Money Laundering in the Asia Pacific

Working Paper No. 1: Regional Challenges and Opportunities for International Co-operation

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Inside Front Cover

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Project: Money Laundering in the Asia Pacific

This project aims to promote and facilitate effective co-operation between jurisdictions in the Asia Pacific in combating money laundering. It seeks to identify the extent of the problem in the region, promote an awareness of the issues, and identify the technical assistance and co-operation requirements of jurisdictions in the region, in order to assist them in building their respective and collective capacity to address the problem of money laundering.

The project has three components. A research phase involves the production of five separate studies analysing different aspects of the problem of money laundering in the region. A second phase, consultation and working meetings on technical assistance needs involving representatives of regional jurisdictions, will follow the research phase in 1999. A final phase will involve the identification and facilitation of technical assistance activities pursuant to the activities and findings of the first two phases. Details about the project may be obtained by contacting the International Centre at the address on the front cover of this document.

Details of other studies in this series are listed on the inside back cover.

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Introduction

The process of globalisation has had two profound impacts in the realm of criminal activity. First, crime has become transnationalised and deterritorialised. Just as global business has expanded in the last two decades, exploiting new technologies and the lowering of barriers to commerce, the business of crime has also seized these opportunities. No less than any other commercial endeavour, criminals in every region have exploited the advantages conveyed by the global marketplace, whether they apply to drugs, prostitution, fraud, or other transnational crimes. Second, criminals have been able to exploit the revolution in global finance. In particular, changes in information technology have made it easier for criminal assets to move across borders, through financial markets and out of reach of the law.

Attempts to combat transnational crime have often focused on preventing money laundering – the manipulation of criminally derived assets to conceal their illegal origins. It is through the process of money laundering that activities such as drug and firearms trafficking, corruption, migrant smuggling, and prostitution become truly profitable, by placing the proceeds of these crimes (and the criminals themselves) beyond the view of authority. International attempts to prevent money laundering have included agreement on a series of international instruments, the development of numerous national infrastructures, bilateral and multilateral technical assistance activities, and awareness-raising events.

Most international attention to date has been directed towards several well-known conduits of money laundering activity. These include areas in Europe and the states of the former Soviet Union particularly affected by organised criminal groups, the numerous tax havens in Europe and the Caribbean, and the axis of the drug trade in the Americas. The Asia Pacific, by contrast, has received relatively little notice. Yet there are many signs that money laundering in that region may find room for growth, as previously favoured locations in other regions become less hospitable.

This report[1] emphasises the need for concerted action against money laundering in the Asia Pacific. It presents an analysis of the opportunities and obstacles likely to be encountered in any attempt to construct a realistic and effective anti-money laundering regime in the region. While portions of the material herein may be found elsewhere, the goal of the report is to provide an overall picture and thus assist in the identification and implementation of effective strategies.

[1] **Methodological note**

This report has been prepared with the use of four major information sources. First, an attempt has been made to draw from most major, relevant official studies and reports addressing money laundering and other financial crime – where possible with a regional focus. Second, academic research having clear policy implications has been consulted wherever possible. Third, current and archival news reports have been employed as background material where other reliable data is unavailable or in order to form a more complete picture. Finally, formal and informal interviews with officials and experts (while not directly referenced in the text) have supplemented other research materials.

1. Defining money laundering

Most organised crime activity is economic activity. The goal of the criminal is to use the proceeds of crime in the same manner as legal earnings, and this is possible as long as the source of the funds remains concealed. The task of the money launderer, therefore, is to make the proceeds of crime appear to be of legal origin, or of sufficiently obscure origin that any attempt to link those assets to criminal behaviour would be futile. In the context of developed states, it is generally understood that this task is accomplished through three basic steps: placement, layering and integration. The following paragraphs describe these activities, as they are currently understood.

Placement

The initial challenge for the money launderer is to place the profits from predicate criminal activity (i.e., original crimes such as drug sales or prostitution) into a bank or non-bank financial institution, in order to more easily manipulate the funds. In the familiar context of the drug trade, this will typically involve depositing or otherwise converting amounts of cash that would be unusually large by normal commercial standards. As placement of large sums of cash may trigger formal reporting mechanisms in many jurisdictions, elaborate means may be employed at this stage to avoid detection. These may include the use of 'front' businesses such as bars, restaurants, or casinos that may reasonably claim to do business in cash. They may also involve the use of 'smurfing' techniques – numerous deposits of amounts small enough to avoid raising suspicion or triggering reporting mechanisms. Once the cash has been placed, it may then be moved with greater ease and less suspicion through the economy or if necessary offshore.

Layering

Once the money derived from criminal activity has been converted to a bank account balance or a financial instrument, the next step in laundering the funds is to 'layer' the money. The launderer seeks to insert layers of transactions between the original criminal activity and the seemingly legitimate re-emergence of the funds into the legal economy. This may be accomplished several ways, but the goal remains the same: to render the path of the funds and their ownership as opaque as possible. The most common means used here are well known. Money launderers favour jurisdictions whose financial institutions provide legally protected anonymous banking and/or who provide 'off-the-shelf' shell companies under conditions of anonymity. Other methods include the importing or exporting of non-existent products, the use of casinos or lotteries, and the purchase and resale of fixed assets or real estate. It is in this phase that the crime of laundering money becomes particularly transnational, as multiple jurisdictions are often used in further efforts to cloud the audit trail.

Integration

The goal of the placement and layering phases is to make it impossible to trace the funds to their original source. Once this condition has been achieved, the criminal assets may then be integrated into the legal economy. This may occur under the auspices of a company

domiciled in the criminal's own jurisdiction, which conducts 'business' with offshore shell companies used in the layering process, or via returns on 'investments' in those companies. It may also take the form of loans with highly favourable or negligible terms of repayment, real estate investments, or other transactions, which will be unremarkable once the criminal has constructed a plausible legal commercial and business identity.

2. Regional Scope

The focus of this report is on East and Southeast Asia and the island states of the South Pacific. This grouping obviously brings together several distinct economic categories. It includes the large, heavily populated economies of East and Southeast Asia, the smaller economies of those same sub-regions, and the small states of the Pacific. Where relevant, reference will be made to the situation and/or experience of individual jurisdictions. However, as the goal of this report is to provide an overall view of problems common to a number of states or entire sub-regions, most analysis is developed in general terms.

The report excludes the distinct groupings of states in South Asia and in the territories of the former Soviet Union, as well as some states where information is either unavailable or unreliable (e.g. North Korea, Mongolia, Christmas Island). Selected developed states on the periphery of the region with an active engagement in the regional economy but with substantial extra-regional links (Australia, New Zealand, Japan, the United States and Canada) are included in the analysis where relevant, and for purposes of comparison.

Table 1: Jurisdictions covered in this report

East and Southeast Asia	Pacific Islands	Other Regional Actors
Brunei, Cambodia, PR China, Hongkong SAR, Indonesia, South Korea, Laos, Macao, Malaysia, Myanmar, Philippines, Singapore, Taiwan, Thailand, Vietnam	Cook Islands, Fiji, Kiribati Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tahiti, Tokelau Islands, Tonga, Tuvalu, Vanuatu	Australia, Canada, Japan, New Zealand, United States

3. The Current Situation: Legislative Framework

Action against money laundering – deterrence, enforcement, investigation, prosecution and punishment – in the context of the rule of law requires an effective legislative framework in which to operate. Our analysis thus starts with the state of legislation in the region. **Table 2**

below provides an overview of money laundering legislation in place by jurisdiction. **Table 3** presents additional information on legislative provisions, particularly those provisions that require the establishment of significant regulatory mechanisms and institutions.

It is important to note at this point that the passage of legislation means little without effective implementation and enforcement, and that the existence of relevant provisions in a country's national statutes is an incomplete and sometimes misleading gauge of national action against money laundering. However, the existence of well-designed and comprehensive legislation is a necessary prerequisite to effective investigation, enforcement and prosecution, and regulation against money laundering. Such legislation makes it possible to mobilise fully the criminal justice system, and the financial and regulatory sectors, in effective action against money laundering.

