

# International Comparative Legal Guides



Practical cross-border insights into anti-money laundering law

## Anti-Money Laundering 2022

**Fifth Edition**

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## Anti-Money Laundering in the Asia-Pacific Region: An Overview of the International Law Enforcement and Regulatory Frameworks

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### Introduction

The Asia-Pacific ('APAC') region encompasses a wide range of states including, amongst others: (a) Australia and New Zealand in the Oceania region; (b) Indonesia, Malaysia, Singapore, Thailand, Vietnam in South-East Asia; (c) India and Pakistan on the subcontinent; (d) China, Hong Kong and Japan in Eastern Asia; and (e) USA and Canada in the Americas. Money laundering is, of course, not geographically limited, and illicit funds are often laundered through a complex web of transactions via multiple jurisdictions spanning across the APAC region and the globe.

This chapter will examine the established regulatory and law enforcement frameworks that govern anti-money laundering ('AML') in the APAC region, with a focus on Australia's role in strengthening AML initiatives.

### The Asia/Pacific Group on Money Laundering and its Role in AML

The Asia/Pacific Group on Money Laundering ('APG') is an intergovernmental autonomous organisation, committed to ensuring effective implementation by its member jurisdictions of international standards combatting money laundering, terrorist financing and proliferation financing related to weapons of mass destruction. The APG is an associate member of the Financial Action Task Force ('FATF'), an intergovernmental organisation established with the purpose of generating policies and international standards against money laundering and terrorist financing. As an associate member, the APG contributes to the development of these policies.

The APG independently operates via a governance mechanism that involves one permanent Co-Chair and a rotating Co-Chair appointed for a two-year term. Australia is the permanent Co-Chair of the APG. The chair position is currently held by Mr Ian McCartney, the Deputy Commissioner of the Australian Federal Police ('AFP'). The present rotating chair is Malaysia, held by Mr Marzunisham Omar, Deputy Governor of the Central Bank of Malaysia. Mr Marzunisham Omar has oversight of multiple departments within the Central Bank of Malaysia, including the department for Financial Intelligence and Enforcement. The secretariat offices of the APG are located in Sydney, Australia.

The APG consists of 41 member jurisdictions, 11 of which are also members of the FATF. These members are Australia, Canada, China, Hong Kong, India, Japan, the Republic of Korea, Malaysia, New Zealand, Singapore, and the United States of America. All members of the APG commit to implementing the international standards against money laundering set out in the FATF recommendations.

The APG monitors the compliance of member jurisdictions against FATF standards. The APG also implements intergovernmental training programmes between members in the APAC region.

Released in July 2021, the APG *Strategic Plan 2020–2024* publishes the APG's primary ongoing strategic goals, which include:

1. To be an effectively governed intergovernmental organisation supporting implementation of the FATF standards and the work of the global AML and counter-terrorism financing ('CTF') network.
2. To be an effectively organised and engaged intergovernmental organisation.
3. To conduct and respond to the assessment of members' compliance with, and implementation of, the FATF standards.
4. To work cooperatively to understand the risk environment for money laundering and terrorist financing and support implementation of the FATF standards.<sup>1</sup>

Between July and August 2021, the government of Malaysia virtually hosted the 2021 APG annual plenary meeting and technical assistance forum. This represented the 23<sup>rd</sup> annual meeting of APG members.<sup>2</sup>

On 7 and 8 November 2019, Australia was also host to the second annual 'No Money for Terror' Ministerial conference, which was held in Melbourne and led by the Hon. Peter Dutton, Minister for Home Affairs. Sixty-five delegations attended the event, where focused sessions were held on emerging terrorist threats and terrorist financing methods.<sup>3</sup>

### How Does the APG Review APAC Compliance with AML Initiatives? A Survey of Recent Mutual Evaluation Reports

The APG mutual evaluations or 'peer review' process involves site visits to fellow APG member jurisdictions conducted by rotating teams consisting of APG legal, financial and law enforcement experts. These teams examine the target jurisdiction for the purpose of testing levels of technical compliance with AML standards, as set by the FATF. The mutual evaluation also involves an assessment of the target jurisdiction's AML and CTF effectiveness.<sup>4</sup>

An example of the mutual evaluation process was the APG on-site visit conducted between 4–15 November 2019 at Hanoi and Ho Chi Minh City, Vietnam, for which a Mutual Evaluation Report was published in 2022. The APG mutual evaluation team on this occasion consisted of:

1. Mr Sok Heng Hak, Legal Assessor, Cambodia.
2. Mr Duarte Chagas, Legal Assessor, Macao, China.

3. Ms Zhang Yi, Financial Assessor, China.
4. Mr Ahmad Farhan, Financial Assessor, Malaysia.
5. Mr Jesse Baker, Financial Assessor, United States.
6. Mr Nesar Ahmad Yosufzai, FIU/Law Enforcement Assessor, Afghanistan.
7. Mr Daniel Burnicle, FIU/Law Enforcement Assessor, Australia.

This team, made up of experts from APG member states, conducted meetings and evaluations of various areas including government departments, governmental agencies and private sector reporting entities in the region.

The on-site visit was facilitated by the APG secretariat, who met with H.E. Mr Vuong Dinh Hue, Deputy Prime Minister of Vietnam.<sup>5</sup>

Since 2015, APG Mutual Evaluation Reports have been published following APG mutual evaluation of the following jurisdictions:

1. Australia.
2. Malaysia.
3. Samoa.
4. Sri Lanka.
5. Vanuatu.
6. Canada.
7. Singapore.
8. Bangladesh.
9. Bhutan.
10. Fiji.
11. United States.
12. Cambodia.
13. Mongolia.
14. Macao, China.
15. Thailand.
16. Palau.
17. Cook Islands.
18. Indonesia.
19. Myanmar.
20. Chinese Taipei.
21. Pakistan.
22. Solomon Islands.
23. Philippines.
24. China.
25. Hong Kong.
26. Korea.
27. New Zealand.
28. Japan.
29. Tonga.
30. Vietnam.<sup>6</sup>

Further to intergovernmental collaboration, the APG has also expressly increased its strategic focus on information sharing and education with private sector agencies under a designated private sector outreach programme.<sup>7</sup>

The FATF and the APG also conduct joint mutual evaluations to assess the AML and CTF regimes of member jurisdictions against the international standards set by the FATF. More recently, Mutual Evaluation Reports have been published for the Republic of Korea, Japan and Vietnam.

