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on Money Laundering

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PAPUA NEW GUINEA ME1

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

PAPUA NEW GUINEA

21 July 2011

Papua New Guinea is a member of the Asia/Pacific Group on Money Laundering. This evaluation was conducted by the World Bank and was then discussed and adopted by the Plenary of the Asia/Pacific Group on Money Laundering as a mutual evaluation on 21 July 2011.

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ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APG	Asia/Pacific Group on Money Laundering
BPNG	Bank of Papua New Guinea (also referred to as the Central Bank)
BFIA	<i>Banks and Financial Institutions Act, 2000</i>
BNI	Bearer Negotiable Instruments
CBA	<i>Central Banking Act 2000</i>
CDD	Customer Due Diligence
CIMC	Consultative Implementation and Monitoring Council
CTR	Cash transaction report
DJAG	Department of Justice and Attorney General
DNFBP	Designated Non-Financial Businesses and Professions
DPM	Department of Personnel Management
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of terrorism
IFT	International Funds Transfer
IAIS	International Association of Insurance Supervisors
IPA	Investment Promotion Authority
ISA	<i>Internal Security Act 1993</i>
KYC	Know your customer/client
MOU	Memorandum of Understanding
ML	Money laundering
MACMA	Mutual Assistance in Criminal Matters Act 2005
MLA	Mutual legal assistance
NPO	Non-profit organization
NBFI	Non-Bank Financial Institution
OPP	Office of the Public Prosecutor
PEP	Politically-exposed person
POCA	<i>Proceeds of Crime Act 2005</i>
PoMSX	Port Moresby Stock Exchange
PNG	Papua New Guinea
ROSC	Report on Observance of Standards and Codes
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TF	Terrorist Financing
TCSP	Trust and company service providers
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Papua New Guinea (PNG) is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from November 6th 2010 to November 19th 2010, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector.

The assessment was conducted by a team of assessors composed of staff of the World Bank (WB), of the Asia/Pacific Group on Money Laundering (APG). The evaluation team consisted of: Emile van der Does de Willebois (team leader, Legal expert, WB), David Shannon (APG Secretariat, Principal Executive Officer), Bill Peoples (Ministry of Justice, New Zealand, Law Enforcement expert), Cari Votava (Financial expert, WB) and Lucie Castets (Consultant, WB). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Papua New Guinea at the time of the mission or shortly thereafter. The report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of Papua New Guinea. It will be presented to the APG plenary meeting in July 2011.

The assessors would like to express their gratitude to the authorities of Papua New Guinea for their collaboration throughout the assessment mission, particularly the Legal Policy & Governance Branch of the Department of Justice.

EXECUTIVE SUMMARY

Key Findings

1. Papua New Guinea (PNG) faces very serious risks of ML from various criminal activities including domestic corruption¹ (misappropriation of public funds), which is considered a serious problem.² PNG is experiencing rapid economic growth, very large scale foreign investment and an escalating crime rate. While the Financial Intelligence Unit (FIU) is building its capacity, there is no clear political level commitment to ‘follow the money’ to tackle corruption and other crimes, and no demonstrated commitment to regulate and supervise AML obligations by financial sector regulators, which severely hampers the authorities ability to tackle financial aspects of corruption.
2. Misappropriation of government funds occurs using government payments which, according to the authorities, are generally placed through the banking sector in PNG and used to purchase real estate, high-value vehicles, distributed in cash or moved offshore. The techniques to launder proceeds from other large-scale crimes in PNG such as illegal logging, arms trafficking, and fraud are less clear. There is no indication of TF risks in PNG.
3. The FIU has minimal resources, currently the FIU has only three staff, having started out three years ago with seven. It has not been given a formal structure within the Police force. It cannot fulfil the role it should be playing in developing the national AML system and receiving, analysing and disseminating reports.
4. Despite hard work by the FIU and some initial results to pursue proceeds of crime by the OPP, the authorities lack a systematic focus on the concept of ‘follow the money’ to tackle profit driven crime. The authorities have good information on the volume and techniques of laundering the proceeds of large scale corruption, but a lack of political will, poor inter-agency cooperation, lack of resources and concerns over undue influence undermine the efforts of the few agencies actively pursuing ML and proceeds of crime in PNG. Trust between agencies is low.
5. PNG has formally required its financial sector to adopt basic anti-money laundering / combating the financing of terrorism (AML/CFT) preventive measures for several years, however the obligations are only heeded by the banking sector and postal service. In depth AML/CFT obligations have not been issued by any regulator and supervision and enforcement of the existing AML/CFT requirements has not yet taken place. In practice, the levels of implementation of customer due diligence (CDD), internal controls and suspicious transaction reporting in the banking sector are higher than the national requirements due to group-compliance policies (foreign subsidiaries) and efforts to adopt best practices. Papua New Guinea has not yet commenced supervision and