The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Over 150 countries are now parties to the 'Vienna Convention'. The Convention required states to:

- make the laundering of drug proceeds an offence
- co-operate in money laundering investigations and in all related proceedings, including (where required) extradition
- pass laws facilitating the tracing, seizing and forfeiture of proceeds of crime

The Vienna Convention, though directed primarily at the drug trade, remains the benchmark in terms of international co-operation against transnational crime and money laundering. Increasing the number of ratifications in the Asia Pacific continues to be a priority. As **Table 4** indicates, at time of writing fewer than 40% of the jurisdictions in question were signatories.

The Vienna Convention is likely to be complemented by the year 2000 by the proposed United Nations Convention against Transnational Organised Crime. The proposed new instrument is likely to require states to criminalise the laundering of the proceeds of all serious crime, not simply the proceeds of drug crime. The new convention may also contain expanded and/or revised provisions with respect to mutual legal assistance and extradition.

Legislation which specifically criminalises money laundering

Legislative efforts to combat money laundering are comparatively recent. Until the introduction of legislation in the United States in 1986, there were no national statutes specifically governing this behaviour. Most states with such legislation have developed it upon ratification of the 1988 Vienna Convention (see box), and much of this legislation have been enacted very recently.

A review of the data presented in **Table 2** reveals that most states in the region have legislation in place criminalising money laundering. However, there are a number of jurisdictions where legislation is not in place, including some states where money laundering activities present a major challenge. These gaps are a source of considerable concern, as the practice of money laundering pursues the path of 'least resistance' – that is, jurisdictions where legal and regulatory obstacles to expedient and anonymous transactions are few.

Legislation covering the laundering of the proceeds of all serious crime

When it entered into force, the 1988 Vienna Convention provided a new international benchmark concerning domestic legislation to combat money laundering. In the subsequent decade, the changing landscape of transnational criminal activity (and international co-operation to combat that activity) have demonstrated that the money laundering provisions of the Convention were limited, applying as they did to money laundered as an offshoot of drug trafficking alone.

While it is probably true that at least half the amount of money laundered globally – a total figure estimated at between $300 and $600 billion annually, varying by estimating organisation and by definitions of laundering – comes directly or indirectly from the illegal drug trade, a significant portion does not.[2] Other criminal activities contributing significantly to the volume of money laundered annually globally (and in the Asia Pacific) include the various forms of trafficking in persons and goods, the illegal arms trade, public sector corruption, and tax evasion.[3] The focus on drugs has meant a relative lack of attention to other harmful transnational criminal activities.

Money laundering legislation: current international standards

In the last decade, due in part to the 1988 Vienna Convention, an international consensus has emerged over the most effective legislative tools in the fight against money laundering. These may be separated into six main themes:

- Criminalisation of the offence of money laundering
- Extension of the offence to include all serious crime
- Elimination of banking secrecy
- Reporting and record-keeping requirements for financial institutions
- Provisions for forfeiture of criminal assets
- Provisions for mutual legal assistance and extradition

Thus, as expressed in the 1994 Naples Declaration on Transnational Organised Crime and in the 1998 United Nations General Assembly's Special Session on the World Drug Problem,[4] an international consensus has emerged around the necessity of criminalising the laundering of the proceeds of *all serious crime*. While a number of states in the region have passed legislation incorporating this provision, or have modified their existing legislation, as **Table 2** indicates many more have not done so. While this is to be expected given the above discussion and the changes since the 1988 Convention, it is clear that this modification must be a priority in regional legislative strategies.

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[2] Estimates of global drug revenue are common, but are naturally the product of informed guesswork derived from estimates of criminal activity, percentages of global product, or other macro-economic measures. The figures typically quoted are in the region of US $400b per annum for drug revenue, and US $500b - $1 trillion per annum for total global proceeds of crime.

[3] For a more detailed analysis of the sources of laundered money in the Asia Pacific, see *Money Laundering in the Asia Pacific: Flows and Trends* (International Centre for Criminal Law Reform and Criminal Justice Policy, March 1999).

[4] See the on-line report of the Special Session at www.un.org/ga/20special/document/20-L1.pdf, and the preparatory report of the Commission on Narcotic Drugs at www.un.org/ga/20special/document/20-4e.htm.

Legislative provisions for asset forfeiture

No anti-money laundering strategy is complete without adequate provisions for the forfeiture of criminal assets. There are two reasons for this. First, the seizure of assets allows the state to directly affect the interests of criminal *organisations* regardless of the deterrent effect of incarceration. Incarceration, when achieved, will rarely affect the majority of the individuals benefiting from either the predicate crimes or from the subsequent illegal transactions. Seizure of the illegal assets, however, affects all those involved in any organised criminal behaviour. Secondly, the seizure of assets may prove to be an effective method of funding the often-costly procedures involved in detecting, investigating, prosecuting and punishing the crime of money laundering. While experience shows that any scheme using seized assets to fund anti-crime activities must be developed with care not to create inappropriate incentives for law enforcement agencies, the benefits of such an approach – in principle – are clear.

Nearly all of the Asia Pacific states listed in **Table 2** having passed anti-money laundering legislation include asset forfeiture provisions in their statutes. While the number of exceptions is small, the 'displacement' nature of money laundering activity – the propensity of the launderer to exploit the jurisdiction with the least stringent legal provisions – suggests that the lack of these provisions in some states should be addressed at the earliest opportunity.

An important additional consideration exists in the form of *asset sharing* provisions. If asset-sharing rules are agreed upon between two or more states, experience suggests that this will serve to expedite international co-operation in case investigations. Where the rules for the forfeiture and subsequent distribution of criminal assets are unclear or ad hoc, there may be a lesser likelihood of effective inter-state co-operation.

Legislative provisions for mutual legal assistance and extradition

Passing funds through a variety of states' financial institutions or other markets has the dual advantage of increasing the logistical difficulties of investigation and taking advantage of loopholes in national laws which may render accurate identification of the source and ownership of criminal assets impossible.

In light of the increasingly transnational nature of money-laundering activities, measures facilitating international co-operation in the investigation and prosecution of these activities are essential. Legislative provisions authorising mutual legal assistance and extradition in money laundering cases are an important first step. Again, while most states addressed in **Table 2** have such provisions in place, a number – including several jurisdictions where the problem of money laundering is a considerable threat – have yet to adopt such legislation. Equally important is the existence of mutual legal assistance and extradition treaties between states. It is important to note that there exists a useful tool in the development of mutual legal assistance provisions in the form of the United Nations Model Treaty on Mutual Legal Assistance.[5]

[5] Available on-line at www.undcp.org.

Table 2: Asia Pacific national anti-money laundering legislation[6]

Region	Country	Legislation addresses:			
		ML as a criminal offence	All serious crimes	Asset forfeiture	Mutual legal assistance, extradition
East and Southeast Asia	Brunei	✓			
	Cambodia	✓		✓	✓
	China	✓		✓	✓
	Hong Kong SAR	✓	✓	✓	✓
	Indonesia	✓		✓	
	South Korea	✓			
	Laos	✓			
	Macao				
	Malaysia	✓		✓	✓
	Myanmar	✓		✓	✓
	Philippines			✓	
	Singapore	✓		✓	
	Taiwan	✓	✓		
	Thailand	✓		✓	✓
	Vietnam	✓		✓	
South Pacific Islands	Cook Islands				
	Fiji	✓		✓	✓
	Kiribati	✓		✓	✓
	Marshall Islands	✓		✓	✓
	Micronesia	✓		✓	✓
	Nauru	✓		✓	✓
	Niue				
	Palau				
	Papua New Guinea	✓		✓	✓
	Samoa				
	Solomon Islands	✓		✓	✓
	Tahiti				
	Tokelau Islands				
	Tonga	✓		✓	✓
	Tuvalu	✓		✓	✓
	Vanuatu	✓		✓	✓
Other Regional Actors	Japan	✓		✓	✓
	Australia	✓	✓	✓	✓
	New Zealand	✓	✓	✓	✓
	Canada	✓	✓	✓	✓
	U.S.A.	✓	✓	✓	✓

[6] As of September 1998 (approximately). Sources: *The World Geopolitics of Drugs 1997/1998*, Observatoire Geopolitique des Drogues, Paris 1998; *UNDCP Legal Assistance on Money Laundering Legislation*, United Nations Drug Control Programme, September 1998; *International Narcotics Control Strategy Report 1997*, United States Department of State (International Narcotics and Law Enforcement Affairs), March 1998; various news reports.

