, going so far as to revoke the licenses of money changers when they submit documents late or in an improper format. This is partly to protect the image of tourism in the country, and partly to combat money laundering and terrorist financing.

In June 2015, the FATF removed Indonesia from their list of countries to monitor for AML/CFT compliance progress. This came about after Indonesia introduced a regulation authorizing the government to block terrorist-linked bank accounts. Despite its removal from the list, Indonesia however still remains the second most complex place for business compliance in the world.

Aside from guarding against ML and TF, money changers in Indonesia also have to deal with great volatility in the IDR. In Indonesia, BI has an unusual mandate relative to other central banks. The usual primary mandates of central banks around the world would be one (or more) of the following: to keep inflation stable, unemployment low and the whole financial system stable. BI's single mandate is to keep the Indonesian Rupiah (IDR) stable to manage inflation which is allowed to spike 'temporarily'.

This single mandate is responsible for the history of IDR volatility, especially in the 1997/1998 Asian Financial Crisis. The value of the IDR had the greatest decline of 70% which was double that of the Malaysian Ringgit (MYR) and Thai Baht (THB).

According to the Wall Street Journal, 80% of office rents are paid in USD. BI rolled out a new ruling on 01 July 2015 which prohibited the use of foreign currencies in Indonesia. Import-export and international financing deals where parties from different countries are involved are however exempted from this deal. This new rule is an attempt to strengthen the legal tender status of IDR as the reform momentum slows.

This change would bring more business to Indonesian money changers progressively as BI enforces their prohibition with the relevant agencies. Despite the higher business volume, Indonesian money changers should remain vigilant: flag high volume transactions, maintain proper records and submit them promptly to ensure that they stay on the right side of the law.

Indonesia appointed the highly respected General Tito Karnavian as the chief of national counter-terrorism agency, BNPT, on 15 March 2016 reflecting their resolve to enforce compliance laws diligently. In June 2016, an Indonesian lawmaker was sentenced to six years of jail for money laundering.

Indonesian Law Highlights

Indonesia has a myriad of laws which can be confusing and requires too much time to digest properly for the lay person. For the convenience of Indonesian money changers, we have extracted the following highlights.

01 Anti - Terrorism Law number 15 Year 2003

Article 11 states that:

"Any person who supplies or collects funds to be used, or which that person should have known will be used, entirely or in part to perpetrate the crime of terrorism within the meaning of Articles 6, 7, 8, 9 and 10, faces between three and 15 years' imprisonment."

Money changers are especially vulnerable as they deal with large numbers of transaction daily. Hence they should screen their clients diligently for every transaction which hits the prescribed limits to stay out of prison.

02 NUMBER 15 YEAR 2002 CONCERNING THE CRIME OF MONEY LAUNDERING

(English Version) Article 1.6 states that:

"Suspicious Financial Transactions shall be transactions deviating from the profile and characteristics as well as from the usual transaction patterns of the customer concerned, including financial transactions conducted by customers that can be reasonably suspected to be conducted with the

purpose of avoiding the reporting of the transactions concerned as required of Providers of Financial Services in accordance with this Law."

The law specifically defines suspicious transaction because they want it to be reported. In addition, article 13.1 states that:

" Providers of Financial Services shall be obligated to submit reports to the PPATK referred to in Chapter V, in respect of the following matters:

a. Suspicious financial transactions;
b. Financial transactions conducted in cash to a cumulative total of Rp.500,000,000.00 (five hundred million rupiah) or more or an equivalent amount (in foreign currency), conducted either in one transaction or in several transactions within 1 (one) business day."

PPATK is the local office that handles suspicious transaction. BI would later revise record keeping limit to US$25,000 or (Rp $329,874,925) in 2015. Money changers should follow the lower limits in their daily operations.

Most importantly, Indonesian money changers should take note of the following penalty provisions for anti-money laundering. Article 6.1 states that:

" Any person receiving or controlling the:

a. Placement;
b. Transfer;
c. Payment;
d. Donation;
e. Contribution;
f. Storage;
g. Exchange,

of assets known or reasonably suspected by him to constitute the proceeds of crime, shall be subject to the criminal sanction of imprisonment for a minimum of 5 (five) years and for a maximum of 15 (fifteen) years and to a minimum fine of Rp.5,000,000,000.00 (five billion rupiah) and to a maximum fine of Rp.15,000,000,000.00 (fifteen billion rupiah)."

