

行政院所屬各機關因公出國人員出國報告書
(出國類別：國際會議)

參加「2010年『亞太防制洗錢組織』洗錢態樣工作研討會」
(APG Typologies Workshop 2010)
出國報告

服務機關：法務部調查局洗錢防制處

姓名職稱：科長 藍家瑞

派赴國家：孟加拉

出國期間：99年10月25-28日

報告日期：99年11月6日

摘要：

今年「亞太防制洗錢組織」(APG)洗錢態樣工作研討會於10月26日至28日在孟加拉舉行三天，前一日(25日)下午另舉行洗錢態樣工作組會議。此會議為APG固定每年舉行會務活動之一，我國為該組織正式會員，本次與會代表包括調查局洗錢防制處科長藍家瑞、法務部板橋地檢署主任檢察官朱帥俊及金融監督管理委員會銀行局稽核黃耀白等三員。本會議目的在於討論區域性防制洗錢相關議題並分享工作經驗，讓與會人員瞭解洗錢趨勢、新興手法與防制方式、國際要求標準及如何推動相關因應作為等。今年工作研討會討論主題包括：(i)與大規模跨國詐欺有關之洗錢；(ii)非營利組織對洗錢威脅所暴露之弱點；(iii)人口販運及偷渡與洗錢。我國在會中除了提報防制洗錢現況報告外，另作專題報告，題目為：「跨國詐欺洗錢案例及我國預防性作為」。

目錄

壹、參加「2010年『亞太防制洗錢組織』洗錢態樣工作研討會」報告

貳、附件

- 附件一 參加2010年亞太防制洗錢組織洗錢態樣工作研討會提報之「現況報告」(status report)
- 附件二 參加2010年亞太防制洗錢組織洗錢態樣工作研討會提報之「跨國詐欺洗錢案例及我國預防性作為」(Transnational Fraud and Money Laundering and Preventative Measures in Chinese Taipei)
- 附件三 孟加拉達卡市當地報紙於98.10.27日報導該國總理於2010年亞太防制洗錢組織洗錢態樣工作研討會開幕式中發表演說情形
- 附件四 紐西蘭提報之「評估洗錢與資助恐怖分子構成國家風險之經驗報告」
- 附件五 亞太防制洗錢組織秘書處提報之「與人口販運/偷渡有關之洗錢—APG目前作為之介紹」
- 附件六 APG洗錢態樣研究工作組提報之「與大規模跨國詐欺有關之洗錢」專案研究計畫及進度
- 附件七 APG洗錢態樣研究工作組提報之「人口販運及偷渡與洗錢」專案研究計畫及進度

壹、目的

「亞太防制洗錢組織」洗錢態樣工作研討會從1998年以來，每年均舉辦一次，為該組織固定會務活動之一，今年為第13次舉辦，計有來自會員國家、觀察員國家及相關國際組織代表約180人齊聚一堂，共同討論區域性防制洗錢相關議題並分享工作經驗，讓與會人員瞭解洗錢趨勢、新興手法與防制方式、國際要求標準及如何推動相關因應作為等。

今年工作研討會討論主題包括：(i)與大規模跨國詐欺有關之洗錢(ML Associated with Large-Scale Transnational Frauds)；(ii)非營利組織對洗錢威脅所暴露之弱點(NPOs vulnerabilities)；(iii)人口販運及偷渡與洗錢(ML and human trafficking/people smuggling)。

本次大會，依會議規定各會員國必須於會前繳交現況報告一篇，內容涵蓋有關非營利組織對洗錢威脅所暴露之弱點相關問卷、列舉各類型洗錢案例、洗錢與資助恐怖分子手法與趨勢之研究或案例、洗錢前置犯罪之類型介紹、洗錢新興、遞減及持續之趨勢、有關最近反洗錢與打擊資助恐怖分子之法律、管理及執法作為、國際合作成效等。我國提會之現況報告如附件一。另大會在議程中安排我國在第二天的討論議程8分組討論「與大規模跨國詐欺有關之洗錢-預防、偵測、調查與起訴相關問題」(ML Associated with Large-Scale Transnational Frauds-Prevention, Detection, Investigation and Prosecution Issues)中作專題報告，題目為「跨國詐欺洗錢案例及我國預防性作為」(Transnational Fraud and Money Laundering and Preventative Measures in Chinese Taipei)，報告投影片影本附件二。

貳、與會過程

今年「亞太防制洗錢組織」洗錢態樣工作研討會於10月26日至28日在孟加拉(Bangladesh)首都達卡市(Dhaka)的Radisson飯店舉行三天，前一日(25日)下午另舉行洗錢態樣工作組(Typologies Working Group)會議。大會由孟加拉金融情報中

心（中央銀行下屬單位）主辦，計有來自會員國、觀察員國及「聯合國打擊恐怖主義委員會執行處」（United Nations Committee Executive Directorate, UNTED）、「世界銀行」（World Bank）、「亞洲開發銀行」（ADB）等國際組織代表參加。大會由「亞太防制洗錢組織」秘書處資深專員 Mr. David Shannon、孟加拉中央銀行副總裁 Mr. Ziaul Hasan Siddiqui 及馬來西亞公司管理局(Malaysia Companies Commission)的 Mr. Mohamed Sufyan Mohd 共同主持。本局由洗錢防制處科長藍家瑞代表與會，同行尚有法務部板橋地檢署主任檢察官朱帥俊及金融監督管理委員會銀行局稽核黃耀白。會議議程如下：

10 月 25 日（星期一）

1530 – 1730 洗錢態樣工作組會議

本議程由馬來西亞公司管理局(Malaysia Companies Commission)的 Mr. Mohamed Sufyan Mohd 及「亞太防制洗錢組織」秘書處資深專員 Mr. David Shannon 共同主持，主要討論後續 3 天會議行程、工作組專案研究目前進展情形及未來計畫，包括「與大規模跨國詐欺有關之洗錢」（ML Associated with Large-Scale Transnational Frauds）；「非營利組織對洗錢威脅所暴露之弱點」（NPOs vulnerabilities）；「人口販運及偷渡之洗錢與犯罪資產沒收」（People smuggling, People Trafficking, Money Laundering and Criminal Asset Confiscation）等，與其他國際防制洗錢組織之洗錢態樣研究合作情形。由於我國是「與大規模跨國詐欺有關之洗錢」專題研究成員之一，我國與會代表藍家瑞及朱帥俊兩人亦參加本會議。各該專案討論內容臚列如下：

與大規模跨國詐欺有關之洗錢：

專案成員：香港及馬來西亞擔任專案領導，成員包括加拿大、中華台北、日本、薩摩亞、新加坡、泰國及美國。

專案目標：

- 藉由執法與其他專責機關之知識分享，羅列所有大規模跨國詐欺型態，以增強對該類詐欺之瞭解與全球性之警覺。
- 找出大規模跨國詐欺涉及洗錢與資助恐怖分子之技巧與手法。
- 大規模跨國詐欺涉及洗錢與資助恐怖分子之案例。

- 各國國內及區域內大規模跨國詐欺涉及洗錢之趨勢及型態。
- 找出有關大規模跨國詐欺涉及洗錢之執法調查問題及可能之解決方案。
- 找出金融情報中心、調查、監理機關預防與偵測有關洗錢活動之最佳執行作為。
- 思考國際合作機制及加強辨識與協調，以促進犯罪資產之回復機制。
- 找出任何新興的政策問題，包括未被涵蓋在國際防制洗錢與打擊資助恐怖分子標準內之問題。
- 將分析所得與執法、管理機關分享，以提升相關作為，並在金融服務業，有效降低風險及提升防制作為。
- 為執法及管理機關蒐集並分享防制跨國詐欺之聯繫資訊，以助及時的國際合作。

專案時限：

- 2010 年 12 月 - 與 APG 會員分享所蒐集之相關參考資料。
- 2011 年 02 月 - 為 APG 洗錢態樣工作組產出一份專案報告。
- 2011 年 03 月 - 分送專案報告予 APG 會員審親，以便在年會中通過審查及後續出版。

營利組織對洗錢威脅所暴露之弱點

專案成員：加拿大擔任專案領導，成員包括巴基斯坦、斯里蘭卡等。

專案目標：

- 藉由執法與其他專責機關分享有關非營利組織被濫用之資訊，研究非營利組織被資助恐怖分子濫用情形。
- 找出非營利組織涉及資助恐怖分子之技巧與手法。
- 分享非營利組織濫用而涉及洗錢與資助恐怖分子之案例。
- 各國國內及區域內非營利組織涉及資助恐怖分子之趨勢及型態。
- 找出有關非營利組織涉及資助恐怖分子之執法調查問題及可能之解決方案。
- 找出非營利組織之管理、調查、監理機關之最佳執行作為。

- 思考國際合作機制並找出強化預防性與偵查性之合作機會。
- 找出任何新興的政策問題。
- 將分析所得與執法、非營利組織之管理機關分享，以提升相關作為，有效降低風險及提升防制作為。

專案時限：

- 準備洗錢態樣研討會：
 - 2010年07月 - 確認專案計畫。
 - 2010年07月 - 請求蒐集相關案例。
 - 2010年09月 - 彙整並分送相關案例。
 - 2010年10月 - 準備並分送會前研閱之資料。
 - 2010年10月 - 在洗錢態樣研討會中討論相關問題。
- 2010年12月 - 與APG會員國家分享所蒐集之參考資料。
- 2011年02月 - 為APG洗錢態樣工作組產出一份專案報告。
- 2011年03月 - 分送專案報告予APG會員審親，以便在年會中通過審查及後續出版。

洗錢與人口販運/人口走私

專案成員：澳洲擔任專案領導，成員尚未確定。

澳洲所準備之初步研究範圍報告：因為問題發放的時間較晚，很多都尚未回復，希望秘書處能夠提醒各會員國家儘早回復。

其他議題

碳交易相關之洗錢威脅：這是一個全新的議題，可能只在部分會員國家形成問題，目前需要有更多資訊，才能確認各國面臨此問題之弱點所在，秘書處應將資訊分享會員國家。

對其他防制洗錢金融行動工作組織之參與情形：目前正在研究有關電子支付、提供有關公司服務之行業及國家洗錢威脅評估等。

與其他防制洗錢/打擊資助恐怖分子相關國際組織之合作

- APG 參與 FATF 洗錢態樣工作組之專題

- 洗錢與人口販運
- 有組織的海盜行爲
- 全國性洗錢威脅評估

工作組對年度洗錢態樣報告之準備情形

- 後續作爲：將繼續依既定行程進行，在明年年會時提出報告。
- 2011 年洗錢態樣工作組會議將於該年 10 月在韓國首爾舉行。

2010 年洗錢態樣工作組會議正式議程

第一天：2010 年 10 月 26 日星期二

0800 - 0900 報到

0900 - 0930 研討會議程概要報告

(i) 由洗錢態樣工作組共同主席：孟加拉中央銀行副總裁 Mr. Ziaul Hasan Siddiqui 及馬來西亞公司管理局法務首長 Mr. Mohamad Sufyan Mohd Mokhtar 報告議程及研討會目標。

(ii) 洗錢態樣工作組共同主席之工作報告

0930 - 1000 來賓安全檢查後就座

1000 - 1100 開幕儀式

致歡迎詞：孟加拉中央銀行副總裁 Mr. Ziaul Hasan Siddiqui、APG 秘書處專員 Mr. David Shanon 分別致歡迎詞。

孟加拉律法及國會事務部部長 Shafique Ahmed 大律師、財政部長 Mr. Abul Maal Abdul Muhith 簡短致歡迎訪及介紹該國在相關法律及金融管理方面之作爲。

特別來賓-孟加拉總理 Ms. Sheikh Hasina 致詞，內容摘要：

- 一. 洗錢與資助恐怖分子是一個多面相的全球性問題，需要全球性的解決方式，確信本研討會及其他相關論壇將有助於發展不同策略，以有效執行相關國際標準。
- 二. 孟加拉期望與 APG 及會員國家以及其他國際組織密切合作，共同防制洗錢、資助恐怖分子及其他財務犯罪。

三. 和平與穩定是發展和建立所需制度的必要條件，我們承諾要建立南亞最和平的國家。

四. 呼籲 APG 會員國家相互協助以消彌本區域之恐怖主義並確保人民的基本權利，讓我們攜手共創一個免於貧窮和飢餓的和平世界。

特別來賓-孟加拉中央銀行總裁 Dr. Atiur Rahman 致詞，內容摘要：

一. 孟加拉在 2002 年通過洗錢防制法，亦是南亞第一個通過此法之國家，規範銀行及金融機構有關「認識客戶」、「疑似洗錢交易及大額通貨交易申報程序」，2009 年修正，以符合國際相關要求。

二. 除了建立及維持「防制洗錢/打擊資助恐怖分子」資料庫，孟加拉中央銀行已和其他國家建立聯繫合作管道，因為洗錢與資助恐怖分子是跨越國界犯罪。

三. 本研討會的各個議程提供參與者交換不同國家之理念與經驗，深入瞭解面對洗錢與資助恐怖分子威脅之弱點與防制之道。在此預祝研討會成功順利，謝謝大家的參與。

議程 1：介紹與檢討 APG 及全球洗錢態樣研究工作

1120 - 1130 研討會共同主席致歡迎詞及議程介紹，包括全球性防制洗錢與打擊資助恐怖分子態樣研究工作-相關組織合作最新資訊

議程 2：洗錢與大規模跨國詐欺

1130 - 1150 由香港代表（香港金融情報中心 Mr. Steward McGlynn）簡報跨國詐欺種類、相關低風險及有利可圖之特性、造成之金錢損失及衍生之問題、發展趨勢及洗錢方式與特徵等，目前專案研究小組進行情形，需要之資源、專案目標、待回答問題及未來進程與產出等。

議程 3：反貪瀆與洗錢防制

1150 - 1245 由孟加拉及美國簡報

(i) 由孟加拉肅貪局（Corruption and Money Laundering）做貪瀆與洗錢案例報告，特別強調該國是高度使用現金的經濟

體，造成貪瀆洗錢的高度風險，然該國政府有決心肅貪，建立廉能政府。

- (ii) 由美國聯邦調查局及美國司法部代表做沒收貪瀆犯罪的國際問題及案例報告，特別強調美國的基本利益是要確保美國金融機構不致成爲貪瀆犯罪所得窩藏天堂；積極執法並沒收犯罪資產；充分國際合作驅逐不法犯罪所得，並說明各國有不同的貪瀆文化、法律制度，且大部分國家目前僅提供刑事沒收協助，對無判決之沒收無法提供協助，使得國際合作變得複雜。

議程 4：非營利組織對洗錢與資助恐怖分子威脅之脆弱性

1400 - 1420 由加拿大代表簡報，強調 APG 與各會員國家及非營利組織代表過去以來，都認同非營利組織在各會員國中所扮演的重要角色，被濫用只是其中非常小的一部分，然在相互評鑑及全球性非營利組織面對資助恐怖分子及洗錢，亦顯現出重大弱點，許多國家並未充分警覺目前對非營利組織相關被濫用之態樣、案例研究以及相關防制之道，且這些非營利組織被濫用的與時俱進，因此有必要及時更新相關態樣研究資訊，目前加拿大、巴基斯坦及斯里蘭卡都有在調查濫用非營利組織以資助恐怖分子之犯罪。

議程 5：洗錢與人口販運

1420 - 1500

- (i) 由澳洲司法部代表簡報，強調綜合先前各會員國家之問卷填答，可以發現：
- 人口販運與偷渡的跨國性質，需要多個司法管轄體對此犯罪的適當回應，包括能夠在不同司法管轄區內，追查資金流向。
 - 法律架構可以強化並更加協調，以便能夠更有效率的進行國際合作。
 - 對於人口販運與偷渡的犯罪調查及起訴，很少進行洗錢調查。

- 對於人口販運與偷渡的犯罪調查仍然存在許多阻礙，包括洗錢調查及沒收犯罪資產。
 - 可以鼓勵透過司法互助方式進行國際合作，然此一方式相當耗時。
 - 可以多應用金融情報中心功能，以追查人口販運與偷渡的資金流向。
 - 應深入研究人口販運與偷渡的犯罪所得洗錢態樣。
- (ii) 對洗錢與人口販運之全球性及區域性之作爲
- FATF 的第一項反洗錢建議，涵蓋人口販運與偷渡，各國必須確認在相關法典內加以罪刑化，並納入洗錢前置犯罪。
 - 在亞太地區人口販運與偷渡是一個大問題，來源國大致有阿富汗、孟加拉、印尼、緬甸、菲律賓及斯里蘭卡，而目的國約有美國、加拿大、紐西蘭、澳洲、中國等。
 - 人口販運與偷渡威脅一個國家的邊界管制及國家安全，並破壞國際對難民的保護系統，並造成人權及人道問題。
 - APG 目前之作爲包括：初步研究報告將分送各會員國家參考，並進一步討論後續作爲及在 FATF 相對的專案中作回饋。

議程 6：區域性洗錢與資助恐怖分子之風險/弱點及國家經驗

1530 – 1700

- (i) 紐西蘭國家風險評估-紐西蘭金融情報中心經驗及主要發現
- 國家風險評估之益處：
 - 可以幫助決策者決定措施優先順序及資源分配。
 - 提供及時正確的資訊。
 - 增加信譽可信度。
 - 預測問題及降低負面結果。
 - 風險評估的五個步驟：
 - 建立風險評估內容。

- 識別風險。
- 分析風險。
- 評量風險程度。
- 風險處理。

- 潛在弱點：

- 過度依賴客戶審查作業。
- 身分盜用及詐欺的興起。
- 未經考驗之立法/程序和缺乏先例。
- 金融機構防衛性的申報。
- 新興科技的運用。
- 國家缺乏因應作為。
- 組織犯罪的擴增。
- 有利可圖的毒品市場。
- 執法量能。
- 使用現金交易之行業。
- 新法律的混淆。
- 情報與資訊的落差。

- 初期結論：

- 現有防制洗錢與打擊資助恐怖分子措施應合宜地實施。
- 透過意見一致方式分配有限資源的優先順序。
- 需要建立犯罪資產回復專責單位。
- 需要更加重視身分盜用及詐欺的問題。
- 重視使用現金交易行業。
- 建立與組織犯罪有關之洗錢檔案。
- 非法毒品交易將持續控制洗錢環境。
- 重視組織犯罪問題。

(ii) 孟加拉代表報告-識別風險與弱點以回應國際防制洗金錢與打擊資助恐怖分子之要求

- 主要介紹孟加拉是一個以現金交易為基礎的經濟體系，人民對金融交易認知水平尚有不足，而金融行業在孟加拉亦不見普及，因此透過金融機構洗錢並非主流，但孟加拉遵循國際要求標準，建立立法、金融監理、金融情報中心及加強國際合作等積極作為，並未有所懈怠。

(iii) 澳洲金融情報中心報告-澳洲防制洗錢與打擊資助恐怖分子之現況與新興趨勢

- 犯罪者善於發掘金融行業與商品之弱點。
- 犯罪者持續利用合法的金融系統遂行犯罪，諸如盜拷信用卡、電腦網路線上詐欺及老鼠會等
- 利用貿易洗錢。犯罪者利用貿易洗錢手法，將大量金錢轉移國外，再投入合法的經濟活動。通常使用之手法包括：
 - 高開或低開貨物及服務費用發票。
 - 高報或低報運輸之貨物。
 - 重複開立貨物及服務發票。
- 大量現金走私。犯罪者持續依賴大量現金走私，以移動非法活動資產跨越國界，執法機關曾發現犯罪者意圖以將大量現金走私出國。澳洲最近曾在雪梨機場扣押 13 個內裝總計 300 萬澳幣的皮箱，另有 500 萬存放在儲存箱中，還有將 150 萬澳幣裝箱放在汽車行旅箱中。
- 租用他人帳戶。犯罪者利用租來的帳戶進行洗錢，在一些案例中，有些人可能容易被犯罪者吸收，以協助遂行犯罪活動，如無業遊民或學生。
- 新支付方式。利用新式支付系統逐漸成為洗錢威脅之弱點，諸如預付卡/信用卡、線上金錢移轉及電話語音支付服務等。

議程 7: 全球防制洗錢與打擊資助恐怖分子作為及洗錢態樣研究

1715 - 1730 由美國財政部代表簡報全球防制洗錢與打擊資助恐怖分子之洗錢態

樣研究最新資訊。

1900 - 2100 歡迎酒會

第二天：2010年10月27日星期三

議程 8：分組討論議程

0900 - 1730

分組 A-洗錢與大規模跨國詐欺-預防、偵測、調查與起訴等問題（全日）

共同主席：香港及馬來西亞代表

報告者：依序為馬來西亞、加拿大、泰國、我國、菲律賓等

馬來西亞代表簡介該國目前跨國詐欺現況，包括投資詐欺、多層次傳銷、預付款、網路購物等，受害人遍及各國，該國積極偵辦相關犯罪並同時追查洗錢行為，並要求金融機構注意異常交易，及時申報，成效良好。

加拿大代表分析該國金融情報中心去年分送 578 件疑似洗錢交易報告予執法機關，其中 155 件涉及詐欺，約占百分之廿七，而詐欺之類型包括偽變造信用卡、社會安全卡及駕駛執照等、老鼠會、股票抄作、投資詐欺、電信詐欺（如偽造支票、信用卡及預付卡等）、貸款詐欺、高利貸及其他，而洗錢手法包括分散存提以逃避申報門檻、規避身分確認要求、使用他人或租用帳戶、使用可轉讓金融商品、換鈔等。

泰國代表簡介一件涉及泰、台及大陸之電信詐欺案件之偵辦過程，特別強調泰國使用臥底偵查方式，並充分與我國及大陸執法機關合作，一舉在泰國偵破並逮捕以台灣人為首的詐騙集團 26 人。

香港代表介紹結合執法、金融監理、金融機構並透過全民教育方式，以及加強國際合作，共同打擊跨國詐欺案件，成效卓著，已使詐欺案件在香港陳現下降趨勢。

我國由調查局洗錢防制處與會代表就跨國詐欺案例及我國防制作為做簡報，說明我國如何與國外對等單位合作偵破跨國詐欺案件，洗錢防制處在個案中扮演之角色及面對之問題，以及我國預防性作為，主要係針對「銀行對疑似不法或顯屬異常交易之存款帳戶管理辦法」摘要說明。簡報資料如附件二。

菲律賓代表簡介該國防制詐欺作為，主要是有關該國相關法律介紹，無太大參考價

值。

分組 B-非營利組織面對資助恐怖分子威脅所暴露之弱點-預防、偵測、調查與起訴等問題（全日）

略（未參與該分組討論）

分組 C-上午（0900-1245）- 洗錢與人口販運-案例、趨勢與同步調查等問題（全日）

略（未參與該分組討論）

分組 C-下午（1345-1700）- 貪瀆與洗錢防制（全日）

略（未參與該分組討論）

1900 正式晚宴

第三天：2010年10月28日星期四

議程 9：各分組總結報告

0900 - 1015

分組 A：由馬來西亞代表報告，就前日分組討論結果做總結報告：

- 特別對提出簡報國家（包括我國）表達感謝之意。
- 提出詐欺難以達到事前預防，經常有詐欺發生與偵辦有時間落差情形。
- 詐欺犯罪成爲全球化犯罪的新興趨勢。
- 偵辦詐欺犯罪，需要國內相關機關及私部門的充分協調及國際合作。
- 各國應有一些預防性作爲，包括全民防詐騙教育、課以金融機構申報相關疑似洗錢交易及配合相關機關凍結、扣押及沒收帳戶資金之作爲。