#### Mutual Evaluation Report of Japan

In August 2021, the FATF and APG jointly published the *Mutual Evaluation Report of Japan*, following an on-site visit by FATF and APG representatives between 29 October 2019 and 15 November 2019. The report was adopted by the APG in July 2021.

A key finding of the report was an assessment that Japan's AML and CTF regimes are, overall, compliant. Whilst the report highlights generally good interagency cooperation amongst law

enforcement agencies on AML and CTF operational matters, further coordination was recommended for the development of AML and CTF policies.

Law enforcement agencies demonstrated substantial experience in conducting less complex investigations, particularly concerning organised crime targets and money laundering cases involving foreign predicate offences. However, authorities still face challenges in investigating more complex, cross-border money laundering cases.

Whilst the terrorist financing risk in Japan is low, deficiencies in the Terrorist Financing Act and a conservative approach to prosecution has constrained the ability to prosecute. For example, the evaluation report highlights that authorities have limited understanding of at-risk non-profit organisations, which lack CTF preventative measures.

Japan achieved a substantial level of effectiveness regarding the assessment of money laundering and terrorist financing risks and effectively collected and used financial intelligence for investigations and prosecutions.<sup>8</sup>

#### Mutual Evaluation Report of Korea

In April 2020, the *Mutual Evaluation Report of Korea* was published by the FATF and the APG, following an on-site visit from 30 June to 18 July 2019. The report was adopted by the FATF in February 2020 at its plenary meeting.

Since its last assessment in 2008, it was found that Korea has strengthened its legal framework with respect to AML and CTF. The 2020 evaluation notes that Korea has a sound overall legal framework that aims to combat money laundering and terrorist financing. The evaluation further finds that Korea's response to emerging risks posed by virtual assets was notably positive, and that there was strong coordination between regulators and public and private sector agencies with respect to AML/CTF collaboration.

While Korea showed low risk of terrorist financing, it was more susceptible to cases dealing with money laundering through fraud and corruption. The 2020 evaluation report suggested recommendations for improvement, including the implementation of measures to prevent 'professional gateways' including lawyers, accountants and real estate agents from being misused for money laundering purposes. It is further recommended that the AML/CTF framework be extended to prosecute tax crimes and for measures to be implemented to prevent politically exposed persons from laundering proceeds of corruption.<sup>9</sup>

### The United Nations Convention Against Transnational Organised Crime and the APAC Region

In addition to holding memberships to the FATF and the APG, Australia and numerous other APAC countries are also signatories to the *United Nations Convention against Transnational and Organised Crime* ('**UNTOC**' or 'the **Convention**'). The Convention was signed by Australia on 13 December 2000 and ratified on 27 May 2004,<sup>10</sup> making it binding on Australia under international law. The Convention includes an agreement that each state party shall:

1. institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money laundering, and which regime shall emphasise requirements for customer identification, record-keeping and the reporting of suspicious transactions; and

- ensure that administrative, regulatory, law enforcement and other authorities dedicated to combatting money laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, consider the establishment of a financial intelligence unit (“FIU”) to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering.

In a conference hosted by Vienna between 15–19 October 2018, the UNTOC adopted resolution 9/1 entitled *Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*. The mechanism represents a means to gather information and review the performance of states party to the Convention.

At the UNTOC 10<sup>th</sup> session of the conference of parties on 12–16 October 2020, resolution 10/1 was adopted entitled *Launch of the Review Process of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*. Resolution 10/1 sets the governing guidelines under which country reviews will be conducted, including providing the self-assessment questionnaires to be used by the reviewee state party and a blueprint for the presentation of the lists of observations, findings, and summaries.<sup>11</sup>

The review mechanism of UNTOC is a peer-reviewed system in which states parties to the convention assess the measures taken in line with the convention, and provide feedback of observations concerning gaps and challenges in implementation and suggestions for improvement. The feedback may further encompass identification of any technical assistance needs of the reviewed state.

The review involves assessment of four thematic clusters that are divided by subject matter and include:

- criminalisation and jurisdiction;
- prevention, technical assistance, protection measures and other measures;
- law enforcement and the judicial system; and
- international cooperation, mutual legal assistance and confiscation.

The expected timeline for the completion of each cluster for each state is approximately two years, and therefore a state’s full review is expected to be completed within eight years. The commencement of these reviews is staggered over the initial three years, with states in group I having commenced their review on 1 December 2020.

Each state under review is assessed by two other states that are parties to UNTOC, with one state required to be from the same regional area and another from a different region.

## United Nations Office on Drugs and Crime in the APAC Region

The United Nations Office on Drugs and Crime (“UNODC”) operates a regional programme in South-East Asia which provides strategic oversight for member states to combat transnational organised crime and illicit trafficking in the region, by way of:

- giving clear focus to supporting member states and regional partners in achieving priority crime and drug outcomes in the region; and
- increasing the responsiveness, efficiency, and effectiveness of UNODC’s support to the region.<sup>12</sup>

UNODC supports AML capabilities in the region by facilitating collaboration with global bodies such as the FATF and regional bodies including the APG.

Together, the FATF standards and UNODC guidance represent the key sources from which the APG and the Australian government base their legal, regulatory and law enforcement strategies to counter money laundering.