Money changers should know that when they run afoul of the anti-money laundering laws, they are highly likely to violate the anti-terrorism financing laws too. They can end up in jail for 30 years and paying 15 billion rupiah worth of fines.

03

BI Regulation Number 16/15/PBI/2014 dated 11 September 2014

Article 13E states that one of the criteria for being a money changer in Indonesia:

"never been sentenced for being proven to have committed a criminal act of money laundering within the last 2 (two) years under a court decision having a permanent legal force;"

In other words, once Indonesian money changers have been convicted of money laundering, they are out of business for at least two years and they will lose their license, in addition to the jail terms and fines.

THAILAND

Current Compliance Landscape

Thailand adheres to international standard of creating a national financial intelligence unit, and that is the Anti-Money Laundering Office (AMLO). AMLO is supervised by the highest level of government with the Prime Minister as Chairman and the Ministers of Justice and Finance as Vice Chairmen.

In June 2013, Thailand was taken off the FATF's ongoing AML/CFT compliance process monitoring list in recognition that it had taken sufficient measures to rectify deficiencies identified in the 2010 plenary. On 9 October 2015, Thailand's Anti-Money Laundering Law was further strengthened to bring it in line with international standards and as a response to the global money laundering situation. The changes included an expanded scope of what constitutes an AML offense, and stricter requirements for conducting due diligence, as well as providing compliance training. There were guidelines around the timeline of record-keeping stipulating that records of customer due diligence be kept for a period of 10 years. The AMLO was also empowered to turn offenders over to other regulators for action to be taken against them.

The AMLO is a powerful regulator in Thailand. AMLO Acting Secretary General, Pol. Col. Seehanat Prayoonrat, made it clear that Thailand is determined to crack down on corruption by preventing money laundering in Thailand.

The penalties are stiff for those who violate its regulations. For instance, any entity that is found guilty of money laundering is subject to 10-year jail terms and fines of 200,000 bahts. The penalty for not reporting suspicious transaction would open these entities to fines of 500,000 baht and 5,000 baht for each day until they report it.

After the AMLO has made an arrest with a probable cause under money laundering offense, they have the authority to seize assets in a civil case. Between the BOT and AMLO, it is clear that the AMLO has stiffer penalties, and money changers should aim to steer clear of all offenses.

BOT announced the Capital Account Liberalization Master Plan on 30 April 2015 which affected money changers in Thailand. One year later on 18 April 2016, BOT relaxed foreign exchange rules further. Currently, each individual is allowed to buy foreign currencies of up to US$5 million, and this amount is expected increase further next year.

Despite the expected increase in business volume, Thai money changers should be aware that they should comply with AML/CFT standards in Thailand, and flag suspicious amounts and transactions so as not to fall afoul of the AMLO.

The proper method to avoid such stiff penalty is to conduct proper Know Your Customer/ Customer Due Diligence (KYC/CDD) measures especially if they have been flagged by compliance services as a politically exposed person (PEP).

Thailand Law Highlights

01 ANTI - MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 13 states that:

" When a transaction is made with a financial institution, the financial institution shall have the duty to report that transaction to the Office when it appears that such transaction is:

(1) a cash transaction exceeding the threshold prescribed in the Ministerial Regulation;
(2) a transaction connected with the asset worth more than the value prescribed in the Ministerial Regulation; or
(3) a suspicious transaction, whether it is the transaction under (1) or (2) or not.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported by the financial institution, that financial institution shall report such fact to the Office without delay."

Section 13 also applies to money changers and they have a regulatory obligation to report suspicious transactions to the Anti Money Laundering Office (AMLO) quickly.

Section 60 states that:

"Any person who commits an offense of money laundering shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or both."

For money changers to avoid money laundering penalties, they should screen their clients thoroughly for each transaction.

