



ANTI-MONEY LAUNDERING REFORMS AND TRENDS IN ASIA

As the fight against money laundering remains an international priority, Asian governments and regulatory authorities have taken steps to tighten related legal requirements. Almost all countries in the region have adopted a legal framework criminalizing money laundering in order to conform with standards set by the Financial Action Task Force (FATF), an inter-governmental body that develops and promotes international policies to combat money laundering. Countries have also strengthened regulation of financial institutions by introducing rules to report suspicious transactions and to verify the identity of customers. Nevertheless, a number of remaining impediments make some Asian anti-money laundering (AML) regimes less than fully effective. This issue of *Asia Focus* reviews the factors that contribute to money laundering in Asia, describes international AML standards, discusses the steps that governments have taken to address AML issues, and outlines the challenges that remain to AML efforts in the region.

Key factors contributing to money laundering in Asia

While money laundering is a worldwide problem, Asia is a primary center for those activities. The United Nations conservatively estimates that money laundering totals \$150 billion annually in Asia, with one-half to two-thirds of that amount coming from the drug trade. Although significant by itself, this figure does not include laundered funds related to corruption

or tax evasion, which remain substantial problems in many Asian countries. Several factors make Asia particularly susceptible to money laundering activities, including:

Criminal activity. High cash volume criminal activity, such as major drug manufacturing operations in the Golden Triangle area (Myanmar, Laos, and Thailand), significantly contributes to money laundering in the region. Illegal income is also generated by Asian organized criminal involvement in human trafficking, prostitution, and gambling.

Political and economic environment. Political and economic instability persists in a number of countries in the region, which can foster a culture of public corruption and contribute to increased money laundering activities. Economic instability in particular can lead to the evasion of laws by encouraging individuals to conduct their business in the underground or informal sector of the economy and by promoting illicit capital flight.

Law and policies. Government policies such as currency controls and trade restrictions can encourage individuals to circumvent official rules in order to conduct business. In addition, narrow legal requirements may provide inadequate coverage of non-financial businesses, which often are subject to far fewer reporting and customer identification requirements than financial institutions. There is also a lack of effective monitoring of cross-border currency

movements. Some countries do not require reporting of cash transportation across national borders, even for large amounts. International cooperation and mutual assistance arrangements for AML in the region are generally weak, while most major money laundering crimes are transnational in nature. Although international cooperation in this area is growing, some national laws do not permit information sharing with foreign counterparts.

Financial infrastructure. The presence of several major financial centers (Hong Kong, Singapore, and Tokyo) provides easy access to banking facilities and communications which can facilitate the movement of laundered funds. In addition, the presence and use of alternative remittance systems such as hawala (an informal value transfer system through money brokers based on honor) also facilitates money laundering because these systems are often unlicensed and circumvent financial sector laws.

Cultural issues. Social and cultural factors and business traditions in Asia can pose obstacles to enforcing customer identification requirements. Rigid confidentiality rules in a number of jurisdictions prevent access to information on suspicious transactions. In addition, the continued acceptance of nominee ownership (where an entity holds assets for the actual owner) in some countries prevents the proper identification of beneficial ownership, reduces transparency, and makes it difficult to enforce “know your customer” requirements.

FATF sets international AML standards

The FATF was created at the G-7 Summit in 1989 in response to growing concerns about money laundering, and membership initially included mostly Western industrialized countries. The following year, the FATF published a list of 40 recommendations to combat the

use of financial systems for money laundering. The original recommendations have been updated several times (most recently in 2003), and are widely regarded as the most comprehensive framework for establishing an AML regime. The current recommendations cover four main areas: (1) legal systems, including the scope of money laundering offenses and confiscation measures, (2) measures to be taken by financial institutions and non-financial businesses, which cover customer due diligence and record-keeping, suspicious transactions reporting, and regulation and supervision, (3) institutional and other measures, mainly related to the establishment of a Financial Intelligence Unit, and (4) international cooperation, which includes mutual legal assistance and extradition.

The FATF currently has 34 members, including four Asian countries (see table 1); China was admitted as a member in June 2007. In recent years, Korea and India have been granted observer status. A FATF observer can obtain full member status following a successful mutual evaluation (a review of the effectiveness of AML measures conducted by an FATF assessment team).

Table 1

ASIA and FATF	
FATF Member Countries	FATF Observer Status
China (June 2007)	India (Feb. 2007)
Hong Kong (1991)	Korea (Oct. 2006)
Japan (1990)	
Singapore (1992)	

Asian governments take steps to address money laundering, but further improvement is needed

Most Asian countries are moving to adopt FATF

recommendations with respect to the scope of money laundering offenses, confiscation of money laundering proceeds, and subjecting non-financial entities to increased scrutiny.