The 14<sup>th</sup> Congress on Crime Prevention and Criminal Justice was held between 7–12 March 2021 in Kyoto, Japan, following its postponement in 2020 due to the COVID-19 pandemic. The agenda for this Congress, which represented a gathering of policymakers, legal practitioners, academics and government agency representatives, included follow-up to the implementation of the Doha Declaration. The Doha Declaration was adopted at the 13<sup>th</sup> Congress on Crime Prevention and Criminal Justice held in Qatar in 2015.

The Doha Declaration represents the foundation agreement for a global programme to be implemented by UNODC to assist jurisdictions, including those within the APAC region, in achieving crime prevention, criminal justice, corruption prevention and upholding the overarching rule of law.<sup>13</sup>

## A Recent Joint APG and UNODC Initiative on Money Laundering from Illegal Wildlife Trade

In 2017, the APG and UNODC jointly published a research report titled *Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime* (“the Report”), in which it was identified that illegal wildlife trade is now an entrenched feature of transnational organised crime, with global annual proceeds estimated at 7–23 billion USD.<sup>14</sup>

Despite the significant cash flows and transnational nature of this criminal typology, the research highlighted multiple regulatory and law enforcement vulnerabilities. For example, in many APAC jurisdictions, wildlife crime does not constitute a predicate offence to money laundering and a majority of member states do not presently involve the FIU in their approach to combat wildlife crime.

To this end, the Report recommended that a multi-agency strategy be adopted for the combat of wildlife crimes, which would involve cooperation between relevant authorities including but not limited to the police, customs, environmental authorities, FIUs, and prosecutors.

The findings of the Report reinforce the conclusion that international criminal organisations will continue to adapt and exploit vulnerabilities in domestic legal frameworks and regional law enforcement to launder criminal proceeds. Parallel financial investigations must accompany traditional law enforcement methods for crimes involving significant cash flow and transnational elements.

In June 2020, the FATF also published a comprehensive report on money laundering and illegal wildlife trade disclosing that public and private sectors in many jurisdictions have not presently prioritised combatting the financial flows connected to such trade. It was found that jurisdictions typically did not retain the knowledge base, legislative frameworks or resources that were needed to effectively combat the threat posed by the illegal wildlife trade. The FATF reported that identification and sanction of illegal wildlife trade networks would result from a greater focus on financial flows, increased resources and cooperation between authorities domestically and globally.<sup>15</sup>

## Law Enforcement and Financial Intelligence: Key International Agencies Operating in the APAC Region

A number of law enforcement agencies operate independently and collaboratively in addition to the regulatory AML framework

established in accordance with the FATF, APG and UN instruments. Governmental examples of strategic planning, such as the *2017 Foreign Policy White Paper*, demonstrate Australia's commitment to create a regional environment that is hostile to money laundering.

The section below focuses primarily on the role of Australian financial intelligence and law enforcement agencies operating within the APAC region. The Australian government seeks to continue its leadership in promoting global standards for combatting money laundering. Amongst other efforts, the Australian government has made express provision for increased bilateral cooperation and diplomatic engagement with international law enforcement partners.<sup>16</sup>

#### Pacific Transnational Crime Network and its role in the APAC region

The Pacific Transnational Crime Network ('**PTCN**') represents a police-service-led criminal intelligence and investigation capability, which operates under the governance of the Pacific Islands Chiefs of Police ('**PICP**') network. The PTCN was established in 2002 to combat transnational crime in the Pacific and presently consists of 25 Transnational Crime Units from 17 Pacific Island countries.

Members include:

1. Australia (AFP).
2. New Zealand (New Zealand Police).
3. Samoa (Samoa Police Service).
4. Fiji (Fiji Police Force).
5. Solomon Islands (Royal Solomon Islands Police Force).

The express purpose of the PTCN and the PICP is to build policing leadership in the Pacific region and collectively navigate regional policing challenges through discovery, knowledge, influence and partnerships.<sup>17</sup>

#### Australian Transaction Reports and Analysis Centre in the APAC region

The Australian Transaction Reports and Analysis Centre ('**AUSTRAC**') exercises a dual function as both Australia's specialist FIU and the AML and counter-terrorism regulator. Tasked with identifying emerging threats and existing contraventions within the financial system, AUSTRAC's regulatory and investigative powers are set out under the *Anti-Money Laundering Counter-Terrorism Financing Act 2006* (Cth) ('**AML/CTF Act**') and the *Financial Transactions Reports Act 1988* (Cth).

AUSTRAC's primary role as a law enforcement agency is the receipt and analysis of financial data, which can, in turn, be disseminated as intelligence to revenue authorities, law enforcement, national security agencies, human services, regulatory bodies and other partner agencies in Australia and overseas.<sup>18</sup>

The transnational nature of money laundering practice means financial intelligence exchange among domestic agencies and international partners plays a crucial role in tracking the cross-border movements of proceeds of crime. The information that can be shared includes transactional records, intelligence, and suspicious matter reports.

Memorandums of Understanding ('**MoUs**') are presently in place between AUSTRAC and 93 other equivalent national FIUs. This consists of successfully signed agreements with prominent regional partners, including China and the United States of America through the following agencies:

1. China Anti-Money Laundering Monitoring and Analysis Centre, on 2 November 2016;<sup>19</sup> and

2. the Financial Crimes Enforcement Network, on 27 September 2018.<sup>20</sup>

The requirements for dissemination of information within such international alliances are set out under s. 132 of the *AML/CTF Act*. The CEO of AUSTRAC must be satisfied that:

1. the foreign government requesting the information has provided requisite undertakings as to the protection of confidential information, controlling the use of the information, and assurances have been provided that the use of the information is only for the communicated purpose;<sup>21</sup> and
2. it is appropriate to release the information in all the circumstances.

By way of example, AUSTRAC may be empowered under the *AML/CTF Act* to alert one or multiple international FIUs in the event that a suspicious matter report is received relating to a foreign resident. There is no requirement that such individuals be subject to investigation by Australian law enforcement agencies. Similarly, FIU counterparts in foreign jurisdictions can approach AUSTRAC directly and request the release of information held by AUSTRAC under existing information exchange programmes.