分組 B：由加拿大代表報告，就前日分組討論結果做總結報告：

- 資助恐怖分子對全球非營利組織構成高風險。
- 目前的專案計畫正在蒐集相關案例，希望能夠照時程完成報告。
- 已完成之概要報告，希望各會員國家提供回饋意見。

分組 C-上午：由澳洲代表報告，就前日分組討論結果做總結報告：

- 未來應更深入瞭解人口販運/偷渡問題與洗錢的關連性。

- 目前面臨的挑戰是國際合作與資訊分享。
- 澳洲志願擔任本專案研究之領導者。
- 期盼各國能夠努力凍結、扣押及沒收相關犯罪資產，以遏止人口販運/偷渡。

分組 C-下午：由美國代表報告，就前日分組討論結果做總結報告：

- 基於各國有不同法律制度與貪瀆文化，美國在分享相關洗錢資訊時面臨一些問題。
- 美國正在努力建構打擊貪瀆犯罪之相關量能（包括人員專業能力及其他資源之支持）。
- 對於執法人員及檢察官之訓練是打擊貪瀆犯罪成功的一環。
- 國際合作在打擊貪瀆犯罪上亦扮演關鍵角色。

議程 10：APG 在洗錢態樣研究之策略方向

1015 - 1030

由美國財政部代表簡報 FATF 洗錢態樣工作組及執行問題工作組目前之工作重點 - 在未來相互評鑑中，將針對反洗錢建議第 27、28 項執法情形及第 26 項金融情報中心功能發揮，重新訂定評鑑內容，以確實反映一個國家在反洗錢系統的效能表現。另 FATF 亦設立專案研究人口販運/偷渡與洗錢及正在重新檢討相互評鑑之相關指引及 40+9 項建議之相關註釋。

APG 秘書處報告對全球性洗錢態樣研究工作之貢獻。並宣布 FATF 將於南非舉辦洗錢態樣研討會，歡迎非 FATF 之會員國家，加入 APG 代表團前往，另明年 APG 洗錢態樣研討會將在韓國的首爾舉辦。

議程 11：特別簡報

1100 - 1230

由聯合國打擊恐怖主義委員會執行處代表簡報有關現金攜帶與打擊資助恐怖分子，簡報中特別強調：

- FATF 打擊資助恐怖分子特別建議第 IX 項，有關跨國境現金及無記名可轉讓金融商品運送要有申報或揭露制度，對涉及資助恐怖分子嫌疑或洗錢，或不實申報/揭露，

應有法律規定可以予以扣留，並予以有效、合宜的制裁作為，涵蓋沒收。

- 目前發現之缺失：只有入境申報的國家仍然很多、只有接受申報但無後續作為、有進行偵測但未予沒收、海關單獨作業缺乏合作、無能力進行分析及找出可疑表徵。
- 海關未注意到聯合國制裁名單，且未與國內犯罪資料庫聯結。
- 未與國際資料庫聯結，諸如國際刑警組織公布的被竊或遺失旅行證件。
- 聯合國打擊恐怖主義委員會執行處將支援明年在馬來西亞為東南亞國家舉辦之有關跨國現金攜帶國際最佳執行作為研討會。

由「亞太防制洗錢組織」秘書處資深專員 Mr. David Shannon 簡報洗錢態樣及相關管理問題，該簡報特別強調：

- 亞太防制洗錢組織在執行國際相關要求標準中所扮演之角色，是協助各會員國家執行 40+9 項建議，透過相互評鑑瞭解遵循程度，分享有關洗錢態樣，並擔任參與 FATF 會務活動之中介。
- 洗錢態樣研究之運用，政府部門為執法機關、金融情報中心、管理機關及政策機關。國際組織為 FATF、區域性防制洗錢組織、世界銀行、國際貨幣基金會，私部門為金融機關及必須申報疑似洗錢交易之事業體，其他為學術研究機構及一般大眾。
- 資助恐怖分子資金來源包括合法與非法，諸如竊盜、毒品交易、剝削勞工、由慈善團體捐助或籌款、現金交易之小型事業等。
- 目前專案研究包括(i)與大規模跨國詐欺有關之洗錢 (ML Associated with Large-Scale Transnational Frauds)；(ii)非營利組織對洗錢威脅所暴露之弱點 (NPOs vulnerabilities)；(iii)人口販運及偷渡與洗錢 (ML and human trafficking/ people smuggling) 三項。
- FATF 所屬的國際合作審查小組將特別注意在遵循國際相關標準有缺陷之國家，且會逐漸增加壓力。
- 合作是一個雙向道，在整個洗錢防制體制上，私部門是在第一線，金融市場需要瞭解最新的洗錢風險與資訊，以便設定管控系統，而執法/金融情報中心及管理機關亦需要從疑似洗錢交易報告及相關資訊中瞭解洗錢風險所在及其管理重點。

閉幕致詞：由孟加拉中央銀行副總裁 Mr. Ziaul Hasan Siddiqui、馬來西亞公司管理局

法務首長 Mr. Mohamad Sufyan Mohd Mokhtar 及「亞太防制洗錢組織」秘書處資深專員 Mr. David Shannon 共同主持，感謝孟加拉主辦本次研討會，過程順利成功，成果豐碩，對主辦單位特別表示敬意，另對研討會中提出報告之國家與個人表示謝意，最後感謝所有與會者在開會期間的熱情參與，希望大家能夠參加明年在韓國首爾舉辦之 APG 洗錢態樣研討會。

參、 心得與建議：

- 一. 我國洗錢防制法自民國八十六年開始施行以來，迄今已超過十三年，期間經過各相關機關及私部門的不斷努力與共同合作，已使我國在洗錢防制工作上，建立一個可行的機制，然在我國過去先後於民國 90 及 96 年接受 APG 的相互評鑑中，評鑑團對我國洗錢防制制度提出諸多改善建議，且在 98 年間，FATF 曾因我國相互評鑑結果，將我國列入國際合作審查小組(ICRG)考量名單，雖經一番努力，得以從名單中剔除，免於受到國際制裁，但實在不得不慎。鑑於各國紛紛針對自己國內進行國家洗錢威脅風險評估(National Risk Assessment)之際，我國應該效法跟進，就法律制度、金融監理、金融市場環境與產品、非營利組織、執法、金融情報中心及國際合作等層面，全面進行洗錢與資助恐怖分子風險評估，並提出行動計畫，提升我國防制洗錢與打擊資助恐怖分子之成效，免於受到國際社會的質疑。
- 二. 目前 APG 正在進行的專案洗錢態樣研究計畫，包括(i)與大規模跨國詐欺有關之洗錢 (ML Associated with Large-Scale Transnational Frauds)；(ii)非營利組織對洗錢威脅所暴露之弱點 (NPOs vulnerabilities)；(iii)人口販運及偷渡與洗錢 (ML and human trafficking/ people smuggling) 等，都是各國犯罪與洗錢的新趨勢，我國在打擊詐欺及人口販運上，在過去均有相當成功之案例與成效，只可惜業務分隸不同機關主政，在跨機關協調缺乏機制又未能共同參與情形下，成效難以在國際社會凸顯，殊屬可惜，未來應整合戰力，彰顯政府打擊犯罪之決心與成效。
- 三. 「亞太防制洗錢組織」洗錢態樣工作研討會主要目的在於共同討論區域性之防制洗錢議題及分享工作經驗，是一個充分瞭解區域性新興洗錢手法、趨勢及防

制作爲之場合，各國除了提出國內防制洗錢及打擊資助恐怖分子之現況報告外，亦會針對會議之討論主題分享相關經驗。我國今年在研討會中提出「跨國詐欺洗錢案例及我國預防性作爲」專題報告，得以張顯我國防制洗錢成效，亦獲得大會的肯定。未來我國參與類似會議場合，建議可以爭取發表簡報之機會，彰顯我國積極參與會務活動的態度，提升國際形象。



Asia/Pacific Group
on Money Laundering

APG Typologies Status Report 2010

中華台北

SECTION1–Supporting the Typologies Working Group Project on Vulnerabilities in the NPO Sector or 第一節—支援洗錢態樣工作組於非營利部門弱點之計畫

Please answer the following key questions:

(Answers to the questions can be typed in the boxes provided)

1. Has your jurisdiction undertaken any of the following: 貴國是否已經執行以下機制

- A typologies study on abuse of the NPO sector in the jurisdiction? 濫用非營利部門之洗錢態樣研究

Ans: No.

- A risk assessment of the NPO sector in the jurisdiction? 非營利部門之風險評估

(Please attach or provide hyperlinks to copies of the documents if applicable) 若有，請夾帶該等文件之附件或提供連結

Ans: No.

2. Have terrorist/criminal groups kidnapped the staff of NPOs from the jurisdiction for ransom?

If so, answer the following questions: 恐怖份子/犯罪集團是否曾綁架勒贖非營利組織之人員？若有，請回答以下問題

Ans: No.

| Case | Cases in which the kidnapping occurred in the home jurisdiction of the NPO | Cases in which the kidnapping occurred in a foreign jurisdiction | Types of Ransom Demanded (<i>cash, material resources, safe travel, prisoner release, etc</i>) | Was kidnap for ransom related to a terrorist cause or radical group |
|------|--|--|--|---|
| | | | | |

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|--|--|--|--|--|
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CASE STUDIES

Please provide case studies of Non-profit Organisations involved with ML/TF in the jurisdiction. The following tables should assist in outlining the cases and answering related questions. Complete one set of questions for each case study. 請貴國提供非營利組織洗錢/資助恐怖主義之案例研究，以下表格應協助略述案例及回答相關問題，完成每一案例研究之系列問題。

General Information for each case study 每一案例之一般資訊

3. Summary of the case study: 案例研究摘要

Summary: (provide a summary of the case in approximately two to four paragraphs) 請提供該案例 2-4 句之摘要
There's no case of Non-profit Organisations involved with ML/TF in the jurisdiction. 無非營利組織洗錢/資助恐怖主義之案例研究可提供

4. Basic information of the NPO(s) Involved: (If case study is sanitized, leave the questions regarding name and country of origin of the NPO blank.) 涉案非營利組織之基本資訊(若案件須保密，請將相關姓名及非營利組織來源國家以空白表示)

Ans: No. 無

| | |
|--|--|
| Name of NPO(s) 非營利組織名稱 | |
| Country of origin of NPO(s)? 非營利組織來源國 | |
| Approximate Age of the NPO(s) 估計成立年數 | |
| Activities & objectives of the NPO 非營利組織成立宗旨及活動 | |
| Location of offices & number of employees 辦公室地址及員工數 | |
| If multiple NPOs were | |

| | |
|--|--|
| involved, please give numbers and involvement 若多個非營利組織涉案，請提供數量及涉案情形 | |
|--|--|

5. Jurisdictions affected in the case: 本文中受影響國家

Ans: No. 無

| Jurisdiction 國家 | How Jurisdiction features in the case 本文中扮演何腳色 |
|-----------------|--|
| | |

Finances Questions 財金問題

6. How was the NPO abused for financial activity relevant to the case? 本案例中，非營利組織如何以金融活動被濫用？

Ans: No. 無

7. What monetary amounts and currencies were involved in the case relevant to the NPO? 涉案金額為何？

Ans: No. 無

8. If the NPO transferred money to, or received money from, a foreign entity in the case, answer the following questions for each foreign entity: 在此案例中，若有非營利組織移轉資金至國外實體或收到來自國外之資金，請回答以下問題：

Ans: No. 無

| | Answers |
|---|---------|
| Type of foreign entity (NPO, bank, private organization, etc) 國外實體類別 | |
| Number of transfers to the foreign entity by the NPO 被國內 NPO 移轉到國外值之金額 | |
| Number of transfers from the foreign entity to the NPO 自國外移轉至國內之金額 | |
| How was the transfer conducted? 如何移轉 | |

9. Was the money involved transferred through the formal financial sector or informal financial systems such as 'Hawala' networks? 本案例資金移轉係使用正式或非正式金融管道，例如地下通匯？

Ans: No. 無

| | Description |
|---|-------------|
| Formal financial sector 正式金融 | |
| Informal financial systems 非正式金融 | |

10. What other types of financial activity related to the NPO factored into the case and were other financial crimes committed?本案例中，還有哪些金融活動與非營利組織部門有關，及還涉嫌哪些金融犯罪？

Ans: No. 無

| Type of Financial Activity 金融交易型態 | Description 描述 |
|-----------------------------------|----------------|
| | |
| | |

Operations Questions 執行問題

11. Does the NPO involved in the case have international operations?非營利組織是否有涉及國際行動？

Ans: No. 無

| | Explanation |
|--|-------------|
| What types of international operations is the NPO involved in? 有哪些國際行動類型 | |
| Does the NPO use its own staff or 3rd party organisations of its international operations? 該 NPO 是否有利用員工或第三者從事國際行動 | |

12. Were the international operations of the NPO in areas of conflict and/or areas where there is low government control or law enforcement presence? 非營利組織之國際行動有不一致或/及低政府管控或低執法能量之情形嗎？

Ans: No. 無

13. How did terrorist/criminal groups begin their involvement with the NPO in the case? 恐怖分子/犯罪集團如何開始與非營利組織部門有關聯？

Ans: No. 無

| | Explanation |
|---|-------------|
| Begin a new NPO, or corrupt an existing NPO? 設立新的 NPO 或行賄現存之 NPO | |
| If infiltration of an existing NPO occurred, how did it occur? (see following options) 若滲透現存 NPO 者，該情形是如何發生？ | |
| Were other members of the NPO aware its' operations were being abused? 該被滲透之 NPO 內其他員工知道此情形嗎 | |

14. Was the NPO involved in the case tied to further illegal activities which factored into the case?

If so, use the following table to describe these where possible: 案例中之非營利組織有涉及更進一步非法行動嗎？若有，請使用下表回答問題。

Ans: No. 無

Material Resources Questions 重要資源問題

15. Did the NPO(s) assist terrorist or criminal groups in ways that are not financial in nature?

Please describe the type of assistance. 非營利組織有無使用非金融方式協助恐怖分子及犯罪集團？請描述協助類型。

Ans: No. 無

16. Was the NPO a victim of extortion by terrorist/criminal groups? If so, what was the method of extortion and any payment. 非營利組織是否為恐怖分子及犯罪集團勒索之犧牲者？若是，以何種方式勒索及金額為何？

Ans: No. 無

17. Was the NPO involved with import/export businesses, or recognized as having import/export authority? If so, answer the following: 非營利組織是否與進出口業務相關，或有進出口之授權？若有，請回答以下問題。

Ans: No. 無

| How was NPO involved in import / export? NPO 係如何涉入進出口業務 | How it impacted the case 對本案有何影響 |
|---|----------------------------------|
| | |
| | |

Personnel Questions 人力問題

18. Have terrorist/criminal groups used NPOs as cover? If so, answer the following: 恐怖分子及犯罪集團是否已經利用非營利組織作為掩護？若有，回答以下問題：

Ans: No. 無

| Method 方式 | Description 描述 |
|--|----------------|
| Operationally (planning, surveillance, etc)行動 | |
| Logistics (finances, material, etc)總務 | |
| Have forged identification been used bearing the NPO's name?偽造身分 | |
| Has stolen NPO ID been used?竊取 NPO 身分證明文件 | |
| Have NPO staff knowingly supplied ID to terrorist/criminal operatives? NPO 員工是否故意提供身分證明文件供恐怖份子使用 | |
| Other Method (add rows as necessary for new methods)其他 | |

19. Have terrorist/criminal groups infiltrated their own operatives into NPOs as staff or recruited already-existing staff? 恐怖分子及犯罪集團是否已經滲透進入非營利組織擔任職員或招募現有員工為其工作？

Ans: No. 無

| Method of infiltration of NPO personnel 滲透 NPO 人員之方式 | Description & any patterns identified 描述&識別出之型態 |
|--|---|
| Members of terrorist / criminal groups work for NPO directly 恐怖份子及犯罪組織直接為 NPO 工作 | |
| Terrorist / criminal operatives recruit existing NPO staff 恐怖份子及罪犯招募現行 NPO 員工 | |
| Terrorist / criminal groups recruit NPO leadership 恐怖份子及犯罪組 | |

SECTION 2 – MONEY LAUNDERING & TERRORISM FINANCING METHODS¹ 洗錢及資助恐怖主義方式

Please provide example case studies, including amounts of proceeds or terrorist finances for each of the categories listed below. 請提供案例研究，包括以下每一類別中資助恐怖分子之犯罪所得金額

- 1) Association with human trafficking and people smuggling 與人口販運及偷渡有關
- 2) Underground banking / alternative remittance services 地下金融/替代性匯款

Mr. A was the responsible person of X underground Remittance System, and also engaged in fraud crimes in neighbour jurisdictions and Taiwan. For facilitating the transfer of proceeds of crime and gaining the profit from exchange rate difference, Mr. A used his personal bank accounts and the names of Mr. Y and Zs' bank accounts as the instrumentality to accept the illegal gain from fraud groups and as a remittance channel for businessman. In the year of 2007, Mr. A had conducted underground remittance more than NTD708 million in total. For avoiding the money being seized and traced by the judicial authorities, whenever Mr. A received the money from the victims defrauded, he would immediately remit the money to third party's banking accounts in this jurisdiction and notified his associates in neighbour jurisdictions to do opposite financial transaction for reaching the balance of liquidity. Mr. A also used the same channel to conceal the illegal gain derived from operating underground remittance service. At last, Mr. A was accused of fraud and ML by the prosecutor's office in 2009.

A 男係地下匯兌組織之首腦，亦於兩岸從事詐欺犯罪。為於兩岸之間遂行移轉犯罪所得及賺取經營地下通匯業務之匯差收益，A 男使用個人及 Y、Z 之銀行帳戶作為媒介，收受詐騙集團之不法所得及商業間之匯款。於 2007 年期間，A 男已經手超過新台幣 7 億 8 百萬元。為避免上述款項遭司法機關查扣及追蹤，於收到上述詐騙不法所得後，即立即以現金匯款方式，匯入第三者帳戶內，並通知中國大陸另一方作相對交易，以維持資金之平衡及流動性，A 男亦用此手法隱藏其經營地下通匯服務之收益。A 男於 2009 年被檢察官控以涉嫌詐欺及洗錢罪。

- 3) Commodity exchanges (barter – e.g. reinvestment in illicit drugs) 商品交換(等價貨物交換—再投資於毒品)
- 4) Gambling activities (casinos, horse racing, internet gambling etc); for example 賭博活動(賭場、賽馬、網路賭博等)例如，
 - a) Use of Casino Value Instruments (casino chips / Ticket In-Out / gaming machine credits / cashier's orders / casino cheques / gift certificates / casino reward cards, etc). 使用賭場價值

¹ See Appendix A for illustrative examples for each category.

支付工具(賭場籌碼/ Ticket In-Out/賭博機餘額/兌幣處之匯票/賭場支票/禮物額度憑證/賭場酬賓卡/吃角子老虎機因出之現金兌換券等)

- b) Structuring / Refining.化整爲零/化零爲整
 - c) Use of Casino Accounts 利用賭場帳戶
 - d) Intentional losses. 意圖輸錢
 - e) Winnings / intentional losses.贏錢/意圖輸錢
 - f) Currency Exchange.通貨兌換
 - g) Employee Complicity.員工串通
- 5) Abuse, misuse, direct operation of non-profit organizations 濫用、誤用非營利組織運作
- Mr. A was the executive secretary of Foundation X. The foundation had a donation of NTD 10 million deposited in its banking account. According the rule of Foundation X's constitution, the fund can only be used on social welfare purposes and any expense for foundation's business is limited to use the interest derived from the fund. It's strictly prohibited to share the fund to individuals as special bonus or interest. Mr. A was responsible for managing the usage and custody of the fund. With the intention to embezzle the fund, Mr. A personally annulled C/D, appropriated the capital and interest which amounted to NTD 53,415,681. He transferred the money to the banking accounts controlled by himself, and then used some of the illegal gain to purchase traveler checks and foreign currency.

The criminal information of this case was sourced from a STR being reported by banks to AMLD, FIU of Chinese Taipei. The STR revealed that one day Mr. A carried NTD 5 million in cash to Bank Y and requested to open a banking account for depositing the cash. He explained to the staff of Bank Y that the money was his pension and planed to deposit as a C/D. However, he came back to the Bank two days later, annulled the C/D, and withdrew in cash without adopting the bank staff's suggestion using remittance instead. Five days later after the STR being filed, AMLD received another STR from Bank Z revealed that Mr. A opened a new banking account and deposited NTD 500 million cash, and immediately withdrew it via remittance, transfer, purchasing traveler checks and foreign currency.

The analysts of AMLD traced the fund's flow and found Mr. A was suspected of embezzling the fund and then disseminated the information to the Investigation Bureau for further investigation. The case was transferred to the prosecutor's office in 2009 for prosecution.

A男係X基金會之總幹事，並擁有基金會捐款存於基金會帳戶內。依據該基金會組織章程規定，基金會之基金僅可用於與設立宗旨社會福利目的相關之處，任何有關基

金會業務之支出僅可使用基金所衍生之孳息。該基金不得分配或給予他人作為特殊利益。A男於該基金會中負責管理基金之使用並保管，惟卻基於侵占之意圖，A男將基金之定存單解約，並侵占該基金及其孳息，總計新台幣53,415,681元，A男移轉該犯罪所得於他控制之帳戶內，部分用於購買旅行支票及外幣。

本案犯罪資訊來源為銀行向洗錢防制處申報之疑似洗錢交易報告。Y銀行申報之疑似洗錢交易報告敘述如次：某日，A男持500萬元現金至Y銀行新開帳戶，向行員表示該500萬元為退休金，欲購買定存單，2日後，回到Y銀行解約該定存單，婉拒銀行行員匯款之建議，堅持提現領出該解約之定存。在Y銀行申報疑似洗錢交易5日後，AMLD收到Z銀行申報之疑似洗錢交易報告，表示A男持500萬元現金要求開戶，卻於開戶後，將資金以匯款、轉帳、旅之、外幣現鈔方式陸續領出。

AMLD 追蹤該資金流向，發現 A 男涉嫌侵占 X 基金會基金，隨即將本案資訊移送調查局進一步調查，嗣於 2009 年移送至地檢署，同年處以緩起訴處分。

6) Investment in capital markets 於資本市場投資

Please refer to 10) and 20).

7) Mingling (business investment) 併用商業投資

8) Use of shell companies/corporations 使用空殼公司

The Anti-Money Laundering Division, FIU of Chinese Taipei, received a STR that described “Wang was an employee of A Corporation, a listed company in emerging stock market. Some huge funds in his banking account sourcing from abroad companies and Wu, the responsible person of A Corporation withdrew the funds daily from the banking account just under the currency transaction reporting threshold on behalf of Wang’s name to avoid reporting requirement.” The analysts of AMLD traced the flow of funds to identify the so called abroad companies and found:

- one of the three paper companies was a subsidiary company of A Corporation in Virgin Islands and the other two were B company (also registered in Virgin Islands and the responsible was Wang) and C Company (also registered in Virgin Islands and the responsible was Chang, an employee of A Corporation).
- The funds were originated from A Corporation’s banking account. At first, the funds were remitted into the banking account of the subsidiary company of A Corporation using the name of reinvestment. The funds were transferred into the banking account of B Company and then were transferred into the banking account of C Company. At last, the funds were remitted into Wang’s personal banking account and were withdrawn daily just under the reporting threshold by Wu on behalf of Wang to avoid the reporting requirement.
- Wu was suspected of involving in irregular transaction for manipulating the stock price of A Corporation in stocking market, which was prohibited by the Securities and

Exchange Act, and embezzling the gains from A Corporation. The funds were very possible sourcing from the illegal gains.

