



ICLG

The International Comparative Legal Guide to:

Anti-Money Laundering 2019

2nd Edition

A practical cross-border insight into anti-money laundering law

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PREFACE

We hope that you will find this second edition of *The International Comparative Legal Guide to: Anti-Money Laundering* useful and informative.

Money laundering is a persistent and very complex issue. Money laundering has been said to be the lifeblood of all financial crime, including public corruption and the financing of terrorism. Over the last 30 years, governments around the world have come to recognise the importance of strengthening enforcement and harmonising their approaches to ensure that money launderers do not take advantage of weaknesses in the anti-money laundering (AML) controls. Governments have criminalised money laundering and imposed regulatory requirements on financial institutions and other businesses to prevent and detect money laundering. The requirements are continually being refined and interpreted by government authorities. Because of the often international nature of the money laundering process, there are many cross-border issues. Financial institutions and other businesses that fail to comply with legal requirements and evolve their controls to address laundering risk can be subject to significant legal liability and reputational damage.

Gibson, Dunn & Crutcher LLP is pleased to join a group of distinguished colleagues to present several articles we hope you will find of interest on AML topics. This guide also has included chapters written by select law firms in 31 countries discussing the local AML legal and regulatory/administrative requirements and enforcement requirements. Gibson Dunn is pleased to present the chapter on the United States AML regime.

As with all ICLG guides, this guide is organised to help the reader understand the AML landscape globally and in specific countries. ICLG, the editors, and the contributors intend this guide to be a reliable first source when approaching AML requirements and considerations. We encourage you to reach out to the contributors if we can be of further assistance.

Stephanie Brooker & Joel M. Cohen
Gibson, Dunn & Crutcher LLP

Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework

Nyman Gibson Miralis

Dennis Miralis



Phillip Gibson



Introduction

The Asia-Pacific or APAC region encompasses a wide range of varying jurisdictions and states including, amongst others, Australia and New Zealand in the Oceania region, Vietnam, Thailand, Malaysia, Singapore and Indonesia in South-East Asia, India and Pakistan in the subcontinent, China, Hong Kong and Japan in Eastern Asia, USA and Canada in the Americas as well as numerous Pacific Island nations. Money laundering of course is not geographically limited and illicit funds are laundered between multiple APAC jurisdictions as well as across the globe.

This chapter will examine the AML frameworks in the APAC region, encompassing both regulatory and law enforcement, with a focus on Australia's role in APAC anti-money laundering initiatives.

The Asia/Pacific Group on Money Laundering (APG) and its Role in AML

The Asia/Pacific Group on Money Laundering ('APG') is the associate Financial Action Task Force ('FATF') member for the Asia-Pacific region. The APG operates independently under a 'Co-Chair' system of governance with both a permanent co-chair and a rotating co-chair.

Australia is a permanent APG co-chair. The chair position is currently held by Deputy Commissioner for National Security, Leanne Close of the Australian Federal Police. The present rotating chair is Bangladesh, whose chair is held by Abu Hena Mohammad Razee Hassan, head of the Bangladesh Financial Intelligence Unit. The secretariat offices of the APG are located in Sydney, Australia.

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

The APG monitors compliance of member countries with FATF standards. The APG also implements intergovernmental training programmes between Member States in the Asia-Pacific region.

Released on 6 September 2016, the APG *Strategic Plan 2016–2020* provides for APG's primary ongoing strategic goals namely:

1. to be an effective multilateral organisation supporting implementation of the FATF standards and the work of the global Anti-Money Laundering and Counter-Terrorism Financing network;

2. to work cooperatively to understand the risk environment for money laundering and terrorist financing and support implementation of the FATF standards; and
3. to conduct and respond to the assessment of members' compliance with, and implementation of, the FATF standards.¹

How Does the APG Review APAC Compliance With AML Initiatives? A Survey of a Recent Mutual Evaluation

The APG mutual evaluations or 'peers review' process involves site visits conducted by rotating teams consisting of APG legal, financial and law enforcement experts. These teams attend upon the jurisdiction of fellow APG members for the purpose of testing their levels of technical compliance with AML standards, as set by the FATF, as well as anti-money laundering and counter terrorism financing effectiveness.²

A recent example of the mutual evaluation process was the APG onsite visit conducted on 8–19 October 2018 at Islamabad, Pakistan. The APG mutual evaluation team on this occasion consisted of:

1. Mr. Ashraf Abdulla, Maldives Monetary Authority, Maldives.
2. Ms. Jingyan Gong, People's Bank of China, China.
3. Mr. Boby Hernawan, Ministry of Finance, Indonesia.
4. Mr. James Prussing, Department of the Treasury, United States.
5. Mr. Ian Collins, New Scotland Yard, United Kingdom.
6. Mr. Mustafafa Necmeddin Oztup, Ministry of Justice, Turkey.

