



In 2022, Atsumi & Sakai has held seminars on some 25 themes for Japanese financial institutions. Following the seminars, we are publishing a series practice notes discussing some of the topics covered that may be useful for overseas readers. In this edition, we outline a lecture that explores the anti-money-laundering in Japan.

Anti-Money-Laundering in Japan

1. Cases of money laundering through financial institutions in Japan

On December 1, 2022, The National Public Safety Commission published the “National Risk Assessment-Follow-up Report (2022)” which reported recent cases of money laundering in Japan.

(1) Deposit and savings accounts misused for money laundering.

In one case accounts belonging to deceased persons or foreign nationals who have returned to their home countries without closing their Japan bank accounts were used to conceal criminal proceeds from fraud, theft, etc. There was also a case in which hundreds of passbooks were seized from the base of criminal operations of a foreigner visiting Japan, who was arrested for illegally soliciting the transfer of accounts through social media, such as buying bank accounts, passbooks, cards, etc.

(2) Deposit transactions misused for money laundering.

Cases included:

- An offender withdrawing criminal proceeds derived from fraud conducted overseas and transferring them to an account in Japan by disguising them as legitimate business proceeds.
- The depositing of a large number of stolen coins into a third party’s account at an ATM operated by a financial institution and then withdrawing it in bills at another ATM.
- A Vietnamese individual transferring proceeds from underground banking into the account of a relative who had become a naturalized Japanese citizen with a Japanese name.

(3) Domestic exchange transactions misused for money laundering.

Cases included:

- An offender accepting requests from more than one client and having them remit cash for an illegal foreign transfer of money into an account that the offender had purchased from a Vietnamese national who had returned to Vietnam
- A Chinese offender engaging in agriculture in Japan obtained criminal proceeds by forcing a Chinese worker without a work permit to work illegally and remitted the proceeds to an account under the name of a Chinese person whom they had previously hired.

- A staffing agency made its subsidiary staffing agency remit money to an account under the name of a third party, knowing that the money was part of the income of the subsidiary agency derived from dispatching Vietnamese nationals without work permits to factories.

As can be seen, many cases involving foreign nationals were noted, so international anti-money-laundering measures are becoming increasingly important. The next section provides an overview of the international assessment of Japanese financial institutions' anti-money-laundering measures.

2. Summary of the FATF¹ Fourth Round Mutual Evaluation Report of Japan

On August 30, 2021, the Financial Action Task Force (FATF) published the Fourth Round Mutual Evaluation Report of Japan. As a result of the Mutual Evaluation, Japan was placed into enhanced follow-up and is required to improve its anti-money-laundering (AML) and counter - terrorist-financing (CFT) measures by the follow-up assessment to be held five years later.

The Mutual Evaluation included 40 items for the evaluation of the status of technical compliance and 11 items for the evaluation of the effectiveness of such measures. Each item is rated in 4 levels, and the overall evaluation results are classified as "regular follow-up," "enhanced follow-up," or "subject to monitoring." "Normal follow-up" is the so-called "sufficient level," which means satisfactory. "Enhanced follow-up" indicates that the jurisdiction will be required to submit reports three separate times prior to the regular follow-up assessment five years later. The FATF's fourth round of mutual assessment resulted in Japan being placed in the "enhanced follow-up" category.

In the technical compliance ratings, the following 11 out of 40 FATF Recommendations were rated insufficient:

- National cooperation and coordination
- Terrorist financing offence
- Freezing terrorists' assets
- Prevention of and sanctions against proliferation of weapons of mass destruction
- Prevention of misuse of non-profit organizations (NPOs);
- Handling of politically exposed persons (PEPs)
- Customer due diligence (CDD) for designated non-financial businesses and professions (DNFBPs)
- Suspicious transaction reporting from DNFBPs
- Beneficial ownership (BO) of legal persons
- BO of legal arrangements
- Supervision of DNFBPs.

For evaluation of effectiveness, the 8 (out of 11) areas below were deemed insufficient:

- Supervision
- Preventive measures
- Prevention of misuse of legal persons, etc.
- Money laundering investigation, prosecution and sanctions
- Confiscation of proceeds of crime
- Terrorist financing investigation, prosecution and sanctions
- Freezing terrorist assets and prevention of misuse of NPOs
- Proliferation financing.

The main finding related to financial institutions is the assessment that a certain number of financial institutions and fund transfers service providers, including large banks (e.g., GSIBs, which are considered higher risk), have an adequate understanding of money laundering and terrorist financing risks (AML/CFT). However, The FATF points out that, compared to bigger banks, other financial institutions (including regional financial institutions) do not have a sufficient level of understanding of and actions

¹ The FATF is an inter-governmental body that develops global AML and CFT standards (FATF Recommendations) and mutually evaluates the status of implementation. The FATF currently comprises 37 member jurisdictions, including the G7, and two regional organizations and together with 9 FATF-style regional bodies; the FATF Recommendations apply to 205 jurisdictions around the world.

taken towards AML. It has been also pointed out that financial institutions are taking a uniform approach and that risk assessment and the application of risk mitigation measures tailored to the circumstances of each financial institution are insufficient. In addition, it was requested that the standards in the guidelines of the Financial Services Agency, which set common minimum standards for all financial institutions, be raised. Financial institutions other than large financial institutions are requested to further strengthen their AML/CFT efforts.

3. The action plan by the government

On the same day as the release of the FATF Recommendations, the Ministry of Finance published the "Anti-Money Laundering, Counter - Terrorist Financing and Counter-Proliferation Financing Action Plan (AML/CFT/CPF Action Plan)". The action plan is divided into the following six categories with clearly stated deadlines for compliance by Japanese financial institutions within the next three years.

- Identification of risks and cooperation regarding AML/CFT and counter-proliferation financing (CPF)
- AML/CFT/CPF measures and supervision by financial institutions and VASPs
- AML/CFT/CPF measures and supervision by DNFBBPs
- Prevention of the misuse of legal persons and trusts
- Money laundering/terrorist financing investigation and prosecution, etc.
- Asset freezing and NPOs.

4. Responses required from Japanese financial institutions

The deadline for implementation of the FSA's Money Laundering Guidelines has been set for March 2024, and full implementation is required. In addition, it is also necessary to follow the AML/CFT/CPF Action Plan. In doing so, the following two points are critical issues for Japanese financial institutions.

First of all, it is essential to implement appropriate risk assessment and risk mitigation measures. Risk assessment and risk mitigation measures depending on the situation of the entire industry and each individual institution will be a key point to be noted moving forward. This is pointed out in the risk based approach section in the Money Laundering Guidelines. Financial institutions will be required to continuously and thoroughly analyze their own products, services, customers, etc. and to understand and take measures against the risks by referring to the National Risk Assessment-Follow-up Report or other relevant sources.

The second key point is ongoing Customer Due Diligence ("CCD") in actual business operations. This point is also mentioned in detail in the Money Laundering Guidelines. The processes of CDD may be expediently categorized into three stages: the start, continuation, and end of the business relationship. Each financial institution should determine and implement appropriate risk mitigation measures at each of the stages according to the level of risk posed by the individual customer and their transactions. With ongoing CCD, misuse of deposit accounts, as in the example at the beginning of this section, is expected to decrease.

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Authors/Contacts

Yukihito Machida

Partner

E: yukihito.machida@aplaw.jp

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www.aplawjapan.com/en/

Tokyo Head Office: Fukoku Seimei Bldg., 2-2-2 Uchisaiwaicho, Chiyoda-ku, Tokyo 100-0011, Japan

Fukuoka Affiliate Office: Tenjin Bldg. 10F, 2-12-1 Tenjin, Chuo-ku, Fukuoka-shi, Fukuoka 810-0001 Japan

New York Affiliate Office: 1120 Avenue of the Americas, 4th Floor, New York, New York 10036

London Office: 4th Floor, 50 Mark Lane, London EC3R 7QR, United Kingdom

Frankfurt Affiliate Office: OpernTurm (13F) Bockenheimer Landstraße 2-4, 60306 Frankfurt am Main, Germany

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