AUSTRAC provides extensive technical assistance and training programmes throughout the APAC region to strengthen the effectiveness of counterpart FIUs. Formal training programmes focused on capability building have been administered in Bangladesh, Cambodia, Indonesia, Nepal, Papua New Guinea, the Philippines, and Thailand.<sup>22</sup>

As part of the 2020–21 Federal Budget, the Australian government provided AUSTRAC with a 104 million AUD funding boost and the allocation of 67 new staff.<sup>23</sup>

AUSTRAC has since revealed its intention to use part of this additional funding to replace the existing reporting system that has underpinned its operations for 20 years. The upgrade will ultimately assist AUSTRAC to detect, investigate and take enforcement action against non-compliance. The investment is timely given that within the 2019–20 year, AUSTRAC received 167 million reports, a 49 per cent increase in volume over the last four years.<sup>24</sup>

#### The AFP in the APAC region

The AFP is Australia's national law enforcement policing body, tasked with enforcing the Commonwealth criminal law, including detection of contraventions of the money laundering provisions contained in Part 10.2 of the *Criminal Code Act* (Cth) ('**Criminal Code**'). The AFP also targets related offences such as terrorism financing, offences of foreign bribery, cybercrime, and tax evasion.

The AFP has demonstrated a strategic shift from domestic law enforcement measures towards increased international engagement. Published in 2017, the *International Engagement: 2020 and Beyond Report* recognises the need to increase collaboration with foreign law enforcement partners to combat 'the growth in criminal and terrorism threats from offshore, the continued global integration of markets and services, and the ongoing disruption of digital technologies'.<sup>25</sup>

The AFP describes its 'international engagement pillars' as essential in achieving its operational focus of:

1. increased strategic engagement with international partners;
2. conducting transnational operations, which deliver operational effect offshore;
3. information and criminal intelligence sharing; and
4. mutual capability building.<sup>26</sup>

The AFP now has in excess of 300 active personnel posted in over 52 separate locations internationally, including several postings with partners in Asia, South-East Asia and the Pacific catchment.<sup>27</sup>

In order to address offences including money laundering and transnational financial crime, the AFP has, in recent times, established MoUs with agencies in APG member jurisdictions, including the Federal Bureau of Investigation in 2015,<sup>28</sup> the Cambodian National Police in 2016,<sup>29</sup> and the Chinese National Commission of Supervision in 2018.<sup>30</sup>

## The Australian Criminal Intelligence Commission in the APAC Region

The Australian Criminal Intelligence Commission ('ACIC') is Australia's Federal criminal intelligence organisation and is mandated to combat serious and organised crime. Forming part of the Department of Home Affairs governmental portfolio, the ACIC's capabilities include:

1. Collecting criminal intelligence from partner agencies and combining it to create a comprehensive national database.
2. Utilising extensive coercive powers under the *Australian Crime Commission Act 2002* (Cth) to obtain information.
3. Acquiring strategic intelligence products to support decision-making, strategic targeting and policy development.
4. Implementing a national target management framework to guide law enforcement in establishing and sharing organised crime priorities and targets. This is particularly useful for dealing with multi-jurisdictional serious and organised crime investigations.<sup>31</sup>

The ACIC participates in a number of national law enforcement task forces in both formal and informal capacities. Contributing unique investigative capabilities, the ACIC provides an 'intelligence-led' response to serious and organised crime.<sup>32</sup>

On 21 December 2017, the ACIC released the *Serious Financial Crime in Australia Report 2017*. The report acknowledged money laundering practices as one of nine key 'financial crime enablers' which impact Australia's national interests.

Money laundering is similarly identified as one of the serious organised criminal activities adversely affecting the national interests of Australia and an identified area of operations for Task Force Vestigo. Led by the ACIC, the task force includes Australian Commonwealth, State and Territory partners as well as the Five Eyes Law Enforcement Group, which comprises law enforcement and intelligence agencies from Australia, Canada, New Zealand, the United Kingdom and the United States.<sup>33</sup>

While Task Force Vestigo is generalist and not limited to a specific body of criminal typology, it builds significantly on the success of the preceding Task Force Eligo, also headed by the ACIC. Commencing in December 2012, Task Force Eligo represented a collaborative special investigation into the use of alternative remittance and informal value transfer systems to launder proceeds of crime. By its conclusion, the investigations of this interagency task force secured the seizure of proceeds of crime in excess of 580 million AUD.

## The AML Ecosystem: Current Examples of Multi-Agency Collaboration in the APAC Region

Consistent with investigations such as Task Force Vertigo, there is an observable tendency for FIUs, Federal and State law enforcement, governmental non-law enforcement agencies and private bodies to formalise collaborative engagements in response to the shifting criminal environment.

Contemporary examples of multi-agency responses operating in the APAC region include the following.

### The Serious Financial Crime Taskforce

The Serious Financial Crime Taskforce ('SFCT') is an ATO-led multi-agency task force established on 1 July 2015 to identify and investigate serious financial crimes including cybercrime, offshore tax evasion and illegal phoenixing activity. The SFCT includes the:

- AFP.
- Australian Taxation Office ('ATO').
- Australian Crime Commission ('ACC').
- Attorney-General's Department ('AGD').
- AUSTRAC.
- Australian Securities and Investments Commission ('ASIC').
- Commonwealth Director of Public Prosecutions ('CDPP').
- Australian Border Force ('ABF').

With the outbreak of COVID-19, the SFCT has also incorporated a recent focus on detecting and actively pursuing serious financial crime committed as part of the ATO-administered measures of the Commonwealth Coronavirus Economic Response Package.