Section 62 states that:

"Any person who fails to observe Section 13, Section 14, Section 16, Section 20, Section 20/1, Section 21, Section 21/2 paragraph one, Section 22, Section 22/1, Section 35 or Section 36 or orders issued under Section 16/1 or Section 21/2 paragraph two shall receive a fine not exceeding one million Baht and an additional amount not exceeding ten thousand Baht for each following day until rectification is made.

A reporting entity under Section 13 or Section 16 who fails to observe Section 21/3 paragraph two shall receive a fine not exceeding five hundred thousand Baht."

Section 62 makes it clear that even if money changers are not guilty of money laundering offenses, they will be slapped with heavy penalties just by failing to report suspicious transactions.

02

Counter - Terrorism Financing Act B.E. 2556

Money changers should also note section 13 which states that:

"For the benefit of implementing this Act, the Office shall have the following powers and duties;

(1) to provide guidance for persons on obligations in taking action under this Act;
(2) to monitor, evaluate, examine, and supervise proper compliance with this Act as well as taking legal action with those who violated or failed to observe the provision of this Act;
(3) to receive or disseminate report or information useful to implementation of this Act or other laws;
(4) to gather , collect information and evidence for the assets freezing, seizure or confiscation under this Act or other laws;"

The only way to avoid potentially financing terrorists is to screen clients diligently. Only by doing that, can money changers safeguard their assets from confiscation and other penalties.

MALAYSIA

Current Compliance Landscape

Malaysia with its geographic position within Southeast Asia, porous land and sea borders, as well as emphasis on cash based economy is at moderate to high risk of terrorist financing activities as identified by 2012 and 2013 National Risk Assessments. This is partly due to unlicensed money changers and remittance agents which represent a point of vulnerability when it comes to terrorist financing, although Malaysia has enacted stricter regulation over the years to deal with this issue.

The FATF evaluated Malaysia AML / CFT measures in 2014 and found them to be sound, however they did advance further recommendations for combating ML. The report noted that while Malaysia has commenced a number of terrorist financing investigations, none had been prosecuted (yet it would be unwise for money changers to adopt a wait-and-see approach when it comes to safeguarding their business against terrorist financing activities). The FATF also recommended that there is room for improvement when it comes to bringing compliance in line with international standards by moving from a rule-based to a risk based approach.

Concerns about being a target for terrorist financing aside, there is great volatility in the Malaysian Ringgit (MYR) in recent times, representing both a temptation and a risk for money changers. Malaysia had formally defaulted on its debt when sovereign wealth fund 1MDB refused to make an interest payment of $50 million on its $1.75 billion debt on 26 April 2016. The MYR weakened significantly by 2.5% in just four days which reflected the global crisis of confidence in Malaysian sovereign debt.

Malaysian money changers might be tempted to stock up on the weakening MYR. After all, the MYR weakened 27% against the USD from MYR3.532 in May 2015 to MYR4.477 in September 2015 when the previous 1MDB scandal erupted. The MYR recovered after 1MDB survived the crisis.

Although money changers who stocked up on the MYR could make a profit, quasi-government regulator, the Malaysian Association of Money Services Businesses (MAMSB), which was launched on 9 January 2014, had warned Malaysian money changers against hoarding MYR previously on 22 July 2015.

Hoarding creates artificial shortages of MYR, which would hurt tourism and other sectors of the economy. MAMSB has already invited the public to submit their complaints to on their website if they are unable to get their hands on MYR. MAMSB would then investigate and take action against money changers according to its regulations. If that is insufficient, BNM can act to suspend licenses and impose other harsher measures.

Malaysia Law Highlights

01 Money Services Business Act 2011

Part II Section 6 states one of the eligibility criteria of being a money changer:

" The applicant has appropriate, sound and adequate internal control mechanisms and compliance programmes to comply with the requirements of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613] and other statutory obligations to which the applicant is or will be subject;"

The Malaysian Central Bank requires their money changers to adhere to AML/CFT laws or risk losing their license.

