

# Knowing your customer (KYC) in a global market

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**Tory Ishigaki:** Today we'll be looking at Australia's Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) regime and the importance of knowing your customer. We'll be discussing Australia's current compliance culture, where it's headed and how a new global search platform KYCIT that is changing the international searching process. I'm joined by Murray Lawson, Senior Director in the Global Risk and Investigations practice at FTI Consulting and Patrick McComish, Product Manager of Global Corporate Services here at InfoTrack. Welcome Murray and Patrick, glad to have you here today.

**Murray Lawson:** Morning.

**Patrick McComish:** Morning.

**Tory:** Murray, so we'll start off with you. Can you tell us a bit about your background and what you do at FTI?

**Murray:** Sure, FTI is a global business advisory firm that works with our clients in the areas of managing and mitigating risk, resolving disputes in the areas of financial, legal, operational, political and regulatory. Within FTI, I lead the Australian side of our global risk practice. So we're a global team of investigation specialists who work with our clients to help them understand the markets that they're entering or operating in, to unpack with them who their business partners might be, gain intelligence into competitors or to help them resolve disputes with things like international asset tracing, finding and locating money - tracing money trails globally.

**Tory:** Why is AML and CTF so pertinent at the moment?

**Murray:** I'd argue it's always been important to us but there have just been a number of recent issues that have brought it right to the fore. The first is the lead by the US and the UK on a number of issues related to bribery and corruption, money laundering and cross border profit shifting. We've seen that become part of the public consciousness, it's in the media all the time - people are starting to get a bit of an idea.

The second string is the ongoing issue of terrorism - that receives a huge focus with government. Cutting off the funding to groups like Islamic State in Iraq is probably one of the most effective ways of shutting them down and limiting what they can do. There's a greater emphasis by government on ensuring the financial systems over which they have control aren't being used to facilitate that sort of work. There's also been a number of fairly major scandals that have come out. We saw the Mossak Fonseca leak of documents about offshore profit shifting and the Unioil scandal which has really brought up those issues of bribery and corruption on a global scale again. I think as a confluence of all those issues there's a greater awareness in the public that these things are going on. There's also a public perception that this is unfair and shouldn't happen and it's putting pressure on governments to actually think about and decide what they're doing.

**Tory:** The government in Australia currently has the AML/CTF Act. Who does that apply to at the moment?

**Murray:** In Australia, the AML/CTF Act applies to those businesses involved in financial services, the gambling sector, gold bullion dealers, what are called remittance service providers so these are sort of bank alternatives for transferring money - things like Western union and there's a number of other sort of specific bodies and anyone who deals in cash, so cash dealers, and that sort of space.

**Tory:** The Financial Action Task Force (FATF) recently conducted a review of Australia's AML/CTF regime earlier this year. Can you explain who FATF is and what the implications of their recommendations were?

**Murray:** FATF is an intergovernmental body that was set up in 1989 by the finance ministers of the member countries. Australia has been a member since 1990 and its objective is to set standards and promote the effective implementation of those standards to target money laundering, terrorism financing and any other related threats to the integrity of the global financial system. It's really a policy-making body so it works with the member states to come up with recommendations, to develop strategies that then can be implemented at the local level within those member countries. Its recommendations are a series of fairly detailed policies and procedures for implementation by government. So it's really the world standard AML/CTF. They also monitor the progress and see how member states are going in terms of implementing and help member states conduct what are called threat assessments to see how risky is your financial sector for money laundering and counter-terrorism financing so they perform an important function and very well respected.

**Tory:** How have the Australian Government and AUSTRAC reacted to this review by FATF?

**Murray:** FATF conducted the review of Australia's regime in late 2015 and that was done with the full cooperation of the Australian Government, they essentially found a number of areas where Australia is not compliant with their recommendations particularly in the area of prosecution and investigation of money laundering and a lack of coordination nationally across our bodies. The most important critique they gave was most of the designated, non-financial businesses and professions still weren't subject to the AML/CTF regulations - things like lawyers, real estate agents - people who deal in large value transactions and are at risk of money laundering but actually aren't picked up under our regulatory regime. So they had a number of criticisms to us.

AUSTRAC who are Australia's financial intelligence agent unit and also the responsible regulator for AML/CTF - I think they're broadly supportive of those recommendations. FATF actually found that on the financial intelligence side, AUSTRAC does a really good job in gathering and analysing financial data and making that available and of use to government agencies and enforcement bodies to help with their purposes. Where the deficiencies exist are in the areas of regulation and enforcement and I think as an agency, AUSTRAC are well aware of those issues and see them as a bit of a frustration so I think they actually welcomed some of the recommendations in terms of saying 'well how can we strengthen the regulatory regime?'