Requirement of disclosure of personal identity in financial transactions

Table 3 indicates those states in the region legally requiring disclosure of real identities in financial transactions. The ability of individuals to conceal their true identities in the opening of accounts, transfer of funds, establishment of businesses, or other transactions, is a central issue in attempts to control and prevent money laundering activity. Simply put, the anonymity afforded by banking secrecy laws (and other measures designed to conceal identity) is the money launderer's greatest ally and the investigator's greatest impediment. A fundamental legislative requirement in combating money laundering is therefore to compel financial institutions (and sometimes other relevant businesses) to establish the real identity of their customers, and to reveal that information to competent authorities upon the provision of warrants in accordance with the law. Beyond these measures, designed to eliminate banking secrecy, financial institutions can be required to establish the actual nature of their source of funds in accordance with the satisfaction of due diligence requirements (the 'know your customer' rule).

It would not be an exaggeration to suggest that failure to require disclosure of identity in financial transactions may be the single biggest indicator regarding the susceptibility of states to money laundering activities. From reviewing **Table 3**, it is clear that although a majority of states have adequate legislative provisions, a significant number do not. Furthermore, in a number of the jurisdictions in question there is considerable doubt regarding adherence to due diligence requirements on behalf of financial institutions. These twin shortfalls are of primary concern in addressing the problem of money laundering in the region.

Transaction reporting requirements and financial intelligence units

One key strategy in the fight against money laundering is the establishment of national units mandated to gather and analyse financial transactions, and in particular to monitor patterns in unusual or 'suspicious' transactions. With this tool in place, the goal is to increase the ability of investigators to piece together the 'paper trail' of a money laundering investigation. These units are typically referred to as Financial Intelligence Units (FIUs).

FIUs are defined as: central, national agencies responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

- concerning suspected proceeds of crime; or
- required by national legislation or regulation, in order to counter money laundering

Typically, such agencies are responsible for analysing transactions reported as suspicious or unusual. Transactions falling into this category are often those that occur using an unorthodox medium of exchange for legitimate business (e.g. very large amounts of cash in small denominations), or transactions that fall outside the normal pattern of transactive behaviour for any given individual or firm. In addition, responsible authorities may find it expedient to designate a given type of transaction (e.g., cash transactions of US $10,000 or more) as inherently worthy of potential investigation and thus mandate the reporting of any such transaction by the financial institution (or other company) in question. These

organisations may also be required to maintain data on currency and financial instruments being introduced into or taken out of the jurisdiction's territory at ports of entry (or through electronic transfers of various kinds).

Assisted by FinCEN (the US Treasury's Financial Crimes Enforcement Network), a core group of FIUs met for the first time in Brussels in 1995 and created an organization known as the Egmont Group. This group serves as an international network to foster improved communication and interaction among FIUs in such areas as information sharing and training co-ordination. At its November 1996 meeting, Egmont Group members agreed on the definition of an FIU to facilitate the establishment of new units by setting a minimum standard. As **Table 3** indicates, by 1998 four Asia Pacific countries had FIUs meeting the Egmont definition: Australia, Hong Kong, New Zealand, and the United States. FIUs under construction or currently being considered for recognition as meeting the Egmont Group FIU definition include those of Taiwan, Japan and Canada.[7]

A major concern for any jurisdiction in the construction and effective operation of an FIU is the cost of its operations and the bureaucratic requirements it places on private institutions. Without sophisticated and efficient information reporting, storage and retrieval systems, and the capacity to analyse data expediently, the risk is that a sizeable investment in regulatory infrastructure may be made with little direct benefit for the law enforcement agencies relying on the information provided. State-of-the-art FIUs, such as Australia's AUSTRAC, FinCEN in the United States, and TRACFIN in France have improved the flow of essential transaction information to investigative and prosecutorial authorities, but have nevertheless imposed considerable bureaucratic burdens on the private and public sector actors involved.

In this light, it is easy to understand why many states in the Asia Pacific, particularly those with limited budgets, do not currently have an FIU in place as a component of their anti-money laundering strategy. A priority for technical assistance in this area, therefore, is to develop as far as possible effective methods of collecting and analysing transaction data given the scarce resources available. Such remedies may include scaled-down FIUs, or the use of random checks or rotating geographical targeting.

Transaction reporting requirements, an important aspect of any anti-money laundering regime, are mandated by law in less than 50% of the countries covered in this report. For evidentiary purposes, even in the absence of an effective FIU, the development of such provisions in these countries is a continuing priority.

[7] *Money Laundering: FinCEN's Law Enforcement Support, Regulatory, and International Roles***,** United States GAO report, April 1 1998.

Table 3: Asia Pacific national anti-money laundering regulatory measures[8]

Region	Country	Disclosure of identity in transactions	Regulation of financial system and transaction reporting	FIU (Egmont Group standard)	Other FIU in place or in development
East and Southeast Asia	Brunei				
	Cambodia	✓	✓		
	China	✓[9]			
	Hong Kong SAR	✓	✓	✓	
	Indonesia				
	South Korea	✓			
	Laos				
	Macao				
	Malaysia				
	Myanmar	✓	✓		
	Philippines				
	Singapore				
	Taiwan	✓	✓		✓
	Thailand	✓	✓		
	Vietnam	✓			
South Pacific Islands	Cook Islands				
	Fiji	✓	✓		
	Kiribati	✓			
	Marshall Islands	✓	✓		
	Micronesia	✓	✓		
	Nauru	✓	✓		
	Niue				
	Palau				
	Papua New Guinea	✓			
	Samoa				
	Solomon Islands	✓	✓		
	Tahiti				
	Tokelau Islands				
	Tonga	✓	✓		
	Tuvalu	✓	✓		
	Vanuatu	✓	✓		
Other Regional Actors	Japan		✓		✓
	Australia	✓	✓	✓	
	New Zealand	✓	✓	✓	
	Canada	✓			✓
	U.S.A.	✓	✓	✓	

[8] As of September 1998. Sources: *The World Geopolitics of Drugs 1997/1998*, Observatoire Geopolitique des Drogues, Paris 1998; *UNDCP Legal Assistance on Money Laundering Legislation*, United Nations Drug Control Programme, September 1998; *International Narcotics Control Strategy Report 1997*, United States Department of State (International Narcotics and Law Enforcement Affairs), March 1998; various news reports.
[9] In development.

4. Key Regional Challenges and Obstacles

The Asian economic crisis

Efforts to combat money laundering in the Asia Pacific necessarily involve attention to financial reform. No such measures may be considered without reference to the present economic climate in the region.

After years of record growth, and predictions of the continued future success and expansion of Asia Pacific national economies, 1997-98 saw a significant downturn in the economic health of the region and the onset of a major recession (and in some cases, depression). The major currencies of the region and the largest economies have suffered considerably in the 'Asian crisis'. This economic crisis was profound: the region's strongest currency, the Japanese yen, lost a third or more of its value, while the currencies of South Korea, Malaysia, Indonesia and Thailand were even more adversely affected. The resulting economic downturn is the most significant policy challenge faced by state leaderships in the region.

One significant fear pursuant to the recent economic collapse has been that of capital flight. Such is the desire of a number of jurisdictions (both large and small) to re-attract departed investment dollars that several open appeals to foreign investors were made in 1998 in an effort to repatriate capital lost in the market fluctuations of the last two years. In these cases, foreign investors were told in explicit terms by government sources that no inquiries would be made with respect to the origin of the funds. In two instances, specific reference was made by the governments of two large states of the region to a willingness to 'launder' returning capital.