02 Anti–Money Laundering and Anti-Terrorism Financing Act 2001

Part II Section 4 states the penalty of money laundering:

"(1) Any person who—
(a) engages in, or attempts to engage in; or
(b) abets the commission of, money laundering, commits an offence and shall on
conviction be liable to a fine not exceeding five million ringgit or to imprisonment
for a term not exceeding five years or to both."

Money changers can be considered to be abetting in the commission of money laundering if they fail to screen their clients properly and assist a criminal organization.

Part IV Section 13 states the obligation to keep record:

"A reporting institution shall keep a record of any transaction involving the domestic currency or any foreign currency exceeding such amount as the competent authority may specify."

Money changers are obliged to keep a record and these record must be easily retrievable for submission and inspection, thus highlighting the need for proper regulatory reporting to be in place.

Part VI Section 44 states that the penalty of being involved in terrorist financing:

"Subject to section 50, where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4(1) or a terrorism financing offence has been, is being or is about to be committed by any person, it may issue an order freezing any property of that person or any terrorist property, as the case may be, wherever the property may be, or in his possession, under his control or due from any source to him.

Where an enforcement agency directs that frozen property be administered or dealt with, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property unless the court before which the claim is made finds that the person charged with the administration of the property has been negligent in respect of the administration of the property. "

Money changers are obliged to keep a record and these record must be easily retrievable for submission and inspection, thus highlighting the need for proper regulatory reporting to be in place.

INDIA

Current Compliance Landscape

In recent times, India has been cracking down on financial institutions and money changers who fail to comply with compliance laws. India had been on the regular follow up list of the FATF since 2010 due to issues like terrorist financing and money laundering, but has actively addressed these concerns leading to them being taken off the list at the 2013 plenary. It was noted however that despite more than a thousand money laundering pending investigations, there were few convictions. This is not a sign that money changers should let their guard down as slow Indian courts mean that cases of ML or TF brought against these money changers could drag on for years, impacting their livelihood.

Money changers also face increasing pressure to conduct proper due diligence on their customers due to the economic climate. Failure to do so could result in negative repercussions as seen in the examples below.

As the overall economy deteriorates, public Indian banks are dealing with ballooning bad loans; cases of wilful defaults, corruption and even outright fraud abound. The health of public banks is of concern to Indian money changers as they are a major source of the Indian Rupee (IDR) stock. The issue of Indian bad debt rose to national consciousness when Kingfisher tycoon Vijay Mallya 'left India' after defaulting on more than US$1 billion of loans in March 2016.

Money changers should note that when tycoons want to leave India, they are likely to change vast quantities of foreign currencies. As such, they should be suspicious if they see the same person sell large sums of IDR on a regular basis. These agents might even be willing to allow money changers to earn a wider spread than usual to facilitate a hassle free transaction.

However, such gains are illusions as seen in the case of the 1 lakh penalty imposed on Vyavsayik Sahkari Bank Limited in December 2015 when it failed to conduct proper KYC checks and failed to submit the Cash Transaction Report (CTR) and Suspicious Transaction Report (STR). Banks usually have strong political connections, but it doesn't immunize them against regulatory repercussions. The case illustrates the necessity of proper regulatory reporting.

In another case, The Times of India reported that RBI moved to cancel the licenses of 201 money changers which included household names such as American Express and Sterling Holiday Financial Services on March 2016. This massive operation was launched as the RBI discovered that these entities had violated regulations..

The regulations which they violated include failing to start operations on time, failing to keep a minimum net owned funds of 25 lakh for single branches and 50 lakh for multiple branches, mismatch of conversation rates and improper bookkeeping.

Besides the monetary losses, all these negative reports had an adverse impact on their reputations. Offences such as the mismatch of conversion rates is a fraudulent practice which the RBI is currently under pressure to root out in the wake of the public banking crisis.

Indian Law Highlights

One of the most powerful laws in India relates to the anti-money laundering laws that Indian money changers should take note of.

01 Prevention of Money-Laundering Act (2002)

Section 3 states that:

"Offence of Money Laundering

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering"

Section 4 states that:

"Punishment for money-laundering

Whoever commits the offence of money-laundering shall be punish-able with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also be liable to fine which may extend to five lakh rupees"

In other words, money changers who exchange tainted money would be deemed as assisting in money laundering and they can be jailed for seven years and fined five lakh.