¹ Freedom House’s 2009 Country Report on Papua New Guinea downgraded the Political Rights score (from 3 to 4) due to the government’s failure to address increasingly widespread instances of corruption and abuse of official power [<http://www.freedomhouse.org/template.cfm?page=363&year=2009&country=7681>]. The 2010 rating remained at 4 [<http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7896>].

² Transparency International’s 2010 Corruption Perception Index ranks Papua New Guinea as 154 out of 178 countries in the 2010: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

enforcement of AML/CFT requirements and key regulators have been notably absent from efforts to regulate and supervise for AML/CFT.

Legal Systems and Related Institutional Measures

6. PNG has criminalized ML in a manner broadly consistent with the Vienna and Palermo conventions under the *Proceeds of Crime Act 2005 (POCA)*. The ML offence extends to the proceeds of all crimes with as yet inadequate coverage of human trafficking and drugs trafficking. A bill criminalizing human trafficking is currently under consideration. The criminal liability of legal persons is provided for and the penalties specified for ML are within the regional range. So far one charge of ML has been laid- the case is ongoing.

7. Terrorism financing is criminalized as support of terrorism under the *Internal Security Act 1993 (ISA)*. There is some doubt as to whether the collection of funds is adequately criminalized, the definition of terrorism is not sufficiently wide and the funding of the individual terrorist has not been criminalized. Terrorism financing is a predicate offence to ML.

8. The extensive range of confiscation powers available under the *POCA*, including non-conviction based forfeiture, are not sufficiently used. This is due to a severe lack in the skills and human resources necessary to conduct financial intelligence gathering and investigation. The confiscation powers are supported by an adequate range of tracing, identification, freezing and seizing powers under both the *POCA* and the Search Act.

9. PNG does not yet have in place any mechanism to implement UNSCR 1267 and 1373. While banks operating in PNG will apply internal checks against databases that include the names on the UNSC 1267 Consolidated List, this is carried out as a matter of internal control and is not enforceable under domestic law. While the *ISA* includes a provision allowing the Head of State to designate an entity as a terrorist organisation, such designation does not entail the freezing of all assets of that entity.

10. The FIU lacks the resources that it needs to fulfil its statutory function. The FIU has very competent, professional and committed staff, and is receiving valuable financial reporting information from banks. This has the potential to be used to help stem the high levels of misappropriation and other corrupt practices in PNG. However, there are currently insufficient resources within the FIU for it to carry out its statutory functions.

11. While investigation of TF is a role for the police, there is uncertainty over whose role it is to investigate ML. The role for investigating the offence of ML rests primarily with police, but due to insufficient training and awareness raising, the police appear to believe that this responsibility rests with the FIU. While there is reported to have been one ML charge laid in court, there has been no successful prosecution for ML. PNG must take positive steps to clearly identify and articulate the police responsibility to investigate ML, and police should actively pursue ML investigations.

12. Cross border currency reporting is focused on foreign exchange controls, rather than AML/CFT measures. There is no form of border cash reporting mechanism for gathering information about the carriage of cash or bearer negotiable instruments across the border, and consequently no such information is available to the FIU. An effective system for identifying this activity and providing information to the relevant agencies should be implemented in PNG.