**Tory:** What power does AUSTRAC currently have?

**Murray:** They currently have the power to issue some limited fines to try and encourage compliance from the bodies they regulate. They can also take civil action in the case of significant breaches on behalf of the government and can also order regulated organisations to undertake remedial actions if they're found to be deficient in their AML/CTF procedures or to comply with particular requirements. They've also got the power to, in limited circumstances, enter into enforceable undertakings with the bodies that they regulate but their powers are very much limited only to those organisations that are registered with them. There's a requirement for registration for any of those industry sectors and AUSTRAC really can't step too much beyond where it's at, at the moment.

**Tory:** What do you think has prevented the rest of the industries from being regulated?

**Murray:** Those industries were flagged as what would be Tranche 2 of the AML/CTF Act when it was first brought in so it was supposed to implement Tranche 2 in 2007 and as you sort of know we've been through several governments since then and 10 years later it has not yet been implemented. So I think it's a combination of varying government priorities and a bit of a lack of traction on a number of these sort of key issues. It's seen as something that would be nice to have. There's also a little bit of industry resistance because it does mean extra compliance requirements on the businesses that will then be regulated. There's also some education that needs to be done about what would need to happen in that situation and I think up until recently we've not had the funding and the bodies to be able to implement it - even if they change the legislation tomorrow - and to regulate it once it's there.

**Tory:** Do you think Tranche 2 will be implemented?

**Murray:** I think so. It will come but it's likely to be event driven. I think something will happen whether it's an Australian company that gets tied up in a money laundering investigation or there's some sort of pressure from one of our partner governments, the US perhaps, that we really do need to step up to the plate. I think then the change would come really quickly and I doubt there'd be too much trouble passing it through the parliament - it's just does it get up on to the priority or not?

**Tory:** Basically once the pressure is on?

**Murray:** Once the pressure is on I think it would definitely come quickly.

**Tory:** How would you describe Australia's current compliance culture? Especially in comparison to our partners as you were mentioning?

**Murray:** A bit behind the times is probably a good way to characterise it. For many Australian businesses the idea of compliance is not well understood. They don't necessarily have a good firm grip on what are the requirements, and I doubt any of the organisations that aren't regulated by AUSTRAC probably even know who they are. It's not something that's in the consciousness of Australian companies, that these issues are there and that they do need to deal with them. It goes alongside issues of bribery and corruption, sanctions and all of those sort of things that by and large businesses aren't thinking enough about. Particularly now when a lot of Australian businesses are looking to go into emerging markets of China, India and other places in Southeast Asia where the risks are considerable. I don't think there's enough attention being focused from the culture within the company of saying how do we assess and mitigate these risks as we go into business?

**Tory:** As you were saying a lot of the unregulated industries don't seem to be too worried about KYC yet, since they

don't have actual compliance requirements but that doesn't mean there is no risk to their business so why should they be worried about internal compliance essentially?

**Murray:** First and foremost, because it's good business practice. Being an organisation that has policies and procedures to say 'this is how we do business, this is how we manage our risk' - it's actually a competitive advantage, particularly when you're talking to shareholders or other business partners to be able to say 'look even though we're not technically regulated we're fully compliant with the regulations we need to follow'. Those regulations are put in place because they're sensible options to try and protect businesses, it's not just there as an issue – they are sensible things and through being compliant you can actually assess and mitigate a number of other business risks other than an AML/CTF risk. It's a question of knowing about the people you're going to do business with and just makes good business sense from the perspective of is this someone you can trust; are they being open with you in their discussions? So irrespective of an AML/CTF compliance issue, just doing your homework on who it is you're about to sign a contract with, buy something from, enter into an agreement with – it just is a good business decision.

**Tory:** At InfoTrack, we recently conducted a survey of legal, accounting and real estate professionals across Australia to see what their understanding of AML/CTF is and what their current KYC practices are. Based on the survey, it seems that many of those people are just starting to get their heads around this and don't understand the full implications of it and what Tranche 2 will mean for their business. So you've taken a look at the survey, I'm curious which results did you find most noteworthy?