The AMLD disseminated the above information to law enforcement agency for further investigation. Law enforcement agents searched the residence of Wu and found huge amount of local and foreign currency valued more than 250 million NTD in a safe box. And then, all the currency was seized by prosecutor's office immediately.

調查局洗錢防制處於 98 年間接獲銀行申報之疑似洗錢交易報告，內容略以：「王某係上櫃公司員工，帳戶資金由國外匯入後，上櫃公司負責人吳某即每日提領低於大額通貨申報之金額。」經調查局洗錢防制處調查後，發現王某帳戶資金係由該上櫃公司以轉投資名義匯往該公司之從屬公司（登記於英屬維京群島，負責人亦為吳某）帳戶，再匯往 F 公司（登記於英屬維京群島，負責人亦為王某）帳戶，轉匯 A 公司（登記於英屬維京群島，負責人為張某，亦為該上櫃公司員工）帳戶（授權人亦為王某），最後轉入王某個人帳戶後，再由吳某分次提領略低於洗錢防制法第 7 條申報門檻之現金，吳某涉有違反證券交易法之非常規交易及侵占罪嫌。本案後經調查局洗錢防制處分送調查局臺北市調查局偵辦，於搜索吳某住所時，發現吳某於保險櫃等處藏匿新臺幣及外幣現金價值總計約新臺幣 3 億 5 千萬元，均予扣押。

- 9) Use of offshore banks and International business companies, offshore trusts 利用境外銀行及國際商業公司、境外信託
- 10) Use of nominees, trusts, family members or third parties etc 利用被提名人、信託、家庭成員或第三者名義等

Mr. A was a staff in Bank X, who was responsible for managing finances for clients. With the illegal intention of embezzling the clients' deposit and investment funds, Mr. A colluded with his colleagues to falsify the financial transaction statements in computer and use forgery signatures and stamps for transferring clients' money to his banking accounts repeatedly without clients' authorization. In addition, the staffs in Bank X compiled the false CTRs and reported to Anti-Money Laundering Division (AMLD), FIU of Chinese Taipei, in order to avoid being noticed by AMLD. The amount of their embezzlement reached to about NTD 134 million during the past three years. For concealing the embezzled fund, Mr. A remitted it to an unaware third party's banking account and used for conducting investments, reimbursing the mortgage from the bank and loans from the covert money dealer.

The case was discovered during financial inspection to the bank, and then Mr. A surrendered himself and confessed his criminal activity to the prosecutor's office.

A 男為 X 銀行理財專員，基於侵占客戶存款及投資基金之不法意圖，A 男共謀與其他於 X 銀行工作之同事偽造電腦金融交易紀錄，並利用偽簽及私刻之印章，於 3 年內多次將客戶資金轉入自己帳戶，而且 X 銀行同謀之員工為避免追查亦製作不實之 CTRs，向調查局洗錢防制處申報，總計侵占金額達新台幣 13,400 萬元。A 男為隱藏前述犯罪所得，將之匯入不知情第三人帳戶，並作其他財務投資、償還銀行房屋貸款及向地下錢莊之借款。

本件係經由金融檢查發現，A 男隨即向地檢署自首。

- 11) Use of professional services (lawyers, accountants, brokers etc.);利用專業服務(律師、會計師、仲介等)
- 12) Use of the internet (encryption, access to IDs, international banking etc);利用網路(加密、身分系統、網路銀行等)
- 13) Use of violence / coercion; 使用暴力/強迫手段
- 14) Association with corruption 與貪污有關
Please refer to 18) and 22).請參考第 18 及 22 案例研究
- 15) Criminal knowledge of and response to law enforcement / regulations 對執法/規定之犯罪知識及回應

Manager Mr. A and Assistant Manager Mr. B in the credit union X are experienced employees in the field of financial business. According to the provisions of Money Laundering Control Act, financial institutions are required to establish AML/CFT guidance and procedures of reporting STRs and CTRs. Mr. A and Mr. B are in managerial level of the credit union X and carry on the responsibility for instructing the staff to comply with the mentioned AML/CFT guidance and related procedures. They are fully aware whenever the customer's financial transaction triggers the indicators of the AML/CFT guidance or the amount of the cash transaction exceeds the threshold of NTD 500,000, and then they should compile CTRs or STRs to report to AMLD.

With the intention of assisting a fraud group to conceal the proceeds of crime (POC) and launder the illegal funds, whenever the couriers of the fraud group gave Mr. A or Mr. B the funds derived from fraud, they followed the instruction from the fraud group to deposit or remit illegal funds to 10 more specific banking accounts. The characteristics of these financial transactions met following STRs or CTRs reporting indicators/requirements:

- A client frequently transfers huge amounts of funds within the relevant accounts;
- A client requests to proceed other kind of financial transaction with cash transaction;

- The amount of each deposit and withdrawal in a banking account is similar and the transactions are close in occurrence date;
- The amount is found apparently incommensurate with the client's identity or income and irrelevant to the attributes of his/her profession;
- A client is found to have frequently deposited/withdrawn large amounts into/out of a specific account for others or through different third parties.
- A client frequently deposited into or withdrawn out of an account in amounts marginally below the threshold for declaration

In addition to assist dealing with the illegal funds, they intentionally skipped to report any STRs and CTRs and conducted some transactions without keeping records. Their acts have cut the money flow and successfully disguised the POC for the fraud group which amounted more than NTD 334 million. Since the fraud group was detected and suspects were arrested by police, Mr. A and Mr. B's criminal offense was discovered by the police as well as Financial Supervisory Commission. They were both accused of money laundering offence by the prosecutor's office and meanwhile credit union X was punished with administrative sanction by FSC.

X 信用合作社經理及襄理 A 男及 B 男為有經驗的金融從業人員，依據洗錢防制法規定，金融機構應訂定防制洗錢注意事項及申報疑似洗錢交易報告及大額通貨交易報告之程序，A 男及 B 男為 X 信用合作社擔任經理層級之主管，負責指導員工遵循防制洗錢注意事項及申報疑似洗錢交易報告及大額通貨交易報告之程序，充分瞭解只要有顧客之金融交易觸及疑似洗錢交易表徵或現金交易超過新台幣 50 萬元申報門檻，就應該編寫 CTR 或 STR 向洗錢防制處申報。

A 男與 B 男基於協助詐騙集團移轉犯罪所得及洗錢之故意，每當車手將詐欺犯罪所得交給 A 或 B，該兩人就會遵照詐欺集團聯絡人之指示存款或匯款到特定 10 個帳戶，而該等金融交易符合申報 STR 或 CTR 警示情形如下：

- 若遇客戶經常於相關帳戶間移轉大額資金
- 客戶要求以現金處理有關交易流程
- 每筆存、提金額相當且相距時間不久
- 款項與客戶之身分、收入顯不相當
- 經常替代他人或由不同之第三人存大筆款項入特定帳戶
- 對經常有多筆略低於必須登記之金額標準存入帳戶或自帳戶提出者

除協助處理上述不法所得外，還刻意不申報 STR 及 CTR，並以不入帳方式處理，渠等行為已經切斷資金流向，成功掩飾詐欺集團犯罪所得，金額高達新台幣 3.34 億

元。由於該詐欺集團遭警方偵查及逮捕，因而查獲 A、B 兩人犯行，由警方及金管會開始調查，地檢署終以洗錢罪起訴，X 信用合作社則遭金管會施以行政懲處。

16) Currency exchanges / cash conversion 貨幣交換/現金轉換

The AMLD received a STR from Bank A that described “Lin deposited 7,000 fifty-dollar coins tainted with greasy dirt smell on November 13 of 2008, and beginning from April 14 of the same year, Lin successively deposited various amount of fifty-dollar coins 37 times into his banking account from different branches of this bank and usually withdrew immediately from ATR after the deposits. The transaction type is different from ordinary customers that caused this bank to file this STR for cautious view.” The AMLD also received another STR from Bank B for the same subject in May of 2009 that described “Lin frequently deposited large amount of fifty-dollar coins into his banking account in person and usually withdrew from ATM at the same day, and each deposit case and withdrawal case were similar in amounts and close together in occurrence.”

The AMLD checked Lin’s background, occupation and criminal records to suspect he was very possible a member of counterfeiting metallic currency organization and disseminated this information to law enforcement agency for further investigation. Law enforcement agents found the criminal organization assigned its members to deposit fake coins mixed with genuine coins by the ratio of 1:4 into banking accounts for deceiving the tellers to find the truth. Once the fake coins have been deposited into banking account, the funds were withdrawn from ATM subsequently. This case was transferred to prosecutor’s office for raising prosecution.

A 銀行申報之疑似洗錢交易報告，內容略以：「林某於 97 年 11 月 13 日至本行存入有油污味之 50 元硬幣共 36,000 元。該客戶自 97 年 4 月 14 日起，陸續到本行其他分行存入現金共 37 次，並於當日以 ATM 提領，交易行為較一般客戶為異常，為謹慎起見，特此通報。」另 B 銀行於 98 年 5 月間亦對林某申報疑似洗錢交易報告，內容略以：「存戶之交易臨櫃存入，當日即以提款機領取，每筆存提款金額相當且相距時間不久。」經調查後發現林某係偽造硬幣集團之成員，該集團偽造面額 50 元之硬幣，嗣後集成員以用真幣、偽幣四比一的比例赴銀行存款，再以提款卡提領現鈔。本案業經臺灣士林地方法院檢察署起訴。

17) Currency smuggling (including issues of concealment & security) 走私貨幣(包括隱匿或證券之發行)

According to the Regulations for the Declaration of Carrying Foreign Currencies or Securities by Cross-Border Passengers or Service Crew on Board of Transport and for the Interagency Report by the Customs, which was stipulated following the provision of the Money Laundering Control Act, the anti-money laundering law in Chinese Taipei, a

passenger or a service crew member arriving into or departing from this jurisdiction on a flight within the same day, holding cash in foreign currency bearing a total value or securities bearing a total face value more than USD\$10,000 in his/her possession, shall be required to declare said object with customs authorities. Thereafter, the customs authorities shall forward the said customs declaration to the Anti-Money Laundering Division, AMLD – FIU of Chinese Taipei.

The AMLD filtered the declaration records forwarded by the customs authorities and found a national Mr. A ever declared 4 times to customs authorities for carrying significant foreign currency which amounted to USD\$500,000 in total to a neighbor jurisdiction. Then, the AMLD began to check the personal background and trace the funds flow:

- Mr. A did not take any occupation but owned an apartment, and he regularly went and came between Taiwan and neighbour jurisdictions. Furthermore, he had many significant currency transactions in his banking accounts in different financial institutions being filed to the AMLD.
- The financial transaction details provided by the mentioned financial institutions above revealed that Mr. A ever received many remittances and transfers from unknown third parties in different locations at the same day. The transactions were abnormal from usual transactions that exposed indicators of money laundering or illegal activities in it.
- After interviewing the persons involved to remit or transfer money to the banking accounts of Mr. A, they identified that the remittances and transfers were credits for the payments of purchase or living expenses of their relatives in other jurisdictions and Mr. A can deal with the remittances and transfers through his banking accounts and charging lower fees than banks.
- Determining Mr. A was very possible involved in underground banking business which violating the regulation of Paragraph 1, Article 29 of the Banking Act that “Unless otherwise provided by law, any organization other than a Bank shall not Accept Deposits, manage Trust Funds or public property under mandate or handle domestic or foreign remittances.”

The information was disseminated to the Investigation Bureau, a law enforcement agency in Chinese Taipei, for further investigation. This case also was verified by the Investigation Bureau that Mr. A engaged in underground banking business without getting permission from authorities. At last, this case was submitted to prosecutor’s office for prosecution.

依洗錢防制法訂定之旅客或隨交通工具服務之人員出入國境攜帶外幣現鈔或有價證券申報及通報辦法規定：旅客或隨交通工具服務之人員出入國境，同一人於同日單

一航次攜帶下列之物，應依本辦法之規定向海關申報；海關受理申報後，應依本辦法之規定向法務部調查局通報。

- 一、總值逾等值一萬美元之外幣現鈔。
- 二、總面額逾等值一萬美元之有價證券。

海關通報國人曹偉達於 2009 年 7、8 月間前後 4 次攜帶大額外幣出境日本，金額合計約新台幣 1500 萬元。

經查曹偉達：

1. 無任職紀錄，在台北市信義區擁有房產，經常往來台、日、港之間，由大額通貨資料庫顯示，在 2 家銀行有多次大額現金存提款紀錄。
2. 調閱該 2 家銀行帳戶交易明細發現，有一活存帳戶曾有同一日來自多個不同地區且不同對象之匯款或轉帳，交易並非循常。
3. 該等來自多個不同地區且不同對象之匯款或轉帳，經向匯款當事人查證發現，匯款或轉帳係透過曹員帳戶支付大陸地區訂購貨物之貨款或親人生活費。
4. 研判曹員可能涉及地下通匯業務，違反銀行法第 29 條第 1 項規定，非銀行不得經營收受存款、受託經理信託資金、公眾財產或辦理國內外匯兌業務。案移調查局進一步調查。

案經調查局調查後發現，曹員意圖為自己不法利益，利用前揭帳戶收受不特定客戶款項，並交付客戶所指定於大陸地區之對象，經營兩岸地下通匯業務，統計從 1998 年 9 月迄 99 年 4 月通匯金額達新台幣約 1 億 8200 萬元，涉嫌違反銀行法，移請地檢署偵查。

18) Use of credit cards, cheques, promissory notes etc 利用信用卡、支票、本票等

Tzeng is a contract employee in a local government who was responsible for promoting local tourism industry. The local government entrusted Company X to plan the advertisement of official tourism activities, which were conducted and supervised by Tzeng. Mr. A, the responsible person Company X, offered a bribe to Tzeng in order to get the project payments from the local government earlier under Tzeng's assistance prior the contracts being completely completed. For avoiding being investigated by judicial authority and with the purpose of concealing and disguising the proceeds of crime, Tzeng asked Mr. A to issue a NTD36,000 check for Tzeng's sister as the bribe, and then Tzeng got the cash and deposited it into her banking account. Tzeng and Mr.A was accused of bribery and money laundering offence.

曾女為地方政府之約聘僱人員，負責推廣地方觀光產業，該地方政府委託 X 公司宣傳官方旅遊活動，該委託案由曾女承辦。為求尚未完全履約，即可先領取政府核撥之工程款，X 公司負責人 A 男行賄曾女，請渠協助順利驗收及請款，曾女為避免其收賄犯行遭司法調查機關查獲，基於掩飾或隱匿因自己犯貪污罪所得財物之犯意，請 A 男開立其胞姐為受款人之支票，而後曾女取得現金後，存入自己銀行帳戶內。曾女及 A 男均被控涉及貪污及洗錢罪。

19) Purchase of portable valuable commodities (gems, precious metals etc)購買可攜帶有價值商品 (寶石、貴金屬等)

20) Structuring (smurfing)化整為零

Mr. A is the chairman of the technology company X which stocks are able to be traded in the stock market. Company Y and Z in other country are Company X's subsidiaries and their profit should be recognized as Company X's revenue according to the related accounting regulations. With the intention of embezzling the profit of Company X, Y, and Z, Mr. A commanded his employees Mr. B and C to set up two shell companies and OBU and domestic bank accounts as the shell companies, Mr. B and Cs' names and operated false transactions with Company X, Y, and Z for getting the payments from the three companies. Once the mentioned payments were remitted to the shell companies' OBU accounts, Mr. B or C would transfer the money to their domestic bank accounts which were under Mr. A's control. Then Mr. A withdrew the money, which was in fact from Company X, Y, and Z, in an intensive small amount of cash under the threshold of CTR reporting mechanism (the threshold is NTD 500,000). Mr. A used those money for investing on bonds or mutual funds or hid it in the vaults at home and in the banks.

Mr. A's intensive cash withdrawing transactions triggered the STRs reporting red-flag indicators, and then financial institutions immediately reported to Anti-Money Laundering Division (AML), FIU of Chinese Taipei. After investigating, AML suspected Mr. A of embezzling the money of Company X, Y, and Z, and then disseminated the information to Investigation Bureau, law enforcement agency in Chinese Taipei, for further investigations. In the process of legal operations, the special agent found more than NTD 510 million, USD 373,820, RMB 913,200, HKD 500,000, and JPY 282,000 in cash, as well as a huge amount of valuable security, bonds, and mutual fund certificates in the vaults at home and in the banks and seized them on the spot. In 2010, Mr. A was prosecuted for violating Security Transaction Act and Money Laundering Control Act.

A 男為 X 科技公司負責人，該公司股票得以於股票市場交易。Y 公司及 Z 公司為 X 公司於海外之子公司，依據相關會計規定，該等子公司之獲利應認列為 X 公司之收益。基於侵占 X、Y 及 Z 公司獲利之意圖，A 男命令員工 B 男及 C 男設立兩個空殼公司，並以該空殼公司名義及員工名義開立境外銀行帳戶及國內帳戶，並使該等空殼公司與 X、Y 及 Z 三公司間製造虛偽交易，使該 3 公司資金得以支付貨款名義匯入該 2 空殼公司帳戶內。一旦前述付款被匯入空殼公司境外銀行帳戶，B 與 C 就會立刻將金錢轉入渠等本國銀行帳戶，而 A 為該等帳戶之實際使用者，該等金錢實際上來自於 A 所擔任負責人之 X、Y 及 Z 公司之資金。A 即刻意規避大額通貨交易申報門檻(新台幣 50 萬元)，自前述以員工為戶名之帳戶小額密集的提現，用於投資基金或債券或存在家中或銀行之保險箱內。

A 之密集金融交易觸動疑似洗錢交易報告警示系統，金融機構立即向洗錢防制處申報，經調查，洗錢防制處認為 A 涉嫌侵占 X、Y 及 Z 公司之資金，將本案移送調查局進一步調查。調查員於搜索行動中發現 A 之家中及銀行保險箱內藏有超過新台幣 5 億元、美金 373,820 元、人民幣 913,200 元、港幣 500,000 元及日幣 282,000 元之現鈔，及一大批有價證券、債券及共同基金憑證，立即予以依法扣押。2010 年，A 以違反證券交易法及洗錢防制法遭起訴。

21) Wire transfers 電匯

22) Purchase of valuable assets (real estate, race horses, vehicles, etc);購買有價資產(不動產、賽馬、交通工具等)

Mr. A was the auditor in the National Tax Administration who was in charge of Business Tax auditing. With the purpose of soliciting bribes from Company X, Mr. A approached Mr. B, the owner of Company X, and revealed to him the auditing rules and examining schedule in the tax authority. Then Mr. A exploited some tricks of taxes evasion for requesting the bribe from Mr. B. Mr. B also agreed with Mr. A's condition, and evaded taxes amounted to NTD 20,042,157 successfully. For this reason Mr. B paid Mr. A NTD 3 million cash as the return.

For avoiding being noticed and disguising the proceeds of crime, Mr. A used Mr. C's name to buy a luxurious car, and the payment of the car, NTD 2,500,000, was also from Mr. C's remittance. Then Mr. A instructed Mr. C to sell the car to the third party, and Mr. A got the payment NTD 2,300,000 in cash but put the fund under Mr. C's custody. Mr. A was prosecuted for corruption and money laundering crime.

A 男為國稅局稅務查核人員，負責營業稅之稽核。基於向 X 公司索賄之目的，A 男接近 X 公司負責人 B 男，向渠洩漏稅務機關查稅規則及稽查計畫，之後 A 男利用提供逃漏稅技巧，向 B 男索賄，B 男亦同意 A 男之條件，而終順利逃稅 2,000 餘萬元，因此 B 男支付 A 男 300 萬元現金作為報酬。

為規避追查，A 男利用 C 男之名義購買價值名車，並由 C 男匯款支付車款 250 萬元，再指示 C 男轉賣該名車與第三者，得款 230 萬元現金，並由 C 男保管。A 男被以貪污罪及洗錢罪起訴。

23) Use of foreign bank accounts 利用國外銀行帳戶

24) Use of false identification 使用不實身分

25) Use of informal financing networks ('Hui', 'arisan' etc)使用非正式金融網路

SECTION 3 – MONEY LAUNDERING & TERRORISM FINANCING TRENDS 洗錢/資助恐怖主義之趨勢

Trends – are the general or continuing tendencies or patterns of methods used.

Please provide information /case studies /reports of significant trends identified: 請提供所辨識出之顯著趨勢之資訊/案例研究報告

- a) Research or studies undertaken on ML/TF methods and trends – please give references if published or key findings if available 洗錢/資助恐怖主義方法及趨勢之研究—若有公佈或關鍵發現，請提供參考資料

Ans: Statistics of the most common money laundering channels in the past 3 years:

| year | Bank | Others | Credit union | Real estate | Post office | Total |
|------|------|--------|--------------|-------------|-------------|-------|
| 2007 | 24 | 3 | 2 | 0 | 2 | 31 |
| 2008 | 21 | 2 | 0 | 0 | 0 | 23 |
| 2009 | 15 | 4 | 1 | 2 | 1 | 23 |

Statistics of the most common money laundering methods in the past 3 years: year

| year | dummy accounts | wire transfer to abroad | accounts of relatives | repayments of debts | others | total |
|------|----------------|-------------------------|-----------------------|---------------------|--------|-------|
| 2007 | 17 | 6 | 2 | 3 | 3 | 31 |
| 2008 | 14 | 3 | 4 | 1 | 1 | 23 |

the year of 2009

| Money laundering methods | No. of cases |
|---------------------------------------|--------------|
| Dummy accounts | 9 |
| Other securities | 4 |
| Underground remittance | 2 |
| Remittance abroad | 2 |
| Purchase of real estate | 2 |
| Purchase of precious metal or jewelry | 1 |
| Purchase of movable property | 1 |
| Carriage in person | 1 |
| Others | 1 |
| total | 23 |

- b) Association of types of ML or TF with particular predicate activities (eg terrorist organisations, terrorist training, corruption, drugs, fraud, smuggling, etc) 洗錢/資助恐怖主義特定前置犯罪活動相關之類型(如恐怖份子組織、恐怖份子訓練、貪污、毒品、詐欺、走私等)

Ans: Statistics of being prosecuted money laundering offence types in past three years:

| year | general criminal offences | narcotic offences | corruption | economic offences |
|------|---------------------------|-------------------|------------|-------------------|
| 2007 | 7 | 1 | 4 | 19 |
| 2008 | 0 | 0 | 4 | 19 |
| 2009 | 1 | 0 | 8 | 14 |

- c) Emerging trends; declining trends; continuing trends 未來趨勢；衰退趨勢；現在趨勢

Ans: The usually methods to launder money in Chinese Taipei include cash couriers, structuring, purchasing portable valuable commodities, wire transfers, alternative remittance systems, using offshore shell companies/corporations, using offshore banks and offshore businesses, using family members or third parties, using foreign bank accounts and using false identification etc. The emerging trends of money laundering threats include utilizing new technological methods, cross border financial transactions and currency movement, and increasing of mule accounts. It has shown the new threats from the mentioned methods in many money laundering cases happened in recent years.