As of 31 December 2020, the SFCT had progressed cases resulting in:

- the completion of 1,287 audits and reviews;
- the conviction and sentencing of 12 people;
- raised liabilities of 996 million AUD; and
- the collection of 384 million AUD.<sup>34</sup>

### The Egmont Group

The Egmont Group is a global network of 156 FIUs committed to collaboration and information exchange. Notable APAC members include:

- AUSTRAC.
- The Hong Kong SAR, China Joint Financial Intelligence Unit ('JFIU').
- The Indonesian Financial Transaction Reports and Analysis Centre ('PPATK').
- Anti-Money Laundering Office Thailand ('AMLO').

### Fintel Alliance

Led by AUSTRAC, Fintel is a public-private partnership aimed at combatting money laundering and terrorism financing. Members include:

- Commonwealth Bank of Australia.
- National Australia Bank.
- Australia and New Zealand Banking Group.
- Westpac Banking Corporation.
- PayPal.
- Western Union.
- NSW Police Force.
- ATO.
- National Crime Agency (UK).

### Fintel Alliance: Performance Report 2020–21

Due to the spectrum of expertise held by Fintel Alliance members, highly specialised task forces can be formed leveraging the skills and experience of the most appropriate members to tackle a specific threat. Fintel Alliance members leverage the

expertise of government, industry, academia and specialised task forces to disrupt serious crime.

In its 2020–21 *Performance Report*, AUSTRAC provided insight into the key achievements of Fintel Alliance, including leveraging the public-private partnership to better protect the community through increased focus on information sharing between public and private partners.

The highlights of the 2020–21 year included:

- release of public reports to stop the illegal trafficking of Australian wildlife,
- 5,258 suspicious matter reports lodged relating to Fintel Alliance areas of focus; and
- establishment of working groups to bring together experts, analysts and practitioners on the complex topics of trade-based money laundering and tax crime.

The operational strategy of the Fintel Alliance in 2020–2023 includes the following priorities:

- to develop shared understanding of threats posed by money laundering, terrorism financing and serious financial crime;
- to enhance the capabilities of public and private partners and the broader regulated community; and
- to pursue improved sharing and innovative exploration of information.<sup>35</sup>

The Fintel Alliance also worked closely with the AFP in executing Operation Ironside, resulting in 224 arrests of organised crime members and 526 charges through the use of world-leading technology that allowed the AFP to see encrypted communications used by organised crime groups.

## Money Laundering Typologies: A Diverse Range of Criminal Activities

In order to better understand and combat the risk environment for money laundering and terrorist financing in the APAC region, the APG engages in and publishes typologies research. This research of methods, techniques and trends of money laundering and terrorism financing offers a valuable tool to understand and classify money laundering and areas of associated risk.

### The impact of COVID-19 on money laundering typologies

#### COVID-19 impact on typologies

The *APG Yearly Typologies Report 2021* (**‘Typologies Report’**) discloses the findings of COVID-19’s ongoing impact on money laundering and terrorist financing typologies. The COVID-19 pandemic continues to change the money laundering and terrorism financing landscape, with reports suggesting increased online scams and fraud of pharmaceutical products, the use of fake charities receiving pandemic-related donations and welfare fraud. The extensive global border closures during the pandemic have precipitated an increase in smuggling related to illicit drugs, alcohol and tobacco. The APG also revealed the increase in suspicious transaction reports related to online gambling that is believed to have resulted from the various and frequent quarantine measures.<sup>36</sup>

While the Typologies Report discusses the manner in which syndicates have adjusted their operations in the wake of the virus, it also reveals the unique opportunities presented to law enforcement and FIUs to identify and disrupt previously regular and systematic money laundering channels. For example, this has included criminal groups needing to stockpile cash due to the inability to launder through casinos and gambling venues that were subject to closure.

#### COVID-19 money laundering emerging risks

The Typologies Report and information note issued by the FATF on *COVID-19-related Money Laundering and Terrorist Risks and Policy Responses* detail the unique threats that have emerged on the money laundering landscape. The findings highlight that the majority of illicit activity related to COVID-19 were proceeds generated from financial fraud and exploitation scams.

##### 1. Counterfeiting and online fraud of medical supplies

As a result of exponentially high demand for medical supplies including personal protective equipment, face masks, virus-testing kits and hand sanitiser, there has been a significant increase in online scams related to the supply of these products. In this endeavour, criminals have exploited the virus-related fears of victims and obtained funds from fraudulent sales that lead to victims not receiving orders or receiving counterfeit or ineffective goods.

##### 2. Impersonation of officials

It is reported that criminals have contacted victims and impersonated government officials, law enforcement or hospital staff seeking payment or personal banking details. Some instances have involved the impersonation of government officials requesting from the victim personal banking details in relation to tax relief. The FATF expects that as governments seek to provide assistance with the issuance of further tax and other financial incentives, this fraudulent activity will increase.

##### 3. Identity theft

Identity theft involves the use of another’s identity for a monetary or other benefit. In the case of COVID-19-related identity theft, criminals have exploited job seekers via fraudulent websites advertising job opportunities that ask for personal banking details upon registration. This information has then been used to hack into the victim’s bank account or to make requests for money using the identity of the victim to friends and family on social media platforms.

##### 4. Fake charity scams

Charity scams involve criminals posing as representatives of international or local charities, fraudulently soliciting donations. Criminals exploit the goodwill of the public by leveraging off COVID-19-related fundraising to receive payments or obtain credit card information from victims.

##### 5. Misuse of public funds

Criminals have sought to claim and exploit funding provided by government COVID-19-related stimulus measures. This has included using a combination of identity theft to make false claims under the guise of seemingly legitimate businesses seeking assistance. Other scenarios include criminals offering access to stimulus funds through which a victim’s personal banking details are obtained.

The FATF have reported further risk of corruption as a result of relaxed procurement procedures that have raised concerns over erosion of transparency mechanisms that would otherwise be in place for the tender of government contracts for medical supplies. The lack of proper checks and balances in this process has ultimately undermined the effectiveness of the global health response.