While some of these circumstances are exceptional, the underlying message is clear. Attempts to introduce stricter controls over the movement of funds, and more stringent requirements concerning the relationship of financial institutions with their customers, must take into consideration the reality of the current economic crisis and the pressures that crisis places on the governments of the region. The rationale for action against money laundering is obvious to those concerned with controlling global criminal behaviour. However, while a consensus has emerged concerning the need to control money laundering, it is easy to understand why more expeditious policies of attracting capital of unknown origin may nevertheless appeal to state leaderships in difficult economic circumstances.[10] Moreover, the essential logic of modern trade agreements – the lowering of barriers to commerce – is in some ways opposed to the need to ensure transparency and accountability in financial transactions.[11]

The expansion of offshore financial services

One of the most significant recent economic developments in the Asia Pacific has been the expansion of the offshore financial service sector. The term 'offshore' was coined originally to describe the advantages of extraterritorial residency for nationals of any state who wished

[10] See on this point Jack A. Blum et al., *Financial Havens, Banking Secrecy and Money Laundering*, double issue 34 and 35 of the *Crime Prevention and Criminal Justice Newsletter*, United Nations, New York 1998.
[11] See "Trade deals hinder crime fighting – UN", *Reuters*, November 13 1998.

to avoid excessive taxation by that state. It now refers more generally to the financial services sector in those jurisdictions offering low taxation rates, relative ease of legal residency, and very often a higher degree of anonymity in financial transactions than is found in many developed states. It is an industry that serves a demand for tax 'avoidance' and increasingly a demand for 'asset protection'.

The more established financial centres of East and Southeast Asia (e.g. Hong Kong, Taipei, Bangkok or Singapore) have long been utilised for laundering activities due to the sheer size and historical under-regulation of their financial markets. More recently, similar activities have emerged in a number of island states in the South Pacific, and this new development deserves particular attention.

In these states, low rates of taxation, strict privacy provisions and easy access to banking and other financial services have generated significant economic activity. But as in other regions of the world where jurisdictions have sought to establish themselves as offshore financial centres, or 'tax havens', any enthusiasm for the economic benefits conveyed by such status must be tempered by concern over the expansion of money laundering activities in these jurisdictions. In the case of the South Pacific, it is not the size of the banking sector or its proximity to other centres of finance and population which attracts money launderers – as is the case in East and Southeast Asia – but a different set of conditions. Any or all of the following attract to the South Pacific individuals or organisations seeking to launder money:

- Ease of access to domestic banking systems with little requirement to provide information concerning ownership or origin of funds. Reporting requirements are commonly absent or poorly enforced, in many cases due to limited resources, and privacy provisions remain in place in many contexts
- Ease of direct entry into domestic banking system through the establishment of private international banks. These institutions may be established in a variety of jurisdictions, with relatively little capital or information required
- Services offered by numerous brokers of anonymous international business corporations (IBCs), anonymous banking, trusts, second passports and other typical 'offshore' tools. Many of the companies offering these brokerage services have extensive internet service sites which display sophisticated analyses of national legislative loopholes and in many cases allow 'virtual' transactions, establishment of companies, or even on-line establishment of private international banks.

Offshore financial services are not unique to the South Pacific islands. Many Caribbean states and dependent territories are better known for such activities, and it is likely that the volume of money transiting the offshore sector in the South Pacific is significantly smaller than in the Caribbean offshore sector. However, there are several reasons why this development should be a priority concern in terms of regional technical assistance. First, unlike the states of the Caribbean, the South Pacific islands are physically remote from those states in a position to be of assistance. While this mundane geographic fact matters less than in previous decades, it cannot be discounted: technical assistance and other aid is more difficult to deliver to these states than to the states of the Caribbean. Moreover, the geography of the islands – with many states spread out over archipelagos covering thousands

of square kilometres – makes enforcement and oversight of financial criminal activity (and other criminal activity) expensive and difficult.

A second point, less tangible but no less important, is that the political culture of the South Pacific does not easily lend itself to heavy-handed regulation, or to other initiatives that operate on the basis of prudent scepticism of individual motives (and thus the need for oversight). Pacific Islanders have historically been reluctant to accept any seemingly externally imposed agenda that might erode the accepting and generous aspects of South Pacific culture (around which there is considerable consensus). In addressing the problem of money laundering in this sub-region, experienced observers agree that it is a significant error to dismiss this consideration or to characterise it erroneously as the product of inexperience.

Cyber-laundering opportunities grow in the South Pacific

Mirroring recent developments in the Caribbean, offshore financial service providers in the South Pacific are now extremely active on the internet. New encryption technologies allow for multiple on-line financial activities in numerous South Pacific jurisdictions, including anonymous banking, second passports, the anonymous purchase and use of "shelf" international business corporations, and even the establishment of private offshore banks.

Examples may be found on-line at:

- www.offshoreprofit.nu/ownbank/
- www.mooresrowland.com/offshore.html
- www.privacy-consultants.com/bom_comparison.html
- www.bankofbermuda.com
- www.offcorp.com/index3.htm
- www.offshore-inc.com/internet.html

Third, the degree of state infrastructure has never been high in these areas, for simple reasons of history and resources. Any remedy for the problems currently being encountered with respect to money laundering must be designed in light of this fact. Additionally, while these states are (or may become) conduits for illegal profits, there is little significant activity in terms of the predicate crimes normally associated with money laundering. The Pacific Islands are neither large consumers nor producers of illegal drugs, nor are they necessarily subject unduly to the sorts of non-drug criminal activity discussed elsewhere in this report. Accordingly, there may well be reluctance on behalf of some jurisdictions to act against money laundering when the criminal activities it supports are not greatly in evidence, and where the only tangible effect seems to be an increase in the amount of business processed by local financial institutions.

The reality of this policy dilemma – the problem of incentive to do something about money laundering in small states whose well-being is derived in large measure from financial services – cannot be ignored. The attractiveness of developing offshore status has been outlined in public by representatives of small states of the Commonwealth. While the short-term benefits of establishing or increasing offshore financial services domiciled in one's own jurisdiction may be readily apparent, the more compelling arguments about the negative

consequences such activity has for democratic development, transparency and the rule of law often require more reflective analysis. The frequent use by criminals of the financial system of a small or developing state may prove corrosive to the integrity of that state's financial system, as recent experience with Russian organised crime and its Mediterranean investments attests. Moreover, the fact that offshore centres service funds of dubious origin from other states – whether from trafficking, fraud or corruption – does not protect the offshore centres from those crimes; in fact, the ease of laundering money in those jurisdictions may encourage domestic criminal behaviour. Awareness-raising seminars, broadcasts and publications, as well as educational exercises, exchanges and consultations may be vital tools in demonstrating the long-term harm of allowing money laundering to continue unchecked.

Informal and traditional banking and accounting practices

There are numerous forms of informal banking and financial practices unique to the Asia Pacific. Given the difficulty of data collection in this area, it is difficult to distinguish actual from potential threat. Informal and anecdotal evidence, however, suggest that these practices be considered in the development of any anti-money laundering strategy for the region.

Typically, informal banking, financial and accounting practices are embedded within individual regional cultures. The best known types of informal banking are the South Asian practice of *hawala*, more prevalent in the Indian subcontinent, and the Chinese practice of *fei-ch'ien*. Both of these practices are found not only in the country of origin but amongst the ethnic diasporas of the region. Other informal banking practices include:

- mutual financing associations (ho hui), in which a group of individuals each pledge the same sum of money. Each member employs the total in turn, ultimately repaying the fund (less his/her share). Such schemes may have considerable application in concealing assets;
- overseas remittances (typically to China), where individuals often escaped official scrutiny of their transactions (and anti-Chinese taxation) through the use of multinational kinship ties;
- representative papers, or 'chits', based on colonial accounting practices, employed to move money in Asia.

While this type of activity is notoriously difficult to document, it appears that underground banking practices with similar characteristics to the types described above are frequently employed. One recent high profile case involved allegations that 'billions' of dollars in criminal proceeds were moved from Japan to China using informal 'underground' banks.[12]

Cash economies

[12] "Underground banks reportedly funnelled billions of dollars from Japan", *Agence France Presse,* December 30 1998.