As bad as that may sound, the punishment actually got worse when the Indian Parliament amended the act in 2012.

Effective from 03 January 2013, the threshold limit of 30 lakh, before a money laundering case can be initiated against the money changer has been done away with. In addition, the rules have been made stricter where the mere 'possession' of the proceeds of crime constitutes an offense.

The only way to prevent this is to take the screening of clients more seriously. Another factor of consideration is the speed of the Indian Courts. According to the Indian Times, there has only been one successfully prosecuted case in the past 10 years since 2013. However, even if you are innocent, the taint of suspicion can hang over a money changer's business for the next decade.

SINGAPORE

Current Compliance Landscape

Singapore has been a member of the FATF since 1992 and was taken off the list of countries needing to be monitored for AML /CFT progress in 2011. The Monetary Authority of Singapore (MAS) issued a statement in July 2015 citing that its systems of regulatory supervision had been ranked as "among the best globally" by the International Monetary Fund.

MAS requires money changers to go for regular AML/CFT courses and to put in place robust systems against abuses. The MAS had revoked the license of 6 money changers for weak AML/CFT practices from the year 2010 to 2013. Since 2006, MAS has instituted the practice of hiring external mystery shoppers to test the robustness of KYC practices at money changers. For example, money changers who value their licenses, should not do business with any customer who wants to exchange more than SGD$5,000 but has 'forgotten' to bring along his identity card.

Money changers who carry on with business after having their license revoked can face penalties of $100,000 and $10,000 for every day that they are in business. The failure of money changers to conduct proper customer due diligence, record keeping, audits and detect suspicious transactions would also constitute offenses, and money changers can be fined amounts of up to $100,000.

MAS had showed its resolve to take action against compliance violations as seen by its recent move against government owned brokerages such as DBS Vickers on 22 April 2016. Earlier in the year in May 2016, it had also served a notice to BSI Bank Limited to withdraw its status as a merchant bank, due to blatant disregard for compliance regulations. Six senior members of the bank were referred to the Prosecutor's Office. This is in line with MAS earlier statement that the country has "no tolerance for its financial system to be used as a refuge or conduit for illicit fund flows".

Singapore Law Highlights

Singapore may be known as one of the easiest place on earth to do business but it does not compromise when it comes to the financial obligations of its money changers.

01 Money-changing and Remittance Businesses Act (CHAPTER 187)

Section 27 states that:

" (1) Every licensee shall at his or its own expense appoint annually an auditor to carry out an audit of the transactions in his or its money-changing business or remittance business, as the case may be.

(2) The Authority may require an auditor appointed under subsection (1) —
(a) to submit to the Authority such information as it may require in relation to the audit carried out by him;
(b) to enlarge or extend the scope of his audit of the business and affairs of the licensee;
(c) to carry out any examination or establish any procedure in any particular case; or
(d) to submit to the Authority a report of his audit or a report on any matters referred to in paragraphs (b) and (c).

The licensee shall be responsible for the remuneration of the auditor for the services referred to in subsection (2).

(6) Any licensee who contravenes subsection (1), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000."

Singapore money changers have to keep a proper record of their business transactions for legal purposes. Next, they have to hire an auditor that does a proper job (covered in subsection 3) or re-appoint a new auditor (covered in subsection 4) under government instructions. If they fail to do so, they will be fined up to $50,000. An important thing for Singapore money changers to consider is to implement a proper electronic system where every single transaction is recorded properly and an immediate electronic audit trail can be furnished to the government upon request.

02 Terrorism (Suppression of Financing) Act (CHAPTER 325)

Part II Section 4 states that:

"Every person who directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services —

(a) intending that they be used, or knowing or having reasonable grounds to believe that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist act, or for benefiting any person who is facilitating or carrying out such an activity; or
(b) knowing or having reasonable grounds to believe that, in whole or in part, they will be used by or will benefit any terrorist or terrorist entity,
shall be guilty of an offence."