Scope of offenses. Generally, countries in the region have passed legislation criminalizing money laundering and in the past few years many have expanded the scope of covered offenses to include other crimes, such as bribery and corruption. However, several countries remain focused on drug trafficking and related crimes, and therefore fall short of the FATF recommendation to include the widest range of possible offenses.

Confiscation. Asian laws diverge on the FATF recommendation to confiscate property from money laundering, but countries are in the process of strengthening these provisions. Most laws have been changed recently to provide for the seizure and forfeiture of criminal proceeds upon arrest rather than upon conviction. Still, some countries have no legal provisions for confiscation or have a weak system of identifying and tracing assets to be seized.

Non-financial entities. Many non-financial institutions in Asia are not subject to the due diligence and record-keeping requirements that apply to financial institutions as provided in the FATF's recommendations. Some countries provide for specific requirements for real estate agents, lawyers, accountants, and casinos, while other countries do not define the non-financial institutions covered by the law or limit applicability to financial intermediaries such as banks, securities brokers, and insurance companies. A number of countries in the region are in the process of expanding the list of nonfinancial businesses subject to reporting and recordkeeping requirements. When laws do not clearly cover both financial institutions and the full range of non-financial entities, a number of professionals and institutions that frequently handle

large cash transactions are unregulated, thereby increasing the likelihood of money laundering activities.

Financial institution regulation has been strengthened

In addition to the legal changes outlined above, most Asian countries have implemented FATF recommendations relating to regulations for financial institutions, which provide critical support to AML efforts. These include recommendations regarding customer due diligence and record-keeping, suspicious transaction reporting, and supervisory programs.

Bank regulatory authorities have issued know-your-customer guidelines in most jurisdictions. Customer due diligence includes identifying and verifying customer identification data upon account opening and when conducting transactions above a certain threshold (the FATF recommends \$15,000). As recommended by the FATF, some countries go beyond mere information collection by requiring financial institutions to develop risk-based customer acceptance policies and risk-profiling procedures for high-risk customers. Those countries also typically require that banks have policies to identify politically exposed persons and prohibit relationships with shell banks (banks that do not have a physical presence in any country).

Most Asian countries require that financial institutions report transactions considered suspicious (whether involving cash or not) if they exceed a certain amount (usually in the \$10,000 range). Suspicious transactions are typically reported to the country's Financial Intelligence Unit which is responsible for analyzing the reports and forwarding them to the appropriate law enforcement agency. The reporting of all cash transactions over a certain threshold is more limited, and some Asian countries have no

requirements for banks to report such transactions, contrary to FATF recommendations of a \$15,000 threshold. In the countries with reporting requirements, thresholds for reporting single or multiple transactions range from approximately \$10,000 to \$50,000.

Most supervisory authorities in Asia include compliance with AML rules in the scope of their examinations and in the assessment of a bank's ratings. In general, banking regulators to date have been more rigorous than securities and insurance regulators in pursuing compliance. While most countries in the region waive bank secrecy laws for money laundering investigations, some jurisdictions still have bank secrecy requirements that prohibit an examiner from examining the financial transactions of a private individual, thus making it more difficult to enforce AML rules.

Remaining Challenges to AML efforts in Asia

Based either on their own accord or international pressure, most Asian countries have established an AML regime that incorporates most of the basic recommendations of the FATF with respect to legal and reporting requirements. Despite this progress, several areas of concern remain. One major problem is the lack of enforcement; despite a significant increase in the number of suspicious transaction report filings in recent years, there is still only limited prosecution activity once suspicious patterns have been identified. Bank management in the region reportedly has been frustrated because increased scrutiny and reporting of suspicious transactions has not been met by significant feedback or visible follow-up action taken by law enforcement authorities. Some government and regulatory authorities have also failed to hold banks responsible for not reporting suspicious transactions.

In addition, a lack of trained investigators limits the

ability to pursue suspicious transactions. AML training for bank staff is also still needed in most Asian countries. Other impediments include the lack of transparent financial practices and the existence of an underground banking system in some jurisdictions.

Despite these challenges, there are indications that increased supervision of financial institution activities is having some effect. Recent law enforcement reports from the region indicate that the use of cash smuggling to launder money is increasing because moving funds through the formal banking system has become more difficult. This development highlights the importance of expanding the coverage of anti-money laundering rules to non-financial entities.

Summary

Asian countries have made significant progress in addressing AML concerns but additional efforts are necessary. Most importantly, Asian countries are working to make AML regimes more compatible with FATF international standards by: (1) revising laws to widen the classes of offenses for money laundering, (2) including more non-financial businesses in reporting requirements as money launderers seek alternatives to highly regulated banks to move funds, (3) uniformly implementing the reporting of cash transactions over a threshold amount, and (4) providing sufficient resources to law enforcement agencies and banking supervisors to allow for adequate enforcement of legal requirements and regulations.