中華台北通常發生之洗錢態樣包括攜帶現金、化整為零、購買可攜帶高價值商品、電匯、替代性匯款、利用空殼公司、利用境外銀行、境外商業、利用家庭成員或第三者名義、利用外國銀行帳戶或假身分等，潛在洗錢威脅趨勢包括利用新科技方式、跨國金融交易及移動貨幣、虛擬帳戶之使用者增加等。該等新興洗錢趨勢來自於近幾年發生之案例。

SECTION 4 – EFFECTS OF AML/CFT COUNTER-MEASURES 防制洗錢/打擊資助恐怖主義反制措施之成果

Recent results from legislative, regulatory or law enforcement counter-measures: 法制、監理或執法機關反制措施之近期成果

- a) The impact of legislative or regulatory developments on detecting and/or preventing particular methods (eg tracing proceeds of crime, asset forfeiture etc) 法制或監理於偵測及/或防止之特別方式之衝擊(如：追查犯罪所得、財產扣押等)
- In respond to the recommendations from the APG evaluation in 2007, the FSC coordinated with the Bankers Association to amend the said checklist in reference to Recommendation 6 of the FATF and the comments of the FSC financial examiners. The checklist includes the following key points, approved for recordation in October 2009 by the FSC and the FSC has simultaneously requested banks to revise their respective checklists and internal control procedures. 因應APG 2007 (民國96)年(評鑑之改善建議，參照FATF第6項建議及金管會金融檢查實務意見，協調銀行公會修正「銀行防制洗錢注意事項範本」，將下列事項納入規範，並已於98年10月核備在案，同時已轉知銀行業者配合修正其內部防制洗錢注意事項。
 - Promulgated amendments regarding prevention of money laundering by politically exposed persons (PEPs) : The FSC coordinated with banks to check whether customers are PEPs by way of the database, established either by the Joint Credit Information Centre or by banks themselves. If any PEP is identified, banks should take appropriate measures which are subject to periodical review. 增訂國外高知名度政治人物(PEPs)之防制洗錢措施：要求銀行業應向財團法人金融聯合徵信中心或利用銀行自行建置之資料庫，查詢客戶是否為外國高知名度政治人物。如是，應採取適當管理措施並定期檢討；
 - Enhanced the guideline for signs of suspicious money laundering transactions : In reference to the experience and comments of on-site financial examiners, the FSC has amended the relevant regulation to explicitly provide for signs of money laundering. 強化疑似洗錢交易表徵規範：參酌金管會檢查局意見與檢查實務經驗，增訂疑似洗錢交易表徵態樣。
 - Chinese Taipei recognizes the importance of seizure and confiscation of proceeds of crime for effectively preventing money laundering. The Ministry of Justice incorporated the “enhancing actions of seizing and confiscating illicit properties derived from embezzlements, severe economic crimes and drug smuggling” into its mid-term administrative plans (2009-2012) and was approved by the Administrative Yuan. The

premier conducted onsite visit to the Ministry on January 15, 2010 and directed the Ministry to pay more attention on the seizure and confiscation of corruption offences, and bring the corruption offenders to justice for establishing the integrity of government to meet the expectation of people. The Ministry has taken measures as response including the amendments of related laws and the plan to set up dedicated units in Taipei, Taichung and Kaohsiung Prosecutor's Offices in charge of seizing and confiscating proceeds of crime related matters. 為加強防制洗錢及落實查扣犯罪所得之重要性。法務部於97年8月間報行政院核定將「加強查扣貪瀆、重大經濟犯罪、毒品等案件犯罪所得」列為中程施政計畫（98至101年）。行政院吳院長於99年1月15日視察法務部時指示：「法務部應加強重視對貪污不法所得之追查及沒收，對於外界批評很多貪污犯、主犯多逍遙法外，希望法務部能盡力將主犯繩之以法。」法務部已採取諸多回應作為，包括修正相關法律並規劃在臺北、臺中、高雄等地檢署成立查扣犯罪所得專責單位。

- The Article 4 of the “Directions Governing Banking Enterprises for Operating Foreign Exchange Business” was revised on 4 September, 2009. Authorized banks and post offices under the Chunghwa Post Co. Ltd. shall abide by the following provisions when performing ordinary inward remittance business: In the event that the information (the full name, the account number and address of the originator) on the remitter of inward remittance from abroad is incomplete, a risk management procedure shall be established. 於98年9月4日修正「銀行業辦理外匯業務作業規範」第4點規定，增訂指定銀行及中華郵政股份有限公司所屬郵局辦理匯入匯款業務，對國外匯入款提供匯款人資訊（匯款人全名、帳號、住址）不足者，應訂定風險管理程序。
- Referring the provisions of the United Nations Convention against Corruption, the Anti-Corruption Act was amended in April 2009 to add in a new provision that authorizes prosecutors the power to order defendants of corruption cases to explain the sources of suspicious property obtained during the existing period of the corruption and the following 3 years then after of himself, spouse and minor children. No explanation without reasonable reason or unable to raise reasonable explanation or untrue explanation of defendants shall be punished with imprisonment for not more than 3 years or detention; in lieu thereof, or in addition to, a fine of not more the unknown source of property in equivalence. 參照聯合國反貪公約，貪污治罪條例於98年4月通過修正案，新增賦予檢察官權力，得命令涉嫌犯貪污治罪條例者，說明自涉嫌犯罪時及其後三年內，其本人、配偶或子女獲得之可疑財務之來源，無正當理由未為說明、無法提出合理說明或說明不實者，處三年以下有期徒刑、拘役或科或併科不明來源財產額度以下之罰金。
- The FSC has drawn up the anti-money laundering measures as financial examination focuses in 2010 as follows: 金管會為因應APG對我國第二輪相互評鑑之建議，已將「洗錢防制作業」列為99年之金融檢查重點，並規劃下列工作重點：

- To enhance the effectiveness of AML audit, the FSC puts emphasis on the internal control system and procedures including whether financial institutions verify customer identity documents, facilitate the know-your-customer procedures, register and report the transactions exceeding a certain amount and suspected money laundering transactions; whether a customer requests to conduct money transfers on the pretext of cash withdrawals, and a customer frequently carried out cash withdraws in a short time; whether institutions adopt related measures for other identified suspicious money laundering activities; and whether financial institutions set up appropriate transaction parameters to establish a database with unusual or suspicious transactions. In addition, the FSC has taken not only the recommendations from the FATF and the APG mutual evaluation but also related AML regulations as reference and designed AML checklists as financial examiners' working paper. 為提升洗錢防制業務查核之效能，金管會除將金融機構是否落實 KYC 認識之審核措施、洗錢交易之登記及申報情形，有無以「提現為名，轉帳為實」規避資金移轉之查核軌跡或客戶短期內密集性以現金提款及其他經認定有疑似洗錢交易之處理、可疑交易資料庫之建置及其相關交易資訊參數設置是否合宜等相關內部管控制度與程序，列入一般檢查之加強查核項目外；並參酌 FATF 相關評鑑項目、APG 評鑑改善建議事項及相關洗錢防制作業之重要規範，已設計「洗錢防制業務檢核表」，作為金融檢查工作底稿之用。
- To strengthen the supervision of AML operation of foreign subsidiaries and offshore branches, the FSC has held a meeting with the banking industry on Dec 28, 2009, drafted “Measures to strengthen the AML operations of foreign subsidiaries and offshore branches” and required the measures to be put into effect. 為加強督導金融機構海外分支機構落實洗錢防制之管理，金管會於 98 年 12 月 28 日邀集相關銀行業者與會，並研擬「強化金管會銀行海外分支機構辦理洗錢防制作業措施」，督促業者落實執行。
- To improve the internal audit mechanism of financial institutions and implement the compliance of Money Laundering Control Act, the FSC has conducted AML targeted financial examinations of banks, Credit cooperatives and post offices while necessity. 金管會本年度將分別對郵局、信合社及銀行等機構規劃辦理洗錢防制專案檢查，以強化金融機構內部稽核管理，落實洗錢防制之法令遵循。
- For strengthening communication among NPOs and to foster partnerships, the authorities organized a convention for nation-wide / provincial social welfare and charitable organizations on November 18th and 19th 2009. Besides discussion on set topics, the convention also focussed on finding solutions to common issues as well as sharing past service experiences. In this year, the Ministry of Interior will continually delegate professional accountants to audit the financial management of 71 foundations which were graded as B, C, D in the 2008. For those shortcomings being detected in audit, the Ministry shall inform the foundations for improvements with official letters. 為加強各基金

會之聯繫並建立合作機制，於98年11月18日、19日辦理全國性暨省級社會福利慈善事業基金會聯繫會報，除設定專題進行研討，亦針對共通性問題討論解決方法、同時分享業務推動經驗。另於99年委託專業會計師查核基金會財務管理，查核97年基金會評鑑評列乙、丙、丁等及公設財團法人，計71個單位。查核缺失，將函請基金會改善。

b) Cases developed directly from suspicious or unusual transaction reports 直接自疑似或異常交易報告發展之案例

| Year | STRs disseminated | Cases developed directly from STRs |
|------|-------------------|------------------------------------|
| 2007 | 383 | 59 |
| 2008 | 396 | 63 |
| 2009 | 403 | 64 |

c) Overall statistics on: 總體統計數據於

- Number of suspicious transaction reports received and disseminated; 收到及分送疑似洗錢交易報告件數

| Year | Reports category | Reports received | Reports disseminated |
|------|------------------|------------------|----------------------|
| 2007 | STR* | 1,741 | 383 |
| | CTR* | 1,190,753 | 73 |
| | ICTR* | 5,157 | 5 |
| 2008 | STR* | 1,643 | 396 |
| | CTR* | 1,133,014 | 36 |
| | ICTR* | 5,801 | 6 |
| 2009 | STR* | 1,845 | 403 |
| | CTR* | 2,963,282 | 17 |
| | ICTR* | 6,709 | 2 |

STR*: Suspicious Transaction Report

CTR*: Currency Transaction Report

ICTR*: International Currency Transportation Reports

- Number of AML/CFT investigations, prosecutions, convictions and sanctions; 防制洗錢/打擊資助恐怖主義於調查、起訴、判刑及裁罰之件數

➤ Statistics of prosecuted ML/FT cases in 2009 as follows:

| Type of ML offense | Prosecuted Offence | Cases referred by Investigation Bureau | Case referred by prosecutor's office | Case referred by police agencies | Total |
|--------------------|--------------------|--|--------------------------------------|----------------------------------|-------|
| | | | | | |

| | | | | | |
|-----------------------------|------------------------------------|----|---|---|----|
| General criminal activities | Robbery | 0 | 0 | 1 | 1 |
| Subtotal | | 0 | 0 | 1 | 1 |
| Economic crime | Abnormal trading prohibited by law | 2 | 0 | 0 | 2 |
| | Unlicensed banking business | 2 | 0 | 0 | 2 |
| | Unlicensed remittance business | 1 | 1 | 0 | 2 |
| | Fraud | 0 | 0 | 6 | 6 |
| | Embezzlement | 2 | 0 | 0 | 2 |
| Subtotal | | 7 | 1 | 6 | 14 |
| Corruption | Kickbacks | 2 | 0 | 0 | 2 |
| | Taking bribery | 3 | 0 | 0 | 3 |
| | Offering bribery | 2 | 1 | 0 | 3 |
| Subtotal | | 7 | 0 | 0 | 8 |
| Total | | 14 | 2 | 7 | 23 |

98 年各地方法院檢察署依洗錢防制法起訴（含緩起訴及聲請簡易判決）之案件統計如次：

| 犯罪類型 | 罪名 | 調查局 | 檢察官 | 警察 | 總計 |
|------|---------|-----|-----|----|----|
| 一般刑案 | 強盜 | 0 | 0 | 1 | 1 |
| 一般刑案 | 合計 | 0 | 0 | 1 | 1 |
| 經濟犯罪 | 非常規交易 | 2 | 0 | 0 | 2 |
| | 非銀行收受存款 | 2 | 0 | 0 | 2 |
| | 非銀行辦理匯兌 | 1 | 1 | 0 | 2 |
| | 詐欺 | 0 | 0 | 6 | 6 |
| | 業務侵占 | 2 | 0 | 0 | 2 |
| 經濟犯罪 | 合計 | 7 | 1 | 6 | 14 |
| 貪污犯罪 | 收取回扣 | 2 | 0 | 0 | 2 |
| | 違背職務受賄 | 3 | 0 | 0 | 3 |

| | | | | | |
|------|--------|----|---|---|----|
| | 職務行為收賄 | 2 | 1 | 0 | 3 |
| 貪污犯罪 | 合計 | 7 | 1 | 0 | 8 |
| 總計 | | 14 | 2 | 7 | 23 |

➤ From Jan. to Aug. in 2010, 39 cases prosecuted were involving to ML. 7 of them have been convicted, and the rest is on trial. 99 年起訴 39 件、判決確定 7 件，其餘未判決確定（統計 99 年 1 月至 8 月）

- Amount of seizures & confiscation related to ML and TF 涉及洗錢及資助恐怖主義沒收件數

In 2009, the total amount of laundered proceeds of crime valued to NTD \$4,626,782,146 from the prosecuted cases by district prosecutors' offices (including the cases of deferred prosecutions and petitions for summary judgments) using the provisions of MLCA. Statistics of the amount of laundered proceeds of crime of the ML cases are as follows:

| Laundered money | Cases |
|---------------------------------------|-------|
| Under NTD 100,000 | 2 |
| NTD 100,000 – under NTD 1 million | 2 |
| NTD 1 million – under NTD 5 million | 3 |
| NTD 5 million – under NTD 10 million | 6 |
| NTD 10 million – under NTD 20 million | 0 |
| NTD 20 million – under NTD 30 million | 1 |
| Upper NTD 30 million – | 9 |
| Total | 23 |

98 年各地方法院檢察署依洗錢防制法起訴（含緩起訴及聲請簡易判決）之案件，洗錢金額總計為 4,626,782,146 元，統計如次：

| 金額(幣別：新臺幣) | 件數 |
|------------------------------|----|
| 10 萬元以下（含 10 萬元） | 2 |
| 10 萬元至 100 萬元（不含 10 萬元） | 2 |
| 100 萬元至 500 萬元（不含 100 萬元） | 3 |
| 500 萬元至 1000 萬元（不含 500 萬元） | 6 |
| 1000 萬元至 2000 萬元（不含 1000 萬元） | 0 |
| 2000 萬元至 3000 萬元（不含 3000 萬元） | 1 |
| 3000 萬元以上（不含 3000 萬元） | 9 |
| 合計 | 23 |

- Number of AML/CFT supervisory inspections and statistics of sanctions 防制洗錢/打擊資助恐怖主義金融監理檢查件數及裁罰統計

From January 2009 through March 2010, the Financial Examination Bureau of the FSC reported 152 negligence findings on AML operations of 169 financial institutions. These findings can be boiled down to the following 4 types: violations of KYC rules, violations of the cash transaction reporting obligations, violations of the suspicious transaction reporting obligations, insufficient implementations of legal compliance and internal control. 金管會檢查局 98 年 1 月至 99 年 3 月止，共對 152 家次金融機構，提列 169 項有關洗錢缺失之檢查意見，上開缺失態樣包括違反 KYC 審查、違反大額通貨交易申報規定、違反疑洗錢交易申報規定、法令遵循及內部控制未落實等 4 種。

Sanctions against financial institutions in violation of the MLCA and the Banking Act 金管會對所轄金融機構違反洗錢防制規定之處理情形，統計如下：

| | 2009 | Jan. 2010 –May 2010 | Total |
|---|---|---|-------|
| Fine under Articles 7 and 8 of the MLCA) | 3 (2 cases under Article 8 and 1 case under Article 7) | 3 (1 case under Article 8 and 2 cases under Article 7) | 6 |
| Order of Correction under Article 61.1 of the Banking Act | 0 | 2 | 2 |
| Order of Improvement (Subject to follow-ups by internal auditing unit or order of reports on the measures taken to the competent authorities) | 16 | 5 | 21 |
| Order of Improvement pursuant to the comments of the Financial Examination Bureau (Subject to follow-ups by internal auditing unit) | 107 | 8 | 115 |
| Others (the statute of limitations is past; the process of presenting | 6 | 3 | 9 |

| | | | |
|---|-----|----|-----|
| views is underway; the circumstance of the offence is not serious) | | | |
| Order to Discharge Directors under Article 61.1 of the Banking Act | 0 | 1 | 1 |
| Total | 132 | 22 | 154 |

| 年度 處理情形 | 98年 | 99年 1月至5月 | 總計 |
|---------------------------|-------------------------------------|-------------------------------------|-----|
| 罰鍰 | 3 (1 件違反洗錢防制法第 8 條、2 件違反洗錢防制法第 7 條) | 3 (2 件違反洗錢防制法第 8 條、1 件違反洗錢防制法第 7 條) | 6 |
| 糾正 | 0 | 2 | 2 |
| 函請改善 (要求稽核單位追蹤列管、改善具報) | 16 | 5 | 21 |
| 依檢查局意見辦理 (追蹤改善情形) | 107 | 8 | 115 |
| 其他 (逾裁罰時效、陳述意見中、違反情節非屬重大) | 6 | 3 | 9 |
| 解除董事職務 | 0 | 1 | 1 |
| 總計 | 132 | 22 | 154 |

- Statistics related to international cooperation – MLA, extradition, FIU info etc. 國際合作統計—司法互助、引渡、金融情報中心資訊交換等

| year | Mutual Legal | Extradition | FIU information |
|------|--------------|-------------|-----------------|
|------|--------------|-------------|-----------------|

| | | | |
|------------------|------------|---|----------|
| | Assistance | | exchange |
| 2009 | 16 | 0 | 66 |
| 2010(Jan.-Sept.) | 11 | 0 | 35 |

SECTION 5 – INTERNATIONAL COOPERATION & INFORMATION SHARING 國際合作&資訊分享

Please provide information /case studies /reports of AML/CFT related international cooperation or information sharing: 請提供防制洗錢/打擊資助恐怖主義於國際合作或訊息分享有關之資訊/案例/研究/報告

a) Cooperation between jurisdictions 國家間之合作

Chinese Taipei signed MOU with Netherlands Antilles and Israel respectively in 2009 and 2010 to establish cooperation on AML/CFT and several bilateral Memorandums of Understanding (MOUs) on cooperation for the exchange of money-laundering intelligence are expected to finalize in the near future. 洗錢防制處於 98 及 99 年與荷屬安地列斯及以色列簽訂「洗錢防制及打擊資助恐怖活動情報交換合作備忘錄」，奠定日後雙方情報交換之基礎。今後，洗錢防制處仍將繼續推動與外國金融情報中心進行簽訂「洗錢防制及打擊資助恐怖活動情報交換合作協定／備忘錄」之工作。

b) Information exchanged between jurisdictions 國家間之資訊交換

Money laundering is a kind of transnational criminal activities in nature. For effectively countering ML/FT, it needs to get consensus from all jurisdictions and cooperate closely together on AML/CFT. The AMLD plays the role of FIU in Chinese Taipei and spares no effort to set up cooperation mechanism with foreign counterparts. In 2009, the AMLD exchanged 66 pieces of ML/FT information with foreign counterparts including 39 pieces requested by foreign counterparts, 8 pieces requesting foreign counterparts to provide information, 17 pieces of spontaneous dissemination and 2 pieces of questionnaire and others. 洗錢犯罪的本質是一跨國性犯罪，為有效打擊跨國洗錢犯罪及資助恐怖主義，有賴各國政府凝聚共識並攜手合作，調查局洗錢防制處扮演我國金融情報中心角色，對洗錢防制國際合作之努力亦不遺餘力。98 年洗錢防制處從事國際合作之情報交換計 66 件，其中外國請我國協查 39 案，我國請外國協查 8 案，主動提供情資 17 案，問卷及其他事項 2 案。

c) Impediments or difficulties with information sharing / international cooperation 資訊分享/國際合作之阻礙/困難

Some countries need MOU or other instrument as precondition to exchange information with foreign counterparts and Chinese Taipei faces impediments to sign MOU or other instrument

with those countries. It really jeopardizes the effectiveness of information sharing with international counterparts on AML/CFT. 中華台北於與國際洽簽 MOU 部分面對許多障礙，而有些國家卻需要備忘錄或其他文書作為情資交換之前提，已危及與各國分享 AML/CFT 情資之有效性。

Looking forward, the AMLD will continue similar initiatives to enter Cooperative Agreements or Memorandum of Understanding concerning the exchange of information related to AML/CFT with other FIUs. 中華台北期盼未來能繼續積極與各金融情報中心洽談簽署 AML/CFT 情資交換合作備忘錄。

Please indicate the key points of contact for MLA and agency to agency international cooperation in relation to AML/CFT investigations or prosecutions. 請指出與防制洗錢、達及資助恐怖主義調查或起訴相關司法互助及機關間國際合作可聯繫之關鍵窗口

| Function | Name | Agency | Email address | Tel. No. |
|---|------------------------|---------------------|-------------------------|------------------------------|
| Information exchange | 吳宗憲 David Wu | AMLD(FIU) | amld@mjib.gov.tw | +886-2-29112241 ext. 6224 |
| Investigations | 吳宗憲 David Wu | AMLD(FIU) | amld@mjib.gov.tw | +886-2-29112241 ext. 6224 |
| MLA-歐洲Europe | 廖先志 Liao, Hsien Jyh | Ministry of Justice | Hjliao1@mail.moj.gov.tw | +886-2-23702227 |
| MLA-美洲、非洲、大洋洲 America, Africa, and Oceania | 游儒倡 Yu, Ju Chang | Ministry of Justice | hary@mail.moj.gov.tw | +886-2-23702227 |
| MLA-兩岸三地 China, Macau, and Hong Kong | 高峰祈 Kao, Feng Chi | Ministry of Justice | Fengchi@mail.moj.gov.tw | +886-2-23702227 |

PM for global efforts to fight money laundering, militancy

UNB, Dhaka

Prime Minister Sheikh Hasina yesterday called for united global efforts to combat menaces like money laundering, terrorism and militancy.

Bangladesh looks forward to working closely with the Asia/Pacific Group (APG) and its member countries as well as other international organisations and their member countries for preventing money laundering, terrorism-financing and other financial crimes, she said.

The PM was addressing the opening session of APG Typology Workshop 2010 at the winter garden of Hotel Radisson in the city.

The Asia Pacific Group on Money Laundering (APG) arranged the workshop in collaboration with the government of Bangladesh as a part of the 13th Typologies Meeting of APG on Money Laundering on October 26-28.

Finance Minister AMA Muhith, Law Minister Barrister Shafique Ahmed and APG Principal Executive Officer David Shannon also spoke at the opening session, chaired by Bangladesh Bank Governor Dr Atiur Rahman.

According to an estimation of the International Monetary Fund (IMF), between 2 percent and 5 percent of global GDP per year is laundered annually as the proceeds of crime, the largest sources of which are illicit drug manufacturing and trafficking, arms and human trafficking, corruption, fraud, extortion, kidnapping,



PHOTO: PID

Prime Minister Sheikh Hasina speaks at the opening session of APG Typology Workshop 2010 at a city hotel yesterday.

theft and environmental crimes.

Some 200 senior government officials from the countries of Asia/Pacific region are attending the meeting that will provide a platform for high-level discussion and co-operation in areas of anti-money laundering and counter-financing of terrorism and will review the techniques and trends or typologies of money laundering and terrorist financing.

Addressing the function as chief guest, the premier said it requires huge sums of money to operate militants' activities.

"Therefore, it is imperative to stop terrorism-financing in order to contain their activities," she said.

"Terrorism and militancy know no territorial borders. I always assert that terrorists have neither border nor race or creed. Hence, it is not possible for any country to combat this menace alone. It requires a united effort."

Money laundering and terrorism-financing are multidimensional global problems that require global solutions, she observed.