#### COVID-19 suggested policy responses

In response to the emerging AML and CTF challenges facilitated by the COVID-19 pandemic, the FATF has advised policy considerations to mitigate against the potential impact of real-ised risks.<sup>37</sup> Some key recommendations include:

1. increase coordination domestically to assess the impact of COVID-19, including collaboration between supervisors and FIUs to monitor the changing risk landscape;

2. strengthen communication with the private sector including on regulatory requirements to minimise potential impact; and
3. undertake risk-based AML/CTF supervision and encourage reporting entities to adopt a risk-based approach to due diligence.

### Money laundering typologies

The Typologies Report identifies numerous other typologies used to launder proceeds of crime in the APAC region. These typologies have been identified following an evaluation of case studies, which reflect the present and emerging money laundering landscape in Afghanistan, Australia, Bangladesh, Brunei, China, Hong Kong, Indonesia, Japan, Korea, Laos, Macao, Malaysia, Mongolia, Pakistan, Papua New Guinea, Philippines, Singapore, and Thailand.<sup>38</sup>

#### 1. Terrorism financing

An objective of many types of money laundering typologies is to ultimately finance acts of terrorism or terrorist organisations. Criminals will seek to obscure money trails in an effort to circumvent targeted financial sanctions imposed against individuals, businesses, or countries.

#### 2. Use of offshore banks, international business companies and offshore trusts

As well as being a prevalent typology for taxation-related offences, the use of offshore companies (including shell companies), trusts and financial institutions is a common means to conceal and launder illicit funds.

'Underground' banks or complex corporate structures may be used, often in jurisdictions subject to less rigorous regulation of such practices.

#### 3. Cash conversion and currency exchange

The use by criminals of travellers' cheques, stored value cards or currency exchange houses to transport money between jurisdictions without direct transfer of funds. The use of cash smugglers is also common in efforts to conceal the movement of currency.

The proliferation of Bitcoin and other cryptocurrencies has also shown an increase in the illegal use of digital currencies in preference to traditional currencies. This is due to the medium's perceived anonymity and market volatility. Digital currencies also represent the most common currency utilised on the 'dark web', which is again used as a means to maintain anonymity and conceal true ownership. Smart Automatic Teller machines have also been used to make high volumes of illegal cash deposits to third-party accounts while avoiding direct interaction with banking staff.

#### 4. Use of professional services (lawyers, notaries, accountants, real estate agents)

Professionals such as lawyers, financial advisors, real estate agents and accountants are commonly referred to as 'gatekeepers', used to facilitate unlawful transactions, exploit apparent loopholes in AML regulation and abuse positions of trust granted to certain professions. Vulnerable professionals experiencing personal pressures such as debt, addiction or mental health issues may be targeted by criminal organisations.

The complexity, global scale, and expertise in the provision of services make combatting the activities of professional money launderers a challenging task for law enforcement.

#### 5. Use of new payment systems or methods

Emerging means of transferring funds are often targeted by criminal organisations due to a lag in oversight and

regulation. New systems often feature a greater number of money laundering vulnerabilities when compared to established systems, which have been subject to regulation and reform over an extended period.

A recent example is the exploitation of Intelligent Deposit Machines utilised by the Commonwealth Bank of Australia, which were used to make in excess of 53,000 suspect transactions that exceeded the reporting threshold amount.

#### 6. Corruption-associated money laundering

The use of bribery of public officials and private sector compliance staff to undermine AML regulation and reporting measures. This method may also involve the use of corrupt 'gatekeeper' professionals including bankers, lawyers, accountants and brokers who succumb to coercion on the part of criminals or, alternatively, actively market specialist methods of laundering money.

#### 7. Structuring

Also known as 'smurfing', this method involves a high volume of comparatively small transactions between multiple parties and accounts to avoid detection threshold reporting obligations.

Difficulty in detection is increased by virtue of the involvement of persons unaware of their participation in such schemes, which involve what would otherwise be a series of legitimate financial transactions.

#### 8. Use of portable commodities

The purchase of high-net-value instruments such as jewellery, diamonds, art works, precious metals, racehorses and illicit drugs are used to conceal net worth and property ownership, as well as a means of transporting assets through international points of entry without detection or reporting. There is also a known association between human trafficking offences and money laundering.

Commodity exchange or barter of such items between parties can also be used to avoid the use of private reporting entities, such as banks. The transnational trade of child pornography, for example, has also been subject to prosecution for money laundering offences in Australia.<sup>39</sup>

#### 9. Use of wire transfers

Electronic wire transfers between banks and financial institutions can be used both as a method to avoid detection, but also as a means to avoid confiscation of proceeds of crime by rapid removal of funds from jurisdictions seeking to enforce AML measures.

#### 10. Underground banks and alternative remittance services: Hawala, Hundi, etc.

Such services are identified as underground or unregulated networks of trust-based, intra-jurisdictional transfers used to remit monies. Such methods are commonly used by money launderers parallel to the traditional banking sector. Alternative remittance providers increase the difficulty by which law enforcement and FIUs can identify individuals or parties controlling funds, as well as obscuring the observable transferor-transferee relationship. Underground banking practices also include illegal card-swiping practices and illegal trading of foreign exchange.

#### 11. Gambling and gaming activities

Such methods exploit the high-net-value of assets which are held and pass between parties in the gambling sector. Examples include the use of online gambling or online gaming accounts to conceal the overall value of assets held, the use of winning tickets to conceal crime proceeds and the use of casino chips as currency.

#### 12. Invoice manipulation and trade-based money laundering

Both over- and under-invoicing of goods or services can be used in conjunction with import and export activities to

obscure movement of funds between international jurisdictions and disguise illegitimate wealth as traditional trade activity. Money laundering that is based on the abuse of trade transactions is achieved by fraudulently misrepresenting the price or quantity of an import or export.

Such a method is often used in tandem with complex transnational business structures to conceal the identities of individuals involved.

In 2020, the FATF and the Egmont Group jointly published a report on trade-based money laundering examining the criminal methods of exploiting trade transactions to move money, rather than goods. To combat this typology, the report recommends improving information sharing of financial and trade data, and cooperation between public and private sectors.