This act is used to prevent terrorists from financing their activities in Singapore. Money changers have to screen their clients properly to avoid financing terrorists indirectly for their operations in Singapore. Otherwise, they can be jailed for 10 years and fined up to $1 million under Section 6A.

Part VII Section 35 states that:

"Where an offence under this Act has been committed by a company, firm, society or other body of persons, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer or a partner of the company, firm, society or other body of persons or was purporting to act in any such capacity, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he proves that —
(a) the offence was committed without his consent or connivance; and
(b) he had exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances."

This section protects money changers if they have done the appropriate due diligence with the appropriate tool. Otherwise, the Public Prosecutor can apply to seize the money changer's property under Section 21.

AUSTRALIA

Current Compliance Landscape

Australia is under international pressure to reform its system after sliding down the International Corruption Index for four consecutive years. RBA owned firms such as Securency and Note Printing Australia were found to be bribing public officials in Saddam Hussein's Iraq and other countries such as Malaysia, Indonesia, and Vietnam to secure bank note printing contracts between 1998 to 2011. RBA had to sell off its shares in Securency in 2013 after the scandal was uncovered. It raised substantial concerns across all political parties in Australia, hence strengthening national resolve to reform AML/CFT laws to root out corruption.

Besides regulators such as ASIC, RBA, and AUSTRAC, Australia formed the Corruption and Crime Commission (CCC) in 2003 to handle corruption-related crimes. Experts believe that a simplified AML/CFT system will improve intelligence and the overall effectiveness against corruption.

In March 2016, AML/CFT reforms, which were to be implemented in two phases, were proposed to cut red tape and reduce duplication. This would be helpful to money changers as it would enable them to expend less energy on paperwork.

As a warning against future violations of AML/CFT laws, AUSTRAC released details of a money changing business who was convicted of money laundering for a European drug syndicate. Law enforcement agencies confiscated AUD$294,500 in cash and assets before jailing the two operators to 14 years each under the Criminal Code Act 1995. AUSTRAC also suspended the license of a money changer for not reporting $9 million worth of offshore transfers related to terrorist group, Islamic State.

In 2015, FATF announced that Australia "has strong legal, law enforcement and operational measures for combating money laundering and terrorism financing", but noted that AUSTRAC had insufficient visibility into TF and ML risk especially when it comes to lawyers, real estate agents and accountants in general.

Australian Law Highlights

01 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (In Force : 05 March 2016)

First, we look at Section 4:

"A reporting entity is a financial institution, or other person, who provides designated services. (Designated services are listed in section 6.)"

In other words, AML/CFT rules covers Australian money changers.

Next, we look at Section 43:

"Reports of threshold transactions

Scope
(1) This section applies to a reporting entity if:
(a) the reporting entity commences to provide, or provides, a designated service to a customer; and
(b) the provision of the service involves a threshold transaction.

Report
(2) The reporting entity must, within 10 business days after the day on which the transaction takes place, give the AUSTRAC CEO a report of the transaction.
(4) Subsection (2) is a civil penalty provision."

Next, we look at Section 47:

"Report
(2) A reporting entity must, within the lodgment period for a reporting period, give the AUSTRAC CEO a report relating to the reporting entity's compliance with this Act, the regulations and the AML/CFT Rules during the reporting period.
(4) Subsection (2) is a civil penalty provision."

In other words, Australian money changers must send in regular reports to AUSTRAC or face civil penalty provisions. So what exactly is a civil penalty provision?

For that, we turn to Section 175

"Civil penalty orders
(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a civil penalty order.

Maximum pecuniary penalty
(4) The pecuniary penalty payable by a body corporate must not exceed 100,000 penalty units.
(5) The pecuniary penalty payable by a person other than a body corporate must not exceed 20,000 penalty units."

AUSTRAC provided us with the estimate of 100,000 penalty units to be AUD$11 million and 20,000 penalty units to be AUD$2.2 million. While this is a major sum involved, there are criminal liabilities for money changers as well.