The PM said Bangladesh have taken all out measures against money laundering and terrorism-financing by enacting the Money Laundering Prevention Act "Bangladesh is the first amongst the South Asian countries in enacting anti-money laundering Act."

In order to strengthen the existing anti-money laundering Act, she said the Parliament

has passed the Money Laundering Prevention and Anti-Terrorism Act 2009.

"The government of Bangladesh is fully committed to implementing the relevant international conventions, particularly the recommendations of the global Financial Action Task Force (FATF) as well as the requirements of other relevant international agencies."

Hasina said her government's stance against terrorism, money laundering and other financial crimes is clear and very firm. "We are committed to encountering these challenges through integrated efforts."

She mentioned that a high-powered National Committee on Anti-Money Laundering and Counter-Terrorism Financing headed by Finance Minister AMA Muhith has been constituted.

The PM said initiatives are also underway to recover billions of taka "amassed through corruption and laundered by influential leaders and adherents of BNP-Jamaat alliance."

The government has instructed the law enforcing agencies to make all out efforts for combating terrorist activities and terrorism-financing, she said.

"The government has already banned a number of organisations for their involvement in terrorist activities," she said.

Hasina said that as in their previous tenure, the present government also launched all out drive against militancy and corruption.

New Zealand National Risk Assessment 2010

Darren Howells
Senior Research Officer
New Zealand Police Financial Intelligence Unit
APG Typologies Workshop 2010 - Bangladesh



Key Points

- Need to understand what Risk Assessment is
- Foundation for future risk assessments and management
- A fusion of available material
- Identification of knowledge and intelligence gaps
- Agreement needs to be reached in relation to methodology
- Determining client expectation vital



NZ National Risk Assessment

- Risk assessment aids decision makers in prioritisation and resourcing
- Provides timely and accurate information
- Risk assessment can add to reputational credibility
- Anticipate problems and limit consequences



Sector Risk Assessments

| Reserve Bank | Internal Affairs | Securities Commission |
|--|---|---|
| Registered Banks Non-Bank Deposit Takers Life Insurers | Casinos Money Remitters Currency Exchanges Debt Collection Agencies Non-Deposit Taking Lenders Factoring Financial Leasing Agents Non-Bank Credit Cards Cash Transportation Trust and Company Services | Brokers Futures Dealers Trustee Companies Collective Investment Schemes Financial Advisors Issuers of Securities |



Threat

Threat is capability x intent



Risk

Risk is likelihood x consequence



Risk Matrix

| Levels of Risk Matrix | | Consequence | | | | |
|-----------------------|----------------|-------------|----------|----------|--------------|--------------|
| | | Negligible | Minor | Moderate | Major | Severe |
| Likelihood | Rare | Low 1 | Low 2 | Medium 3 | Medium 4 | High 5 |
| | Unlikely | Low 2 | Low 4 | Medium 6 | Medium 8 | High 10 |
| | Possible | Low 3 | Medium 6 | High 9 | High 12 | High 15 |
| | Likely | Medium 4 | Medium 8 | High 12 | High 16 | Very High 20 |
| | Almost certain | Medium 5 | High 10 | High 15 | Very High 20 | Very High 25 |

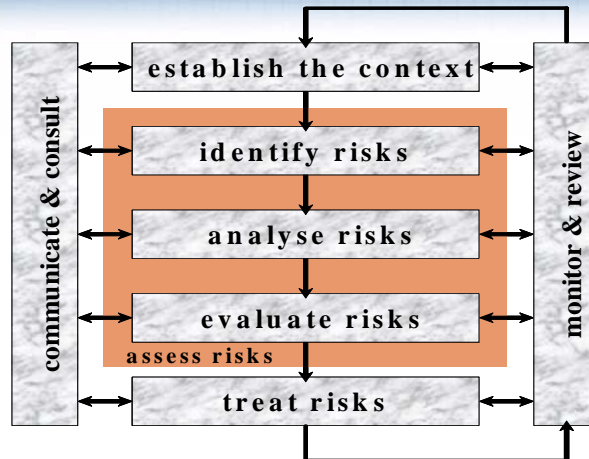


Risk Levels

| | |
|-----------|--|
| Very High | The level of impact indicates action required now. |
| High | The level of impact indicates action should be initiated as soon as possible. Monitor for any change. |
| Moderate | The level of impact indicates action should be initiated when resources are no longer required to address Very High or High levels. Monitor for any change. |
| Low | The level of impact is considered acceptable at this point in time. Initiate action if resources no longer required to address Very High, High or Medium levels. Monitor for change. |



5 Steps of Risk Assessment



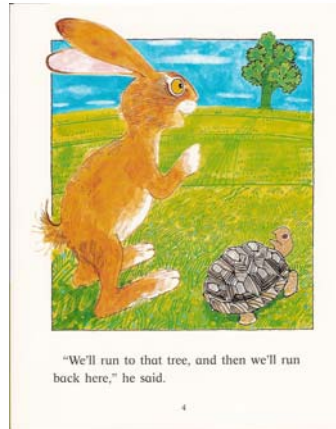
Static vs. Dynamic Risk

- Risk can be both static and dynamic
- Static risk = things that do not change
- Dynamic risk = things that can change
- Historic static factors = a foundation for assessment of risk
- Dynamic risk = can be stable or acute



Stable & Acute Dynamic Risk

- Stable dynamic risk = things that can change slowly
- Stable dynamic risk might occur over a period of months or years
- Acute dynamic risk = things that can change quickly
- Acute dynamic risk might occur over a period of a day or two weeks



Nature and extent of money laundering

- Full nature and extent of money laundering (ML) is unknown
- ML prosecutions are low
- Perceptions continue that ML is complex
- ML investigations a lower priority although profile is increasing
- Estimated total cost to NZ vary in amounts
- Further work required

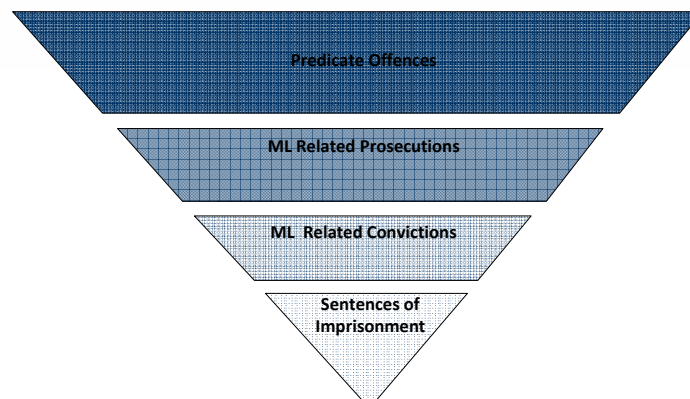


Nature and extent of terrorist financing

- Full nature and extent of terrorist financing (TF) is unknown
- There have been no TF convictions in New Zealand
- Information and intelligence holdings are limited
- New Zealand consider risk of TF as LOW
- Indicators and warnings still need to be developed
- Further work required



Money Laundering Crime Funnel



Typology - General

- Typologies change and adapt
- Drug offending most common predicate offence
- Retail banks generate most Suspicious Transaction Reports (STRs) followed by money remitters and casinos
- Wire transfers generate the most STRs



Typology - General

- Definitions based on the Asia Pacific Group typologies
- Adapted in keeping with the New Zealand environment
- Use of multiple typologies appears common
- TF typology shares many characteristics with ML typology but overall TF risk is assessed as low



Typology Risk - Current

- FIU assessed highest risk typology currently is the purchase of valuable assets (property, vehicles) and commodities (precious metals, gems)
- The next highest risk typology is wire transfers by money remitters



Typology Risk – Next 12 months

- FIU assessed highest risk typology if it increases in the next 12 months is wire transfers by money remitters
- The next highest risk typologies are the purchase of valuable commodities/assets, the use of shell companies, the use of nominees/trusts/third parties and trade based money laundering



Case Study - Organised Crime

- Operation ACACIA
- Methamphetamine predicate offence
- Organised Crime
- Money laundering
- Foreign Exchange
- Money Remitters



Case Study - Shell Company

‘NZ linked to suspected arms smuggling.’

Dominion Post, 15 December 2009



Summary of Impact & Risk

| Typology | Current Impact | Likelihood of increase | Consequence of Increase | Assessed Risk |
|------------------------------------|----------------|------------------------|-------------------------|---------------|
| Wire transfers - Remitters | Severe | Almost Certain | Major | Very High 20 |
| Purchase valuable commodities | Severe | Likely | Major | High 16 |
| Purchase of valuable assets | Severe | Likely | Major | High 16 |
| Shell companies | Major | Likely | Major | High 16 |
| Nominees, Trusts, 3rd parties etc. | Major | Likely | Major | High 16 |
| Trade based money laundering | Moderate | Likely | Major | High 16 |
| Cancel credits or overpayments | Major | Almost Certain | Moderate | High 15 |
| Electronic Transfers | Major | Almost Certain | Moderate | High 15 |
| Co-mingling | Major | Almost Certain | Moderate | High 15 |
| Gatekeepers, Professional Services | Major | Almost Certain | Moderate | High 15 |
| Cash Deposits | Major | Almost Certain | Moderate | High 15 |
| Smurfing | Major | Likely | Moderate | High 12 |
| Credit Cards, Cheques etc. | Moderate | Likely | Moderate | High 12 |
| Cash Couriers | Moderate | Likely | Moderate | High 12 |
| Structuring | Major | Almost Certain | Minor | High 10 |
| Abuse of non-profit organisations | Minor | Possible | Moderate | High 9 |
| Investment in capital market | Major | Possible | Moderate | High 9 |
| Other payment technologies | Moderate | Possible | Moderate | High 9 |
| Underground banking etc. | UNKNOWN | Possible | Minor | Medium 6 |
| Trusted Insider/Corruption | Minor | Unlikely | Moderate | Medium 6 |
| Cash exchanges | Moderate | Possible | Minor | Medium 6 |
| Currency conversion | Minor | Possible | Minor | Medium 6 |



Forecast and Trends

- Technology and evolving typologies creating **dynamic** risk
- Criminals adapting faster than law enforcement can innovate
- Lack of resources and limited capability



Forecast and Trends

- Lack of focus on fraud predicate offending by law enforcement and Courts
- Continued information and intelligence gaps
- Greater focus on organised crime could mean more demand for AML measures



Potential Vulnerabilities

- Over reliance on Customer Due Diligence
- Identity theft and fraud
- Untested legislation/processes and poor precedents
- Defensive reporting
- New and adapted technology
- Countries with weak AML/CFT measures



Potential Vulnerabilities

- Organised crime expansion especially Asian organised crime
- Continued profitable illicit drug market
- Capability and capacity of law enforcement
- Cash intensive areas of continued concern
- Confusion over new legislation
- Continued intelligence and information gaps



Law Enforcement - NZ

- New legislation
- Role of Financial Crime Group
 - Financial Intelligence Group
 - Asset Recovery units
- Proactive targeting of criminals using financial data
- NZ Customs initiatives



Quarterly Typology Report

- Ongoing 3 monthly key element in producing the annual National Risk Assessment
- Provision of ML/TF indicators and warnings
- Reporting on financial crime intelligence products
- Identification of emerging typologies, trends and risks
- Assist in focusing resources
- Contribute to the updating of policies and procedures



Early Conclusions

- Existing and future AML/CFT measures need to be properly applied to avoid poor legal decision
- Prioritisation for limited resources is required through agreed methods
- Asset Recovery Units will be in demand
- Greater focus on identity theft and fraud
- Focus on cash intensive industry



Early Conclusions

- Raising profile of ML in connection with organised crime
- Illicit drug trade continues to dominate ML environment
- Cash based activity attractive to organised crime
- Focus on Asian organised crime



Lessons learned

- Determine client needs and expectation from outset
- Need to educate client and partner agencies on risk
- Need to consider both static and dynamic risk
- Combination of good data and professional judgment best way to assess risk



Lessons learned

- Early/ongoing communication essential for law enforcement and Sectors
- Someone has to take the lead
- The first version will always be more time consuming than planned for
- Methodology should meet demands of environment
- Separation of the AML/CFT reporting



Its all about the money...



Questions?

Contact Darren Howells at the FIU at:

darren.howells@police.govt.nz

Tel: 0064 -4-474 8863





Money laundering linked to human trafficking and people smuggling

Background issues & Introduction to current work

APG Typologies Workshop

October 2010



Summary of presentation

- Background
 - APG
 - Definitions: ‘smuggling’ versus ‘trafficking’
 - AML standards
 - Regional threats and smuggling operations
- Current APG work
- Current FATF work
- Conclusion and next steps

Why APG is focusing on this



The vision / mission of the APG:

To reduce the economic and social impacts of serious crime in the Asia/Pacific region by full and effective implementation the international standards to combat money laundering and terrorist financing

Going after the money behind crime

Why APG is focusing on this



Human trafficking - a profit driven crime

The driver behind human trafficking is financial gain

AML tools allow all countries to tackle serious
crime at the profit-taking level

– Many implementation challenges

Definitions

- ‘People/migrant smuggling’ versus ‘trafficking in persons’
- FATF includes both as ‘designated categories of offences’ or predicate crimes for ML
- APG is looking at both types of crime and associated ML techniques and trends in its current work

Why is it important?

- Risks/harms to people being trafficked or smuggled
- Impact on countries of origin and destination
- Huge income generating potential for criminals / organised crime
- Strong AML systems and better understanding of ML trends and methods can help detect and deter trafficking in persons and people smuggling

Smuggling v Trafficking



- **Smuggling**

- Willing participants – “asylum seekers”
- Not coercive
- Offence against the state
- Violates integrity of borders
- Breaches criminal laws
- Circumvents immigration laws

- **Trafficking**

- Coercive
- Offense against the person
- Compelled labor or service
- Traffickers maintain ongoing control over victims, even after the border is crossed
- Common in prostitution
- Debt bondage

Anti-Money Laundering Standards



- **FATF Standards:**
 - Predicate offences to money laundering under FATF Recommendation 1 includes:
 - “trafficking in human beings and migrant smuggling”
 - Countries must ensure their criminal laws include a “range of offences” within this designated category
 - Dealing in illicit funds generated from smuggling and trafficking constitutes money laundering under FATF standards

Trafficking and Smuggling APG Region



- Trafficking and migrant smuggling a huge problem in Asia/Pacific region
- Region contains large number of source countries as well as destination countries
- Common source countries:
 - Afghanistan, Bangladesh, Indonesia, Myanmar, Philippines, Sri Lanka
- Common destination countries:
 - US, Canada, New Zealand, Australia, China, the Pacific



Regional Threats

- People smuggling/human trafficking:
 - **challenges national sovereignty** in controlling borders and potentially threaten national security. An open back door to people smugglers is an open back door to anyone;
 - **undermines integrity of international refugee protection** system, with the potential to erode public support for legal migration programs;
 - Often results in **human rights abuses and humanitarian concerns:**
 - smugglers and traffickers send people across dangerous waters in unsafe and overloaded boats
 - mislead women and children about their future employment and lives when they reach their destination

Smuggling Operations



- **The traffickers:**
 - have broad transnational reach
 - use networks of service providers to help in various stages of operations
 - influence on government officials
 - Bribery and corruption
 - access money at many locations
 - have ties with criminal organisations/enterprises

2005 Moneyval Report



‘Proceeds from Illegal trafficking in human beings and illegal migrant/human smuggling’

- Role of criminal organisations/enterprises
- Payments usually made in cash
- Payments often made outside of the country where the smuggling/trafficking crimes likely to be detected, ie the source country
- Amounts paid are often small – individual payments or structuring
- Underground banking and cash couriers widely used

2005 Moneyval Report



‘Proceeds from Illegal trafficking in human beings and illegal migrant/human smuggling’

- Use of money remittance and foreign exchange services
- Use of intermediaries ‘straw men’ to screen criminal organisers
- Use of victims to perform transactions
 - Especially with human trafficking
 - Role of ‘supervisor’ person overseeing smurfs
- Use of businesses
- Restaurants, travel agencies, landscaping businesses
- Investment in high value vehicles and real estate



APG Typologies Workshop 2009

- Human trafficking / people smuggling and ML discussed at 2009 APG Typologies Workshop
 - Legal frameworks and international cooperation issues arising from the Human Trafficking Protocol and the Smuggling Protocol
 - Why a country that is not necessarily a source or destination country would take steps to implement the UNTOC protocols
 - Need to include these offences as predicates to ML and importance of cutting off jurisdictions being used as ‘safe haven’ transit points for both trafficking/smuggling and associated ML



APG Typologies Workshop 2009

- Delegates discussed:
 - International cooperation (agency to agency and MLA)
 - Use of the UNTOC as formal basis for international cooperation
 - Need to strengthen informal mechanisms to cooperate at international level on financial aspects of human trafficking investigations
 - Significant information gaps
 - dynamics of finances associated with human trafficking
 - flows of funds
 - ML typologies
 - red flag/indicators for ML



APG Typologies Workshop 2010

- Australia is leading a **scoping exercise** for APG on ML and human trafficking / people smuggling
 - This included a questionnaire to all APG members, responses to which were due in August 2010. The questionnaire covers (for both smuggling and trafficking:
 - criminal offence provisions
 - proceeds of crime provisions
 - investigations, including international cooperation
 - statistics and reporting

Current APG work



APG Typologies Workshop 2010 and beyond

- The findings of the initial scoping exercise will be shared with APG members this week at the APG's 2010 Typologies Workshop in Bangladesh
- Discussions **preliminary findings, gaps** and **opportunities** for further work, including feeding into the FATF's current project (see next slide)
- A parallel seminar going on in Malaysia this week

Current FATF work



Money Laundering Risks Arising From the Trafficking of Human Beings (THB)

- FATF's Working Group on Typologies (WGTYP) commenced this project in June 2010
- Led by France and the Offshore Group of Banking Supervisors (OGBS)
- Scheduled to be completed in June 2011
- A questionnaire was circulated to all FATF delegations on 8 September 2010 with answers due on 10 October 2010
- Contributions will be compiled and draft a first version of the report will be prepared.
- Other documentation is being gathered for the study.

Current FATF work



Money Laundering Risks Arising From the Trafficking of Human Beings (THB)

- Main objectives of the project:
 - assess the scale of the problem
 - identify different trends in THB
 - identify case studies where ML is occurring and what form it is taking
 - raise awareness among law enforcement agencies on ML and THB
 - identify red flag indicators to assist financial institutions identify the specific characteristics of ML related to THB and in submitting STRs;
 - increase the possibility of proceeds of THB being identified and confiscated and thereby discouraging THB activity

Current FATF work



Timeline for FATF Project

- A first meeting of the project team (core group) took place in the margins of the FATF Plenary on 20 October 2010.
- A workshop will be held during the joint FATF/Egmont Group experts' meeting in Cape Town from 16 to 18 November 2010.
- A first draft of the report will be prepared in advance of the February 2011 WGTYP meeting.
- The final draft report will be prepared for discussion in the perspective of its adoption at the June 2011 Plenary meeting.

Current FATF work



FATF Questionnaire

1. Which law enforcement agencies, or other government or regulatory authorities are directly involved in detecting and investigating cases of THB/SOM (police, customs...)?
2. Do you have specialised law enforcement agencies or other government authorities investigating ML arising from THB/SOM?
3. What are the main sources of detecting ML arising from THB/SOM (STRs, investigations by law enforcement agencies on THB/SOM)? Please provide statistical data for each source since 2005.
4. What specific trends in THB/SOM and money laundering of THB/SOM has your jurisdiction detected? Which jurisdictions are mainly involved in the THB/SOM and its ML?
5. Has your jurisdiction conducted analysis or investigations into the financial aspects of THB/SOM? If so, please provide the total number of investigations and convictions for money laundering relating to THB/SOM since 2005.

Current FATF work



FATF Questionnaire (con't.)

6. If such analysis or investigations have occurred, please provide case examples with an estimate of the amount of money laundered and the main characteristics of the financial transaction associated in each case. For each case, do you consider it illustrative (common) or exceptional (uncommon) for laundering the proceeds of THB/SOM?
7. What were the obstacles to conduct such money laundering analysis/investigations/ convictions?
8. What indicators have you observed in relation to money laundering associated with THB/SOM? What guidance has been given to financial institutions to help in the identification of the money laundering of the proceeds of the THB/SOM? Are you aware of any other initiative undertaken by the private sector or any other institution in this area?
9. Do you have any other information/input on the subject you wish to be included in the typology report?

Related Regional Work



Regional Seminar: Money Laundering Linked to Trafficking of Persons

25 – 27 October 2010, Kuala Lumpur, Malaysia

- Organised by the French Government
- Focus on the issues we're discussing today
- Mostly SE Asian countries,
- Law enforcement, regulators, FIUs
- Also considering how to support APG to feed into the FATF global project

Conclusions and next steps



Human trafficking/people smuggling is a very important issue globally and regionally

- An effective AML system can help combat these serious crimes
- This session is an important forum to share experiences and outcomes can feed into FATF and APG projects in this area
- Strongly encourages all delegates to contribute FATF project.

APG Typologies Working Group
Typologies Project Plan
Money Laundering Associated with Large-Scale Transnational Frauds
July 2010

| Work Plan |
|--|
| <p>PROJECT CO-LEADERS: Hong Kong, China and Malaysia</p> |
| <p>PROJECT TEAM</p> <p>The following jurisdictions indicated an interest in the project during a meeting in the margins of the APG Annual Meeting in July 2010: Canada, China, Chinese Taipei, Japan, Samoa, Singapore, Thailand, United States</p> |
| <p>ISSUES</p> <p>APG mutual evaluations, APG typologies collections and typologies workshops continue to highlight threats from money laundering (ML) associated with large-scale transnational frauds, in particular telemarketing / boiler room / lottery frauds. Jurisdictions which have conducted investigations of these frauds and associated ML highlight the involvement of transnational organised crime groups and highly profitable criminal activity.</p> <p>Laundering of proceeds from Boiler Room / Heritage / Lottery Frauds is a lucrative, relatively low risk, global criminal activity. Their trans-national nature presents numerous multi-jurisdictional issues for preventative measures, enforcement, prosecution and asset recovery. The failure to rapidly exchange information and the lack of coordinated multi-jurisdictional action to combat and identify the syndicates involved enhances ML vulnerabilities. Increased national and international collaboration is required to combat these offences.</p> <p>Despite the scale of the problem, there remains a lack of recent regional or global ML typologies for these large-scale transnational frauds. While a significant amount of research has already been undertaken on the fraud itself, this has largely been conducted by jurisdictions where victims are resident or where operators of certain frauds, such as boiler rooms, are located. Many jurisdictions may not be fully aware of this research, the recommendations made and best practices identified. Given the continuing vulnerabilities from large-scale transnational frauds, there is a need for up-to-date ML typologies.</p> <p>Telemarketing and related frauds present a good example of how transnational organised crime activity has adapted and grown with globalisation. Telemarketing frauds and associated ML have proliferated, utilising an increasingly wide spectrum of modus operandi to present a fraudulent solicitation to a prospective victim. Global in nature, the perpetrators, victims and the bank accounts used to launder the proceeds of such fraud are normally located in different jurisdictions.</p> <p>A survey by the Crime Prevention Coalition of America found fraudulent telemarketing schemes cost US consumers an estimated \$40 billion each year, while in Hong Kong, 519 cases of Lottery and Boiler Room Fraud were reported in 2009 with losses of over US\$13 million. This figure includes cases where the victim actually resided in Hong Kong and also cases where the victim resided in other jurisdictions but</p> |

where the proceeds were laundered through a number of different jurisdictions, including Hong Kong. The experience of Hong Kong has therefore been that shared with many other jurisdictions, that of a conduit; numerous inward remittances from overseas victims, quickly followed by outward remittances overseas. The businesses and money flows seen in Hong Kong have been relatively unsophisticated, although this may not be the case for all jurisdictions.