At a practical level, the prevalence of cash-based transactions in large denominations as a regular feature of legitimate business practice in many Asian countries is a significant impediment to the implementation of oversight and reporting schemes – schemes which have been a central part of strategies against money laundering in other regions. Reporting regulations, typically affecting transactions at or above a threshold of US $10,000, allow investigators and private institutions in the West to distinguish more easily between criminals (who deal mainly in cash) and legitimate businesses (where cheques and credit are more common media of exchange).

These requirements, as expressed in the 'Forty Recommendations' of the Financial Action Task Force (see Section 5 below) and other important technical documents, make the implicit assumption that most legal economic activity is (with some noted exceptions) credit-based. In a region with varying levels of socio-economic development such as the Asia Pacific, cash is more frequently encountered in the legal economy. This is due to a variety of factors: lack of faith in financial institutions, reliance on extra-national currencies as the primary medium of exchange, variance between official and market-value currency exchange rates, and a reliance on traditional methods of doing business are but a few.

This phenomenon is not easily countered. It raises the larger issue of the feasibility of establishing reporting regimes in economies commonly exhibiting financial practices at variance with the dominant practices of the most developed state economies. Accordingly, it would be appropriate to develop the concept of 'suspicious transaction' on a case-by-case basis, developing reporting mechanisms and compliance schemes in tandem with this knowledge.

Difficulties of state control

Money laundering now involves an increasingly sophisticated set of behaviours, involving techniques that range from the traditional banking practices discussed here to the use of advanced information technologies. The recommended attributes of a comprehensive national anti-money laundering infrastructure include the integration of public and private-sector bodies in an orchestrated pattern of information exchange, co-operation and compliance. Through the mutual evaluation procedures of the Financial Action Task Force, it is clear that many of the world's richest and most developed countries are still not in compliance with international standards.

It is therefore not surprising that in the Asia Pacific, a region encompassing a variety of levels of development, actual and potential state capacity to limit money laundering activities many of the states examined here are not currently in full compliance with accepted international standards. We may say, indeed, that for the Asia Pacific complete compliance would be the exception rather than the rule. There are obvious reasons for this. First, some states are simply too poor to provide effective oversight. It is easy to set up offshore financial institutions in a developing state to service the flow of international capital, legal and illegal. It is far more difficult for the government of that state, with a limited tax base and perhaps with severe shortages of personnel, equipment and expertise to develop an effective regulatory structure governing this activity.

This basic set of socio-economic facts is complicated by more serious political concerns. Some states in this survey, particularly in Southeast Asia, have been subject to widespread criminal activity concerning drug production and trafficking. In several cases, the ability of the central government to exercise effective control over its peripheral and/or rural regions is under challenge. Nor is this challenge strictly geographic. In other cases, criminal groups have, through processes of corruption and intimidation, become influential actors on the political landscape, restricting the freedom of action of domestic governments by posing a genuine threat to state security. In such circumstances, the ability of criminal groups to use the financial institutions and other economic actors of such a state to their own ends is – obviously – a far greater challenge than that faced by the G8 states.[13]

Public sector corruption

Public sector corruption is linked to money laundering in two ways, as a source of laundered money and as a facilitating condition for the practice of money laundering.

First, corruption can itself be a source of the proceeds of crime. This may occur through the misappropriation of aid monies, other public funds, or in some cases other criminal proceeds which would otherwise be subject to forfeiture by the state. It should be noted that the extent of laundered money stemming from corrupt activities linked to the public sector is difficult to assess in absolute terms, for two reasons. First, like any illegal activity there is obviously no mechanism for reporting the values involved. Second, any corrupt activity involving the transfer of significant funds to (or involving) public officials will of necessity be more difficult to identify and investigate in the first instance, as is the case with any 'internal' investigation.

Second, public corruption may facilitate other activities discussed in this report. There may be side payments to officials responsible for investigation, prosecution, regulation or other oversight capacities. Illegal payments or influence peddling/purchasing may also be used in some cases to influence decisions made regarding legislative, judicial or enforcement activities concerning money laundering.

Despite the difficulty of establishing concrete instances of this behaviour (including obvious official reticence on such matters) significant questions have been raised in public debate in the last year over the link between corruption and money laundering in at least four major states of the region. There have been several high-profile regional court cases linking money laundering with public sector corruption involving government officials.[14] Furthermore, corruption and the misappropriation of public funds have developed into a significant issue in several major regional jurisdictions.

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[13] There is an inverse corollary to this point, which is that money laundering, while seeking to avoid official scrutiny, is also an activity that seeks to cement the 'legal' ownership of funds derived from predicate crimes. As such, like any financial transaction it benefits not only from a lack of interference but from a degree of political and financial stability which may not be present in states where the central government is unable to assert itself completely against criminal elements.

[14] This issue will be explored in greater depth in *Money Laundering in the Asia Pacific, Working Paper No. 4: Money Laundering and Corruption* (International Centre for Criminal Law Reform and Criminal Justice Policy, 1999).

With respect to these issues, successful identification and prevention of corrupt practices is aided by a high degree of political institutionalisation, insulation of key officials from an excessive differential in reward between legal and illegal activity, and by a press free to investigate and critique government activity. No country is free of corrupt practices, and thus nowhere have safeguards been constructed which are sufficient to combat this threat in all its forms. States with significant problems concerning public sector corruption can be found on every continent. However, concerned state actors in the Asia Pacific have long identified it as a region where the elimination of corruption is a major priority. It is also true, in general terms with some exceptions, that (despite political will) the region is still in the early stages of developing effective safeguards against such activity). Concern over this situation is borne out by survey data, which suggests that that several major jurisdictions of the region are considered to be at considerable risk from corruption.[15]

There is no quick solution to the challenge posed by corruption and its relation to money laundering in the Asia Pacific, just as there is no quick solution elsewhere. The process of removing corruption from public life is inextricably linked to the advance of democracy and the rule of law. Where arbitrary decisions are common in the political realm, it is unrealistic to expect great advances in limiting corruption. Similarly, the role of a free press and adequate human rights safeguards for critics of corrupt practices are central in combating corruption. No anti-money laundering strategy can accomplish all these things by itself. However, the insulation of official bodies from potentially corrupt behaviours and the implementation of adequate independent oversight capacities, are by the same token necessary conditions for the rule of law and financial transparency, and must therefore remain present in strategic planning against regional money laundering activity.

Awareness

Related to many of the points raised in this section is the question of ensuring adequate public and official awareness of money laundering activity. Such awareness has two components. First, knowledge of the existence of the practice (and where possible, some knowledge of the extent to which it is being practised, including the types of actors involved, in the jurisdiction in question) is essential. Second, a degree of familiarity with the negative consequences of this activity for the jurisdiction in question, where this is not self-evident, is also desirable.

While considerable technical assistance activity has been directed towards this need in recent years (see **Table 5**), there is consensus amongst specialists working in the region that this remains a priority. Recent public pronouncements by numerous states regarding the possibility of laundering money as an antidote to current economic woes, as discussed above, are indicative of the degree to which the threat posed by money laundering may be treated lightly in public discourse.

[15] The most influential of these is the annual Corruption Perceptions Index conducted by Transparency International, the global anti-corruption watchdog body. Copies of its reports and description of methodology are available at (http://www.gwdg.de/~uwvw/).

5. International co-operation against money laundering in the Asia Pacific

How can concerted action against money laundering in the Asia Pacific progress from this point? The following discussion highlights three important categories of international co-operation – regional multilateralism, the work of facilitating bodies and agencies, and the role of bilateral co-operation.

A. Regional Multilateral Bodies

The South Pacific Forum

The South Pacific Forum is the primary multilateral organisation in for the South Pacific Island states. While the resources of the Forum are limited and technical and financial assistance is often required from outside supporters (including the Commonwealth Secretariat), Forum activities may serve as a common basis for technical assistance on money laundering.