02 Financial Transaction Reports (FTR) Act 1988 (In Force: 01 July 2015)

Both the FTR and the AML/CFT Acts make reference to each other. AUSTRAC is the designated body to handle suspicious transaction in both laws.

Section 6A provides for the criminal punishment:

"Application of the Criminal Code
Chapter 2 of the Criminal Code (except Part 2.5) applies to all offences against this Act."

A reliant and efficient compliance screening software, complete with reporting capabilities, would be greatly beneficial for Australian money changers seeking to better comply with these laws.

HONG KONG

Current Compliance Landscape

Hong Kong has been a member of the FATF since 1991.

Chinese authorities are cracking down on both legal and illegal methods of capital outflows. One popular method of illegal outflows is to smuggle cash out of China into Hong Kong through 'smurfing' and then exchange or transfer this cash with money changers. Hong Kong authorities have already called for enhanced suspicious transaction monitoring efforts.

However, Quartz reported that $175 billion left China through Hong Kong in the first quarter of 2016 compared to $165 million in the first quarter of 2015. Methods include fake invoicing and insurance as both foreign and domestic capital flee China as the anti-corruption drives intensifies amid slowing economic growth.

Noted US-based Brookings Institute testified before Congress on China's economy on 27 April 2016 starting that 'Money laundering and capital flight also go hand in hand'.

The Custom and Excise Department had updated its guidelines for the pecuniary penalty for money changers on April 2016, and the commendable part is that they do not seek to bankrupt the money changers with their pecuniary penalties. The drawback is that the April 2016 guidelines removed the maximum fine limit of three times the profit earned illegally as seen in the June 2012 guidelines.

In other words, Hong Kong money changers have to face greater financial risk for each offense, stopping just short of bankruptcy. This is Hong Kong's method of turning up the heat after capital outflows hit a record high. It would not be surprising if the authorities pushed the punishments up another notch if the economy weakens further and anxious investors pulled their capital out through both legal and illegal means.

Hong Kong Law Highlights

01 Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

Part 1 defines money laundering as

" money laundering (**洗錢**) means an act intended to have the effect of making any property—
(a) that is the proceeds obtained from the commission of an indictable offence under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or
(b) that in whole or in part, directly or indirectly, represents such proceeds, not to appear to be or so represent such proceeds;"

and terrorism financing is defined as

"terrorist financing (**恐怖分子資金籌集**) means —
(a) the provision or collection, by any means, directly or indirectly, of any property— (Amended 20 of 2012 s. 12)
(i) with the intention that the property be used; or
(ii) knowing that the property will be used, in whole or in part, to commit one or more terrorist acts (whether or not the property is actually so used); (Amended 20 of 2012 s. 12)
(b) the making available of any property or financial (or related) services, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or ter rorist associate; or (Amended 20 of 2012 s. 12)
(c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reck less as to whether, the person is a terrorist or terrorist associate. (Added 20 of 2012 s. 12)"

Part 2 identifies Hong Kong money changers as a financial institution:

"financial institution (**金融機構**) means—
(f) a licensed money service operator; (Amended 18 of 2015 s. 71)"

Section 6 lays out the penalty for money changers if they fail to comply with the law:

"If a financial institution, with intent to defraud any relevant authority, contravenes a specified provision, the financial institution commits an offence and is liable
—

(a) on conviction on indictment to a fine of $1000000 and to imprisonment for 7 years; or
(b) on summary conviction to a fine of $500000 and to imprisonment for 1 year"

Hence, Hong Kong money changers have to screen their clients properly to avoid the stiff penalty of 7 years jail and fine of HKD$1,000,000. A good investment in a proper commercial screening tool would address such concerns.

NEW ZEALAND

Current Compliance Landscape

New Zealand was placed in the FATF greylist in 2009. Following the implementation of several measures to tighten its regulations governing AML, it was removed in 2013.

However, in 2015, it was stated that $8.5 billion worth of suspicious transactions were being reported in New Zealand, an amount double that of what was flagged to the authorities in June 2014. An official estimate set the estimate of the amount of money being laundered in New Zealand at $1.5 billion, however the reality is that the figure is likely to be far higher. This shows that New Zealand still has plenty of room for improvement when it comes to anti-money laundering measures.