A number of jurisdictions, including Hong Kong and Malaysia, have successfully prosecuted ML offences associated with cross border telemarketing fraud. It is apparent that criminals may take account of AML/CFT controls in various jurisdictions when designing ML schemes associated with these frauds.

Experience suggests that some financial institutions are successful in identifying accounts used for this type of crime, however, criminals are quick to react and adapt money flows in response to preventative measures. Jurisdictions' experience with this matter is worthy of further examination.

RESOURCES REQUIRED

Law enforcement experts, Police, Tax, Customs and FIUs with skills and experience with investigating ML/TF and predicate crimes involving large-scale transnational frauds

Financial sector experts, including FIUs, with skills and experience in the regulation and supervision of services utilised in large-scale transnational frauds, i.e. bank accounts

Policy experts involved in formulating policy to cover ML/TF

Legal Experts involved in the prosecution of ML/TF offences relating to telemarketing frauds

Existing reports from studies of large-scale transnational fraud and any risk assessments conducted

Case studies about money laundering related to large-scale transnational frauds

Copies of laws, regulation, guidelines, standards as relevant for AML/CFT impacting this crime type

PROJECT OBJECTIVES

- I. Scope the types of large-scale transnational frauds, by sharing knowledge held by law enforcement and other specialist agencies concerned with these type of fraud, thereby increasing understanding and raising global awareness
- II. Identify the techniques and methods of ML or TF associated with large-scale transnational frauds (offshore centres, TCSPs, etc)
- III. Share case studies of ML and TF associated with large-scale transnational fraud
- IV. Identify any trends or patterns within jurisdictions and across the region for money laundering related to large-scale transnational frauds
- V. Identify problems and possible solutions with regard to law enforcement investigations of ML associated with large-scale transnational fraud
- VI. Examine best practices in FIU, investigation, regulatory and supervisory approaches (including for offshore centres) to prevent and detect related ML activity
- VII. Consider mechanisms for international cooperation and identify opportunities to enhance and harmonise efforts to facilitate the recovery of stolen assets.
- VIII. Identify any emerging policy issues, including whether any issues arise which are not adequately covered by the international AML/CFT standards

- IX. Share key findings of the analysis with law enforcement and regulatory authorities to promote best practice and with the financial services sector promote effective risk mitigation and preventative measures
- X. Collect and share contact information for practitioners (enforcement/regulatory) working on cases of large-scale transnational fraud in order to assist with real-time international cooperation.

KEY QUESTIONS TO BE ANSWERED

- What are the key types of large-scale transnational frauds and which fraud types generate the most proceeds of crime?
- What techniques and methods of ML have been identified (from prosecutions or from intelligence) in relation to the proceeds of large-scale transnational frauds and what is their level of sophistication?
 - i. What structures and financial activities were vulnerable to associated ML?
 - ii. What case studies exist, demonstrating techniques and methods?
 - iii. What are the primary risk factors in the case studies?
- What patterns of association with the predicate offence were identified?
- What are the patterns of association with transnational organised crime groups?
- What existing guidance, information and alert mechanisms can be identified?
 - i. What factors might assist the private sector and regulators to detect ML associated with large scale transnational frauds?
- What factors might assist law enforcement to successfully investigate associated ML?
- What are countries' experience of domestic co-ordination and international co-operation in relation to these ML investigations?
- What are the obstacles to domestic and international co-operation between FIUs, LEAs and the private sector?
- What areas have been identified as requiring assistance and training?
- What emerging risks and vulnerabilities might occur in future, including regulatory developments and displacement, as a result of implementation of measures designed to combat this form of ML?

PROJECT COMMUNICATIONS

Secure website

A secure project section of the APG website will be utilised.

Username:

Password:

PRODUCTS

Typologies Workshop sessions on Money Laundering Associated with Large Scale Transnational Frauds and associated transnational organised crime

- Consideration of summary papers, presentations and expert practitioner discussion of case studies and regional issues related to the project during the 2010 APG Typologies Workshop.

A Project Report outlining:

- The scope of ML related to large scale transnational frauds crime, including key techniques, methods and representative case studies
- Consideration of summary papers, presentations and expert practitioner discussion during the October 2010 APG Typologies Workshop
- Sources of guidance and best practice for AML regulation and enforcement to counter this issue
- Specific indicators ('red flags') to assist the private sector and regulators detect ML associated with Large Scale Transnational Frauds
- An analysis of key findings and policy implications
- Areas for further typologies research by APG, FATF, other FSRBs, the private sector or academia

A collection of background reference materials available to APG members, including:

- National studies on Large Scale Transnational Frauds and associated money laundering
- Case studies
- Example awareness raising, regulatory or guidance materials
- Academic sector studies
- Press articles

Secretariat providing APG information to the project team, including :

- Previous Mutual Evaluation Reports and APG Typologies collection returns
- Related work conducted by the APG, FATF and other FSRBs

DEADLINES FOR COMPLETION OF PROJECT

- Prepare for the Typologies Workshop:
 - July 2010 – confirm project plan
 - July 2010 – request collection of case studies
 - September 2010 - collect & circulate case studies and other relevant research material
 - October 2010 - prepare and circulate pre-workshop reading materials
 - October 2010 – discuss key issues during typologies workshop
- December 2010 – share collected background reference materials with APG members
- February 2011 – produce a project report for the APG Typologies Working Group
- March 2011 – distribute draft project report to APG members for adoption at the 2011 APG Annual Meeting and subsequent publication.

KEY MILESTONES

- Identify and discuss preliminary issues – June & July 2010
- Confirm composition of the project team – by July 2010
- Identify data and information needed and formulate collection plan – by September 2010
- Collect and analyse information – preliminary collection by October 2010. Further collection

following typologies Workshop by November 2010

- Conduct Typologies Workshop (Bangladesh) – October 2010
- Share collected reference materials by December 2010
- Analyse materials and draft findings and conclusions – by late February 2011
- Typologies Working Group consider the draft report by March 2011
- Draft project report distributed to APG members by late March 2011

“Milestones table” – Project on Money Laundering Associated with Large Scale Transnational Frauds

| Minimum Actions | June 2010 | July '10 | August '10 | September '10 | October '10 | November 2010 | December 2010 | January 2011 | Feb '11 | March '11 |
|---|-----------|----------|------------|---------------|-------------|---------------|---------------|--------------|---------|-----------|
| Appoint team leaders & draft project plan | X | | | | | | | | | |
| Confirm team members | | X | X | | | | | | | |
| Identify preliminary issues | X | X | | | | | | | | |
| Identify data & information needed | | X | | | | | | | | |
| Collect & analyse info | | | X | X | | | | | | |
| Draft initial findings report | | | | X | | | | | | |
| Prepare workshop | | | X | X | X | | | | | |
| Hold typologies workshop | | | | | X | | | | | |
| Determine further project needs | | | | | X | X | | | | |
| Draft final report | | | | | | X | X | X | | |
| Collected materials to APG secure website | | | | X | X | X | X | X | | |
| Report to Typologies WG | | | | | | | | X | X | |
| Report to APG Plenary | | | | | | | | | | X |



APG Typologies Workshop 2010

APG Typologies Working Group Paper:

Draft Preliminary Scoping Study on People Smuggling, People Trafficking, Money Laundering and Criminal Asset Confiscation

Background

1. During the 2009 APG Typologies Workshop the APG Typologies Working Group decided to conduct further work to scope a number of regional issues on anti-money laundering (AML) and human trafficking / people smuggling.
2. The 2009 APG Typologies Workshop included a focus on money laundering and human trafficking and people smuggling.
3. Australia, through the Attorney General's Department led the work to draft a preliminary scoping study. As part of the scoping study a questionnaire was sent to all APG members, responses to which were due in August 2010.

Discussion of the Preliminary Scoping Study at the 2010 Typologies Workshop

4. The attached Preliminary Scoping Study represents the findings of the initial scoping exercise and will be shared with APG members at the APG's 2010 Typologies Workshop in Bangladesh.
5. Discussions will include preliminary findings, gaps and opportunities for further work.
6. This may include a possible project team in the APG Working Group to ensure that the Asia/Pacific experience of this issue is fed into the FATF project and that key findings from both the APG and FATF project are comprehensively shared with APG members.
7. At the same time, the FATF and OGBS are co-leading a project on human trafficking and AML through the FATF WGTYP.

APG Secretariat
19 October 2010



DRAFT

APG Typologies Working Group

**Preliminary Scoping Study on People Smuggling,
People Trafficking, Money Laundering and
Criminal Asset Confiscation**

Prepared for the APG Typologies WG by
the Australian Attorney-General's Department

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Executive summary

People smuggling and people trafficking are both profit-seeking crimes. Smugglers and traffickers obtain substantial earnings from their illicit activities by exploiting vulnerable persons. Rather than estimate financial flows or provide a list of example money laundering cases, this paper aims to explore the legal frameworks and the use of anti-money laundering (AML) and asset confiscation systems in countering people smuggling and people trafficking amongst Asia/Pacific Group on Money Laundering (APG) members.

In January and July 2010, a general questionnaire was sent to all APG members. Fourteen APG members responded (Responding Members) and those responses were analysed in relation to legal frameworks and the implementation of those frameworks.

The questionnaire that formed the basis of this scoping study was general in nature and the answers to the survey reflect this. The analysis and findings of this report are based solely on the responses received on the questionnaire and have not encompassed external reports or data other than for illustrative purposes. Care should be taken in relying on the statistics presented in the report given the small sample size and difficulties APG members experienced in obtaining accurate data.

This report does not seek to be a comprehensive study of all the issues and does not make prescriptive recommendations. The responses received provide an initial indication of how money laundering related to people smuggling and people trafficking is being dealt with by Responding Members, the difficulties in detecting, investigating and prosecuting money laundering and taking proceeds of crime action in relation to these crimes, and what steps might need to be taken to address those difficulties. It is hoped that the findings of this report can contribute to ongoing regional and international work on the topic, including the project being pursued by the FATF and the Offshore Group of Banking Supervisors (OGBS).

This study makes a number of findings in relation to the ways in which Responding Members target the financial aspects of people smuggling and people trafficking. The **findings** are as follows:

1. The transnational nature of people smuggling and people trafficking requires multi-jurisdictional responses to the crimes, including 'following the money' between jurisdictions.
2. Legal frameworks could be strengthened and harmonised, which would also allow more effective international cooperation.
3. Money laundering investigations into the proceeds of people smuggling and people trafficking offences, and subsequent prosecutions, are rare.
4. There are a wide range of impediments hindering the investigation of people smuggling and people trafficking, associated money laundering and the confiscation of proceeds of crime.

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5. The potential for international cooperation by way of mutual assistance is encouraging, however it can be a time consuming process.
6. Financial Intelligence Units could be utilised more in detecting the money flows for people trafficking and people smuggling offences.
7. Further research into the amount and typologies for how proceeds of people smuggling and people trafficking are laundered (either through formal or informal financial systems) is required.
8. There is a need for further research with respect to statistics on people smuggling and people trafficking, and the financial aspects of these crimes.

In light of these findings, this study makes the following **recommendations**:

1. APG members should continue to assess and improve their legal frameworks in accordance with the FATF Recommendations, ensuring that people smuggling and trafficking are comprehensively criminalised, and are predicate offences for money laundering. APG members should take steps to become party to, and implement fully, the *United Nations Convention on Transnational Organised Crime*, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, if they have not already.
2. APG members should increase awareness of the benefits of using AML systems to combat people smuggling and people trafficking.
3. In order to increase the regularity of proceeds of crime and money laundering investigations into all profit driven crime, Member Countries should develop a broader understanding of how robust proceeds of crime laws can act as a disincentive to criminal activity by targeting the proceeds, and high level organisers, of crime.
4. APG members are encouraged to:
 - 4.1. Support investigation agencies and Financial Intelligence Units to build knowledge and awareness of the typologies of laundering proceeds of people smuggling and people trafficking in order to support the analysis of relevant reports.
 - 4.2. Collate and share statistics on the incidence, investigation and prosecution of money laundering and proceeds of crime action for people smuggling and people trafficking.
 - 4.3. Engage with non-government organisations and other stakeholders on people smuggling and people trafficking to obtain greater information on the incidence of these crimes.
 - 4.4. Train police, border enforcement agencies and prosecutors involved in people smuggling and people trafficking cases to build their capacity to investigate

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and prosecute money laundering and take proceeds of crime action. This could include donor assisted training.

- 4.5. Enhance multi-jurisdictional intelligence sharing and investigations to ‘follow the money’ involved in money laundering associated with people smuggling and people trafficking.
- 4.6. Continue to develop and strengthen mutual assistance relationships and to engage in information exchange where legislative and mutual assistance arrangements permit.
- 4.7. Take steps to improve laws and procedures for timely mutual legal assistance in line with FATF Recommendations 36-40.
- 4.8. Strengthen and harmonise laws on AML and criminal asset confiscation, including considering adopting non-conviction based asset forfeiture laws to enhance their ability to target the proceeds of people smuggling and people trafficking.
5. The APG should contribute to the FATF’s work in this subject, including considering forming a working committee to:
 - 5.1. Share regional experience of money laundering and proceeds of crime action associated with people smuggling and people trafficking.
 - 5.2. Consider strategies to increase awareness of the role of asset restraint and forfeiture in fighting people smuggling and people trafficking.
 - 5.3. Conduct further research into known typologies associated with people smuggling and people trafficking, including further case studies and develop red flag indicators for Financial Intelligence Units, border enforcement and law enforcement agencies.
 - 5.4. Conduct further research into instigating money laundering and proceeds of crime investigations in parallel with people smuggling and people trafficking investigations.

These findings and recommendations are considered in further detail in the Study. **Appendix A** provides a more detailed analysis of the responses received to the questionnaire, to provide background and context to the main findings and recommendations of the Study.

Introduction

Key issues and definitions

People smuggling and people trafficking are complex transnational crimes. Almost every country is affected by people smuggling or people trafficking, either as a source, transit or destination country. These crimes exploit vulnerable people, have massive income generating potential and pose challenges to State sovereignty and the integrity of border control systems. They are a global challenge of the same proportions as the illegal trafficking of drugs and weapons. The architects and financiers of people smuggling and people trafficking are often well organised international criminal groups attracted by the lucrative profits that flow from the smuggling and trafficking of persons. Robust anti-money laundering (AML) and proceeds of crime frameworks can be used to disrupt people smugglers and people traffickers by detecting the financial aspects of these crimes and taking away any benefit gained from them.

The impact of people smuggling and people trafficking crimes penetrate throughout countries of origin, transit, and destination. For victims of trafficking and for smuggled persons, the dangers and consequences of the crimes can be significant and devastating. Given the widespread and serious effects of these crimes, it is important to try and understand how money is laundered in connection with these crimes and to reduce the financial incentive for persons to commit these crimes.

The Financial Action Task Force (FATF) 40+9 Recommendations require countries to designate people smuggling and people trafficking as predicate offences for money laundering, and require countries to take action to combat money laundering and follow the proceeds of crime.

What are people smuggling and people trafficking?

The terms “people smuggling” and “people trafficking” are often used interchangeably but they are in fact different. “People smuggling”, or “migrant smuggling”, is the organised, illegal movement of people across borders, usually on a payment for service basis. While often undertaken in dangerous or degrading conditions, people smuggling involves migrants who have consented to the smuggling.¹ People trafficking on the other hand is the physical movement of people through deceptive means, coercion or force. Importantly, people traffickers are motivated by the prospect of exploiting their victims once they reach the destination country.²

¹ Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Air or Sea (People Smuggling Protocol) defines people smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”

² Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (Trafficking Protocol) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

It is important to distinguish between people smuggling and people trafficking as the elements of each offence are different and the response required will vary depending on the offence. The four key differences between people smuggling and people trafficking - exploitation, consent, transnational and source of profits - are discussed below.

Exploitation

The key difference between people trafficking and people smuggling is exploitation. The activity of people trafficking involves an intention to exploit the victim. However, as a smuggled migrant generally has consented to and paid for the service provided, exploitation is generally not a feature of the offence of people smuggling, except in aggravated circumstances. Until the exploitation has occurred it may be difficult to distinguish between a people smuggling and people trafficking case. This is because some trafficked persons may start their journey by agreeing to be smuggled but then find themselves in a situation where they are vulnerable to exploitation.

Consent

In almost all cases of people smuggling, the individual being smuggled has consented to the unlawful crossing of a border. The person being smuggled pays the smuggler for the service of being taken across the border.

People trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers. Consent of a victim will also be irrelevant in a trafficking scenario where the person being trafficked is a child.³

Transnational

People smuggling and people trafficking both involve the movement of people. However, people smuggling is always transnational: the objective of people smuggling is always to facilitate the unlawful entry or stay of a person from Jurisdiction A into Jurisdiction B.⁴ People trafficking is not always transnational, and can occur regardless of whether victims are taken to another jurisdiction or moved within a jurisdiction's borders.⁵

Source of Profits

For people smugglers, profit is primarily derived from fees paid by the migrant for the service people smugglers provide – including transportation or facilitation of the unlawful entry or stay of a person in another country. The primary source of profit for a people trafficker is the exploitation of the trafficked person.

³ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2237 UNTS 319, (entered into force 25 December 2003), articles 3(a) and 3(b) ('Trafficking Protocol').

⁴ United Nations Office on Drugs and Crime, 'Issue Paper: A short introduction to migrant smuggling' (2010) <www.unodc.org/documents/human-trafficking/publications> accessed 18 August 2010.

⁵ Please note the scope of this Study is in respect of trafficking across jurisdictional borders only.

How are the proceeds of people smuggling and people trafficking laundered?

This study has not gone into the various typologies of laundering proceeds of people smuggling and people trafficking, however it is clear that the transnational nature of people smuggling and people trafficking enterprises often means that the money flows from these crimes are also transnational. The involvement of international criminal organisations in these highly lucrative crimes also suggests that proceeds from these crimes are likely to pass through a complex financial web.

Links with Anti-Money Laundering and Asset Recovery

Strong AML systems assist in detecting criminal activity through the reporting of suspicious transactions in the financial system and by providing strong tools to law enforcement and prosecution agencies to detect, seize and confiscate proceeds of crime. Robust AML frameworks that include effective asset restraint and confiscation provisions can also enable countries to restrain and confiscate the proceeds of people smuggling and people trafficking, prevent reinvestment of these proceeds in criminal activity and reduce the financial incentive for individuals to engage in these crimes in the future.

While there is little reliable data about the amount of profits derived from people smuggling and people trafficking, there is general consensus that people smuggling and/or people trafficking affects almost every country in the world. With estimates of some 15.2 million refugees in 2009⁶ and 1.2 million children trafficked every year⁷, criminal organisations are profiting substantially from the vulnerability of others.

The transnational nature of people smuggling and people trafficking enterprises often means that the money flows from these crimes are also transnational. Unravelling such webs requires monitoring of financial transactions, strong investigatory capacity, international cooperation, vigorous prosecution and pursuit of the proceeds of crime. These elements are integral to effectively deterring criminals from engaging in people smuggling and people trafficking through targeting a primary motivation for committing these offences – the money.

Background and report methodology

Recognising the impact of people smuggling and people trafficking throughout the world, particularly in the Asia/Pacific, this study was proposed and unanimously endorsed by APG members at the 2009 APG Typologies Meeting.

In January 2010, the APG sent a questionnaire to all APG member and observers (**Appendix B**). Eleven APG members responded. A further three responses were received after an additional request at the APG Annual Meeting in July 2010. This Study has only been possible due to the participation of the Responding Members. The time and resources allocated by the Responding Members in completing the

⁶ United Nations High Commissioner for Refugees, 2009 Global Trends: Refugees, Asylum-seekers, returnees, internally displaced and stateless persons.

⁷ UNICEF, <http://www.unicef.org/protection/index_exploitation.html>

questionnaire to contribute to knowledge of current legal frameworks, practices and challenges in this area is most appreciated.

The questionnaire that formed the basis of this Study was general in nature and the answers reflect this. This report does not seek to provide a comprehensive study of all the issues and does not make prescriptive recommendations. The responses received provide an initial indication of how people smuggling and people trafficking is being dealt with in Responding Countries, the difficulties in detecting, investigating, prosecuting and taking proceeds of crime action in relation to these crimes, and what steps might need to be taken to address those difficulties.

Aim and objectives of the Study

The **aim** of this preliminary study is to explore the legal frameworks and the use of AML and asset confiscation systems in countering people smuggling and people trafficking throughout APG members. The questionnaire sought information in order to provide guidance to APG members on the approaches to and success in combating these crimes and “following the money” in the region.

The **objectives** of the study were to:

- obtain information about how APG members deal with these crimes and whether proceeds of crime actions are readily pursued in respect of persons charged with people smuggling or people trafficking
- identify the obstacles APG members have experienced or anticipate in using AML, asset restraint and confiscation laws to target the proceeds of people smuggling and people trafficking crimes
- seek information regarding the success of prosecutions for these crimes and the difficulties faced and anticipated by APG members in investigating and prosecuting people smuggling and people trafficking cases
- obtain information about how the proceeds from these crimes enter financial systems
- identify information gaps, and
- propose steps to enhance the use of AML and proceeds of crime measures to combat people smuggling and people trafficking.

The main findings and recommendations arising from the study are below, with more detailed analysis of the questionnaire responses contained in **Appendix A**. A copy of the original questionnaire is included at **Appendix B** for reference.

Main findings and recommendations

The main findings arising from the Study relate to legal frameworks, investigations and prosecutions, proceeds of crime and statistics. These points are discussed in turn below.

Case Studies of Money Laundering Typologies

This preliminary study did not collect case study data on the methods and trends of laundering proceeds of people smuggling and people trafficking.

There is a need for the APG to take further steps to collect example case studies of the methods and trends of laundering proceeds of people smuggling and people trafficking.

Limited numbers of cases may have been shared during previous typologies exercises and should be included in APG typologies publications.

Legal frameworks

Legal frameworks could be strengthened and harmonised, which would also allow more effective international cooperation

The preliminary study identified a number of legal constraints which affect the ability of APG members to target the money in investigating people smuggling and people trafficking offences. Many of these issues have broader ramifications for international cooperation. The key areas identified are as follows:

1. **People smuggling is not criminalised in all Responding Countries.** This means that people smuggling is not a predicate offence for money laundering in all Responding Members (contrary to FATF Recommendation 1).⁸ It also means that some APG members are unable to take action to confiscate the proceeds of this activity.

This can also have consequential effects on international cooperation where dual criminality is required, as follows:

- 1.1 **Proceeds of crime:** Foreign asset restraint or confiscation orders relating to people smuggling offences (or money laundering where the predicate offence is people smuggling) may not be able to be registered, or given effect to, in those countries (contrary to FATF Recommendation 38).

⁸ Even where some aspects of people smuggling can be prosecuted under immigration laws, often these do not meet relevant threshold requirements for an offence to qualify as a predicate offence for money laundering. Further, immigration offences were not found to have been categorised as predicate offences where countries followed a list based approach for predicate offending.