**Murray:** One of the first results that stuck out most to me was the finding that only 18% of the respondents mentioned that they do searches of sanction lists and searches for politically exposed people. That was a very striking finding because irrespective of any AML/CTF legislation, the penalties for breaching trade sanctions by doing business with a sanctioned country or entity are on the books now and they can range up to 10 years in prison and fines of up to half a million dollars for an individual and for companies the fines can range up to \$1.8 million or more and companies aren't even checking these things when they are starting to do business with people. If you're not doing that check, I think it's a massive risk for your business. The issue with sanctions is really one about Australia's reputation and standing within the world, that is that we won't support other bodies or other companies that have been sanctioned by the UN. Australia is also quite strict in applying our own autonomous sanctions outside of the UN and we like to think that we're leaders in that space as a government, so I think in the event where it's found that a significant breach has happened the government would be looking at what the legislation needs to change and even harshening penalties. I think that's one of the things that stuck out for me.

The other was that when you look at who is being looked at when they search through InfoTrack or other mechanisms, they're often looking at the directors of the company that they're involved in and that's not enough. Only about 38% were really looking at the beneficial owners of a customer or a business partner. And it's really the beneficial owners that the AML/CTF requirements dictate you should understand. In Australia, we have a situation where directors actually have quite a role in who runs the company. In other places it's not the same - the directors are generally often just the proxy for the owner so it's really important that you go beyond the board of the company and figure out to the extent that you can who runs it and who owns it. Who's going to receive the funds from it? Because that's really where the risk lies. Those are the two that really stuck out to me.

**Tory:** And do you think those arise from a lack of knowledge or lack of awareness or people not thinking it matters?

**Murray:** I think there's probably a number of factors at play. I think one is the Australian perspective that we think the board is kind of the important thing that we need to look at so that gets the focus and it's usually the easiest thing to find. Often the directors are listed in corporate records, they're the first sort of names to pop up and then people don't necessarily go beyond that so it's kind of 'yup I've ticked, I've got that here, I've got those names, that's great'. I think it's the broader issue when we talk about due diligence and what that actually means. It's not about collecting together some docs and keeping them on a nice file to tick some boxes; it's about being critical of the information, seeking to verify, seeking to understand whether what you're being told is true or not and then making a decision based on that. That's what due diligence should be and that's what the AML/CTF Act requires of due diligence. If you look at AUSTRAC's guidelines for an AML/CTF program, they refer to enhanced due diligence having to make the threshold that a reporting entity is satisfied that the individual customer is who they claim to be and for a non-individual company, or a company, that they actually exist and they know who the beneficial owner is. So that's there, that's what's expected and if you're not going beyond the initial you never get to it.

**Tory:** Once people have gathered all this data and they're doing their investigations what are the main questions they should be asking really before they go into any sort of international transactions?

**Murray:** The first big one is who is it that I'm actually dealing with here? Who is the company or who is the individual? And trying to as much as possible understand that. Going a bit beyond just the first scratch of the surface and saying

does this information check out or is there something that's a little bit odd? Quite often I find when we've gone into a situation after and found issues at the very early stages people have raised some sort of concern.

I had an example last year where an Australian business contacted me because they were having trouble getting money out of a key business partner, so they sort of contacted us and said 'this guy is based overseas and we're waiting on about \$20 million from him', and said, 'can you help us figure out who he is and where he is'? As often happens with these things we said 'yeah but we don't work for free' and the client basically said 'I don't want to spend too much money to worry about this so we'll sort it out'. In the process he sent me some documents that had been involved, one of which was the proof of funds for an international bank that said that this guy overseas who came out of an emerging market had a billion dollars in cash in an account.

**Tory:** That doesn't sound suspicious.

**Murray:** Exactly. When you start to think that sovereign governments don't keep that much money cash on hand in a bank account ready to deploy, it probably should have raised some question marks somewhere to say hang on what's going on here? I immediately rang the guy back and said 'here's a freebie but what's going to happen next is they're going to call you and tell you they need a sum of funds to help them get theirs released and what that called is an advanced fee fraud. So the game is you pay me 20 grand so I can get my funds released so I can give them to you. You pay them the 20 grand and then they disappear and that's exactly what happened in this instance. But at the very earliest stages, that document that was presented should have just kind of raised some alarm bells and gone 'hang on a second this doesn't sound right - there's something not right here'. When we spoke to the guy he said 'yeah I thought there was something a bit fishy'. My question is if you think it go find out, don't put your money on the table until you know and until you're satisfied that you're protected. It's about having a sceptical mindset – don't believe everything you're told; don't believe that a document you're given – even if it looks like an official government document – is actually real. You need to check it, you need to go through someone who knows what that document should look like – it might be a lawyer in that country, an investigations firm like ours who can actually verify that indeed that is true, that is what it is. There's a lot of things they need to think about.