The Department of Internal Affairs had issued its first AML/CFT public warning against a finance company in September 2015 which preceded two public warnings sent to a bank and a brokerage by the Financial Markets Authority (FMA) in October 2015 and May 2016 respectively. Transparency International criticized the soft approach by the New Zealand government following the Panama Paper leaks after traditional safe havens like Panama fell out of favor in April 2016.

The Ministers for Finance and Revenue, Simon William English and Michael Woodhouse respectively, responded by establishing a government inquiry into foreign trust disclosure rules on 19 April 2016. The inquiry included the review of AML/CFT laws which were passed in 2009. The government intends to extend AML/CFT laws to govern real estate, accountants and lawyers in phase two of the roll-out which is expected to be completed in 2017.

In summary, money changers can expect more robust laws and enforcement actions on AML/CFT in the near future.

New Zealand Law Highlights

01 Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Section 40 obliges money changes to report suspicious transaction in a timely fashion:

"Despite any other enactment or any rule of law, but subject to section 42 of this Act and to section 44(4) of the Terrorism Suppression Act 2002, this section applies if—
(a) a person conducts or seeks to conduct a transaction through a reporting entity; and
(b) the reporting entity has reasonable grounds to suspect that the transaction or proposed transaction is or may be—
(i) relevant to the investigation or prosecution of any person for a money laundering offence; or
(ii) relevant to the enforcement of the Misuse of Drugs Act 1975; or
(iii) relevant to the enforcement of the Terrorism Suppression Act 2002; or
(iv) relevant to the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or
(v) relevant to the investigation or prosecution of a serious offence within the meaning of section 243(1) of the Crimes Act 1961.

(2)
If this section applies, the reporting entity must, as soon as practicable, but no later than 3 working days after forming its suspicion, report the transaction or proposed transaction to the Commissioner, in accordance with section 41."

Section 73 states that both criminal and civil charges can be brought against the money changer who had flouted the law.

"Criminal proceedings for an offence under this Part may be commenced against a person in relation to particular conduct whether or not proceedings for a civil penalty under this Part have been commenced against the person in relation to the same or substantially the same conduct."

For New Zealand money changers, the onus is on them to conduct rigorous checks before they do business with their clients to avoid any criminal or civil liabilities. They must also report any suspicious transaction as soon as possible to the Commissioner of Police.

CONCLUSION

All jurisdictions have different standards of regulation and penalties when it comes to the AML/CFT. However, it is indisputable that they are all converging towards tougher standards. Failure to conduct proper due diligence on customers, even unknowingly, can result in a loss of license which equates to the loss of livelihood for a money changer.

Money changers must exercise vigilance when it comes to AML and CFT laws. Any money changer who suspects that a suspicious transaction is taking place, especially when a PEP is involved, has to file a report with the relevant authorities in accordance to the law. A big hurdle for money changers then is how to properly conduct their due diligence. It would be onerous and nearly impossible for them to maintain and compile a list of suspicious individuals. For that, money changers would have to rely on a reliable database with a comprehensive coverage of different data sources for them to conduct the necessary regulatory checks. While the punishment for non-compliance is harsh, it can be avoided entirely with a professional platform that is built specifically to handle this business need.

While evaluating such platforms for comprehensive compliance databases, certain features that might be useful for money changers should be considered as well, such as the ability to:

(i) Generate reports that are customized to the requirements of local regulators.
(ii) View real-time FX rates to help influence Buy/Sell decisions that will help maximize the money changer profit margin.
(iii) Manage business inventory of foreign currencies and standardize price setting across multiple business branches.
(iv) Provide access to new customers through traveller communities.

Last, but not least, a commercial software for managing money changer business needs, has to be future-proof. It needs to be easily customizable and frequently updated to weather changing local regulations and laws. Biz4x is one such professional SaaS platform, that is currently being used by hundreds of money changers worldwide.

If you're interested to learn more about how Biz4x can help you to better comply with local regulators and more efficiently manage your business, drop us a note at sales@biz4x.com and our team of experts will be happy to evaluate your business requirements.

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