- 1.2 **Information sharing:** Mutual assistance may be limited in the absence of dual criminality (contrary to FATF Recommendation 37).
 - 1.3 **Extradition:** In the absence of dual criminality, the extradition of a person sought in relation to people smuggling (or money laundering where the predicate offence is people smuggling) may be prevented (contrary to FATF Recommendation 37).
2. **People trafficking is criminalised in all of the Responding Members, however it is not always a predicate offence for money laundering** (contrary to FATF Recommendation 1). This can inhibit international cooperation in respect of money laundering offences related to people trafficking, in similar ways as outlined above.
 3. **Not all APG members have extraterritorial jurisdiction for people smuggling and people trafficking offences in accordance with Article 15 of the *United Nations Convention on Transnational Organised Crime*.** This means that if these offences are committed outside the jurisdiction they could not necessarily be prosecuted.
 4. **There are widespread differences in proceeds of crime laws in Responding Members with respect to people smuggling and people trafficking.** Even within Responding Members there are differences in the types of criminal asset confiscation mechanisms that can be used for people smuggling and people trafficking. Amongst the Responding Members there are differences in the times and circumstances when asset restraint and confiscation can take place, and in most cases confiscation can only occur after conviction. These differences can adversely affect cooperation between countries in proceeds of crime matters. For example, countries that require a conviction prior to restraint and / or confiscation are not able to recognise non-conviction based restraint and confiscation orders obtained in other countries.
 5. **Not all APG members have implemented the United Nations Convention on Transnational Organised Crime Protocols on People Smuggling and People Trafficking.** These Protocols are important in providing international benchmarks and a universal definition of people smuggling and people trafficking. The conventions and protocols can also provide a framework for international legal cooperation in investigating and prosecuting relevant offences. Increased ratification and implementation of these Protocols would go some way to increasing international cooperation and compliance with the FATF Recommendations.

Recommendation 1: APG members should continue to assess and improve their legal frameworks in accordance with the FATF Recommendations, ensuring that people smuggling and trafficking are comprehensively criminalised, and are predicate offences for money laundering. APG members should take steps to become party to, and implement fully, the *United Nations Convention on Transnational Organised Crime*, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, if they have not already.

Recommendation 4.8: APG members are encouraged to strengthen and harmonise laws on AML and criminal asset confiscation, including considering adopting non-conviction based asset forfeiture laws to enhance their ability to target the proceeds of people smuggling and people trafficking

Investigations and prosecutions

Investigations into the proceeds of people smuggling and people trafficking offences, and subsequent prosecutions, are rare

According to the responses received, investigations into the proceeds of crime generated by people smugglers and people traffickers have not been conducted in 71% (10/14) of Responding Members. This is surprising in light of the income generating potential of these crimes for international criminal organisations and the role proceeds of crime investigations can play as a disincentive for investment and reinvestment in criminal activity. Indeed, one Responding Country with a dual civil and conviction based confiscation system commented on the difficulty of prosecuting people trafficking offences and suggested that proceeds of crime action, even in the absence of a criminal brief, may impact criminal operations and act as a deterrent.

The suggestion that countries rarely look into the financial aspects of people smuggling and people trafficking matters was confirmed by other information provided by Responding Members. For example, only 29% (4/14) of Responding Members reported that restraint or forfeiture applications had been made in respect of people smuggling and people trafficking. In addition, while some Responding Members reported having the capacity to give effect to foreign proceeds of crime orders, few of the Responding Members had actually received requests to register foreign proceeds of crime orders. This indicates that the region is not effectively pursuing proceeds of crime investigations in all people smuggling and people trafficking cases.

The available prosecution figures in respect to people smuggling and people trafficking also indicate that few proceeds of crime investigations occur and result in restraint or forfeiture orders. The table below compares the prosecution figures in respect of people smuggling and people trafficking, with the number of proceeds of crime orders made. The number of restraint and forfeiture orders is vastly under proportion to the number of prosecutions.

| Number of people smuggling prosecutions reported | Number of people trafficking prosecutions reported | Number of restraint or forfeiture orders reported in people smuggling or people trafficking cases |
|---|---|--|
| ~ 1061 | ~ 5637 | ~ 14 |

These figures are approximations only, due to the different ways in which Responding Members reported their statistics. Further research into precise figures in a common time period would provide a more useful foundation for analysis, as would maintenance of statistics in all countries. This is discussed further below.

There are a wide range of impediments hindering the investigation of people smuggling and people trafficking, and the confiscation of proceeds of crime

Responding Members reported wide-ranging legal and other impediments hindering restraint and forfeiture applications in people smuggling and people trafficking matters. Responding Members expressed concerns about a lack of human resources, lack of law enforcement concern and awareness, lack of training, lack of financial resources, lack of cooperation from reporting institutions and difficulties tracing proceeds of crime through complex international financial transactions. These concerns are noted in more detail in **Appendix A**.

Recommendation 2: APG members should increase awareness of the benefits of using AML systems to combat people smuggling and people trafficking.

Recommendation 3: In order to increase the regularity of proceeds of crime and money laundering investigations into all profit driven crime, APG members should develop a broader understanding of how robust proceeds of crime laws can act as a disincentive to criminal activity by targeting the proceeds, and high level organisers, of crime.

Recommendation 4.4: APG members are encouraged to train police, border enforcement agencies and prosecutors involved in people smuggling and people trafficking cases to build their capacity to investigate and prosecute money laundering and take proceeds of crime action. This could include donor assisted training.

The potential for international cooperation by way of mutual assistance is encouraging however it can be a time consuming process

The potential for general international cooperation is encouraging; many countries have established mutual assistance relationships and laws. In respect of both people trafficking and people smuggling, however, numerous Responding Members noted that whilst often necessary, mutual legal assistance was time consuming which often hampered timely investigation and evidence collection. It was unclear however if police to police enquiries in these cases had first been made and whether the mutual assistance request was following up after those informal police to police inquiries.

It was noted by one Responding Member that establishing mutual legal assistance relationships was difficult in itself, whilst another noted that incompatibility of legal systems limited full cooperation. Another country also noted that international cooperation still focussed on the predicate crime rather than the related money laundering or proceeds of crime investigation. Further discussion of international cooperation is also contained part 4.2 of **Appendix A**.

Recommendation 4.6: APG members are encouraged to continue to develop and strengthen mutual assistance relationships and to engage in information exchange where legislative and mutual assistance arrangements permit.

Recommendation 4.7: APG members are encouraged to take steps to improve laws and procedures for timely mutual legal assistance in line with FATF Recommendations 36-40.

FIUs could be utilised more in detecting money flows for people trafficking and people smuggling offences

Responding Members also indicated that there is a lack of information known about whether suspicious transaction reports (STRs) relate to or identify people smuggling or people trafficking. This is discussed in further detail below.

Recommendation 4.1: APG members are encouraged to support Financial Intelligence Units to build knowledge and awareness of the typologies of laundering proceeds of people smuggling and people trafficking in order to support the analysis of relevant reports.

Proceeds of crime connected with people smuggling or people trafficking

Further research into the amount and ways proceeds of people smuggling and people trafficking activities enter financial systems is required

The above findings on proceeds of crime connected with people smuggling and people trafficking indicate that the Responding Members lack detailed information about associated typologies of money laundering, including how proceeds from these crimes enter financial systems and the amount of proceeds generated. This includes a limited number of suspicious transaction reports. Further, from the responses received, it appeared that few Responding Members had information about the amount of proceeds being generated by people smuggling and people trafficking and whether the proceeds that were generated remained in domestic system or were transferred to another jurisdiction. Very few suspicious transaction reports (STRs) related to these crimes have been received and there did not appear to be any strategies in place to address this.

This lack of information may, perhaps, be a result of few proceeds of crime investigations into people smuggling and people trafficking cases. Likewise, it may indicate the complexity of the systems used by people smugglers and people traffickers, or that cash deposits, transfers and informal remittance systems are being widely used to disguise the source of the proceeds.

By encouraging a higher rate of money laundering and proceeds of crime investigations into people smuggling and people trafficking cases, there are a number of positive flow on effects. These include:

- obtaining greater knowledge about the typologies associated with these crimes in and across countries
- more information about the value of the proceeds generated by these crimes would be available generally

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- the typical flow of the proceeds – e.g. whether proceeds from trafficked persons largely remain in the country where the trafficked person works, and
- greater international cooperation on money laundering and proceeds of crime cases in addition to the predicate offence.

The corporate knowledge for law enforcement agencies working in this area would also increase as they become more experienced in proceeds investigations within these crime types. Understanding the main typologies used to launder money in these types of cases could also increase the number of STRs that could be reported in relation to these crimes in the future. We note here that one Responding Country is currently analysing an STR filed in respect of people trafficking to determine whether it can identify links between people trafficking and money laundering.

Recommendations 2, 3, 4.1 and 4.4 address these issues.

Statistics, sources of information and principal offenders

There is a need for further research with respect to statistics on people smuggling and people trafficking, and the financial aspects of these crimes

Minimal statistics were reported on the incidence of people smuggling and people trafficking within Responding Members. The statistics that were provided in response to this question largely reflected the prosecution statistics that were provided.

Communication with non-government organisations on the issues of people smuggling and people trafficking could assist in this regard. Non-government organisations working with irregular immigrants and victims of trafficking are likely to be able to provide further insights to the size of the problem in a given country and a range of other information. Greater ongoing communication between government and non-government organisations may therefore contribute to an increased awareness by government on the incidence of these crimes.

Information regarding the nationality of principal suspects of people smuggling and people trafficking offences was also scarce in many countries, even where prosecutions had taken place. This may indicate a lack of statistical information routinely collated. Further collection of statistics would be useful in analysing these matters in the future.

Recommendation 4.2: APG members are encouraged to collate statistics on the incidence, investigation and prosecution of money laundering and proceeds of crime action taken on people smuggling and people trafficking.

Recommendation 4.3: APG members are encouraged to engage with non-government organisations on people smuggling and people trafficking to obtain greater information on the incidence of these crimes.

Conclusion

In light of the significant information gaps on the nature and financial aspects of people smuggling and people trafficking, as well as the low number of money laundering prosecutions and asset confiscations proceedings, further work is required on this topic. This is particularly the case given the limited number of Responding Members participating in this Study (only 14 out of 40 APG Members). There are a number of areas which could benefit from further consideration at a regional level.

Recommendation 5: The APG should contribute to the FATF’s work in this subject, including considering forming a working committee to:

5.1 Share regional experience of money laundering and proceeds of crime action associated with people smuggling and people trafficking

5.2 Consider strategies to increase awareness of the role of AML, asset restraint and forfeiture in fighting people smuggling and people trafficking.

5.3 Conduct further research into known typologies associated with people smuggling and people trafficking, including further case studies and develop red flag indicators for Financial Intelligence Units, border enforcement and law enforcement agencies.

5.4 Conduct further research into instigating money laundering and proceeds of crime investigations in parallel with people smuggling and people trafficking investigations.

Such work should be informed by, and feed into, the FATF Working Group on Typologies on “Money Laundering Risks arising from the Trafficking of Human Beings”.

Appendix A – Detailed analysis of questionnaire responses

Appendix A provides a more detailed analysis of the responses received to the questionnaire, to provide background and context to the main findings and recommendations of the Study. In some cases, countries responded only in relation to people trafficking, and unless otherwise known, the figures below were calculated on the basis that the country did not have specific people smuggling offences, but did have immigration laws under which some people smuggling conduct could be prosecuted.

Legal frameworks

1.1 The legal frameworks for people trafficking and people smuggling vary significantly (Questions 1, 2 and 4)

Both within a country and between countries, the legal frameworks dealing with the crimes of people smuggling and people trafficking vary significantly. On the whole, the Responding Members appear to have more comprehensive legislation dealing with people trafficking than people smuggling.

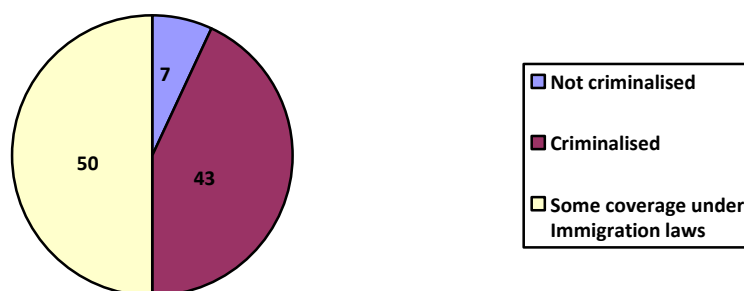
People smuggling

43% (6/14) of the Responding Members have criminalised people smuggling. The maximum sentences of imprisonment for people smuggling offences range from 10 to 20 years. It was also possible to impose large fines in addition to, or as an alternative to, imprisonment. The people smuggling offences in the majority of these Responding Members have extraterritorial jurisdiction (only one of the six Responding Members reported people smuggling offences as not having extraterritorial jurisdiction).

One of the 14 Responding Members indicated that there was no legislation that criminalised people smuggling. Since the questionnaire was completed, this Responding Country has passed people smuggling laws which will soon enter into force.

Of the remaining seven Responding Members, people smuggling conduct could be prosecuted under immigration laws. In these countries, the maximum penalties reported for offences such as irregular entry and false travel documentation range between three and five years imprisonment. It is also possible to impose fines in addition to, or as an alternative to, imprisonment. Two of these countries reported the relevant legislation as having extraterritorial application.

Figure 1: Criminalisation of people smuggling



People trafficking

All Responding Members have legislative provisions dealing with people trafficking. The range of offences included in people trafficking legislation are generally extensive. Some legislation explicitly included trafficking for the purpose of organ and / or body parts, and the recruitment of children to engage in armed activities. However some of the legislation simply dealt with trafficking for the purpose of prostitution or any form of forced servitude or labour. Withholding or destroying travel documentation of trafficked persons was also criminalised in some countries. The breadth of offences often evident in people trafficking cases was illustrated by a case study reported to us in which charges were proven in respect of people trafficking, dealing in proceeds of crime, and aiding, abetting, counselling or procuring the presentation of false documents.

The maximum penalties for people trafficking generally range from five to 25 years imprisonment with the potential to impose large fines in addition to, or as an alternative to imprisonment. The penalties for trafficking in children were generally harsher than for trafficking in adults.

The legislation criminalising people trafficking varied in its extraterritorial application. In more than half the Responding Members, people trafficking offences have extraterritorial jurisdiction (8/14). However the offences in the remaining Responding Members either did not apply extraterritorially and/ or applied extraterritorially to some, but not all, offences.

1.2 People smuggling and people trafficking are not always predicate offences for money laundering (Question 3)

The FATF Recommendations list people smuggling (‘migrant smuggling’) and people trafficking as designated categories of offences which should constitute predicate offences for money laundering. All Responding Members have legislation creating money laundering offences, however not all Responding Members have designated people smuggling and people trafficking as predicate offences.

People smuggling

In 57% (8/14) of Responding Members, people smuggling is a predicate offence for money laundering.

As noted above, one Responding Member reported that it had not criminalised people smuggling. This necessarily means that people smuggling is not a predicate crime for money laundering in that country. (Note, this country has since criminalised people smuggling, and the law will shortly enter into force.) A further 72% (5/7) of the Responding Members with some type of legislation that could be used to prosecute people smuggling indicated that people smuggling is not a predicate offence for money laundering.

People trafficking

According to the information received, in 93% (13/14) of Responding Members people trafficking offences are predicate offences for money laundering. In one country however, only certain people trafficking offences are predicate offences for money laundering. In the country that did not currently include people trafficking as a predicate offence for money laundering, legislative amendments are underway to change that position.

1.3 Proceeds of crime provisions differ, are generally located in multiple pieces of legislation, and charges must usually be imminent (Questions 7-9)

According to FATF Recommendation 3, countries should adopt legislative measures similar to those set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention on Transnational Organised Crime. Under these Conventions, legislative measures, including those to enable confiscation of property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of offences, or of property of corresponding value, should be adopted.

The brief review of proceeds of crime provisions as they relate to people smuggling revealed that 71% (10/14) of Responding Members reported that there were some restraint and / or confiscation provisions which could be used. This was largely in general criminal laws, where proceeds could be forfeited upon conviction. No Responding Members reported having asset restraint and forfeiture provisions in laws criminalising people smuggling. Some countries have non-conviction based provisions.

In respect of people trafficking, all Responding Members have at least some restraint and / or confiscation provisions for proceeds of crime. The provisions for restraint and / or confiscation of proceeds of crime and instrumentalities are largely located either in a criminal code and / or the people trafficking legislation. A general proceeds of crime law is only evident in 21% (3/14) of Responding Members.

Where a defendant was not facing a charge imminently, the responses received indicated that assets could only be restrained in 21% (3/14) of Responding Members

and in 14% (2/14), no restraint action was possible prior to charge. With respect to confiscation, 71% (10/14) of Responding Members required the person to be convicted before proceeds of crime could be confiscated. Of the four countries that do not require conviction before confiscation can be ordered, three have dual conviction and civil-based confiscation systems. One of these countries uses a criminal standard of proof (beyond a reasonable doubt) in seeking civil forfeiture of proceeds and thus stated that those provisions are not used very often and that conviction based forfeiture is usually used. The legislation in a fourth country gave the court broad powers to confiscate assets seized during search, regardless of conviction.

Investigations and Prosecutions

2.1 Difficulties are being experienced or are anticipated in the investigation of people smuggling, people trafficking and in bringing proceeds of crime cases before the courts in respect of people smuggling and people trafficking (Questions 15-16)

People smuggling

In respect of the difficulties that are being experienced or are anticipated in the investigation of people smuggling offences, Responding Members indicated difficulties in the following areas:

- lack of law enforcement to investigate
- lack of legislation criminalising people smuggling
- lack of financial capacity to investigate
- lack of procedures and experience in investigation of people smuggling offences
- cross border nature of the crime means investigation and location of the organisers of people smuggling can be difficult
- language difficulties
- lack of law enforcement concern in relation to people smugglers
- location of people smugglers in foreign countries
- lack of legal infrastructure in other countries to cooperate fully
- compiling reliable intelligence and evidence
- limited use of foreign evidence, and
- lack of public awareness.

From the above list, capacity, resources, international cooperation, legislation and a lack of concern and awareness appear to be key impediments for these countries in investigating people smuggling cases.

People trafficking

55% (6/11) of Responding Members that reported conducting prosecutions of people trafficking offences noted difficulties obtaining the cooperation of victims and witnesses. This was variously stated to be a result of fear of retaliation by the traffickers or returning home, shame, and a distrust of the criminal justice system.

Other difficulties reported by Responding Members included:

- gathering evidence
- victim's security concerns
- lack of law enforcement to investigate
- lack of financial capacity to investigate
- porous borders
- lack of procedures and experience in investigation of
- people trafficking offences
- language difficulties
- cultural misunderstandings
- funding witnesses during the court process
- compiling reliable intelligence and evidence, and
- limited use of foreign evidence.

It appears from this list and the one above in respect of people smuggling that many of the reported difficulties are similar. However, a lack of law enforcement concern was not reported with regard people trafficking offences.

Proceeds of crime

The difficulties reported as anticipated or experienced in bringing proceeds of crime action before the courts where people smuggling or people trafficking are the predicate offences reflected the often complex nature of proceeds of crime investigations and cases. Included in the difficulties reported by Responding Members were the following:

- lack of training for investigators particularly with respect to evidence and the elements required to be proven by prosecutors
- difficulties in identifying and tracking proceeds due to the use of straw accounts and cross border remittance systems
- use of cash payments as opposed to more traceable means
- difficulty tracing proceeds across multiple countries involving complex structures
- investigatory culture focus on predicate offences rather than proceeds of offences
- incompatible legislation
- lengthy process of obtaining evidence and difficulties in compiling evidence
- lack of time and resources both in respect of investigators and prosecutors
- convincing decision makers
- funding investigations
- lack of effective legal measures for asset forfeiture

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- timely mutual legal assistances
- laws not tested, and
- lack of law enforcement to investigate.

Although the above list is not exhaustive, it is indicative of the wide range of difficulties anticipated or encountered by Responding Members in investigating and bringing proceeds of crime cases before the courts. It is noteworthy that only 14% (2/14) of Responding Members made distinctions between difficulties with proceeds of crime action in people smuggling cases and proceeds of crime action in people trafficking cases. Even within that 14%, only minor differences were experienced or anticipated. The list of difficulties may therefore be representative of the difficulties Responding Members experience or anticipate in taking action to restrain and confiscate the proceeds of crime, particularly cases in which complex systems are employed by criminals to disguise the source of the proceeds or those which cross borders.

2.2 There have been few proceeds of crime investigations reported as being conducted into cases involving people smuggling or people trafficking. This has resulted in few domestic restraint and forfeiture applications and orders and minimal international registration of orders (Questions 10-12)

Proceeds of crime investigations

Only 29% (4/14) of the Responding Members indicated that proceeds of crime investigations have been conducted into cases of people smuggling and / or people trafficking. Of those four countries, one noted that no statistics regarding the number of investigations are kept and one did not provide any further detail. The remaining two countries noted that only two proceeds of crime investigations related to people smuggling and less than 10 related to people trafficking have been undertaken. It is interesting to note that no Responding Country indicated a policy to always look behind these profit-driven crimes and to “follow the money” generated by people smuggling and people trafficking.

The limited number of Responding Members conducting proceeds of crime investigations in relation to these crimes may be due to a number of reasons. Many countries will not conduct separate proceeds of crime investigations as they only have conviction based confiscation provisions. That is, in some countries it may be that investigations are not focussing on proceeds of crime beyond the proceeds that may be seized upon the commission of an offence.

Applications for restraint and / or forfeiture orders

Bearing in mind the above comments, it is interesting to note that 29% (4/14) of Responding Members indicated that restraint and / or forfeiture applications have been made in respect of people smuggling and / or people trafficking offences. One country stated that statistics are unknown. However, within the detailed statistics provided, 62% (8/13) of those restraint and / or confiscation applications have been made in respect of people trafficking. One country also noted that a pecuniary penalty order has been made in respect of people trafficking offences.

The ability to register foreign proceeds of crime orders with respect to people smuggling or related money laundering activity

The numbers of restraint and confiscation orders is low with respect to people smuggling and people trafficking offences, as is the potential level of international registerability of these orders. Of the countries with laws under which some or all people smuggling conduct can be prosecuted, 38% (5/13) of countries expressly indicated they are able to register and act on requests to register foreign proceeds of crime orders in respect of people smuggling or related money laundering activity.⁹ One country further noted that the only requirement for registration of such orders in that country is that the foreign offence be punishable by more than 12 months imprisonment. Only one country reported having received a request to register a foreign proceeds of crime order related to people smuggling.

The ability to register foreign proceeds of crime orders with respect people trafficking or related money laundering activity

Less than half (6/14) of Responding Members are able to register and act on requests to register foreign proceeds of crime orders in relation to people trafficking and related money laundering.¹⁰ Only one country provided information that it had received such requests.

2.3 The potential for international cooperation by way of mutual assistance appears encouraging however countries noted that it is a time consuming process (Question 14)

The potential for general international cooperation is encouraging. In respect of both people trafficking and people smuggling, however, numerous Responding Members noted that whilst often necessary, mutual legal assistance is time consuming which often hampered timely investigation and evidence collection. It was unclear, however, if police to police enquiries in these cases had first been made and the mutual assistance request was following up after those informal police to police inquiries.

It was noted by one Responding Country, that establishing mutual legal assistance relationships is difficult in itself whilst another noted that incompatibility of legal systems prohibited full cooperation. Another country also noted that international cooperation still focuses on the predicate crime, rather than any related money laundering or proceeds of crime investigation.

⁹ It should be noted that 54% of Responding Countries with some laws under which people smuggling could be prosecuted did not answer this question.