Other things that we generally look for is really complex business structures. Throughout Asia the use of shelf and shell companies is really common. It can often mean between the business you're doing business with and the beneficial owner it can be 10 layers of corporate in between them, which can be a sign of corruption and quite often is. It's not always though, but you've got to start asking the questions of why would you have such a complicated business structure unless there was very good reason. And if you can't find a good commercial reason, you've got to say well hang on is this something that's a little bit nefarious. I've seen investigations where we've had to chase a corporate structure across Singapore, Cambodia, Myanmar, five different countries in order to understand how a particular company was owned and what was involved in that, but in a situation where you're doing business with a company or you're contracting with them, in the event that it goes bad and you need to take legal action, a complex structure makes it really difficult to try and take action, to retrieve anything, to get your money back so you've got to be really careful of those.

The other things I'd look for is when a business is government and state owned, particularly in emerging markets it's something you always want to be wary of. In Australia we're supposed to be a little more safer from that although I think we've got our own problems on that front. But where there's a state owned enterprise there's always a greater corruption risk.

**Tory:** Why's that?

**Murray:** Because most of the people who are inside the business are also government officials so when you're dealing with an SOE the opportunities for handouts, bribery, corruption, conflicts of interest can come up.

When you see a business whose profits are well above the industry standard and the industry norm you should always start to ask some questions. There could be good reasons for it but there could also be a problem and that's where you need to take a bit more of a due diligence approach.

**Tory:** How far do you need to go in these investigations? When you have suspicious feeling and you start investigating, how far do you take it?

**Murray:** My view is – and maybe I'm just conservative – you take it to such a point that you're satisfied. At the basis there's always a bit of a risk decision that you need to make. Any business transaction involves risk. It's about do you understand how much risk is there and you need to take your due diligence to a point where you are satisfied that you know what's going on and if you don't then you should go further or you should think about walking away. If you can't get to a point where you say 'I'm comfortable' or know who you're dealing with, maybe that's not a business you should be working with.

**Tory:** When you're conducting your investigations currently, how do you go about gathering all this information?

**Murray:** Often the certified documents are supplied by a customer and they'll give you certified copies of whatever. They're often incomplete, questionable, so it generally involves for most businesses a very laborious process of trying to find and verify corporate records through multiple different online sites or through actual direct on the ground stuff where you have to go to a government office and try to verify a document. It can be really time intensive, really costly and really quite challenging in a number of places around the world. Even the markets where there's good transparency like the US, the problem that can come there is there are so many states that will have individual repositories of information that actually checking across them all can be really hard and different databases don't cover all states and it can really be really quite a challenge.

In my business - and I'll plug your product for you - we use InfoTrack and find it really well. We find it to be a pretty good tool for what we need. We've managed to shorten our time frame on collecting that stuff by using InfoTrack and using other online systems to try and get that data in faster and easier. For us really, the collection part of getting all that information together is kind of the first step of our job, the rest of our job is about understanding and doing that analytical checking, verifying, questioning, because that's where you start to understand the risk.

**Tory:** So what I'm hearing is that it's a very patchwork process at the moment.

**Murray:** Yeah.

**Tory:** And pretty time consuming.

**Murray:** Yeah.

**Tory:** It's a lot of time and effort that just goes into collecting the data and as you were saying after that there's the whole analysis part after that which is the important part obviously. At InfoTrack we're always trying to make our clients lives easier by simplifying processes and as transactions are becoming increasingly global we've been hearing more about KYC and people's needs to do searches globally and we've been working on a new global KYC search platform that's hopefully going to streamline this process and help in both gathering this data and analysing it as well. So now I'll turn to Patrick our Product Manager for Global Corporate Services and Patrick can you tell us a bit about KYCIT which is our new searching platform?

**Patrick:** Yeah of course. This came about because over the last few years InfoTrack opened three international offices, London, New York and NZ, so our existing Australian clients started requesting access to international data from those offices. Because all our development work is client-driven we started looking at ways that we could best deliver these services. It turned out our clients wanted a single platform that works much the same as our existing domestic interface does but from which they can search into all global jurisdictions, and from that the KYCIT platform was born. As with all our development we worked closely with people like Murray and FTI to help keep the new work in line with their needs and expectations. For KYCIT, the overriding motive was to create a single portal that gives access to all global data.