### 13. Business investment or ‘mingling’

As one of the key objectives of money laundering activity, ‘mingling’ involves the deliberate combining of proceeds of crime with profits from legitimate business enterprises to obscure the source of funds and perpetuate the impression of ‘clean’ money.

The practice may be combined with false accounting practices to manipulate the observable proportions of profit obtained through legitimate enterprise.

### 14. Identity fraud and false identification

Identity fraud can be used both as a method of concealment to engage in separate money laundering typologies or as a means of obtaining further illegitimate funds through welfare fraud, superannuation fraud, obtaining fraudulent cash loans or lodgment of false tax returns. Nominees, trusts, family members or third parties may also be used by criminal organisations in an effort to obscure true ownership.

### 15. Complex tax fraud including phoenix activity

‘Phoenixing’ involves the liquidation of a company to avoid paying debts and the subsequent incorporation of a new company that, in essence, then continues the prior business. Complex tax fraud readily also includes the use of corporate structures where false invoices and trusts are utilised to facilitate phoenixing and to complicate the source destination of illicit proceeds. Professional gateways including lawyers and accountants are used to create an opaque trail of funds through shell companies, offshore bank accounts and creative accounting.

#### ACIC – Serious Financial Crime in Australia Report 2017

In the ACIC’s *Serious Financial Crime in Australia Report 2017*, it was identified that the methodology used to launder proceeds of a crime is also influenced by the area of crime the proceeds originate from. The proceeds of a drug crime, for example, commonly requires large amounts of illegally obtained cash to be deposited into the banking system. Alternatively, financial or ‘white-collar’ crime often involves the manipulation of accounting practices for money already contained within legitimate banking systems.<sup>40</sup>

Irrespective of the original source of the funds, the use of global methods and prevalence of transnational transfers to launder proceeds of crimes, as well as the increased use of technology to enable and conceal financial crime, make up entrenched features of money laundering in the APAC region. Such enablers are the subject of increased AML attention, investment and collaboration from law enforcement agencies and their partners.

## Recent Media Publications by Asia-Pacific Law Enforcement Relating to Money Laundering Activity

### AFP and FBI – Operation Ironside

Operation Ironside represented targeted, collaborative investigations into organised crime by officers and staff of the AFP and FBI, along with international cooperation from 18 countries.

The operation involved the development of an application by the name of ‘ANoM’ marketed to transnational and serious organised crime groups as an encrypted communications platform that was visible to the AFP. The application was installed on mobile phones that were sold on the black market to organised crime members.

The operation resulted in 224 arrests of organised crime members and 526 charges. A total of 3.7 tonnes of drugs, 104 weapons, over 44 USD in cash and other high-value assets were also seized under the operation. As of June 2021, the AFP expected further arrests both domestically and offshore.<sup>41</sup>

### AFP – Chinese Ministry of Public Security Joint Operation

Between 14 and 15 November 2018, AFP officers performed search warrants on residential homes located in Sydney, NSW, Melbourne, VIC and the Gold Coast, QLD in response to a request for assistance in 2016 made to the AFP by the Chinese Ministry of Public Security (‘CMPS’).

During the course of these search warrants, investigators seized jewellery, vehicles and other property valued in excess of 8.5 million AUD. It is alleged that Chinese nationals had established shell companies in Australia to purchase extensive residential and development property, using funds illegally acquired in China through fraudulent investment.<sup>42</sup>

While no criminal proceedings were instigated against the Chinese nationals subjected to the search warrants, an application for a restraining order was made under the *Proceeds of Crime Act 2002* (Cth) (‘POCA’) for the related Commonwealth indictable offence of dealing with proceeds of crime contrary to s. 400.3 of the *Criminal Code*, as well as fraud and tax evasion offences.

### AUSTRAC – Civil action against Westpac Banking Corporation for non-compliance with the AML/CTF Act

On 20 November 2019, AUSTRAC applied to the Federal Court of Australia seeking civil penalty orders against Westpac Banking Corporation, more commonly referred to as Westpac Bank.

It is alleged by AUSTRAC that Westpac Bank engaged in systematic non-compliance with the *AML/CTF Act* and contravened the terms of the legislation on over 23 million separate occasions. The contravening conduct is said to include a failure to:

1. Appropriately assess and monitor money laundering and terrorism financing risks associated with transnational transfers of funds to and from Australia.
2. Report over 19.5 million International Funds Transfer Instructions (‘IFTIs’).
3. Provide separate financial institutions within transfer chains with information relating to the source of funds transferred.
4. Keep records in relation to the origin of internationally acquired funds.

- Carry out appropriate customer due diligence, particularly in relation to outgoing transactions to the Philippines and South-East Asia with high-risk indicators for child exploitation typologies.

Each alleged contravention attracts a civil penalty of between 17 million AUD and 21 million AUD, meaning Westpac Bank faced a potential maximum penalty of 391 trillion AUD for its alleged conduct.

On September 2020, Westpac Bank and AUSTRAC agreed to a penalty amount of 1.3 billion AUD. As part of this settlement, Westpac Bank admitted to the contravention of the *AML/CTF Act* on 23 million occasions. On 21 October 2020, the Federal Court approved the penalty for 1.3 billion AUD and cited its appropriateness in achieving both general deterrence and specific deterrence in respect of Westpac Bank's admitted contraventions.<sup>43</sup>

## Overview of Laws in Australia

In accordance with Australia's obligations as an APG member and signatory to the UNTOC, money laundering activities and dealing with the proceeds of crime are codified criminal offences in Australia.