The Forum facilitated in July 1998 a meeting in Fiji of offshore banking services regulators from seven Pacific countries (Cook Islands, Niue, Papua New Guinea, Republic of Marshall Islands, Samoa, Tonga and Vanuatu). The meeting addressed methods of strengthening the supervision of their financial sectors and of how to discourage unwanted financial activities.

More broadly, the Forum Secretariat initiated in 1998 a five-year program to assist fourteen states in combating cross-border crimes. The crimes addressed include money laundering, financial fraud, drug trafficking and movement of contraband. This program is aimed at strengthening regional law enforcement co-operation, improving the operational and investigative skills of law enforcement officers and helping the countries formulate national drug policies based on the United Nations 'three-tiered' model. The UN model involves:

- enacting legislation that is consistent with the 1988 Vienna Convention (see comparative charts in Section 4 above)
- establishment of a framework for co-operation and exchange of information
- improving enforcement skills in the detection, investigation and prosecution of cross-border crimes

Countries involved in the program include the Cook Islands, Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The program has three objectives:

- participant countries should have in place balanced policy guidelines and strategies, and enacted legislation on anti-drug trafficking, money laundering and other aspects of economic crimes
- within the bounds of national legislation, participant countries should have an agreed framework and agreed means for mutual assistance and exchange of information and data necessary to counter transnational crimes

- the training of personnel involved in the interdiction and prosecution tasks related to drug trafficking, money laundering and other economic crimes, as well as stronger senior management support for law enforcement activities in participant countries

Organisations participating in this activity include the Oceania Customs Organisation (OCO), the Pacific Islands Law Officers Meeting (PILOM), the Pacific Immigration Directors Conference (PIDC) and the South Pacific Chiefs of Police Conference (SPCPC). Despite the broad participation in the program, its ambitious scope means that outside technical and financial support will in likelihood be required if substantial progress is to be made across the three objectives.

ASEAN

Pursuant to the March 1998 Asia-Pacific Regional Ministerial Workshop on Transnational Crime, held in Manila, the *ad hoc* ASEAN experts meeting on transnational crime in November 1998, and the subsequent ASEAN leaders' meeting in December 1998, ASEAN has indicated a willingness to tackle organised crime and money laundering.[16] This represents a further involvement in this area for an organisation more usually confined to the consideration of security, traditionally defined. The central component of the new ASEAN strategy will be the establishment in Manila of the ASEAN Center on Transnational Crime (ACOT). While the functions of ACOT have yet to be made public, it may be assumed that an attempt will be made to regularise ASEAN's activities in the area of transnational crime in money laundering. These activities, while not insubstantial, have so far been on an ad hoc rather than regularised basis. Given the difficulties faced by some ASEAN states with the problems discussed in this study, the new focus must be welcomed as a positive step.

APEC

The Asia Pacific Economic Co-operation (APEC) leaders, in a 1997 communiqué, welcomed the founding of the Asia Pacific Group on money laundering. Beyond this statement, however, APEC has not been a substantial contributor to international efforts to control organised crime and money laundering. While as a trade body these issues may be said to fall outside APEC's scope of responsibility, APEC remains the one pan-regional organisation. However, this status may also restrict its ability to effect change where smaller or more specialised organisations may achieve greater progress. APEC's inclusion of a broad spectrum of states with geography as the primary membership criterion has led to the emergence of political tensions concerning the organisation. These tensions, in turn, have led many observers to question APEC's ability in the current climate to provide leadership on needed reforms. Notwithstanding these difficulties, there may be room for optimism in the future. Resolution of issues concerning APEC's focus and principles may in time make it possible to capitalise on that organisation's unique regional status.

[16] See *Report of the Asian Ministerial Workshop*, E/CN.15/1998/6/Add.2, Manila, 23-25 March '98; the Philippine president's remarks to the ministerial meeting (available at http://www.asean.or.id/news/crime98a.htm); "Manila chosen as site of ASEAN Transnational Crime Center", *Philippine Daily Inquirer*, 17 December 1998.

B. Facilitating bodies and groups

The United Nations Drug Control Programme

The United Nations Drug Control Programme (UNDCP), based in Vienna, has been active in the fight against transnational crime and money laundering for some time. The most recent development with respect to money laundering has been the launch of the Global Programme against Money Laundering (GPML). With one component focused on Asia and the Pacific, the GPML seeks to promote

- technical co-operation, encompassing activities of awareness-raising, institution building and training
- research and analysis, offering information to better understand the phenomenon of money laundering and to enable the elaboration of more efficient countermeasures
- the establishment of financial investigation services to contribute to raising the overall effectiveness of law enforcement measures

In the Asia Pacific, GPML activities include the direct delivery of technical assistance services, partnering with other regional organisations to facilitate further technical assistance, the provision of model laws, the co-ordination of regional technical assistance activities, and the establishment of an on-line database of key international documents on money laundering.

The United Nations Crime Prevention and Criminal Justice Programme

Technical assistance on money laundering is also facilitated through the network of independent institutes affiliated with the United Nations Commission on Crime Prevention and Criminal Justice. UN-affiliated institutes with regional responsibility in the Asia Pacific include the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR, Vancouver), the Australian Institute of Criminology (AIC, Canberra), and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI, Tokyo).

While resources do not permit these organisations to facilitate and deliver technical assistance on the same scale as a number of larger international organisations, the institutes have nonetheless been involved in numerous activities in recent years (see **Table 5**). In 1999, ICCLR and UNAFEI will each convene two regional meetings on money laundering and/or organised crime.

The Commonwealth Secretariat

The Commonwealth Secretariat, through its links with a substantial percentage of the states included in this study, continues to contribute to the struggle against money laundering. The most significant recent activities of the Secretariat, which works closely with the South Pacific Forum Secretariat, are in the realm of technical assistance. They include:

- training seminars for Pacific Island law officers, including information on extradition, mutual legal assistance, and anti-money laundering legislation
- a major workshop for finance and law ministries and central banks of the South Pacific states
- (in co-operation with the FATF) a series of Asia-wide money laundering symposia

The Commonwealth Secretariat continues to be, along with the South Pacific Forum, a key actor in the South Pacific sub-region.

Table 4: Participation/membership in selected international co-operative efforts to combat money laundering[17]

Region	Country	FATF member	Asia Pacific Group member	South Pacific Forum member	1988 Vienna Convention	
					Signatory	Ratified
East and Southeast Asia	Brunei				✓	✓
	Cambodia					
	China		✓		✓	✓
	Hong Kong SAR	✓	✓		✓	✓
	Indonesia				✓	✓
	Korea		✓		✓	
	Laos					
	Macao					
	Malaysia				✓	✓
	Myanmar				✓	
	Philippines		✓		✓	✓
	Singapore	✓	✓		✓	
	Taiwan[18]		✓			
	Thailand		✓			
	Vietnam				✓	
South Pacific Islands	Cook Islands			✓		
	Fiji		✓	✓	✓	
	Kiribati			✓		
	Marshall Islands			✓		
	Micronesia			✓		
	Nauru			✓		
	Niue			✓		
	Palau			✓		
	Papua New Guinea			✓	✓	
	Samoa			✓		
	Solomon Islands			✓		
	Tahiti					
	Tokelau Islands					
	Tonga			✓		
	Tuvalu			✓		
	Vanuatu		✓	✓		
Other Regional Actors	Japan	✓	✓		✓	✓
	Australia	✓	✓	✓	✓	✓
	New Zealand	✓	✓	✓	✓	✓
	Canada	✓			✓	✓
	U.S.A.	✓	✓		✓	✓

[17] Data on Vienna Convention is from the United Nations Treaty Collection website (http://www.un.org/Depts/Treaty/) (requires free registration for login), last accessed December 20 1998. FATF data is available at the FATF website (www.oecd.org/fatf/). South Pacific Forum information is available from the SPF Secretariat website (http://chacmool.sdnp.undp.org/pacific/forumsec).

[18] Taiwan is not a member of the United Nations and may not therefore currently become a party to the 1988 Convention.

The Egmont Group

As mentioned earlier, the Egmont group continues to be one of the most important resources with respect to regulatory measures to combat money laundering. While the standards set by the Group for recognition of a state's financial intelligence unit are stringent, and thus unlikely to be met quickly by many of the states in the Asia Pacific, the Group's increasingly heterogeneous membership affords ever greater comparative insight into the establishment of these arrangements.

The Financial Action Task Force

The FATF continues to provide the impetus to give legislative form to the policy framework set up by the Basle Committee and the Vienna Convention. The Financial Action Task Force was established by the G7 at the Paris Economic Summit in 1989. It has grown to include 28 members.[19] It is the leading international body on money laundering policy. Its most important report was its first in April 1990. This report reviewed the nature and extent of money laundering, considered programs in place nationally and internationally to address it, and made 40 recommendations for a co-operative international regime. The recommendations fall into three main areas: the improvement of national legal systems, the enhancement of the role of the financial system, and the strengthening of international co-operation.

The recommendations defined the 'state of the art' in providing a functional yet transparent financial system. They include:

- provisions on the identity of the clients ('know your customer')
- the removal of banking secrecy and anonymity provisions
- the recording of unusual or suspicious transactions
- the development of compliance programs
- the monitoring of cash crossing over borders
- the encouragement of movement away from cash transfers towards other secure techniques of money management (like credit cards, cheques, and direct deposits)
- the establishment of competent national supervisory and regulatory authorities governing financial transactions

The mandate of the FATF is threefold. First, the FATF is committed to continue the process of *mutual evaluation* in which teams of experts from other member countries visit individual member jurisdictions, examine the way in which the recommendations have been implemented, and report back to the FATF Secretariat. Second, the FATF studies recent developments in *money laundering techniques* based on the experience of its members.

[19] The members are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Turkey, the United Kingdom, and the United States, as well as the Commission of the European Communities and the Gulf Co-operation Council.

Interpretative notes updating the 40 recommendations are issued from time to time in light of what is known about new laundering typologies. Finally, the FATF is involved in an *outreach program* encouraging implementation of the recommendations by non-member states, many of which are important financial centres.

The Asia-Pacific Group on Money Laundering

The FATF's outreach program is manifest in the Asia Pacific in the form of the Asia Pacific Group on Money Laundering (APG). The most recent meeting of the APG, a workshop on money laundering typologies held in November 1998, drew participants from twenty of the jurisdictions covered in this report, as well as from a number of other countries and several international organisations.

The APG is the single most important multilateral regional forum in the fight against money laundering in the Asia Pacific. Like the FATF, the APG's strategy is to make use of mutual evaluations and studies of money laundering techniques in order to improve compliance with international standards and understanding of the nature of the problem. In many jurisdictions in the Asia Pacific, however, the APG has an additional role of creating awareness about the issue in the governmental and financial communities and in the public realm, as well as maintaining an active assisting role in the development of legislation, regulations and treaties.

A priority for the APG remains the further inclusion of regional jurisdictions in the organisation, and the expansion of the process of mutual evaluation. One major obstacle for the APG, as for other multilateral solutions to the problem of money laundering in the region, is the wide range in size, population, wealth, and technical expertise of the states of the region. Mutual evaluation, while a useful tool, is difficult to employ effectively amongst vastly dissimilar states. Accordingly, the APG has sought to partner with other regional organisations with more specific geographic mandates, such as the South Pacific Forum. This strategy will continue to be appropriate in addressing money laundering in the disparate states of the region.

C. Bilateral co-operation

Bilateral co-operation is a vast area of activity, which is impossible to catalogue exhaustively. The United States, Australia and Japan have all developed extensive bilateral co-operative linkages with many of the countries of the region the Asia Pacific. Canada, Britain and New Zealand maintain a smaller but still significant presence. Amongst the other countries of the region there is of course a considerable degree of co-operation, more typically ad hoc than formalised. The forms of bilateral co-operation of greatest significance in attempts to control money laundering are mutual legal assistance and bilateral technical assistance.

Mutual legal assistance

Mutual legal assistance involves an undertaking to share information and provide other facilitating actions regarding investigation, prosecution and in some cases punishment of offenders. The most common instrumental form such assistance takes is a Mutual Legal Assistance Treaty (MLAT). Typically, mutual legal assistance in criminal matters will also

entail a commitment to extradite individuals indicted in another jurisdiction for an offence punishable by law in both jurisdictions. This commitment is undertaken under the international legal principle *aut dedere aut judicare* ('extradite or prosecute'). Such agreements are typically undertaken between no more than two countries at a time, primarily because of the sensitivity of the issues of extradition and extraterritoriality.

The degree of participation in bilateral mutual legal assistance provisions in the Asia Pacific region is uneven. Many states have agreements with one or several large extra-regional states, but the intra-regional web of legal co-operation is far from complete. The extent of compliance with international standards in terms of legislative provisions allowing for the negotiation of MLATs is summarised in **Table 2** and section 3 above.

Bilateral technical assistance

In addition to multilateral initiatives, bilateral technical assistance possesses the advantage of relatively quick delivery and specificity of beneficiary. While such initiatives are not publicised to the extent that multilateral events tend to be, all major extra-regional actors covered in this report continue to be involved in the delivery of direct technical assistance in the region, for two reasons. First, given the resource differential between the wealthier states on the region's periphery and many of the less developed states of the region, action will continue to be best facilitated through the donation of outside resources. This consideration is rendered even more relevant by the recent regional financial crisis. Second, as mentioned above, technical assistance may be more easily tailored to specific needs on a bilateral basis.

Criticisms of bilateral approaches to technical assistance include the view that donor states will consciously or unconsciously encourage a response in the recipient state to the issue of primary importance to the donor state. In this fashion, the action taken by the recipient state may not correspond directly to the concerns of that state, or regional or global interests, but rather to the interests of the donor state. While it would be unrealistic to discount this objection, it would also be unwise to grant it excessive significance. It may be enough to recommend that bilateral technical assistance occur in the context of multilateral agreement and consultation.

In general, therefore, it is both likely and desirable that bilateral assistance will continue to be a key component of any general regional response to the threat of money laundering in the Asia Pacific.

7. Existing and planned technical assistance activities

Whether multilateral or bilateral, technical assistance activities will be critical in helping the jurisdictions of the Asia Pacific develop effective strategies against the threat of money laundering. **Table 5** details current or recently completed technical assistance projects.[20]

[20] Data in part as catalogued by the UN Drug Control Programme following a meeting of global money laundering technical assistance providers in September 1998, with several revisions based on new information.

Despite the considerable number of useful, targeted exercises contained in these tables, the need for technical assistance at the multilateral and bilateral levels in the Asia Pacific remains critical. So, too, does the need for co-ordination amongst regional actors to avoid replication in a field where demand far outstrips supply.

Table 5: Asia Pacific recent and current technical assistance activities

Target Region, Sub-region or Jurisdiction(s)	Provider	Date	Activity
South Pacific	COMSEC	Ongoing	Assistance to the Pacific Island Law Officers, including extradition, mutual legal assistance, and anti-ML laws
Asia Pacific	USA, Interpol	Ongoing	Project Asiawash for the analysis of country-level and regional ML situations.
Asia Pacific	Japan (UNAFEI)	Annual	Seminar for information exchange on proceeds of crime and investigative techniques held for drug investigation officials in approximately 20 developing countries (SE Asia and Pacific Islands)
Asia Pacific	APG	Ongoing	Comprehensive strategic assessment of all regional states.
Asia Pacific		Annual	Asia Pacific Operational Drug Enforcement Conference – Investigative co-operation and ML countermeasures.
Asia-Pacific	APG	November 1998	Money laundering typologies workshop, held in New Zealand
South East Asia	APG	June 1998	One-day information session at the South East Asian Central Banks Training Centre Workshop, held in Labuan, Malaysia.
Asia Pacific	APG	May 1998	Awareness raising presentation at the BanComp 1998 international ML seminar held in Hong Kong, China.
Asia Pacific	APG	March 1998, February 1997	Comprehensive workshops for the elaboration of a strategic approach to technical assistance and training in both Asia and the South Pacific, including assistance to legal, financial and law enforcement sectors.
Asia Pacific	UNDCP	March 1998	Awareness raising at the Asian Regional Ministerial Meeting on Transnational Crime, including money laundering provisions in the declaration.
South Asia, Southeast Asia	UNDCP	March 1998	Regional awareness raising conference for South Asian States (Bangladesh, India, Iran, Maldives, Myanmar, Nepal, Pakistan, Sri Lanka, and Thailand), held in New Delhi.
Asia Pacific	Interpol, APG	November 1996, October 1995	Regional proceeds of crime money laundering methods workshops held in Hong Kong.
South Pacific	COMSEC	1995	Workshop for representatives of finance and law ministries and central banks (Pacific States).
Asia Pacific	COMSEC, FATF	1995, 1994, 1993	Asia Money Laundering Symposiums.
ASEAN states	ASEAN	1997	Training course on financial investigations
China	APG	November 1996	Legal assistance for the drafting of anti-ML legislation.

Target Region, Sub-region or Jurisdiction(s)	Provider	Date	Activity
China	ICCLR	October 1998	Workshop on money laundering under the Symposium on Prevention and Control of Financial Fraud.
Indonesia, Vietnam	WCO	1997	Training assistance.
Malaysia	APG	1997	Training programme for the Malaysian National Narcotics Agency as part of the ASEAN Training Course on Financial Investigations.
Malaysia, Thailand	Canada (RCMP)		Training programme on proceeds of crime/ML investigative techniques
Myanmar	GPML	March 1998	Participated in regional conference;
Thailand	APG	May 1998	Provided with material in support of new money laundering legislation
Thailand	GPML	March 1998	Participated in regional conference
Cook Islands, Vanuatu	USA (Customs)	September 1998	ML training to customs officers
Cook Islands, Fiji, Niue, Samoa, Tonga, Vanuatu	APG	May 1998	Expert mission to offshore financial services centres
Fiji	APG	May 1998	Sourcing information on white collar crime for presentation to the Parliament

Table 6: Asia Pacific planned future technical assistance activities

Target Region, Sub-region or Jurisdiction(s)	Provider	Date	Activity
Asia Pacific	APG	March 1999	Law enforcement typologies workshop, to be held in Tokyo
	APG	1999	Working party meeting for the assessment of additional anti-ML measures in the Asia/Pacific region
	ICCLR	1999	Asia-Pacific regional working meeting on South Pacific technical assistance needs, held in Fiji.
	ICCLR	Fall 1999	Asia-Pacific regional working meeting on Southeast Asia technical assistance needs, held in Bangkok.
	GPML	Second half 1999	Regional technical assistance programme for Asia.
	GPML	Second half 1999	Regional technical assistance programme for Pacific Islands
South Pacific	South Pacific Forum Secretariat	1999-2004	Program on combating cross-border crimes
South Korea, Taiwan	France (TRACFIN)		ML training; (under consideration)
Philippines	GPML-CICP	January 1999	Awareness raising and assessment on crime, corruption and ML
Thailand	GPML	March 1999	National seminar for review of new legislation

8. Conclusions

This report has presented a preliminary analysis of some of the most significant practical problems likely to be encountered in any attempt to construct a comprehensive and effective anti-money laundering regime in the region.

The new and specific challenges present in the region, which overlay the generic challenges faced in any area of the world seeking to combat money laundering, are numerous. First, the emergence of the South Pacific to join other states of the region in offering *offshore services* is made a greater problem by the comparative lack of regulation in many of those jurisdictions. In addition to legislation, regulation and enforcement measures against these developments, awareness raising may be vital in demonstrating the long-term harm of allowing money laundering to continue unchecked. Second, concerning the *Asian financial crisis*, the dire economic circumstances of many regional states have led to a devaluing of financial regulatory measures in favour of increased and unquestioned foreign investment. Third, locally and culturally specific informal banking and financial practices are common in the Asia Pacific. Though many of the se practices may be intractable, training for investigators, transaction reporting, and any region-wide strategies must take such practices into account inasmuch as they can be identified. Fourth, the frequency of states or areas within states possessing substantial, legal cash economies questions the feasibility of establishing reporting regimes in these settings. At a minimum, it would be appropriate to develop the concept of 'suspicious transaction' on a contextually specific basis.

Fifth, regarding public-sector corruption, while the Asia Pacific as a whole has begun to develop safeguards against such activity, several major jurisdictions of the region are considered to be at considerable risk from corruption. Insulating official bodies from corrupt behaviours, and implementing adequate independent oversight capacity, must remain present in strategic planning against regional money laundering activity. There is considerable correspondence between those initiatives combating corruption and those combating money laundering: technical assistance in developing anti-corruption strategies is likely a necessary condition for the establishment of transparent domestic financial systems in the region.

Regarding the basic structure of an anti-money laundering regime, the following lists key areas requiring attention and concerted action on the parts of the countries of the region. This listing may in turn serve as a basis for the further identification of technical assistance and technical co-operation activities that may be undertaken in the region to establish such a regime.

- **Criminalisation:** Most states in the region have legislation in place criminalising money laundering. However, there are a number of jurisdictions where comparable legislation is not in place, including some states where money laundering activities present a major challenge or where criminal behaviour is otherwise a policy problem. Continued use of diplomacy, and awareness raising techniques to promote the passage of legislation in compliance with international standards is required. Technical assistance may focus on legislation drafting and implementation.

- **Proceeds of serious crime:** A majority of states in the region have not yet criminalised the laundering of the proceeds of all serious crime. While there is no consistent, universally agreed definition of serious crime, this term typically refers to crimes other than drug trafficking which carry significant penal sanctions – for instance, kidnapping, trafficking in persons or contraband, or extortion. The uneven application of this provision internationally reflects the rapidity of changes in international thinking on this issue since the 1988 Convention. It is clear that this modification must be a high priority in regional legislative strategies. Local research on the impact and social consequences of serious crime, and on how the proceeds of these crimes are laundered, may help raise local awareness of the need to implement new, more comprehensive anti-money laundering legislation. Technical assistance on legislation drafting and implementation may be required in several jurisdictions.

- **Asset forfeiture:** Most regional states possess asset forfeiture provisions in their statutes. While the number of exceptions is small, a number of jurisdictions that do not possess such a provision are amongst those significantly at risk of exploitation by money launderers. These jurisdictions may require technical assistance on legislation drafting and implementation, as well as assistance in the development of co-operative bilateral and/or multilateral asset sharing schemes. In establishing an effective program to combat money laundering, clear and fair asset-forfeiture provisions will do much to facilitate international co-operation on a case-by-case basis.

- **Mutual legal assistance and extradition:** Most regional states have legislative provisions in place allowing bilateral agreement on mutual legal assistance and extradition. The passage of this legislation is vital if these jurisdictions are not to become 'safe havens.' A second (equally important) step is the elaboration and adoption of mutual legal assistance treaties on a bilateral or multilateral basis. Towards this end, model treaties and other related supporting material made available by the United Nations, the Commonwealth Secretariat, and other organisations are useful and readily available resources. Technical assistance on legislation drafting and implementation, treaty development, and the sharing of existing regional legislative and treaty forms would be appropriate in a number of jurisdictions.

- **Disclosure of personal identity in financial transactions:** A majority of regional states have adequate legislative provisions, but a significant number do not. Furthermore, in a number of the jurisdictions possessing adequate legislation there is considerable doubt regarding adherence to due diligence requirements on behalf of financial institutions. Further development and delivery of technical assistance on legislation drafting and implementation may be required in these cases, as well as awareness-raising activities surrounding the long-term effects of promoting opaque financial transactions, including attention to due diligence requirements.

- **Transaction reporting requirements and FIUs:** Less than half of the countries in this region mandate reporting requirements, and of those, most do not currently have an FIU in place as a component of their anti-money laundering strategy. Beyond the development and delivery of technical assistance on legislation drafting and implementation, there is a need for the development and implementation of methods of

collecting and analysing transaction data which take into account scarce resources available and the characteristics of the local economy. This issue promises to be one of the most significant challenges in regional efforts against money laundering, and is reflective of the general level of difficulty posed by insufficient resources.

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