**Tory:** How does KYCIT work?

**Patrick:** KYCIT uses our global network of data to search hundreds of jurisdictions all at once so users can then select from those results where they want to dig deeper and then we bring those results back in several ways whether it's company summaries or company documents and of course our REVEAL visualisation service. For this, there are no subscription fees, a lot of the data we can access can be returned free of charge or the charge will be shown up front so people know where they're up to as far as costs are concerned. All of those charges shown in local currency of course. The majority of data is returned in minutes and if anything is not immediate we give turnaround times as well. One of the most important feature as Murray alluded to earlier is a REVEAL visualisation that can show you immediately who the beneficial owners are of international identities or corporate entities.

**Tory:** That's great. And does it highlight that on the diagram?

**Patrick:** Yes, it does actually Tory. You click on a filter for beneficial ownership and it will show them. And what we're doing is building out rules around that for different jurisdictions so when you've got international entities from certain jurisdictions they've got different rules around it. For example, in the UK they've got a persons of significant control register and we'll be able to access that and show immediately if there's a PSC associated with an entity.

**Tory:** And how do you think this is going to change the current workflow for professionals who are doing international company searching?

**Patrick:** What we're trying to do is improve the turnaround process and time for the clients. Improve the speed with which they can consume the data and find the information they're looking for, particularly when they're looking into international companies or people. It'll also give them more uniform results. Rather than them having to reinvent the wheel every time they go into a new jurisdiction, having to engage new agents, work out new systems, it'll all come through the one portal.

**Tory:** This will obviously shorten the time spent gathering this data. I know a lot of people in some of the professional industries are kind of worried about technology taking over their jobs and that type of thing so what would you say to anyone who has those concerns?

**Patrick:** We come up against this a lot, as would most technology companies. We're not about replacing people; we're more about making processes more efficient. In that way our clients can use our technology to reallocate professional staff to tasks that are more suited to their skill set. If we can speed things up and automate parts of their workflow, then our clients' staff are better resourced in the more complicated aspects of their roles.

**Tory:** KYCIT is pretty new, it's in its beginnings right now. How do you see it evolving and what features are planned for the future?

**Patrick:** Right now what we're working on integrating is international sanctions and PEPs check, international property searching and we're also building out now an ongoing monitor of international entities so if anything changes in there – it could be in their corporate structure, in their credit writing or in litigation for example – we'll be able to alert our clients who are monitoring them so they'll know immediately.

**Tory:** And Murray as someone who does use our products and has seen a bit of this platform already, how do you think this will change things for you?

**Murray:** For me, I think exactly what you said Tory and picking up on Patrick's point, it's about making the collection of that information as efficient as possible so the time my staff is spending on a project for a client – their time is actually spent thinking about it, starting to really ask those hard questions about does all this information stack up? Are there discrepancies? Are there different pieces of information that don't agree with each other and if so why? So it's those big questions – because that's where the real business risk lies and any professional organisation should be thinking about having its staff think on those questions because that's where you can value-add to your client using something like InfoTrack. For us, it means that that's where my staff spend their time, not on trying to pull back documents that through a system like InfoTrack we can get easily, quickly - in the space of minutes we can have what would normally be a five or six day turn around on documents and when you're working in sometimes a very time-sensitive investigation that really matters on what you can deliver to your client – it means you can deliver more to them in a shorter space of time.

**Tory:** Which is what everyone is looking for usually. Is there any last advice that you would give to anyone who's starting to think more about knowing your customer and AML requirements?

**Murray:** I think it's about knowing who you're doing business with. The compliance requirements are just one aspect of it but there are number of other legal risks that come out of money laundering. There can be bribery and corruption, there can be false accounting, there can be recklessly dealing with the proceeds of crime. Even if you're not a regulated body you may still have legal liability if these issues happen within the business that you're responsible for. I would say there is a payoff to being compliant. It means if you're compliant and you've got good AML/CTF policies, good bribery and corruption policies and you know that your staff know what to do with these issues and how they should behave in a given circumstance you can have a bit more confidence that you maybe can enter that emerging market and take on a bit more risk than your competitor who maybe isn't as ready, knowing that if something goes wrong you're able to hand on heart say to a regulator and enforcement body, 'this is the level of due diligence we went to. We found out everything we possibly could and we didn't know whereas if you've got no policies in that space and you've run into trouble there's actually nothing there to defend you.'

**Tory:** I think that's great advice. Thank you so much Murray and Patrick for joining me today on the InfoTrack podcast and for any listeners if you want to know more about KYCIT you can book a demo or contact Patrick direct.