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

The on-site visit was facilitated by the APG secretariat as well as the State Bank of Pakistan and the Pakistan Financial Monitoring Unit. The findings of this mutual evaluation process will be published in a report and presented at the 22nd APG annual meeting which is to occur in Canberra, Australia in August 2019.³

Since 2015, APG mutual evaluation reports have been published following APG mutual evaluation of the following jurisdictions:

1. Australia.
2. Malaysia.
3. Samoa.
4. Sri Lanka.
5. Vanuatu.

6. Canada.
7. Singapore.
8. Bangladesh.
9. Bhutan.
10. United States.
11. Cambodia.
12. Mongolia.
13. Macao, China.
14. Thailand.
15. Palau.
16. Cook Islands.
17. Indonesia.
18. Myanmar.⁴

Further to intergovernmental collaboration, the APG has also expressly provided for an increased strategic focus on information sharing and education with private sector agencies under the APG's private sector outreach programme.⁵

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

In addition to membership to FATF-APG, Australia and many other APAC countries are signatories to the *United Nations Convention against Transnational and Organised Crime*. Signed on 13 December 2000 and ratified on 27 May 2004,⁶ the Convention includes an agreement that each state party:

1. shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasise requirements for customer identification, record-keeping and the reporting of suspicious transactions; and
2. shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combatting money laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering.

The United Nations Office on Drugs and Crime ('UNODC') in the APAC Region

The UNODC operates a regional programme in South-East Asia which provides strategic oversight for Member States to combat transnational organised crime and illicit trafficking in the region by way of:

1. giving clear focus to supporting Member States and regional partners in achieving priority crime and drug outcomes in the region; and
2. increasing the responsiveness, efficiency and effectiveness of UNODC's support to the region.⁷

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

Together, the FATF standards and the UN instrument represent the key measures on which the APG and the Australian government base their legal, regulatory and law enforcement strategy to counter money laundering.

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

In the 2017 joint APG and UNODC research report titled *Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime*, it was identified that the illegal wildlife trade is now an entrenched feature of transnational organised crime with global proceeds estimated in the region of \$7–23 billion USD annually.⁸

Despite the significant cash flows and transnational nature of this criminal typology, the outcomes of the research conducted highlighted multiple regulatory and law enforcement vulnerabilities in the region. For example, in many Asia-Pacific jurisdictions wildlife crime does not constitute a predicate offence to money laundering and a majority of Member States do not presently include FIU's in multi-agency anti-wildlife crime taskforces.⁹

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

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

A number of law enforcement agencies operate independently and in collaboration adjunct to the regulatory Anti-Money Laundering framework established in accordance with the FATF-APG and UN instruments. Governmental examples of strategic planning, such as the *2017 Foreign Policy White Paper*, demonstrate Australia's commitment to creating a regional environment hostile to money laundering.

The section below focuses primarily on the role of Australian financial intelligence and law enforcement agencies operating within the APAC region. The Australian government anticipates continuing its leadership in promoting global standards for combatting money laundering and expressly provides for increased bilateral cooperation and diplomatic engagement with international law enforcement partners.¹⁰

Pacific Transnational Crime Network ('PTCN') and its role in APAC

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

Members include:

- Australia (Australian Federal Police).
- New Zealand (New Zealand Police).
- Samoa (Samoa Police Service).
- Fiji (Fiji Police Force).
- Solomon Islands (Royal Solomon Islands Police Force).

The express purpose of the PTCN and the PICIP is to build policing leadership in the Pacific region and collectively navigate regional policing challenges through discovery, knowledge, influence and partnerships.¹¹

Australian Transaction Reports and Analysis Centre ('AUSTRAC') in APAC

AUSTRAC has a dual function as both Australia's specialist Financial Intelligence Unit ('FIU') and the country's anti-money laundering and counter-terrorism regulator. Tasked with identifying emerging threats and existing contraventions within the financial system, AUSTRAC's regulatory and investigative powers are set out under the AML/CTF Act and the *Financial Transactions Reports Act 1988* (Cth).

AUSTRAC's primary role as a law enforcement agency is the receipt and analysis of financial data which can in turn be disseminated as intelligence to revenue, law enforcement, national security, human services, regulatory and other partner agencies in Australia and overseas.¹²

The transnational nature of money laundering practice means financial intelligence exchange among domestic agencies and international partners is essential in tracking the cross-border movements of proceeds of crime. Information shared includes transactional records, intelligence and suspicious matter reports.

Memorandums of understanding ('MoU') are presently in place between AUSTRAC and 93 other equivalent national FIU's. This includes successful agreements signed with prominent regional partners China Anti-Money Laundering Monitoring and Analysis Centre ('CAMLMAC') on 2 November 2016¹³ and United States counterpart, the Financial Crimes Enforcement Network ('FinCEN') on 27 September 2018.¹⁴

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

1. the foreign government requesting the information has provided requisite undertakings as to the protection of confidential information, controlling the use of the information and assurances have been provided that the use of the information is only for the communicated purpose;¹⁵ and
2. it is appropriate to release the information in all the circumstances.

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

AUSTRAC provides extensive technical assistance and training programmes throughout the Asia-Pacific region to strengthen the effectiveness of counterpart FIU's. Formal training programmes focussed on capability building have been administered in Bangladesh, Cambodia, Indonesia, Nepal, Papua New Guinea, the Philippines and Thailand.¹⁶

The Australian Federal Police ('AFP') in the APAC region

The AFP is Australia's national law enforcement policing body, tasked with enforcing the Commonwealth criminal law including

detection of contraventions of Part 10.2 Criminal Code money laundering provisions. The AFP also targets related offences such as terrorism financing, offences of foreign bribery, cybercrime and tax evasion.

The AFP has demonstrated an increased strategic shift from domestic law enforcement measures towards increased international engagement. Published in 2017, the *International Engagement: 2020 and Beyond Report* recognises the need to increase collaboration with foreign law enforcement partners to combat 'the growth in criminal and terrorism threats from offshore, the continued global integration of markets and services, and the ongoing disruption of digital technologies'.¹⁷

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

1. increased strategic engagement with international partners;
2. conduct transnational operations which deliver operational effect offshore;
3. information and criminal intelligence sharing; and
4. mutual capability building.¹⁸

The AFP now has in excess of 300 active personnel posted in over 52 separate locations internationally including several postings with partners in Asia, South-East Asia and the Pacific catchment.¹⁹

In order to address offences including money laundering and transnational financial crime, the AFP has in recent times established memorandums of understanding ('MoU') with agencies in APG partner jurisdictions including the Federal Bureau of Investigation in 2015,²⁰ the Cambodian National Police in 2016²¹ and the Chinese National Commission of Supervision in 2018.²²

The Australian Criminal Intelligence Commission ('ACIC') in the APAC Region

The ACIC is Australia's federal criminal intelligence organisation and is mandated to combat serious and organised crime. Forming part of the Department of Home Affairs governmental portfolio, the ACIC's capabilities include:

1. Collecting criminal intelligence from partner agencies and combining it to create a comprehensive national database.
2. Utilising extensive coercive powers under the *Australian Crime Commission Act 2002* (Cth) to obtain information.
3. Acquiring strategic intelligence products to support in decision-making, strategic targeting and policy development.
4. Implementing a national target management framework to guide law enforcement in establishing and sharing organised crime priorities and targets. This is particularly useful for dealing with multi-jurisdictional serious and organised crime investigations.²³

The ACIC participates in a number of national law enforcement taskforces in both a formal and informal capacity. Contributing unique investigative capabilities, the ACIC provides an 'intelligence-led' response to serious and organised crime.²⁴

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

Money laundering is similarly identified as one of the serious organised criminal activities adversely affecting the National interests of Australia and an identified area of operations for Task Force Vestigo. Led by ACIC, the task force includes Australian Commonwealth, state and territory partners as well as Five Eyes Law Enforcement Group which comprises of law enforcement and intelligence agencies from Australia, Canada, New Zealand, the United Kingdom and the United States.²⁵

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

The Anti-Money Laundering Ecosystem: Current Examples of Multi-Agency Collaboration in APAC

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

Contemporary examples of multi-agency responses operating in the Asia-Pacific region include:

The Serious Financial Crime Taskforce ('SFCT')

An Australian multi-agency taskforce which includes:

- AFP.
- Australian Tax Office ('ATO').
- Australian Crime Commission ('ACC').
- Attorney-General's Department ('AGD').
- AUSTRAC.
- Australian Securities and Investments Commission ('ASIC').
- CDPP.
- Australian Border Force ('ABF').

The Egmond Group

A global network of 156 FIU's committed to collaboration and information exchange. Notable Asia-Pacific members include:

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

The Fintel Alliance

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

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

Money Laundering Typologies: A Diverse Range of Criminal Activities

In order to better understand and combat the risk environment for money laundering and terrorist financing in the Asia-Pacific, the APG engage in and disseminate typologies research. This study of methods, techniques and trends of money laundering and terrorism financing offers a valuable tool to understand and classify money laundering and areas of associated risk.

What Are Some Recent APAC Money Laundering Typologies?

The *APG Yearly Typologies Report 2018* identifies the numerous typologies used to launder proceeds of crime in the Asia-Pacific region. These typologies have been identified following an evaluation of case studies which reflect the present and emerging money-laundering landscape in Afghanistan, Australia, Bangladesh, Brunei, Fiji, Hong Kong, Japan, Lao, Macao, Malaysia, New Zealand, Pakistan, Philippines, Singapore, Chinese Taipei and Thailand.²⁶

1. Cash conversion & currency exchange

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

The proliferation of bitcoin and other cryptocurrencies has also shown an increase in the illegal use of digital currencies in preference to traditional currencies. This is due to the mediums perceived anonymity and market volatility.

Smart Automatic Teller machines have also been used to make high volumes of illegal cash deposits to third-party accounts while avoiding direct interaction with banking staff.

2. Corruption associated money laundering

The use of bribery of public officials and private sector compliance staff to undermine anti-money laundering regulation and reporting measures.

This method may also involve the use of corrupt 'gatekeeper' professionals including bankers, lawyers, accountants and brokers who succumb to coercion on the part of criminals or alternatively actively market specialist methods of laundering money.

3. Structuring

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

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

4. Use of portable commodities

The purchase of high-net-value instruments such as jewellery, diamonds, precious metals, race horses and illicit drugs are used to conceal net worth and property ownership as well as a means of transporting assets through international points of entry without detection or reporting.

Commodity exchange or barter of such items between parties also can be used to avoid the use of private reporting entities such as banks. The transnational trade of child pornography, for example, has also been subject to prosecution for money laundering offences in Australia.²⁷

5. Use of wire transfers

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

6. Alternative remittance services: Hawala, Hundi, etc.

Such services are identified as underground or unregulated networks of trust-based, intra-jurisdictional transfers used to remit monies. Such methods are commonly used by money launders parallel to the traditional banking sector.

Alternative remittance providers increase the difficulty by which law enforcement and FIU's can identify individuals or parties controlling funds, as well as obscuring the observable transferor-transferee relationship.

7. Gambling and gaming activities

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

8. Invoice Manipulation

Both over- and under-invoicing of goods or services can be used in conjunction with import and export activities to obscure movement of funds between international jurisdictions and disguise illegitimate wealth as traditional trade activity.

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

9. Business investment or 'Mingling'

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

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

10. Identity fraud and false identification

Identity fraud can be used both a method of concealment to engage in separate money laundering typologies or as a means of obtaining further illegitimate funds through welfare fraud, superannuation fraud, obtaining fraudulent cash loans or lodgement of false tax returns.²⁸

In the ACIC's *Serious Financial Crime in Australia Report 2017*, it was identified that the methodology used to launder proceeds of a crime is also influenced by the area of crime the proceeds originate from. The proceeds of a drug crime, for example, commonly requires large amounts of illegally obtained cash to be deposited into the banking system. Alternatively, financial or 'white-collar' crime often involves the manipulation of accounting practices for money already contained within legitimate banking systems.²⁹

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

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

Strike Force Bugam

Strike Force Bugam represented a joint agency investigation conducted by the NSW Police Organised Crime Squad and the ACIC which culminated in the arrest and prosecution of numerous persons said to be involved in internationally-based money laundering syndicate, operating out of Sydney between 2016 and 2017.

The execution of six separate search warrants on 7 November 2017 and two further search warrants on 29 November 2017 resulted in the seizure of cash, documentation, mobile phones, firearms, motor vehicles, a boat and prohibited drugs.³⁰

A resident of Dee Why, NSW was charged with the State offences of knowledge of direct activities of a criminal group, participating in a criminal group, drug supply, drug possession, knowingly dealing with proceeds of a crime, publishing false misleading material to obtain advantage, receiving vessel/part-theft, disposing vessel/part-theft, knowingly possessing an identity plate on an incorrect vehicle and dishonestly possessing and interfering with a unique identifier.

A resident of Lidcombe, NSW was charged with the State offences of participating in and contributing to a criminal group, dealing with property proceeds of crime, knowingly dealing with the proceeds of a crime, dishonestly interfering/copying a unique identifier, dishonestly possessing and interfering with a unique identifier, disposing of a vessel/part-theft and knowingly facilitating an organised car re-birthing activity.

In total, \$1.7 million AUD in currency, 12.25kg cocaine, 6.2kg of methamphetamine, 1,000 MDMA tablets and seven firearms were seized. The resulting arrest and prosecution of 18 persons is alleged to have dismantled three related criminal syndicates and resulted from intelligence sharing and money-tracing investigations conducted between the NSW Police and the ACIC.³¹

These investigative activities also resulted in regulatory action being taken against the Commonwealth Bank by AUSTRAC in response to the banks alleged failure to report transactions made using Commonwealth Bank smart deposit machines.³²

It is estimated by AUSTRAC that the criminal syndicates had engaged in an operation which had laundered in excess of \$42 million AUD for international crime groups.

Strike Force Mactier

Strike Force Mactier represented targeted, collaborative investigations into international money laundering by officers and staff of the NSW Police Force, the NSW Crime Commission, AFP, and the ABF.³³

A series of arrests were made between 5 November 2018 and 16 November 2018 at the Sydney International Airport, Sydney CBD and Bondi Junction. Five Hong Kong nationals were charged with offences including recklessly dealing with the proceeds of a crime, knowledge of direct activities of a criminal group, contributing to criminal activity and participating in a criminal group.

A total of \$180,000 AUD currency, SIM cards and mobile phones were seized during subsequent search warrants.

It is alleged that the persons were laundering money within Australia before transferring funds offshore into Hong Kong and mainland China.

AFP – Chinese Ministry of Public Security ('CMPS') Joint Operation

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

During the course of these search warrants, investigators seized jewellery, vehicles and other property valued in excess of \$8.5 million AUD. It is alleged that Chinese nationals had established shell companies in Australia to purchase extensive residential and development property, using funds illegally acquired in China through fraudulent investment.³⁴

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

Overview of Laws in Australia

In accordance with Australia's obligations as an APG member and signatory to the *United Nations Convention against Transnational and Organised Crime*, money laundering activities and dealing with the proceeds of crime are criminal offences in Australia.

Criminal Code Act 1995 (Cth)

Money laundering is an offence prohibited at a Federal level under Part 10.2 of the Criminal Code Act 1995 (Cth) ('Criminal Code'). The provisions cover a wide variety of offending conduct relating to money, or other property, that is used in connection with serious crime. This legislative regime has been described judicially as a '21st century response to antisocial and criminal conduct, commonly with international elements'.³⁵

Sections 400.3–400.9 of the Criminal Code include offence provisions which make it an offence to deal with or receive, possess, conceal, dispose, import, export or engage in a banking transaction relating to money or property which represents proceeds or an instrument of crime.³⁶

Property will be classified as *proceeds of crime* under the Criminal Code if it is wholly or partly derived or realised (directly or indirectly) by any person from the commission of an indictable offence against a law of the Commonwealth, a State, a Territory or a foreign country.³⁷

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

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

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

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

By way of example, if the prosecution can establish beyond reasonable doubt that an accused person deals with money or property that the person believes to be proceeds of a crime (or intends for the property to become an instrument of crime) and the property is valued at \$1,000,000 AUD or more, the person is liable to a maximum term of imprisonment of 25 years and or a fine of up to \$315,000 AUD.³⁸

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

Proceeds of Crime Act 2002 (Cth)

As of 1 January 2003, the AFP and the Commonwealth Director of Public Prosecutions ('CDPP') have been empowered under the *Proceeds of Crime Act 2002* ('POCA') to seek restraining, forfeiture or freezing orders in relation to property suspected of being connected with a criminal offence.

Typically, assets including actual, real and interests in property, becomes subject to an order if it is established that the property is suspected on reasonable grounds to be the proceeds of an indictable offence, a foreign indictable offence or was previously used in connection with the commission of an offence.³⁹

A Court must also make an order that property subject to the application be forfeited to the Commonwealth if a person has been convicted of one or more indictable offences and the court is satisfied that the property is proceeds or an instrument of one or more of the offences.⁴⁰

It is an express object of POCA to give effect to Australia's obligations under the Council of Europe *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, and other international agreements relating to proceeds of crime.⁴¹

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

The conduct of financial institutions in Australia is regulated under the *Anti-Money Laundering Counter-Terrorism Financing Act 2006* (Cth) ('AML/CTF Act'). The AML/CTF Act sets requirements for reporting entities including institutions within the financial sector, gambling sector and business involved in the trade of bullion.⁴²

Obligations are imposed on reporting entities including a requirement to:

1. enrol and register businesses conducting relevant business;⁴³
2. conduct due diligence on all customers including confirmation of identity;⁴⁴
3. retain transaction records for a period of seven years;⁴⁵
4. develop and implement programmes for the detection of money laundering activity;⁴⁶ and
5. report suspicious matters to the ('AUSTRAC').⁴⁷

AUSTRAC is Australia's primary financial intelligence unit. AUSTRAC also functions as the national regulator under the AML/CTF Act. The roles and responsibilities of AUSTRAC are covered in further detail below.

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

Some contraventions under the AML/CTF Act do attract criminal sanctions. It is a criminal offence to provide a designated service under a false name⁴⁸ or conduct transactions with the intention of avoiding reporting requirements.⁴⁹ Further ‘tipping off’ offence provisions prohibit contact or communication with persons, other than AUSTRAC personnel, following a referral of suspicious activity. For example, it is a criminal offence under such a provision for a reporting entity such as a bank to notify AUSTRAC of suspicious activity on the part of a customer while simultaneously notifying the relevant customer that their conduct has been reported to AUSTRAC.

The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017* was passed by both houses of Parliament on 7 December 2017 and commenced on 3 April 2018. This amending legislation expanded AUSTRAC’s powers under the AML/CTF Act to monitor digital currency markets. As with existing reporting entities within the finance sector, digital currency exchange providers are now required to register under the AML/CTF Act and comply with the obligations set out under the Act.⁵⁰

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

Australia’s legislative amendments follow comparable recent regulatory action on the part of the Hong Kong Regulatory Authority, Bank of Negara Malaysia and the Monetary Authority of Singapore.⁵¹ In these jurisdictions, the amendments bring cryptocurrencies and providers of digital currency predominantly in line with traditional financial and property exchange markets, for the purpose of anti-money laundering regulation.

Political focus on legislative regulation of transitional financial crime has intensified in the region. In the lead up to the 2019 Federal election in Australia, shadow treasurer Chris Bowen has levelled criticisms at the existing coalition government for its delay in implementing Tranche 2 laws, a proposed further amendment of the AML/CTF Act extending the compliance measures to non-financial sectors in which vulnerability have been established. Such sectors include the real estate industry as well as the legal and accounting professions.⁵²

The criticism follows recent media coverage including the ABC’s Four Corners ‘Project Dragon’ investigation, aired 18 February 2019, which revealed rising concerns from the Chinese Government about the growing import and export of illicit funds by Chinese nationals in Australia. The investigation revealed the increasingly prevalent practice of private ‘bounty hunter’ engagement by Chinese government agencies in which civil agents are used to recover Chinese proceeds of crime currently held in Austrian markets.⁵³

Conclusion

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

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

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