### *Criminal Code Act 1995 (Cth)*

Money laundering is an offence prohibited at a Federal level under Part 10.2 of the *Criminal Code*. The provisions capture an expansive range of offending relating to money or other property used in connection with serious crime. This legislative regime has been described judicially as a '21<sup>st</sup> century response to antisocial and criminal conduct, commonly with international elements'.<sup>44</sup>

Included in ss 400.3–400.9 of the *Criminal Code* are provisions which make it an offence to deal with or receive, possess, conceal, dispose, import, export or engage in a banking transaction relating to money or property, which represents proceeds or an instrument of crime.<sup>45</sup>

Property will be classified as 'proceeds of crime' under the *Criminal Code* if it is wholly or partly derived or realised (directly or indirectly) by any person from the commission of an indictable offence against a law of the Commonwealth, a State, a Territory or a foreign country.<sup>46</sup>

Property will be classified as an 'instrument of crime' if it is used in the commission of, or used to facilitate the commission of, an indictable offence against a law of the Commonwealth, a State, a Territory or a foreign country.

Commonwealth and State indictable offences which may constitute a predicate offence for the purpose of money laundering include tax evasion, fraud, bribery and corruption offences as well as drug importation, manufacture or supply.

The fault element is established under the offence provisions by proving intention, knowledge, recklessness or negligence on the part of the accused person to the fact that they were dealing with the proceeds of a crime or an instrument of a crime.

The corresponding maximum penalties for offences set out under Part 10.2 of the *Criminal Code* vary based on the value of the property dealt with and the fault element demonstrated on the part of the accused person.

By way of example, if the prosecution can establish, beyond reasonable doubt, that an accused person deals with money or property that the person believes to be proceeds of a crime (or intends for the property to become an instrument of crime) and the property is valued at 1 million AUD or more, the person is liable to a maximum term of imprisonment of 25 years and/or a fine of up to 315,000 AUD.<sup>47</sup>

The offence provision has extraterritorial jurisdiction that is not restricted to application against Australian nationals or persons residing in Australia. Foreign nationals can be prosecuted if proceeds of a crime are dealt with in Australia or the conduct which constitutes the relevant indictable predicate offence is an Australian Commonwealth, State or Territory offence.

### *Proceeds of Crime Act 2002 (Cth)*

As of 1 January 2003, the AFP and the CDPP have been empowered under POCA to seek restraining, forfeiture or freezing orders in relation to property suspected of being connected with a criminal offence.

Typically, assets including actual, real and interests in property become the subject of an order if it is established that the property is suspected, on reasonable grounds, to be the proceeds of an indictable offence, a foreign indictable offence or was previously used in connection with the commission of an offence.<sup>48</sup>

A Court must also make an order that the property which is the subject of the application be forfeited to the Commonwealth if a person has been convicted of one or more indictable offences, and the Court is satisfied that the property is proceeds or an instrument of one or more of the offences.<sup>49</sup>

It is an express object of POCA to give effect to Australia's obligations under the Council of Europe *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, and other international agreements relating to proceeds of crime.<sup>50</sup>

### *Anti-Money Laundering Counter-Terrorism Financing Act 2006 (Cth)*

The conduct of financial institutions in Australia is regulated under the *AML/CTF Act*. The *AML/CTF Act* sets requirements for reporting entities including institutions within the financial sector, gambling sector and businesses involved in the trade of bullion.<sup>51</sup>

Obligations are imposed on reporting entities, including a requirement to:

- enrol and register businesses conducting relevant business;<sup>52</sup>
- conduct due diligence on all customers including confirmation of identity;<sup>53</sup>
- retain transaction records for a period of seven years;<sup>54</sup>
- develop and implement programmes for the detection of money laundering activity;<sup>55</sup> and
- report suspicious matters to AUSTRAC.<sup>56</sup>

The majority of penalties imposed for non-compliance with the *AML/CTF Act* are civil and not criminal in nature. An established breach of a civil penalty provision under the *AML/CTF Act* can attract a significant monetary penalty, with maximum fines of 21 million AUD per offence applying under the legislation.

Some contraventions under the *AML/CTF Act* do attract criminal sanctions. It is a criminal offence to provide a designated service under a false name,<sup>57</sup> or conduct transactions with the intention of avoiding reporting requirements.<sup>58</sup> Further, there are 'tipping-off' offence provisions that function to prohibit contact or communication with persons, other than AUSTRAC personnel, following a referral of suspicious activity. For example, it is a criminal offence under such a provision for a reporting entity, such as a bank, to notify AUSTRAC of suspicious activity on the part of a customer, while simultaneously notifying the relevant customer that their conduct has been reported to AUSTRAC.

The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017* was passed by both houses of Parliament on 7 December 2017 and commenced on 3 April 2018. This

amending legislation expanded AUSTRAC's powers under the *AML/CTF Act* to monitor digital currency markets. As with existing reporting entities within the finance sector, digital currency exchange providers are now required to register and comply with the obligations set out under the *AML/CTF Act*.<sup>59</sup>

The legislative amendment follows a growing acknowledgment among members of the FATF and APG that digital currency providers present elevated risks as facilitators of criminal activity, including money laundering, cybercrime and terrorism financing activities.

Australia's legislative amendments follow comparable recent regulatory action on the part of the Hong Kong Regulatory Authority, Central Bank of Malaysia and the Monetary Authority of Singapore.<sup>60</sup> In these jurisdictions, the amendments bring cryptocurrencies and providers of digital currency predominantly in line with traditional financial and property exchange markets for the purpose of AML regulation.

## Conclusion

To create an environment hostile to money laundering efforts in the APAC region, the APG and its partner agencies will continue to collaborate and build the capability of regional partners to ensure the standards of the FATF are met and effectively enforced. The increase in FATF member states in the APAC region will decrease the number of 'soft targets' presently exploited by criminal syndicates in the region.

It is predicted that FIUs and law enforcement agencies in the APAC region will continue a deliberate shift away from 'as necessary' international collaborative operations and increasingly operate within proactive interagency action groups to address serious transnational financial crime and money laundering. Australia will also continue its efforts in formalising mutual assistance agreements with APAC partners and increase its physical presence throughout the region, in recognition of the increasingly global nature of financial crime.

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Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms