



**MONEY LAUNDERING
AND
FINANCING OF TERRORISM
NATIONAL RISK ASSESSMENT**

September 2017

ACKNOWLEDGEMENTS

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ABBREVIATIONS

ADB	Asian Development Bank
AML/CTF	Anti-Money Laundering and Counter Terrorism Financing ¹
AML/CTF Act	<i>Anti-Money Laundering and Counter Terrorist Financing Act 2015</i>
APG	Asia/Pacific Group on Money Laundering
AROB	Autonomous Region of Bougainville
AUD	Australian Dollar
BCL	Bougainville Copper Limited
BFIA	<i>Banks and Financial Institutions Act, 2000</i>
BPNG	Bank of Papua New Guinea (also referred to as the Central Bank)
BNI	Bearer Negotiable Instruments
CBA	<i>Central Banking Act 2000</i>
CDD	Customer Due Diligence
CIMC	Consultative Implementation and Monitoring Council
CPAPNG	Certified Practising Accountants Papua New Guinea
CTF	Counter Terrorism Financing
CTR	Cash transaction report ²
DFAT	Department of Foreign Affairs and Trade
DJAG	Department of Justice and Attorney General
DNFBP	Designated Non-Financial Businesses and Professions
FASU	Financial Analysis and Supervision Unit
FATF	Financial Action Task Force
FI	Financial Institution(s)
FIU	Financial Intelligence Unit
FT	Financing of terrorism
GDP	Gross Domestic Product
GST	Goods and Services Tax
IAIS	International Association of Insurance Supervisors

¹ The FATF refers to AML/CFT and many countries adopt this nomenclature. Others refer to AML/CTF. In PNG, the relevant legislation is the *Anti Money Laundering and Counter Terrorist Financing Act 2015* and in this NRA, the shortened reference to AML/CTF is used.

² In PNG, threshold transaction reports or TTRs also refer to cash transaction reports

ICSA	Immigration and Citizenship Service Authority
ICAC	Independent Commission Against Corruption
ICRG	International Co-operation Review Group
IFT	International Funds Transfer
IFTI	International Funds Transfer Instruction
IMF	International Monetary Fund
IPA	Investment Promotion Authority
IRC	Internal Revenue Commission
ISA	<i>Internal Security Act 1993</i>
ISPD	Investor Services & Promotion Division
ITTO	International Tropical Timber Organisation
KYC	Know your customer/client
MACMA	<i>Mutual Assistance in Criminal Matters Act 2005</i>
MER	Mutual Evaluation Review
ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of Understanding
MVTS	Money and Value Transfer Systems
NBFI	Non-Bank Financial Institution
NCC	National Coordinating Committee
NCD	National Capital District
NFA	National Fisheries Authority
NFACD	National Fraud and Anti-Corruption Directorate
NFB	National Forest Board
NFS	National Forest Service
NPO	Non-profit organization
NRA	National Risk Assessment
NSAC	National Security Advisory Council
OPP	Office of the Public Prosecutor
OSCA	Office of Security Coordination and Assessment
PEP	Politically exposed person
PFMC	Provincial Forest Management Committee

PM&NEC	Department of the Prime Minister and National Executive Council
PNG	Papua New Guinea
PNGFA	Papua New Guinea Forest Authority
PNGLS	PNG Law Society
POCA	<i>Proceeds of Crime Act 2005</i>
POMSOX	Port Moresby Stock Exchange
REs	Reporting Entities
RPNGC	Royal Papua New Guinea Constabulary
Sanctions Act	<i>United Nations Financial Sanctions Act 2015</i>
SCPNG	Securities Commission of PNG
SGS	Société Générale de Surveillance
SMR	Suspicious Matter Report
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TF	Terrorist Financing
TWG	Technical Working Group
TCSP	Trust and company service providers
UN	United Nations Organization
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
USD	United States Dollar

NCC CO-CHAIRS FOREWORD



Mr. Loi M Bakani, *CMG*
(Co-chair from 2012 to date)



Dr. Lawrence Kalinoe, *OBE*
(Co-chair from 2012 – 2018)

We, the Co-Chairs of the National Coordinating Committee on Anti-Money Laundering and Counter Terrorist Financing (NCC), are pleased to present Papua New Guinea's *inaugural* Money Laundering and Financing of Terrorism National Risk Assessment (NRA) 2017 report. The objective of the NRA is to identify, understand and assess the money laundering (ML) and terrorist financing (TF) risks in terms of threats and vulnerabilities faced in Papua New Guinea (PNG). It also makes recommendations to address identified risks using a risk based approach.

The outcomes of the NRA have been incorporated into the National Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) Strategic Plan 2017-2022 for the NCC member agencies to implement. The NRA will assist in making well-informed decisions in resource allocation to introduce risk-specific measures to detect, monitor and prevent ML/TF and other related crimes in the country which pose threats to the economy of PNG.

By virtue of PNG's membership to the Asia/Pacific Group on Money Laundering in 2008 and since PNG was de-listed from the Financial Action Task Force (FATF) on AML/CTF International Cooperation Review Group (ICRG) or the 'grey list' review in June 2016, PNG must continue to demonstrate and maintain a robust AML/CTF system. Conducting a national risk assessment is central to FATF's analysis of effectiveness of a country's AML/CTF infrastructures to which PNG is committed to implementing. Hence, the PNG NRA was endorsed in February 2018 by the NCC and the National Executive Council (NEC) in November 2018 and represents an important step for PNG's continued compliance with FATF standards.

The 18 member Government law enforcement and regulatory agencies led by the Governor of the Bank of Papua New Guinea and the Secretary for the Department of Justice and Attorney General (DJAG) will continue to strive to maintain and reinforce greater close coordination and collaborative efforts within the NCC agencies, the private sector, the civil society, our international partners and the public in this course.

This NRA and its implementation strategy will pave the way for more reviews in the future as and when it is recommended by the NCC and the NEC as we continue to steer PNG into the coming years as a leader in the Asia Pacific region.

A handwritten signature in black ink, appearing to be 'L. Bakani'.

Mr Loi M Bakani, *CMG*
Governor, Bank of Papua New Guinea

A handwritten signature in blue ink, appearing to be 'L. Kalinoe'.

Dr Lawrence Kalinoe, *OBE*
**Acting Secretary, Department of Justice
and Attorney General**

EXECUTIVE SUMMARY

This is Papua New Guinea's first money laundering and terrorist financing national risk assessment (NRA). The aim is to identify, understand and assess the money laundering (ML) and terrorist financing (TF) risks faced by PNG.

Money laundering is a global problem. The best available international estimate of amounts laundered globally suggests an annual global figure between \$800 billion³ and \$2 trillion.

Both money laundering itself, and the underlying criminality (predicate offences) which drives it, present a significant risk to PNG. While PNG is less likely to attract foreign proceeds of crime, domestic proceeds of crime need to be laundered both within the country and to other jurisdictions such as Australia, Singapore, Malaysia and China.

Terrorism Financing is a major area of international concern. Money for terrorists is derived from a wide variety of sources. While terrorists are not greatly concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it has been collected. There is a marked overlap between money laundering and terrorist financing – both criminals and terrorists use similar methods to store and move funds. PNG needs to be aware of the possibility that funds destined for terrorist groups may pass through PNG.

RISK BASED APPROACH

Countries have increasingly recognised that the threats to financial integrity and stability, national security and the incidence of serious criminal activity driven by large profits require concerted international and national responses, which have focused on identifying and mitigating risk. This NRA uses the guidance provided by the Financial Action Task Force (FATF)⁴ to identify, mitigate and manage risk. The objectives of the process at the country level are:

- (1) To provide input for potential improvements to the AML/CTF regime,
- (2) Assist in prioritising and allocating AML/CTF resources by competent authorities, and
- (3) To feed into the AML/CTF risk assessments carried out by reporting entities (REs).

This NRA therefore seeks to:

- Identify the ML and TF risks which PNG faces,
- Analyse and understand those risks,
- Identify structural, capacity and skills deficiencies which provide additional vulnerabilities,
- Identify current and future mitigation activities which can reduce ML and TF risks, and
- Provide a basis for policy development, legislative action, compliance and enforcement activities and resource allocations,

to respond to the residual ML and TF risks.

³ References to \$ are, unless indicated otherwise, references to USD

⁴ The FATF is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

Key Concepts

Risk management involves developing the appropriate measures to mitigate or reduce an assessed level of risk to a lower or acceptable level. In the NRA, the following key concepts⁵ are used:

- A **threat** is a person or group of people with the potential to cause harm to PNG through illegal activity and in the ML/TF context this includes criminals, terrorist groups and their facilitators.
- **Vulnerabilities** comprise those things that can be exploited by the threat or that may support or facilitate its activities.
- **Consequence** refers to the impact or harm that ML or TF may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally.
- **Risk** is a function of the three factors: *threat*, *vulnerability* and *consequence*. An ML/TF *risk assessment* is a process that attempts to identify, analyse and understand ML/TF risks and serves as a first step in addressing them.

The NRA has been developed by Financial Analysis and Supervision Unit (FASU)⁶ using a methodology agreed with the ADB and discussed with all the relevant government agencies and key reporting entities.

Sources and qualification of information

Sources of information included Government agencies, the private sector, international organisations, non-government organisations (NGOs) and other civil society groups and individuals with particular expertise or insights. A comprehensive set of questions was prepared and circulated by FASU to relevant public and private sector entities.

Assessing AML/CTF Risk

The NRA assessed the threats imposed by various types of criminal activity and how these might be exacerbated by existing systemic or sectoral vulnerabilities using the adopted methodology. The terrorist financing risks were assessed separately using the same methodology.

The quality of the NRA depends largely on the types and quality of data and information available. The lack of available quantitative data in the ML/TF field makes it very difficult to rely exclusively on such information. Moreover, in PNG quantitative information is not readily available. In the NRA process such gaps have been identified and action is being taken to address these deficiencies for future NRAs. The result is that the lack of information and data is itself a risk which is recognised in the NRA.

Analysis of the available information enabled the determination of the threats, vulnerabilities and consequences and, accordingly, the risks faced by PNG. Tentative findings and conclusions were then tested in further discussion with key stakeholders (both from Government and the reporting entities). The final NRA was then prepared for consideration by the NCC and presentation to Government. In large part, the NRA reflects a consensus on the risks which PNG needs to address.

The extent to which consensus has been achieved and the preparedness of all the agencies involved to respond positively to the process underlines the value of the resultant NRA for all the potential users.

⁵ As described in FATF Guidance, *National Money Laundering and Terrorist Financing Risk Assessment*, FATF, 2013, p7.

⁶ FASU is the financial intelligence unit (FIU) for PNG and was established by Section 61 of the Anti-Money Laundering and Counter Terrorist Financing Act 2015.

Confidentiality

Some Government agencies and reporting entities are understandably and properly concerned about the confidentiality of data which they hold. However, to be effective in identifying risks, developing mitigation strategies and determining priorities the NRA needs to honestly and accurately recognise the reality of the ML and TF risks faced by PNG. The NRA therefore contains data which has not previously been public or readily accessible to provide a clear basis for further action. The NCC agreed that the complete NRA should be published in the form adopted by it.

Legal System and International Arrangements

PNG's legal system has a common law background and customary law is incorporated as part of the underlying law. PNG is bound by Resolutions of the Security Council (UNSCR) and there are several of these which are directly relevant to national obligations to combat ML/TF. PNG ratified the UN Convention Against Corruption (UNCAC) in 2007, but has not yet ratified other relevant UN Conventions. PNG now has in place an extensive legal framework which is compliant with the international AML/CTF standards set out by the FATF. It is a member of the Asia/Pacific Group on Money Laundering (APG), the regional FATF style body. PNG has agreed to adopt and implement the FATF 40 Recommendations.

The legislation which establishes PNG's AML/CTF system consists of the following laws:

- *Anti-Money Laundering and Counter Terrorist Financing Act 2015 (AML/CTF Act);*
- *Criminal Code 1974 as amended by the Criminal Code (Money Laundering and Terrorist Financing) (Amendment) 2015;*
- *Mutual Legal Assistance in Criminal Matters Act 2005 as amended by the Mutual Assistance in Criminal Matters (Amendment) Act 2015;*
- *Proceeds of Crime Act 2005 (POCA) as amended by Proceeds of Crime (Amendment) Act 2015;* and
- *United Nations Financial Sanctions Act 2015.*

AML/CTF CONTROLS

The main agencies with functions relevant to PNG's AML and CTF activities are FASU, the Royal PNG Constabulary (RPNGC) and the Office of Public Prosecutor (OPP). FASU is responsible for enforcement of the AML/CTF Act and receives reports submitted by reporting entities under the AML/CTF Act. It works closely with the RPNGC, which investigates relevant predicate offences and money laundering.

In accordance with international standards, Part II of AML/CTF Act imposes wide-ranging obligations on financial institutions and designated non-financial businesses and professions (DNFBPs).

Financial institutions are defined consistently with international standards and include those engaged in banking, leasing, insurance, securities, and currency exchange and transfer. The DNFBPs include lawyers and accountants engaged in commercial activities on behalf of clients, casinos, real estate agents, dealers in precious metals and stones, trust or company service providers and motor vehicle dealers.

Financial institutions are required to conduct ML and TF risk assessments, appoint an AML/CTF Compliance Officer, appoint external auditors, implement group wide AML/CTF programs, identify and verify customers, conduct due diligence (and, in certain cases, enhanced due diligence) on all customers, report financial transactions above specified thresholds, suspicious transactions and assets held by persons or entities designated under a number of UN Security Council resolutions or other international obligations. Section 52 of the AML/CTF Act imposes comparable obligations on DNFBPs.

THREATS AND VULNERABILITIES

The NRA has focused on crime types (predicate offences) as the threats and potential exacerbating factors (both domestic and international) as creating or exacerbating vulnerabilities. Not all crime types are relevant to the NRA. Many possible predicate offences will not be found in PNG or occur at low levels of activity or with limited impact. For the purposes of the NRA however, the focus is on identifying the **incidence** (number) and **value** (impact) of criminal activities which are likely to generate **proceeds of crime** and the need to launder those funds. It is also important to examine offences which might generate funding for terrorism or facilitate the movement of funds to terrorist organisations. These are respectively **ML or TF threats**.

There is also the need to consider the factors which increase PNG's **vulnerability** to these threats and therefore increase the risk of ML or TF activity. These vulnerabilities can be external or arise from domestic factors such as corruption, resource constraints, a lack of skills and training, the need for enhanced legislative frameworks and problems with inter agency coordination.

Major Threats

In preparing the NRA each of the possible predicate offences or areas of criminal activity identified by FATF⁷ was examined and its impact and incidence considered.

There is a significant gap in the statistics collected by law enforcement agencies in PNG. The national crime statistics provided by the RPNGC do not provide details of offences other than in relation to broad categories and they do not indicate, in most cases, the value of the offence.

The domestic crime rate in PNG is relatively high but much of the crime which occurs does not generate large amount of funds which need to be laundered. As is the case in many developing economies with major law enforcement challenges, criminals may not feel the need to launder funds to hide the criminal source because they do not fear the likelihood of arrest and prosecution.

The following major areas of criminal activity are considered to provide significant ML threats to PNG:

- Corruption and Bribery
- Fraud against government programs and activities
- Illegal logging and Fishing
- Taxation and revenue fraud
- Other environmental offences
- Illicit drug importation and distribution

Most of these crime types are likely to have both domestic and offshore components. In addition, many offences are facilitated through the involvement of corrupt practices.

The Value of Predicate Offences

It has not been possible to determine the value of proceeds generated by the main types of predicate offences.

There is widespread corruption at senior levels of the bureaucracy and extensive reliance on facilitation payments across government. Bribery of officials is common.

With a GDP of K88.9 billion (\$28 billion⁸), based on the IMF estimate of money laundering being between 2 and 5 percent of GDP, the possible level of laundering in PNG would range between K1.8 billion (\$560 million) and K4.4 billion (\$1.4 billion).

⁷ National Money Laundering and Terrorism Financing Risk Assessment, FATF, February 2013, Appendix 1

⁸ References to \$ are, unless indicated otherwise, references to USD converted at the official BPNG rate.

Vulnerabilities

In the ML/TF risk assessment context, looking at vulnerabilities means focusing on the factors that represent weaknesses in AML/CTF systems or controls or certain features of a country – the form of government, legal system, public sector, its economy, geography and cultural norms. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML or TF purposes.

Capacity and Resource Limitations within Government

Full and effective implementation of AML/CTF laws and policies presents challenges for all countries. In 2014, the FATF placed PNG on its list of High-risk and Non-Cooperative Jurisdictions as a result of findings that the AML/CTF system in PNG was deficient. Since then, PNG developed and has implemented a comprehensive Action Plan to address the deficiencies and enacted new legislation.

On 24 June 2016, FATF recognised that PNG had made significant progress and was removed from the list of high-risk-non-cooperative jurisdictions.

PNG has been developing its AML/CTF expertise and the establishment of the NCC and its Technical Working Group (TWG) have provided a framework for increased skill development and coordination. Nonetheless, there are issues in relation to:

- Resources,
- Training,
- Skills development,
- Information flows,
- Equipment and technology,
- Cultural norms, and
- Coordination and cooperation

In addition, there is limited intelligence support and forensic accounting capacity in most agencies. Limited availability of appropriate technologies and the skills to operate the technologies is also a significant vulnerability.

Ultimately, while there are talented people with good legislative powers and systems, there are not enough people to effectively make use of these advantages.

FASU

FASU has begun to develop the in house analytical capacity which is needed to allow it to effectively use the threshold and suspicious matter reports it now receives. This will take time to develop and implement. It is not yet meeting the full functional requirements of an FIU. Until it meets these requirements ML and TF risks are increased.

RPNGC

The RPNGC has officers with considerable experience in dealing with fraud and corruption, through the National Fraud and Anti-Corruption Directorate (NFACD), and an understanding of ML/TF issues as the FIU function was previously housed within the RPNGC. Fraud and corruption within government and the private sector are major sources of criminal proceeds.

PNG Customs Service

Customs faces some serious challenges. It has both border protection and revenue collection responsibilities and seeks to manage and regulate the flow of goods through 22 ports, airports, and along a largely unpatrolled coastline and a porous land border. While it has access to technology such as x-ray equipment and scanners at some ports, this is by no means universally available. This is essentially a resource issue.

The long land border which runs through rugged and often difficult terrain is largely uncontrolled. The long coast line and the many small bays and harbours means that fishing vessels provide a ready means of moving illegal goods, guns and cash into and out of PNG.

Passengers arriving on scheduled air services or charter flights require visas but many foreign nationals can obtain these on arrival. The declaration requirements for large amounts of cash (K20,000 or more) are not rigorously applied.

It is likely that large amounts of undeclared cash, illegal products such as guns and drugs and goods on which duty is payable such as alcohol and cigarettes move across the porous borders. Equally, unauthorised arrivals are also occurring, probably in significant numbers. Even where breaches of customs legislation are detected, these do not often lead to prosecution.

Immigration and Citizenship Service Authority (ICSA)

Entry to and work in PNG is controlled by a visa system and work permits but the system does have some weaknesses. Note that work permits are issued by the Department of Labour and Industrial Relations. There are widely held views within PNG that a growing number of unauthorised people are entering the country or remaining after visas have expired.

Internal Revenue Commission

The IRC is responsible for the collection of personal and company income tax, GST and other taxes such as withholding tax and mining taxes. It is inevitable that there is a degree of fraud in relation to income tax and GST payments. The extent of these frauds (through undeclared income, false declarations or failure to register) is not known but the resultant financial benefits are, clearly, proceeds of crime. There is a very high risk that this is occurring.

Criminal prosecutions in relation to serious cases of tax evasion or fraud are unusual.

Investment Promotion Authority

The IPA registers companies and not for profit (NPO) associations.

The large number of currently registered companies compared with the much smaller number currently lodging income tax returns suggests that there is a significant level of tax fraud.

The current level of control over Associations is totally inadequate⁹. They are registered under outdated legislation with no obligation to update public officer notification or lodge any form of annual report.

Yet these Associations can be the recipients of significant grants from government. They can also receive funds from overseas sources (such as churches or charities). Despite their not for profit status, they may in fact be used to operate tax free businesses, or the funds may end up benefiting only a small number of the local community. The potential for misuse is very high. Again, prosecutions are unlikely to occur even where there may have been deliberate fraud.

Regulatory Agencies

A major concern arises with the supervision of the financial sector and DNFBPs. Limited staff within FASU has meant less supervision and enforcement action.

Environment and Resource Protection

PNG has legislation which controls the logging and fishing industry and other extractive industries. Illegal activities in these industries generate large amounts of illegal profits.

⁹ The IPA has advised that it is being assisted under an ADB funded technical assistance project to review the legislation. It is critical that the revised legislation addresses the ML and TF threats identified in the NRA.

Logging

The industry is controlled by the PNGFA. Despite a detailed regulatory regime, the level of illegal logging in PNG is well known and well documented. It is a complex problem which requires coordinated responses from several agencies.

Fishing

PNG has an extensive and valuable fisheries sector managed by the NFA. The PNG fisheries zone is the largest in the South Pacific. The fisheries create a huge opportunity for PNG but also present an enormous challenge for monitoring and control.

OVERCOMING VULNERABILITIES

Responding to these vulnerabilities requires four components:

- Political will and government commitment
- Enhanced coordination and cooperation
- Increased resources
- Infrastructure and technology

The Cash Economy

The domestic economy is largely driven by cash. Much of the wealth from its extractive industries (both legitimate and illicit) is accrued off shore with only limited benefit to the PNG economy.

There are disparities in the electronic flow of funds out of PNG when compared with the flow of goods and services into PNG. Actual cash (or negotiable instrument) flows across the border also raise serious ML/TF issues.

In PNG cross-border cash flows above a threshold are required to be declared. The system is not working. There is a significant vulnerability to illicit cash flows in and out of PNG.

Porous Borders

PNG must deal with the problem of porous borders. The extensive sea border means that it is not possible for PNG agencies to patrol the sea borders to prevent the unauthorised movement of goods and people. Similarly, the land border with Indonesia creates difficulties. Communities straddle the border, goods move freely and people can move between the two countries with limited controls.

There is a market in cross-border purchases which might also be used to facilitate cross-border cash flows. Many people are involved in unauthorised recovery of alluvial gold and much of this is moved across the land border. The gold is acquired at about half the global price, still providing a substantial return to the miners but also large profits for the gold traders.

Trade Based Crime

PNG had imports amounting to around \$2.27 billion per annum in 2015 and exports of around \$8.34 billion in the same year. With the significant volume of imports, and to a much greater extent, the level of exports, it is possible that legitimate trade is providing cover for ML/TF through a range of trade based laundering activities. Such activities may include ghost shipments, mislabelling goods, inaccurate descriptions of container loads, variable volumes and other false documentation including under invoicing and over invoicing.

The incidence of trade based ML is assessed as very high.

Creation of Laundering Businesses

A common laundering activity is to use cash based business as a basis for laundering, either by adding funds to be laundered to legitimate business revenue (comingling) or by creating a business which has little legitimate business but can be the basis for claiming proceeds of crime as legitimate earnings.

Responding to this vulnerability requires regular supervision of these businesses and their financial activities. However, there is no effective monitoring of unregistered businesses. The cash economy combined with low levels of controls over business operations in PNG therefore poses a very high ML risk.

Legislative and Regulatory Weaknesses

The NCC is maintaining a regular review of legislation so that changes can be made where these are needed. Several areas have been identified through the NRA process which provides vulnerabilities which need to be addressed through legislative and regulatory changes.

Of course, making changes to the relevant legislation needs to be matched with enhanced supervision and compliance.

Reporting Entities (Vulnerabilities from Customers, Products and Services)

The vulnerability of financial institutions and DNFBPs can arise from the products and services they offer and types and location of clients they serve. The financial market is dominated by commercial banks, but there are also money transfer businesses, currency exchange businesses, savings and loans societies¹⁰ and insurance providers. The bulk of the financial transaction reports made to the FASU under the AML/CTF Act come from the banks. The Sectors that were found to be very highly vulnerable to ML/TF are:

- Domestic Banks,
- Company/ trust formation, and
- Currency Transfer and Exchange Businesses.

Other Financial Institutions (Savings and Loans Societies, Insurance and Securities)

There are 22 savings and loan societies and they hold almost K1 billion in assets. The risk of these entities being used for ML activity is moderate but this should be managed by adequate internal and external scrutiny.

PNG has a domestic stock market and there are a small number of listed securities. The level of market supervision is considered to be adequate and the ML risks involved are low to moderate.

Reporting Entities – Designated Non-Financial Businesses and Professions (DNFBPs)

Under the AML/CTF Act the main DNFBPs include:

- real estate agents;
- lawyers and accountants engaged in commercial activities on behalf of clients; and
- motor vehicle dealers.

Money launderers frequently use DNFBPs to assist them to hide and move their funds.

The vulnerability of this sector is due to the:

- Low levels of knowledge and understanding of the requirements of AML/CTF regime,
- Low levels of reporting and/or lack of quality of SMRs,
- Lack of commitment by DNFBPs to the AML/CTF program, and
- Lack of concern regarding vulnerability to related reputational risk.

The level of reporting of both threshold and suspicious matters by DNFBPs is very low.

The real estate industry in PNG is relatively small and concentrated in larger urban areas. Cash payments to customary owners to access highly undervalued land is an issue of concern in PNG.

¹⁰ References to Savings and Loans Societies refers to Savings and Loans Cooperatives. Other jurisdictions call them credit unions. In PNG, the relevant legislation is the *Savings and Loans Societies (Amendment) Act 1995*.

There have also been claims that customary title has been lost and the land subsequently sold or leased without the knowledge or consent of the customary owners. The potential for fraudulent land transactions is high as is the risk of associated ML.

Off shore real estate purchases are often claimed to be a major way in which funds generated in PNG are laundered. There are frequent claims that property has been purchased in Australia (and elsewhere) by PEPS using corrupt earnings.

The risk of ML activities through real estate transactions is high.

NON-PROFIT ORGANISATIONS (NPOs)

NPOs in PNG are governed by the *Association (Incorporation) Act 1966*. There are approximately 7000 registered NPOs. These include community groups, landowner¹¹ associations (in relation to traditional ownership), clubs, political parties and charities.

There is no ongoing review of the activities of NPOs by the IPA. The present arrangements mean there are no records of the individuals using the NPO structure, no records of their current activities and therefore a high probability that some NPOs are involved in fraud, corruption and money laundering.

The use of NPOs for ML and TF activity is well known internationally. While there is no evidence of TF involving NPOs in PNG, global concerns about the use of NPOs in TF together with the lack of supervision raise the level of vulnerability to ML/TF to very high.

TECHNOLOGY RISKS

New technology can assist in the detection and combating of ML and TF but it can also create new means of ML and TF. Reporting entities should be required to notify FASU of new products and technologies so that, in addition to the obligation on the institution to assess the risk that the product brings from a ML and TF perspective, the regulators also have this capacity. They should also alert FASU where they see possible ML or TF issues arising from new technologies.

DATA COLLECTION DEFICIENCIES

The development of the NRA has been complicated by the lack of data collected by key agencies such as the BPNG, RPNGC, Customs, IRC and IPA and within the reporting entities.

The NCC should develop and implement a data collection plan so that when the NRA is revised prior to the next scheduled MER, there will be more reliable information.

Unless there are major changes in the way data is collected and analysed there will be significant difficulties in preparing for and responding to the next Mutual Evaluation process.

TERRORISM FINANCING

Politically and ethnically motivated violence has occurred in regional areas and in Lae and Port Moresby. However, none of these events appears to be the result of foreign funding or support. Unlike several of PNG's regional neighbors, there is no evidence of domestic terrorist activity directed at the central government or other countries. There is no evidence of any flow of funds destined for funding terrorist activity within PNG.

The major threat to PNG posed by terrorism financing arises from the possibility that the country will be used as a conduit for the flows of funds intended to be used by terrorist organisations.

¹¹ Or landholder

LIKELIHOOD AND CONSEQUENCES

Money Laundering

In PNG, those crimes most likely to generate large amounts of value, coupled with high rates of incidence and therefore which have significant ML consequences are revenue and other fraud, corruption, environmental offences and drug offences.

A number of vulnerabilities exacerbate these risks: the porous borders, internal corruption in law enforcement, lack of control on the movement of value, lack of coordination and cooperation between agencies, weak systems and low levels of resources. All of these factors contribute to the continued incidence of these offences.

While the legislative provisions were strengthened in 2015 there is scope for significantly increased use of financial intelligence, greater coordination and cooperation between government agencies and with the REs, more effective law enforcement and enhanced international law enforcement cooperation.

The threats and vulnerabilities most likely to have severe domestic ML consequences for PNG are tax evasion (including GST fraud), illicit drug related activities and the movement of funds obtained from bribery and corruption. The laundering of funds derived from illegal logging and fishing are more likely to accrue offshore, although some of this will find its way back to PNG to support continuation of these activities. This has international implications for PNG because those countries face a domestic ML problem created by criminal offences within PNG and this requires cooperation between PNG authorities and those in neighbouring jurisdictions.

The vulnerabilities that will assist the creation and laundering of funds from these predicate crimes include those vulnerabilities associated with low levels of capacity within some elements of the AML/CTF program such as weaknesses in the reporting and supervision of DNFBPs, limited information flows between government agencies and limited supervision of the reporting entities.

It is far less likely that PNG is used as a vehicle for the laundering of criminal proceeds generated off shore and moved into or through PNG.

The highest priority need for mitigating action is to address those threats which arise from high impact criminal activity (in terms of frequency and value) within PNG which are compounded by the systemic and institutional vulnerabilities which create the highest ML risks.

The highest priority for the offshore ML of funds generated within PNG is to address the cause: corruption and the ongoing illegal logging and fishing. PNG can and should work with other jurisdictions to trace, locate, freeze and recover these criminal proceeds but addressing the problem at its source is critical.

Terrorism Financing

The likelihood of TF is assessed as low because of the general absence of communities which might support terrorist activities or which might see 'home grown' or 'lone wolf' activity develop. The violence associated with domestic politics is of concern but not in the international terrorism context. However, this situation could change rapidly.

The emerging informal value transfer operations in PNG provide a significant risk and need to be better understood and scrutinised by FASU, the RPNGC and the banks which might be used to move larger amounts to offset transactions.

MITIGATION AND PRIORITIES

Most ML and TF risks can be mitigated but few can ever be effectively removed. Criminals and terrorists continually respond to the way governments try to deal with ML and TF. The situation is

never static. New technologies, new payment systems, more elaborate and complex laundering systems all provide ongoing challenges.

Mitigation strategies designed to limit, if not prevent, ML and TF need to be realistic and practical. While the costs are often apparent, benefits may be difficult to quantify. The NRA identifies strategies which are affordable, practical and impede as little as possible legitimate use of the financial system. Enhanced information sharing, genuine coordination and effective cooperation do not cost much. They require some resources, for example, to ensure IT systems can share information, and they inevitably involve cultural changes. But these actions can produce substantial benefits.

Other mitigation strategies will require substantial investment of resources and will require assistance from the international donor community. The development of the analytical capacity in FASU is being supported by donor funding. Building human resources in NFACD and the Ombudsman Commission requires additional funding. Customs could be more effective in reducing fraud, better controlling the national borders and preventing cross-border cash and gold movements with more staff and better and more widely available technology.

There must be a fundamental change in the way the natural resources of PNG are managed. The scale of illegal logging and fishing not only dramatically reduces the financial benefits of these industries to PNG but they are also reducing a limited resource. The technical assistance to be provided by INTERPOL to address illegal logging is an important development.

Equally, the rampant corruption must be addressed. In the development of the NRA, there was a great deal of support from the TWG and the major REs. They know what the problem is and the extent to which it permeates the country. The lower level bribery and demands for facilitation payments will not be stopped until the high-level corruption is addressed. The establishment of a powerful and well-resourced ICAC is a critical step.

Much of the fraud on government programs and the taxation and revenue systems can be reduced. Information sharing, the use of targeted campaigns, selective use of criminal prosecutions and deployment of resources will be more than repaid with increased revenue.

The poor control of PNG's borders sees the influx of illicit goods and the uncontrolled entry of people. ICSA and Customs must address the large number of people who enter PNG through trafficking or with false paperwork or who work without approval. This not only means unpaid tax, it creates social dislocation and involves compromised officials. Cash, gold, high value products like vanilla, shark fin and bêche-de-mer and logs and fish all leave PNG illegally. The lost revenue is huge but the associated corruption is just as damaging.

All of these issues have to be addressed if PNG is to significantly reduce its ML risk.

While PNG does not have an internal terrorist threat, the risk of TF in and through PNG is high, largely driven by PNG's location between high TF risk countries, the fact that its financial system might be seen as a less scrutinised means of moving funds and because its porous borders will allow the flow of TF funds virtually unhindered. Given that only small amounts of money are needed for many terrorist attacks, the flow of funds below the declaration level goes unhindered. Even larger amounts can be easily moved because the scrutiny at ports and airports is weak.

Residual Risks

Even if it were possible to address all of the mitigation strategies and activities outlined in the NRA, PNG will still face high ML risks in relation to major threats which are exacerbated by vulnerabilities which it cannot overcome, not just in the short to medium term, but even in the long term. No developed economy has been able to completely remove ML/TF threats and the challenge in

developing economies is greater. In PNG expectations need to be realistic but this does not mean that challenging targets should not be set.

What is possible is to ensure that resources are directed to areas of highest overall risk so that those risks can be reduced, where possible. Subsequently, resources should be deployed to those areas where the highest residual risk remains.

As training activities are expanded, AML/CTF awareness within reporting entities increased, identification and due diligence policies more widely implemented and reporting of unusual transactions increased, there will be a reduction in actual ML and a lower TF risk. Information must be exchanged between the reporting entities and with the regulatory bodies.

Of course, high levels of residual risk will remain and must be managed. For the foreseeable future the risk of money laundering arising from corruption, fraud, environmental offences and taxation and other revenue related fraud will remain high, even if the identified mitigation strategies are put in place.

CONCLUSIONS AND RECOMMENDATIONS

PNG faces a very challenging ML threat arising from the need to launder criminal proceeds generated by

- Corruption,
- Taxation fraud,
- Other frauds against government and the private sector,
- Environmental offences (particularly illegal logging and fishing), and
- Trafficking of illicit drugs.

Each of these threats see high levels of incidence and high impact because the values involved are large. It has not been possible to put estimated values on the amount of criminal proceeds arising from these threats due to the lack of data available at present. However, the value of funds being moved out of PNG (both in cash and by international fund transfers) does suggest that the amounts involved are significant.

These threats are compounded by many vulnerabilities. PNG has porous borders, a cash based economy and a significant informal sector. This makes it easier to move cash and other items of value (such as illegally mined alluvial gold) in and out of PNG. Furthermore, there are capacity and skills shortages within government agencies, in non-bank financial reporting entities and in the DNFBP sector. Weaknesses in the regulatory and legislative framework (such as the lack of supervision of the NPO sector) and the need for greater inter agency coordination and cooperation exacerbate the situation.

While the ML threat in each case is very high the ML risk can be mitigated. The result however will still see high ML risks even after significant mitigation work is undertaken.

Other significant ML threats arise from the operation of gangs and organised criminal activity in relation to illegal gambling, illicit movement of stolen, pirated and smuggled goods, robberies and theft, land frauds the importation of arms, alcohol and cigarettes. In each case the vulnerabilities identified above increase the ML risks associated with these criminal activities. They will remain high for the foreseeable future.

The TF threat is considered to be low at present but there are real concerns that this might increase quickly unless the issue is kept under very active review. Given the very small amounts of money needed to fund terrorist activity these may well escape detection.

It is critical that PNG addresses these threats and vulnerabilities in a planned and structured way. Priorities need to be determined and resources allocated in response to these priorities. The issues identified in the NRA provide the framework for future action. This involves several interrelated actions which will:

- reduce the overall risks by combatting threats,
- respond to vulnerabilities,
- address structural issues,
- enhance cooperation and coordination, and
- manage residual risks through targeted resource allocation, training and enhanced supervision.

By adopting the NRA and implementing the recommendations set out above, PNG can reduce its current ML and TF risks and manage the resultant risks. It will take time, effort and resources but if this is done, it will lay the foundations for a much more effective AML/CTF regime.

CHAPTER ONE – BACKGROUND AND METHODOLOGY

Geography and Demography

PNG is a country occupying the eastern half of the island of New Guinea and numerous offshore islands covering a total area of 462,840 sq km. PNG is in the south-western Pacific Ocean and has a 824 km land border with Indonesia and 5,152 km coastline. Port Moresby is the country's capital and the main commercial centre. The mainland of the country is where the largest towns are also located, including Port Moresby and Lae. Other major islands within PNG include New Britain, New Ireland, Manus and Bougainville.

PNG is one of the most culturally diverse countries of the world. With a population of 7,275,324 according to the 2011 Census,¹² which had increased to an estimated 8.3 million by 2015¹³, PNG's population is growing at more than 2% per year. Most of the population (57%) are under 25 years of age. More than 860 distinct indigenous languages exist with many different traditional societies. The three official and most common languages are Tok Pisin, Hiri Motu and English. Most government documents are produced in English although Tok Pisin is frequently the language of debate in the National Parliament.

The country is one of the world's least explored, culturally and geographically. PNG is mostly a rural country, with around 12% of its people living in urban centres¹⁴, and much of the population living in traditional societies and practising subsistence-based agriculture. There is an increasing movement of people to urban areas. Most of the land (97%) is under customary title.

The country's Human Development Index (HDI) as at 2014 was 0.505, which ranks it at 158 out of 188 countries measured and the second lowest in the Asia-Pacific Region.¹⁵ More than 60% of the population has no sustainable access to safe water. HIV infection rates are increasing at a pace that causes serious concern. Healthcare is a major issue with only one doctor to 17,000 people (compared to 1 per 300 in Australia) and TB, malaria (endemic throughout the country) and other communicable diseases cause more than 60% of deaths.

Violent crime rates are high with high rates of murders and assaults¹⁶, attributable in part to high levels of poverty with almost 28% of the population¹⁷ living below the poverty line.

Government and Political System

Structure

PNG is a constitutional monarchy within the Commonwealth. The British monarch is represented by a Governor General, chosen by the Parliament for a six year term. The PNG Constitution provides for the independence of the three branches of Government: executive, legislative and judicial. Legislative power is held by a unicameral Parliament of 111 members, elected for a five year term. 89 members represent "open" constituencies, and the remainder represents 22 provincial constituencies, including the NCD and the Autonomous Region of Bougainville (AROB). Suffrage is universal for citizens over age 18.

Executive power is exercised by the National Executive Council (NEC), which consists of the Prime Minister (Chairman) and all Ministers, who are appointed by the Governor-General on the

¹² 2011 Census results. National Statistics Office, PNG

¹³ ADB Basic Statistics 2016, April 2016.

¹⁴ 2011 Census.

¹⁵ UNDP Human Development Index 2015: <http://hdr.undp.org/en/countries/profiles/PNG>. The index places it in a similar position to much of sub Saharan Africa and with neighbours such as Vanuatu and the Solomon Islands.

¹⁶ 13 per 100,000 compared to 3.5 in India and 1.3 in Australia.

¹⁷ ADB Basic Statistics 2016, April 2016.

recommendation of the Prime Minister. The Prime Minister is proposed by the party or coalition with the most seats in the Parliament and appointed by the Head of State.

The Constitution establishes the Supreme Court of PNG and the *Supreme Court Act* provides for the Court's powers and rules of practice and procedure.

PNG is administratively organized into 22 provinces, including the AROB and the NCD. Each province is divided into one or more districts, which in turn are divided into one or more Local Level Government areas. Provinces are the primary administrative divisions of the country. Provincial governments are branches of the national government. Each of the 22 provinces including the Autonomous Region of Bougainville has its own government, which may levy taxes to supplement grants received from the national government.

Over the years the country has focused its governance on decentralization from the National level to the sub-national level through “first generation” efforts. This has been achieved through driving electoral competition and decision-making down to the provincial and local levels. The “second generation” decentralization is now more concerned with the integration of citizens into key points of decision-making and government oversight.

Consistent with the levels of Government are the administrations which are; National, Provincial or Provincial Administrations and the Districts or District Development Authorities (DDAs)¹⁸.

Political Stability

Historically, the country had been through political instability such as numerous Votes of No Confidence and a Political Impasse in 2012.

PNG's politics are highly competitive and most members are elected on a personal and ethnic basis rather than because of party affiliation. There are 45 parties, but party allegiances are not strong. Winning independent candidates are usually courted in efforts to forge the majority needed to form a government, and allegiances are fluid. No single party has yet won enough seats to form a government without the support of at least one other party.

Currently, a level of political stability within government has been maintained since the 2012 General Elections. This was initially made possible because of a major party coalition led by the Peoples National Congress party to form the 9th Government in Alotau, Milne Bay Province. A Political Blueprint was established and called the “Alotau Accord” where priorities of the government were laid out for the next five years (2012-2017). The accord enabled a strong political coalition to form government. In Parliament, this coalition voted for a grace period of 30 months¹⁹ before it was possible for the Opposition to move no confidence motions in parliament.

In mid-2016, when the 30 month grace period on a vote of no confidence lapsed, the Opposition attempted several times to push for a vote of no confidence. They succeeded with a Supreme Court ruling in their favour calling for a Vote of No Confidence. However, the Government retained its numbers and maintained its position. Some Members of Parliament crossed the floor and joined the Opposition which led to a cabinet reshuffle within Government in late 2016.

Political Violence and Terrorism

There was history of major political violence relating to the Panguna Copper Mine on Bougainville in the late 1980's to 1990's. The resource was developed by Rio Tinto and BCL until the operation of the mine was shut down.

¹⁸ Not all Districts have DDAs.

¹⁹ This was achieved through the *Constitutional Amendment (Motion of No Confidence) Law 2013*.

The conflict related to the lack of proper compensation and payment of royalties from the project to the Bougainville people. The Government of PNG intervened by sending in soldiers and RPNGC mobile squads to address the rebellion by local armed forces. However, while the conflict was contained on the island, it had immense financial implications for the country over the next 10 years and its impact is still felt today.

Other political violence that occurs in PNG is related to general elections, especially in the Highlands region including tribal or ethnic clashes. This is very different in character to the terrorist activities witnessed in many other countries over the last two decades²⁰. These international examples are well organised and financed large-scale terrorist attacks and are intended to:

- Pursue geo-political goals,
- Undermine the territorial integrities of countries, or
- Change regimes of legitimately elected governments.

Politically motivated violence in PNG so far is very different in purpose, scope and size to what other countries frequently encounter.

Legal System

PNG's legal system has a common law background and its higher courts follow procedures similar to those of other common-law countries. Customary law is incorporated as part of the underlying law.

PNG's national judicial system consists of the Supreme Court of Justice and the National Court of Justice²¹. The Supreme Court is the highest court in PNG. The lower courts include the National Court of Justice, District Courts (in urban centres) and Village Courts presided over by stipendiary magistrates.

The Supreme Court hears appeals from decisions made by the National Court, reviews decisions made by the National Court, gives opinions or advice on whether a proposed or already existing law is constitutional, develops rules of the underlying law and enforces human rights as provided under the Constitution. The Supreme Court is the final court of appeal and has original jurisdiction on constitutional matters. It sits as a bench of three or five judges. The Supreme Court includes all the judges of the National Court other than acting judges²². It is based in the capital, Port Moresby, and sits in some regional centres. Currently, there are 33 judges, operating at the national and provincial level.

The National Court has unlimited jurisdiction, which is exercised by a single judge. National courts have power to hear any case unless the Constitution gives the power to hear a particular case to another court. It deals with most civil and criminal cases and hears appeals from lower courts. There are resident National Court judges in several regional centres.

District Court magistrates are appointed by the Judicial and Legal Services Commission. Under the Chief Magistrate and the two Deputy Chief Magistrates are 24 Principal Magistrates, 65 Magistrates and 14 probationary Magistrates²³. There are Tribunals that may be established outside the national judicial system, as well as arbitral or conciliatory tribunals. Their powers to impose penalties are

²⁰ For example, the 9/11 Terrorist Attacks in New York and Washington, Bombings in Bali, London, Madrid, Mumbai, Paris and Brussels and the daily ISIS or Daesh attacks in Syria and Iraq and bombings and attacks in Israel and Palestine.

²¹ Constitution, Section 99 (2)(c) and Section 155 (1).

²² Constitution, Section 161.

²³ As at March 2017.

limited. The Constitution also provides for courts that may deal with matters primarily by reference to custom or in accordance with customary procedures or both²⁴.

Many hundreds of Village Courts operate in both rural and urban areas. Village Courts consist of at least three lay magistrates appointed from the local village or community by the Minister for Justice. One of their objectives is to mediate disputes applying customary dispute resolution methods. Their jurisdiction is limited to minor offences and customary law cases. They may impose fines or community service but not imprisonment. Appeal is to the local or District Court Magistrate and there is a supervising magistrate in each province.

The PNG Constitution provides for the independence of the national judicial system. The Chief Justice is appointed by the Head of State on the advice of the NEC. Other judges and magistrates are appointed by the Judicial and Legal Services Commission, which consists of the Minister for Justice, the Chief Justice, the Deputy Chief Justice, the Chief Ombudsman and a Member of Parliament. The Commission has adopted "Judges' Appointment Criteria and Guiding Principles" to enhance the independence of the appointment processes. The only grounds upon which a judge, the Public Prosecutor, the Public Solicitor or Chief Magistrate may be removed from office are their inability to perform the functions and duties of their office, misbehaviour or misconduct in office.

The Economy

Domestic Economy

PNG is a developing country, with a GDP estimated in 2016 at \$28.02 billion²⁵ up from an estimated \$27.33 in 2015, \$18.78 billion in 2014 and \$ 17.3 billion in 2013. In the five years from 2010 to 2015, Nominal GDP grew from K38.6 billion to K64.2 billion (\$20.2 billion), a growth of 69% or, on average, by 13.8% per annum. Per Capita Nominal GDP grew from K5,456 to K8,378, that is a growth of 54% or an average of 11% per annum.²⁶

Inflationary pressures are forecast to increase from an estimated 6.8% in 2016 to 7.5% in 2017.

At the end of December 2016, the Kina, was trading at approximately 3.2 Kina to the US Dollar. The Kina has depreciated against the USD over the last 5 years from around 2.1 Kina to the USD in 2012 to 3.2 Kina at the end of 2016. It is likely to remain volatile in the next few years, owing to changes in global commodity prices and broad movements in the values of major trading currencies.

The economy of PNG sees an export-oriented, capital-intensive minerals sector operating in parallel to traditional rural subsistence. Agriculture currently accounts for 22.3% of GDP and supports more than 75% of the population. PNG's natural resources include gold, copper, oil, gas, timber and fish. Despite significant wealth generated from mineral exploitation over the last 20 years, the resources sector has provided relatively few jobs. Mineral deposits, including copper, gold and oil, account for almost 80% of export earnings.

Natural gas reserves amount to an estimated 155 billion cubic meters. A US led consortium has constructed a liquefied natural gas (LNG) production facility that began exporting in April 2014. As the largest investment project in the country's history, it has the potential to double GDP in the near-term and triple PNG's export revenue. PNG's first oil refinery opened in 2004 and the owners are building a second LNG production facility. The government faces the challenge of ensuring

²⁴ Constitution, Section 172 (2).

²⁵ References to amounts in \$ are to US dollar amounts converted using official BPNG exchange rates for the period in question.

²⁶ Presentation by Mr. Loi M. Bakani, CMG Governor, BPNG, 32nd Australia-PNG Business Council Forum, Cairns, 16 May 2016.

transparency and accountability for revenues flowing from this and other large LNG projects. In 2011 and 2012, the National Parliament passed legislation that created an offshore Sovereign Wealth Fund to manage government surpluses from mineral, oil, and natural gas projects. In recent years, the government has opened up markets in telecommunications and air transport, making both more affordable to the people.

The Port Moresby Stock Exchange (POMSOX) currently lists 17²⁷ companies that cover industries such as Aviation, Banking, Finance, Industrial, Mining & Exploration and Oil & Gas. It had a market capitalisation of K54.4 billion (around \$17 billion) at the end of 2016.

The divide between the rich and the poor in PNG is substantial. Per capita flow of international aid to PNG is approximately US\$40. About 1/3 of the PNG's total budget is planned for development purposes, and roughly 2/3 of this is financed through concessional project loans and donor grants.

Imports

Imports were estimated to be worth K7,063.8 million (\$2.54 billion²⁸) in 2015²⁹ and come in large part from Australia (38.5%), the US (26.1%), China (7.1%), Singapore (5.2%), Indonesia (4.1%), Malaysia (3.2%), New Zealand (2.7%) and Japan (2.6%).

Exports

The main export destinations are Japan (25.9%), Australia (24.8%), China (18.3%), Taiwan (9.1%), Singapore (8.1%) and Germany (2.3%) and the total value of exports was an estimated K23,302.7 million (\$8.38 billion) in 2015. Mineral exports accounted for K13,337.3 million (\$5.95 billion) in 2013 and grew to K19,387.5 million (\$6.98 billion) by 2015. Non-mineral exports have been dropping from K2,744.5 million (\$1.22 billion) in 2013 to K2,368.4 million (\$852 million) in 2015³⁰. The main component of the non-mineral export sector are forest and maritime products which were valued at K1,568.8 million (\$556 million) in 2015.

Inconsistencies in Money Flows

In general terms, we would expect a correlation between the flow of goods and services (exports and imports) and the flow of funds (international funds transfers) to pay for imports and as receipts for exports. Yet if we look at the flows of funds between Australia³¹ and PNG and the export³² and import figures there are issues which require more analysis.

There are some serious inconsistencies in the flow of funds into and out of PNG. Of course, the value of imports in a given period will not necessarily match the transfer of funds to the import source. For that reason, we need to be careful in drawing conclusions from the trade data but we can at least form some tentative judgements where the differences seem greater than would be expected.

Where the nature of imports involves manufactured consumer goods (cars, household goods, food or commercial and industrial equipment), as is the case in PNG, we should expect that there would be a general correlation between the value of imported goods and services and payments to the exporters of those goods and services. A disparity will arise because of delays in invoicing and

²⁷ One of which is currently suspended.

²⁸ Kina values converted to USD at BPNG official rate for the year.

²⁹ QEB Statistical Tables published by BPNG.

³⁰ BPNG Quarterly Economic Bulletin (QEB) Statistical Tables

(<https://www.bankpng.gov.pg/statistics/quarterly-economic-bulletin-statistical-tables/>)

³¹ Australia is the largest source of imports to PNG and it is second only to Japan as a destination for exports. The value of the transfers is based on the total of each international fund transfer instruction (IFTI) recording a transfer between the two countries.

³² In the case of Australia, the value of imported services and transfer payments figures to PNG do not include off line aid payments by Australia for consultancy, education and procurement related to aid projects.

payments, seasonal variations in agricultural crop flows, delays in the collection of statistics and the fact that the payments might be made to the country of manufacture rather than the country from which the goods were imported³³. There may also be cases where the payment is made to a country other than the country providing the goods or services³⁴. Disparities will also occur because funds are transferred off shore for investment purposes, as repatriated profits to off shore owners or as repatriated earnings of expatriate workers.

There may be also cases where excessive profits are being repatriated. While generating excessive profits is not illegal, many of the ways in which such profits are realised may involve illegal activity. This might arise because of the use of transfer pricing arrangements through related companies to shift value to a low tax regime. This might breach transfer pricing prohibitions but it might also involve fraudulent documentation. Overcharging for management or advisory services by a related company also enable profits to be moved offshore by transferring the apparent cost of the service as payment while increasing tax deductions in the home jurisdiction. An example might involve the provision of specialist consulting or legal services at inflated (non-market) prices by related entities or even apparently unrelated entities.

Table 1. Imports to PNG from Australia

YEAR	TOTAL IMPORTS ³⁵	IMPORTED SERVICES	IFTIs OUT OF PNG	GAP
2014	\$1,556,847,600 (K 3,369,800,000)	\$ 14,470,041 (K 32,091,464)	\$ 3,375,746,715.19	\$1,804,429,074
2015	\$1,309,308,770 (K 2,718,100,000)	\$ 159,083,106 (K 330,253,491)	\$ 2,492,347,740.93	\$1,023,955,864
2016 ³⁶ (JAN – OCT)	\$759,630,580 (K 1,847,800,000)	\$ 47,480,293 (K 115,495,727) ³⁷	\$ 1,789,688,997.28	\$ 982,578,124

Table 1. shows that the value of imports (goods and services) and other transfer payments (such as those recorded as family maintenance) from Australia to PNG is significantly less than the value transferred to Australia by international funds transfers during the corresponding period. Indeed, in

³³ For example, Singapore records the third largest export value to PNG behind Australia and the USA and well ahead of fourth ranked China. Imports from Singapore obviously include goods shipped from Singapore but which originated elsewhere.

³⁴ The use of countries such as Singapore or Ireland to reduce taxation by having revenue earned from services provided in one country attributed to another lower tax country is widely reported. See for example, <http://www.afr.com/technology/technology-companies/google/yes-google-does-pay-tax-on-2-billion-ad-revenue-5-million-in-singapore-20150413-1mjymy>

³⁵ Converted to AUD using BPNG official rate for the year

³⁶ NOTE: IFTIs cover January to September while the import figures cover the slightly longer period from January to October. The services figure is for the **full year** but the full year import figures are not yet published.

³⁷ Note that these figures are for **FULL YEAR 2016**. If this was adjusted to an approximate figure of 75% of the annual amount this would be \$35,610,219 for the first three quarters. The approximate value of the gap would then be \$994,448,198.

some years the value transferred out of PNG to Australia has been more than double the value of imported goods and services. This gap might be because of purchase of goods in Australia not intended for importation to PNG (for example, property purchases in Australia) or because of funds being transferred without any corresponding inwards transaction such as the transfer of profits from Australian owned businesses to the parent company. Many of these transfers will be legitimate. But the volume of funds being transferred out of PNG without an apparent economic rationale calls for further investigation. Some of these funds may be the result of money laundering. The volume of funds exceeding the value of imported goods and services is such that further work needs to be undertaken to seek to ascertain what other legitimate transfers are occurring and therefore the possible value of illicit or money laundering transactions.

Conversely, the value of exports should generally reflect the value of funds remitted to pay for those exports. In the case of export earnings, the values are more likely to be different because the value of the exports are less likely to be matched by the amounts remitted. In large part this will be because the exporting company retains the value off shore. Where exports are largely made up of agricultural and mineral products most of the added value will remain off shore because only the cost of extraction needs to be remitted to maintain the domestic operation. Yet, in the case of exports to Australia the actual export figures compared to the value of international fund transfers to PNG shows that more money is transferred into PNG than is necessary to pay for the goods exported.

One likely explanation for some of this movement will be capital injections for new or expanding projects. The payments may also reflect remittance payments from Australia to PNG by expatriate workers, payments for services or goods not reflected in the official balance of payments figures or other legitimate transfers, for example, NGOs and charities might send funds to assist in local projects. It may also indicate that there are funds returning to PNG from illicit sources.

Table 2. Exports to Australia from PNG

YEAR	TOTAL EXPORTS ³⁸	EXPORTED SERVICES	IFTIs IN TO PNG	GAP
2014	\$ 3,023,284,500 (K 21,625,700,000)	\$ 25,754.188 (K 57,117,296)	\$ 3,847,878,250.63	\$ 798,839,562
2015	\$ 2,783,214,430 (K 5,777,900,000)	\$ 100,819,456 (K 209,299,266)	\$ 3,283,500,747.81	\$ 399,466,861
2016 ³⁹ (JAN – OCT)	\$ 2,077,288,300 (K 5,053,000,000)	\$ 109,883,717 (K 267,291,942)	\$ 2,659,528,211.58	\$ 472,356,194

Overview of the Financial Sector

In PNG, the financial sector is small and largely oriented to serve the formal sector and provides little reach to the very large informal, rural and self-employed segments of the population. Approximately

³⁸ Converted to AUD using BPNG official rate for the year as the IFTI data is in AUD.

³⁹ NOTE: IFTIs cover January to September while the export figures cover the slightly longer period from January to October.

85 percent of the adult population lacks access to the formal sector. Around 1.2 million people are included in the formal financial system. However, these numbers are growing as financial service providers seek to expand their services. The use of mobile phone and internet access will see significant increases in access, at least to basic financial products.

Alternative methods of payments services in the country are being developed. These are regulated by the Bank of Papua New Guinea (BPNG) and, as new electronic and mobile payment services and systems are developed, BPNG is working with the service providers and other stakeholders to develop the necessary legal and regulatory regime that will enable new, innovative and interoperable electronic payment systems to be introduced to the market. Unless the regulatory systems are developed and implemented from the commencement of new technologies these represent a money laundering and terrorism financing (ML/TF) risk.

Two thirds of financial sector assets are held by four locally incorporated banks, two are Australian owned (ANZ and Westpac) and two are locally owned (Bank of South Pacific (BSP) and Kina Bank). BSP is the largest with over a million retail bank accounts.

Authorized Superannuation Funds (ASFs) represent the next largest share of assets, two of which dominate and represent the longer term oriented institutional investors. Other deposit takers in the form of finance companies, savings and loans societies and microfinance operators are all small in size and in aggregate but are growing. The insurance sector is constituted by a moderately dynamic non-life insurance sector and a nascent life sector. PNG has a small stock exchange, operating under the *Securities Act 1997* and licensed by the Securities Commission.

Despite rapid growth in recent years, PNG's financial system remained stable during the Global Financial Crisis and avoided any direct impact. Since 2000, a favourable external environment and the introduction of financial sector reforms after a crisis through the 1990s provided a strong foundation for financial sector expansion. Total financial sector assets have increased from K9.5 billion at the end of 2005, to K23 billion as of March 2010 and K41.2 billion as of December 2016.

Rationale for a National Risk Assessment

This is PNG's first money laundering and terrorist financing national risk assessment (NRA). In conducting this assessment, the aim is to identify, understand and assess the money laundering and terrorist financing risks faced by PNG. Money laundering is a global problem. It can undermine the integrity and stability of financial markets and institutions. It enables criminals to enjoy the profits of their illegal activities.

According to the UNODC, "Money is the prime reason for engaging in almost any type of criminal activity. Money-laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence."

The APG explains that, "Money laundering" is not a legal term in international law but is used to loosely describe the "turning of dirty money into clean money". The act by which illicit funds are made to appear legitimate (which the term refers to) is defined in key international instruments, most notably the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the UN Convention Against Transnational Organized Crime (the Palermo Convention). The latter defines money laundering as:

The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; or the concealment or disguise of the true nature, source,

location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. (Article 6, UN Convention Against Transnational Organized Crime).

The act of conversion and concealment is crucial to the laundering process. But it is important to note that "laundered funds" never become legitimate. They only ever have the appearance of legitimacy, not the reality, even though the so-called money trail may be complicated and obscure the original criminal source of the funds. This is important because in jurisdictions where there is a criminal asset confiscation scheme (proceeds of crime legislation), such as PNG, apparently legitimate laundered funds may still be forfeited to the State as criminal proceeds.

Estimates of the global size of money laundering vary. Given the clandestine nature of money laundering, its actual size can only ever be estimated. The European Commission's 2013 impact assessment of the EU's AML/CTF legislative framework points to global criminal proceeds potentially amounting to some 3.6% of GDP; around \$2.1 trillion in 2009.⁴⁰ The best available international estimate of amounts laundered globally would be equivalent to some 2.7% of global GDP or \$1.6 trillion in 2009.⁴¹ These estimates are consistent with the original 1998 IMF estimate of global money laundering as between 2 and 5 percent of global GDP.⁴²

More recent publications⁴³ tend to simply adopt and apply the IMF estimate which now suggests a global figure between \$800 billion and \$ 2 trillion.

Both money laundering itself, and the underlying criminality (predicate offences) which drives the need to launder money, present a significant risk to PNG. While PNG is less likely to attract foreign proceeds of crime because of the relatively small size of its financial sector and the availability of more conducive jurisdictions, domestic proceeds of crime need to be laundered both within the country and to other jurisdictions such as Australia, Singapore, Malaysia and China.

Money laundering of the proceeds of crime enables further criminal activity. For example, the successful laundering of drugs profits will inevitably lead to further drug purchase at source, importations and sales.

Terrorism Financing is a major area of international concern. As the UNODC point out, "Terrorists and terrorist organizations also rely on money to sustain themselves and to carry out terrorist acts. Money for terrorists is derived from a wide variety of sources. While terrorists are not greatly concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it has been collected. Terrorists and terrorist organizations therefore employ techniques similar to those used by money launderers to hide their money."

There is a marked overlap between money laundering and terrorist financing – both criminals and terrorists use similar methods to store and move funds. However, the motive for generating and moving funds differs. Terrorists ultimately need money to commit terrorist attacks. Unlike criminal

⁴⁰ 'Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing and Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds', European Commission, February 2013

⁴¹ 'Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes: Research report', UNODC, October 2011.

⁴² This 'consensus range' was announced by the then Managing Director, Michel Camdessus in a speech at the FATF Plenary meeting in Paris on 10 February 1998. The methodology for this analysis was not disclosed.

⁴³ See UNODC, Globalisation and Money Laundering, <https://www.unodc.org/unodc/en/money-laundering/globalization.html> and Global Economic Crime Survey 2016, PricewaterhouseCoopers, <http://www.pwc.com/gx/en/services/advisory/forensics/economic-crime-survey/anti-money-laundering.html>

gangs, terrorist groups involve disparate individuals coming together through a shared motivation and ideology. Finance is an essential aspect of enabling terrorist groups to function, recruit and commit terrorist acts. A lack of funds can have a direct effect on the ability of terrorist organisations and individuals to operate and to mount attacks. Increasingly there are well documented concerns expressed by researchers, security agencies and those involved in responding to ML/TF⁴⁴ that there are crossovers between organised criminal gangs and terrorism financing with criminals being involved in the movement of funds intended to fund terrorist activities.

Given the incidence of terrorist activity in the region, PNG needs to be aware of the possibility that funds destined for terrorist groups may pass through PNG.

Over the last two decades, countries have increasingly recognised that the threats to financial integrity and stability, national security and the incidence of serious criminal activity driven by large profits have required concerted international and national responses. These responses have focused on identifying and mitigating risk. While there are several methodologies and approaches⁴⁵ to assist in this risk identification process, the guidance provided by the FATF provides a relatively straight forward approach and one which is consistent with the risk managing processes used by financial institutions (and other businesses) to identify, mitigate and manage risk. For this reason, it was adopted as the basis for the NRA by FASU from the BPNG.

Risk Based Approach

FATF Recommendation 1 lays out several basic principles regarding risk assessment. First, it calls on countries to “identify, assess and understand” the ML/TF risks they face, and states that countries should also designate “an authority or mechanism to co-ordinate actions to assess risks”.

The goal is to ensure that countries can mitigate their ML/TF risks effectively, and the risk assessment is clearly intended to serve as the basis for application of the risk-based approach, *i.e.*, “to ensure that measures ... are commensurate with the risks identified.” The text of the Recommendation adds that the “[risk-based] approach” (and therefore the risk assessment process on which it is based) should also be “an essential foundation” in allocating AML/CTF resources efficiently. Furthermore, risk assessments carried out by countries should be used for determining higher and lower risks that may then be addressed by applying enhanced measures or allowing simplified measures respectively. FIs and DNFBPs are required to be able to identify, assess and take effective action to mitigate ML/TF risks.

The objective of the risk-based approach is to ensure AML/CTF measures are commensurate with the “risks identified”, as well as to enable decision making on effective resource allocation⁴⁶. Countries should take steps to identify and assess their ML/TF risks on an “ongoing basis.” The objectives of the process at the country level are:

- (1) to provide input for potential improvements to the AML/CTF regime, including through the formulation or calibration of national AML/CTF policies,
- (2) to help in prioritising and allocating AML/CTF resources by competent authorities, including through feeding into any risk assessments conducted by such competent authorities (*e.g.*, supervisors) and

⁴⁴ See for example, *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)*, FATF, 2015 and Alda, E and Sala, J L, *Links Between Terrorism, Organized Crime and Crime: The Case of the Sahel Region*. Stability: International Journal of Security & Development, 3(1): 27, pp. 1-9, 2014

⁴⁵ The FATF, IMF and World Bank have developed different approaches which all seek to assist countries to identify ML/TF risk.

⁴⁶ See Interpretive Note 1 on FATF Recommendation 1.

(3) to feed into the AML/CTF risk assessments carried out by financial institutions and DNFBPs.

Supervisors responsible for the implementation and application of national AML and CTF policies should, in accordance with FATF Recommendations 26 and 28, review the risk assessments prepared by FIs and DNFBPs and take the result of that review into consideration in their supervision. Country-level risk assessments should be kept up-to-date, and **appropriate information should be shared with all relevant competent authorities, self-regulatory bodies, financial institutions and DNFBPs.**

In the cases of higher and lower risk determination, country-level risk assessments have very specific roles: Where countries identify higher risks, they should ensure that their AML/CTF regime addresses these risks. Where countries identify lower risks, they may decide to allow simplified measures to be applied in relation to some of the FATF Recommendations.

This NRA therefore seeks to:

- Identify the ML and TF risks which PNG faces,
- Analyse and understand those risks,
- Identify structural, capacity and skills deficiencies which provide additional threats,
- Identify current and future mitigation activities which can reduce ML and TF risks, and
- Provide a basis for policy development, legislative action, compliance and enforcement activities and resource allocations,

to respond to the residual ML and TF risks.

Potential Users of the NRA

The form, scope and nature of the NRA must ultimately meet the needs of all its intended users – Minister, legislators, policy makers, supervisors, operational agencies, financial institutions, DNFBPs, and civil society. The number and diversity of users (*Table 3.*) of a NRA will vary according to the circumstances of individual jurisdictions. Large, diverse and developed economies will often have large numbers of users inside and out of government. In federal systems, such as Canada, the USA and Australia, there will be provincial as well as national agencies with law enforcement and regulatory obligations who will draw on the NRA. In small unitary systems, particularly those in developing economies the number of users may be quite small but, between them, they will have most of the obligations shared amongst users in large economies.

In PNG, the users of the NRA will include:

Table 3. Users of the NRA

Functional Responsibility	Relevant PNG Agency or Entity
Policy makers and other authorities, who are required to formulate the national AML/CTF policies, make decisions on the legal and regulatory framework and the allocation of resources to competent authorities based on FATF Recommendation 2.	<ul style="list-style-type: none"> ▪ Prime Minister ▪ Ministers ▪ Parliamentarians ▪ Department of Prime Minister and National Executive Council (PM&NEC) ▪ BPNG ▪ FASU ▪ Department of Foreign Affairs and Trade (DFAT) ▪ Department of Justice and Attorney General (DJAG)

	<ul style="list-style-type: none"> ▪ Department of Finance ▪ Department of Treasury
Operational agencies, including law enforcement, other investigative authorities, financial intelligence units (FIUs), relevant border agencies, etc.	<ul style="list-style-type: none"> ▪ FASU ▪ Royal PNG Constabulary (RPNGC) ▪ Office of the Public Prosecutor (OPP) ▪ Internal Revenue Commission (IRC) ▪ PNG Customs Service ▪ Immigration and Citizenship Services Authority (ICSA) ▪ Investment Promotion Authority (IPA) ▪ Securities Commission of Papua New Guinea (SCPNG) ▪ National Gaming Control Board ▪ Office of the Insurance Commission (OIC) ▪ Lands and Physical Planning Department ▪ PNG Forestry Authority (PNGFA) ▪ National Fisheries Authority (NFA)
Regulators, supervisors and self-regulatory bodies (SRBs).	<ul style="list-style-type: none"> ▪ BPNG ▪ FASU ▪ Securities Commission of Papua New Guinea (SCPNG) ▪ Office of the Insurance Commission
Financial institutions, and designated non-financial businesses and professions (DNFBPs), for which the national-level ML/TF risk assessment is a critical source ⁴⁷ contributing to their own ML/TF risk assessments and risk-based obligations.	<ul style="list-style-type: none"> ▪ Banks ▪ Other entities providing financial services (loans, taking deposits, leasing, credit cards etc) ▪ Finance Companies ▪ Insurance Companies (Life and General) ▪ Securities traders and brokers ▪ Unit Trust industry ▪ Financial Cooperatives ▪ Lawyers, notary public or other independent legal practitioner or an accountant engaged in any of the following on behalf of a client: <ul style="list-style-type: none"> ○ buying or selling real estate ○ managing client currency, securities or other assets ○ organising contributions for the creation operation or management of bodies

⁴⁷ According to the FATF standard, countries are expected to make appropriate information on the results of their national risk assessment available to financial institutions and DNFBPs for this purpose.

	<ul style="list-style-type: none"> o creating or operating or managing corporate or unincorporated entities o buying or selling businesses <ul style="list-style-type: none"> ▪ Accountants ▪ Trust and Company Service providers ▪ Gold dealers ▪ Dealers in precious metals and stones ▪ Money Exchange Companies ▪ Real Estate Agents ▪ Motor Vehicle Dealers ▪ Casinos
Non-profit organisations (NPOs).	<ul style="list-style-type: none"> ▪ Investment Promotion Authority ▪ Individual NPOs ▪ International and domestic donors
AML/CTF assessors and assessment bodies more broadly, along with other international stakeholders.	<ul style="list-style-type: none"> ▪ FATF ▪ APG ▪ IMF ▪ World Bank ▪ ADB ▪ UNODC
Civil Society	<ul style="list-style-type: none"> ▪ Transparency International ▪ The public, as well as academia, etc. ▪ Customers of reporting entities and consumers more generally who are affected by costs of ML and the impact of TF

Assessing Papua New Guinea’s ML/TF Risk

Key Concepts

In utilising the NRA it is important to have a common understanding of key concepts and terms that will be used in this assessment. Many of these come from the area of *risk management*, a process commonly used in the public as well as the private sectors to help in decision-making. While many risk management concepts are usefully described elsewhere⁴⁸, their use in this assessment has been adapted to assessing ML/TF risk at the national level. **Broadly speaking, however, risk management involves developing the appropriate measures to mitigate or reduce an assessed level of risk to a lower or acceptable level.**

In the NRA, the following key concepts⁴⁹ are used:

⁴⁸ See for example ISO (2009a), ISO (2009b) and ISO (2009c)

⁴⁹ As described in FATF Guidance, *National Money Laundering and Terrorist Financing Risk Assessment*, FATF, 2013, p7.

- A **threat** is a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. through illegal activity. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities. *Threat* is one of the factors related to risk, and typically it serves as an essential starting point in developing an understanding of ML/TF risk. For this reason, understanding the environment in which predicate offences are committed and the nature (and if possible the size or volume) of the proceeds of crime that are generated is important to carry out a ML/TF risk assessment. In some instances, certain types of threat assessments (such as those carried out by reporting entities or more broadly by government law enforcement agencies) might serve as a precursor for a ML/TF risk assessment.⁵⁰ In the NRA, the focus is on the threats posed by different kinds of predicate offences.
- The concept of **vulnerabilities** as used in this risk assessment comprises those things that can be exploited by the threat or that may support or facilitate its activities. In the ML/TF risk assessment context, looking at *vulnerabilities* as distinct from *threats* means focussing on, for example, the factors that represent weaknesses in AML/CTF systems or controls or certain features of a country. They may also include the features of a sector, a financial product or type of service that make them attractive for ML or TF purposes.
- **Consequence** refers to the impact or harm that ML or TF may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally. The consequences of ML or TF may be short or long term in nature and also relate to populations, specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector. As stated above, ideally a risk assessment involves making judgments about threats, vulnerabilities *and* consequences. Given the challenges in determining or estimating the consequences of ML and TF it is accepted that incorporating consequence into risk assessments may not involve particularly sophisticated approaches, and that countries may instead opt to focus primarily on achieving a comprehensive understanding of their threats and vulnerabilities. The key is that the risk assessment adopts an approach that attempts to distinguish the extent of different risks to assist with prioritising mitigation efforts.
- **Risk** is a function of three factors: *threat*, *vulnerability* and *consequence*. An ML/TF *risk assessment* is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand ML/TF risks and serves as a first step in addressing them. Ideally, a risk assessment, involves making judgments about threats, vulnerabilities and risks, which are discussed below.

Methodology

The NRA has been developed by FASU using a methodology agreed with the ADB and discussed with all the relevant government agencies and key reporting entities. The starting point was agreement on the purpose and scope of the assessment as well as the process through which the assessment was conducted; the stages of the risk assessment, the participants, users and other parties involved; the information which may be used, and the outcome of the assessment process. While there is no

⁵⁰ The United Nations Office on Drugs and Crime (UNODC) has published *Guidance on the preparation and use of serious and organised crime threat assessments* ("The SOCTA Handbook"), which provides useful information on the conduct of national threat assessments related to serious and organised crime.

single or universal methodology for conducting an ML/TF risk assessment there are core principles which need to be followed. Outlined below is the process used to develop the NRA.

Agreement on purpose and scope

A NRA is intended to identify, assess and ultimately understand ML/TF risks. It will also inform the development of policy and the deployment of resources by supervisors, law enforcement and other competent authorities. Understanding the scale and impact of identified risks can also assist in determining the appropriate level and nature of AML/CTF controls applied to products, reporting entities or sectors.

FASU⁵¹ determined the proposed purpose and scope of the NRA. FASU then arranged meetings with representatives of all the agencies represented on the National Coordinating Committee (NCC)⁵², which is the national body established to coordinate PNG's AML/CTF efforts. At these meetings, the rationale for and the role and purpose of a NRA and the proposed process were discussed and agreed. Similar meetings were held with representatives of the reporting entities and with other civil society groups. Subsequently the NCC agreed on 25 August 2016 to the proposed purpose and scope of the NRA and of the processes which would be undertaken. It was agreed that the NRA would:

- Deal with both money laundering and terrorism financing threats,
- Be comprehensive enough to provide an overall picture of the national ML/TF risks across the AML/CTF regime. This picture should include sufficient breadth and depth about potential threats and vulnerabilities⁵³ and their consequences to address the purpose and scope of the assessment,
- Be focused on national threats and resultant risks, noting that individual reporting entities are required to conduct their own risk ML/TF assessments (which will help to inform this and future NRA),
- Utilise existing risk assessments⁵⁴ at the national or regional level to help inform the NRA,
- Cover
 - all the relevant sectors of the financial community (eg, banks, non-bank FI's, DNFBPs, NPOs),
 - all the regulators, compliance entities and other agencies such as RPNGC, Customs, ICSA, IRC and the FASU,
 - the range of financial products and services that are available,
 - the potential abuse of sectors rather than of individual institutions, and
 - the degree of aggregation or disaggregation of risks, and

⁵¹ Initially assisted by consultations with the ADB and a mission in August 2016 including a consultant engaged by the ADB under TA-8659 REG: Targeted Pacific Financial Sector Strengthening: Supporting National Risk Assessments - Anti-Money Laundering Specialist (Papua New Guinea) (48262-001).

⁵² The members of the NCC are senior representatives from the Department of Justice and Attorney General; Bank of Papua New Guinea; Department of Prime Minister and National Executive Council; Department of Foreign Affairs and Trade; Department of Finance; Department of Treasury; National Gaming Control Board; Royal Papua New Guinea Constabulary; Office of the Public Prosecutor; PNG Custom Service; Internal Revenue Commission; Investment Promotion Authority; Securities Commission; Office of the Insurance Commission; and Immigration and Citizenship Services Authority. The co-chairs are the Governor of the Bank of Papua New Guinea and the Secretary of the Department of Justice and Attorney General. The PNGFA and the NFA have been added to the NCC for the purposes of its consideration of the NRA.

⁵³ Sectoral risk assessments, in relation to high risk areas of the financial system or other areas where other high ML or TF risks might eventuate, could also be conducted.

⁵⁴ For example, *Transnational and Organised Crime in East Asia and the Pacific - A Threat Assessment*, UNODC, April 2013 and *Terrorism Financing South-East Asia and Australia, Regional Risk Assessment 2016*, AUSTRAC 2016.

- Consider the adequacy of resources in both the public and private sector to address the identified risk.

The NCC also recognised that where information gaps exist or difficulties in reaching conclusions arise, these will be recognised in the risk assessment and will then become areas where more work is done in the future. It also recognised that the uncertainty caused by the lack of information may itself raise the risk profile of the issue under consideration.

Planning and organisation of the NRA

FASU adopted a comprehensive plan for the preparation of the NRA. The plan addressed time frame, roles, participants, sources of information, threat identification, analysis, mitigation activities in place or which could be adopted and assessment of resultant risk. A key part of this plan was to involve all the key public and private sector entities which were vital contributors to the process and who will be the major users of the NRA. The NRA was developed over a period of 15 months.

The actual NRA process involved three stages, although these were undertaken around other activities such as onsite visits⁵⁵ and work on various stages overlapped.

It is useful for descriptive purposes to divide the NRA process into a series of activities or stages: *identification, analysis, and evaluation*⁵⁶:

- The process of **identification** starts by developing an initial list of **potential threats** PNG faces when combating ML/TF. These were drawn from known or suspected threats or vulnerabilities. The process was dynamic because while it was comprehensive there was need to be aware of new or previously unidentified risks which may need to be considered at a later stage of the development of the NRA.
- The **analysis phase** involved consideration of the nature, sources, likelihood and consequences of the identified threats. Ultimately, the aim of this stage was to gain a **holistic understanding of each of the risks – as a combination of threat, vulnerability and consequence** to work toward assigning some sort of relative value or importance to them. The use of a matrix provided a useful means to analyse risk.
- **Evaluation** involved taking the risks analysed during the previous stage to determine priorities for addressing them. These priorities contributed to development of a strategy for their mitigation. **Developing and applying mitigation strategies are essential if risks are to be reduced.** While risks can never be eliminated, mitigation can significantly affect the impact of risk and reduce the overall risk faced by PNG.

As was to be expected, the process was often more iterative with tentative conclusions leading to new questions which needed additional information.

Sources and qualification of information

A variety of sources were involved in the collection and analysis of data: these included Government agencies, the private sector, international organisations, non-government organisations (NGOs) and other civil society groups and individuals with particular expertise or insights. Sources included:

- Ministries and regulators
- Law enforcement and prosecutorial authorities
- Intelligence and security services
- International organisations and foreign partners
- Financial institutions and DNFBPs

⁵⁵ A consultant was engaged by the ADB to assist in the preparation of the NRA. Funding was provided under TA-8659 REG: Targeted Pacific Financial Sector Strengthening: Supporting National Risk Assessments

⁵⁶ This description is taken from the FATF Guidance Material (see Note 5).

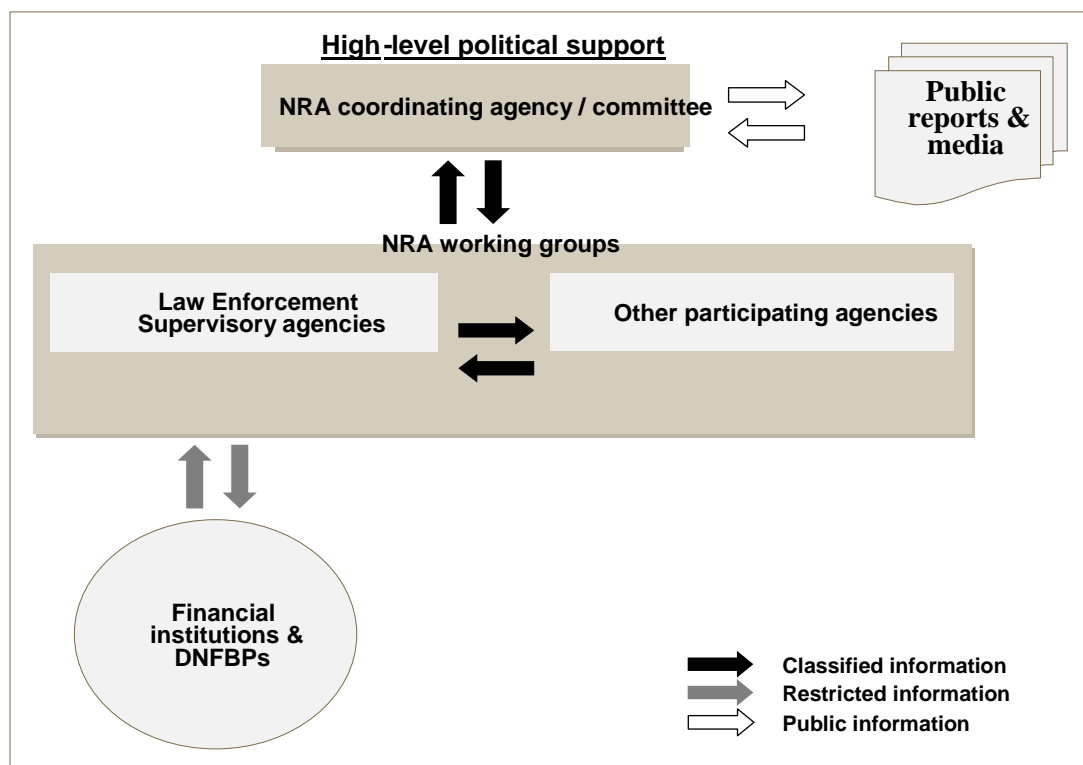
- Industry associations and SRBs
- Civil Society groups (including NGOs)

A comprehensive set of questions addressing the areas examined in the NRA was prepared and circulated by FASU to relevant public and private sector entities. The Questions (contained in **Attachment A**) covered:

- The Economy,
- Law Enforcement and Legal Framework, and
- Political, Social and Cultural Context.

The responses, together with open source material and information from other jurisdictions, were the basis for identifying the likely types and scale of predicate offences and the kind of ML and TF activity which might arise. Some information particularly that based on anecdotal evidence, local knowledge and experience and onsite experiences of donors, aid workers and foreign governments was collected through meetings and discussions. The relationships between the participants in the NRA process are shown in Figure 1.

Figure 1. Interrelationships between various contributors to the risk assessment process



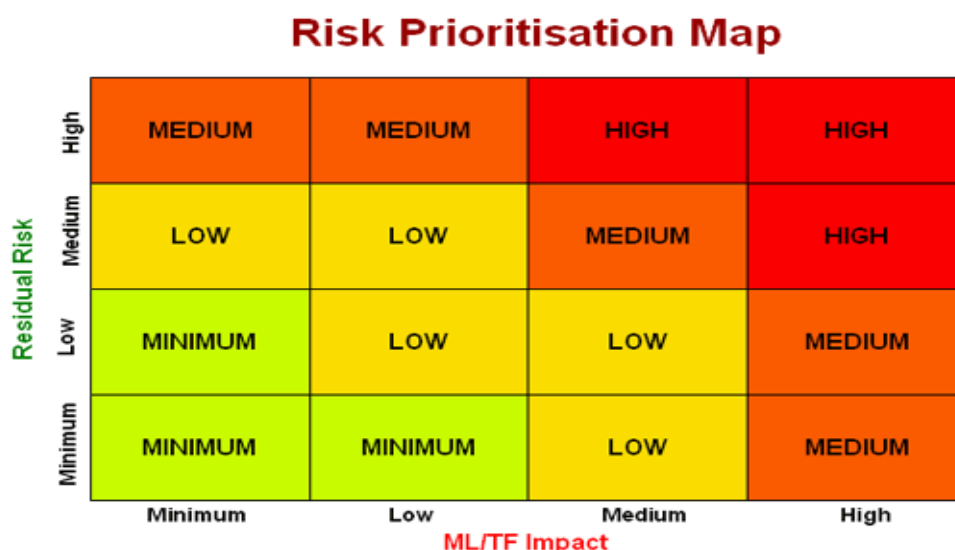
Assessing AML/CTF Risk

The final stage of the assessment was the evaluation of the relative exposure of each sector to risk. As part of this, areas were ranked based on risk, using the methodology outlined previously.

The terrorist financing risks were assessed separately using the same methodology.

A key part of this process was the development of risk maps (*Figure 2.*) or matrixes which enabled the relative level of risks to be demonstrated and to show how these levels of risk can be altered by corrective action. Showing that high level threats with a low likelihood of occurrence and reduced consequences might be regarded as lower level threats enabled much more informed decisions about how to respond to the range of ML/TF risks PNG faces.

Figure 2. Risk Prioritisation Map



A risk rating is a relative assessment, and a rating of low risk does not mean that there is no risk within a reporting sector or in relation to particular kinds of offences. Money laundering may still take place through low risk sectors at a significant level, and, as compliance is one of the factors considered in the risk assessment, sectors still need to invest significant effort to strengthen their AML/CTF controls to address the threats and vulnerabilities they face.

There is a general threat to PNG that criminals will attempt to launder proceeds of crime generated in PNG through some means, that all the financial sectors covered below can be used to launder money and that even where the criminal proceeds are derived off shore, those proceeds will be laundered so that the beneficiaries in PNG can enjoy the result of their criminal activities. The NRA risk rating model assesses the risk within each area, based on a series of factors to indicate the vulnerability of a particular sector to money laundering and the relative likelihood that the threat of money laundering will materialise in that particular sector, offset by any mitigation activities that are in place or which can be put in place.

It should also be noted that this approach generally focuses on the risk of businesses in a sector being used by criminals to facilitate money laundering, wittingly or unwittingly, due to the services it offers, rather than the risk that a business itself is established as a front for money laundering. That latter risk is also real and is addressed specifically in terms of the potential for money laundering businesses in the section on vulnerabilities.

The assessment has also looked at means of transferring funds that provide a degree of anonymity, and so present a greater risk than payments through the conventional payment systems that are directly linked to a bank account, such as debit/credit card payments, direct debit or other transactions through bank payment systems. A range of factors were considered when assessing the risk within the sectors, including law enforcement agencies' existing knowledge of money laundering through the sector, where a lower level of knowledge represents a vulnerability and so a higher level of risk. The factors considered when assessing the vulnerability of a sector or area included:

- The relative complexity and reach (national/international) of the services offered by the sector, or the capacity to move money internationally given the nature of the funds (i.e. cash, e-money)

- The relative volume and speed of money movement through firms in the sector, or the volume and speed of money movement given the nature of the funds
- The level of compliance within the sector

For factors such as complexity, reach and volume, and speed of money movement, the ratings are based on the nature of business undertaken by most of the sector.

The factors considered when assessing the likelihood that a threat will materialise in a sector/area include:

- The size of the sector or area,
- The likelihood that the sector will report suspicious activity to law enforcement, as indicated by the level of suspicious transaction or activity reports submitted by the sector, and
- Law enforcement agencies' existing knowledge of money laundering through the sector.

The consequences of criminals **successfully** laundering money through a sector were assumed to be severe for all the areas covered. Following the scoring of vulnerabilities and likelihoods, the matrix provides an indication of the area's risk, which is then categorised from Minimal to Very High risk levels. The assessment then considered the mitigating measures in place (or which can be introduced) in terms of PNG law enforcement agencies and supervisors' capability and capacity to combat money laundering in that area. Mitigation has the potential to reduce the overall risk level of an area where law enforcement or supervisory activity effectively mitigates the risk. The mitigated risk may be significantly lower if it is likely that risk can be mitigated but, in some cases, even with mitigation, risks will remain high.

Self-evidently the quality of the NRA depends largely on the types and quality of data and information available. While quantitative assessments (*i.e.*, based mostly on statistics) may seem much more reliable and able to be replicated over time, the lack of available quantitative data in the ML/TF field makes it very difficult to obtain and rely exclusively on such information. Moreover, in many countries quantitative information that would be useful to the NRA is not readily available. In the NRA process several such gaps have been identified and action is being taken to address these deficiencies for future NRAs.

This means that the NRA is also based on relevant qualitative information such as appropriate intelligence information, expert judgments, private sector input, case studies, thematic assessments, typologies⁵⁷ studies and other (regional or supranational) risk assessments in addition to any available quantitative data. Some of these qualitative elements are themselves based on limited information. The result is that the lack of information and data is itself a risk which is recognised in the NRA.

Armed with the required information (or as much as it has been possible to obtain) analysis of that information enabled determination of the threats, vulnerabilities, likelihood and consequences and, accordingly, the inherent risks in PNG. An outline of the NRA was developed, including tentative findings and conclusions that reflected the identified risks and how they might be mitigated.

The tentative findings and conclusions were modified as a result of looking at ways to mitigate risk. Mitigation strategies are a key feature of the NRA. Many ML and TF risks can be reduced, if not eliminated, by adoption of mitigation strategies. Resources can be better targeted. Products which are high risk and low return might be modified or withdrawn. Pooling information (between agencies or reporting entities) can significantly reduce risk. The NRA specifically addresses ways to remove or reduce risk.

⁵⁷ Typology or typologies refers to a study of or analysis or classification based on types or categories, in this case, risks in ML/TF

Evaluation of these findings (which tended in practice to be undertaken in conjunction with the analysis process) led to tentative key findings and conclusions. These were then tested in further discussion with key stakeholders (both from Government and the reporting entities). The final NRA was then prepared for consideration by the NCC and presentation to Government. The result is that, in large part, the NRA reflects a consensus on the risks which PNG needs to address. Where there were significant differences of view, these are reflected in the NRA, together with an explanation of the rationale for these differences.

International experience in the development of NRAs and their adoption by Government makes it clear that without a high degree of consensus the NRA will not be accepted by key players and the process lacks the legitimacy which is needed if it is to drive policy making, resource allocation and actions.

Governments, public sector agencies and reporting entities do not necessarily welcome analysis which demonstrates threats and vulnerabilities⁵⁸. Yet identifying weaknesses is the starting point to addressing the vulnerabilities and therefore reducing the risks. This is not always a welcome message but it becomes a key part of the NRA process. It might lead to additional donor assistance, allocation of additional resources by government and sharing of skills and knowledge within the private sector to reduce both sector and reporting entity risk.

These potential risks to the NRA process were addressed from the outset in discussions with all the key participants. It was stressed that any concerns (threats) identified in relation to particular agencies or sectors should be seen as part of the strength of the NRA process. The very significant extent to which consensus has been achieved and the preparedness of all the agencies involved to respond positively to the process underlines the value of the resultant NRA for all the potential users.

Confidentiality

Some Government agencies are understandably and properly concerned about the confidentiality of data which they hold. This will particularly be the case with policing and security agencies or with those who hold commercially sensitive information. Reporting entities are also concerned about the confidentiality of customer information or the competitive risk of disclosure of their own commercial information or vulnerabilities. On the other hand, claims for confidentiality are not always well founded and may be based on self-interest rather than genuine confidentiality. To be effective in identifying risks, developing mitigation strategies and determining priorities, the NRA needs to honestly and accurately recognise the reality of the ML and TF risks faced by PNG. The NRA therefore contains data which has not previously been public or readily accessible to provide a clear basis for further action. The NCC agreed that the complete NRA should be published in the form adopted by it.

Other planning considerations

While FATF Recommendation 1 requires that countries assess risks “on an ongoing basis”, and that they keep assessments up-to-date, no specific time frame is required. FASU has determined that it will plan on undertaking a new NRA process within 3⁵⁹ years but it will keep the NRA under review and respond as required to domestic and international developments such as:

⁵⁸ Governments may well seek to minimise threats and vulnerabilities which may be seen as politically damaging internally or internationally. Criticism of weaknesses in the performance of regulators (which increases vulnerabilities and risk) may not be well received including findings of low capacity in policing or prosecutors. Failures of banks to apply domestic legislation in relation to beneficial ownership, PEPs or due diligence which exposes them to increased supervision or possible action by third parties (eg, loss of correspondent relationships) will not be welcomed.

⁵⁹ FASU intends to revise the NRA before the Mutual Evaluation expected to be conducted in 2020.

- Changes in international standards or guidance⁶⁰.
- Changes in the political, economic or legal framework of the country.
- Developments in other countries' regimes (important trading partners or countries with similar financial sectors or legal systems).
- Issues raised by the private sector (for example, "level-playing field" concerns, "countries of concern" not already identified by FATF, new products, services and technologies).
- Open source material or public reports (for example, FATF typology reports) on new ML/TF trends.
- Domestic typologies studies and intelligence received from law enforcement and trends identified by FASU and other stakeholders, which may include updates on the vulnerability of a product or service.
- Information about trends in other countries (by means of international conferences, regular information exchanges, etc.).
- The cycle of mutual or self-evaluation may also be an important consideration for countries in deciding when to conduct or update their risk assessment.

⁶⁰ For example, FATF recommendations, IOSCO and IAIS publications, guidance and sound practice papers issued by the Basel Committee on Banking Supervision, UN Conventions, EU legislation.

CHAPTER TWO - LEGAL AND REGULATORY AML/CTF FRAMEWORK

Legal System and International Arrangements

PNG's legal system has a common law background and its higher courts follow procedures similar to those of other common law countries. Customary law is incorporated as part of the underlying law.

As a member of the United Nations, PNG is bound by Resolutions of the Security Council (UNSCR) and there are several of these which are directly relevant to national obligations to combat ML/TF.

While PNG ratified the UN Convention Against Corruption (UNCAC) in 2007, it has not ratified or acceded to the UN Convention Against Illicit Traffic in Narcotic drugs and Psychotropic Substances (Vienna Convention), UN Convention Against Transnational Organized Crime (UNTOC or Palermo Convention) or the UN International Convention for the Suppression of the Financing of Terrorism (TF Convention). It is now making efforts to ratify UNTOC.

PNG is a member of the South Pacific Forum. It signed the Honiara Declaration on Law Enforcement Cooperation in 1992 and the Nasonini Declaration in 2002. The former Declaration effectively adopted the initial FATF 40 recommendations and the latter Declaration adopted the FATF 9 Special Recommendations on Terrorism Financing⁶¹.

Legislative Framework

PNG now has in place an extensive legal framework which is compliant with the international AML/CTF standards set out by the FATF. It is a member of the Asia/Pacific Group on Money Laundering (APG), the regional FATF style body since 2008. PNG has agreed to adopt and implement the FATF 40 Recommendations.

The legislation which establishes PNG's AML/CTF system consists of the following laws:

- *Anti-Money Laundering and Counter Terrorist Financing Act 2015*;
- *Criminal Code 1974* as amended by the *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015*;
- *Mutual Legal Assistance in Criminal Matters Act 2005* as amended by the *Mutual Assistance in Criminal Matters (Amendment) Act 2015*;
- *Proceeds of Crime Act 2005* as amended by *Proceeds of Crime (Amendment) Act 2015*; and
- *United Nations Financial Sanctions Act 2015*.

A description of the key provisions of these Acts is at **Attachment B**.

These laws:

- Define money laundering and terrorism financing offences;
- Establish the FASU as the national FIU;
- Impose on FIs and DNFBPs
 - customer due diligence (CDD) and enhanced due diligence requirements,
 - customer identification and verification obligations, and
 - reporting and record keeping obligations, internal practices and procedures (appointment of AML/CTF officers and risk management reviews);
- Provide authority for the identification, freezing and seizing of criminal proceeds;
- Enable PNG to meet its AML and CTF obligations under UNSCRs; and
- Allow PNG to seek and provide mutual legal assistance in criminal matters.

⁶¹ These are now incorporated in the most recent iteration of the FATF 40 Recommendations.

Defining Money Laundering and Terrorism Financing

Most crimes in PNG are defined in the *Criminal Code Act*. Accordingly, in PNG money laundering is defined by Section 508B⁶² of the *Criminal Code Act*, rather than in the AML/CTF Act which defines money laundering by reference to Section 508B of the *Criminal Code Act*⁶³. The general nature of the offence is that a person who deals (widely defined to include conceals, disguises, converts, transfers, receives, uses etc) in criminal property (defined to include property of “every kind” derived directly or indirectly from criminal conduct) and who knows or reasonably ought to know that the property is criminal property is guilty of money laundering. There is a related offence (Section 508C) of dealing with property reasonably suspected of being criminal property. The law in PNG reflects the general approach in most countries to establishing a money laundering offence.

A majority of predicate offences for money laundering are in the *Criminal Code Act*. These offences are divided into 3 categories: crimes, misdemeanours and simple offences. Simple offences attract imprisonment for up to 12 months, misdemeanours attract imprisonment between 2 to 3 years and any offence attracting a term of imprisonment of more than 3 years is a crime. Simple offences and misdemeanours can be dealt with summarily (Schedule 2, *Criminal Code Act*).

The money laundering offence therefore applies to all serious offences including simple offences and misdemeanours attracting an imprisonment term of at least six months and meets international standards as set out in the Vienna and Palermo Conventions and the FATF Recommendations.

Under Section 508J of the *Criminal Code Act*, terrorism financing occurs where

a person by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part to carry out a terrorist act or to be provided to a terrorist organisation.

Terrorism is widely defined by reference to conduct prohibited under several UN Conventions and more generally where an act, or the threat of an act, involving serious violence, damage to property, public health or safety or interference with an electronic system which is intended to influence a government, or international organisation or to intimidate the public or a section of the public or for advancing political, religious or ideological causes. Terrorist financing attracts a fine of up to K100,000 or imprisonment for a term not exceeding 3 years or both for a natural person and a fine not exceeding K200,000 for a body corporate.

Responding to Money Laundering and Terrorism Financing

Proceeds of Crime

The POCA provides the legal basis to freeze, restrain and confiscate proceeds of crime and tainted property. It contains a conviction based stream, a civil based stream and an *in rem*⁶⁴ confiscation stream. Under the civil stream a restraining order and confiscation order is not dependent on criminal conviction for the offence alleged. Under the *in rem* stream, property can be frozen, restrained and forfeited without having to prove ownership and confiscation can take place at least six months after the restraining order. These powers are consistent with international standards.

Since 2010, the OPP has run six successful cases under POCA to restrain assets and have them forfeited. At one stage, assets worth an estimated K15 million were restrained. One matter resulted in a civil settlement in July 2010 where a sum of K1, 286,000.00 was forfeited to the State. There are five current cases where OPP is seeking recovery of proceeds of crime and enforcement of pecuniary

⁶² Inserted by *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015*.

⁶³ See Section 5 of the AML/CTF Act.

⁶⁴ Essentially the property is the subject of the application and the court order rather than any alleged activity or offence by a person.

penalties following criminal convictions. In the last matter, conviction was entered in March 2017 but the defendant appealed his conviction soon after, effectively staying any confiscation proceedings. In the earlier four matters, appeals against conviction were dismissed, discontinued or not filed and the assets have been forfeited automatically by law. However, the assets have not been managed and sold due to lack of asset management policy and guidelines.

PNG has made one mutual legal assistance request to Australia (and there have been 7 subsequent requests relating to the same matter) which related to a POCA proceeding that commenced in 2012.

In addition to freezing powers, the Commissioner of Police has power to direct a head of a government agency to produce documents that are required in a POCA investigation (s.164). The Commissioner can apply to a magistrate to enforce the direction in the event of non-compliance. These powers are designed to allow information in the possession of government agencies that is relevant to establishing if an offence has or is being committed or for an application to freeze, manage or recover proceeds of crime to be obtained. If the request from the Commissioner of Police is refused or not complied with within 21 days, the Commissioner may seek an order from a magistrate. The magistrate can, if satisfied that there is no reasonable ground for refusal (such as a legal obligation not to disclose information), order the disclosure and a refusal to comply is an offence under Section 164B of the POCA with a penalty of K20,000 or imprisonment for up to two years or both. This provides a framework to obtain evidence held by government agencies which might be relevant to establishing the predicate offence or the location of criminal assets and thus to the prosecution of a money laundering offence and the recovery of criminal proceeds.

UN Financial Sanctions

PNG's financial sanctions regime is contained in the *United Nations Financial Sanctions Act 2015* (Sanctions Act). The Sanctions Act establishes a legal framework for implementing targeted financial sanctions against persons or entities involved in or connected with terrorism, terrorist financing (TF), the proliferation of weapons of mass destruction (WMD) and other matters of international concern.

Section 7 of the Sanctions Act empowers the Prime Minister to make an interim designation of a person or entity to give effect to UNSCR 1373. A Sanctions Secretariat has been established in the Department of Prime Minister and National Executive Council.

Dealing with terrorist assets and providing assets and financial services to a designated person or entity or a person or entity owned or controlled by a person acting on behalf of a designated person or entity is prohibited under the Sanctions Act (ss.14 and 15). There are penalties for breaches and they include fines and imprisonment terms.

The Act aims to combat TF and proliferation financing (PF) by:

- Deterring non-designated persons or entities who might otherwise be willing to finance terrorist activity,
- Exposing TF "money trails" that may reveal leads to previously unknown terrorist cells and financiers,
- Dismantling TF networks by encouraging designated persons or entities to dissociate themselves from terrorist activity and renounce their affiliation with terrorist groups,
- Suffocating terrorist activity and nuclear development by shutting down the pipelines used to move funds or other assets,
- Forcing terrorists and developers of nuclear weapons or other WMD to use more costly and higher risk means to finance their activities, thus making them more susceptible to detection and disruption, and
- Fostering international co-operation and compliance with obligations under UNSCRs 1267, 1373, 1718 and 1737.

Designations of a person or entity by the United Nations Security Council (UNSC) or one of its Committees pursuant to any of the following UNSCRs have immediate effect in PNG:

- UNSCRs on Al-Qaida, ISIL (Da'esh) (Resolutions 1267/1989 and successor resolutions),
- UNSCRs on Taliban (Resolution 1989 and successor resolutions),
- UNSCRs on Democratic People's Republic of Korea (Resolution 1718 and successor resolutions), and
- UNSCRs on Iran (Resolution 1737 and successor resolutions). However, the Joint Comprehensive Program of Action terminated sanctions imposed under this Resolution.
- Designations by the UNSC or its Committees continue in force until they are revoked by the UNSC or its Committees.

A procedural guide was developed for the sanctions regime and it sets out the processes to be utilised in administering the Sanctions Act and outlines the roles of the Sanctions Secretariat.

The Domestic Designation mechanism gives effect to PNG's international obligations under UNSCR 1373⁶⁵, which targets international terrorism in general and goes beyond UNSCR 1267⁶⁶. Designations under the Sanctions Act are made by the Prime Minister, following consideration of the matter by the National Security Advisory Council (NSAC). Designations, re-designations or revocations are not made without first being considered by the NSAC. While the NSAC's advice will be taken into account when determining an application, the decision ultimately rests with the Prime Minister.

The Prime Minister via the Secretariat notifies FIs, DNFBPs and any other person considered necessary of designations made by the UNSC or its Committees. This is done by written advice to relevant entities.

The Sanctions Act, the *Criminal Code Act* and the AML/CTF Act do not provide for confiscation of terrorist property. However, the various offences attract imprisonment terms of more than six months' imprisonment and qualify as 'indictable offences' for purposes of confiscation under the *Proceeds of Crime Act*. The actual terrorist property may also be confiscated on the basis of being 'tainted' property.

Following the APG Mutual Evaluation of PNG in 2011 and as a result of the ICRG processes instituted by FATF in 2014, PNG has undertaken major reviews of the legislation relating to ML/TF. This is an ongoing process. The primary outcome of this review was the development and passage of the AML/CTF Act in 2015 as well as major amendments to the *Criminal Code Act 1974* (to include definitions of money laundering and terrorism financing) and the *Proceeds of Crime Act 2005* (to provide for more effective tracing, freezing, seizing and recovery of criminal proceeds) and the passage of the *United Nations Financial Sanctions Act 2015* (which establishes a process for compliance with UN sanctions including tracing, freezing, seizing and recovery of terrorist finances). However, FASU together with DJAG maintains an ongoing review of legislation to meet new international requirements or emerging issues.

The investigative agency for all offences under the *Criminal Code* and most summary offences under other legislation is the Royal PNG Constabulary (RPNGC). Summary offences are investigated by RPNGC investigators and prosecuted by police prosecutors before magistrates sitting in the District Court. Indictable offences (misdemeanours) that can be tried summarily (after election by the Public

⁶⁵ UNSCR 1373 is a counter-terrorism measure passed following the 11 September terrorist attacks on the United States

⁶⁶ UNSCR 1267 is an important building block of the UN global counter terrorism strategy

Prosecutor) are prosecuted by police prosecutors before Grade 5 Magistrates. Serious indictable cases are dealt with by police prosecutors at the committal hearing (in District Court) and prosecuted by State Prosecutors in the National Court after committal. Any appeal in the Supreme Court is handled by State Prosecutors.

Proceeds of crime cases are currently investigated by police investigators and referred to the Office of the Public Prosecutor (Proceeds of Crime Unit). Prosecutors in the unit appear in the National Court to obtain restraining and confiscation orders under the *Proceeds of Crime Act*.

For extradition and mutual legal assistance matters (incoming and outgoing) the Department of Justice and Attorney General (DJAG) is the Central Authority and facilitates all incoming and outgoing requests.

In many cases, money laundering and terrorism financing involve conduct which is opposite in character. Money laundering involves the attempt to hide the origin of predicate criminal proceeds. Terrorism financing, in most cases, involves the transfer of legitimately acquired funds for the intended or suspected purpose of facilitating a subsequent criminal act. While there is increasing evidence that criminal acts such as drug trafficking, robbery and people smuggling are used to fund terrorism, there is no requirement for a predicate criminal act.

It is the mechanisms used for these transactions on which we need to focus because both ML and TF involve the need to hide the link between the origin or destination of the property (often cash) and the participants in the predicate crime or the proposed terrorism.

For the purposes of the NRA, we are looking for ways in which funds can be laundered or transferred for ML and TF purposes and the extent to which those means represent threats which must be addressed if we are to reduce the risk of ML/TF in and through PNG.

This suit of legislation directly addressing ML/TF issues is supported by other legislation which establishes key regulatory bodies, regulates banking, insurance, securities and other financial products, regulates gambling, imposes income and other taxation, controls the movement of goods and people across the border, and regulates forestry and fishing. These laws include:

- *Central Bank Act 2000*
- *Banks and Financial Institutions Act 2000*
- *Superannuation (General Provisions) Act 2000*
- *Savings and Loan Societies (Amendment) Act 1995*
- *National Payments System Act 2013*
- *Extradition Act 2005*
- *Companies Act 1997* and Regulations
- *Insurance Act 1995*
- *Life Insurance Act 2000*
- *Securities Act 1997*
- *Gaming Control Act 2007*
- *Income Tax Act 1959* and related legislation⁶⁷ dealing with Sales Tax, Goods Tax and Stamp Duty
- *Customs Act 1951*
- *Forestry Act 1991*
- *Fisheries Management Act 1998*
- *Cooperative Societies Act 1982,*

⁶⁷ The extent to which the taxation legislation and its administration creates the possibility of serious fraud and gives rise to major ML risks.

- *Association (Incorporation) Act 1963*
- *Police Act 1998*
- Anti-corruption laws such as the Constitution and Organic Law which creates the Ombudsman Commission

CHAPTER THREE - PNG DEPARTMENTS AND AGENCIES WITH AML/CTF RELATED FUNCTIONS

The main agencies with functions relevant to PNG's AML and CTF activities are:

Policy Departments

The **Department of Prime Minister and National Executive Council (PM&NEC)**, which provides national policy oversight and support to the Prime Minister and the National Executive Council. The Office of Security Coordination and Assessment (OSCA) at PM&NEC accommodates and operationalizes the Sanctions Secretariat in line with the Procedural Guide and the UN Sanctions Act 2015 in relation to ML, TF, Sanctions and Proliferation issues.

The **Department of Foreign Affairs and Trade (DFAT)**, which is responsible for areas such as implementation of UNSCRs, PNG's relationships with other countries and domestic implementation of international obligations.

The **Department of Finance** is responsible for providing direction and support in financial policy formulation, financial systems development and maintenance, financial and accounting information processing, financial management and accounting procedures, monitoring of financial performance against the budget and legislative compliance and financial reporting requirements for the whole of Government.

Department of Justice and Attorney General (DJAG) is the central agency responsible for the administration of legal services to the Government of PNG and its instrumentalities, and the provision of law and justice services to the people. DJAG deals with Mutual Legal Assistance issues. The Justice Ministry also includes the courts and the **Office of the Public Prosecutor (OPP)**.

Department of Treasury undertakes research and provides advice to the Government on economic issues and prepares and monitors the National Budget.

Revenue Collection

Revenue is primarily collected by the **Internal Revenue Commission (IRC)** and the **PNG Customs Service** (which has border protection and trade facilitation roles as well). PNG imposes income tax, withholding tax and goods and services tax (GST) as well as a range of import duties. The IRC has wide-ranging powers to obtain information and access places, books and documents (including electronically stored records). There is a broad anti-avoidance provision (Section 361) in the *Income Tax Act*. It can issue garnishee orders to recover unpaid tax. Importantly, the offshore transfer of any funds in excess of K200,000 (\$63,000) in a calendar year requires a Tax Clearance Certificate (TCC). Certificates are issued for a period of three months and have to be issued for each transaction. There are detailed requirements to obtain a certificate.

The *Income Tax Act* also deals with international related party transactions (Section 197A) and transfer pricing is addressed under new arrangements which commenced in 2016.

An MOU dealing with information exchanges is in place between IRC and Customs and a similar MOU with FASU was signed in September 2017.

Border and Entry Controls

The **PNG Immigration & Citizenship Service Authority (ICSA)** is responsible for managing PNG's borders by authorising the movement of persons into and out of the country. This work includes visa processing, integrity checking and compliance and enforcement activities. In addition, the ICSA is responsible for assessing and issuing applications for PNG Passports and supporting the Citizenship Advisory Committee in relation to application for PNG Citizenship. Enhanced identification

requirements for PNG passports, restricting the use of agents and requiring new birth certificates and officially issued identification cards, came into effect on 17 March 2017.

Entry to PNG is controlled by a visa system. Work permits issued by the Department of Labour and Industrial Relations are required if a person wishes to work in PNG. Business visas are available to qualified applicants.

At PNG airports, the visa on arrival system allows people from more than 70 countries to enter PNG on a tourist or business visa who may then remain in breach of their visa conditions, unless identified and removed.

There is a growing tourist market for cruise ships to call into PNG ports. This has the potential to generate wealth for PNG and to provide a market for local businesses. Cruise passengers are required to go through the same entry and exit procedures as applied to those arriving by air.

The **PNG Customs Service** facilitates legitimate movement of people and goods across the border while maintaining the integrity and security of the border, ensuring supply chain security and protecting the health and safety of PNG. Customs manages and regulates the flow of goods through 22 ports, airports, and along a largely unpatrolled coastline and a porous land border.

It is required to collect both import duty and GST on goods at each entry point. Like all customs authorities, it relies to a large extent on the documentation produced by importers, their agents, shipping companies or airlines to identify the nature of the goods being imported. It relies on inspections, driven by intelligence or intuition, to identify fraudulent claims.

AML/CTF Controls

The **FASU**, which was established by the AML/CTF Act in 2015, is the financial intelligence unit (FIU) for PNG. It is responsible for enforcement of the AML/CTF Act and receives reports submitted by reporting entities under the AML/CTF Act. It works closely with the RPNGC, which investigates relevant predicate offences and money laundering. The RPNGC is the key national law enforcement agency with around 5,000 officers and staff located across PNG. The FIU was originally created within the RPNGC by Section 13 of the POCA 2005 and the FIU was established in May 2007. There were a number of criticisms of the FIU in the 2011 Mutual Evaluation Report on PNG and these concerns⁶⁸ as well as those raised by the ICRG were addressed in the new AML/CTF Act.

With the passage of the new legislation, the role formally passed to FASU but in practice the RPNGC retained the role while FASU was staffed and effectively established. The FASU is now assumed all of the FIU functions previously undertaken by the RPNGC.

FASU recognises the importance of having memoranda of understanding (MOUs) with all its key partners. FASU signed its first MOU with the National Intelligence Office on 25 May 2017 as well as with the IPA & SCPNG on 4 August 2017 respectively and with IRC on 28 September 2017. It plans to develop and sign MOUs with Customs, ICSA and the RPNGC this year and then with other agencies. External MOUs were also negotiated by the old FIU but each of these needs to be renegotiated with FASU. FASU is empowered under the AML/CTF act to exchange information with other FIUs and has signed⁶⁹ a MOU with AUSTRAC, the Australian FIU. It is examining the possibility of further MOUs, particularly with regional FIUs.

⁶⁸ The APG/World Bank MER raised concerns about the resources, structure, independence and effectiveness of the FIU (PNG MER 2011 published 21 July 2100, APG, at pages 62-60)

⁶⁹ The MOU was signed in May 2017.

Environmental Protection and Management of Primary Resources

The **Lands and Physical Planning Department** (DLPP) administers all alienated land (State and Freehold) in PNG and also facilitates customary land (land under the ownership of the original inhabitants of PNG) issues.

The **Papua New Guinea Forest Authority** (PNGFA) manages PNG's forests. The PNGFA comprises the National Forestry Board (NFB) and the National Forest Service (NFS). It implements the *Forestry Act* 1991 and the Forest Policy 1991. It is responsible for the development and implementation of policies to ensure the forest resources are developed in a sustainable way.

The **National Fisheries Authority** (NFA) regulates and manages PNG's fisheries.

Regulation of the Financial Sector

The PNG financial sector is primarily regulated by the **BPNG** (banking, credit and other financial services, superannuation and life insurance industries), the **Insurance Commissioner** (general insurance), and the **Securities Commission of PNG** (capital markets, both equity and debt securities including options, Unit Trusts industry and non-superannuation aspects of the Fund Management Industry). The **National Gaming Control Board** regulates gambling activities in PNG.

The **Investment Promotion Authority** (IPA) is the organisation that houses the Companies Office of PNG, the Securities Commission of PNG and the Intellectual Property Office of PNG, hence the roles and functions of the IPA are diverse. The Authority maintains a national registry of all companies, associations, business groups and business names in Papua New Guinea. The Registry is open to the public to conduct searches on companies, associations, business groups and business names and to obtain copies of registered documents.

There were 51,063 local companies and 1,166 foreign companies registered with the Registrar of Companies in December 2016. There is an online registration system for companies which allow a person to establish and register a company in PNG providing certain documentation is provided. There is no need for a face to face meeting. The fee for an online registration is K450 and an application in person will cost K600.

A company must file an annual return (Section 215 of the *Companies Act*). Failure to do so will trigger an automatic reminder and subsequent notices are sent to the registered email address provided on registration. If the company does not respond, it will be deregistered. Where annual returns are not filed, each director is liable for a fine of K10,000 (Section 413 of the *Companies Act*). All new companies must obtain a Tax Identification Number (TIN) from the IRC on registration. However preexisting companies can seek a TIN from the IRC.

In addition, there were 122,544 registered business names, 4,797 business groups and 7,394 Associations. The latter group are made up of various not for profit organisations which included community groups, charities, clubs, religious organisations, political parties and family associations or land association groups. The initial registration (Form 1) is free. After the intention of the Association is published in the national newspapers and if, after a month with no objection from the public is lodged with the IPA, then a Form 2 is lodged with a K70 registration fee.

Associations are registered under the *Association (Incorporation) Act 1963*. There is a standard set of rules for Associations and registration requires the Association to provide a copy of the rules (with details relating to the Association such as name and office holders, aims and objectives to be achieved and its constitution). Office holders and the public officer (usually the secretary) are notified at the time of registration. There is no requirement to disclose financial reports to the Registrar of Companies, updating of public officer information or vetting to see that the terms of the objects and purpose of the Association are consistent with the purposes set out in the constitution.

It is likely that many of the Associations currently registered are no longer functioning or that the nominated public officer has long since ceased to perform that role.

There are plans in place to reform the *Associations (Incorporation) Act 1963* since it is outdated. This is part of an ongoing program of the IPA to reform the outdated business laws it administers to be consistent with international business standards and to facilitate doing business in PNG. The reforms commenced in 2011 with the amendments to the *Companies Act 1997 (as amended 2014)*, the replacement of the *Business Names Act 1963* with the *Business Names Act 2014* and the new *Companies Regulation 2015* and the *Business Names Regulations 2015*. These reforms came into force to reflect the new IPA's Online Registry System that was officially launched on the 29th November 2013. All interested parties and new business owners are encouraged to view documents filed online and use the online registry system to lodge and pay for documents.

As part of the ongoing reforms, the IPA aims to repeal the *Associations (Incorporation) Act 1963* with new legislation to reflect the current domestic issues, the FATF requirements and the AML/CTF Act 2015, especially on issues surrounding the NPO sector.

The IPA is also the point of identification of markets for PNG exports and dissemination of investor-related information about PNG. The IPA achieves this through the Investor Services & Promotion Division (ISPD). The ISPD's main functions are to

- encourage and promote exports,
- facilitate the ease of doing business in PNG,
- promote effective and efficient investment, and
- provide effective economic policy advocacy.

It also provides

- a reliable one stop business information hub,
- effective domestic and international strategic networking and partnership,
- provide public relations, marketing and export promotion, and
- active participation in the APEC.

Law Enforcement

In the context of AML/CTF there are several agencies which have roles directly related to the enforcement of the criminal law (investigating and prosecuting predicate offences), ensuring compliance with the AML/CTF Act, the *Proceeds of Crime Act* and the *Mutual Legal Assistance in Criminal Matters Act* and seeking to prevent or investigate revenue offences and environmental offences. The key agencies are:

- RPNGC;
- OPP;
- PNG Customs Service;
- IRC;
- FASU;
- IPA
- SCPNG
- Office of the Insurance Commission;
- ICSA;
- National Gaming Control Board;
- Lands and Physical Planning Department;
- PNGFA;
- NFA;

In the broader sense, the supervision and enforcement of all the relevant legislation⁷⁰ is an essential part of the AML/CTF system in PNG. Often the importance of enforcement of environmental laws, revenue laws and cross-border movements of goods and people as an essential part of effective ML and TF controls is understated. The NRA recognises the important part these areas play in PNG's AML/CTF system.

Investigation of Criminal Offences

The **RPNGC** is the main investigative agency and has jurisdiction to investigate all serious offences which are, for the purposes of the AML/CTF Act, predicate offences for money laundering.

Enforcement of AML/CTF Related Legislation

As noted previously, regulation, supervision and enforcement of AML/CTF related legislation is carried out by several agencies:

Enforcement of Banking, Securities and Insurance Laws

- BPNG;
- FASU;
- Securities Commission of Papua New Guinea;
- Office of the Insurance Commission;

Enforcement of Revenue, Customs and Gaming Laws

- IRC;
- PNG Custom Service;
- National Gaming Control Board;

Enforcement of Environmental Laws

- PNGFA;
- NFA;

Border Entry and Control

- ICSA
- PNG Customs Service

Supervision of Reporting Entities and Enforcement of AML/CTF Act

- FASU

Prosecution, Recovery of Proceeds of Crime and International Mutual Assistance Requests

- OPP
- DJAG

⁷⁰ See page 37.

CHAPTER FOUR - REPORTING ENTITIES

Reporting Entities (Financial Institutions)

In accordance with international standards, Part II of the *Anti-Money Laundering and Counter Terrorist Financing Act 2015* (AML/CTF Act) imposes wide-ranging obligations on financial institutions and designated non-financial businesses and professions (DNFBPs).

Financial institutions include those engaged in

- acceptance of deposits and other repayable funds from the public, including private banking;
- lending;
- financial leasing (other than with respect to arrangements relating to commercial products);
- transfer of currency or value;
- issuing and managing means of payment (e.g. credit cards, traveller's cheques);
- issuing financial guarantees and commitments;
- trading in bearer negotiable instruments; foreign exchange, exchange, interest rate and index instruments, transferable securities, commodity futures trading;
- participation in securities issues and the provision of financial services related to such issues;
- individual and collective portfolio management;
- safekeeping and administration of physical currency, bearer negotiable instruments, or liquid securities on behalf of other persons;
- underwriting and placement of insurance, including insurance intermediation by agents and brokers; or
- currency changing

DNFBPs are those involved in the following businesses or professions:

- casinos;
- real estate agents;
- dealers in precious metals and stones;
- lawyer notary public or other independent legal practitioner or an accountant engaged in any of the following on behalf of a client:
 - buying or selling real estate,
 - managing client currency, securities or other assets,
 - organising contributions for the creation operation or management of bodies corporate,
 - creating operating or managing bodies corporate or unincorporated entities, or
 - buying or selling businesses.
- trust or company service provider; and
- motor vehicle dealer.

The diverse nature and size of the financial sector in PNG is illustrated by *Table 4*.

Table 4. Structure of Financial Sector⁷¹ as at December 2016

FINANCIAL INSTITUTIONS				
	Number of Institutions	Total Assets	Proportion of Total Financial Sector Assets	Authorized/Registered /Regulated by
Commercial Banks	4	K27.5 billion	66.7%	BPNG
Finance Companies	7	K942 million	2.3%	BPNG
Savings and Loans Institutions	22	K967.6 million	2.4%	BPNG
Microfinance Institutions	5	K169.9 million	<0.5%	BPNG
Authorized Superannuation Funds	4	K10.2 billion	24.7%	BPNG
Non-life Insurance Companies	27	K1.8 billion	2.3%	Insurance Commission
Life Insurance companies and brokers	9	K419.7 million	>1%	BPNG
Stockbrokers	2			POMSOX
DNFBPs				
Casino	Nil			National Gaming Control Board
Lawyers	More than 200 firms			PNG Law Society
Accountants	65			PNG Institute of Accountants
Dealers in precious metal and stones	6			BPNG
Alluvial Gold Exporters	9			BPNG
Real estate	81			FASU (for AML/CTF purposes)
Motor Vehicle Dealers	27			FASU (for AML/CTF purposes)

⁷¹ Data provided by BPNG

Financial institutions are required to conduct ML and TF risk assessments, appoint an AML/CTF Compliance Officer, appoint external auditors, implement group wide AML/CTF programs, identify and verify customers, conduct due diligence (and, in certain cases, enhanced due diligence) on all customers, report financial transactions above specified thresholds, suspicious transactions and assets held by persons or entities designated under a number of UNSCRs or other international obligations. Section 52 of the AML/CTF Act imposes comparable obligations on DNFBPs. These obligations implement a comprehensive AML/CTF system on relevant PNG businesses and individuals.

Banks (International and Domestic)

The four Domestic Banks (ANZ, Westpac, BSP and Kina Bank) are licensed under and governed by the BPNG under the *Banks and Financial Institutions Act 2000*. These banks have a range of banking businesses including taking deposits, providing cheque services, lending, selling investment products, providing international funds transfers and other services. These banks service a range of clients from individuals to corporate customers. They offer a wide range of services with a major focus on cash deposits and withdrawals. These banks have a global presence and their activities include trade finance, cash management services and correspondent banking. The ANZ and Westpac are foreign-owned. Only the BSP has a broad branch network, with 62 branches. The other branches have smaller networks with 15 for ANZ, 17 for Westpac and 3 for Kina Bank. The branch networks are in larger centres. Mobile, home and internet banking services are available and their use is growing.

The domestic banks are supervised by the BPNG in relation to overall banking supervision and by FASU for the reporting of suspicious financial transactions and other AML/CTF obligations. The banks are subject to AML/CTF inspections by FASU. There is regular contact between FASU and the banks and some guidance material, for example in relation to CDD obligations, has been issued.

The domestic banks dominate the financial system with assets accounting for almost 67 percent of total financial system assets. Their dominance reflects the relatively small and weak non-bank financial institutions sector. Prudential supervision and prudential indicators support the conclusion that PNG has a generally sound financial sector.

In addition to its role as the Central Bank, the BPNG also undertakes several commercial banking activities. It provides foreign exchange services to commercial clients, sells market securities and Central Bank Bills, Treasury Bills and Inscribed Stock. It also acts as a banker to the Government and its agencies. Therefore, it is a reporting entity under the AML/CTF Act and needs to comply with the full range of obligations (CDD, KYC, reporting, record keeping and the need for an AML/CTF Program etc) in the same way as the other commercial banks.

Securities

The Securities Commission of Papua New Guinea (SCPNG) was established by the *Securities Act 1997*. The primary responsibility of the SCPNG is to regulate the securities and capital markets by the buying and selling of stocks on the stock exchange.

The *Securities Act 1997* also established and licensed the POMSOX which is the only licensed stock exchange and self-regulating organisation in PNG. There are only two stock brokers: BSP Capital (a subsidiary of Bank of South Pacific) and Kina Bank which operate as stock broking firms in the POMSOX.

The securities market in PNG includes listed securities (regulated by POMSOX), government bonds and superannuation services which are regulated by the BPNG and insurance securities which are regulated by the Office of Insurance Commission.

The legal powers, functions and authorities of the Securities Commission (SC) were not clearly defined in the *Securities Act*. The SCPNG exercised no public supervisory or regulatory function over the POMSOX. There was no clear power for the SCPNG to withdraw the license or approval of the stock exchange even as a regulatory penalty for non-compliance or misuse. The SC had no powers to directly instruct or sanction brokers or regulate disclosure or licensing requirements. As a result, the SC faced a number of legal challenges due to its limited powers. The inability of the legislation to provide a basis to respond to global challenges and domestic regulatory issues led to the development of new legislation.

The Parliament passed the *Securities Commission Act 2015*, the *Capital Market Act 2015* and the *Central Depository Act 2015* to address of the key issues faced by the SC and industry. The *Securities Commission Act and the Central Depository Act* came into effect on 27 October 2015 but the *Capital Markets Act* is not yet in force⁷². It empowers the SCPNG to better regulate, monitor and investigate the capital market where potential risks are embedded. The SC as an independent Commission will have a major role to perform. The SC acknowledges that the enforcement of these laws will require substantial financial resources and encourage the report to note such.

The SC aims to facilitate business growth in the market by working closely with market players and position the SC as a reliable entity and/or regulator to the investing public, be responsive to new opportunities available to develop the market and remain relevant in the evolving capital market environment over the medium to long term in PNG.

There were 17 entities listed on the POMSOX at the end of 2016. Domestic Market Capitalization of securities listed on the POMSOX has declined over the last 6 years. It had a market capitalisation of K109.5 billion at the end of 2010 but this has declined to K54.4 billion (around US\$17 billion) at the end of 2016.

Insurance Sector

Local and international insurance companies may be established under the *Life Insurance Act 2000*. Life insurance companies and brokers, of which there are 9 licensed in PNG, are supervised by the BPNG. The 27 general insurance companies are supervised by the Office of the Insurance Commissioner. There is 1 reinsurance company, 1 reinsurance broker, 13 insurers, 8 insurance brokers and 4 loss adjusters in the industry.

The licensing requirements for general insurance companies include:

- Evidence of beneficial ownership,
- Financial standing, with a minimum capitalisation of K2 million,
- Evidence of reinsurance arrangements,
- Information on office holders, directors, associated entities and shareholders, and
- AML/CTF policies and procedures, KYC and CDD procedures and an appointed ML/TF compliance officer

Applications must be submitted to the BPNG or the Office of the Insurance Commission. The domestic market involves fire, household, general accident, personal accident and health, motor vehicle, worker's compensation, engineering and marine and product liability. Offshore business

⁷² The Capital Market Act 2015 is still undergoing a Parliamentary vetting process and is yet to be certified and guidelines and regulations are still at the drafting stage. Plans have been developed for more consultation, active collaboration and effective communication for the SC with the market players. At this stage, the Securities Commission is in the process of developing its organisation structure and remuneration framework to be fully established as an independent Commission and have funding in place with recruitment of new qualified staff to enforce and facilitate the new Securities laws.

includes aviation hull and liability life insurance, workforce protection, marine hull, professional indemnity, and travel, death and income protection.

BPNG regulates and licenses the life insurance sector under the terms of the *Life Insurance Act 2000*. The life insurance market was small and stagnant but has increased significantly over recent years and was worth K420 million in 2015, while the non-life insurance market is more substantial and growing in real terms.

General insurance companies are regulated by the Office of the Insurance Commissioner under the terms of the *Insurance Act 1995*. The scope of products offered in the general insurance sector indicates that the sector is not generally vulnerable to use in ML schemes.

Money Transfer Activities

Money Transfer Businesses are supervised by the BPNG and consist of both bank based services and separately licensed transfer businesses. The formal money transfer sector in PNG is relatively small, with one company authorised to conduct inward international fund transfers. BPNG regulates remittance under the CBA. A second application is under consideration.

There is one domestic remittance service through the Post Office. The Post Office provides the main means by which funds can be transferred within the country as many areas do not have access to banking services.

There is a growing foreign workforce which may create the demand for informal transfer services which will operate outside the regulated system. The BPNG has identified a few services providing transfer services to Filipino workers and these are being encouraged to seek approval and compliance with the CBA, the *Banks and Financial Institutions Act* and the AML/CTF Act.

Currency Exchange Businesses

Foreign currency exchange in PNG is conducted by the four domestic banks, and by 9 authorised money changers who can collect and change foreign currencies. Currency exchange businesses are regulated by the BPNG.

Aside from the exchange activities of the commercial banks, these currency exchange businesses deal with significant volumes.

Savings and Loans Societies

There are 22 Savings and Loans Societies registered in PNG. The Societies hold accounts with the commercial banks. Members can draw down funds against savings. Despite most customers having generally low value deposits and withdrawals, the Savings and Loans Societies had assets of K967.6 million at the end of 2016. Profits have increased over time and the number of societies has increased substantially.

Other Financial Institutions

Micro-Finance Institutions - There are 5 micro-finance entities generally set up along community lines. These entities generally have a savings scheme for members, with savings generally unable to be withdrawn until the client forgoes their membership, or with a very low rate of interest if funds are withdrawable. They also provide small loans over short periods of time.

Non-Bank Lenders - As with Micro-Finance generally, there are very few non-bank lenders in PNG. These entities generally provide very low value loans over short periods of time.

Reporting Entities (Designated Non-Financial Businesses and Professions – DNFBPs)

Lawyers and Accountants

The legal profession is regulated by the *Lawyers Act 1986*. The Act established the Papua New Guinea Law Society which issues practising certificates and deals with complaints against lawyers.

Effectively, the profession is self-regulated. Where professional misconduct is alleged, these are referred to the Lawyers Statutory Committee which has the power to impose various penalties and can apply to the National Court to remove the lawyer from the roll of practitioners. There are 1065 lawyers who are members of the Law Society. They operate throughout PNG.

There are more than 200 law firms operating in PNG, most of which operate in Port Moresby. Lawyers mainly service the commercial and financial interests of residents and offshore clients. In addition to the provision of advocacy and litigation services, lawyers in PNG also provide company services for both domestic and international companies, including the incorporation of local and international companies, creation and provision of partnerships and trusts, provision of company secretarial services, the provision of directors, trustees etc.

Accountants are also subject to a similar self-regulatory structure established under the *Accountants Act 1996*. Under the Act accountants are subject to a registration and self-disciplinary system conducted by the Certified Practising Accountants Papua New Guinea (CPAPNG) which is the body which exercises registration power under the Act. There are 65 accountancy firms operating in PNG.

In addition to the provision of general financial and accounting services, funds management, asset management and real estate services, accountants in PNG also provide company services for both domestic and international companies, including the incorporation of local and international companies, creation and provision of partnerships and trusts, provision of company secretarial services, the provision of directors, trustees etc.

Lawyers and accountants are designated reporting entities under the AML/CTF Act. Accordingly, they are required to meet all of the obligations imposed on FIs under the AML/CTF Act in relation to action taken by them on behalf of a client in relation to:

- buying or selling real estate,
- managing client currency, securities or other assets,
- organising contributions for the creation, operation or management of bodies corporate,
- creating, operating or managing bodies corporate or unincorporated entities, or
- buying or selling businesses.

In practical terms, this means that lawyers and accountants should conduct client identification and verification, conduct due diligence enquiries and report suspicious transactions to FASU.

Real Estate

Most land in PNG is unregistered or indigenous land and the rules of ownership recognise the traditional users of land and their personal and clan arrangements for land use. Investors cannot purchase or lease customary land directly from its traditional owners. If an investor requires access to customary land, the government would have to acquire the land from its traditional owners and then lease it to the investor.

Land that is not customary land is known as alienated land. This is land which has been acquired from customary owners by the government either for its own use, or for private development. Alienated land in PNG can be held either as freehold or leasehold from the State. Freehold land makes up a small proportion of alienated land in PNG. Both freehold land and leasehold land are registered by the Registrar of Titles under a Torrens system of land registration which, on registration, essentially provides guaranteed title. The Land Title Commission established by the *Land Act 1966* administers the *Land (Tenure Conversion) Act 1963*. The Commission authorises registration of customary land, determines whether land is alienated land and ascertains who the owners of the customary land are.

Land for sale must be registered and this requires a change in title to freehold under the registration system established under the *Land Act*. The primary role of real estate agents in PNG is to facilitate lease or freehold property transactions for clients.

The Real Estate sector in PNG, especially in Port Moresby, is growing with the increasing demand for accommodation and the rapidly rising value of real estate in PNG. Real estate companies are incorporated and registered under the IPA. However, as there is no obligation on the part of those persons to register properties for rental purposes, not all real estate activities are regulated. Outside the capital about 97 percent of land is held under customary title. Real estate agents are supervised by the FASU for AML/CTF purposes.

Gambling Activities

Casino

PNG has no legal casinos. The *Gaming Control Act 2007* allows for the licensing of casinos and a casino was planned in 2011 but the proposal floundered. The authority responsible for administering this sector is the National Gaming Control Board.

Lottery

There is only one lottery operating in PNG. This is also governed by the *Gaming Control Act 2007*. The revenue is split between the operator and the government.

Poker Machines

Poker machines are also licensed under the *Gaming Control Act 2007* and are found in permitted sites in hotels and clubs.

Other DNFBPs

Motor Vehicle Dealers.

There are approximately 27 car dealers in PNG, many of which are second hand dealers and provide motor mechanical services. The use of cash is prevalent in the industry. Car Dealers are supervised by the FASU for AML/CTF purposes.

Trust and company service providers (TCSPs)

The regulatory framework for trusts and company service providers includes the *Trustees Companies Act 1966*, the *Trust Accounts Act 1951* and the *Companies Act*. In practice, these services are provided by lawyers and accountants rather than standalone service providers. It is not clear that independent TCSPs are operating in PNG under these statutes.

Dealers in precious metals and precious stones

Gold dealing activities in PNG were de-regulated in 1987, enabling all residents to buy and sell gold within the country. For export purposes, a license must be obtained from the BPNG before gold of any form can be exported overseas. A gold export license is valid for only one year and may be renewed through a renewal application to the BPNG. This applies to all precious metals unless it is declared otherwise by the BPNG.

CHAPTER FIVE - UNDERSTANDING MONEY LAUNDERING AND TERRORISM FINANCING RISK

Threats and Vulnerabilities

In identifying and analysing the threats and vulnerabilities confronting PNG, the NRA has focused on crime types (predicate offences) as the threats and potential exacerbating factors (both domestic and international) as creating or exacerbating vulnerabilities.

It is important to recognise that not all crimes types are relevant to the NRA. There are many possible predicate offences for ML purposes which will not be found in PNG or which occur at such low levels of activity or with such limited impact that they will not create significant risks. For example, assaults (which do not involve robbery) may not generate any proceeds of crime but they may, nonetheless, be part of a broader assessment of the level of criminal activity. For the purposes of the NRA however, the focus is on identifying the **incidence** (number) and **value** (impact) of criminal activities which are likely to generate **proceeds of crime** and the need to launder those funds. It is also important to examine offences which might generate funding for terrorism or facilitate the movement of funds to terrorist organisations. These are **ML or TF threats**.

There is also the need to consider whether there are factors which increase PNG's **vulnerability** to these threats and therefore, increase the risk of ML or TF activity. These vulnerabilities can be external, for example, PNG's proximity to neighbouring countries and the high risk of proceeds generating offences in those countries. The size and difficulty of managing the movement of goods and people across PNG's border make it more vulnerable to cross-border movement of money as part of laundering or TF activities. Vulnerabilities can also arise from domestic factors such as corruption, resource constraints, a lack of skills and training, the need for enhanced legislative frameworks and problems with inter-agency and international coordination⁷³.

Predicate Offences

In preparing the NRA, each of the possible predicate offences or areas of criminal activity identified by FATF⁷⁴ was examined and its impact and incidence considered. Some were found to have very low levels of incidence and, even where the offences might occur in PNG, the ML impact was also found to be low. The ML risk from these offences was therefore, found to be low or even negligible. Others, however, were found to have high levels of occurrence and impact and therefore, provide high ML risks.

With much of the country involved in subsistence agriculture, with no access to financial services and with low levels of available cash, the potential for financial crimes is severely reduced in many areas. However, as the economy develops and new services emerge the potential for computer based fraud, scams, fraud and other financial crime will increase. Some ML threats depend on a level of financial complexity or the existence of products or services not generally found in PNG. Again, this will change as the economy develops.

Those predicate offences which create serious ML threats to PNG are discussed in detail in the next Chapter.

The assessment of ML threats to PNG comprises the identification and analysis of the predicate crimes in and linked to PNG that will generate funds that may be laundered in and through PNG or elsewhere where the predicate offence occurs in PNG. It is important to identify both the predicate

⁷³ An example of enhanced cooperation at the international and local level is the Experts Group on Illegal Logging and Associated Trade (EGILAT) of the APEC which aims to assist agencies to understand the need for coordination of scarce resources to monitor cross border movements of forest products.

⁷⁴ National Money Laundering and Terrorism Financing Risk Assessment, FATF, February 2013, Appendix 1

crimes and their origins as money may be laundered in and through PNG because of predicate crimes in other countries. Almost any country can be a source, transit or end point for money laundering.

This assessment of PNG's ML/TF threats is based upon a detailed analysis of predicate offences and the factors that the government agencies and other sources (for example, reporting entities) have identified as relevant to PNG's context which exacerbate the ML or TF threats arising from the predicate offences. These include the following as major threat factors:

- Nature and extent of relevant domestic predicate offences,
- Amount of proceeds of crime generated abroad because of illegal activities in PNG (eg illegal logging) and laundered off shore,
- Amount of proceeds of crime generated domestically,
- Physical cross-border inflows and outflows of proceeds of crime,
- Amounts of proceeds of crime generated abroad and laundered domestically,
- Sources, location, and concentration of criminal activity, including within illegal underground areas in the economy, and
- Nature and extent of terrorist activities and groups in neighbouring countries, regions or sub-regions.

Each of these factors have been considered in developing the threat component of this NRA. The extent to which various types of predicate offences will be more or less susceptible to these exacerbating factors will vary significantly. These factors have been dealt with in the context of analysing predicate offence types. For example, the proceeds of illegal logging will tend to be laundered off shore, the proceeds from frauds may be moved off shore using financial transactions and the profits from robberies and violent crime might be laundered domestically.

Several sources have been used to identify the predicate offences that may generate funds which may be laundered in and through PNG. These sources have included the RPNGC, other government and private sector representatives, published and non-published reports, and media reports on crime. Much of this information was sourced from meetings, workshops and from research on the Internet.

There is a significant gap in the statistics collected by law enforcement agencies in PNG. The national crime statistics provided by the RPNGC do not provide details of offences other than in relation to broad categories and they do not indicate, in most cases, the value of the offence. The absence of reliable data means that estimates of likely value of offences cannot reliably be made. This problem is acknowledged by the agencies but it must be addressed if future decisions are to be based on sound information.

The domestic crime rate in PNG is relatively high but much of the crime which occurs does not generate large amount of funds which need to be laundered. This means that many types of predicate offences will represent relatively low ML threats while the criminal activity might still present serious threats to PNG citizens and foreign visitors. As is the case in many developing economies with major law enforcement challenges, criminals may not feel the need to launder funds to hide the criminal source because they do not fear the likelihood of arrest and prosecution.

As a result of the analysis, certain predicate offences are considered likely to generate sufficient proceeds of crime which need to be laundered. The following major areas of criminal activity are considered to provide significant ML threats to PNG:

- Corruption and Bribery
- Fraud against government programs and activities
- Illegal logging and Fishing

- Taxation and revenue fraud
- Other environmental offences
- Illicit drug importation and distribution

Each is discussed in detail below.

Most of these crime types are likely to have both domestic and offshore components. In addition, with many of these predicate offences, it is possible that they are facilitated through the involvement of corrupt practices. What is also clear is that the nature of some offences means that the criminal proceeds are accrued outside of PNG and do not return to PNG.

Those offence types which have been found to have low ML threats are referred to for completeness with a short indication of the reasons for the low risk rating.

The Value of Predicate Offences

It has not been possible to determine the value of proceeds generated by the main types of predicate offences. The RPNGC do not collect sufficiently detailed statistics to enable any real estimates to be made. They have advised that in the three years from 2013 to 2016, reported misappropriation from both government and private organisations amounted to almost K400 million⁷⁵. Clearly, such an amount is of a magnitude worthy of laundering, unless there was no real fear held by those involved of identification and retribution.

In 2013, the UNODC estimated that the annual value of illegally obtained logs in PNG and the Solomon Islands was in the order of \$800 million. There have been many reports over the years of corruption in PNG.

The Ombudsman Commission investigates alleged breaches of the Leadership Code and, following its consideration it can refer cases for prosecution. By the end of 2013, the Commission had referred a total of 101 persons for prosecution. What is clear is that PNG is like many countries with significant corruption problems. There is widespread corruption at senior levels of the bureaucracy and extensive reliance on facilitation payments across government. Bribery of officials is common. A simple example is that the necessary approvals for a new private dwelling can be processed in under 6 months if total payments of around K5000 are paid during the process while an “unfacilitated” application will take three years.

With a GDP of K88.9 billion (\$28 billion), based on the IMF estimate of money laundering being between 2 and 5 percent of GDP, the possible level of laundering in PNG would range between K1.8 billion (\$560 million) and K4.4 billion (\$1.4 billion). These estimates need to be qualified. The IMF estimate was a global estimate which did not necessarily translate to the national level because of huge differences between the threats and vulnerabilities which individual countries face. This is often ignored when applying the “IMF Formula”. The other major consideration is that “dirty money” might be generated within a country and remain there, be sent from it to be laundered elsewhere and never returned to the source country, or sent to another country as a destination country or as a transit country with some or all returned to the country of origin. The extent to which countries are perceived to be good destination countries or good transit countries for ML purposes will obviously affect the amount of criminal proceeds moving into and out of a country. Similarly, countries with low levels of predicate offences might be favoured destination countries, for example, Tax havens. The criminal proceeds reside there and are only moved to pay for goods and services once they are “clean”, often never returning to the country where they were generated.

⁷⁵ The actual figure was K394,567,229.98 arising from 158 complaints but the RPNGC noted that much of this was only reported after audits had been conducted. The offences had gone undetected. Over the same period there were another 170 complaints concerning false pretences offences.

However, there is sufficient public information about cases of corruption, the existence of fraud and serious tax cheating and illegal exports of logs⁷⁶ and fish to support the conclusion that the amounts involved are consistent with the broader estimates.

⁷⁶ In relation to the level of illegal logging, the PNGFA argues that while there may be a level of corruption, the extent of illegal logging is greatly overstated because of the systems in place to prevent this practice. Civil society groups, international agencies and some domestic agencies dispute the PNGFA assessment. A means to address this issue and determine the extent to which there is a significant ML problem is discussed in Chapter Ten.

CHAPTER SIX - SIGNIFICANT MONEY LAUNDERING THREATS (PREDICATE OFFENCES)

The analysis of predicate offences⁷⁷ has been based on the approach described in Chapter Five. Each area of predicate criminal activity has been considered and assessed to determine the likely level of money laundering risk which each type of criminal activity might create for PNG.

Participation in an organised criminal group & racketeering

This category covers a wide range of what is sometimes called 'organised crime' but the degree of organisation and the degree of sophistication can vary significantly. It includes:

- Sophisticated organisations (*e.g.*, mafia, yakuza)
- Drug organisations
- Motorcycle gangs
- Street gangs
- Other

There is a high level of gang related violence in Port Moresby and other population centres. The gangs, referred to as raskols⁷⁸, provide a law enforcement challenge and are the product of social dislocation, poor education, unemployment and poverty. Initially, these gangs were involved in opportunistic crime and breaking and entering but there is growing evidence of involvement in more organised criminal activity, such as drug trafficking, linked to sophisticated international criminal groups, domestic drug trafficking or other organised criminal activity. This involvement sees the gangs involved in the sale of drugs (marijuana and other recreational drugs) often as the middlemen between end users and the organisers. Some of the gang violence involves clashes between ethnic groups.

In most cases of raskol related criminal behaviour, while there is a financial incentive because the assaults involve robbery, the amounts involved are relatively low and the proceeds are almost always spent immediately by the gang members. There is little or no associated laundering⁷⁹ activity.

There is some evidence of the involvement of international organised crime gangs in PNG. Cannabis production is widespread and difficult to control and there is a high level of domestic usage. Ice (methamphetamines) is becoming increasingly available. There is evidence of importation but there is also considered to be some local production. Gangs, often involving local and expatriate members, are thought to be involved in the distribution of Ice and other drugs. In addition, there is evidence of foreign nationals located off shore being linked to local gangs and providing a conduit to off shore supply and distribution networks.

There has been growing evidence of Asian gangs being involved in illegal gambling and other criminal activity. Linked with these concerns have been allegations of senior police being linked to

⁷⁷ The order of offence types follows the FATF model. It does not indicate relative importance as a ML or TF risk.

⁷⁸ Raskol is a Tok Pisin (Pidgin English) word derived from the English word rascal

⁷⁹ Technically, the purchase of a good or service with the direct proceeds of a robbery is "money laundering". The criminal who buys a meal with the proceeds of a mugging commits a money laundering offence in "dealing" with the proceeds of the crime. But the person providing the meal does not, unless they know or can reasonably be assumed to know, that the money used was the proceeds of a criminal offence. But this does not equate with our normal understanding of the concept as involving a deliberate attempt to conceal the criminal origins, usually through several transactions which allow the money to be spent as if it were legitimate or clean money (see Section 508C (2) of the Criminal Code).

these gangs. There is also evidence of organised groups being involved in activities such as contract fraud and other financial crimes. The available RPNGC statistics do not address the issue of gang involvement focusing only on the crime type.

While local cannabis sales are unlikely to generate large amounts of proceeds (because the price is low), the distribution of Ice and other drugs is likely to produce considerable criminal profits including organised frauds against government agencies. It is unclear whether these proceeds are used locally (with or without attempts to launder the funds) or moved off shore. In the case of imported drugs, the funds to purchase new supplies need to be sent to source countries or brokers in other jurisdictions. There is a high risk that funds are being laundered out of PNG for this purpose. These payments could be sent to Vietnam, Thailand, the Philippines as well as Malaysia, Australia, Hong Kong or Singapore.

It is considered by the RPNGC that gang or organised crime group involvement in non-drug related crime, such as that linked to illegal gambling, is likely to generate significant profits but that these will be much less than the returns generated from drugs. In the case of non-drug offences, there is a need to launder the proceeds. The incidence of gang related crimes is assessed to be high and the impact is assessed as high and likely to increase without mitigating activity, and therefore the threat of money laundering associated with gang activity is assessed to be high.

The ML risk from criminal activities such as drug trafficking which might involve organised groups is dealt with under the nature of the illicit activity.

Trafficking in human beings and migrant smuggling

A range of criminal activities are covered by this category. It covers:

- Trafficking (involuntary)
 - Inwards
 - Outwards
- Migrant smuggling (voluntary)
 - Inwards
 - Outwards

Trafficking in persons is criminalised in Sections 208C and 208D (trafficking with knowledge or recklessness) of the *Criminal Code Act* and people smuggling is criminalised in Section 206D,⁸⁰ and attract a maximum penalty of life imprisonment in aggravated cases.

Over the last two decades there has been a high level of people smuggling between Indonesia and Australia. Almost all this activity involves asylum seekers from the sub-continent, Africa or the Middle East. Much of this activity has involved people smuggling activity for profit. There is little evidence that such activity has involved the movement of people from PNG to Australia. Such activity will generate funds in Indonesia (or perhaps at other places along the chain of countries from the source countries to Indonesia) but these funds will be held (and possibly laundered) in Indonesia or elsewhere. There is no direct evidence of such proceeds being laundering into or through PNG.

There are greater concerns about the movement of people across the land border with Indonesia. The border is porous and there is a free flow of local people and goods across the border. The border with West Papua cuts through communities and there are arrangements in place to allow the people living on either side of the border to move freely across the border. Permits are issued

⁸⁰ *Criminal Code (Amendment Act No.30 of 2013)*. These offences came into force on 30 June 2014.

for traditional border crossing (TBC) and at official border posts. However, much of the border is not controlled and there is a regular flow of people, estimated to be in the order of thousands each week, and a wide variety of goods passing, uncontrolled over the border.

There is a significant market for goods on the Indonesian side of the border which can be acquired at lower prices than in PNG. This raises concerns about the way in which Kina and Rupiah are traded across the border and the potential for funds which need to be laundered to be comingled with the funds arising from the cross-border trade.

The population in West Papua is, as is the case in PNG, ethnically Melanesian and the movement of refugees or involuntary trafficked people from the middle east, the sub-continent and Asia is unlikely to go undetected. The use of the PNG land border as a means of entering PNG as a transit country for people smuggling is assessed as low. There is a small flow of undocumented ethnic Melanesians permanently moving from Indonesia into PNG.

However, the voluntary movement of people for possible involvement in prostitution and employment in PNG is more problematic. Women from countries such as Thailand, the Philippines and China are brought to PNG illegally (using forged documents or illegally obtained approvals), and the porous land border together with the large coastline provides further avenues for this transit.

A number of agencies are concerned that unlawful entry into PNG through the land border (of which only about 1% is actively controlled) and the coastline, which is long and largely uncontrolled, is likely. It is more likely that human trafficking will be through airports and ports with the organisers being paid before the travel occurs or meeting travel costs in exchange for subsequent profits from prostitution or other employment. There are also weaknesses in the controls at both airports and ports.

Whatever profits are obtained from these sources are likely to be dealt with in similar ways to other higher value predicate offences.

The threat of money laundering in PNG associated with human trafficking is thus assessed to be medium to high. The impact of illegal entry and people trafficking is very high because it is linked to significant social problems including racial tensions and exploitation. The payments to organisers are probably paid at earlier stages of the process. Some of the proceeds will simply be used by those involved but it is considered that there will be proceeds generated in PNG that will probably be laundered and so the ML risk is assessed as high.

Possible TF related risks from human trafficking

However, for several reasons PNG needs to maintain vigilance. It is possible that human trafficking into or through PNG might be used as a source of funds by or for, terrorist groups outside PNG. The existence of such groups in Indonesia, the Philippines, Malaysia and Thailand increases the likelihood that such activity might be used for TF purposes and that funds might be moved through PNG if it were thought that the risk of detection was low. The risk that people smuggling from PNG to Australia might be undertaken is increased by the relative proximity of PNG to northern Australia, and the possibility of moving small numbers of people to isolated areas of northern Australia. Given the assimilation of some of the people held in the Manus Island Regional Processing Centre into the PNG community and the fact that many of the people currently held in the centre will not be transferred to another country and will remain in PNG when the Centre is closed, there may be an increased risk that PNG will be used as a transit country with the assistance of the asylum seekers who remain in PNG.

The TF risk is also assessed to be low to moderate at present (because there has been no evidence of such flows) but this could change quickly and needs to be actively monitored.

Sexual exploitation, including sexual exploitation of children

Adult and child prostitution, the production of pornographic material and commercial paedophilia are covered by this category.

- General - unclassified
 - Illegal prostitution
 - Sexual slavery
 - Procuring sexual activity with minors
- Selling/distributing illegal pornographic material
- Selling/distributing illegal pornographic material involving minors

Prostitution is not illegal in PNG but there are various offences in under Divisions 2 and 4 of the Criminal Code relating to procurement and the operation of brothels. However, brothels do operate and it is likely that there are significant profits made by those who operate these premises. It is also clear that, in addition to local women engaged in prostitution, women are brought in to PNG from countries such as the Philippines, Thailand and China. These women may enter PNG voluntarily (either legally or otherwise) but it is also likely that there are cases where the women have been brought in involuntarily or under duress. It is considered likely that that there is a significant level of prostitution associated with mining and forestry camps. The amount of proceeds generated by these businesses is unknown but it is reasonable to expect that there are significant amounts involved and that some of these profits are laundered out of PNG.

There are offence provisions covering child and adult sexual exploitation and pornography. There are limited statistics on both the number and nature of offences which might be covered by these provisions. The RPNGC maintains statistics on the number of sexual offences reported and the number of arrests but the figures do not break up the offences further.

Table 5. Sexual Offences 2013 – 2016⁸¹

YEAR	Rape Offences	Persons Charged	Other Sexual Offences	Persons Charged
2014	145	62	258	91
2015	173	51	246	84
2016	149	67	273	111

The extent to which there is an active and organised movement of women into PNG for sexual exploitation is unclear. However, given the extent to which this practice occurs throughout the immediate region, it must be assumed that PNG is also subject to this activity. Based on data provided by the RPNGC, there is no indication of the number of arrests for adult prostitution cases, pornography and for offences involving children. The latter category, to the extent that they are investigated and lead to charges, are unlikely to generate significant criminal proceeds. There is a

⁸¹ Source: RPNGC

strong need for more detailed statistics to be collected so the Government can make more informed decisions in future.

While the police statistics do not suggest that there is a high level of illegal prostitution (involving brothels) and using women trafficked for this purpose, such activity is believed to occur at a significant extent and the profits so generated, would be laundered. The impact of these offences is very high because the illegal nature of the offences is likely to also involve serious threats of violence to the women involved. The risk of ML associated with sexual exploitation is high.

Illicit trafficking in narcotic drugs and psychotropic substances

The range of substances covered by this area of crime includes

- Cocaine
- Marijuana/Cannabis
- LSD
- Ecstasy
- Meth/Amphetamines
- Heroin/Morphine/Opium
- Other

and the offences cover production, possession and sale of illicit substances.

Drug cultivation and smuggling is prevalent throughout the country including incidences of drug abuse leading to other major social upheavals. However, the laws are not actively enforced. As a result, there are many repeat offenders and many end up developing mental illness due to drug abuse.

Drug offences now qualify as predicate offences for ML following amendments to the *Criminal Code Act*. In addition, the definition of indictable offence in the *Proceeds of Crime Act* now captures drug offences for purposes of confiscation. RPNGC statistics show that there is a greater number of persons charged than the number of offences recorded, indicating that there are multiple offenders involved in some cases.

The most common illicit drug is cannabis. The crop, often known as marijuana, is freely available and is grown in many areas. It is the drug used by the indigenous population. A joint sells for about K2. It is unlikely there are large profits made from the distribution of the drug because it is so widely grown by large numbers of people, removing the need for a distribution network and leading to prices being driven higher due to limited supplies.

Within the expatriate community there is demand for other drugs such as opiates and there is growing evidence of Ice.

Table 6. Drug Offences 2013 – 2016⁸²

YEAR	Offences	Charged
2014	193	237
2015	211	256
2016	121	167

⁸² Source: RPNGC

Again, the statistics do not record the type or quantity of drugs but the overall numbers indicate that there are relatively low levels of detection and prosecution. The RPNGC believe that drugs are transiting through PNG from Asia to Australia and that there is major drug distribution problem in PNG but that resource constraints (and corruption) limit the ability of RPNGC to address the scale of the problem. It is difficult to draw firm conclusions with the absence of better data but we can presume, based on international experience, that there are large volumes of illegal drugs being sold and transited which generate significant proceeds which may be laundered. There is a high incidence of drug offences and high impact. The border issues (both land and sea) exacerbate the problem. The associated ML risk is very high.

Illicit arms trafficking

The concern about various forms of arms trafficking covers the potential for large profits from the sale of arms, the possible use of these arms in terrorist attacks and the potential for violent politically motivated violence. The range of arms covered by this category includes:

- Small arms/guns
- Light weapons
- Larger military hardware
- Ammunition
- Weapons of mass destruction
- Other (biological weapons)

The *Firearms Act 1978* and *Firearms Regulation 1980* regulate and control the licensing and use of firearms. The Commissioner of Police is the Registrar of Firearms and maintains a register for this purpose. The Act prohibits ownership or possession of an unlicensed pistol or high powered firearm. The penalty for a breach is a fine not exceeding K5000 or imprisonment for up to 5 years (s.27A).

The land border with Indonesia and the maritime boundary are largely unguarded. As such, there is high risk of arms trafficking. Currently, there are many high powered guns illegally in the hands of criminals and tribesmen in the country. There is no doubt many of the arms come through the porous borders into the country. In 2016 and 2017, there was a State of Emergency declared in Hela Province where warring tribes have been attacking and killing each other for some time using high powered guns. The government has deployed about 300 security personal consisting of RPNGC and soldiers to stop the fighting and recover illegal firearms. An amnesty was announced and a considerable number of illegal weapons were surrendered in the early part of 2017. The RPNGC has said that it believes between 30 and 40 percent of the estimated number of illegal firearms have been surrendered.

Both Customs and RPNGC believe that there is a trade across the border with guns exchanged for drugs. Drugs such as cannabis are grown in the highlands and traded for guns which are used by people for hunting and to exercise power and influence in political matters.

The size of the illicit market is unknown. Many of the illegal weapons which have been confiscated or handed in are handmade or low powered rifles. There is however, a market in automatic weapons and the ready availability of automatic weapons in many parts of Asia suggest that these could easily find their way to PNG. However, despite the existence of laws outlawing illegal ownership and possession of firearm, enforcement is ineffective and few get charged and prosecuted.

The threat of ML relating to illicit arms sales is considered to be medium to high. The potential for guns to be used in politically motivated violence and in inter-tribal disputes is very high and thus the impact of these offences is very high. However, the likelihood that ML occurs in relation to illegal gun sales is considered to be low so the overall ML risk is medium to high. Where guns are sold, the proceeds are probably taken out of PNG or simply spent rather than laundered through the financial system within PNG.

Given the border control issues, it is possible that cross-border illicit arms sales across the land border could be used to fund terrorism activities. It is also possible, but far less likely, that the militarily well-equipped insurgent groups in the southern Philippines might also seek to sell weapons in PNG. Such sales could be used to finance the ongoing terrorist activities in the southern Philippines but there has been no suggestion that this is occurring.

Illicit trafficking in stolen and other goods

This category focuses on a relatively narrow range of stolen goods. However, such goods could have high values. The goods covered by this category are:

- Stolen goods (NB: only to extent not captured under *e.g.*, theft)
- Gems
- Precious metals
- Radioactive materials
- Cultural goods
- Other

Given the existence of significant gold mining operations in PNG, there is a potential for gold to be stolen by employees or others who can access the mines. There are no widespread reports of such activity as site security is designed to prevent this and is active. The availability of alluvial gold in PNG does allow for large scale illicit mining which is addressed separately.

Cultural goods do not attract sufficient value to give rise to an illicit market.

There is the strong possibility that high value goods such as gold, shark fin, bêche-de-mer, vanilla and gems are carried across the border as a means of moving value. Illicit proceeds from offences in PNG might be used to purchase such goods as the carriage of these goods may be less suspicious than large amounts of cash.

The threat of money laundering associated with illicit trafficking in stolen and other goods of this type is thus assessed to be low to medium and the impact of these offences is considered to be medium to high, although the amounts involved are unknown. The overall ML risk is medium to high.

Illicit cross-border cash flows

In countries where border controls at ports and airports are lax, where large and uncontrolled land and sea borders mean they are very susceptible to uncontrolled movement of people and goods or where corruption can undermine effective border controls, the physical cross-border movement of criminal proceeds is the easiest and most effective means of moving proceeds with little chance of detection.

PNG faces these challenges. Cash can be carried in many areas without attracting attention and there is substantial evidence that cash is carried out of PNG through ports, airports and across the land border.

PNG has legislated for a declaration system for cross-border cash movements. Amounts of K20,000 or more must be declared and details provided at the border. These forms are then to be forwarded to FASU.

There is a strong belief within the RPNGC, FASU and Customs, based on intelligence and observation that cross-border cash movements are occurring at the land border. This is facilitated by the lack of control and the large amount of cross-border trade which takes place along the border and allows comingling of licit and illicit funds. In addition, the movement of Kina into Indonesia and counterfeit Kina being brought into PNG exacerbate the problem. Given the problems referred to earlier in relation to the movement of people and goods across the border, the volume of cash involved is likely to be very significant and with high incidence of such movements.

While much of the cash which flows is the result of legitimate trade, the cross-border illicit movement of cigarettes, alcohol and pirated goods, all of which will produce criminal proceeds, generates large profits.

The risk of ML across the border, be it land, sea or air, is considered to be very high.

Corruption and Bribery

This category deals with a variety of criminal behaviour.

- Bribery - major
 - Friendly GST/tax assessments
 - Avoiding investigation/prosecution
 - Procurement contracts
 - Permits/permissions/licenses
 - Other
 - Graft - minor
 - Police
 - Traffic Police
 - Customs Officers
 - Licensing/Permit officials
 - Other
- Embezzlement/misappropriation (theft)
 - Central/federal government
 - Local/state/county etc. government
- Bribery of private sector
- Bribery of foreign officials
- Bribery or embezzlement - international organisations
- Illegal lobbying and political campaign financing

There is adequate legislation dealing with bribery, embezzlement and corruption offences. The problem is the lack of investigation and prosecution. Corruption in PNG is a deeply structural problem. It is said to be systemic and systematic. While some legislative steps have been taken to inject a certain degree of accountability, historically rooted patronage systems that operate in an environment still based on ethnic and social fragmentation render these legislative changes ineffective. Narrow political bases and short time horizons have created incentives for Members of Parliament to focus on the distribution of favours targeted to their supporters, thus further reinforcing social fragmentation.

Corruption is endemic in PNG, at all levels of government, public sector organizations and, though to a lesser extent, in the private sector. The state of corruption in the forestry sector has been

highlighted by the UNODC, and the situation of governance and oversight in public-private partnerships was found to be poor in the findings of the Commission of Inquiry into the Finance Department⁸³. The continuing low ratings for PNG by international bodies in relation to corruption show that there has been little improvement in recent years as annual Transparency International Corruption Index reports and World Bank Governance Indicators (discussed below) have consistently shown.

Abuse of position at the political and public service levels has frequently been alleged and established in many cases⁸⁴. This may occur to gain support and to influence decisions from minor permit decisions through to major decisions on infrastructure developments. The funds used in bribery and corruption may be sourced within PNG or come from offshore sources, either from prospective investors as a basis for approvals sought from government officials or as a result of offshore earnings from illegal activity in PNG. Of most concern is the possibility of high value bribery and corruption in respect of political favours and misuse of government assets and positions. Changes to laws and regulations alone are insufficiently effective to address this problem.⁸⁵

In PNG, corruption impedes efficient and fair delivery of the most basic state services and democratic rights. The experience and perception of outside opinion has a big impact on a variety of factors influencing PNG's ongoing development - including investor confidence and the willingness of donor agencies to engage with the country.

There have been many reports of corrupt practices that may generate funds that can be laundered, which include:

- Nepotism and Cronyism
- Appointment of government Ministers and Officials
- Political funding, both of parties and candidates and distribution of funds by politicians
- Misuse of government assets and funds
- Facilitating real estate improprieties – sales and leases.
- Misuse of political position
- Misuse of public service position
- Embezzlement of public funds or assets
- Bribery in procurement in both public and private sectors
- Facilitating immigration, visa and citizenship improprieties

The funds from corruption which are available for laundering in and through PNG are likely to be very substantial. The value of alleged offences reported to the RPNGC over the last three years was almost K400 million, suggesting an annual level of offences in the order of K130 million. Of course, this estimate is based only on those possible offences which were identified and reported to the RPNGC. There may well have been significantly greater amounts in undetected offences. One current case concerns the purchase of land at Manumanu for a new defence base⁸⁶. A number of Ministers and agency heads have been stood aside while the matter is investigated.

⁸³ Transparency International, 2009 Annual Report on Papua New Guinea

⁸⁴ The Ombudsman Commission investigates alleged breaches of the Leadership Code. The Annual Reports of the commission show that following investigation dozens of MPs, heads of national agencies and senior officials have been referred for prosecution.

⁸⁵ For further discussion of the patronage politics in PNG see Allen, Matthew, & Zahid, Hasnain. 2010. "Power, Pork, and Patronage: Decentralization and the Politicization of the Development Budget in Papua New Guinea", in Commonwealth Journal of Local Governance, No. 6. July 2010.

⁸⁶ A Commission of Inquiry was established by the Prime Minister in March 2017 to investigate alleged corruption relating to the K 63 million land purchase for the proposed Manumanu Naval Base.

A characteristic of the traditional culture of PNG is the Wantok system. It is a system of relationships/obligations between individuals connected by common origin, hailing from common geographic area, sharing common kinship and common language. The Wantok refers to an extended family or clan ranging from just a few people to several hundreds. In political and public affairs, the Wantok system can provide a strong incentive for nepotism and corrupt practices. Upon being elected, many leaders tend to infuse the rules governing public office and resources with this traditional cultural practice, bestowing favour on their Wantok to the detriment of their proper political constituency.

While high-level corruption is a major problem, the widespread use of facilitation payments is endemic. Without such payments, applications for most licenses, permits, approvals or official consideration will be long delayed. These payments, in addition to the required fee for the application are a burden for business and citizens. The payment of bribes or reliance on wantok connections to prevent RPNGC, Customs or IRC action are widely reported.

The Transparency International 2016 Corruption Perception Index (CPI)⁸⁷ ranked PNG at 136 out of 176 surveyed countries, with a score of 28. PNG's ranking rose marginally from the 2015 ranking of 139 and a score of 25. This increase is due to the inclusion of more countries in the 2016 survey and a slight change in methodology⁸⁸ rather than an improvement in PNG's substantive assessment.

The World Bank's Worldwide Governance Indicators⁸⁹ show that across the last ten years, little measurable improvement has been achieved by PNG in the areas of "Voice and Accountability" and "Government Effectiveness". In relation to "Political Stability and the Absence of Violence/Terrorism" the improvement which had been noted from 2011 to 2014 saw a significant reduction in this indicator over the last two years. This also includes "Regulatory Quality" which has seen a significant drop in the last two years as well. In relation to the "Rule of Law" the low ratings for PNG have continued over the last decade with a drop in the last two years. In relation to "Control of Corruption", PNG had experienced a downward trend from 1996 to 2009 when the situation began to marginally improve. The indicator on control of corruption has deteriorated sharply since 2002, being at an especially low level in 2009. The slight improvement from 2009 to 2012 has been reversed since then.

In 2015, PNG was in the bottom quartile of countries for 3 of these 6 indicators (Political Stability, Rule of Law and Corruption) and in relation to Corruption, its percentile rank was 14.4, the lowest of all of the indicators. In relation to the other factors (Voice, Regulatory Quality and Government Effectiveness) PNG is into the next quartile with percentile ranks of 49.26, 31.25 and 29.81 respectively.

The legislature in PNG has not been very effective in performing its accountability function. The volatile party system, the lack of party loyalty and stability limit the ability of the legislature to act as a watchdog against corruption. Parliamentary committees generally do not operate to vet bills. A proposed law to establish an independent anti-corruption body in PNG (ICAC) has been stalled in the Parliament.

Until PNG implements the UNCAC, it will remain non-compliant with FATF Recommendation 36 which explicitly requires PNG "to become a party to and implement fully" the UNCAC.

⁸⁷ CPI score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 100 (highly clean) and 0 (highly corrupt). According to Transparency International, a score of less than 30 out of 100 indicates there is "rampant" corruption.

⁸⁸ Advice from TIPNG 19 May 2017.

⁸⁹ World Bank Governance Indicators 2016. Accessed at <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

What is also needed is a comprehensive National Whistleblower Protection legislation to enable civil servants who are aware of corruption, fraud and other illegal activity to be able to report those concerns without fear.

Anti-Corruption Measures

While there are criminal offences under the relevant laws to combat corruption in PNG, the effective implementation and policing of these laws remain highly problematic. Political will to eradicate corruption practices over successive governments has been lacking.

There are no specialist institutions (other than the Ombudsman Commission) with special powers or dedicated resources to tackle corruption offences. Prior to the 2013 amendments to the Criminal Code,⁹⁰ the offence of misappropriation of public funds carried relatively low penalties and the Directorate established in the RPNGC to investigate those offences is severely under resourced.

PNG's Ombudsman Commission (OC) is established under the Constitution and Organic Law⁹¹ to combat corruption through oversight of the Leadership Code. It does not have a role to investigate cases of corruption for criminal prosecution or proceeds of crime action. It refers cases for prosecution following its investigation of the allegations but many of these cases remain "pending" long after referral⁹². An obvious defect in the present system is that investigations by the OC are terminated if the subject leaves office.

The Leadership Code sets out the responsibilities of office, specifying that leaders must not place themselves in a conflict of interest and that they are obliged to disclose their assets and incomes and prohibiting certain functions for leaders. The Leadership Code definition of leader covers mainly ministers, members of national and provincial legislatures, members of local level governments, constitutional office holders, heads of national and provincial departments and ambassadors. There are about 600 leaders and offices to which the Leadership Code applies.

The OC is entitled to investigate a wide range of official bodies, initiate investigations, respond to complaints, question decisions and consider defects in law. The Commission is composed of three members appointed by the Ombudsman Appointment Committee, chaired by the Prime Minister and consisting of the leader of opposition, the Chief Justice, the Chairman of Public Service Commission and the Chairman of the appropriate Permanent Parliamentary Committee. Although the OC has been very vocal against corruption, its efficiency is impeded by its lack of resources.

While its jurisdiction is limited to matters within PNG, this does not prevent it from working in cooperation with FASU, DJAG and the OPP to seek to recover proceeds of corruption if these are identified outside PNG.

Officials and civil society note that there is an environment of impunity, where case of large scale corruption and misappropriation of public funds appear to take place largely without consequences. The Freedom House 2010 Country Report on PNG indicates that senior officials generally avoid investigation by claiming executive privilege or parliamentary immunity and have occasionally silenced accusers through defamation and libel suits⁹³. Recent moves to undermine the power of the Ombudsman Commission, for example, illustrate the lack of leadership to support processes where parliamentarians and senior officials are called to account for abuse of public finances.

⁹⁰ The Criminal Code (Amendment) Act 2013 increased the maximum penalty for misappropriation and stealing to life imprisonment.

⁹¹ Section 27 under Part III Division 2 of the Constitution

⁹² See, for example, Ombudsman Commission for PNG, Annual Report, 2013 at pp 42-43.

⁹³ Freedom House 2010 Country Report on Papua New Guinea;

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7896&pf

In addition, through efforts of bodies such as the Media Council and certain non-governmental organizations such as Transparency International, the public has become a more vocal actor in the fight against corruption.

Government efforts to fight corruption include the National Anti-Corruption Strategy (NACS) 2010-2030. The aim of the Strategy is to assist and support PNG to be more transparent and accountable and bring its legislation in line with the UN Convention Against Corruption. However, progress has been slow. This is because “the PNG NACS is not an implementation document”⁹⁴ and does not direct government agencies to take action against corruption. Effective implementation requires such direction.

It is essential that all allegations of serious corruption are investigated and, if appropriate, prosecuted. The cost of corruption is high. It has many effects including:

- Damaging PNG’s international reputation,
- Undermining public confidence in government and the institutions of government,
- The direct cost of bribery and corruption in lost revenue,
- Indirect costs to public and private projects through higher costs where competitive contracting is undermined,
- Lost revenue from GST fraud and unpaid taxes, and
- Lost tax and royalties as a result of the illegal export of valuable resources, enabled by corruption.

The risk of corruption generating funds which are laundered within and out of PNG is very high. For the reasons outlined above, the impact of corruption is very high. Funds obtained through corruption may be laundered within PNG through the purchase of assets such as real estate and businesses which can then be used to further launder corruptly obtained proceeds. High-level corruption will likely lead to funds moved offshore to countries such as Singapore, Malaysia, Australia and the Philippines. Lower level corruption tends to generate much smaller amounts which essentially boost salaries and are used to support lifestyle. The overall risk of ML associated with corruption is very high given a very high level of incidence and very high impacts on PNG.

Fraud

This category of offences affects both the public and private sectors. There is some crossover with offences covered by corruption and bribery because fraudulent activity might be ‘hidden’ through the payment of bribes to law enforcement and revenue officials. Taxation fraud is dealt with separately. The Fraud category includes:

- Against government - General
- Embezzlement/misappropriation (**excluding** from government by officials)
- Lending fraud (*e.g.*, mortgage fraud)
- Payment instrument fraud (*e.g.*, credit card, cheque fraud)
- Insurance fraud
- Healthcare fraud
- Benefit fraud
- Vendor, supplier & procurement fraud
- Confidence tricks/scams

⁹⁴ PNG NACS 2010-2030, page 3.

- False billing/invoicing
- Cyber & Internet selling frauds (e.g., “phishing”)
- Investment frauds (e.g., Ponzi & pyramid schemes)
- Other fraud

The Criminal Code criminalises various types of fraud relating to government and private sectors, insurance, procurement and false billing. The provisions are wide enough to prosecute most types of fraud including fraud perpetrated through the internet.

The major areas of fraud in PNG relate to fraud against government programs, embezzlement, fraudulent purchasing and contract administration and frauds against private sector bodies of similar kinds but to a lesser degree.

The level of fraud reported in RPNGC statistics would, on the basis of discussions with a number of agencies, seem to be very significantly under-reported.

Table 7. Fraud Offences 2013-2016⁹⁵

YEAR	Offences	Charged
2014	98	50
2015	105	73
2016	84	39

In cases where corruption is involved, there is often also related fraud (such as false documentation to facilitate the activity) as well as payment of bribes.

In commercial cases, the amounts involved can be very large. But the likelihood of detection and prosecution is low.

Financial Product Fraud

The commercial banks report that while there are inevitable cases of loan default, the incidence of deliberate fraud in relation to financial products is low and consequently the risk of fraud related ML is low.

Insurance Fraud

Similarly, the incidence of fraud in relation to insurance products is not reported to be high and the resultant ML risk is therefore, considered to be low.

Procurement Fraud

This is a major area of fraudulent activity, often occurring in relation to government procurement but also in the private sector, in relation to contracts and the delivery of goods and services. Many of the cases investigated by the NFACD within the RPNGC involve procurement fraud. These cases of

⁹⁵ Source: RPNGC

fraud can involve large values, a high level of incidence and therefore the risk of related ML is very high.

Taxation and Revenue Fraud

This area covers all of the various forms of government revenue collection and the means by which there is fraud. These include frauds relating to:

- Personal income tax,
- Withholding tax
- Corporate income tax
- Illegal income sources
- Sales/turnover tax, VAT
- Customs/excise under invoicing - exports
- Customs/excise under invoicing - imports
- Customs/excise false declaration of quantity & product
- Spirits, tobacco, fuel excise evasions
- Gaming machine taxes and excise evasions
- Excise evasions related to counterfeit and piracy of products
- Other excise evasions
- Departure taxes & fees
- Death & estate duties
- Stamp Duty
- Capital gains taxes
- Real estate rental etc. taxes
- Informal sector
- Illegal transfer pricing
- Other

In PNG, the main focus is on fraud relating to income tax, GST, customs duties and excise and non-payment of tax and duty on illegally imported products.

Taxation Fraud

Globally, taxation fraud is common. PNG faces similar challenges. A range of taxation frauds are committed in PNG. These include income tax fraud, GST evasion, avoidance of duties and excise and avoidance of stamp duties on real estate.

The IRC has placed considerable effort into ensuring that it is capturing more of the taxation that is payable and the introduction of Tax Identification Numbers (TIN) for businesses in 2013 was a major step forward. All new businesses are required to obtain a TIN from the IRC on registration but there are still gaps in the system.

Income tax fraud is a major issue. While salary earners have income tax deducted at source and are not required to lodge returns, some individuals, such as those who are self-employed, are required

to lodge returns. Companies are required to lodge annual returns. Only about 12% of registered PNG companies were assessed as having a taxation obligation in 2013,⁹⁶ the last year for which there is an annual report from the IRC. Of the remainder, many of these companies may be inactive⁹⁷ but the proportion not paying tax suggests there may be significant levels of tax fraud.

Tax Clearance Certificates are required before amounts in excess of K200,000 are transferred off shore in each calendar year. Around 2000 certificates are issued each year. This is designed to ensure that any tax liability is met before the funds are transferred. However, while the IRC has moved to tighten the process, the system can easily be circumvented⁹⁸.

In addition, employees who are working without the necessary permits, foreign workers who are undocumented or without work permits and trafficked workers provide an unscrupulous employer with the opportunity to underpay workers or take tax at source but not remit the tax to the IRC.

GST is an indirect consumption tax imposed on most goods and services supplied in PNG and on most goods imported into PNG. Sole traders, companies, partnerships cooperatives, non-profit bodies and others must register for GST purposes. GST is initially self-assessed and returns are lodged with the IRC.

Around 10% of claims for GST refunds are rejected because they are found to be false. It is unclear what level of undetected GST fraud exists but there are many ways in which this can occur:

- False claims for GST refunds (overstating purchases and understating sales, or both),
- Use of not for profit entities such as Associations and obtaining tax exempt status for business activity,
- Undervaluation of goods at entry (where GST is payable in addition to GST on later sales), and
- Non-registration for GST purposes and the conduct of cash businesses where the tax is collected but not remitted.

Associations (such as charitable organisations, clubs, political parties and traditional landownership groups) registered with the IPA under the *Association (Incorporation) Act* can register with the IRC for an income tax exemption. They can also obtain a GST exemption which allows them to not charge GST on sales and receive a refund of GST paid on purchases.

Failure to register and failure to lodge GST statements after collecting the GST from customers are considered to be at significant levels. The funds from fraudulent GST related activities which may be available for laundering in and through PNG are also considerable.

Where IRC is aware of false GST claims, it refuses payment. Where it is aware of an understatement of income or excessive claims for deductions in relation to income tax, it will seek to recover unpaid tax using administrative processes including imposing additional tax penalties.

⁹⁶ In 2013, 6,437 assessments for company income tax were made: PNG IRC Annual Report, 2013 at p 23. Around 52,000 foreign and domestic companies are registered in PNG.

⁹⁷ The IPA conducts annual reviews of companies which have not lodged annual returns (which are compulsory). Following a series of contacts by the IRC the company should be deregistered if the return is not lodged and heavy fines are payable by directors for a failure to lodge returns. Accordingly, there should be few registered inactive companies.

⁹⁸ This issue is discussed in more detail in Chapters 7 and 11.

The likelihood of taxation fraud is very high and the amounts involved are considered to be very significant, as evidenced by the number of companies not being assessed. The non-payment of tax has a major adverse effect on PNG as it reduces the funds available for basic government services. Given the estimated extent of taxation fraud and the need to hide the extent of these frauds, the ML risk relating to unpaid income tax (undeclared or understated) and GST fraud and withholding tax is very high.

Customs Duty

The Customs Service collects duties, excise and GST on goods imported into PNG. All products imported into PNG must be the subject of a declaration describing the nature, quantity, value, supplier and country of origin of the goods imported or to be imported. The name, address and Tax File Number of the owner must also be declared. Similar obligations apply to exports. Exports may be subject to the need for permits such as for fish product, alluvial gold and concentrates, logs and articles of precious metal.

In addition to the GST imposed on goods at the point of sale, GST is also collected when goods are imported. Effectively this is a tax levied on the wholesale (or import) value of the goods. This is then incorporated into the base cost of the retail sale price which also attracts GST.

The duty to be imposed depends on the nature of the goods and the dutiable rate for that category of goods. Excise might also be imposed. Misstatement of the nature of the shipment may reduce the duty and GST payable. However, the subsequent sale of the imported product may be at a price which included the (assumed) duty that was payable, thus increasing profits.

To obtain Customs clearance the exporter or importer (or their agent) must provide detailed documents to Customs and these must be retained for 5 years. Customs is moving to an electronic clearance system which will allow up to 80% of goods to be cleared without Customs intervention at the time of import.

Most cargo is not inspected on arrival or departure. Customs conducts physical inspections of cargo based on intelligence, concerns about the parties involved and the declared nature of the products as part of a spot checking regime. However, Customs has limited resources and its use of technology (such as scanners, x-ray machines, drug testing equipment) is constrained by cost and the number of ports and airports and the length of the sea and land borders it must control.

False documentation, misclassification and compromising of Customs staff are common. Alcohol and cigarettes (which attract high duty and excise) are smuggled across the land border and through the ports. Drugs are brought in regularly. Containers are removed from ports prior to Customs clearance and few containers are inspected. The logging ports are outside effective Customs control and these are known to be used for people movement, the export of flora and fauna and laundering. Despite legislation requiring declaration of currency movements, these are not effectively monitored.

While Customs can inspect export documentation relating to the export of forestry products, Customs indicate that this does not occur unless the products are exported through Customs controlled ports. There is also linking of the shipping documentation with logging approvals. This is separately controlled by the PNGFA and a private contractor engaged by the PNGFA. Similarly, the clearance of fishing vessels at ports does not prevent mother ships taking fish which have been taken in PNG waters in excess of approved levels and never brought back to PNG ports. Human trafficking and smuggling is linked to fishing vessels. Consequently, the widespread breaches of the duty and excise system will give rise to large amounts of criminal proceeds.

The incidence of these offences and the large amounts involved means that the ML risk is very high.

Illicit and Informal Sector

The sale of counterfeit, smuggled or illegal products (such as drugs or pornography) will produce criminal proceeds. These products may be sold through outlets also selling legitimate products and comingling proceeds. The extent of such sales is unknown but the widespread availability of counterfeit goods suggests that the market is large.

In addition, there is a large section of the cash economy where products ranging from home grown produce to consumer products, food, alcohol, cigarettes, and virtually any other product is sold by individuals or businesses which are unregistered, have no permits or approvals and who never access the formal financial system. They operate off the regulatory radar.

These entities are not paying income tax and are not remitting GST. The amounts earned by individuals operating in this sector (such as road side stalls) might be very small, essentially at the subsistence level. But others will make large profits and these are criminal proceeds derived from tax fraud. Most of these profits will simply be spent within the cash economy or, in the case of larger amounts, they may find their way into the formal economy. More likely they will be used to expand the business, find legitimacy through front businesses or be used to purchase high value goods such as cars or property.

The incidence of this kind of fraud is very high, its impact is very high and the resultant risk of ML in relation to these activities is very high.

Counterfeiting currency

- Local currency
- Foreign currency

Authorities are aware of the movement of counterfeit Kina currency across the land border. It appears to be freely traded across the border although the banks indicate that there are few examples of counterfeit currency being found elsewhere in the formal sector. This suggests that the counterfeit currency is largely used in border regions. The currency is apparently produced in Indonesia but once in circulation is mixed with legitimate currency.

It is possible that counterfeit currency is being purchased at a discounted rate with legitimate currency, including foreign currencies. This trade in currencies might provide means of moving illicit funds out of PNG linked with other forms of cross-border trade.

While the volume of counterfeiting is unknown, the increasing discovery of counterfeit notes is of concern to BPNG. The threat of money laundering associated with counterfeiting currency is thus assessed to be medium to high.

Counterfeiting and Piracy of Products

The sale of pirated products is a major problem in PNG. The potential for high returns encourages the sale of these products. In this category the main offences are:

- Illegal parallel imported products
 - Patents/copyright/trademark infringement
 - Clothing and shoes
 - Accessories: bags/sunglasses/watches etc.
 - Books
- Information technology
- CDs/DVDs, etc.
- Cigarettes
- Foodstuffs

- White ware & other electricals
- Pharmaceuticals
- Of collectibles (*e.g.*, wine, antiques)
- Software

Counterfeit goods are easily acquired in PNG. The most common goods are pirated DVDs, clothing and footwear. Counterfeit cigarettes are also readily available. Counterfeit electrical goods, phones and small appliances are available. There is less evidence of larger counterfeit appliances being available.

Most counterfeit products are clearly identified by the price charged. In developed economies, there is often an attempt to sell these products as “genuine” but at discounted prices. In PNG, in part because the quality is often low, these items are sold at much lower prices than genuine products. The sale of fake sports clothing (team jerseys) is particularly prevalent because most people cannot afford the genuine product.

The volume of product available suggests there are large profits being made. The cost to purchase these goods in the country of origin is low and even if the profit margins are not large, the volume of product produces large profits. The goods are imported from various sources in Asia and are cleared through customs controls through false declarations, concealment in legitimate imports, payments of bribes, and removal of containers from ports before clearance or by transfer from coastal or international shipping before entering ports.

The threat of money laundering associated with counterfeit goods is thus, assessed to be very high.

Environmental Offences

Environmental crimes cover a wide range of offences which include:

- Illegal logging
- Illegal fishing
- Illegal dumping/polluting
- Illegal mining
- Other illegal extraction
- Illegal trading in endangered species (CITES)
- Illegal construction

In addition to the revenue generated from illegal logging and fishing (discussed below), other environmental crimes generate large criminal profits. For example, a failure to comply with laws on the handling of waste products may save companies millions of dollars and these savings are just as much the proceeds of crime as the revenue from the illegal drug trade.

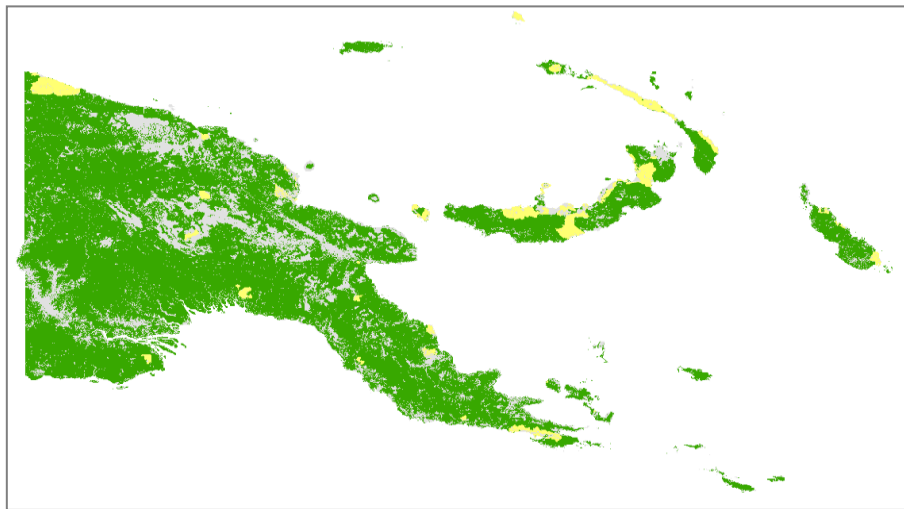
There is evidence of illegal mining, such as alluvial gold mining and failures to comply with various conditions relating to mining and production activities designed to protect PNG’s environment. Waste products may be dumped to avoid fees for the use of designated areas.

Where there are examples of illegal mining and breaches of environmental conditions, such as illegal dumping of mine waste, it is likely that the resultant proceeds will simply appear as changes in the overall profits of the business. The criminal proceeds will be comingled and will not be separately laundered. In the case of foreign companies, they will be repatriated to their home base or to a third country where favourable taxation treatment may attract the funds of global companies. Local firms

are more likely to utilize the increased profits for further expansion, distribution to owners or transfer offshore.

The island of New Guinea contains the third largest rain forest in the world. It contains many species in which there is an illegal global trade. The loss of forest areas and the illegal trade in fauna is a major problem. The increasing loss of habitat increases the risk of loss of endangered species. While forestry operations are often consented to allow for regrowth and long term sustainability of both the industry and the forests, almost a third of the logging carried out by the PNGFA involves land clearances for agriculture leading to permanent deforestation. Figure 3 shows the estimated loss in forest cover from 1980 to 2020.

Figure 3. Projected Loss of Forests 1980 – 2020⁹⁹



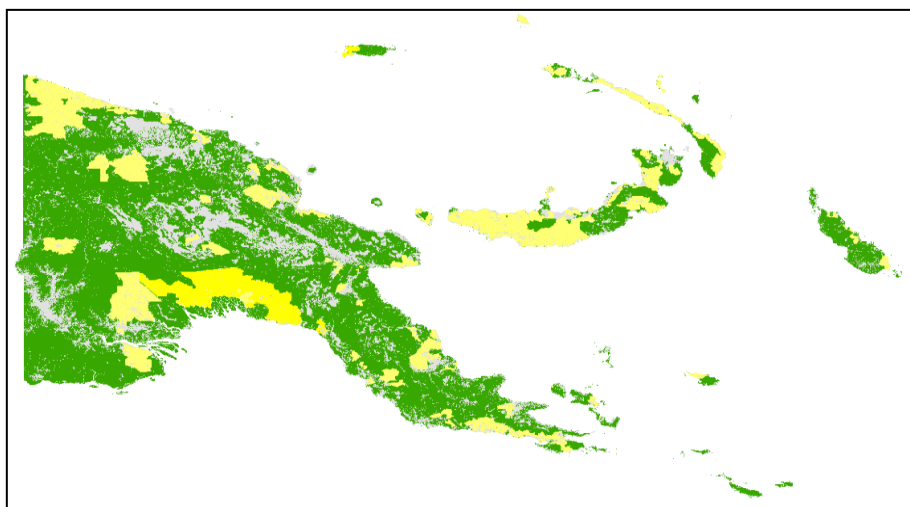
Projected Forest degradation in 1980

Green = Forest Area

Gray = Non Forest Area

Yellow = Forest area overlapped with concession purchased before 1980

*proposed concession and cancelled concession are not included.



⁹⁹ Source: PNGFA/JICA Project, May, 2017. Diagrams provided by PNGFA.

Projected Forest Degradation by concession areas by 2020

Green = Forest Area

Gray = Non Forest Area

Yellow = Forest area overlapped with forest concessions so far

*proposed concession and cancelled concession are not included.

While the consequences of these environmental offences can be very significant, it is less likely that the criminal proceeds will be laundering in traditional ways. That is not to say that the use of illegal proceeds to boost profits of legitimate businesses is not a form of money laundering. Rather the criminal proceeds will not be separately laundered in or through PNG. The risk of ML in PNG related to these kinds of offences is thus considered to be low to medium.

Illegal Logging and Fishing

Illegal logging and fishing are the two forms of environmental crimes which are believed to produce the largest amount of criminal proceeds. However, unlike the proceeds of most crime in PNG, the proceeds of illegal logging and fishing accrue in other countries.

Legal Framework - Logging

The legislation governing logging and other forest industry activities is the *Forestry Act 1991*. Logging and forest industry activities in PNG are illegal without lawful authority given under the *Forestry Act*¹⁰⁰.

There are four 4 specific ways which allow for registered Forest Industry Participants to undertake forestry business or activity. These can be done under the issuance of the following, as governed by the *Forestry Act 1991* (as amended);

1. Timber Permit (s.73)
2. Timber Authority (s.87)
3. Forest Clearance Authority (s.90B)¹⁰¹
4. License (s.92)

Different levels of approval apply in the issuing of each authority. Any logging activity which is conducted without or contrary to lawful authority under the Act is illegal and can constitute an offence under s.122 of the Act.

Section 122 of the Act provides for breaches and penalties under the Act. It is an offence to engage in forestry activities outside of those allowed by a *timber permit*, a *timber authority*, or *license*. This offence carries a penalty fine of K1,000,000 or imprisonment for a term not exceeding five years or both.¹⁰² There is a default penalty of a fine not exceeding K10,000. The offence therefore is a predicate for money laundering and for recovery of criminal assets under the *Proceeds of Crime Act 2005*.

Legal Framework - Fishing

PNG is an archipelagic nation and its Exclusive Economic Zone (EEZ) spans up to almost 2.5 million square kilometres. The law governing the fishing industry in PNG is the *Fisheries Management Act 1998*, as amended (the FMA) and the *Fisheries Management Regulations 2000*, as amended. The National Fisheries Authority (NFA) is a non-commercial statutory authority established and operating

¹⁰⁰ The definition of illegal logging adopted by the International Tropical Timber Organisation (ITTO) is “removal of logs in a manner that is against the provisions of relevant laws [...of a particular country]” and this is the basis of determination of illegal logging under various international guidelines relating to prohibitions on the importation of illegal logs.

¹⁰¹ This allows forests to be cleared for agricultural activity and accounts for a large amount of forest removal.

¹⁰² As amended by *Forestry (Amendment) Act 2007*.

under the FMA and related regulations which administers the legislative framework. The legal framework covers, amongst other things, the licensing procedures, the type of offences under the legislation and how the offences are to be investigated and prosecuted.

The importance of the industry to PNG is shown by the value of the export market. The annual value of exports to the Philippines (PNG's largest export market) is in excess of K 6.5 billion (\$2 billion) and, for the next 9 largest markets, an additional almost K 500 million (around \$158 million) per year.

The FMA has extra-territorial application and regulates, controls, and manages the fishing industry in PNG and its fisheries and marine aquatic resources and environment. It extends to all persons and boats in PNG waters and vessels licensed under the Regional Access License through the Federated States of Micronesia Arrangement (FSMA). The FMA and the Regulations along with NFA's systems and processes were recently amended to give effect to PNG's regional and international obligations to combat illegal, unreported and unregulated fishing (IUU fishing), strengthen sanctioning systems and improve monitoring and control of fishing and related activities in the PNG Fisheries Waters. The legal framework is now compliant with international legal requirements relating to the conservation and management of fish stocks.

All commercial fishing and related activities undertaken in PNG must be covered by licence¹⁰³ authorised by NFA. The approval and validity of these licences is determined by the NFA Board. Licences are not transferable¹⁰⁴ and there are several circumstances where fishing licence may be refused, suspended, cancelled or terminated. A license must be surrendered within 5 working days after it is suspended, terminated or cancelled. Licenses are usually issued for one year.

Commercial fishing licenses have conditions that specify prohibited areas and a vessel monitoring system enables the NFA to ascertain the location of a vessel in near real time. This enables the NFA to impose fines on vessels that fish in prohibited areas. However, the vessel monitoring system cannot see illegal unlicensed vessel and the NFA uses chartered aircraft and boats to conduct aerial surveillance and sea patrols.

In addition, FMA Observers are placed on board all licensed Local and Foreign Tuna Fishing Boats (using purse seiners¹⁰⁵) and mother ships. Observers are mandated by the FMA and they report on all catches and activities that happen out in the fishing ground.

It is still possible for unlicensed vessels to operate given the size of the EEZ. Equally the monitoring systems can be compromised by corruption.

Any non-compliance with the terms and conditions of a licence under Section 43 of the FMA may result in suspension or cancellation of the licence and any penalties that may apply may be imposed. Automatic termination of a fishing licence under Section 20 of the Regulation occurs where there are unapproved changes in ownership or flag state, the good standing of the vessel is removed or the flag state removes endorsement to operate outside its own waters.¹⁰⁶

Fisheries offences are summary in nature and relate to:

- (i) Fishing without licence, and
- (ii) Conducting fishing and related fishing activities in breach of conditions of licence.

¹⁰³ The scope of the licences covers fishing and related activities including Fishing Vessel Licence, Trial Fishing Licence, Aquaculture Licence, Fish Buyers Licence, Fish Storage Facility, Fish Factory and Fish Export Facility Licence.

¹⁰⁴ Papua New Guinea National Fisheries Authority Licensing Policy

¹⁰⁵ Large walls of netting used to surround schools of fish.

¹⁰⁶ supra (PNG Licensing Policy)

There are other offences apart from the offences concerning licences. Breaches are dealt with either administratively or through prosecution in the District Court. The offences are prosecuted summarily before a Grade 5 Magistrate except where administrative proceedings are involved.

Fisheries officers¹⁰⁷ conduct investigation into breaches and their powers extend to undertaking inspections beyond PNG's waters. As a result of a different regulatory regime under the FMA, offences are **not predicate offences** for ML purposes but, as described below, there are ways in which illicit earnings could be recovered.

Illegal Logging

There are strong indicators of large scale corruption and illegal logging in the forestry sector in PNG, which result in high levels of proceeds of crime. While the full extent of illegal logging and fishing is not known (inevitable whenever dealing with illicit activities), it is widely accepted that the problem is widespread and the lost revenue is extensive¹⁰⁸. Notwithstanding that there is in place a detailed legislative framework for the control of logging, it is widely claimed that there is a huge volume of illegal logging and that these products are exported alongside the legally obtained products. NGOs estimate that a large majority of all logging practice in PNG is illegal, mainly due to the lack of prior and informed consent by traditional landowners and failures by authorities in PNG to enforce existing laws covering the sector, including management of timber concessions. The PNGFA believes that its systems are robust, verified and that there is close supervision of the industry. It also argues that the traditional owners may have differing views about making land available for logging, giving rise to claims of unapproved logging. The logging sector includes a network of over 40 private ports for export.

Despite the comprehensive legal regime under the *Forestry Act 1991* which allows those involved in illegal logging to be prosecuted and means the offences are predicate offence for ML and recovery of proceeds under the *Proceeds of Crime Act 2005*, in practice, these offences seem to invariably be dealt with as regulatory matters.

There has never been any investigation into breaches of forestry laws that has resulted in a successful prosecution of a timber operator or an individual associated with the industry¹⁰⁹. This is despite reports from environmental groups alleging high levels of corruption in the sector. Concerns about the industry have been voiced over a long period¹¹⁰ and remain today.

Capacity for supervision is weak for logging concessions, extraction and export activities, payments, and the operation of ports. Monitoring some aspects of the sector is contracted to an independent third party verification/certification company, Société Générale de Surveillance (SGS). The logging sector in PNG is characterized by vertical integration, with key foreign companies operating in the sector controlling road construction, media outlets, financial services, private ports and major infrastructure projects across PNG. Legal frameworks to identify illegal logging, and to prosecute those involved and "follow the money" have not met with a great deal of success.

¹⁰⁷ Section 48 of the Fisheries Management Act 1998 states that Members of the RPNGC and Defence Force are deemed to be Fishery Officers and a person appointed or authorised

¹⁰⁸ Transnational Organised Crime in East Asia and the Pacific (TOCTA) – A Threat Assessment, UNODC, 2013.

¹⁰⁹ The OPP are unaware of any successful criminal prosecution under the *Forestry Act* although the PNGFA has indicated there have been some prosecutions but were unable to provide details.

¹¹⁰ See for example, the Barnett Commission of Enquiry Report, 1989 which highlights a number of serious improprieties in the sector including improper payments to politicians, public servants and persons associated with the industry. *Commission of Enquiry into Aspects of the Forestry Industry, Final Report*, Vol.2, July 1989 at p.312 *et seq.*

However, in the development of the NRA some effort has been made to estimate the size of the problem. This has proved difficult. The official export figures for logs since 2013 are shown in *Table 8*.

Table 8. Annual Exports of Logs 2013 -2016¹¹¹

YEAR	PERIOD ENDING	LOG VALUE K MILLION	ANNUAL TOTAL
2013	Mar	169.6	
	Jun	171.9	
	Sep	158.1	
	Dec	224.5	
			K 724,100,00
2014	Mar	211.2	
	Jun	264.1	
	Sep	210.3	
	Dec	264.7	
			K 950,300,000
2015	Mar	221.4	
	Jun	222.7	
	Sep	237.2	
	Dec	358.8	
			K 1,040,100,000
2016	Mar	240.8	
	Jun	277.7	
	Sep	229.4	
YTD			K 747,900,000 ¹¹²

This reflects the amounts reported to the BPNG as transfers to PNG for logging products. These figures appear to reflect legal logging exports as they reflect payments made to PNG which are attributed by BPNG to logging receipts. It is unlikely that payments would be made for illegally obtained logs, unless these were comingled with legal product.

Figures provided by the PNGFA¹¹³ for export log revenues for the first 3 quarters of 2016 are consistent with the BPNG figures. While the PNGFA figures reflect the value assessed at the time of export and the BPNG figures reflect payments received (which would be paid after export) this tends to support the conclusion that BPNG figures reflect the value of legal logging.

However, figures compiled by SGS on a regular basis show that logs in excess of the approved volumes for a particular area are regularly exported. These illegally taken logs are retrospectively “authorised” by PNGFA prior to export. PNGFA then collects royalties on these exports but the products have been taken outside of the approvals issued under the legislation. Arguably these logs are proceeds of crime and could be seized under POCA, sold on behalf of PNGFA rather than the logging company and the full sale value (not just the royalty) retained by PNG.

¹¹¹ BPNG QEB Table 8.2 Exports Classified by Commodity.

¹¹² Year to date as fourth quarter figures not available.

¹¹³ PNGFA has not published annual revenue for logs since 2005 (the date of the latest data included on the PNGFA website) but it has provided data for export values during 2016 for the purposes of the NRA.

Various estimates¹¹⁴ put the value of illegal logging¹¹⁵ in PNG as between 70 and 90 percent of the total product exported. While PNGFA acknowledges that there are significant compliance issues and that it faces resource issues in remote locations it disputes that the illegal logging problem is of the size estimated by external entities and civil society organisations.

Illegal logging is important for four different but obviously related respects:

1. The logging occurs outside the formal regulated system and therefore the Government loses the taxation revenue, royalties and licence fees to which it is entitled,
2. Because the logging occurs outside the approved procedures it takes place in areas where logging may not be legitimately approved because of environmental concerns or because the forests are not yet fully mature. This means that legitimate logging is prevented in the medium term,
3. The fact that the activity is illegal means the proceeds are all recoverable as proceeds of crime. Prosecution for the predicate offences involved and recovery of the proceeds will deter future illegal logging as well as generating considerable revenue, and
4. The activity almost always involves corrupt behaviour by officials. It therefore fosters the widespread corruption problems facing PNG and increases the likelihood of corruption in other areas.

During the development of the NRA, several productive meetings were held with PNGFA. This enabled PNGFA to obtain a much better understanding of the NRA process and for FASU to better understand the challenges faced by PNGFA. In particular, there has been agreement that there are significant compliance challenges which need to be addressed at various stages of the logging process and prosecutions of offenders, tracing of criminal profits and recovery of these profits would have both enhanced compliance and increased revenue implications. In recognition of these issues, arrangements have been put in place between INTERPOL and PNG agencies including PNGFA and law enforcement agencies, to obtain technical assistance in addressing illegal logging.

Illegal Fishing

Illegal, unreported and unregulated (IUU) fishing is a global concern. The term “IUU Fishing” has become a catch-all term used worldwide to capture, in a single term, the major regulatory threats to sustainable fisheries from fishing that takes place outside the established legal framework for fisheries management. IUU fishing is a global challenge. In PNG the compliance program to prevent, combat and deter IUU fishing is underpinned by a National Plan of Action (NPOA) and includes a process of risk assessment. The NPOA translates into operational activities through the NFA’s Operational Compliance Strategy (OCS) which lays out activities and targets for high risks and high priority activities. These include collaboration with other line agencies like PNG Defence Force, Customs, Department of Health, National Agriculture and Quarantine Authority, National Maritime Safety Authority and the RPNGC through Memorandum of Understanding. The day to day work of fisheries enforcement is undertaken by Fishery Officers appointed under Section 48 of the FMA. The range of enforcement actions in which Fishery Officers are involved includes small scale offences on

¹¹⁴ See TOCTA, op cit, at page 95. The basis for the method used in this assessment is that declared trade is not necessarily legal. Consequently, realistic estimates of the proportion of illegal products in the formal trade are needed to calculate volumes and values. The estimates used take into account illegality in the minor clandestine trade but also the sustainable management of logging concessions, land-use designation, corruption and fraudulent methods. In the processing of wood-based products, the practice of combining illegal imported wood materials with legal wood materials that renders subsequent export products illegal is also factored in to production estimates in relevant source and processing countries. The proportions of illegal trade in this assessment derive from the totals of bilateral trade in specific products. The data presented for 2010 is a UNODC estimate based on the export value in US dollars.

¹¹⁵ The definition of illegal logging used in the TOCTA is significantly wider than that used by ITTO.

inshore reefs including those involving bêche-de-mer and reef fish through to large industrial scale illegal tuna fishing.

There are different instances of illegal fishing in PNG; fishing by unlicensed foreign vessels (such as the Vietnamese Blue Boats), fishing by vessels without nationality and illegal fishing by licensed vessels (which may involve the use of prohibited gear or breaches of management plans).

The NFA does not prosecute all offences. A hierarchy of enforcement actions is used as follows;

- 1) Court Prosecution- for serious and very serious infringements
- 2) Administrative Panel – for certain serious offences where the offender admits guilt.
- 3) Penalty notices with a fine fixed by regulation.
- 4) Written caution- for very minor offences where a prior verbal warning has been issued
- 5) Verbal Caution- for very minor infringements

Whilst the Legislation prescribes offences and penalties, it is a matter for the Court to determine what sanctions to apply. The sanctions include;

- Monetary fines of up to K1million for individuals and K5million for corporations.
- Forfeiture of vessels
- Forfeiture of gear
- Forfeiture of catch
- Suspension and cancellation of licenses
- A jail term of up to 5years and up to 10 years where the offences involve weapons or threats to a fishery officer or observer.

While there have been successful prosecutions for offences under the *Fisheries Management Act* the Act imposes penalties of up to a specified period. It does not set penalties of at least 6 months which is the trigger for offences to be predicate offences for money laundering¹¹⁶. It follows that recovery action under the *Proceeds of Crime Act* is not legally possible. The framework under the Act however allows for forfeiture of tainted assets (including instruments of the offence) and proceeds of the sale of fish caught under illegal circumstances. Amendments must be introduced to the FMA to include imprisonment terms for individuals. Alternatively, the definition of criminal conduct in Section 508A *Criminal Code* must be amended to include monetary penalties above a certain threshold.

The biggest challenge for PNG is its limited resources and capacity to police its EEZ to prevent IUU fishing. Illegal fishing boats in particular could potentially bring illegal cargo and engage in other transnational criminal activities such as human smuggling and contraband.

The main problem faced by NFA is that the large area within PNG's EEZ makes it very difficult to patrol and conduct surveillance activities. It is likely that unlicensed foreign vessels are fishing within the area, depositing catches with mother ships and returning to fishing grounds.

How Big is the Problem?

Illegal logging and fishing is, along with corruption, the major source of criminal proceeds and therefore raises money laundering activities. We should note however that much of the proceeds generated by illegal logging and fishing actually accrue offshore because the buyers will pay for the

¹¹⁶ Criminal conduct, an element of the money laundering offence under Section 508B *Criminal Code*, hinges on an offence attracting a penalty of imprisonment for at least 6 months and there is no qualification in respect of offences that only carry fines. There is a doubt as to whether the way the imprisonment provisions in the FMA meets the requirement in s.508B. In the absence of a definitive legal interpretation it is desirable that the issue be resolved by clarifying legislation.

logs in third countries and that the extent to which these criminal proceeds are in fact laundered¹¹⁷ in those jurisdictions needs further detailed consideration. What is also likely is that some, but by no means most of the funds so generated, will return to PNG as supposedly legitimate funds to be spent or used in local investment activity.

The UNODC has estimated illegal movement of timber products (timber and paper) from countries in the East Asia/Pacific region to be worth \$18 billion per year although the value of the finished products is estimated at more than \$350 billion per year. It is second only to counterfeiting by value.

There are estimates that the value of illegal logging in PNG and the Solomon Islands is in the order of \$800 million per annum. This means it is around 10% of the value of all legitimate exports from PNG. It also represents about 4% of national GDP. The lost benefit to income tax revenue, GST and licence fees is very significant.

Illegal logging and illegal fishing at the current levels represents a major money laundering threat to PNG. These practices generate very large illegal profits with very high impact on PNG's economy and environment. The ML risk is very high noting that most of the proceeds will be paid in other countries.

Murder, grievous bodily injury

This category includes:

- Murder - for hire/contract killing
- Murder - motive is profit (*e.g.* insurance claim)
- Grievous bodily injury- for hire or to derive funds or assets
- Other serious assaults

PNG has high rates of murder and other offences involving serious physical harm to victims as noted in *Table 9*.

Table 9. Murder and Other serious offences involving grievous bodily injury 2013-2016¹¹⁸

YEAR	Murder/Manslaughter Offences	Persons Charged	Grievous Injury	Persons Charged
2014	255	161	249	103
2015	330	129	486	109
2016	306	180	441	126

¹¹⁷ It is possible, and indeed likely, that at least some of the proceeds are simply accrued by the logging interests without the need for laundering. The funds may find their way into the financial system directly because the countries in which the funds are deposited are failing to apply appropriate AML policies and procedures. But we can also expect that some of the funds will be laundered using a variety of methods (eg, trade based laundering, false loans or presented as legitimate earnings of legal logging).

¹¹⁸ Source: RPNGC

However, the likelihood that these offences are carried out for profit (as distinct from acts of family violence or gang attacks) is very low. While the incidence is high, the ML impact is very low and therefore the ML threat is low.

Kidnapping, illegal restraint, and hostage taking

These offences relate to financially motivated hostage taking and include:

- Kidnapping/abduction for profit, and
- Hostage taking for ransoms.

While kidnapping for ransom is a major problem in some countries, this kind of offence is not often found in PNG. It therefore has a very low level of incidence. If it were to occur, there would be strong incentives to hide the proceeds creating a high risk of ML. Overall, the ML risk is considered to be low.

Robbery or theft

There are many thefts and robberies reported in PNG. Many are linked to assaults and the resultant proceeds may be of low value. A large proportion is linked to raskol activity discussed in the context of organised crime gangs above. The offences covered here include:

- Burglary - commercial
- Burglary - domestic/residential
- Theft/stealing/larceny
- Theft of motor vehicles (including car-jacking)
- Theft from motor vehicles
- Shoplifting
- Pick pocketing
- Bank robbery
- Pilfering/embezzlement (theft by employee)
- Robbery/mugging (including armed robbery)
- Cyber theft (e.g., transferring bank balances through illegal account access)

Robberies and thefts which do not involve motor vehicles are common, although most of these occur in the National Capital District (NCD). The nature of these offences in PNG is that while some involve significant value, most involve small amounts and the proceeds are almost always simply spent by the perpetrators.

Research conducted for the World Bank¹¹⁹ found that crime in general and violent crime in particular tends to be concentrated in “hot spots” such as the NCD, Lae and Madang but that the lack of data makes identification of these hot spots more difficult. The research also noted that there was a growing trend of criminal activity involving violence and the use of firearms in violent crime.

Table 10. Robbery and Theft 2013 -2016¹²⁰

Year	Robbery¹²¹	Persons Charged	Theft¹²²	Persons Charged	Burglary¹²³	Persons Charged

¹¹⁹ *Trends in Crime and Violence in PNG*, Sadaf Lakhani and Alys M. Willman, World Bank, 2014

¹²⁰ Source: RPNGC

¹²¹ Robbery refers to theft involving person-to-person interaction involving force, intimidation or coercion.

¹²² Theft is an unauthorized taking of property from another with the intent to permanently deprive that person of the property.

¹²³ Burglary involves entering a structure or dwelling with the intent to commit a crime within it.

2014	202	79	259	56	137	20
2015	272	63	259	51	141	29
2016	272	135	348	133	183	26

Similarly, motor vehicle thefts and robberies largely occur in the NCD. There is a growing trend for car jackings but thefts of unattended vehicles are also growing. As will be seen in *Table 10* and *Table 11* there are few arrests of perpetrators for these kinds of offences.

Table 11. Motor Vehicle Robberies and Thefts 2013 - 2016¹²⁴

Year	Motor Vehicle Robbery	Persons Charged	Motor Vehicle Theft¹²⁵	Persons Charged
2014	68	11	246	29
2015	159	16	139	27

While the incidence of these offences is very high and the impact (value) can also be high in the case of vehicles, the resultant proceeds are unlikely to be laundered through the financial system. The profits will usually be spent directly by those directly involved. The ML risk is moderate.

Smuggling

Smuggling is a major problem. Illicit goods can readily enter PNG and the relevant offences include:

- Prohibited imports
- Cigarettes
- Alcohol
- Cash smuggling of "clean" money (including dirty money would be double counting)
- Foodstuffs
- Prohibited exports
- Fuel
- Other

There is a strong incentive to smuggle these products into PNG because of the high levels of duty imposed on both alcohol and cigarettes. There is a significant trade across the land border and it is also thought that these products are brought in along the coast using fishing vessels or by smuggling larger quantities through the ports. Cigarettes and alcohol are smuggled across the land border as both can be acquired in Indonesia at substantially lower prices than in PNG. Some of this product is sold on the PNG side of the border but it is believed that larger quantities are transported by road and sea to other parts of the country.

The large potential profits from smuggling increase the likelihood that Customs officials will be bribed or that false declarations will be made concerning the content of containers. There are

¹²⁴ Source: RPNGC

¹²⁵ Theft is an unauthorized taking of property from another with the intent to permanently deprive that person of the property.

reports of false declarations in shipping documentation and of containers being moved from the ports before clearance. An added incentive to deliberately declare lower value goods (for dutiable purposes) is that in addition to duty, GST is imposed on goods entering the country and again at the point of sale. Thus, declaring a lower value product reduces the amount of GST paid by the importer. The “correct GST” can be factored into the sale price but retained as increased profit.

As noted, previously pirated and counterfeit products are widely available and these are the result of large scale smuggling operations, assisted in large part by low levels of scrutiny at ports.

The level of duty and GST evasion and the sale of the smuggled goods provides substantial profits which make the ML risk very high. Addressing these risks involves adoption of a number of mitigation activities discussed below.

Extortion

There is little evidence of offences such as:

- Blackmail, and
- Protection money/rackets

of the kind found in many countries where such practices are used to prevent competition, extort payments for fear of damage to premises or family, or support other forms of illegal activity. Accordingly, the ML risk is considered to be low.

Forgery

Forgery of documents covers offences such as:

- Fake financial assets,
- Philatelic forgery,
- Fake permits, approvals, and other government issued documents such as land titles,
- Fake export and import documentation,
- Fake passports,
- Fake ID/driver licenses, and
- Art forgery.

The main forms of forgery relate to government issued documentation which then forms the basis for fraud (such as where false land titles are obtained), and other documents which may otherwise support fraud like fake passports, visas and work permits to allow illegal entry and work.

There are widespread claims of people working in PNG without the necessary permits or with forged documentation. It is certainly believed by many in both the public and private sector to be the case. Given the border control issues it is probably a significant problem. The banks have reported that many people seeking to open accounts cannot produce the necessary work permits or other documentation but that they are in possession of significant cash sums. They also report false or forged documents purporting to demonstrate the importation of goods for which payment needs to be made or apparently false documents being used to support the legitimacy of funds which are sought to be transferred offshore.

The extent to which this is true is hard to verify and the ICSA has tightened procedures for new passports and is conducting inspections of work sites including leading joint inspections with other relevant PNG agencies.

There are well reported cases where false documentation was the basis for large frauds and in such cases, the amounts involved can be very large.

Accordingly, given the high incidence of these offences and the large amounts involved, the ML risk is very high.

Maritime Piracy

Maritime piracy can involve

- Theft of goods from piracy during transit,
- Extortion or ransoms from piracy, and
- Piracy of the vessel.

There have been incidents of piracy and for a maritime nation, the threats can be very real. There are cases where PNG nationals are currently on death row for piracy following their convictions in other countries.

The amounts involved in piracy can be very large, such as where a vessel carrying a high value cargo is taken. The incidence of these offences in PNG is low and while the impact would be high, the overall ML risk is considered to be low.

Insider trading and market manipulation

These offences are more prevalent in larger developed economies or developing economies with active markets. The offences include:

- Insider trading,
- Traded markets - market manipulation,
- Anti-trust/cartel or anti-competition violations,
- Boiler room scams, and
- Other securities or investment related offences.

The PNG securities market is small. The current market capitalisation is around \$17 billion but trading levels are low. The small number of listed securities makes market manipulation and other forms of illegal trading more difficult to conceal. There is always the risk of insider trading but high volume of trades against the normal level of activity would attract regulatory attention.

More likely areas of concern are the incidence of anti-competitive activity such as price fixing which might generate significant illegal profits. With a developing minerals industry, it is certainly possible that those seeking to list shares in a new venture might be in a position to use inside information to advantage. It is more likely that the company would be listed on a larger international market (eg Singapore or Australia) where there may be a larger pool of investors and more demand for the shares. Another strategy would be to list at a low price based on partial disclosure of the value of the asset and then disclose much more favourable reports leading to a price rise and the potential to sell at the much higher price.

If the securities market is to provide a basis for investment, it is important that this is given adequate supervisory, oversight, regulatory and licensing authority to effectively monitor and control risks, serve as advocate of the interests of the general public, protect the rights of investors, enforce disclosure requirements in the interests of public transparency and enforce integrity standards.

At present, there is little evidence of market manipulation but, if it were to occur there could be large amounts of profits. They are unlikely to be laundered however, as they would be related to a legitimate sale of listed securities. The ML risk to PNG from these offences is considered to be low.

Illegal gambling

Illegal gambling includes

- Illegal lotteries

- Illegal betting/bookmaking
- Illegal gambling houses/casinos
- Illegal online gambling
- Other prohibited gambling related activities

PNG has no casinos but it does operate an official lottery, has poker machines and allows other forms of gambling such as bookmakers and internet gambling under the *Gaming Control Act 2007*. The Act also established the National Gaming Control Board to administer the legislation. Illegal racing machines, unlicensed gambling and illegal casinos operate. There are repeated claims of these activities being controlled by Asian gangs.

To the extent that illegal gambling occurs, it is inevitable that it will generate large profits, be protected through the payment of bribes or by intimidation and will probably be linked to other offences such as illegal prostitution.

The risk of ML related to the operation of illegal gambling is very high.

Other Proceeds Generating Crimes

This category covers a variety of offences ranging from the use of new techniques such as internet fraud to some of the most traditional such as remittances. It covers:

- Computer crime
- Illegal trading of goods and services
 - Alcohol and tobacco
 - Pharmaceuticals, including internet pharmacy
 - Anabolic steroids
- Illegal carrying out of a regulated/licensed business
 - Loan sharking/illegal lending
 - Illegal remittance activity
 - Illegal/prohibited FX dealing or money changing
 - Other illegal/prohibited financial services
 - Illegal professional services (*e.g.*, accounting, legal etc.)
 - Illegal health related services (*e.g.*, abortions, dentistry, donor tissue operations and trading etc.)

The level of computer access is small but growing across the entire PNG population. The increased access to mobile phone technology will effectively turn this around. Accordingly, users will become exposed to the broad range of computer based crime such as investment scams, phishing, installation of malware and other offences.

The problems with illegal sales of alcohol and cigarettes have been referred to earlier. There is no evidence of widespread offences such as illegal trade in pharmaceuticals or steroids. No doubt there are examples but not on a major level.

The most likely of the unlicensed businesses is the use of informal remitting services which are considered to be prevalent although apparently not well known or understood within the formal financial system. These operators of hawala or similar systems provide a ready service for those wishing to send small amounts of wages to their home country as well as providing a facility to send large values to pay for imports, avoid the formal system and avoid tax and transfer large amounts of criminal proceeds to any desired destination.

Given the ethnic mix in PNG, it is highly likely that the extent of informal transfer activity is high and that the amounts being transferred are also high. These remitters also provide a market for the

conversion of currency which can disguise criminal proceeds, avoid declaration requirements and assist offshore couriering of cash.

The ML risk arising from unlicensed remittances and illegal FX trading is very high.

CHAPTER SEVEN - VULNERABILITIES

Vulnerabilities are those things that can be exploited by a threat or that may support or facilitate the operation of the threat. In the ML/TF risk assessment context, looking at vulnerabilities means focusing on the factors that represent weaknesses in AML/CTF systems or controls or certain features of a country – the form of government, legal system, public sector, its economy, geography and cultural norms. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML or TF purposes.

Vulnerabilities can be external. For example, PNG's proximity to neighbouring countries with high ML/TF risks, the high risk of proceeds generating offences in those countries and the difficulty to manage the movement of goods and people across PNG's border make PNG more vulnerable to cross-border movement of money as part of laundering operations or TF activities. Similarly, the proximity of countries where there are domestic terrorism cells, or which are known as source countries for TF, heighten the vulnerability of PNG to the TF risk. Vulnerabilities can also arise from domestic factors such as corruption, resource constraints, a lack of skills and training, the need for enhanced legislative frameworks and problems with inter agency coordination and cooperation. The following factors have been identified as ML/TF vulnerabilities.

Capacity and Resource Limitations within Government

Full and effective implementation of AML/CTF laws and policies presents challenges for all countries. In developing economies, the challenges are more acute, because there are resource, capacity and institutional factors which often limit the ability of the country to develop policies and procedures, develop and implement legislation and provide ongoing supervision and enforcement of the AML/CTF framework.

PNG has faced these challenges over the past two decades. In 2014 the FATF placed PNG on its list of High-risk and Non-Cooperative Jurisdictions as a result of findings that the AML/CTF system in PNG was deficient and did not meet global standards. In February 2014, PNG made a high-level political commitment to work with the FATF and APG to address its strategic AML/CTF deficiencies. Since then, PNG developed and is implementing a comprehensive Action Plan to address the identified deficiencies and developed new legislation which:

- Established the formal structure of its FIU (FASU)
- Adequately criminalised money laundering and terrorist financing;
- Established adequate procedures for the confiscation of assets related to money laundering,
- Established an adequate legal framework for identifying, tracing and freezing terrorist assets,
- Established suspicious transaction reporting requirements,
- Legislated for threshold reporting of high value transactions,
- Required reporting entities to apply KYC, CDD, reporting and record keeping policies and procedures, and
- Established and is implementing effective controls for cross-border currency transactions.

In 2016, the FATF conducted an on-site evaluation of the progress being made by PNG to implement the Action Plan. On 24 June 2016, FATF recognised that PNG had made significant progress in improving the regime to combat money laundering and terrorist financing and would therefore, no longer be subject to the FATF's monitoring process. This announcement recognised the results of the work of the NCC in overseeing the implementation of the Action Plan and the efforts made by many agencies to address the strategic deficiencies previously identified.

Nonetheless, while the legislative system now in place is a necessary prerequisite to effective AML/CTF action, it does not mean that the system will necessarily be effectively implemented. Ongoing effort, adequate resources, the development of skills and capacity and the gaining of experience through implementation are all elements of an effective AML/CTF system.

Two of the immediate challenges are establishing FASU as a fully operational and effectively functioning FIU and implementing an adequate AML/CTF supervisory and oversight program for all financial and non-financial sectors. While significant progress has been made on both aspects, more work is needed. FASU must build its analytical capacity which needs more people, new technology and training. It is currently recruiting new staff and it has a new, purpose built office which demonstrates the commitment of resources by the BPNG to ensure FASU is effective. It has negotiated with a donor to enhance its analytical IT capacity and has been provided with significant and ongoing training by AUSTRAC.

This NRA provides another element of the necessary steps to make the system fully effective.

It is only through the full and effective enforcement of laws and regulations that ML/TF can be prevented and, if necessary, prosecuted and the illicit proceeds of ML/TF seized and forfeited. The effective enforcement of AML/CTF policies requires:

- The accurate and timely identification of persons, accounts and financial transactions possibly linked to suspicious activity (FATF Recommendation 20),
- The collection and analysis of such information in a timely manner (the development of financial intelligence) (FATF Recommendation 29),
- Effective and timely investigations of possible ML/TF activity based on that intelligence (FATF Recommendations 30 and 31),
- Development of cases for criminal prosecutions (FATF Recommendation 31), and
- The location, tracing and forfeiture of criminal assets (FATF Recommendations 30, 31, 37 and 38).

Each of these steps requires the relevant agencies and entities (reporting entities, FASU, RPNGC and the OPP) to have highly skilled and adequately resourced staff, supported by ongoing access to emerging trends, training and skills development.

The ML/TF risks to PNG posed by the presence of the threats outlined above are compounded by PNG's relatively low level of capacity and resources in each of these areas. While there are knowledgeable and committed staff in key government agencies and in the REs, it does not have the number of staff needed in each agency to meet the ML/TF challenges. Limited technical and human resources is a major vulnerability to the effectiveness of the legislation and consequently to minimising the ML/TF risks. This is compounded by the absence of resources (both human and technical), limited information sharing and weaknesses in front line agencies such as the RPNGC, Customs, IRC, ICSA, and the PNGFA. The issues are discussed below.

The major agencies involved in PNG's AML/CTF program were outlined above¹²⁶. PNG generally has a broad level expertise in most of its agencies with regard to their core functions. Many staff in the key agencies are long serving with a high level of education. However, despite having a broad range of prudential, regulatory and investigative experience within the agencies, AML/CTF expertise is generally limited to the staff in the FASU and the BPNG, RPNGC and the OPP.

PNG has been developing its AML/CTF expertise and the establishment of the NCC and its TWG have provided a framework for increased skill development and coordination. The work done to meet FATF's concerns about the state of AML/CTF capacity, and the speed with which this was completed,

¹²⁶ Refer to Chapter 3 - Key PNG Departments and Agencies with AML/CTF Related Functions

demonstrated the commitment to address these deficiencies. Nonetheless, there are issues in relation to:

- Resources,
- Training,
- Skills development,
- Information flows,
- Equipment and technology,
- Cultural norms, and
- Coordination and cooperation

In addition, there is limited intelligence support and forensic accounting capacity in most agencies. Limited availability of appropriate technologies and the skills to operate the technologies is also a significant vulnerability.

PNG's main capacity issues stem from insufficient staff to conduct key AML/CTF roles. Many AML/CTF related functions are assigned to agencies with other functions. However, because of the low level of technical AML/CTF capacity, some agencies can only focus on their core roles as they do not have the staff resources to conduct both their original functions and AML/CTF supervision.

Ultimately, while there are talented people with good legislative powers and systems, there are not enough people to effectively make use of these advantages. It is difficult for agencies to fill specialist functions, such as AML/CTF supervision by BPNG and FASU, analysis, intelligence and investigative support within RPNGC and fraud detection and prevention in Customs and the IRC. There are limited staff in these agencies to conduct proceeds of crime investigations and in the OPP to undertake recovery action. This creates a systemic weakness in PNG's AML/CTF program leading to an inability to suppress ML/TF and crime generally.

There are a number of structural or operational weaknesses in relation to key agencies involved in PNG's AML/CTF effort.

FASU

FASU has begun to develop the in-house analytical capacity which is needed to allow it to effectively use the threshold and suspicious matter reports it now receives in accordance with the AML/CTF Act and to develop and disseminate financial intelligence consistent with its role as the FIU. This is required by FATF Recommendation 29. It is taking part in intelligence training provided by donors and building the capacity of its IT system so that its analytical capacity will be expanded. It has negotiated donor funding to enhance its in-house analytical program. This will take time to develop and implement.

FASU is receiving SMRs from REs and these are being examined as received. In addition, the REs, in particular the commercial banks, are contacting FASU directly where they have concerns about particular accounts or transactions. While there is a legislated obligation to file threshold transaction reports, FASU does not yet have the capacity to undertake the analysis which will make these a critical source of financial intelligence.

It has plans to conduct training across the REs but this has not yet occurred. There has been regular contact with the larger REs and the creation and operation of the TWG, which includes representatives of the REs, has helped to develop a greater appreciation of the ML/TF issues which PNG is addressing. It is actively recruiting staff but it will be before the year-end¹²⁷. There are still gaps in its IT capacity, staff resources and outreach activities which increase the risk of ML/TF

¹²⁷ FASU had 12 staff as at 1 June with additional recruitment being undertaken. It has a target of 20 staff by the end of 2017.

activity occurring in and through PNG. It also needs to develop and implement a supervision program covering all of the REs.

It is not yet meeting the full functional requirements of FATF Recommendation 29 and not yet exercising the supervision and oversight requirements of FATF Recommendations 26, 27 and 28 relating to regulation and supervision of FIs and DNFBPs. Until it meets these requirements, ML and TF risks are increased.

RPNGC

The RPNGC has officers with considerable experience in dealing with fraud and corruption, through the National Fraud and Anti-Corruption Directorate (NFACD), and an understanding of ML/TF issues as the FIU function was previously housed within the RPNGC. Fraud and corruption within government and the private sector are major sources of criminal proceeds. The NFACD has had success in the past and it is essential that the work of the NFACD is continued and enhanced.

As FASU develops its financial intelligence capacity to analyse threshold transactions, the number and quality of SMRs increases, reporting entities improve their effective AML/CTF programs and agency cooperation improves, the RPNGC will have access to better financial intelligence and this will produce more targeted and effective investigations.

Nonetheless, the resource and capacity problems faced by the NFACD and the wider RPNGC, the existence of corruption and the pressures which arise from wantoks limit the effectiveness of the RPNGC.

While RPNGC collects some statistics on the number of offences reported and the number of persons charged, these statistics are acknowledged to be limited. Reporting is not carried out consistently and there is a serious absence of relevant data such as:

- Nature of the offence,
- Value of the alleged criminal activity,
- Specific charges laid,
- Number of persons charged with each offence,
- Result of the prosecution, if any, and
- Whether, and if so, proceeds were recovered

The present data does not, for example, distinguish between various types of charges within broad categories such as sexual assault. It is not clear if the offences involved an adult or a minor. Nor are the values of goods stolen or seized apparently recorded. Many RPNGC officers operate in difficult conditions in remote areas but effective resource allocation and priority setting need good statistics. The present position in relation to data collection falls well short of FATF Recommendation 33 which requires countries to maintain statistics on ML/TF investigations, prosecutions and convictions. This obligation also applies to other regulatory, investigative and enforcement agencies such as the IPA, IRC, Customs and BPNG.

PNG Customs Service

Customs faces some serious challenges. It has both border protection and revenue collection responsibilities and seeks to manage and regulate the flow of goods through 22 ports, airports, and along a largely unpatrolled coastline and a porous land border. While it has access to technology such as x-ray equipment and scanners at some ports, this is by no means universally available. The capacity to use technology to inspect containers and cargo can significantly increase the capacity of Customs to identify fraud and illicit goods. This is essentially a resource issue.

The long land border which runs through rugged and often difficult terrain is largely uncontrolled. The legitimate movement of local people using the border crossing permit system increases the difficulty of controlling the movement of goods and unauthorised people.

The long coast line and the many small bays and harbours, which are not Customs controlled and where traditional fishing rights can be exercised, means that fishing vessels provide a ready means of moving goods into and out of PNG. Illegal guns can be exchanged for drugs or cash and other valuable products such as gold. Cash can and is transported out of PNG by these vessels.

Passengers arriving on scheduled air services or charter flights require visas but many foreign nationals can obtain these on arrival. There are declaration requirements for large amounts of cash (K20,000 or more) and specified goods and also for items of quarantine concern. However, due to resource and capacity constraints, the checking of passengers is not as rigorous as it might be. Both charter flight and cruise liners operate under a streamlined clearance system which is designed to provide greater economic benefits to PNG but which may also assist those who wish to move goods into or out of PNG. Movements of cruise ships and charter flights may not attract physical Customs inspections.

There is a need for adequate numbers of trained Customs staff to perform functions at the borders. It is likely that with insufficient Customs staff at the borders, persons will be moving large amounts of undeclared cash across PNG's borders, importing illegal products such as guns and drugs and goods on which duty is payable such as alcohol and cigarettes. Equally, unauthorised arrivals are also occurring. Some of this illicit movement of people and goods is facilitated by the payment of bribes to staff.

A strong border control system is essential in preventing ML/TF. In addition to the staffing capacity issues outlined above, limited infrastructure and ineffective border controls, particularly at the seaports, creates opportunities for the unauthorised movement of goods into PNG and a significant ML/TF vulnerability in PNG. The necessary checks on travellers, luggage and cargo are less than adequate, and consequently there is a relatively low number of reports relating to movement of currency into and out of PNG being made and these are not yet being reported to FASU. Visibility of Customs officers and other visible deterrence such as screening and inspection of travellers, luggage and cargo are essential. Security is also a major concern at the seaports.

Customs recognises that it faces major problems with false documentation, misdeclarations and compromising of staff. The result is large amounts of lost revenue, the importation of illicit and illegal goods and the export of cash, gold, other high value crops, illegal logs and unauthorised fishing. Even where breaches of customs legislation are detected these do not often lead to prosecution. It is important that serious offences are prosecuted and unpaid duties recovered. This will have two effects: it will increase revenue and operate as a deterrent.

Immigration and Citizenship Service Authority (ICSA)

Entry to and work in PNG is controlled by a visa system and work permits which are issued by the Department of Labour and Industrial Relations. Business visas are available to qualified applicants. At PNG airports, the visa on arrival system allows people from more than 50 countries to enter PNG on a tourist or business visa.

To assist in developing the cruise ship market, the ICSA has implemented an electronic processing procedure for cruise ship passengers and passengers on charter flights which facilitate entry and remove the need for the usual passenger declarations. With this new procedure, it is possible that passengers could be used to bring illicit goods into PNG and remove cash or other valuables without detection. The same is true of charter flights. In both cases, there may be times where there is no Customs or ICSA presence on arrival or departure.

The work permit system processed by the Department of Labour and Industrial Relations does have some weaknesses. The financial institutions report customers who seek to open accounts with large amounts of cash, or transfer cash off shore, who cannot produce a work permit or explain the source of the funds. Where permits are held there are concerns as to whether the permits are forged or have been obtained illicitly. It is highly likely that the funds involved are either criminal proceeds, untaxed earnings of the customer or another person, or are funds being moved without the required tax clearance (discussed in relation to the IRC).

It is possible that once a person has entered PNG, perhaps by obtaining a visa on arrival, they can remain and engage in work or undertake business activities.

There are concerns that the visa and work permit system is being rendered ineffective through illegal entry, visas obtained through fraud or bribery, work permits issued as a result of bribes or which are forged and a lack of enforcement which allows this process to continue. These weaknesses are a major vulnerability for PNG and increase its ML/TF risks.

ICSA is undertaking spot checks including joint inspections with relevant PNG agencies (for example at mines, specified locations and forestry sites) and taking action where these breaches are detected. The individuals identified might face deportation but those involved in bringing the people to PNG or employing them do not face effective sanctions.

Internal Revenue Commission

The IRC is responsible for the collection of personal and company income tax, GST and other taxes such as withholding tax and mining taxes. It is inevitable that there is a degree of fraud in relation to income tax payments. There is limited scope for employees whose wages are taxed at source to avoid income tax but there is scope for employers to understate the tax collected or for people to be employed without this being documented, thus avoiding tax payments. In some cases, the employees may be working without a work permit or with illegally obtained permits. If this is known to the employer they have an incentive to underpay the worker, who cannot complain, thus increasing profits. This gives rise to criminal proceeds as a result of the tax fraud being undertaken.

Tax fraud by companies can also occur through the understatement of income or the overstatement of deductions and expenses (or both) as well as through transfer pricing or the creation of artificial schemes whereby revenue earned in PNG is attributed to an entity in another jurisdiction which has apparently provided a service to the PNG company.

The extent of these frauds (through undeclared income) is not known but the resultant financial benefits to the company are, clearly, proceeds of crime. These might be reinvested (laundered) within PNG or sent offshore. Weaknesses in the control of funds being moved offshore exacerbate this form of laundering. There is a very high risk that this is occurring.

GST fraud is known to occur in any jurisdiction which runs a value added tax system. The extent of the fraud will vary, depending on the way the scheme is implemented and the resources available to counteract fraudulent activity. A common fraud, which occurs in PNG, is the making of claims for GST reimbursement in relation to alleged purchases on which a company has paid GST, while its sale of products on which GST has been collected are significantly lower. In such cases the IRC will refuse the payment where it identifies an apparently fraudulent claim. If this occurs after a payment it will seek to recover the payment or deduct it from any future payments. It rarely undertakes prosecutions. This approach to fraudulent claims weakens enforcement. The consequences are likely to be more fraudulent claims and reduced GST revenue.

The IRC also operates a taxation clearance certificate (TCC) system which requires clearance by IRC of any transfer of K200,000¹²⁸ or more (in one or more transactions) in a calendar year. This means that a person or corporate entity such as a company, trust or association must obtain a clearance before a transaction which would take their annual transfers above that limit. The banks, which undertake the offshore transfer, maintain records of their customers' transfers and will require the certificate before a transfer is made which exceeds the customer's limit. The clearance process by IRC normally takes around ten days but there is an ability to apply for urgent transfers within a few hours. Around 2000 certificates are issued each year.

A TCC is only issued where the applicant has met all its taxation responsibilities which extends to income, GST, withholding and other taxes.

Until 2017, customers could request blanket clearances from the IRC so that once the limit has been reached the certificate would cover all subsequent transfers in the calendar year. This meant that once the threshold had been reached and a clearance issued there was no ongoing scrutiny of offshore transfers other than by the remitting bank (which relies on the IRC issued clearance). New arrangements now require clearances for each transaction in most cases. There is still a capacity for blanket clearances to be issued in limited circumstances although these are now only valid for 6 months as against the previous 12 months.

The banks will require the customer to complete an international transfer form and may also request additional documentation such as underlying contracts or proof of source before making the transfer. These forms contain details of the parties to the transaction, the amount, purpose and source of funds. This information is used by the banks to meet their obligations under PNG law and also to satisfy any query from the beneficiary's financial institution which might wish to be satisfied about the source of the funds before actioning the transfer. The key parts of the information (date, amount, parties and the financial institutions sending and receiving the transfer) contained in the form is then converted into an electronic message transmitted via SWIFT¹²⁹ to the beneficiary's financial institution.

Details of each international transfer are lodged with BPNG which receives a copy of the transfer form. This information is manually recorded within the BPNG's balance of payments section which uses the data to prepare the detailed trade and financial records which are published on the BPNG website.

The inherent weakness in the current clearance system is that it depends on the banks' internal system to aggregate transfers so that a transfer which will trip the clearance obligation is identified. More importantly, a person or legal entity can make multiple transfers at different institutions, or use different entities (such as companies) or friends, associates or wantoks to transfer amounts well above the clearance threshold. A person or company could make 4 transfers just below the limit at the four commercial banks and thus remove almost K 800,000 with little risk of detection. The use of other companies, friends and associate increases the amounts which can easily be transferred.

Transfers made by lawyers, on behalf of their clients, can be the subject of a clearance issued in the name of the lawyer or in the name of the client. Transfers by accountants are issued in the name of the client. Despite the efforts taken by IRC, there remains significant scope for large off shore transfers to take place without any taxation clearance.

¹²⁸ Where any transfer is made to specified jurisdictions, which are regarded as low tax or off shore centres, a TCC is required.

¹²⁹ The Society for Worldwide Interbank Financial Telecommunication (SWIFT) is a cooperative of financial institutions which provides the main system for international fund transfers between more than 11,000 institutions in over 200 countries.

While there have been cases where criminal prosecutions have been brought in relation to serious cases of tax evasion or fraud, these are unusual and present policy appears to favour the use of administrative sanctions (demands for repayment, imposition of an additional fine or penalty or simply refusing a claim for refund if it is thought to be fraudulent). This approach is no doubt widely known and is counterproductive and actually encourages fraudulent activity. In selected cases (determined in consultation with the OPP), prosecutions should be brought and, where convictions occur, imprisonment and financial penalties as well as recovery of unpaid tax should be sought. Successful prosecutions should be widely publicised.

IRC is working around proposed legislative changes to tighten up the perceived weaknesses in the areas of GST fraud and Tax clearance certificates in which this will be communicated once legislative changes come into effect.

Investment Promotion Authority

The IPA registers companies and not for profit (NPO) association. The IPA is providing an online system for efficient and low cost company registration as a means of encouraging investment and economic activity in PNG. This system provides opportunities for companies to be registered from offshore and with no facility for in person checking and verification of identification documents. There is a high risk that companies will be registered based on false or unverified documentation.

Once registered the company provides a basis for other activity such as opening bank accounts, entering into contracts, and applying for various permits and approvals where there may not be rigorous checking of the identity of company office holders. The potential for fraud, money laundering and tax evasion is high.

The large number of currently registered companies compared with the much smaller number currently lodging income tax returns suggests that there is a significant level of tax fraud. IPA requires that companies must lodge annual returns or be deregistered. The companies currently registered on the IPA database are, presumably, at least meeting these reporting obligations. IPA is seeking to more actively undertake deregistration action where returns are not lodged. While many might not be actively trading, there is significant scope for reconciliation between the tax paying companies and those which are registered.

There is also a high risk that there are many businesses which are operating without being registered. Cash based businesses which have not registered a business name or incorporated, can still operate. While they might be in breach of requirements for various approvals or permits, they nonetheless remain outside IPA and IRC scrutiny unless onsite spot checks are undertaken. These businesses may not be able to open bank accounts (because the banks will require identification of office holders, company registration, TINs, and proof of earnings etc as part of their KYC and CDD procedures) but they can use associates or friends to access the financial system. Alternatively, they can use informal money transfer systems to transfer value. While the use of these systems is not widely known in PNG, there is no doubt that they operate within the foreign worker community and are used by certain cash based businesses.

The current level of control over Associations is totally inadequate¹³⁰. They are registered under outdated legislation with no obligation to update public officer notification or lodge any form of annual report. Nor are there even rudimentary checks to verify the purpose or function of the Association. There is no scrutiny of their operation by the IPA. The list of registered Associations needs to be reviewed and inactive associations removed.

¹³⁰ The IPA has advised that is being assisted under an ADB funded technical assistance project to review the legislation.

Yet these Associations can be the recipients of significant grants from government. They can also receive funds from overseas sources (such as churches or charities). Despite their not for profit status, which ensures that any earnings are not taxed, they can carry out activities which may generate significant profits. For example, incorporated land groups might be the recipient of payments for allowing logging activity on their land, thus receiving significant payments. While these funds might be intended for development of community facilities, they may in fact be used to operate tax free businesses, or the funds may end up benefiting only a small number of the local community.

While the absence of scrutiny makes the potential for misuse much more likely, there is no evidence of which IPA is aware that this is in fact occurring. The potential for misuse is, however, very high.

Breaches of the company and NPO registration systems are usually dealt with administratively. Prosecutions are unlikely to occur even where there may have been deliberate fraud. Again, this approach to compliance exacerbates risk. It heightens ML and TF risk but also increases the risk of fraud and tax evasion.

Regulatory Agencies

A major concern arises with the supervision of the financial sector and DNFBPs. The BPNG has a strong supervisory role and is adequately resourced to conduct prudential supervision. It supervises the financial sector but AML/CTF supervision is the responsibility of FASU. Its resources are yet to reach approved levels. Limited staff within FASU hinders the levels of suspicious transaction reporting, the general level of compliance and the adequacy of intelligence obtained from reporting entities. Reporting entities need to be adequately supervised to ensure they report suspicious activity in line with the legislative obligation. Consequently, a lack of supervision will result in the increased risk of ML/TF not being detected. Supervision is not just about compliance with legal requirements but extends to increased awareness and effective feedback.

The IPA through Office of the Registrar of Companies in the Business Registration and Regulation Division, registers and regulates companies, business names, business groups and associations (which includes the not for profit associations). Despite having some legislative powers to supervise this sector, it does not have an AML/CTF supervisory role. However, the IPA and FASU entered into a MOU on 4 August 2017 for the purposes of sharing information on matters of AML/CTF. This MOU will assist the IPA to have a supervisory role for AML/CTF purposes. The Registrar of Companies also has powers under Section 394(9) of the *Companies Act 1997 (as amended 2014)* and Section 55(1) to issue such guidelines, practice notes, orders or directions as the case may be, as the Registrar considers desirable. It is proposed that guidelines will be developed for customer due diligence purposes to give the Registrar a more AML/CTF supervisory role. This will enable the IPA to ensure increased compliance with the AML/CTF requirements.

The SCPNG registers and regulates the securities sector, primarily the POMSOX, listed companies, trustee¹³¹, unit trust and management companies. The new *Securities Commission Act* and the *Central Depository Act 2015* have addressed the licensing, supervisory, monitoring and compliance issues but the *Capital Market Act* also needs to be brought into force. Also, the new laws capture AML/CTF provisions relating to the powers and functions of the SC¹³².

¹³¹ This is different to a Licensed Trustee under the *Superannuation (General Provisions) Act 2000*

¹³² The Act provides in Section 7(d) that the SC is able “to elaborate policies on money laundering and related activities in the capital market in Papua New Guinea” and, Section 8(c)& (d) authorises the SC to “set rules and guidelines governing the conduct of business in the securities and derivatives market, the over-the-counter activities and money laundering and related activities in Papua New Guinea and issue orders, class orders, or

The Insurance Commission is the regulator for the general insurance sector but again it does not deal with AML/CTF supervision. It is important to note that its licensing requirements include the need for AML/CTF policies as required by the AML/CTF Act.

While the legislative structure for adequate AML/CTF supervision of the financial sector is in place, there are limitations on the extent to which this is being actively and effectively carried out.

Environment and Resource Protection

Logging

The level of illegal logging in PNG is well known and well documented. It is a complex problem which requires coordinated responses from several agencies.

There is detailed legislation controlling both the areas where logs can be taken, the species which can be logged and the volume of logs which can be harvested. The legislation provides for penalties, including criminal prosecution for breaches, but illegal logging is dealt with as a regulatory or administrative¹³³ matter with fines imposed by the Board. This is counterproductive as it provides little disincentive for unauthorised activities. A different approach to compliance, involving criminal prosecutions and imprisonment, as provided for in the legislation, is needed.

All harvested logs must be classified correctly according to species, quality and quantity, and logs can only be removed from the log landing once they are tagged with official PNGFA log tags and the tree information has been entered into the official PNGFA Log Scaling Record Sheet. The log tag represents the site where the logs have been harvested and a log number. A three letter code for general and species name for each log exported out of the country are also written on the logs. The tags are provided by SGS, which implements the PNG's export log monitoring system. Each tag has two tear-off sheets which are removed at the time of shipment (one for the SGS inspector and the other for the exporter)¹³⁴. The tagging of logs is intended to provide a guarantee that the logs have been taken in an approved way from an approved area. Yet this system does not prevent taking more than the approved number of logs from an approved area or unapproved species being logged.

Once the logs are brought to a seaport, a representative of SGS checks the tags to verify that the product has been logged from approved areas. It records discrepancies which are reported on a monthly basis to PNGFA. Customs does not ensure that the number of logs matches the export documentation but Customs does verify that the value of logs is consistent with the export documentation. However, Customs does not always operate at the special logging ports.

The structure of the control systems in place are sound but it is clear that there are real challenges faced by PNGFA to ensure effective administration of the legislation and the various approval processes it contains. The records provided to PNGFA each month by SGS show that there are extensive overlogging of areas and, while these logs are retrospectively 'approved' prior to export and royalties paid, there is no penalty for this activity and indeed the logging company makes additional profits.

PNGFA has acknowledged there is a need to deploy additional resources to combat illegal logging. It also recognises that the use of Forest Clearance approvals which authorises the removal of forest to be used for agriculture means that large amounts of PNG's forests are lost. Up to 30% of exported

directives in relation to the conduct of business in the capital market, over-the-counter activities, or money laundering and related activities in Papua New Guinea".

¹³³ There appear to have been very few recorded criminal prosecutions which could attract imprisonment and allow for the profits of illegal logging to be recovered as proceeds of crime. The OPP is unaware of any criminal prosecutions but the PNGFA say that two cases have been run.

¹³⁴ European Timber Trade Federation, <http://www.timbertradeportal.com/countries/papua-new-guinea/#legality-profile>

logs each year involves logs harvested under clearances which mean there is no prospect of ongoing forestry activity in these areas.

The undertaking of a specific ML risk analysis for the logging industry¹³⁵, linked to the INTERPOL technical assistance project to address criminal activity in the industry will provide the basis to reduce criminal behaviour, increase public (national and international) confidence in the integrity of the industry.

Fishing

Under the *Fisheries Management Act 1998*, the National Fisheries Authority (NFA) is responsible for the management and development of the fisheries sector in accordance with the provisions of the Act under the overall policy direction of the Minister.

PNG has an extensive and valuable fisheries sector ranging from inland river fisheries, aquaculture, coastal bêche-de-mer and reef fisheries to the prawn trawl and large-scale deep-water tuna fisheries. The range of participants covers artisanal community to medium sized domestic prawn and tuna longline operators to large international purse seine fleets in the deep-water tuna fishery.

The PNG fisheries zone of 2.4 million square kilometres is the largest in the South Pacific. The fisheries zone includes an extended reef system, numerous islands and an extensive coastline. These create a huge opportunity for PNG but also present an enormous challenge for monitoring and control.

According to the NFA, the total market value of PNG catch is estimated at K350 to K400 million on average although information on the true value of artisanal fisheries is difficult to obtain and cyclical factors and commodity price movements, especially tuna, cause huge value swings from year to year. It is believed that there is significant potential to increase the economic value and returns to PNG of these fisheries through better management and development programs.

Export earnings are important, but the importance of fisheries to the local markets and subsistence economy is also of major importance to the people of PNG. Reliable data on these markets is not available. Access fees from deep-water fishing nations currently form the bulk of the revenues received and managed by NFA.

Criminal Activity within Logging and Fishing Industries

There are serious concerns that illegal logging and illegal fishing is occurring at levels which generate large amounts of criminal proceeds. Despite attempts to regulate and police both industries, and notwithstanding the system outlined above, illegal activity is widespread. In most cases any profits from these illegal activities will accrue off shore. The risk of money laundering of the amounts involved is very high although the ML activity will occur in other countries and may involve the eventual return of some of these funds to PNG.

The critical question is, why is the level of illegal activity so high? Is it a failure to develop effective systems, a failure to implement and enforce the systems, a breakdown in the outsourced inspection regime meant to ensure that only legally felled and legitimately tagged logs or legally taken fish are exported, a failure to coordinate PNGFA and Customs roles to reduce the export of illegal logs, shortcomings in NFA oversight of fishing or corruption within the regulatory structures in both industries? The answer almost certainly is that each of these factors plays a part. This is a major problem which must be addressed. Not only is the value of the illegally harvested logs lost to PNG

¹³⁵ This should include an examination of the efficacy of the current regulatory processes and the operation of the SGS run oversight mechanisms. These have not been independently reviewed since they were established more than 20 years ago. For example, despite the SGS monthly reports identifying operators who regularly take logs without approval or in excess of approved amounts little or no action seems to be taken. The system needs a thorough external review.

(because no royalties have been paid) but the illegal profits so obtained are accrued offshore and apparently out of the reach of PNG authorities. Illegal fishing costs PNG revenue and depletes a finite resource. The value of these illegal activities is almost certainly the source of the largest amount of criminal proceeds derived in PNG.

The Cash Economy

Most developing economies operate largely cash economies. They have relatively immature and limited financial sectors, an economy where most people are engaged in subsistence agriculture and where there are high levels of relative poverty. Even where there are significant industries producing large amounts of wealth, the benefits are often captured by external investors or local elites.

The same is true for PNG. Much of the wealth from its extractive industries (both legitimate and illicit) is accrued off shore with only limited benefit to the PNG economy.

As we saw elsewhere¹³⁶ there are disparities in the electronic flow of funds into and out of PNG when compared with the flow of goods and services into PNG. Actual cash (or negotiable instrument) flows across the border also raise serious ML/TF issues.

FATF Recommendation 32¹³⁷ deals with Cash Couriers. It is a response to the well documented problems arising from the potential for cross-border movements of cash to be used as both a basic money laundering mechanism and because of the capacity for small value cash movements to be used as a means of terrorism financing. Concerns about the latter issue have caused countries to focus more directly on the problem. In countries where border controls at ports and airports are lax, where large and uncontrolled land and sea borders mean they are very susceptible to uncontrolled movement of people and goods or where corruption can undermine effective border controls, the physical, cross-border movement of criminal proceeds is the easiest and most effective means of moving proceeds with little chance of detection.

Recommendation 32 provides that:

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system. Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed. Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.

Many countries have yet to enact legislation which complies with Recommendation 32. The Recommendation requires a declaration and/or disclosure system for both cash and bearer negotiable instruments¹³⁸ but most systems focus entirely on cash movements.

In PNG, the legal position is that cross-border cash flows above a threshold are required to be declared. Arrival and departure cards require passengers to make declarations on entry and exit. The present requirement is to declare amounts of K20,000 or more. Where a declaration is made,

¹³⁶ Table 1. Imports to PNG from Australia

¹³⁷ The issue was originally dealt with in Special Recommendation IX adopted in 2001 and later incorporated in the consolidated FATF Recommendations.

¹³⁸ For example, travellers' cheques, money orders, bank cheques or other bearer negotiable instruments.

the person is required to complete a form in relation to the funds being imported or exported. The system operates at airports and ports and at land border crossings with Indonesia. However, while its operation at the Jacksons International Airport (PNG's international gateway) is monitored, there are lower levels of scrutiny at other airports and sea ports. Cruise ship passengers do not, in general, have to complete the declaration.

Australia requires passengers entering or leaving Australia to declare all cross-border flows of cash valued at AUD 10,000 or more (or its equivalent in foreign currency)¹³⁹. The obligation on a departing or arriving passenger is to declare cash above the limit or, if asked by a Police or Customs official, negotiable instruments of \$10,000 or more. The reality is that passengers are rarely asked and the checking of the declaration system is cursory at best, particularly on departure. The result is that the declared cross-border transfers are likely to significantly understate the actual values involved.

An analysis of the 571 declarations made by passengers travelling between PNG and Australia between October 2013 and September 2016 raises questions about both the scrutiny of these transfers and the actual level of declarations which takes place. Of the total declarations submitted, more than \$55 million of the \$67 million in funds being taken to PNG are categorised as not having the actual departure port identified. So, while the amounts and direction of funds are declared, the departure point is unknown.

Unless a large quantity of notes were discovered during the security checking of luggage, the declaration process for both outwards and inwards passengers is essentially voluntary¹⁴⁰. There is a legal obligation to make the declaration but no regular checking of the actual declaration is made in either PNG or Australia. This certainly facilitates the carriage of cash out of PNG. Action in both countries is needed to address this issue.

As *Table 12* shows the value of declared transfers to PNG is more than 5 times the value of declared cash being removed from PNG.

Table 12. Declared Cash and Negotiable Instruments PNG to Australia¹⁴¹

PERIOD	VALUE DECLARED IN AUD FROM PNG	VALUE DECLARED IN AUD INTO PNG	VALUE DECLARED BUT DIRECTION UNKNOWN ¹⁴²
OCT 2013 – SEP 2014	\$ 6,322,561.10	\$10,637,666.17	\$46,733.61
OCT 2014 – SEP 2015	\$ 5,669,688.52	\$24,045,472.81	\$75,168.39
OCT 2015 – SEP 2016	\$ 3,648,898.36	\$32,400,835.13	\$119,942.94

¹³⁹ A passenger is only required to declare negotiable instruments above that value if asked by a police officer or customs official.

¹⁴⁰ The automated passport readers now used mean that there is no visual checking of the declaration on the outbound passenger card and it is 'collected' through boxes located in the departure lounges after passport clearance.

¹⁴¹ AUSTRAC data provided to FASU.

¹⁴² A number of declaration forms were lodged which did not indicate the direction of travel. If this was not noticed until the declaration forms are collated at the airport or port, the only way to determine the direction of passenger movement would be through a reconciliation with the data recorded in the immigration system. The AUSTRAC data does not indicate if this is done.

TOTAL	\$15,641,147.98	\$67,083,974.11	\$241,844.94

Given that the physical carriage of cash across-borders is a common way to launder funds and given very strong anecdotal evidence that cash couriers operate to remove cash from PNG, why would the flow of funds be weighted more than 5 times greater for cash carried into PNG? One possible explanation is that while the scrutiny of both hold and carry-on luggage at Australian airports is high on departure there is far less scrutiny on arrival, unless a quarantine declaration is made or border control officers decide to scrutinise passenger luggage on arrival. While declarations are required at PNG departure points, the level of scrutiny is less rigorous. Nor is there any cross referencing of declarations made on departure from one country and arrival at the other.

It is also possible that much of the cash being taken to PNG represents earnings of expatriate PNG nationals being returned for the benefit of family or friends in a way which overcomes the loss of value through bank transfers with poor exchange rates.

There is no limitation on the amount of cash that can be carried from PNG and Australia. If declared, any questioning of the passenger is highly unlikely. A passenger leaving PNG may not declare cash on departure but declare it to the Australian authorities with little risk of any follow-up action¹⁴³.

The result is that there is a significant vulnerability to illicit cash flows in and out of PNG.

Porous Borders

Linked to the limitations of resources and capacity outlined above, PNG must deal with the resultant problem of porous borders. The extensive sea border means that it is not possible for PNG agencies to patrol the sea borders to prevent the unauthorised movement of goods and people. While there is extensive naval and airborne surveillance of the seas between Indonesia and PNG and Australia, the northern sea border is far less patrolled. This means that the possibility of moving illicit funds in and out of PNG is increased. Similarly, the land border with Indonesia creates difficulties. Communities straddle the border, goods move freely and people can move between the two countries with limited controls. This creates challenges for both the Indonesian and PNG authorities.

As a result of different taxation and duty systems and transportation problems, goods purchased on the Indonesia side may be cheaper than similar goods purchased on the PNG side. There is a market in cross-border purchases which might also be used to facilitate cross-border cash flows. While the volume of cash involved might be too small to allow for large amounts of money to be laundered, small amounts destined for the use of terrorist groups might be moved in this way. Alluvial gold is available in many areas of PNG. In addition to the commercial mining ventures, many people are involved in unauthorised recovery of alluvial gold and much of this is moved across the land border. The gold is acquired at about half the global price thus providing a substantial return to the miners but also large profits for the gold traders. The use of gold therefore allows another means of transferring value out of PNG.

Trade Based Crime

PNG had imports amounting to around \$2.27 billion per annum in 2015 and exports of around \$8.34 billion in the same year.

¹⁴³ The FATF Mutual Evaluation reported that on average 30,000 passengers report in excess of \$1.1 billion in cash each year (an average of \$31,000 per passenger) and that few are questioned. The FATF also reported that despite identifying an average of \$10.5 million in undeclared cash movements each year since 2011, only 23 convictions were obtained from 2011 to 2014. FATF MER Australia, 2015, page 51.

With the significant volume of imports, and to a much greater extent, the level of exports, it is possible that legitimate trade is providing cover for ML/TF through a range of trade based laundering activities. Such activities may include ghost shipments, mislabelling goods, inaccurate descriptions of container loads, variable volumes and other false documentation including under invoicing and over invoicing. Such trade based money laundering is well known in the region and the nature of the products imported (consumer durables, food, clothing and plant and equipment) and exported (forestry products, fish products and minerals) provides easy avenues for this kind of activity.

There is also the potential for extraction and export approvals to be used to cover the export of illegally obtained products such as fish and forestry products.

PNG has a developing tourism base. Goods specifically directed towards tourists are highly visible, particularly in regional areas. Undervalued imported merchandise is likely to occur. Shops may be funnelling funds out of the country at higher levels than the real value of the goods actually imported. The lack of adequate and appropriate infrastructure at the cruise shipping docks will likely assist this type of crime.

Other structured financial transactions on behalf of third parties may be occurring in the guise of trade. Discussions with the commercial banking sector confirmed that there is evidence of trade based money laundering or the use of false documentation to support funds transfers in and out of PNG.

The incidence of trade based ML is assessed as very high.

Creation of Laundering Businesses

A common laundering activity is to use cash based business as a basis for laundering, either by adding funds to be laundered to legitimate business revenue (comingling) or by creating a business which has little legitimate business activity but can be the basis for claiming proceeds of crime as legitimate earnings. Taxi services, grocery stores, laundries, fast food outlets and similar businesses are often used this way and the opportunity is greater in countries with large cash economies. For example, in much of Asia cash is used as the basis for even large purchases such as cars and real estate. This is not regarded as unusual or suspicious in the way it would be in most developed economies.

Responding to this vulnerability requires regular supervision of these businesses and their financial activities. However, in many countries these industries are not subject to close regulation and supervision. There may be no supervisor of the creation of such businesses (because of the absence of the need for corporate registration) and no controls on small businesses. In PNG, the position is that there is a system for the registration of business names, companies and associations and for the recording of details of office holders and directors. As noted this can be done online to assist new entrants and to encourage investment.

There is no effective monitoring of unregistered businesses. A business can effectively be established without registration and recording of ownership and many cash businesses such as taxis, couriers, transport operators, food stores and restaurants are essentially unregulated. This provides an easy vehicle for laundering.

The cash economy combined with low levels of controls over business operations in PNG, therefore, poses a very high ML risk.

Legislative and Regulatory Weaknesses

The extensive work done in PNG in response to the listing by the FATF in 2014 has seen its legislative framework largely meet international standards. The NCC is maintaining a regular review of legislation so that changes can be made where these are needed. A number of areas have been

identified through the NRA process which provide vulnerabilities which need to be addressed through legislative and regulatory changes. These involve:

- The need to amend fishing legislation to ensure that offences under the *Fisheries Management Act* are predicate offences under the AML/CTF Act,
- Weaknesses in the application of the regulatory controls in the logging industry,
- Lack of controls on the registration and operation of companies,
- Lack of controls on the registration and operation of NPOs,
- Weaknesses in the operation of the tax clearance certificate system,
- Passage of the legislation to establish ICAC,
- Passage and implementation of national whistleblowing legislation,
- Weaknesses in the reconciliation of company registration data and income tax assessments,
- Lack of supervision activities in relation to lawyers and accountants, and
- Lack of awareness and supervision within the other DNFBPs, particularly in areas such as real estate¹⁴⁴.

Of course, making changes to the relevant legislation needs to be matched with enhanced supervision and compliance.

Reporting Entities - Financial Institutions

Structural, product, location and regulatory weaknesses

The vulnerability of the different types of FIs and DNFBPs can arise from the products and services they offer and types and location of clients they serve. For example, reporting entities in the financial sector can have higher risks if they provide off shore services and professional services, such as lawyers and accountants, can create risks through the anonymity provided using trust accounts. Further, it is widely considered that institutions with a high proportion of cash deposits or withdrawals, cross-border wire transfers and non face-to-face business are highly vulnerable to ML/TF.

PNG has a predominantly cash economy with a large informal sector. The financial market is dominated by commercial banks, money transfer businesses, currency exchange businesses, savings and loans societies and insurance providers. The bulk of the financial transaction reports made to the FASU under the AML/CTF Act come from the banks. Financial institutions are defined in the AML/CTF Act.

PNG's relatively diverse and open financial sector, limited capacity to address ML/TF issues in some sectors, lack of knowledge and skills and limitations on the capacity of regulators to fully supervise all sectors, creates several vulnerabilities to money laundering and terrorist financing, especially transnational money laundering. The Sectors that were found to be very highly vulnerable to ML/TF are:

- Domestic Banks,
- Company/ trust formation,
- Money Transfer Businesses, and
- Currency Exchange Businesses.

Within the DNFBPs sector, those found to be highly vulnerable to ML/TF were:

- Lawyers and accountants,
- Real estate,
- Vehicle dealers,
- Non-profit organisations, and

¹⁴⁴ FASU has been working with the Real Estate Industry Association to increase awareness. However, the unregulated nature of the industry creates broader issues.

- High value asset dealers eg, bullion sellers and boats, (to a lesser extent).

The reasons for these conclusions are discussed below.

Domestic Banks

The domestic banking sector provides a full range of services to local and foreign business and retail customers. While well regulated by the BPNG and with well trained staff, the domestic banks pose a significant vulnerability to ML/TF. The reporting of SMRs provides evidence of the types of ML conduct being used in PNG. It includes the use of large cash transfers, often inconsistent with the supporting documentation provided, attempts to open accounts with large amounts of cash which cannot be adequately explained and the use of corporate structures to exceed the limits on off shore transfers without tax clearances.

The commercial banks are well aware of the adverse consequences to PNG and to their businesses if PNG was to attract greater international attention in relation to ML/TF. They are implementing effective AML/CTF policies and there are examples of refusals to open accounts where the source of funds is unclear, the closing of accounts for PEPs and for businesses which are considered to be involved in high risk industries¹⁴⁵.

Despite being adequately regulated by the BPNG and FASU with regard to prudential and AML/CTF requirements respectively, and despite the extent to which the banks are applying AML/CTF policies and procedures, the domestic banks are considered to provide a high ML/TF risk due to the size of the banks, the number and type of customers, including potentially high risk customers (for example, PEPS), the cash intensive nature of their business and their offshore links.

Money Transfer Businesses

The commercial banks and the Post Office operate domestic money transfers. There is only one licensed international money remitter, Digicel Financial Services Limited, but international remittances through arrangements with companies such as Western Union operate from the Bank of South Pacific branches. These remittance operations are different from international banks to bank telegraphic transfers which the banks also provide. These remittance services are used to enable foreign workers to remit money to family but can also be used for the transfer of illicit funds.

The AML/CTF supervision of money transfer businesses is very limited and has, to date, been limited to guidance. Inspections of these entities as to their AML/CTF compliance and particularly the transactional activity of their customer base has occurred as part of BPNG supervision but this role now falls on FASU. There are very few transactional reports from these entities.

It is likely that the following will occur through the money services businesses in PNG:

- Cash converted to electronic funds and sent offshore with little evidence of the source of funds,
- Electronic funds from offshore (again with the source unknown) converted to cash in PNG, and
- A high volume of transactions, many or relatively low amounts, over a relatively short period.

Global evidence shows that criminals involved in most significant crimes that generate large volumes of cash often use money transfer businesses to launder their funds. These businesses are also known to move funds for the purposes of terrorism financing. As PNG is a cash based economy and money transfer businesses have been highlighted globally as a high risk to ML/TF, they are rated as a very

¹⁴⁵ One commercial bank has instituted a policy of not dealing with companies involved in the logging industry because they are regarded as high risk.

high vulnerability for ML/TF in PNG. The level of supervision is also a significant factor in this vulnerability level. Increasing the level of supervision will reduce the risk.

FATF Recommendation 14 specifically addresses money or value transfer systems (MVTs). It requires a registration or licensing system for all entities engaged in MVTs and effective systems to monitor and ensure compliance with the other Recommendations by these entities. Unregistered or unlicensed entities should be identified and closed down. In reality this is very difficult in cash economies and it does require continued scrutiny by regulators and law enforcement. BPNG, FASU, RPNGC and other agencies need to increase their awareness and scrutiny of unlicensed operators.

Currency Exchange Businesses

AML/CTF supervision of currency exchange businesses (the banks and 9 authorised money changers) is conducted by FASU. Inspections of these entities as to their AML/CTF compliance and particularly the transactional activity of their customer base is not yet occurring. This is a consequence of capacity issues in FASU. There are very few transactional reports from these entities in relation to currency exchanges. However, the high level of awareness in the banks suggests that they would be conscious of the potential abuse of their currency exchange operations. The same cannot be said of the authorised money changers.

Global evidence shows that criminals involved in many proceed producing crimes use currency exchange businesses to launder their funds. They are also used for the purposes of terrorism financing. The following activities are occurring through the currency exchange businesses in PNG:

- Foreign currency is converted to Kina,
- Kina is converted to foreign currency,
- Exchange of large volumes of low denomination notes,
- Acquisition of large volumes of high denomination foreign notes, and
- High frequency of exchanges.

Anecdotally, there are shortages in some common international currencies in PNG such as Euros and USD. The BPNG does not want to import currency as it affects its balance of payments but the shortage of foreign currencies might suggest high demand for stable currencies which might be used as a means of removing value outside the formal system. The cash based economy in PNG and the global concerns as to ML/TF facilitation through currency exchange businesses would indicate that these businesses should be rated as very highly vulnerable in terms of ML/TF. The level of adequate supervision is a significant factor in this vulnerability level. It is an area which should receive urgent attention by FASU.

Savings and Loans Societies

In PNG these societies perform similar functions to credit unions in other jurisdictions. There are 22 savings and loan societies and they hold almost K1 billion in assets. As transactional activity is comprised largely of cash, and the value of funds held in the societies is significant and increasing rapidly, the level of vulnerability to ML/TF is considered to be potentially high. However, most of the transactions will involve low value deposits, loan transactions and repayments. The Societies are supervised by the BPNG in relation to their prudential supervision and FASU in relation to the role as reporting entities.

The risk of these entities being used for ML activity is moderate but this should be managed by adequate internal and external scrutiny.

Securities Dealers

PNG has a domestic stock market and there are a small number of listed securities. The market is supervised by the Securities Commission of Papua New Guinea (SCPNG) and the Port Moresby Stock Exchange. The level of market supervision is considered to be adequate given the size of the market

and the volume of transactions. However, securities markets can be, and often are, used for ML purposes. Recognising this, the SC and FASU have signed an MOU to facilitate information sharing and cooperation.

The very small number of listed companies, the relatively low levels of trades and the likely scrutiny of any untoward activity suggests the ML risks involved are low to moderate.

Insurance Companies

ML may be evident through life insurance products with single premium payments and high cash surrender values or through the assignment of policies to third parties. Cash payments for premiums may also result from illicit funds. The life sector is supervised by the BPNG but FASU has the AML/CTF responsibility. There is little evidence of the use of the sector for ML purposes.

There is a possibility that the general insurance sector will be subject to fraudulent claims generating criminal proceeds. There is also the possibility that policies can be taken out and paid for in cash and then cancelled so that refunds can be shown to have come from the insurance company. This, however, would involve relatively low values and would constitute no more than a low level vulnerability.

Overall the ML vulnerability in the sector is considered to be low to moderate.

Reporting Entities – Designated Non-Financial Businesses and Professions (DNFBPs)

Under the AML/CTF Act, the entities that are defined as DNFBPs and therefore, fall within the AML/CTF regime in PNG include:

- casinos;
- real estate agents;
- dealers in precious metals and stones;
- lawyer, notary public or other independent legal practitioner or an accountant engaged in any of the following on behalf of a client:
 - buying or selling real estate
 - managing client currency, securities or other assets
 - organising contributions for the creation operation or management of bodies corporate
 - creating operating or managing bodies corporate or unincorporated entities
 - buying or selling businesses
- trust or company service provider;
- motor vehicle dealer, and
- any other business or profession prescribed by the regulations.

Money launderers frequently use DNFBPs to assist them to hide and move their funds. Indeed, as the traditional financial institutions come under greater scrutiny, those seeking to launder funds will increasingly turn to DNFBPs for laundering opportunities.

The vulnerability of the different types of DNFBPs arises from the products and services they offer, the type of clients they serve and, importantly, the potential for funds to be sent off shore without adequate information about the source of the funds.

The vulnerability of this sector is due to the:

- Low levels of knowledge and understanding of the requirements of AML/CTF regime,
- Low levels of reporting and/or lack of quality of SMRs,
- Lack of commitment by DNFBPs to the AML/CTF program, and
- Lack of concern regarding vulnerability to related reputational risk.

The level of reporting of both threshold and suspicious matters by DNFBPs is very low.

Casinos

While the legislative framework exists to license casinos, no casinos are currently operating. However, should casinos be established they can provide ML/TF opportunities and need to be adequately supervised.

Examples of possible ML/TF activity:

- Cash in/Cash out without playing,
- Wire transfers from offshore,
- Wire transfers of “winnings” offshore,
- Converting small denomination currency notes to larger denominations,
- Foreign currency exchange,
- Funds transferred to bank accounts from casino bank accounts,
- Funds deposited into a casino’s offshore bank accounts, and
- Structuring transactions to avoid financial transaction reporting.

Casinos have been identified globally as a means of undertaking ML/TF using cash and electronic payments. With a significant cash economy in PNG, coupled with a developing tourist focus, PNG has a very high vulnerability to ML/TF through casino operations, should these commence.

There are however reports of illegal gaming activities. These operations will face all the risks outlined above as well as exposure to organised criminal gangs, loan sharking, illegal alcohol sales and other offences which may be associated with illegal gaming activities such as prostitution. The profits from these operations are considerable and there may be associated corruption and bribery of the RPNGC. These activities will have a very high risk of ML activity.

Interactive Gaming, Gambling and Betting Sites

Interactive gaming, gambling and betting sites must be licensed in PNG under the *Gaming Control Act 2007*, but there are no licensed internet casinos or online sports betting operations in PNG. Under the *Bookmaking Act*, there are sports betting operations in PNG. Such sites generally provide activities such as sports betting, poker, casino games, bingo and interactive games, many of which involve two or more players in different locations. Interactive gaming, gambling and betting is one of the fastest growing sectors globally.

Globally, these sites are vulnerable to a wide variety of criminal activities including ML/TF. For example, criminals may participate in games with other criminals, specifically to exchange and launder illicit funds. This can be done by intentionally losing games. Bribery and corruption can also be facilitated by these means.. There is evidence that virtual currencies are also being used in interactive gaming to launder funds.

Sports betting is widely seen as a growth area. Unlicensed sites are growing at a much more rapid pace than licensed sites. ML/TF through these sites is also assisted by the offshore nature of many of the services. Money launderers have many opportunities to conceal money flows through these on-line sites, making the task for law enforcement more difficult. Sports betting, particularly using very short priced options¹⁴⁶, can be used to produce winnings with a low chance of loss. Alternatively, if match fixing has taken place the result might be ‘guaranteed’ and again a winning bet can be assured. The cost of this ML activity might be the bribe paid to the sportsperson involved in the event.

Relative anonymity and ease of access, together with limited supervisory ability make these sites very highly vulnerable to ML/TF. The lack of adequate supervision is also a significant factor in this vulnerability level. The risk at present is low to moderate.

¹⁴⁶ For example, backing a highly-ranked player in an early round of a competition. This might involve backing the first or second seed against a lowly ranked player at very short odds.

Company formation

The Investment Promotion Authority (IPA), through the Business Registration & Regulation Division, is responsible for the administration and enforcement of PNG's key business laws such as the *Companies Act 1997 (as amended in 2014)*, *Business Names Act 2014*, *Business Groups (Incorporation) Act 1963* and the *Associations (Incorporation) Act 1963*. Domestic companies are registered under the *Companies Act 1997* and foreign companies are registered under the *Companies Act 1997* then registered as a foreign company under the *Investment Promotion Act 1992* by issuing a foreign certificate licence by the Managing Director of the IPA.

A person can register a company online or in person at IPA Head offices and the four regional offices.

Companies may also be established by company service providers, lawyers or accountants. Any of these firms will provide company formation and administration services such as:

- Providing a registered office,
- Providing a registered agent for an international company,
- Opening bank accounts and undertaking other financial activities on behalf of the company,
- Acting as a director, secretary, nominee shareholder or nominee member of a company, and
- Other related services.

The ease of registration and the considerate oversight regime are designed to encourage investment. There were 1,166 registered international companies and 51,318 registered domestic companies at the end of 2016. The cost of setting up these companies is relatively low (K600) and consequently they can be readily used as vehicles for facilitating ML/TF. The anonymity of persons involved in international companies, which may have been established in high ML risk jurisdictions, together with the global concerns of ML/TF through these types of companies raises the level of vulnerability to ML/TF to a very high level. Local or international lawyers and accountants can facilitate the creation of international and domestic companies.

The online creation of companies in PNG without verification of the documents used to support the application creates a serious risk that the companies so created, will be used for ML purpose. The problem with the current systems is that a company can be created without verification of office holders and the company can then open accounts with various financial institutions. While the financial institutions or DNFBPs are required to carry out their own identification, verification and due diligence, there is a strong likelihood that they will rely on the IPA registration. This is a breach of the AML/CTF Act but both IPA and FASU may find that the present procedures are insufficient to satisfy FATF Recommendations 10 (concerning customer due diligence) and 24 (concerning transparency and beneficial ownership of legal persons).

Trusts

Lawyers and accountants can provide trust creation and management services. There are also many international company service providers who can provide Trust services including:

- Services of a professional trustee, protector or administrator of a trust or settlement,
- Managing and administering a trust or settlement,
- Services in relation to the creation or modification of an express trust, other than as a legal practitioner, and
- Providing any of the above services for a private trust company, or a company that acts as trustee of a single trust.

It is possible to use trust structures to create layers that obscure the link between illicit funds and their origins. It is also possible to set up complex trust structures across multiple jurisdictions making tracing of illicit funds extremely difficult. Trust structures are often created as part of wealth management services for high risk customers. Trust Managers in PNG need to be incorporated as local companies in PNG. The anonymity of persons and funds involved in these trusts, together with

the global concerns of ML/TF through trusts raises the level of vulnerability to ML/TF to a very high level. The role of TCSPs in creating and facilitating these trusts is a significant component of this vulnerability.

Lawyers

In PNG, as is the case elsewhere, there is some concern that lawyers may provide advice on ML/TF to their clients on the assumption that they will be protected by the rules of privilege that protects the confidentiality of the lawyer/client relationship. However, these protections do not apply in the furtherance of any illegal act and therefore are not applicable where this is the case. Further, the AML/CTF Act specifies that the obligation of lawyers to report transactions relates only to specified kinds of services.

There is the potential for lawyers' trust accounts to be used to hide illicit funds and to enable the funds to be transferred offshore. Tax clearance certificates can be obtained in the name of the law firm rather than in the name of the client who is the owner of the funds.

The strong links to TCSP services and the global concern with the facilitation of ML/TF through lawyers raises the level of potential vulnerability of lawyers to high. The fact that supervision of the profession is through the Law Society which is a self-regulatory system (supported by legislation) is also a significant factor in this vulnerability level. FASU is responsible for ensuring that lawyers in PNG meet their obligations under the AML/CTF Act but it needs to institute arrangements, in conjunction with the Law Society, to develop procedures which will assist it to meet these obligations.

Accountants

Accounts can be involved in company creation activities and providing various services for clients which might create significant ML risks. Where funds are transferred offshore by accountants, the tax clearance must be in the name of the client. This substantially reduces the risk of associated ML.

The strong links to TCSP services and the global concern with the facilitation of ML/TF through accountants raises the level of potential vulnerability of accountants to high. The fact that supervision of the profession is through a self-regulatory system (supported by legislation) by the CPAPNG is also a significant factor in this vulnerability level. FASU is responsible for ensuring that accountants in PNG meet their obligations under the AML/CTF Act but it needs to develop arrangements, in conjunction with CPAPNG, to develop procedures which will assist it to meet these obligations.

Real Estate

The real estate industry in PNG is relatively small and concentrated in larger urban areas. FASU's register of DNFBPs lists 81 real estate agents of which 46 are located in the NCD and another 10 in Lae. The purchase of real estate has long been used as a means to launder money. While transactions paid for in cash are the most obvious examples, the use of off shore loans are also a ready means of laundering funds. Often the property is purchased using an off shore loan which may be genuine but is repaid by transferring illicit funds to make the loan payment. Any scrutiny of the transfer is justified by the loan documentation. Alternatively, previously transferred illicit funds are the basis for the 'loan' allowing the funds to be repatriated and used to buy the property. Further illicit finds are then transferred to repay the loan. In some cases there is no loan at all but false documentation justifies the 'repayments'. The historic lack of scrutiny of real estate transactions¹⁴⁷ by agents, banks and lawyers has facilitated these practises in many places.

¹⁴⁷ There are well documented cases of Russian criminals buying large amounts of London real estate without any apparent scrutiny of the source of funds. See, for example, *'From Russia with Cash'*, Channel 4 UK first

There have been allegations of criminal activity in regard to real estate in PNG over many years, although this may now be on the decline as a result of legislative changes. Cash payments to customary owners to access highly undervalued land is an issue of concern in PNG. There is no restriction on the lease of land by non-resident foreigners, and payment can be made in Kina or any foreign currency. However, there are constraints on foreign freehold ownership. This might give rise to the use of local representatives to hide the actual beneficial owner, particularly where the value of the property is high or where the land may be used for unlawful purposes.

While the title registration system should provide certainty of title there have been problems. Where the title file has been lost, or misplaced, a temporary file is created and this has led to subsequent complaints by those who claim to be the registered prior owner. There have also been claims that customary title has been lost and the land subsequently sold or leased without the knowledge or consent of the customary owners. Greater controls on the circumstances when 'temporary files' can be created are needed. The whole basis for a title registration system is that a purchaser can acquire safe title knowing that the government run register is accurate. Unless addressed, this will undermine trust in the system.

The potential for fraudulent land transactions is high. Consequently, illicit funds can be used in this process. Similarly, land and property can be used as a means of laundering funds. The structure of the real estate market in PNG makes it vulnerable to exploitation by people moving funds through PNG.

Off shore real estate purchases are often claimed to be a major way in which funds generated in PNG are laundered. There are frequent claims that property has been purchased in Australia (and elsewhere) by PEPS using corrupt earnings. The use of trust funds operated by lawyers to provide a vehicle for the movement of funds, without the beneficial ownership of the funds being disclosed to the FI involved in the transfer, is a significant risk factor.

The risk of ML activities through real estate transactions is high.

High Value Asset Sellers

There are few high value assets, other than real estate, sold in PNG. FASU has identified 3 jewellers in NCD who are registered as DNFBPs, including one who trades in gold. There is the potential for gold and jewellery to be used for ML purposes and it is important that those DNFBPs involved in high value asset sales conduct adequate customer identification and due diligence. Given low levels of scrutiny and the very high potential for such sales to be used for ML purposes, the ML risk is high.

An area that raises some potential concern is in the sale and purchase of boats and yachts, and vessel management. Although there is no evidence of ML/TF in this industry, the high value of the vessels and the use of cash generally in PNG, raises the level of vulnerability to high. The lack of adequate supervision is also a significant factor in this vulnerability level.

Non-profit Organisations (NPOs)

NPOs in PNG are governed by the *Association (Incorporation) Act 1963*. There are approximately 7000 registered NPOs. These include community groups, landowner associations (in relation to traditional ownership), clubs, political parties and charities.

There is no ongoing review of the activities of NPOs by the IPA. Once established for a K70 registration fee there is no ongoing scrutiny of the activity of the Association. There has never been a review of the registered associations and it is likely that many exist in name only. They do not

broadcast on 8 July 2015 and *Corruption On Your Doorstep: How Corrupt Capital Is Used to Buy Property in the UK*, Transparency International UK, March 2015.

lodge annual reports or financial statements with the IPA and have no obligation to update membership information, office holder details or even the name of the public officer. They may receive large amounts of government grants, sell community assets and can be involved in business activities notwithstanding their not for profit status. They are not taxed. There is a high risk of fraud associated with the allocation of grant funds. The present arrangements mean there are no records of the individuals using the NPO structure, no records of their current activities and therefore a high probability that some NPOs are involved in fraud, corruption and money laundering.

While NPOs are not reporting entities under the AML/CTF Act, they can be customers of reporting entities or be involved in activities which might be caught by the AML/CTF Act, such as provision of loans. There is a very low level of understanding of AML /CTF issues within the NPO sector.

Given the lack of supervision and the potential for misuse of the association registration procedures creating a legal entity which can operate bank accounts, enter into contracts and undertake business activities it is essential that action be taken to tighten the provisions for establishing Associations and that they are placed under increased scrutiny.

FATF Recommendation 8 and the Explanatory Notes to the Recommendation highlight the vulnerability of NPOs to being used for TF purposes. Recognising that the risks of such use will vary considerably and that some NPOs might be very low risk while others pose much greater risk, FATF has focused on the need for a risk based assessment of NPOs. This approach must be applied by the entities which establish and should monitor the activities of the NPO. In PNG, this is the IPA.

Financial institutions dealing with NPOs must also apply a risk based approach to the financial activities and the office holders of the NPOs. Some may require enhanced due diligence while others might, after proper assessment be regarded as low risk. Finally, FASU also needs to be aware of the possible TF and ML risks from the operation of NPOs. While the primary FATF focus on NPOs concerns their possible use for TF activities, they also pose a significant ML risk where they are involved in commercial activities, the receipt of large government grants or the sale of traditional land. The absence of any public register of NPOs or their office holders means that reporting entities have no way of checking the veracity of information provided by the NPO, unlike their ability to check company registration details. This significantly increases the risk of the reporting entities in their dealings with NPOs.

The use of NPOs for ML and TF activity is well known. While there is no evidence of TF involving NPOs in PNG, global concerns about the use of NPOs in TF together with the lack of supervision would raise the level of vulnerability to ML/TF to very high.

Other DNFBPs

Micro-Finance Institutions

There are a very small number of micro-finance entities generally set up along community lines. These entities generally have a savings scheme for members, with savings generally unable to be withdrawn until the client forgoes their membership, or with a very low rate of interest if funds are withdrawable. They also provide small loans over short periods of time. The vulnerability to ML/TF is considered to be low.

Non-Bank Lenders

As with Micro-Finance generally, there are very few non-bank lenders in PNG. These entities generally provide very low value loans over short periods of time. The vulnerability to ML/TF is considered to be low.

Lottery

There is only one lottery operating in PNG. This is also governed by the *Gaming Control Act 2007* and is regarded to have a very low vulnerability to ML/TF. However, there is a lottery type game operated by Digicel, the national telephone carrier, for phone subscribers.

Car Dealers

The use of motor vehicle dealers as a means of laundering money has been documented in many countries. The practices can range from simple to complex arrangements. A car might be purchased with cash and the vehicle subsequently resold (perhaps to the same dealer) with the payment made by a cheque issued by the dealer. This can be banked and the sale of the vehicle used as the legitimate basis for the funds. Often the original purchase price is inflated to provide an incentive to the dealer to accept the cash without question. Much more complex schemes have also been used¹⁴⁸.

FASU's register of DNFBPs records 27 car dealers in PNG, many of which are second hand dealers and provide motor mechanical services. The use of cash is prevalent in the industry. Car Dealers are supervised by the FASU for AML/CTF purposes. The vulnerability to ML/TF is considered to be medium to high because of the wide use of cash in the industry and the value of motor vehicles. The lack of adequate supervision at present is also a significant factor in this vulnerability level.

Technology Risks

New technology can assist in the detection and combating of ML and TF but it can also create new means of ML and TF. The use of mobile phones to transfer value, stored value cards, online transactions involving international funds transfers, development of electronic currencies and peer to peer transactions which might bypass existing payments systems provide enormous benefits but create significant vulnerabilities. The creation of new products, particularly involving technology, need to be assessed for their ML/TF vulnerability.

REs should be required to notify FASU of new products and technologies so that, in addition to the obligation on the institution to risk assess the product from a ML and TF perspective, they should also alert FASU where they see possible ML or TF issues arising from new technologies.

Failure to regularly and consistently address the risk arising from new technologies puts both the reporting entities and FASU in potential breach of FATF Recommendation 15 concerning new technologies.

Data Collection Deficiencies

The development of the NRA has been complicated by the lack of data collected by key agencies such as the BPNG, RPNGC, Customs, IRC and IPA and within the reporting entities. This has meant that many of the conclusions are based on the views and experience of people working in the key agencies and on anecdotal material. However, each of the key findings is based on consideration of all of the available material and has been tested with officials and private sector staff directly involved in PNG's AML/CTF system.

¹⁴⁸ For example, an international scheme which involved more than 2 dozen US car dealers and the Lebanese Canadian Bank. Cars were sold in the US to West Africa and drugs were purchased in South America. The drugs were sold in the US and Europe and funds used to purchase consumer goods in Asia which were sold in South America to pay for the drugs and the proceeds were sent to Hezbollah (which is considered a terrorist group by many countries). The original allegations were made in a suit filed by US prosecutors in 2011 and settled with the payment of \$102 million in June 2013. By that time, the Bank had been acquired by a Lebanese subsidiary of Société Générale.

What is important is that the NCC develop and implement a data collection plan so that when the NRA is revised, prior to the next scheduled MER, there will be substantially more reliable information.

FATF Recommendation 33 requires that

Countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CTF systems. This should include statistics on the STRs received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation.

While this requirement places primary responsibility on FASU as the agency responsible for supervision and compliance, the RPNGC and all of the agencies represented on the NCC must play their part. The current RPNGC statistics are very limited in scope and detail.

There is a need to establish and maintain statistics in relation to matters such as:

- The identity, location and office holders of all reporting entities,
- Supervision and enforcement activities undertaken by FASU, the Law Society, the CPAPNG and other entities with AML/CTF related functions,
- Records of training activities by FASU, other government agencies and within REs,
- Providing details of the internal policies of REs concerning ML/TF,
- Documenting REs AML/CTF programs,
- Ensuring record keeping and reporting obligations in the AML/CTF Law are being met,
- Ensuring that REs risk analysis activities are documented and inspected by FASU,
- Records of all SMRs received as well as other financial intelligence disseminations,
- Records of the number, nature and outcome of predicate offence investigations (this involves the RPNGC, IRC, IPA, Customs, OPP, PNGFA, NFA, OC, FASU and the courts),
- Documenting decisions not to prosecute ML offences in conjunction with predicate offence prosecutions,
- Records of AML and CTF related asset searches, freezes and seizures,
- Records of mutual legal assistance and extradition requests made by PNG and to PNG, including the outcome, timing and agencies involved,
- Records of AML and CTF related information requests and outcomes within the PNG agencies,
- Records of AML and CTF related information requests and outcomes by FASU to REs and by REs to FASU,
- Records of AML and CTF related information requests and outcomes between FASU and other FIUs, and
- Records of action in relation to sanctions,

Unless there are major changes in the way data is collected and analysed there will be significant difficulties in preparing for and responding to the next Mutual Evaluation process.

CHAPTER EIGHT - TERRORISM FINANCING

While there have been several significant instances of internal violence linked to political objectives, most of these cases have not involved action which can be properly described as terrorism. The secessionist movement on Bougainville in the 1990s saw long term political instability in the region which has subsequently been managed largely through a degree of local autonomy. Politically and ethnically motivated violence has occurred in regional areas and in Lae and Port Moresby. However, none of these events appears to be the result of foreign funding or support. Rather they are the consequences of domestic political factors. Unlike several of PNG's regional neighbors, there is no evidence of domestic terrorist activity directed at the central government or other countries. Accordingly, there is no evidence of any flow of funds destined for funding terrorist activity within PNG.

However, the potential for political or ethnic differences to grow into serious, if relatively small and focused, politically motivated violence which may take on the features of terrorist groups cannot be ruled out. Even if this were to occur, the potential for such groups to attract funding within PNG is low and even less likely from overseas groups.

The major threat to PNG posed by terrorism financing arises from the possibility that the country will be used as a conduit for the flows of funds intended to be used by terrorist organisations. Several of PNG's neighbours are countries where acts of terrorism have taken place or are occurring and are acknowledged as both the source of, or the recipients of, funds intended for TF purposes. Indonesia, Malaysia, the Philippines, Australia, Singapore and Thailand have acknowledged their vulnerability¹⁴⁹. While there have not yet been documented cases of terrorism financing through PNG, the possibility of physical carriage of funds through PNG to neighbouring countries is recognised and the use of the PNG financial system to reduce suspicion of direct fund flows from source to recipient jurisdictions is also recognised.

In 2014, there were unsubstantiated reports that a PNG company was "linked" to terrorism due to family links between the company owners and an acknowledged ISIS fighter. As has occurred elsewhere, the diversion of funds from legitimate businesses to terrorist causes is an ongoing threat. The fact that the business which is generating legitimate profits might be the source of funds destined for a terrorist group can be almost impossible to detect, particularly if the funds are moved through several transactions in different jurisdictions.

In response to its obligations under relevant UNSCRs to identify and prevent financial transactions by individuals or groups suspected of involvement in terrorism, PNG has had in place since 2016 systems to vet all domestic transactions passing through financial institutions. It is also finalising arrangements which will allow it to apply the same scrutiny to all international funds transfers.

The weaknesses in the system of registration and oversight of NPOs and companies create a vulnerability for the movement of funds intended for TF purposes. The use of defunct or even active NPOs whose office holders are unrecorded on IPA records poses a significant risk. So does the use of companies whose recorded office holders might not reflect beneficial ownership or control. This risk needs to be recognised and mitigated now. Until this occurs, the TF financing risk is high.

Given the potentially catastrophic consequences that even a small amount of terrorism funding might allow, the need for vigilance in PNG is very high. For example, authorities in Australia and Indonesia have been focused on the possible of flow of funds between the two countries to support terrorist acts such as the Bali Bombing and the Jakarta attacks or to support "home grown" terrorism in Australia, supported by funds from sympathetic sources in Indonesia. PNG provides a possible

¹⁴⁹ *Regional Terrorism Financing, South East Asia and Australia*, Regional Risk Assessment, 2016,

transit point which may reduce the level of scrutiny of financial transactions. Alternatively, the funds might be sent to PNG and physically carried into Australia, Indonesia, Thailand or the Philippines.

There is need for greater coordination by domestic agencies, and with international partners, as a precautionary measure to deal with possible terrorism and TF activities.

Currently, the country doesn't have a clear-cut strategy on how to address AML/CTF in the medium to long term and it is necessary that the country develops one soon. This will assist agencies to address ML and Terrorism and TF in a targeted way with clarity on its definition and focus on the activities of persons and entities. For the moment, the focus should be centred on strengthening and prevention measures of the AML/CTF regime.

CHAPTER NINE – LIKELIHOOD AND CONSEQUENCES

Money Laundering

In the discussion of threats in Chapter Six, an assessment has been made of the likelihood that the various predicate offences might generate ML or be used for TF. Chapter Seven looked at the areas where various vulnerabilities might increase the risk of ML or TF because of geographic factors, weaknesses in legislation, law enforcement or regulatory structures and activities, the operation of the taxation and revenue systems, weaknesses in the REs and limitations on the control of entities such as NPOs.

Likelihood is the chance of a risk occurring and is a function of threats and vulnerabilities and consequence is the potential impact or outcome of the criminal activity and takes into consideration the effect of an event occurring. This will include the effect of the criminal activity on victims and the broader community as well as the effect on financial systems and institutions and the economy and society more generally. The consequences of ML may be short or long term in nature and may affect the entire populations, specific communities, the business environment, other national and international interests, as well as the reputation and attractiveness of PNG's financial sector. Other possible factors to consider include financial loss, media response, available resources, impact on the community and reputational risk.

The recognition that there are specific consequences of ML threats and vulnerabilities assists in assigning a relative value or importance to ML risks. For example, a high level of car thefts or robberies will not only impact on the victim of each offence but will affect every vehicle or home owner through increased insurance rates in the longer term. Known use of a nation's financial system for ML or TF may lead to international sanctions and may lead to higher borrowing costs and impeded development.

Drawing on the earlier analysis of predicate offences, the highest risks for ML will arise where the likelihood of the predicate offence occurring is high and where the consequences of that kind of offence are significant. In PNG, we can see that those crimes most likely to generate large amounts of value, coupled with high rates of incidence and therefore, which have significant consequences are revenue and other fraud, corruption, environmental offences and drug offences. A number of the vulnerabilities which were discussed in Chapter Seven exacerbate these risks: the porous borders, internal corruption in law enforcement and government, lack of control on the movement of value, lack of coordination and cooperation between agencies, weak systems and low levels of resources all contribute to the continued incidence of these offences.

While the legislative provisions have been significantly strengthened in 2015, there is scope for significantly increased use of financial intelligence, greater coordination and cooperation between government agencies and with the REs, more effective law enforcement and enhanced international law enforcement cooperation.

The threats and vulnerabilities most likely to have severe domestic ML consequences for PNG are activities including tax evasion (including GST fraud), illicit drug related activities and the movement of funds obtained from bribery and corruption. The laundering of funds derived from illegal logging and fishing are more likely to accrue offshore, although some of this will find its way back to PNG to support continuation of these activities. This has international implications for PNG because those countries face a domestic ML problem created by criminal offences within PNG and dealing with these issues requires cooperation between PNG authorities and those in neighbouring jurisdictions.

The vulnerabilities that will assist the creation and laundering of funds from these predicate crimes include those vulnerabilities associated with low levels of capacity within some elements of the AML/CTF program such as weaknesses in the reporting and supervision of DNFBPs, limited information flows between government agencies and limited supervision of the reporting entities.

It is far less likely that PNG is used as a vehicle for the laundering of criminal proceeds generated offshore and moved into or through PNG.

The highest priority need for mitigating action is to address those threats which arise from high impact criminal activity (in terms of frequency and value) within PNG which are compounded by the systemic and institutional vulnerabilities which create the highest ML risks.

The highest priority for the offshore ML of funds generated within PNG is to address the cause: the ongoing illegal logging and fishing and corruption. PNG can work with other jurisdictions to trace, locate, freeze and recover these criminal proceeds but addressing the problem at its source is critical.

Terrorism Financing

While the current likelihood of PNG being either a source of, or a vehicle for the movement of funds intended to be used by terrorists is considered to be low, it is clear that the various vulnerabilities which enable ML to take place can also allow for TF activity to occur. In addressing these ML vulnerabilities, PNG will also reduce the risk that it might be used for TF.

The likelihood of TF is assessed as low because of the general absence of communities which might support terrorist activities or which might see 'home grown' or 'lone wolf' activity develop. The violence associated with domestic politics is of concern but not in the international terrorism context.

However, this situation could change rapidly. There are ethnic communities within PNG which might be susceptible to groups seeking to radicalise these communities and seek support for TF or even to engage in terrorist activity. More likely is that those involved in TF activities will perceive that the PNG financial system has a lower level of scrutiny of transactions that might have a TF purpose, particularly given the high levels of scrutiny of transfers to and from many of PNG's neighbours. For example, money transferred directly from Australia to Indonesia, Thailand or the Philippines might attract close scrutiny while a transfer to an account in PNG may be less likely to attract attention, particularly given the large number of relatively low value transactions remitted to family members. These funds might then be sent to Indonesia, Thailand or the Philippines supposedly as payment for imported goods or services. Alternatively, the funds might be physically carried out of PNG.

The difficulty in identifying TF transactions is well known. Often the amounts involved are small, they can have apparently legitimate purposes, involve legitimate entities such as NPOs or seem to be credible payments to suppliers. Given that TF transactions often use similar methodologies to ML, the very fact that the amounts are small can reduce the level of scrutiny and they may slip through various transaction monitoring systems designed to identify large scale ML.

The emerging informal value transfer operations in PNG provide a significant risk and need to be better understood and scrutinised by FASU, the RPNGC and the banks which might be used to move larger amounts to offset transactions.

The consequences of PNG being found to have been a source of or transit point for TF activity would be serious. An international perception that PNG was not addressing the TF risk could lead to unilateral responses or coordinated multilateral action.

It is therefore critical that the government agencies involved in the AML/CTF program and the REs are aware of and looking for these kinds of transactions.

CHAPTER TEN - MITIGATION AND PRIORITIES

Most ML and TF risks can be mitigated but few can ever be effectively removed. Criminals and terrorists will continually respond to the way governments try to deal with ML and TF. The situation is never static. New technologies, new payment systems, more elaborate and complex laundering systems all provide ongoing challenges. Some solutions may be so expensive as to be outside the reach of many governments or so onerous that they would attract reaction and rejection by the public. Porous borders could be plugged with thousands of additional police but the cost would outweigh any benefit. Balances have to be struck between the scrutiny of each financial transaction and the needs of international commerce in the 21st century. When security at airports reaches a certain level of intrusiveness, there is debate about the benefits compared to the delays and cost. Is the process designed to effectively address risk or simply designed to be seen to be addressing a problem?

Mitigation strategies designed to limit, if not prevent, ML and TF need to be realistic and satisfy a cost-benefit analysis if they are to be adopted by agencies and REs and be acceptable to the community. While the costs are often apparent, some of the benefits may be difficult to quantify, particularly when they relate to the reputation of the national financial system, perceived levels of transparency and corruption and issues such as the increased cost of international finance faced by countries who are seen to be non-compliant with international ML and TF norms. In developing suggested mitigation activities, the NRA has identified strategies which are affordable, practical and impede as little as possible on legitimate use of the financial system. The following strategies can help PNG to reduce the risk of ML and TF and significantly improve the effectiveness of its AML/CTF program.

Mitigating Threats

Serious Offences

Criminal offences such as those involving assaults, murders, illicit drug trafficking, smuggling and the movement of high value goods, illegal gambling and gang activity pose serious challenges to the RPNGC, the Customs Service and other agencies such as the OPP. Despite international assistance and substantial donor investment in law enforcement initiatives, the frequency of such offences is high and this has led to PNG being seen to have a serious crime problem, particularly in the Capital and the larger urban areas.

Where the amounts involved are large, the usual expectation is that there would need to be extensive ML activity to hide to prevent the identification of the offenders when the criminal proceeds are spent. However, in many developing countries where law enforcement has serious resource constraints and corruption is widespread, the risk of detection and arrest is low. If a drug trafficker is identified, the payment of bribes will lead to the dropping of charges or an acquittal. There is therefore no need to launder illegal profits. It is likely that in PNG a considerable amount of the profits generated by the serious crime types discussed above are simply spent without any attempt to launder or where very rudimentary means are used such as having assets held in the name of an associate, relative or wantok.

Where the underlying criminal activity does not produce large amounts of proceeds, there is even less need to engage in laundering activity.

There is no short term solution. PNG needs to address a range of issues as part of a long term plan to reduce the incidence and impact of serious offences. These include:

- Strong political commitment,
- Increased resource allocation to the RPNGC and Customs,

- Increased skills, training and technology within the law enforcement agencies,
- Increased development of and use of financial intelligence,
- Addressing cultural issues,
- Dealing with corruption within RPNGC and Customs and more generally, and
- Obtaining targeted donor assistance (which will require demonstrated self-help as a prerequisite).

In the meantime, while the incidence of criminal activity generating proceeds of crime is very high the actual threat of associated ML activity is, ironically, lower with a probable ML risk of high.

Bribery and Corruption

The jurisdiction of the Ombudsman Commission is limited to those politicians and officials covered by the leadership code and therefore other official corruption is not within their jurisdiction. While a comprehensive anti-corruption agency is needed, the powers and resources of the Ombudsman Commission should also be addressed.

A number of mitigating strategies can be implemented:

- Enhanced interagency coordination and information sharing,
- The Ombudsman Commission should publish more detailed statistics on the cases it investigates including the outcome of any related prosecutions,
- Passage and implementation of the ICAC legislation,
- Passage and implementation of national whistleblowing legislation,
- Working with off shore partners through information sharing with other FIUs and using mutual legal assistance processes to locate, freeze and recover criminal proceeds,
- Increasing the capacity of FASU, RPNGC and other agencies to carry out financial investigations to assist in proceeds of crime recovery,
- Using Proceeds of Crime legislation to locate, freeze and recover corrupt payments and stolen funds,
- Using legislation such as the *Income Tax Act* to deal with the recovery of proceeds where this can be done more efficiently than using proceeds of crime laws,
- Enhancement of the budget of the Ombudsman Commission,
- Enhancement of the NFACD within RPNGC, and
- Enhanced Customs scrutiny of the movement of goods into and out of PNG to ensure that goods have the appropriate approvals and that taxation is paid.

In relation to the extent and value of illegal logging there are differing views. While there is a widely held view that it is an extensive problem, the PNGFA believes the extent of illegal logging is seriously overstated. To the extent that there is illegal logging, PNGFA recognises that this will involve lost revenue (royalties and taxes) and produce proceeds of crime when the logs are sold domestically or, more likely, off shore. It has suggested that a sectoral ML Risk Analysis be conducted to determine the extent of the problem, the values involved, the means by which this lost value might be recovered (including the use of POCA and MACMA) and the ways that the problem can be mitigated in the future. This is an important and urgent need. A Sectoral ML Risk Assessment should be undertaken as soon as possible and involve PM&NEC, DFAT, Department of Labour and Industrial Relations, PNGFA, FASU, DJAG, OPP, RPNGC, Customs and ICSA.

Taxation, GST and Other Revenue Fraud

Many countries with value added taxes (VAT), such as the goods and services taxes (GST) in PNG, face serious fraudulent activity. VAT Carousel frauds were the subject of a FATF Report in 2007 and most revenue authorities agree that these taxes are subject to fraud. This is particularly the case where there is self-reporting and insufficient resources to monitor the system. In such cases the amounts involved may be very significant and action to address the problem could be very cost

effective. However, where countries lack the necessary staff resources, the fraud may go largely unchecked.

The extent of GST fraud in PNG is estimated to be very high. However, this can be mitigated by the following approaches:

- Ensuring entities registered for GST purposes meet the relevant criteria,
- Run checks on claims where there is a trend of claims for GST refunds (eg GST on purchases not offset by GST collected on sales),
- Review the procedures and processes to identify deficiencies and address these,
- Undertake targeted reviews of GST registration and claims, and
- Act against those found to be defrauding the system with criminal prosecutions.

In 2013, more than K1.2 billion was collected in GST. If total GST related fraud was 10% of the total collected this would mean K120 million in lost revenue. In the same year, more than K2.8 billion was collected in personal income tax and K2.0 billion in company income tax. Even a very conservative estimate of income tax related fraud at 5 percent would involve K240 million in lost revenue each year, all of which is proceeds of crime.

Tax and other revenue related fraud is a serious criminal offence but it is often dealt with under administrative recovery systems. This has a dual effect:

- It allows fraudulent claims to be settled by the payment of additional tax or recovery of wrongly paid refunds rather than involving criminal prosecution and sanctions.
- It encourages fraudulent activity because there is no risk of serious consequences thus reducing revenue.

Given the likely extent of fraud against government programs and in relation to income tax, GST, duties and excise, there are a number of steps which can be taken. These include:

- Ensuring the exchange of information between the IRC, IPA, FASU and Customs.
- Provide a TIN at the time a new company is registered rather than having a two-step process. The TIN should then be automatically notified to IRC with all the registered details of the company.
- IRC should, in conjunction with the RPNGC and the OPP, undertake criminal prosecutions for tax and GST fraud rather than relying on non-payment of fraudulent claims or the use of civil recovery processes.
- All international funds transfers must be reported to the BPNG. This information is reported using part of the form used by the customer to request the transfer. This information is converted by the bank into an electronic message to allow the transfer to be processed. The banks should provide to BPNG an electronic message (with same data as contained in the SWIFT message, to save BPNG manually re-entering the same data.
- This data (which identifies the sender) should be made available to the IRC and should identify same party transfers in excess of the tax clearance requirements.
- Encourage IRC to cross reference tax returns with company annual reports to identify possible tax fraud.
- Customs undertaking targeted document/container verification and prosecution where the documentation is fraudulent.
- The use of selected criminal prosecutions by IRC and Customs would be beneficial as it would act as deterrence. At present those involved in GST and tax fraud know they will not face criminal prosecution.

Sale of Counterfeit and Illegal Products

A range of illicit products will be manufactured in or imported into PNG. Some of these will be in small numbers but others may be in large quantities and with high composite value. For example, cigarettes, DVDs, clothing, spare parts and IT products.

In addition, the importation, manufacture and export of illicit drugs are a major problem with large amounts of proceeds being generated.

Responding to these threats requires coordinated and prioritised responses. This may need:

- The creation of task forces to pool expertise and resources,
- Determining which targets are of higher priority and focusing resources on those generating large amounts of proceeds, for example, cigarettes.
- Engaging with overseas agencies where there are international aspects to target both source and destination countries, and
- Combining both prosecution of the predicate offences with recovery of proceeds of crime.

Environmental Crime

Environmental crime is one of the major sources of criminal proceeds. While much of the value of this activity does not accrue in PNG and the value is not remitted, the criminal activity giving rise to it occurs in PNG. It is therefore regarded as a major ML risk for PNG. It is also a major regional ML risk because the funds from the PNG criminal activity are laundered in the region.

There are several ways this can be mitigated:

- Full application of and effective implementation of the current legislative regime,
- Amend the FMA to ensure the main offences under the FMA are predicate offences for AML/CTF Act purposes.
- NFA and PNGFA should review their compliance processes and ensure that adequate resources are deployed. The revenue lost through ineffective supervision and compliance far exceeds the cost of enhanced enforcement.
- Use of criminal prosecution rather than administrative sanctions where breaches occur.
- Create a task force with FASU, Customs, PNGFA, NFA, OPP, RPNGC, IRC, DJAG to seek to trace and locate, freeze and recover proceeds of illegal logging and fishing. A task force focused on identifying and tracing illegal exports could seek recovery using mutual legal assistance arrangements.
- Undertake a full sectoral ML/TF risk review of the logging industry.

Responding to Structural and Operational Vulnerabilities

Responding to the structural and operational vulnerabilities discussed in Chapter Seven requires dealing with:

- Enhanced coordination and cooperation
- Increased resources
- Infrastructure and technology
- Political will and government commitment
- Export and Import Control Weaknesses
- Unauthorised Cross-border Movements of People
- Illicit International Value Transfers
- Cross-border Cash Flows
- Legislative, Legal, Judicial and Regulatory Weaknesses
- ML Risks from Financial Products and Customers
- Currency Exchange and Money Transfer Risks
- Enhancing Supervision

- Risks Relating to Lawyers and Accountants
- Real Estate Related ML Risks
- NPO Risks
- Risks Relating to CDD, Beneficial Ownership, Regulation and Supervision and Reporting Failures

Enhanced coordination and cooperation

The structural framework for implementing the AML/CTF program in PNG (the NCC and the TWG) has assisted the level of coordination and communication among responsible government agencies. Relevant agencies meet regularly at the working and management levels to keep abreast of the latest developments and crime trends in ML/TF, to ensure that there are opportunities for sharing information such as financial intelligence, and coordinating policy decisions and implementation issues among the agencies. This is a major strength of the PNG system.

Yet there is scope for much more coordination and cooperation. PNG agencies also have limited technical resources such as computers and software to assist them in the PNG AML/CTF program. This affects information collection, sharing and analysis. The need to manually process information in one agency which is already collected electronically in another agency or reporting entity uses resources that could be much more effectively deployed in other ways. There is a tendency for agencies to regard information as their property which should not be shared.

There are existing legal and constitutional mandates for Government Agencies to coordinate and cooperate in implementing the laws in PNG. However, there is still a lack of coordination between and amongst Government Agencies and between Government and the Private Sector.

There is also duplication of functions and responsibilities in certain agencies and a lack of technical and institutional capacity to address and implement these issues. This needs to be addressed by Government which must encourage and facilitate cooperation and coordination.

There are also examples where agencies compartmentalise functions in ways which facilitates criminal activity. The result is an increase in crime which will generate large amounts of criminal proceeds – illegal logging, corruption, fraud on government programs, taxation fraud (income and GST) and the illegal movement of people and goods across the border. The resultant risk of ML is high. This needs to be addressed.

A medium to long term AML/CTF Strategy should be developed soon so that cooperation and coordination of all efforts to address the issues identified above are realistic, smart and achievable with a realistic timeframe. This strategy must supersede the now outdated Strategic Implementation Plan (SIP) which was developed at the time of the ICRG intervention. Examples of where increased information sharing would reduce fraud and associated money laundering include the need for the threshold transaction data provided to FASU being shared with the IRC so it can be compared with taxation clearance certificates and taxation returns and the sharing of company registration data with IRC for similar purposes.

It is important to recognise that the benefits from increased coordination and cooperation can deliver very significant improvements in the effectiveness of the AML/CTF regime and that these can be achieved with relatively low cost. Essentially, they involve changing attitudes and cultures rather than spending money.

Increased resources

There is a need for more resources to be devoted to PNG's AML/CTF efforts. The difficulties caused by the FATF grey listing should not be forgotten. If PNG were to again be found non-compliant in subsequent FATF reviews or Mutual Evaluation Reports, there would be direct consequences for its economy through restricted financial flows and increased borrowing costs. FASU needs to meet its

agreed staffing targets and to undertake the awareness, training, supervision and enforcement activities it is now planning.

It is important that FASU, enforcement agencies and prosecutors are sufficiently resourced to adequately supervise reporting entities for AML/CTF compliance and to be able to undertake financial transaction analysis, gather evidence, mount investigations, bring charges and prosecute ML/TF offences. Lack of adequate staff in all agencies will result in ML/TF not being detected or inadequately investigated.

Infrastructure and technology

FASU must develop its enhanced IT capacity as soon as possible so that it can better analyse the threshold reports and SMRs it is receiving. Its current capacity to develop financial intelligence is limited. It also needs to access the international transfer data being received by the BPNG for balance of payment data but not until it can receive this electronically and directly from the commercial banks.

Other agencies need to develop their IT systems so they can share data and analyse data more effectively. There is scope for the closer cooperation between IRC and IPA. The new Customs on-line clearance system will reduce the need for direct Customs clearance of imports but there is a need to enhance the use of technology so that both spot check and intelligence driven scrutiny of containers ensures that the new system does not increase the capacity for fraud. The RPNGC needs to maintain better records of its investigations, arrests, charges and outcomes so that deployment and resource decisions are based on better data.

Political Will and Government Commitment

Addressing each of these areas requires political will and government commitment. Ministers must commit to improving coordination and cooperation and ensure it is delivered. In a very tight budgetary framework the demands on government are many. Yet the potential to reduce revenue fraud, reduce corruption, increase the identification and recovery of proceeds of crime and have resource allocation better matched to need and priorities will more than meet the costs involved. There will be a significant financial dividend.

Export and Import Control Weaknesses

PNG's large and poorly controlled borders create major opportunities for revenue fraud, the cross-border movement of illicit goods and unauthorised people movements. The PNG Customs Service recognises that it faces major challenges and that these are compounded by compromised Customs staff, the lack of control over ports, weaknesses in technology and systems.

The problems have direct impact on the revenue collected by the Customs Service. Enhancing Customs systems and equipment, albeit at some cost should produce positive revenue consequences.

The movement to greater electronic clearance of goods might reduce costs but might also see even more cases of fraudulent declarations. This is an area which needs substantial investment in resources in the medium to long term. Without this, fraud will remain costly, and illicit goods will continue to flow into PNG and illegal exports will continue to cost PNG a loss of revenue. Immediate needs include:

- Review the current documentation needs and identify shortcomings in the system (which might be legislative, resourcing, improper conduct (bribery or corruption), technological or logistical) and respond, and
- Ensure serious customs offences are prosecuted.

Unauthorised Cross-border Movements of People

The legislative framework, its application and the processes for checking immigration status of non-citizens needs to be reviewed. Effective sanctions for those involved in bringing in workers without valid visas need to be imposed.

The extent to which there are large numbers of unauthorised workers within the Chinese and south Asian communities is undocumented but believed to be significant. To the extent that these groups exist, they can potentially provide a clientele for unauthorised money transfer businesses, pose tax avoidance risks and provide the capacity for informal value transfers systems to operate.

This has direct implications for ML activity outside the RE structures.

Illicit International Value Transfers

The use of the modern international banking system to facilitate the movement of criminal proceeds is well understood. Yet around the globe the banking community has consistently been found to have demonstrated major shortcomings in the application of AML/CTF requirements. Notwithstanding the efforts of FASU and the commercial banks in PNG, the apparent inconsistencies in the flow of funds between PNG and other countries needs to be examined as part of a broader strategy which would include:

- Regular analysis by FASU of the trade data collected by the BPNG, Customs and other agencies with the flow of international fund transfers. This could involve working closely with the banks to examine unusual transfer volumes to ensure that these are consistent with the known business activities of the originating and receiving parties,
- Encourage the banks (through regular inspections) to actively examine international fund transfers (IFTs),
- Use the data reported to BPNG to enhance the operation of the tax clearance certificate system,
- Focus on transfers carried out by lawyers and accountants through trust accounts where the beneficiary of the transfer is not identified. In this regard work with the banks and FIUs in the sending/receiving country if there are concerns about the transfers,
- Ensure, as part of the supervision program, that reporting entities are collecting, retaining and updating customer data including the identity of company office holders and beneficial owners and the nature of the business,
- Revising the legislation for NPOs, de-registering all inactive Associations and ensuring regular reporting of office holders and financial statements,
- Where illicit transfers are discovered, FASU should work closely with the RPNGC and the OPP to prosecute offenders and to recover transferred funds, and
- Develop and maintain close working relationships with neighbouring FIUs.

Cross-border Cash Flows

Possible action includes:

- Review, enhance and apply the declaration system at airports and seaports,
- Ensure the declarations are collected, collated and referred to FASU,
- Exchange declaration data with regional FIUs,
- Conduct enhanced surveillance of high risk passengers,
- Enter into MOUs with neighbouring countries to exchange data on cash declarations to identify possible system failures as well as high risk passengers,
- Conduct physical inspections (based on intelligence or risk profiling) of luggage, container and postal movements, and
- Where breaches are found, confiscate undeclared cash and prosecute offenders as a means of deterrent.

Legislative, Legal, Judicial and Regulatory Weaknesses

Following the amendments made as a result of the ICRG process, the current AML/CTF laws provide the necessary framework and powers for an effective AML/CTF system.

Due to many factors, however, there are legislative, investigative and prosecutorial weaknesses:

- Financial intelligence collection, analysis and dissemination needs to be improved.
- Investigators (RPNGC, Customs, ICSA, PNGFA and NFA) only tend to investigate the predicate criminal offences (if at all) and do not follow the money trail.
- There needs to be more training to promote a cultural shift so that equal emphasis is placed by investigators on following the money with a view to restraining and confiscating proceeds of crime and other tainted property.
- There needs to be a specialist squad within the NFACD dedicated to following the money and supporting other investigators in financially motivated crime such as corruption and fraud.
- The use of criminal prosecutions, in addition to administrative settlements, needs to be undertaken by the IRC, ICSA, IPA, Customs, PNGFA and the NFA to provide real deterrents to fraud and other illegal activity.
- The existing powers relating to proceeds of crime need to be utilised.

Some legislative changes are needed to:

- Ensuring that offences under the FMA are predicate offences for ML purposes.
- Control the creation and operation of NPOs.
- Create an effective anti-corruption agency and allow ratification of the UNCAC.

At present Customs, IRC, IPA, ICSA, PNGFA and the NFA all use administrative sanctions (reprimands, repayment or fines) rather than prosecution, even where the conduct is a clear breach of the criminal offence provisions in their enabling legislation. While prosecutions can be complex and expensive, it is essential that those agencies which have functions to control the movement of goods and people across PNG's borders (Customs, ICSA, PNGFA and NFA) collect revenue (Customs and IRC) and control the creation and operation of companies and NPOs (IPA) adopt clear policies to use prosecutions rather than administrative remedies in all appropriate cases. These cases should be publicised as part of the deterrent effect.

In addition, DJAG, OPP and FASU should jointly examine the legislation relating to customs, immigration, revenue (GST, income tax, company tax, customs duties etc) and company formation and reporting to identify:

- Any policy or legislative impediments to greater use of targeted prosecutions for breaches of the legislation,
- If there are provisions which prevent or inhibit the use of prosecutions and favour civil or regulatory procedures these should be removed, and
- Any offence provisions which should be predicate offences for the purposes of the AML/CTF Act but which do not meet the threshold to enable proceeds of crime action to be taken to trace, locate, freeze and recover the resultant profits.

These should then be amended or removed as soon as possible.

Supervision and Compliance action must be enhanced to ensure the AML/CTF system addresses the identified risks by:

- Addressing weaknesses in the application of the regulatory controls in the logging industry.
- Imposing adequate supervision of the NPO sector once new legislation is in place.
- Ensuring the effectiveness of the tax clearance system.

- Reconciliation of company registration data and income tax assessments to identify companies not lodging tax returns.
- Developing effective AML/CTF supervision of lawyers and accountants in conjunction with the self-regulating professional bodies.
- Increasing awareness and enhanced supervision within the other DNFBPs, particularly in areas such as real estate which is largely unregulated.

It is also important that practical impediments to domestic and international cooperation are addressed. This requires that:

- MOUs are developed and signed by FASU with Customs, OPP and the RPNGC. FASU expects these MOUs to be signed this year.
- MOUs with the FIUs in Indonesia, Malaysia, Thailand and the Philippines should be developed and signed as soon as possible.
- The need for training and enhanced skills in key agencies are identified and addressed.
- Donor assistance for training and technical assistance is sought. This would be assisted by the development of a national AML/CTF training needs assessment and national AML/CTF training program.
- FASU, the DJAG and the OPP should ensure that there is regular review of the existing legislation, necessary amendments are identified and that these are put in place, and

Judicial training in areas such as proceeds of crime and international cooperation should be provided where necessary. This may be the result of assistance from other jurisdictions.

ML Risks from Financial Products and Customers

To mitigate risks, FIs need to look at their customers, the products they sell to customers, and the physical location of their businesses and their customers.

Customers

A basic element of AML activity is the application of know your customer (KYC) policies and procedures and the use of due diligence and enhanced due diligence when appropriate. While these are mandated in the AML/CTF Law for all reporting entities, the level of application varies between reporting entities.

Some customers will inherently involve higher ML and, possibly, TF risk (eg PEPS, customers with large amounts of unaccounted cash and NPOs who have large numbers of high value transactions) and must be dealt with accordingly. The use of shared accounts, failures to properly identify customers and a lack of customer data also increase risk significantly. It is essential that financial institutions apply rigorous enhanced due diligence procedures for all higher risk customers.

The capacity for off shore parties to establish PNG companies without verification of documents means that banks need to be particularly careful in dealing with such companies. These processes should be reviewed, given the ML and TF risks involved.

Enhanced supervision, training, information sharing and awareness of new typologies can assist reporting entities to improve the quality and effectiveness of their AML/CTF activities.

It is critical that BPNG and FASU implement a comprehensive program of awareness raising, training across agencies and reporting entities, information distribution, supervision and enforcement action where necessary to reduce the ML/TF risk to PNG.

Products

Many financial products are relatively low risk. Savings accounts held by wage earners are low risk while off shore investment products may have a much higher ML risk. New products should be

reviewed to assess ML risk before they are introduced and existing products need to be kept under review. If necessary, regulators may need to ban the use of high risk products.

BPNG, FASU and the reporting entities need to constantly review products in light of emerging global ML and TF typologies. Each bank must conduct and record a ML/TF risk assessment and respond to identified risks. Reviewing this documentation, and responding as necessary, should be part of the regular supervision of reporting entities.

The internal AML/CTF reviews conducted by the banks should be used to inform future iterations of the NRA.

Geographic factors

Off shore clients can increase risk. Their location may mean that financial institutions rely on third parties to conduct due diligence. This also increases risk including the use of off shore products, particularly if these involve high risk jurisdictions. This needs to be a key focus of the supervision of reporting entities. Telegraphic transfers (TT) to high risk jurisdictions need to be carefully examined.

The BPNG should use its access to TT data to identify apparent breaches of the tax clearance system and money flows which are inconsistent with the movement of imported goods and services to PNG.

Currency Exchange and Money Transfer Risks

These are potential weak spots in the AML system given the high usage of cash in PNG. Regular inspections of these businesses should be an area of priority supervision until FASU and BPNG are comfortable with the way they are operating and the level of record keeping, customer identification and reporting. This is an area which FATF Recommendation 14 seeks to target particularly because of its use for both ML and TF.

Within the formal financial sector there is little understanding of the informal value transfer systems which operate globally. Hawala, chit, door to door and the other well-known systems are operating in PNG but seem to be below the radar of the REs, BPNG and FASU. Informal transfer systems are widely used by expatriates to return funds to family, particularly within the south Asian, Filipino and middle eastern communities. While the individual transactions are small, the total value can be high and this provides a basis for larger ML activities.

Given the very likely use of these systems to move criminal proceeds out of PNG, this is an area where FASU and other regulators should apply resources. It is critical that FASU gain intelligence about the operation of these systems, the likely operators, their links to particular communities and their involvement in larger ML activities.

Enhancing Supervision

While there is an existing framework for supervision of the banks and other elements of the financial system by BPNG and FASU, this needs to be enhanced. The supervisory activities need to be both regular and ad hoc, they should focus on priority areas of concern (to best use BPNG/FASU resources) and to ensure the reporting entity response is geared to the most important aspects. FATF Recommendation 23 requires supervisors to ensure effective implementation of the FATF Recommendations. They must focus on preventing criminal interests from holding or being beneficial owners of significant or controlling interest in financial institutions. They must also ensure that financial institutions are applying risk based approaches to their AML/CTF activities.

Given that there is a sound level of AML/CTF policies in the commercial banks, effort in the short term should be focused on other areas of high ML risk such as corruption, fraud, company formation and registration and areas of taxation fraud.

A compliance policy should be prepared and adopted by FASU/BPNG and this should clearly set out how FASU will respond to compliance failures.

Enforcement action should be predictable and consistent.

Risks Relating to Lawyers and Accountants

Globally, there has been strong opposition from lawyers, accountants and other professionals to being subject to AML/CTF customer identification, record keeping and reporting obligations. PNG has imposed the obligations set out in the FATF Recommendations but these need to be applied and subject to regular supervision.

PNG has legislated reporting obligations in relation to specified types of transactions but, given the self-regulating nature of the professions, FASU should seek the cooperation of the professions for the development of working protocols and cooperative arrangements to facilitate compliance, supported by a MOU.

A number of other steps could be taken:

- Include a representative of the self-regulating associations for lawyers and accountants on the NCC,
- Ensure the Law Society and the CPAPNG has a program of supervision and is carrying out AML and CTF supervision of members in conjunction with FASU,
- Assist the professional associations to conduct training for their members (and use these professionals in other training activities),
- Ensuring that any suspect behaviour is taken up with the professional registration authorities, and
- Where evidence emerges of professionals being knowingly involved in ML activity, ensure that prosecution is undertaken.

Real Estate Related ML Risks

The potential for domestic real estate transactions to be used for ML purposes is high including the use of criminal proceeds moved off shore to purchase assets in other jurisdictions. There are strong concerns that these methods are used to launder the proceeds of corruption and tax evasion. Accordingly, it should be a focus for action. Priority action should involve:

- Close scrutiny of transactions by real estate agents and lawyers by financial institutions should be required and be the subject of specific analysis during supervisory visits to these entities.
- FASU should examine international funds transfers from PNG law firms to foreign real estate agents and law firms and determine the beneficial owner of the transferred funds.
- Banks should be asked to pay close attention to these kinds of transfers and apply enhanced due diligence.
- Real estate transactions involving PEPS, their associates and families should receive particular attention.
- Agents should be required to demonstrate that the purchaser (and any beneficial owner) is properly identified and that the source of funds has been established. Similar obligations exist for banks and others involved in the transaction (such as lawyers and accountants) and compliance should be the subject of compliance audits.
- FASU and AUSTRAC should work together to scrutinise real estate transactions in Australia where there are funds provided from PNG or which involve PNG owners.
- The NCC could facilitate a workshop involving lawyers, accountants and bank staff to identify possible areas of abuse and suggest ways these can best be addressed.

NPO Risks

No current TF issues have been identified but because the risk of TF use is very high, a mitigating action must be taken. There is also a high risk of ML activity. Given that there are 7000 registered

Associations, many of which are probably defunct, it would seem necessary to require each Association to register under the new law once it is put in place.

In relation to the TF risk, the present lack of oversight creates a very high risk that NPOs could be used for TF activities. NPOs have been used in many jurisdictions to raise, move or hide funds intended to be used for terrorism¹⁵⁰. Legitimate charities might be used, innocently or otherwise, to raise funds which are later diverted for TF purposes. For example, an existing, but no longer functioning, NPO with no current members might be resurrected and used as a front organisation to open financial accounts and transfer funds. Alternatively, a functioning NPO might be used to move funds relying on the protection from scrutiny provided by the legitimate objectives of the organisations. FATF Recommendation 8 does not focus on the whole NPO sector, rather it seeks to have countries focus on the misuse of the NPO sector for terrorism or TF purposes. Where the NPO sector is well regulated by Government entities or through effective self-regulation, the risks that the sector will be misused are diminished. Where the sector is not well regulated, the risks of misuse are much higher and both government agencies and REs need to be aware of these enhanced risks.

REs need to be conscious that they need to apply a risk based approach to their dealings with NPOs. This does not mean that they should not deal with them but it does mean they need to satisfy the normal CDD and identification and verification requirements and, where necessary, conduct enhanced due diligence in relation to the entity or the transactions in which it is involved.

It is essential that reporting entities dealing with NPOs are advised of the risks associated with these entities until a sound legal and administrative oversight system is in place. It is also essential that FASU, as part of its supervision activity, ensure that the REs are addressing this risk.

The current system in relation to the registration of NPOs needs urgent overhaul. It is essential that:

- A review of the current law be urgently initiated and proposals for a new Associations Law be prepared.
- The new law should (at the very least) specify
 - the functions an NPO is permitted to undertake,
 - require the registration of office holders,
 - require annual reporting of office holders, activities and financial arrangements,
 - create a public data base of NPOs,
 - prohibit commercial activities being undertaken by NPOs,
 - prescribe when they may be given tax free status, and
 - that where NPOs receive government grants, appropriate reporting and audit controls are mandated.
- An urgent attempt is made to de-register inactive NPOs.
- Adequate controls and audit obligations be imposed on all grants to NPOs.

Banks and other financial institutions dealing with NPOs be required to apply enhanced due diligence procedures to the opening and operating of accounts until the inherent risks in the current system are addressed.

Risks Relating to CDD, Beneficial Ownership, Regulation and Supervision and Reporting Failures

While understanding of AML and CTF issues in the banks is high, the level of knowledge in other areas, particularly in the DNFBP sector is much lower. FASU has not yet been able to extend its supervision activities to the full range of DNFBPs.

¹⁵⁰ See FATF Report Risk of Terrorist Abuse in Non-Profit Organisations, June 2014 and FATF Best Practices Combatting the Abuse of Non-Profit Organisations, June 2015

In PNG, as elsewhere, the creation and use of companies and trusts can be part of planned ML activities and it is important that both regulators and reporting entities are aware of these risks. It is critical that the CDD and beneficial ownership requirements of the FATF Recommendations are applied.

The present procedures for company creation and registration of NPOs by IPA and the supervision of DNFBPs by FASU and the self-regulating bodies for the legal and accountancy professions are insufficient to satisfy FATF Recommendations 8 (concerning NPOs), 10 (concerning customer due diligence), 11 (concerning record keeping) and 24 (concerning transparency and beneficial ownership of legal persons).

It is therefore essential that IPA, the CPAPNG, the Law Society and FASU jointly develop changes to the registration of companies and NPOs and that the CDD, record keeping and beneficial ownership practices of reporting entities meets the relevant FATF standards set out in Recommendations 22 and 23.

Priorities

While PNG faces very significant ML/TF risks it can reduce these risks with concerted effort across government agencies and the reporting entities. Many of the mitigation activities outlined in the NRA can be implemented with little additional expense. Enhanced information sharing, genuine coordination and effective cooperation do not cost much. They require some resources, for example, to ensure IT systems can share information, and they inevitably involve cultural changes. But these actions can produce substantial benefits.

Other mitigation strategies will require substantial investment of resources and will require assistance from the international donor community. The development of the analytical capacity in FASU is being supported by donor funding but it will give FASU the capacity to fully use the data it collects. Building human resources in NFACD and the Ombudsman Commission requires additional funding. Customs could be more effective in reducing fraud, better controlling the national borders and preventing cross-border cash and gold movements with more staff and better and more widely available technology.

There must be a fundamental change in the way the natural resources of PNG are managed. The scale of illegal logging and fishing not only dramatically reduces the financial benefits of these industries to PNG but they are also reducing a limited resource. Many of the illegal logging activities involve unsustainable practices with no replanting. Given that the illegal proceeds generated by this activity are one of the major producers of proceeds of crime, PNG will face a continuing ML risk until this issue is addressed.

Equally the rampant corruption must be addressed. In the development of the NRA there was a great deal of support from the TWG and the major reporting entities. They know what the problem is and the extent to which it permeates the country. The lower level bribery and demands for facilitation payments will not be stopped until the high-level corruption is addressed. The establishment of a powerful and well-resourced ICAC is a critical step.

Much of the fraud on government programs and the taxation and revenue systems can be reduced. Information sharing, the use of targeted campaigns, selective use of criminal prosecutions and deployment of resources will be more than paid for with increased revenue.

The poor control of PNG's borders sees the influx of illicit goods and the uncontrolled entry of people. ICSA and Customs must address the large number of people who enter PNG through trafficking or with false paperwork or who work without approval. This not only means unpaid tax, it creates social dislocation and involves compromised officials. Cash, gold, high value products like

vanilla, shark fin and bêche-de-mer and logs and fish all leave PNG illegally. The lost revenue is huge but the associated corruption is just as damaging.

All of these issues have to be addressed if PNG is to significantly reduce its ML risk.

Mitigating Terrorism Financing Risk

While PNG does not have an internal terrorist threat, the risk of TF through PNG is high, largely driven by PNG's location between high TF risk countries, the fact that its financial system might be seen as a less scrutinised means of moving funds and because its porous borders will allow the flow of TF funds virtually unhindered. Given that only small amounts of money are needed for many terrorist attacks, the flow of funds below the declaration level goes unhindered. Even larger amounts can be easily moved because the scrutiny at ports and airports is weak.

The current risks that PNG is providing a source of TF is low including the likelihood that it is being used as a conduit for funds intended to support terrorism. Yet the possibility that individuals or small groups might become radicalised and seek to undertake TF activity (or even become involved in acts of terrorism within PNG) cannot be ignored.

There is need for greater awareness of the possibility that PNG might be used as a conduit for TF and for coordination and cooperation between government agencies and reporting entities as a precautionary measure to deal with possible terrorism and TF activities. For the moment, the focus should be on strengthening and taking prevention measures of the AML/CTF regime.

Key actions which need to be taken are:

- Effectively applying the declaration system for cross-border cash transfers. This requires enforcement at the ports and airports of the declaration requirements and collection and analysis of the reports.
- Increased awareness of and responding to
 - cross-border transfers of cash,
 - carriage of cash into and out of PNG by passengers on vessels or through airports,
 - the use of smuggling as a source of TF, and
 - the potential for cross-border gun sales to be used to fund terrorism within Indonesia,
- Continued monitoring of domestic and international funds transfers by parties who might be listed on UNSCR lists or subject to sanctions.
- Ensuring the legislative framework for identifying and notifying groups and individuals covered by UN designations in relation to terrorism and other sanctions are operating effectively.
- Ensuring as part of regular supervision activities that the REs are aware of and meeting their obligations in relation to sanction lists and other reporting.
- Ensuring REs are focusing on fund transfers through PNG from or to high risk jurisdictions.
- Provision of information to REs when new TF typologies or activities are identified in the region.
- Developing a clear-cut strategy on how to address AML/CTF in the medium to long term, using the NRA as a basis for priority setting and resource allocation. This will assist agencies to address ML, Terrorism and TF risks.

Residual Risks and Risk Ratings

Even if it were possible to address all of the mitigation strategies and activities outlined in the NRA, PNG will still face high ML risks in relation to major threats which are exacerbated by vulnerabilities which it cannot overcome, not just in the short to medium term, but even in the long term. No developed economy has been able to completely remove ML/TF threats and the challenge in

developing economies is greater. In PNG, expectations need to be realistic but this does not mean that challenging targets should not be set.

What is possible is to ensure that resources are directed to areas of highest overall risk so that those risks can be reduced, where possible. Subsequently, resources should be deployed to those areas where the highest residual risk remains. This will ensure the residual risk are managed as well as possible. In addition, the identified vulnerabilities must be addressed over time. For example, the limitations on the technical capacity of FASU (in relation to analytical software) are being addressed and with greater skills and increased staffing FASU will be better placed to detect ML/TF activity and more active in supervising compliance in both the financial and DNFBP sectors.

As training activities are expanded, AML/CTF awareness within reporting entities increased, identification and due diligence policies more widely implemented and reporting of unusual transactions increased, there will be a reduction in actual ML and a lower TF risk. Information must be exchanged between the reporting entities and with the regulatory bodies.

Of course, high levels of residual risk will remain and must be managed. For the foreseeable future the risk of money laundering arising from corruption, fraud, environmental offences and taxation and other revenue related fraud will remain high, even if the identified mitigation strategies are put in place. This is because the extent of the underlying predicate offences means that there will be significant ongoing criminal activity. Without mitigation activities and robust AML strategies implemented by both the REs and relevant government agencies, the risk of high levels of money laundering ranges from high to very high in relation to corruption, tax fraud and environmental crime. While the task is large, it cannot be ignored. International pressure will be applied if PNG is not seen to actively and effectively address these challenges. The driving motivation to address the issues identified in the NRA is the need to ensure that PNG's limited resources and available funds are used in the best interest of all its people rather than for the benefit of a small criminal elite.

While the TF risk is presently assessed as low, this is an area where close scrutiny is required by FASU, other government agencies and the Res. Notwithstanding the current assessment as it could change at any time. Given the potential for very serious consequences should PNG be used as a TF source or transit country, continuing vigilance is required.

Inevitably, high levels of residual risk will remain and must be managed. A coordinated and concerted effort by the NCC and the individual constituent agencies as well as by all the REs will be required. An Implementation Plan to give effect to the NRA needs to be developed and applied under the supervision of the NCC. Priorities need to be constantly reviewed, resources redeployed to meet new and increasing areas of risk and legislation kept under review to ensure that weaknesses are identified and addressed. Overall, it is possible to reduce risks and to manage the residual risks.

CHAPTER ELEVEN - CONCLUSIONS AND RECOMMENDATIONS

PNG faces a very challenging ML threat arising from the need to launder criminal proceeds generated by

- Corruption,
- Taxation fraud,
- Other frauds against government and the private sector,
- Environmental offences (particularly illegal logging and fishing), and
- Trafficking of illicit drugs.

Each of these threats see high levels of incidence and high impact because the values involved are large. In every jurisdiction, any assessment of the value of proceeds of crime being generated can only ever be an estimate. The very nature of crime means that criminals will seek to hide the value of their exploits. It has not been possible to put estimated values on the amount of criminal proceeds arising from these threats due to the lack of data available at present. However, evidence of known cases, anecdotal evidence about the nature of the threats, extrapolation from experience in other jurisdictions and evidence of the value of funds being moved out of PNG (both in cash and by international fund transfers) does suggest that the amounts involved are significant.

These threats are compounded by many current vulnerabilities. PNG has porous borders, a cash based economy and a significant informal sector. This makes it easier to move cash and other items of value (such as illegally mined alluvial gold) in and out of PNG. Furthermore, there are capacity and skills shortages within government agencies, in non-bank financial reporting entities and in the DNFBP sector. Weaknesses in the regulatory and legislative framework (such as the lack of supervision of the NPO sector) and the need for greater inter agency coordination and cooperation exacerbate the situation.

While the ML threat in each case is very high, the ML risk can be mitigated. The result however will still see high ML risks even after significant mitigation work is undertaken.

Other significant ML threats arise from the operation of gangs and organised criminal activity in relation to illegal gambling, illicit movement of stolen, pirated and smuggled goods, robberies and theft, land frauds, the importation of arms, alcohol and cigarettes. In each case, the vulnerabilities identified above increase the ML risks associated with these criminal activities. They will remain high for the foreseeable future.

The TF threat is considered to be low at present but there are real concerns that this might increase quickly unless the issue is kept under very active review. Given the very small amounts of money needed to fund terrorist activity, these may well escape detection. The easy movement of proceeds of crime (largely in the form of cash) across the PNG border creates an obvious risk that the funds could be moved for terrorism purposes. The flow of relatively low value transactions in the financial system is unlikely to attract attention in reporting entities unless there are particular features such as the involvement of high risk jurisdictions or institutions where the transfer of funds through PNG is likely.

It is critical that PNG addresses these threats and vulnerabilities in a planned and structured way. Priorities need to be determined and resources allocated in response to these priorities. The issues identified in the NRA provide the framework for future action. This involves several interrelated actions which will:

- reduce the overall risks by combatting threats,
- respond to vulnerabilities,
- address structural issues,
- enhance cooperation and coordination, and

- manage residual risks through targeted resource allocation, training and enhanced supervision.

Reducing Threats

There are very high ML threats arising from those crimes which generate large amounts of cash. Unless there is concerted action to address the incidence of these crimes, large amounts of proceeds of crime will continue to be generated and laundered. While it has not been possible to put a monetary value on the proceeds generated by

- Corruption,
- Taxation fraud,
- Other frauds against government and the private sector,
- Environmental offences (particularly illegal logging and fishing), and
- Trafficking of illicit drugs,

it is clear that the amounts involved are high. Lower level corruption and bribery is endemic but the involvement of many officials in relatively low value corruption effectively quarantines the incidence of high-level corruption. It is important that action is taken against corruption at all levels and is undertaken if this is to be eliminated, or if not, mitigated. That is why the establishment of an ICAC with broad jurisdiction and adequate resources is critical.

The threats from high-level corruption can be reduced by:

- Passage and implementation of the ICAC legislation.
- Ratification and accession to the UNCAC.
- Working with off shore partners through information sharing with other FIUs and using mutual legal assistance processes to locate, freeze and recover criminal proceeds.
- Increasing the capacity (skills and resources) of FASU, RPNGC and other agencies to carry out financial investigations to assist in proceeds of crime recovery.
- Using legislation such as the *Income Tax Act* to deal with the recovery of proceeds where this can be done more efficiently than using proceeds of crime laws.
- Enhancement of the budget of the Ombudsman Commission.
- Enhancement of the NFACD within RPNGC.
- Actively prosecuting offences when they come to notice.

Fraud is occurring within the taxation system (including in relation to income tax, company tax, GST, customs duties and excise). While the IRC has undertaken several initiatives and the level of revenue collected is increasing, there are gaps which are being exploited. There are many steps which can be taken. These include:

- Ensuring the exchange of information between the IRC, IPA, FASU and Customs.
- Provide a TIN at the time a new company is registered rather than having a two-step process (company registration by IPA and subsequent issuance of the TIN by IRC). The TIN should then be automatically notified to IRC with all the registered details of the company.
- IRC should, in conjunction with the RPNGC and the OPP, undertake criminal prosecutions for tax and GST fraud rather than relying on non-payment of fraudulent claims or the use of civil recovery processes. This will provide a much stronger incentive to pay tax.
- Have the banks provide to BPNG an electronic message (with same data as contained in the SWIFT message, to save BPNG manually re-entering the same data.
- This data (which identifies the sender) should identify same party transfers in excess of the tax clearance requirements, thus enhancing the effectiveness of the tax clearance system and ensure FASU has access to more details concerning IFTs in a way which can be analysed.
- Encourage IRC to cross reference tax returns with company annual reports to identify possible tax fraud.

- Customs undertaking targeted document/container verification and prosecution where the documentation is fraudulent.
- Enhanced Customs scrutiny of the movement of goods into and out of PNG to ensure that goods have the appropriate approvals and that taxation is paid.

Environmental offences are producing large amounts of criminal proceeds. The value of legally exported timber products reported by the BPNG is in the order of K1 billion per year while UNODC estimates of the value of illegal logging are more than double this amount. This represents a major loss of revenue to PNG and is associated with unsustainable logging practices with long term adverse effects on the industry. The current controls on illegal export of logs and fish products are inadequate. Possible responses include:

- Coordinated and concerted action by PNGFA, revenue agencies and the OPP to identify illegal shipments and to ensure prosecutions (rather than collection of civil fines) are undertaken.
- A review of the current compliance and regulatory controls applying to the logging industry and an industry specific ML risk assessment linked to the INTERPOL technical assistance project to target criminal activity in the industry.
- A broader task force of ALL key agencies might be the most effective way to address the problem including the location and seizure of proceeds held off shore.
- To the extent needed, the FMA should be amended to ensure offences are predicate offences for the purposes of proceeds of crime actions.

Responding to Vulnerabilities

The recommendations above address the incidence of the underlying predicate offences. While many of PNG's vulnerabilities are the result of factors which cannot be addressed in the short to medium term: geography, limited resources in a developing economy, skills shortages, lack of infrastructure, inadequate technology, cultural factors and structural unemployment, there are steps which can be taken now and which can be built on over time. Adopting the NRA as a basis for action is a necessary first step.

There are other initiatives which will deal directly with the capacity of relevant institutions (both government agencies and reporting entities) to identify possible money laundering. These include:

- A major deficiency in available data has hindered the development of the NRA. The criminal statistics collected by the RPNGC do not record the extent of criminal activity nor the value of the offences which are committed. To understand the scale of possible laundering, it is essential that both the incidence and the value of predicate offences are better recorded. These statistics need to track the alleged offences, investigations, subsequent prosecution action and recovery of criminal proceeds. This data will be needed as part of the next Mutual Evaluation process to be undertaken by the APG.
- The NCC should institute a project to ensure the necessary statistics required by FATF Recommendation 33 are being collected by relevant agencies and consolidated so they can guide priority setting and resource allocation including streamlining initiatives and efforts.
- Regular analysis by FASU of the trade data collected by the BPNG, Customs and other agencies concerning the flow of international fund transfers. This could involve working closely with the banks to examine unusual transfer volumes to ensure that these are consistent with the known business activities of the originating and receiving parties. There could also be useful exchanges of data with regional FIUs.
- The value of international fund transfers from PNG to Australia when compared with the value of imported goods and services suggest a significant amount of unexplained movement of funds. BPNG, FASU and the commercial banks need to examine the volume of

funds leaving PNG to ensure that amounts for which there are no apparent economic rationale are flagged and further investigations are undertaken.

- Actively implement cross-border reporting of cash transfers, prosecute offenders and publicise results.
- Encourage the banks (through regular inspections) to actively examine international fund transfers (IFTs) and to look at clients identified by FASU as requiring additional due diligence.
- Use the international funds data reported to BPNG to enhance the operation of the tax clearance certificate system.
- Focus on international transfers carried out by lawyers and accountants through trust accounts where the beneficiary of the transfer is not identified. In this regard, work with the banks and FIUs in the sending/receiving country if there are concerns about the transfers.
- Ensure, as part of the supervision program, that reporting entities are collecting, retaining and updating customer data including the identity of company office holders and beneficial owners and the nature of the business.
- Revising the legislation for NPOs, de-registering all inactive Associations and ensuring regular reporting of office holders and financial statements.
- Where illicit transfers are discovered, FASU should work closely with the RPNGC and the OPP to prosecute offenders and to locate, freeze and recover transferred funds.
- Develop and maintain close working relationships with neighbouring FIUs. MOUs with regional FIUs should be concluded as soon as possible to ensure the free flow of information. Proceeds generated from predicate offences in PNG almost certainly do not return to PNG. The illegal profits are being laundered in and through adjacent countries such as Australia, Malaysia, Singapore and the Philippines. A cooperative program involving regional FIUs, law enforcement agencies and prosecutors (who can target recovery of criminal proceeds) should be established to target this activity.
- The use of selected criminal prosecutions by IRC, Customs, PNGFA and the NFA and the use of related Proceeds of Crime actions would be beneficial as a means of deterrence. At present, those involved in GST and tax fraud and environmental offences know they will not face criminal prosecution and that, even if detected, the only sanction will be recovery of the unpaid tax or duty. A task force consisting of the revenue agencies, the OPP, BPNG FASU, PNGFA and NFA should be established to coordinate prosecutions which should also be highly publicised to operate as a deterrent.

Long Term Issues

In the long term the increased use of the formal financial system, creation of an effective and well-resourced ICAC, increased use of technology in agencies like the RPNGC and Customs, breaking down the silos within government (where information is commodity to be kept rather than shared is the norm), legislative reforms and social and cultural changes, will reduce the ML/TF risks. It is important that government, assisted by the NCC is focused on these long term goals. In the meantime, the following steps can improve effectiveness and reduce risk.

Enhance cooperation and coordination

FATF Recommendation 2 recognises that cooperation and coordination are critical to effective AML/CTF strategies. It requires the establishment of a coordinating entity and the NCC meets that need.

It also requires that countries

“have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.”

PNG faces challenges in this area. The NCC needs to encourage and assist agencies to engage in greater information exchange, develop complementary policies and shared outcomes. For example, greater sharing of information between the IRC and IPA could lead to significant additional taxation revenue and reduced levels of ML. The use of task forces involving a number of agencies to target high priority issues (such as cross-border movements) would improve the effectiveness of PNG's AML/CTF responses.

International cooperation and coordination is also essential and is required by FATF Recommendation 36 dealing with full and effective implementation of the Vienna, Palermo, Corruption and Terrorist Financing Conventions. More work is need before PNG can join the UNCAC and this is an urgent priority. It needs the full support of the NCC and Government.

The other FATF Recommendations dealing with International cooperation (38-40) also require commitment by the NCC but in particular involve FASU, BPNG, OPP, DJAG and reporting entities. Priority should be given to developing and signing domestic and regional MOUs to provide a framework for greater cooperation.

This requires leadership and the NCC is well placed to provide that leadership and direction.

Managing Residual Risks

The Government, with the support of the NCC, must adopt the NRA and commit to its implementation. The NCC must work to develop an Implementation Plan for the NRA to be adopted by Government, improve the level of supervision of the REs, enhance the capacity of the NCC agencies and the REs, review and amend legislation as needed, prioritise resource usage based on the NRA, ensure that major threats are as far as resources and capacity will allow and work to reduce the vulnerabilities identified in the NRA. All of this is necessary if the ML/TF risks are to be managed. This approach mirrors the successful process adopted by PNG to develop and implement a plan to address its AML/CTF deficiencies which led to its FATF listing.

Targeted Resource Allocation

The NRA has identified many areas where action can be taken over the next few months or processes begun which will deliver results in the medium term. It is critical that once the NRA is adopted by Government, the NCC closely monitors the implementation of the strategies and actions outlined and allocate resources where necessary.

Training

There are still weaknesses in the level of understanding of AML/CTF issues within government agencies and in REs. FASU needs to develop a national AML/CTF Training Program to address this need. The Program can be used as a basis for seeking donor support and for engaging with the commercial banks who have all agreed to support and provide resources for FASU training activities.

Enhanced Supervision

Finally, FASU must develop and implement a supervision program over the next three years which targets the areas of weakness identified in the NRA but also maintains pressure on those REs which are critical to effective AML/CTF implementation: the commercial banks and DNFBPs such as the lawyers and accountants.

It is important that the REs which have obligations under the AML/CTF Act understand that compliance failures will have predictable consequences.

Conclusion

By adopting the NRA and implementing the recommendations set out above, PNG can reduce its current ML and TF risks and manage the resultant risks. It will take time, effort and resources but if this is done, it will lay the foundations for a much more effective AML/CTF regime.

ATTACHMENT A - Questionnaire

PAPUA NEW GUINEA NATIONAL RISK ASSESSMENT

KEY QUESTIONS BY SECTOR

The following are questions to be asked or information to be obtained for the purposes of the NRA. The material gathered will allow us to develop an overview of the country and form the basis of the initial assessments of THREATS and VULNERABILITIES. This will allow us to assess risk levels arising from the threats and vulnerabilities. While many of the questions are general in nature we need to remember that the focus of the NRA is Money Laundering and Terrorism Financing risk. We need the answers to these questions to provide the framework within which we can undertake the NRA.

The questions/issues are broken into three broad categories: Economic, Law Enforcement and Political and Social. I suggest that we have a specific subgroup within the TWG to prepare the NRA and this subgroup will be further divided into three teams to address the three areas mentioned earlier.

Where answers to these questions are contained in publicly available material (eg reports) a reference to the report and the specific data would be most helpful.

THE ECONOMY

- GDP totals and by sectors eg, manufacturing, agriculture (particularly forestry and fishing), services, financial, petroleum, mining, etc (as measured by the Central Bank and the Ministry of Finance).
- Known value of funds entering and leaving jurisdiction based on Central Bank figures.
- Aggregate value of inwards and outwards transfers based on banking sector figures.
- Compare the two results (they may use different sources and methodologies) and identify if there are significant gaps in the figures.
- Values of exports (totals and by types) over the last three years, by years.
- Values of imports (totals and by types) over the last three years, by years.
- How export industry funds flow to PNG. For example, do the funds actually remain off shore (companies paying funds to off shore entities)?
- Customs duties and VAT/GST collected on imports and the sectors which are delivering these revenues. Customs figures on value of exports by sector.
- Do the Customs figures match the import/export data from other sources? Can we explain the differences, if any?
- Number of domestic companies and international companies registered. Are most high value companies owned/controlled off shore?
- Composition of the financial sector. How concentrated is it? By value and customers.
- What are the Regulatory structures and how effective are they considered to be?
- Size and use of securities markets (products/players/structure and value)
- Size and use of insurance markets (products/players/structure and value)

- Level of cash based transactions in the economy. Is barter the basis for most transactions in rural and remote areas?
- Basic banking statistics –
 - Average value of accounts
 - Percentage of population with bank account
 - Who has direct access to payments system
 - Use of electronic/phone banking
 - Services in rural and remote areas
 - Extent of off shore owned accounts and locations
- Extent of value transfer businesses (both formal and informal). Known and estimated value of transactions.
- Value of international funds transfer instructions (IFTIs) (total, bands eg PGK 10-15,000, 15-20,000, 20-40,000 etc)
 - Sources (country) of inwards flow
 - Outward destinations
 - Number of different parties involved (how concentrated are the transactions?) as receiving and sending parties.
- The number of financial institutions and the nature of these institutions.
- The value of any off shore centre financial transactions and the nature of these transactions.
- Value of CTRs (if collected)
 - Same queries as for IFTIs
- Size and composition of cash flows
 - Sources of inwards flow
 - Outward destinations
 - Number of different parties involved (how concentrated are the transactions?)
- Nature of the DNFBP sector, its composition and regulators.
- Casino data - as well as financial data we need to understand how these places operate – do they get funds transferred directly to them or must it come through a local bank? Can I put money in a casino account in Hong Kong and use it in the jurisdiction with the funds never actually coming on shore?
 - Turnover
 - Actual player losses (house wins)
 - Number of high rollers
 - Value of high rollers
 - Extent of regulation
- Real Estate transactions
 - The nature of the real estate market. Is it traditional with controls on transfers to non-nationals?
 - Number of transactions per year.
 - Total value of transactions and the number of transactions in various price bands
 - Sales of leases may attract stamp duty but is this avoided by the use of cash sales? What is the value of duty received and the (declared) value of transactions as well as the actual (perhaps based on estimates) value of transactions? An aggregated figure from agents would show the extent of stamp duty fraud.

- Ownership details. Is there a central registry and how reliable is it? This should show extent of off shore and local ownership.
- If the banks are involved in providing the funds at settlement, they should be in a position to identify the purchaser, any beneficial owners, the extent of cash and borrowed funds involved, and the source of funds. They should also be able to indicate if they think the source may be dubious. To what extent have such transactions attracted STRs?
- Off Shore Real Estate Transactions
 - Are off shore transactions by PNG residents monitored, and if so, by whom?
 - Value of off shore purchases.
 - Reporting of international transfers for real estate purchases
- Non-profit Sector
 - How many non-profit organisations are there and are they active? What is their role and what financial services are they involved in?
 - Is there a consolidated list of NPOs?
 - Is there a registration system for NPOs?
 - To what extent are there concerns about the possibility of the use of NPOs as sources or vehicles to move TF?
 - What is the size of the sector and the kinds of transactions involved? The banks might be the best source of this data.
 - What is the vulnerability of the sector to use as a means of transferring funds for terrorism purposes?
- To what extent do changes in the use of technology provide emerging threats and vulnerabilities by opening up new ways of transferring funds, hiding transactions, creating new criminal opportunities or weakening existing controls?
 - Use of transportation
 - New communication methods (eg, enhanced encryption)
 - The use of technology in money transfer (eg phone pay)
 - Introduction and use of new payment methods (eg bitcoin, PayWave, virtual currencies etc)

LAW ENFORCEMENT AND LEGAL FRAMEWORK

- Signature and accession to relevant UN Conventions (Vienna, Transnational Crime, Corruption, Terrorism Financing)
- Are there relevant regional agreements relating to law enforcement?
- Is domestic legislation consistent with international obligations?
- Have any deficiencies been noted which are the subject of proposed legislation?
- Adherence to relevant UN Security Council Resolutions and scope of domestic legislation to give effect to these obligations.
- What action has been taken to give effect to SCR 1373 and subsequent TF related resolutions?
- Existence and scope of other relevant legislation dealing with proceeds of crime, mutual legal assistance, extradition, sanctions and proliferation controls.
- The extent to which the AML/CTF Act and delegated legislation (regulations, directives) meet international standards.

- Preventative controls
 - Criminalisation of serious offences
 - Powers to locate, freeze and confiscate both POC and TF funds
 - Are policies and laws regularly reviewed?
 - Regulation and supervision of DNFBPs
 - Regulation and supervision of NPOs
 - Power to enter and extent of MOUs, domestically and internationally
 - Regular provision of advice to reporting entities
 - Enforceability of rules and regulations
 - Adequacy of AML CTF controls
 - CDD
 - Ongoing and enhanced CDD
 - Reporting of suspicious, high value and cross-border transactions
 - Internal controls in reporting entities
 - Record keeping by both FASU and REs
 - Regulation of beneficial ownership
- Structure of LEAs. Who are the main agencies and how do they functionally interrelate?
 - Structure of Defence and Security agencies and how do they functionally interrelate?
 - Relationships between LEAs (mainly the police) and Defence/Security agencies
 - What statistics are maintained by LEAs? Are these recorded by reference to
 - Offence type
 - Value
 - Offenders
 - Location
 - Victims/targets
 - What are considered as predicate offenses under local laws?
 - We need detailed information on the **nature, extent and value** of Predicate Offences. We may find that certain crime types are relatively rare while others are prevalent but do not generate large amounts of proceeds of crime. We need to identify high risk criminal activity based on prevalence, value, social impact and ML/TF threat.
 - Types of Predicate Offences
 - Existence and extent of organised crime groups
 - Human trafficking and human smuggling
 - Sexual exploitation, including children
 - Corruption and bribery
 - Taxation/duty assessments
 - Avoiding investigation
 - Contract procurement
 - Permits/licences
 - Low level graft or facilitation payments eg by police, customs, immigration, or licencing authorities
 - Embezzlement or misappropriation from Government or private sector
 - Bribery of officials

- Illegal political lobbying or campaign financing
- Fraud
 - Against government
 - Private sector
 - Insurance
 - Procurement
 - False billing
 - Internet based fraud
- Taxation and duty evasion
 - Are particular goods targeted (eg alcohol)
 - Under invoicing
 - Real estate duty
- Counterfeit products
- Theft and robbery
- Illegal drug production and sale
- Smuggling of drugs through PNG
- Illegal logging
- Illegal fishing
- Other environmental offences
- Arms trafficking
- Piracy
- Insider trading and market manipulation
- Illegal gambling
- What are the major proceeds generating crimes?
- What offences might we expect to grow as sources of proceeds?

POLITICAL, SOCIAL AND CULTURAL CONTEXT

Political and Geographic

- The nature and structure of the Government
- Level of political stability (coalitions within government and frequency of changes)
- Geographic vulnerabilities such as a porous border, large or difficult border to police, relations with and geography of neighbours.
- Awareness of ML and TF issues at ministerial level and in parliament
- Perceived level of commitment to address ML and TF issues. Passage of AML/CTF laws, responsiveness to external concerns (APG, FATF, foreign missions, donors and development banks)
- Is there any history of political violence and terrorism? Is this localised or widespread?
- Are there groups with a predilection for political violence domestically or in support of off shore terrorism?
- What are the perceived levels of corruption in government, the bureaucracy and the private sector?
- Is there high level commitment to AML/CTF activities? Is there an understanding of the consequences of poor AML CTF effort both at the domestic and international level?

- Adequacy of resources devoted to law enforcement in general and AML/CTF in particular.
 - Human
 - Financial
 - Extent of donor funding and technical assistance
 - Need for training
- Adequacy of resources devoted to prevention and response ML and TF in reporting entities.
 - Human
 - Financial
 - Need for training

Public Sector

We need to examine the following:

- Structure and roles of relevant departments and agencies (list and include functions)
- Powers and structure of the FASU
- Respective supervisory and compliance roles of central bank, corporate regulator, Finance Ministry, Justice Ministry, Foreign Ministry and FASU in relation to ML, TF, sanctions and proliferation issues
- Budgets for key agencies
- Assessment of capacity in FASU, police, prosecutors and courts to respond to ML and TF
- The nature of national coordination frameworks such as a National Coordination Council, its composition, role and powers and support from Government as well as the strategies and structures it has in place
- The levels of cooperation and coordination within the government agencies. Are there particular areas of weakness which can be strengthened?
- Is there a need for more coordination between agencies to deal with possible terrorism and TF?
- The relationships between the public and private sector (both through formal structures) and informally

Social and Cultural Factors

Social and cultural factors can create threats to social stability or reduce the effectiveness of regulatory mechanisms. For example, tight familial ties might allow the hiding of beneficial ownership of assets or the use of shared accounts. Social dislocation might increase the risk of politically motivated violence and the propensity to engage in or support terrorism either domestically or off shore. Accordingly, we need to create a picture of PNG society and its social norms.

- The demographics of the society
- Extent of social inclusiveness
- Significant population shifts
- The ethnic diversity of the population
- Cultural factors, and the nature of civil society
- Areas of social, ethnic or political conflict
- Cultural immigrant, emigrant or religious ties with jurisdictions at high risk of experiencing terrorism, political instability, or both

- Low level of consultation / co-operation between government and financial sector
- Affiliates of banks circumvent international prohibitions that screen transactions for terrorists, drug traffickers, rogue jurisdictions and other wrongdoers
- Bank personnel not required to routinely share information among affiliates to strengthen coordination
- Requirements of AML/CTF regime not well understood or implemented by financial institutions and DNFBPs

Environmental and Geographical Factors

To the extent that these are not covered above we might also look at some broader considerations although these are not priorities.

- Global environmental factors such as availability of water, global warming, etc.
- The use and re-use of resources
- Impact of the local environment on crime such as housing, security etc. What is the cost involved in prevention, replacement, reaction, justice systems and so on.
- Impact of environmental legislation. In particular, are export industries such as logging and fisheries adequately regulated and do they generate a reasonable return to PNG? Do the funds actually enter and or remain in PNG at all?

Civil Society

In many jurisdictions civil society might have a strong role in identifying issues such as corruption, dealing with aid agencies and engaging in the political process. For example, organisations like Transparency International may have local organisations, the major aid agencies might have a local presence, the churches may be influential and local NPOs might have perspectives on threats and vulnerabilities in the country. These groups can provide a perspective to test information provided by the government and the business community. Engaging with these entities will be an important part of the NRA process. The precise definition of “civil society” varies but essentially it includes the organisations such as charities, international bodies like the Red Cross, TI, human rights campaigners, social advocates and local and national interest groups but excludes government, political parties and business and business organisations.

We need to

- Identify the main players in civil society on PNG
- Use them as a basis for information gathering and providing a perspective on the issues addressed in the NRA
- Understand what they see as major crime threats to PNG
- Obtain their views on weaknesses in government and business activities which might increase the impact of crime and the growth in proceeds of crime.

ATTACHMENT B – Legislation

The *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015* inserted a new Part VIA in the Criminal Code Act. These changes included new definitions of money laundering and terrorism financing and also defined criminal conduct and criminal property. The amended provisions are set out below:

PART VIA. - MONEY LAUNDERING AND TERRORIST FINANCING.

Division 1. - Money Laundering.

508A. INTERPRETATION FOR THIS DIVISION.

The following definitions apply for the purposes of this Division:

"criminal conduct" is conduct which –

(a) constitutes an offence in Papua New Guinea for which the maximum penalty is death or a term of imprisonment for at least six months; or

(b) would constitute an offence in Papua New Guinea if it occurred in Papua New Guinea and for which the maximum penalty under the law of Papua New Guinea is death or a term of imprisonment for at least six months;

"criminal property" means property that is, in whole or in part and whether directly or indirectly, derived from, obtained or used in connection with criminal conduct and includes any interest, dividends or other income on or value accruing from or generated by such property, regardless of who carried out the criminal conduct or who benefited from it;

"property" means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including an enforceable right of action, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Papua New Guinea or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such assets.

508B. CRIME OF MONEY LAUNDERING.

(1) A person who deals with property that is criminal property and who knows or reasonably ought to know that the property is criminal property is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or

(b) if the offender is a body corporate – a fine not exceeding K1,000,000.00.

(2) Knowledge in Subsection (1) may be inferred from objective factual circumstances.

(3) For the purposes of Subsection (1) "deals with property" includes one or more of the following:

(a) conceals property; and

(b) disguises property; and

(c) converts property; and

(d) transfers property; and

(e) removes property from Papua New Guinea; and

(f) brings property into Papua New Guinea; and

(g) receives property; and

(h) acquires property; and

(i) uses property; and

(j) possesses property; and

(k) consenting to or enabling any of the actions referred to in any of Paragraphs (a) to (j).

(4) For the purposes of Subsection (3), conceals or disguises property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

508C CRIME OF DEALING WITH PROPERTY REASONABLY SUSPECTED TO BE CRIMINAL PROPERTY.

(1) A person who deals with property in circumstances where it is reasonable to suspect that the property is criminal property is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding K100,000.00 or imprisonment for a term not exceeding three years or both; or

(b) if the offender is a body corporate – a fine not exceeding K200,000.00.

(2) For the purposes of Subsection (1) "deals with property" includes one or more of the following:

(a) conceals property; and

(b) disguises property; and

(c) converts property; and

(d) transfers property; and

- (e) removes property from Papua New Guinea; and
- (f) brings property into Papua New Guinea; and
- (g) receives property; and
- (h) acquires property; and
- (i) uses property; and
- (j) possesses property; and
- (k) consenting to or enabling any of the actions referred to in any of Paragraphs (a) to (j).

(3) Reasonable suspicion in Subsection (1) may be inferred from objective factual circumstances.

(4) Without limiting Subsection (1), it is reasonable to suspect that the property is criminal property if -

(a) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements under anti-money laundering and counter terrorist financing laws of Papua New Guinea; or

(b) the conduct involves using one or more accounts maintained in false names; or

(c) the value of the property involved is grossly disproportionate to the person's lawful income and expenditure over a reasonable period of time within which the act occurs; or

(d) the conduct involves a transaction which exceeds the threshold reporting obligation under anti-money laundering and counter terrorist financing laws of Papua New Guinea, and the person has –

(i) contravened his obligations under those laws relating to reporting the transaction; or

(ii) given false or misleading information in purported compliance with those obligations; or

(e) the conduct involves an importation or exportation which is required to be the subject of a report under section 14 of the ***Proceeds of Crime Act 2005*** and the person has –

(i) contravened his obligations under that Act relating to making the report; or

(ii) given false or misleading information in purported compliance with those obligations; or

(f) the person has –

- (i) stated that the conduct was engaged in on behalf or at the request of another person; and
- (ii) not provided information enabling the other person to be identified.

(5) For the purposes of Subsection (2), conceals or disguises property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(6) It is a defence to the crime created by Subsection (1) that the defendant had no reasonable grounds for suspecting that the property was criminal property.

(7) A defendant bears the legal burden of proof in relation to Subsection (6) and the legal burden must be discharged on the balance of probabilities.

508D. ALTERNATIVE VERDICT.

If, on a trial for a crime against Section 508B, the Court –

- (a) is not satisfied that the person is guilty of the crime charged; but
- (b) is otherwise satisfied that the person is guilty of a crime against Section 508C,

the Court may find the person not guilty of a crime against Section 508B, but guilty of a crime against Section 508C.

508E. COMBINING SEVERAL CONTRAVENTIONS IN A SINGLE CHARGE.

A single charge of a crime against Section 508B or 508C will constitute a crime against that section even though it may include more than one instance of the person engaging in conduct, whether that conduct occurs at the same time or at different times.

508F. PROOF OF CRIMINAL PROPERTY.

To avoid doubt, in order to prove that property is criminal property for the purposes of Section 508B –

- (a) it is not necessary to establish –
 - (i) who committed the criminal conduct in relation to the property; or
 - (ii) that there is a charge or a conviction relating to the criminal conduct; and
- (b) the prosecution –
 - (i) does not need to prove the property was derived from particular criminal conduct, but must prove either the general type or types of criminal conduct from which the property derived; or

(ii) can rely on evidence that the circumstances in which the property is handled are such as to give rise to the inference that it can only be derived from criminal conduct.

508G. MULTIPLE CHARGES.

Nothing in this Division precludes a person from being charged with or convicted of any criminal conduct, in addition to being charged with or convicted of a crime against Section 508B or 508C.

Division 2. - Terrorist Financing.

508H. APPLICATION.

In addition to Section 12 of the ***Criminal Code Act 1974***, this Division applies to an offence –

- (a) committed in Papua New Guinea; or
- (b) committed on board a ship flying the flag of Papua New Guinea or an aircraft registered in Papua New Guinea; or
- (c) directed towards or resulting in the carrying out of a terrorist act in the territory of or against a citizen of Papua New Guinea; or
- (d) directed towards or resulting in the carrying out of a terrorist act committed against a facility of Papua New Guinea abroad, including diplomatic or consular premises of Papua New Guinea; or
- (e) committed by a citizen of Papua New Guinea or a body corporate incorporated under a law of Papua New Guinea (whether or not the offence took place in Papua New Guinea).

508I. INTERPRETATION FOR THIS DIVISION.

(1) The following definitions apply for the purposes of this Division:

"electronic system" includes an information system, telecommunications system, financial system, system used for the delivery of essential government services, system used for, or by, an essential public utility, or system used for, or by, a transport system;

"property" means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including an enforceable right of action, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Papua New Guinea or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such assets;

"terrorist" means any natural person who –

- (a) commits, enables, aids, counsels or procures a terrorist act; or
- (b) attempts to commit a terrorist act; or
- (c) conspires to commit (whether directly or indirectly) a terrorist act.

"terrorist act" has the meaning given by Subsections (2) and (3);

"terrorist organisation" means a group of persons or a body corporate that –

- (a) commits, enables, aids, counsels or procures a terrorist act; or
- (b) attempts to commit a terrorist act; or
- (c) conspires to commit (whether directly or indirectly) a terrorist act.

(2) An act which is an offence within the scope of and as defined by any of the following treaties is a terrorist act –

- (a) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; and
- (b) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; and
- (c) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; and
- (d) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; and
- (e) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; and
- (f) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; and
- (g) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and

(h) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; and

- (i) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

(3) Any other act or threat of action is a terrorist act if -

- (a) the act or threat of action -
 - (i) involves serious violence against a person not taking an active part in hostilities in a situation of armed conflict; or

- (ii) involves serious damage to property; or
- (iii) endangers another person's life; or
- (iv) creates a serious risk to the health or safety of the public or a section of the public; or
- (v) is designed to seriously interfere with or to seriously disrupt an electronic system; and

(b) either the act or threat of action -

- (i) is designed to influence a government, or international organisation or to intimidate the public or a section of the public; or
- (ii) is made for the purpose of advancing a political, religious or ideological cause.

508J. TERRORIST FINANCING.

(1) A person who by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part –

(a) in order to carry out a terrorist act; or

(b) by a terrorist organisation,

is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or

(b) if the offender is a body corporate – a fine not exceeding K1,000,000.00.

(2) A person who, without lawful justification, by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part by a terrorist is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or

(b) if the offender is a body corporate – a fine not exceeding K1,000,000.00.

(3) In this section, a reference to providing or collecting property includes a reference to it being given, lent or otherwise made available, whether or not for consideration.

(4) A person commits a crime under this section –

- (a) even if a terrorist act does not occur or is not attempted; and
- (b) even if the property was not actually used to commit or attempt to commit a terrorist act or linked to a specific terrorist act; and
- (c) regardless of whether the property was from a legitimate or illegitimate source; and
- (d) regardless of the country in which the terrorist or terrorist organisation is located; and
- (e) regardless of the country in which the terrorist act has occurred or is intended to occur.

(5) Intention and knowledge in Subsections (1) and (2) may be inferred from objective factual circumstances."

3. APPLICATION OF AMENDMENTS.

The amendments made by Section 2 of this Act apply -

- (a) to conduct that takes place on or after this Act comes into operation; and
- (b) to property that is criminal property, regardless of whether the criminal conduct that gave rise to the property being criminal property occurred before, on or after this Act comes into operation.