¹⁰ It should also be noted that 50% (7/14) of Responding Countries did not respond to this question

2.4 The data provided with respect to prosecutions undertaken for people smuggling and people trafficking offences was difficult to interpret (Questions 5-6)

The responses to questions regarding the number of prosecutions undertaken for people smuggling and people trafficking offences provided data over different time periods. This made interpretation of the data difficult. Further, the more recent figures provided indicate that court findings are still pending in some cases.

People smuggling

Only 29% (4/14) of Responding Members reported prosecuting people smuggling offences. **Table A** in **Appendix C** reflects the data received as it relates to people smuggling prosecutions. It is apparent from Table A that the great majority of people smuggling cases proceed to prosecution when referred to prosecution agencies. Although little detail was provided regarding the outcomes of those cases, the detail that was provided nevertheless tends to suggest that the prosecutions were largely successful. No information was offered which shed any light about the penalties for those convicted, however. The meaning that can be derived from these results is limited by the small number of countries with people smuggling legislation and also by the absence of detailed information about prosecution of people smuggling offences.

People trafficking

Some 79% (11/14) of Responding Members have prosecuted people trafficking offences. **Table B** in **Appendix C** provides the data received as it relates to people trafficking prosecutions. Similarly to people smuggling prosecutions, the figures suggest that prosecutions are conducted in the large majority of people trafficking cases where they are referred to prosecution agencies. Once again, there was a lack of detail regarding the outcomes of the cases prosecuted and any penalties imposed.

Proceeds of crime connected with people smuggling or people trafficking

3.1 How proceeds from people smuggling or people trafficking is entering the financial systems of reporting countries is somewhat uncertain (Question 17)

Of the Responding Members, 50% (7/14) have no information on how proceeds of crime generated by people trafficking and people smuggling enter their financial systems. Although there was some uncertainty indicated within the responses of the remaining 50% (7/14) of Responding Members, the following methods of proceeds from people smuggling and people trafficking entering financial systems were reported:

- cash transfers or deposits
- electronic funds transfer
- use of formal and informal banking systems and remittance systems

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- hawala / hundi
- co-mingling of funds with legitimate business proceeds
- smuggling of cash
- use of straw accounts
- use of company accounts including shell and offshore companies, and
- payments on credit cards from foreign countries

There were no differences reported on the methods used in respect of people smuggling and people trafficking by 14% (2/14) of Responding Members. 36% (5/14) reported some minor differentiation of methods between people smuggling and people trafficking. The responses of 21% (3/14) of Responding Members included in the above list related only to people trafficking.

The above list is supported by a number of case studies that were reported in respect of people smuggling and proceeds of crime. In one case study, large funds transfers between a local business operator and persons of interest were found. In a second case study, reported as relating to people smuggling between Asia and Europe, the operators of a remittance agency, through which the substantial proceeds of people smuggling had passed, were arrested. The investigation revealed that the monies remitted were a mix of funds remitted by smuggled persons to persons in another country to pay the organising syndicate. A third case study reported identified moneys being collected by way of various methods including cash deposits onto debit cards from throughout the country.

At least one Responding Country noted the difficulty in differentiating between proceeds from people smuggling and people trafficking from other crimes such as drug trafficking. This may be a more widespread problem which impacted on the ability to respond to this question.

3.2 Little is known about the amount of proceeds generated by people smuggling or people trafficking (Questions 22-23)

64% (9/14) of Responding Members indicated that the amount of proceeds being generated by people smuggling or people trafficking in their country is unknown or unable to be estimated. Of the other Responding Members, one reported that a figure in excess of \$1,000,000 USD related to people smuggling had been restrained in its country. After further inquiry, this figure was said to not relate to people smuggling to, through or from that country but that its financial system was used to launder the proceeds. In respect of the remaining three countries, one reported that they did not believe any proceeds had been generated by these crimes, another indicated that the figure was less than \$200,000 USD and another indicated a figure in excess of \$1,000,000 USD in respect of both people trafficking and people smuggling.

Having little information regarding the level of funds generated from people smuggling and people trafficking in their countries, Responding Members indicated uncertainty as to whether the proceeds remained in country or were sent overseas. It was noted by one country that the majority of financial activity in relation to people smuggling occurs prior to arrival in the destination country. Another country reported that the majority of proceeds generated by people smuggling was remitted overseas.

In respect of people trafficking, it was indicated that the difficulties associated with estimating the amount of proceeds from the crime were a result of the ongoing generation of proceeds due to the continuous nature of the offence. By this it was meant that, although some transactions related to trafficking may occur in one country where the offence was initiated, proceeds were known to continue to be generated in what is often another country. An example of this is where people are trafficked from one country to perform sexual services in another country. In such cases it was indicated that proceeds may flow back to the country of origin or, alternatively, that the proceeds remain in the country of the trafficked person to be applied to the “debts” that the trafficked person owes according to their traffickers.

3.3 Suspicious Transaction Reports (STRs) are rarely known to identify or relate to people smuggling or people trafficking (Question 20)

The responses indicated the lack of information known about whether STRs relate to or identify people smuggling or people trafficking. 29% (4/14) of Responding Members indicated that it is not possible to identify relationships between certain financial transactions and people trafficking or people smuggling, or that the number of STR’s identifying or relating to these crimes is unknown. 50% (7/14) of countries reported that no STRs have been received that identify or relate to people trafficking or people smuggling.

Another 21% (3/14) of Responding Members indicated that STRs have been received in relation to people smuggling and / or people trafficking. Eight of the 12 STRs reported related to people smuggling offences. This statistic is interesting to note in light of the money flows associated with people trafficking and people smuggling. In respect of people smuggling, the financial transaction between the person to be smuggled and the smuggler is understood to usually involve a one-off payment at the point of departure or during transit. In contrast, people trafficking offences are usually characterised by ongoing financial transactions over the period of time the victim is exploited.

Statistics, sources of information and principal offenders

4.1 Statistics on the incidence of people trafficking and people smuggling within countries are largely unknown (Question 21)

People smuggling

The information that was received on the incidence of people smuggling in Responding Members is provided in the **Table C** in **Appendix C**. The information reported with respect to people smuggling indicated a widespread lack of data maintained on the incidence of people smuggling. As such, no thorough analysis can be conducted on these figures.

People trafficking

The information that was received on the incidence of people trafficking in countries is provided in **Table D** in **Appendix C**. As with people smuggling, the Responding

Members were largely unable to provide data with respect to the incidence of people trafficking. As such, no thorough analysis can be conducted on these figures. This is one area in which further information from non-government organisations may be useful.

4.2 The agencies from which responding countries could seek information about proceeds of crime being generated by people smuggling or people trafficking were generally government agencies (Question 13)

Government agencies and non-government organisations

Responding Members overwhelmingly indicated that, for information on money being generated by people smuggling or people trafficking, they would turn to government agencies such as financial intelligence units (FIUs), police, immigration, customs, maritime enforcement and prosecution agencies. Some Responding Members also indicated that financial institutions may be consulted. Only one country listed non-government organisations that might be contacted for information about proceeds of crime and people trafficking.

The responses to this question may be viewed as demonstrating a gap between government and non-government organisations. It is to be reasonably expected, however, that both government and non-government organisations working in the areas of people trafficking and people smuggling could usefully contribute to the wider knowledge of each other. Within many sectors, non-government organisations have useful and up-to-date information that can be usefully acted upon by a variety of government agencies in the fight against people smuggling and people trafficking.

International Cooperation

In terms of international cooperation between agencies for information on proceeds of crime generated by people smuggling and people trafficking, 86% (12/14) of Responding Members reported numerous relationships with other countries by which cooperation was possible in proceeds of crime actions. These were reported to be largely in the form of bilateral mutual assistance agreements although agreements between domestic and foreign police forces were also mentioned. 14% (2/14) of responding countries stated that they had no relevant mutual assistance agreements in place.

Police to police inquiries were mentioned by 36% (5/14) of countries. This is an important and perhaps underutilised avenue of inquiry. Police to police inquiries are often integral to obtaining up to date information and progressing the mutual assistance process as quickly as possible.

The sharing of information for intelligence purposes between FIUs was not widely mentioned. This may reflect the point that some countries reported that it was not possible to identify financial information as pertaining solely to people smuggling or people trafficking.

4.3 The information is mixed on the principal persons suspected of people smuggling or people trafficking in or through countries (Question 18)

People smuggling

Of the Responding Members with legislation under which some people smuggling conduct could be prosecuted, 38% (5/13) reported foreign nationals as being the principal suspects for people smuggling. Within that 38% of Responding Members, most had laid charges or prosecuted people smuggling conduct. One of these countries also reported that, although foreign nationals were the majority of persons that organised people smuggling destined for that country, there was some evidence that a number of its recently nationalised persons were involved in organising people smuggling.

In the remaining Responding Members with people smuggling legislation, 15% (2/13) reported people smuggling suspects are believed to be both nationals and foreign nationals, and another 15% (2/13) indicated that no information on the nationality of persons suspected as being people smugglers was available. 15% (2/13) of countries have not reported any instances of people smuggling and 23% (3/13) did not respond to the question.

People trafficking

14% (2/14) of Responding Members indicated that they have no available data on whether people trafficking suspects are largely foreign nationals, citizens or whether both citizens and foreign nationals engaged in people trafficking activity. However, of this 21% (2/14), prosecutions for people trafficking had taken place in both of them. Consequently, although the information was not readily available, it may be possible to determine this with further research.

Of the remaining 79% (12/14) of countries, the reporting on those suspected of committing people trafficking offences was divided. In 36% (5/14) of Responding Members, foreign nationals were suspected to be the principal offenders of people trafficking. It was indicated by one country here that, in cases of people trafficking, the offenders were found to usually be from the same region as the trafficked victims. In another 29% (4/14) of Responding Members, both citizens and foreign nationals were indicated as being suspected of people trafficking, whilst nationals were reported as the principal offenders in 14% (2/14) of Responding Members. A further 14% (2/14) of countries have not reported any instances of people trafficking.

Appendix B – Questionnaire

SCOPING STUDY: LINKS BETWEEN MONEY LAUNDERING, PEOPLE SMUGGLING AND PEOPLE TRAFFICKING

The Australian Attorney-General's Department is conducting an APG Typologies Working Group Scoping Study to evaluate the links between money laundering and people smuggling and trafficking in persons in the Asia/Pacific region.

This questionnaire is being sent to all APG members and observers. Results provided in response to the questions will be collated and condensed into a scoping study which will be tabled at the APG Annual Meeting in July 2010. The information collected will be used to consider potential challenges faced by the region in effectively combating both offences using AML systems.

Note: the term 'people smuggling' will be used throughout this document and is analogous with the term 'migrant smuggling' as used by the FATF in 40 Recommendations.

Due to their cross-border nature and income generating potential, both people smuggling and trafficking in persons are recognised as a global challenge of the same proportions as the illegal trafficking of drugs and firearms. The impact of these crimes penetrates throughout countries of origin, transit and destination. It is therefore important to understand how money is laundered in the facilitation of trafficking in persons or smuggling migrants across jurisdictions. This will allow a greater understanding of obstacles to combating trafficking in persons and people smuggling and strategies to address these obstacles.

The terms 'people smuggling' and 'trafficking in persons' are often used interchangeably but they are in fact, different. Trafficking in persons is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them. People smuggling involves the procurement for financial or other material benefit of illegal entry of a person into a jurisdiction of which that person is not a national or resident. For the purposes of conducting this study it is important to clearly define the separate conduct that constitutes trafficking in persons and people smuggling.

Trafficking in persons

- Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (Trafficking Protocol) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- People traffickers are motivated by the prospect of exploiting their victims once they reach their destination. This exploitation can continue well after the victim has reached their destination.
- Trafficking in persons can occur whether people cross borders by legal or illegal means.

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- Although trafficking in persons often has a transnational component, trafficking can also take place within or across national borders
- Whether or not a person has consented to cross a border, or consented to the proposed exploitation, is not relevant when determining whether a person has been trafficked.

People smuggling

- Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Air or Sea (People Smuggling Protocol) defines people smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”
- The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling.
- The relationship between the smuggler and the migrant is a commercial transaction which usually ends with the migrants’ arrival at their destination.
- People smuggling involves illegal border crossing and entry into another country.
- People smugglers generate profit from fees to move people.

These crimes affect almost every country in the world, whether as a country of origin, transit or destination, generating large profits for the criminals involved. Indeed, trafficking in persons and people smuggling represent a core business of many international criminal organisations and are thought to be among the most lucrative of their worldwide activities. The FATF’s standards require countries to designate trafficking in persons and people smuggling as predicate offences for money laundering.

Strong AML systems can help detect trafficking in persons and people smuggling activities by triggering financial and other institutions to report suspicious financial activities. Additionally, a robust AML framework will enable countries to restrain and confiscate the proceeds of people smuggling and trafficking in persons, prevent reinvestment in criminal activity and reduce the financial incentive for individuals to engage in these crimes in the future.

The Australian Attorney-General’s Department would appreciate your cooperation by filling out the survey below and returning it to the Department by. Please answer questions in the boxes provided and include responses that address both people smuggling and trafficking in persons where possible. Should jurisdictions be unable to answer certain questions because of lack of available information, we would be happy to receive partial responses.

APG Delegates kindly reply by 31 August 2010 to:

**Anti-Money Laundering Assistance Team
Australian Attorney-General’s Department
3-5 National Circuit
Barton ACT 2600
AUSTRALIA**

Email: amlat@ag.gov.au

QUESTIONNAIRE

LINKS BETWEEN AML, PEOPLE SMUGGLING AND TRAFFICKING IN PERSONS

[PLEASE INSERT YOUR JURISDICTION NAME HERE]

Please forward completed questionnaire to the Anti-Money Laundering Assistance Team, Attorney-General's Department at amlat@ag.gov.au by 26/02/2010.

| Question | Jurisdiction response regarding people <u>smuggling</u> | Jurisdiction response regarding <u>Trafficking in persons</u> |
|--|--|--|
| Criminal Offence Provisions | | |
| 1. What laws do you have that address people smuggling / trafficking in persons? If applicable, please state where the terms are defined in your legislation and any relevant provisions. | | |
| 2. What are the penalty provisions which relate to these offences? | | |
| 3. Do these offences qualify as predicate offences for related money laundering offences? | | |
| 4. Do these offences have extra territorial jurisdiction? | | |
| 5. How many prosecutions have been undertaken for these offences and what were the results? | | |
| 6. How many matters have been referred for prosecution where no prosecution has been undertaken | | |

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| Question | Jurisdiction response regarding people smuggling | Jurisdiction response regarding Trafficking in persons |
|--|---|---|
| Proceeds of Crime Provisions | | |
| <p>7. What provisions do you have to confiscate proceeds of crime generated by people smuggling / trafficking in persons in your jurisdiction?</p> <p>If applicable, please state the relevant Proceeds of Crime legislation used.</p> | | |
| <p>8. Do your proceeds of crime provisions require that a person be charged at any point prior to or after restraint of assets?</p> <p>Do you require a conviction to obtain forfeiture of assets?</p> | | |
| <p>9. Do your proceeds of crime provisions require that a particular person be identified as having committed an offence or can the suspected criminal assets be restrained without an identified owner?</p> | | |
| <p>10. Has there been any restraint or forfeiture applications made in respect to people smuggling/trafficking activity or related money laundering activity in your country?</p> | | |

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| Question | Jurisdiction response regarding <u>people smuggling</u> | Jurisdiction response regarding <u>Trafficking in persons</u> |
|---|--|--|
| <p>11. Have you received any requests to register foreign proceeds of crime orders in respect to people smuggling/trafficking activity or related money laundering activity?</p> <p>Could you register and act on this if they were made?</p> | | |
| Investigations | | |
| <p>12. Have there been any Proceeds of Crime focused investigations conducted into cases where people smuggling / trafficking in persons is the predicate offence?</p> <p>If so, please provide an estimate of the number of investigations undertaken.</p> | | |
| <p>13. What agencies would you contact to get information about proceeds of crime being generated by people smuggling / trafficking in persons?</p> <p>For example – financial intelligence units, police, immigration and customs agencies.</p> | | |

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| Question | Jurisdiction response regarding people <u>smuggling</u> | Jurisdiction response regarding <u>Trafficking in persons</u> |
|--|---|---|
| 14. Are there agencies in other countries that cooperate with you in Proceeds of Crime actions? For example, do you have any Mutual Assistance Relationships in place to assist in investigations in foreign jurisdictions? | | |
| 15. What are the problems and difficulties that are encountered or anticipated to be encountered in your jurisdiction in the investigation of people smuggling / trafficking in persons? | | |
| 16. What are the problems and difficulties that are encountered or anticipated to be encountered in your jurisdiction in bringing Proceeds of Crime action before the courts where people smuggling / trafficking in persons is the predicate offence? | | |
| 17. How are the proceeds from people smuggling / trafficking in persons entering the financial system in your jurisdiction? | <i>For example – by way of cash transfers.</i> | <i>For example, through the mixing of legitimate and illegitimate income of brothels being deposited into the bank.</i> |

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| Question | Jurisdiction response regarding people <u>smuggling</u> | Jurisdiction response regarding <u>Trafficking in persons</u> |
|---|--|--|
| 18. Are the principal offenders suspected of undertaking people smuggling / trafficking in persons in or through your jurisdiction foreign nationals? | | |
| 19. Can you provide any case studies that relate to people smuggling /trafficking and AML? | | |
| Statistics and Reporting | | |
| 20. How many STR's have been submitted to your FIU that identify or relate to (a) people smuggling and (b) people trafficking? | | |
| 21. Do you have any statistics on the incidence of people smuggling / trafficking in persons in your jurisdiction? | | |
| 22. How much money do you estimate is being generated by people smuggling / trafficking in persons in your jurisdiction per year? | <input type="checkbox"/> Less than USD\$200,000 <input type="checkbox"/> Between USD\$200,000 and \$500,000 <input type="checkbox"/> Between USD\$500,000 and \$1,000,000 <input type="checkbox"/> More than USD\$1,000,000 <input type="checkbox"/> Other | <input type="checkbox"/> Less than USD\$200,000 <input type="checkbox"/> Between USD\$200,000 and \$500,000 <input type="checkbox"/> Between USD\$500,000 and \$1,000,000 <input type="checkbox"/> More than USD\$1,000,000 <input type="checkbox"/> Other |
| 23. Does this money remain in your country or does it get sent overseas? | | |
| 24. Do you have any further comments you would like to share about the links between AML and either people smuggling or people trafficking? | | |

Appendix C – Statistics

Table A – People Smuggling Prosecutions

| Country | Time period | Number of prosecutions | Outcomes known | Number of matters referred for prosecution but not prosecuted |
|-----------------|--|------------------------|---|---|
| A | 2004 - 2009 | 404 | No detailed data provided - some convictions, some in progress | 0 |
| B | No statistics on people smuggling cases maintained | | | |
| C | No law criminalising people smuggling | | | |
| D | 07/1999 – 06/2009 | 567 | 17 acquittals 16 discontinued 4 hung juries 1 incomplete 529 proven | 140 |
| E | No law criminalising people smuggling | | | |
| F | No statistics available | | | |
| G | No statistics on people smuggling cases maintained | | | |
| H ¹¹ | | 0 | 0 | 0 |
| I | | 0 | 0 | 0 |
| J | | 0 | 0 | 0 |
| K | 04/2004 – 03/2009 | 67 | Majority resolved by guilty plea or conviction | ~10 |
| L | 2008-2009 | 23 | No detail | 63 |
| M | No statistics on people smuggling cases provided | | | |
| N | No statistics on people smuggling cases provided | | | |
| Total | | 1061 | | ~213 |

¹¹ This country noted that although a charge had been laid for people smuggling, the accused had absconded.

Table B – People Trafficking Prosecutions

| Country | Time period | Number of prosecutions | Outcomes known | Number of matters referred for prosecution but not prosecuted |
|--------------|-------------------|-----------------------------|--|---|
| A | 2007 - 2010 | 93 | No detailed data provided - some convictions, some in progress | 0 |
| B | 2009 | 118 relating to 335 accused | Judgments handed down in 2009 resulted in the conviction of 376 defendants ¹² | 17 |
| C | 2005 – 06/2007 | 59 ¹³ | No detail provided - many cases still pending in court. | 7 |
| D | 07/2004 – 06/2009 | 20 | 2 acquittals 6 discontinued 12 convictions with imprisonment sentences | 10 |
| E | 03/2008 – 02/2010 | 193 | 8 convictions | 0 |
| F | 2009 | 229 | No detail provided | 0 |
| G | 2009 | 2 | Pending in court | 0 |
| H | | 0 | 0 | 0 |
| I | | 0 | 0 | 0 |
| J | | 0 | 0 | 0 |
| K | 04/2004 – 03/2009 | 1 ¹⁴ | Convicted of some charges | No statistics available |
| L | 2008-2009 | 6 | No detail | 14 |
| M | 2009 | 97 relating to 231 accused | 112 people sentenced and imprisoned 25 absolved of charges 9 acquitted | 68 |
| N | 2007-2010 | 4819 | No detail | 46 |
| Total | | ~5637 | | ~162 |

¹² Note that this figure reflects decisions delivered in 2009 and likely relates to prosecutions conducted prior to 2009. It is therefore not reflective of the outcomes of the cases prosecuted in 2009.

¹³ This country indicated that a further 52 cases were under investigation.

¹⁴ Indications from this country were that a number of prosecutions had occurred under other legislation at a regional level and detailed information about those prosecutions was unavailable.

Table C – Statistics on the incidence of people smuggling

| Country | Time period | Number of investigations | Detail and outcomes provided | Number of matters referred for prosecution |
|----------------|---------------------------------------|---------------------------------|--|---|
| A | No statistics known | | | |
| B | 2009 | 158 | 196 offenders | |
| C | No law criminalising people smuggling | | | |
| D | No statistics known | | | |
| E | No law criminalising people smuggling | | | |
| F | No statistics | | | |
| G | 2008 - 2009 | 40 | No further information | |
| H | 2004 - 2009 | 13 | 12 closed due to insufficient evidence and a previous lack of legislation, 1 pending trial | 1 |
| I | | 0 | 0 | 0 |
| J | | 0 | 0 | 0 |
| K | Statistics unavailable | | | |
| L | No statistics provided | | | |
| M | No statistics provided | | | |
| N | 2007-2010 | 14,922 | No further information | |

Table D – Statistics on the incidence of people trafficking

| Country | Time period | Number of investigations | Detail and outcomes provided | Number of matters prosecuted |
|---------|-----------------------------|--------------------------|--|--|
| A | No statistics known | | | |
| B | 2009 | 88 | 46 involving labour exploitation 42 involving sexual exploitation | 118 cases of people trafficking: 83 cases and 335 offenders of labour exploitation 35 cases and 233 offenders of sexual exploitation |
| C | 2003 – 2005 | 109 | 25 rescue operations led to the arrest of 56 persons and the rescue of 137 victims | 22 cases out of the 25 rescue operations |
| | 2006 | 122 | 7 cases subjected to inquest proceedings 7 cases closed for insufficient evidence further detail unknown | 3 |
| D | No statistics known | | | |
| E | No statistic provided | | | |
| F | Yes, but no detail provided | | | |
| G | 2008 - 2009 | 3 | No further information | |
| H | | 0 | 0 | 0 |
| I | | 0 | 0 | 0 |
| J | | 0 | 0 | 0 |
| K | 2008 | 12 | 2 involving minors | No further information provided |
| L | 2008-2009 | 17 | No further information | |
| M | 2009 | 165 | No further information | |
| N | 2007-2010 | 4819 | No further information | |