AML for CSA Newsletter
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How would the Anti-Foreign Sanction Law (反外國制裁法) that would under the Basic Law Annex III (基本法附件三) affect companies complying with US sanctions?

Question	A company secretary refuses to take on a client that is under the US sanction.
Effect	Based on the language in national Anti-foreign Sanction Law, it will effectively enable the Chinese and HKSAR governments to sanction all who comply with US/EU sanctions, forcing entities to choose whether to comply to Washington's side or Beijing's side.
Interpretation	If the reason for the refusal of service is based solely on US sanction, then the company secretary is breaking the Anti-Foreign Sanction Law.
What to do	The US currently often seeks to punish third party entities or countries for direct or even indirect dealings with a sanctioned regime. That means: • If the company secretary opted to do business with the US sanctioned individual and accept him as a regular client, then the company secretary is under the threat of secondary sanction by the US authority. The most prominent example is Huawei doing business with Iran which let the executive of Huawei subject to US extradition while in transit in Vancouver. • If the company secretary refuses to do business with the US sanctioned individual, then the China/Hong Kong Anti-Foreign Sanction Law kicks in and put the service provider in danger.
Solution	This is the damned if you do or damned if you don't situation. However, we can use the Sarbanes–Oxley Act of 2002 as the guideline. The effect of that law is to separate the auditing business from other professional services that might impair audit independence. That is the reason why we have to set up a separate company's secretarial practice apart from auditing business. To follow this argument, we may need to set up a separate entity called it China Division to dual with the business that may be subject to Anti-Foreign Sanction Law. This is the Firewall between the Chinese and US-let regimes.

Appendix:

China's Anti-Foreign Sanction Law

中华人民共和国反外国制裁法

（2021 年 6 月 10 日第十三届全国人民代表大会常务委员会第二十九次会议通过）

第一条　为了维护国家主权、安全、发展利益，保护我国公民、组织的合法权益，根据宪法，制定本法。

第二条　中华人民共和国坚持独立自主的和平外交政策，坚持互相尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利、和平共处的五项原则，维护以联合国为核心的国际体系和以国际法为基础的国际秩序，发展同世界各国的友好合作，推动构建人类命运共同体。

第三条　中华人民共和国反对霸权主义和强权政治，反对任何国家以任何借口、任何方式干涉中国内政。

外国国家违反国际法和国际关系基本准则，以各种借口或者依据其本国法律对我国进行遏制、打压，对我国公民、组织采取歧视性限制措施，干涉我国内政的，我国有权采取相应反制措施。

第四条　国务院有关部门可以决定将直接或者间接参与制定、决定、实施本法第三条规定的歧视性限制措施的个人、组织列入反制清单。

第五条　除根据本法第四条规定列入反制清单的个人、组织以外，国务院有关部门还可以决定对下列个人、组织采取反制措施：

（一）列入反制清单个人的配偶和直系亲属；

（二）列入反制清单组织的高级管理人员或者实际控制人；

（三）由列入反制清单个人担任高级管理人员的组织；

（四）由列入反制清单个人和组织实际控制或者参与设立、运营的组织。

第六条　国务院有关部门可以按照各自职责和任务分工，对本法第四条、第五条规定的个人、组织，根据实际情况决定采取下列一种或者几种措施：

（一）不予签发签证、不准入境、注销签证或者驱逐出境；

（二）查封、扣押、冻结在我国境内的动产、不动产和其他各类财产；

（三）禁止或者限制我国境内的组织、个人与其进行有关交易、合作等活动；

（四）其他必要措施。

第七条　国务院有关部门依据本法第四条至第六条规定作出的决定为最终决定。

第八条　采取反制措施所依据的情形发生变化的，国务院有关部门可以暂停、变更或者取消有关反制措施。

第九条　反制清单和反制措施的确定、暂停、变更或者取消，由外交部或者国务院其他有关部门发布命令予以公布。

第十条　国家设立反外国制裁工作协调机制，负责统筹协调相关工作。

国务院有关部门应当加强协同配合和信息共享，按照各自职责和任务分工确定和实施有关反制措施。

第十一条　我国境内的组织和个人应当执行国务院有关部门采取的反制措施。

对违反前款规定的组织和个人，国务院有关部门依法予以处理，限制或者禁止其从事相关活动。

第十二条　任何组织和个人均不得执行或者协助执行外国国家对我国公民、组织采取的歧视性限制措施。

组织和个人违反前款规定，侵害我国公民、组织合法权益的，我国公民、组织可以依法向人民法院提起诉讼，要求其停止侵害、赔偿损失。

第十三条　对于危害我国主权、安全、发展利益的行为，除本法规定外，有关法律、行政法规、部门规章可以规定采取其他必要的反制措施。

第十四条　任何组织和个人不执行、不配合实施反制措施的，依法追究法律责任。

第十五条　对于外国国家、组织或者个人实施、协助、支持危害我国主权、安全、发展利益的行为，需要采取必要反制措施的，参照本法有关规定执行。

第十六条　本法自公布之日起施行。

(来源： 中国人大网)

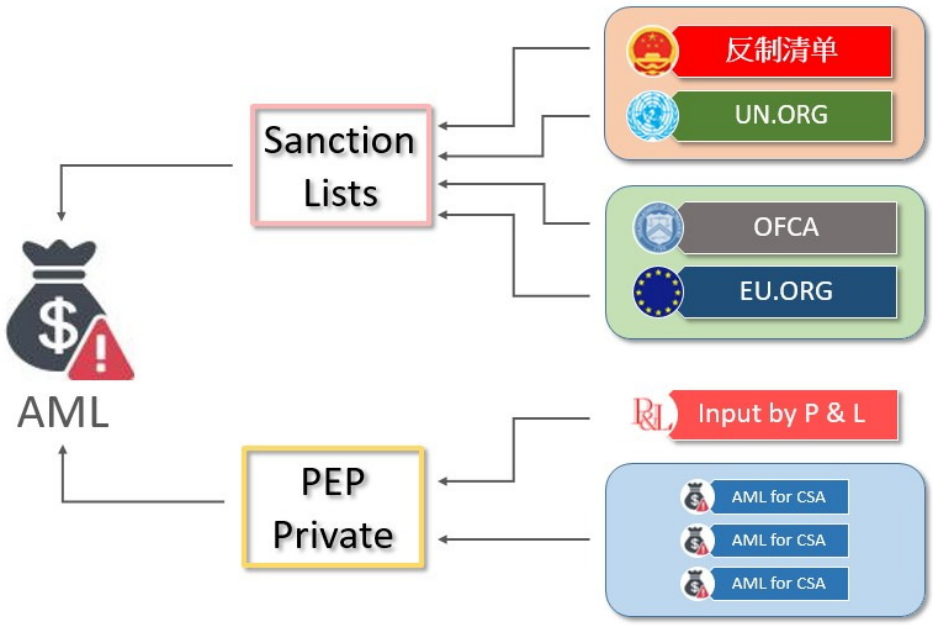
Questions from AML System Users

Requests	"I want to see all PEPs in my system and their current status." "I want the alarm, like the one in CSA, to alert me for any missing EDD for PEP." "I want the PEP check, like the Sanction Check, to scan through my entire database against a PEP list. "When I searched for a company called "VTB Bank" that is sanctioned under OFCA, it doesn't show."
Proposed Solutions	User Suggestion: Beef up the PEP function for searching, saving, and warning for EDD. We have discussed about this issue among many users of AML for CSA ("AML"). The solution is: 1. Setting up a private database shared among users.

2. AML can conduct periodic check of PEP private list against his own entity files.
3. Update the CSA of the PEP information.
4. List of PEPs in CSA and their CDD status.
5. Thanks for letting us know. We have fixed that problem.

Private PEP Database

Algorithm



Background

It is like the sanction lists. We have written an algorism to search and extract information from different sanction lists. Each time an AML user activates the Sanction Search, the system would download the latest sanction lists from us and march it against the entire database.

This is proven to be the most popular feature in AML. Not only its fast, timely and accurate, the best way is no typing involve. The system will do almost everything and show you the result. Consider if we can use the same method to PEP, that would be wonderful.

Solution

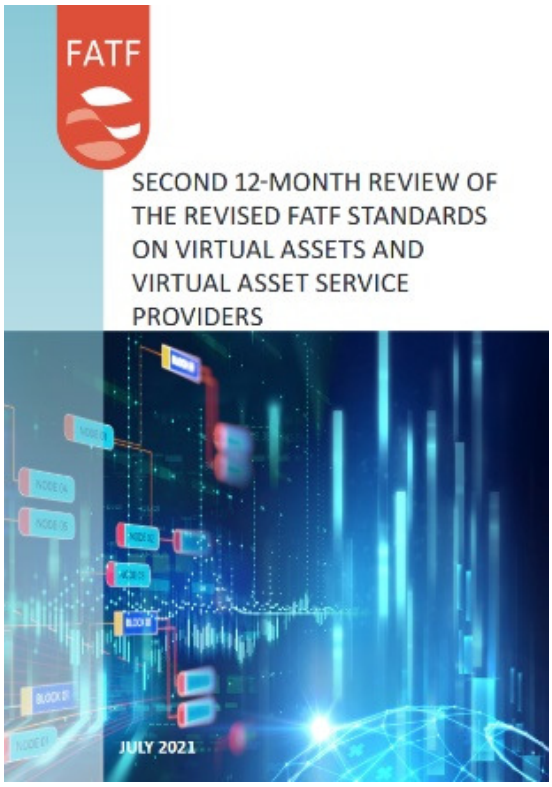
We will initially set up a database of known PEPs. This list is not open to public. When an AML user search the PEP private database, it will show whether it matches with the list. The only problem is that we have limited resources to update the list.

The best alternative is that we would allow users to upload their PEP list to the private list. When every user shares this information, the PEP list will grow much faster. It's just like Wikipedia that every user can contribute to the PEP.

FATF

The Financial Action Task Force

Virtual Assets and VASPs – Include Private Persons as VASP that are subject to enforcement like banks



That Guidance for Risk-based Approach – Virtual Assets and Virtual Assets Service Provider was first released in 2015, updated in June 2019, and has generally mirrored existing policies from the U.S. AML regulator FinCEN. The 2019 guidance, while still calling for mass warrantless surveillance, at least placed cryptocurrency businesses on a level playing field with traditional financial institutions and, generally speaking, imposed no stricter nor more privacy-invasive policies than existing regimes like the policies we have had in place here in the U.S. since 2013 under the Bank Secrecy Act and FinCEN's guidance. The new updated guidance changes that dramatically.

What are the concerns in the new draft guidance?

There are at least three issues with the new guidance:

1. Increased obligations for non-custodial entities. The draft has expanded definition of VASPs (the persons and businesses obligated to register and conduct AML surveillance) that could include non-custodial participants in cryptocurrency networks. That may include multi-signature minority keyholders, participants in smart contract and "layer two" mechanisms (potentially including decentralized exchange software developers or contract participants, and Lightning Network node operators). If finalized as drafted, the recommendations would be creating a big difference with the

existing FinCEN policy and global consensus that only people with independent control over customers fund, like banks in fund transfer, are treated as regulated money transmitters that are subject to the existing rules. If those non-custodial persons are classified as VASP, they need to register with the local regulator, collect and report to government tons of information about their activities and activities of others, and to know the names and actual addresses of everyone with whom they transact. Banks and other financial institutions are doing it because there are places where most money laundering takes place. However, it would be a big burden for private persons participating in open computer networks to comply with the stringent requirements as if they are banks. There won't be any personal privacy as all these transactions even with private persons will need to be reported to the authority.

2. Expose peer-to-peer transactions and examination of privacy-enhancing technologies. The draft quietly against peer-to-peer transactions and transactions involving privacy-enhancing technologies. It argues that regulated VASPs should limit support for transactions with non-regulated parties (so-called "unhosted" wallets), and insists that software developers should limit the availability of private and peer-to-peer transactions by design.
3. Identify Customer Counterparty. The draft recommends that VASPs should subject all transactions to "travel rule" (*i.e.,* FATF Recommendation 16) recordkeeping requirements even though, under existing U.S. law, the travel rule only applies to transactions between regulated entities. This would obligate exchanges to collect specific information about who their customers are paying or being paid by.

Pre-registration for the Upcoming Seminar

Managing PEP using "PEP Private"

- Date: To be advised (will notify you once the date is fixed)
- Form: Zoom Meeting
- Time: Around 1 Hour
- Language: Cantonese
- Limit: Depends (ideally within 30 to facilitate group discussions)

Agenda

1. How to determine if a client is a PEP?
2. What is "PEP Private"?
3. How does the AML System handle the PEP?
4. Introducing the new PEP Control Center.
5. Analyzing the Enhanced Due Diligence form.

Target Participants

- Compliance officer
- Firm administrator

The Seminar will be conducted by Mr. Harry Tsui CPA and Mr. Oscar Lo. Harry is licensed to practice public accounting by California State Board of Accountancy, and is specialized in US international taxation, tax audit and FATCA (Foreign Account Tax Compliance Act) compliance. Oscar is the Manager of P & L Associates.

Pre-registration

If you are interested to join the upcoming Seminar, please use the following Google link to write down your contact information. Once we have the date fixed, we will send you an email to ask for your confirmation.

GOOGLE LINK FOR PRE-REGISTRATION:

https://forms.gle/tkLsU2z6ZaSBSfM2A

Should you have other questions, please contact Mr. Oscar Lo at 2521-3110 or oscar@plsoft.com.