Preventive Measures—Financial Institutions

13. The POCA sets out basic AML/CFT preventative measures applying to all financial institutions, however only the banking sector has been made aware of the obligations and other sectors are not yet implementing *POCA* requirements. There is an absence of enforceable rules or regulations to implement the more detailed requirements of AML/CFT preventative measures as set down in the international standards. A weakness of the preventative AML/CFT system is that it largely relies on the fact that foreign owned banks operating in PNG are obligated by their home regulators to implement much stricter AML/CFT internal controls than required by PNG laws. Such preventative measures developed to address risks in another country may not be as effective to address the risks facing PNG's current environment.

14. The lack of effective CDD obligations undermines the suspicious transaction reporting requirement. Although the *POCA* requires financial institutions and most DNFBPs to identify customers, there is no requirement to collect sufficient information to understand the business of each customer for the purpose of understanding the likely transaction profile in order to distinguish normal transactions from suspicious transactions. There are no effective supervision or compliance monitoring systems in place to oversee and enforce compliance with CDD obligations.

15. The suspicious transaction report (STR) reporting obligation is in place, and despite some technical deficiencies, provides a clear legal basis to report STRs for ML and FT. Reporting institutions are providing safe harbour for reporting and there are clear prohibitions on tipping off. Given the corruption environment in PNG, and based on guidance from the FIU, the banking sector is taking a targeted approach to identifying and reporting STRs and CTRs. The priority target is to identify STRs related to public sector corruption and to ensure that the banks are reporting. There are no obligations to monitor accounts for unusual transactions, although the commercial banks are doing so pursuant to group policies and best practices.

16. AML/CFT obligations of financial institutions and DNFBPs need to be clearly stipulated in law and regulation, and contain effective and enforceable penalties for non-compliance that can be enforced directly and without recourse to courts. This includes CDD obligations, and other measures to mitigate risks arising from transaction activity of PEPs, risks arising due to the use of new technologies in financial services, and other areas of risk facing PNG.

17. There are serious weaknesses in the various legal powers which provide the basis for supervisory officials to fully assume the roles they must fulfil in supervising, regulating, monitoring compliance and penalizing non-compliance with AML/CFT preventative measures. Without clarifying supervisory powers and roles in relevant legislation, the effectiveness of the overall

AML/CFT system will continue to suffer, particularly in respect of the ability to monitor compliance and penalize instances of non-compliance.

Preventive Measures—Designated Non-Financial Businesses and Professions

18. The *POCA* sets out basic AML/CFT preventative measures applying to all the DNFBPs, with the exception of trust and company service providers (TCSP), as set out in the international standards. With the exception of casinos and regulated trust and company service providers, all DNFBPs are currently active in PNG. PNG has recently passed legislation to allow a casino to operate, however no casino license has yet been granted. The casino will fall within the definition of a cash dealer and will fall under the requirements of the *POCA*.

19. DNFBPs operating in PNG have not been made aware of their obligations under the *POCA* and it is apparent that no steps have been taken to implement *POCA* requirements in those DNFBP sectors which are currently operating in PNG. The FIU is working towards issuing guidelines to DNFBPs to make them aware of their obligations under the *POCA* for CDD, record keeping and STR reporting.

Legal Persons and Arrangements & Non-Profit Organizations (NPOs)

20. The availability of accurate information on the beneficial ownership of legal persons and arrangements is hampered by practical impediments. While the legal framework for companies provided under the *Companies Act 1997* is reasonably comprehensive where it concerns ownership and control by foreigners, securing- in theory at least- information by the Registrar of Companies on the first layer of owners/controllers of a foreign legal entity with a stake in a PNG entity, in practice the system is proving deficient. Frequently local persons have been acting as nominees for unnamed foreigners. In addition there is frequent abuse of Incorporated Land Groups where a few individual members of an ethnic group will claim funds in return for use of their customary held land on behalf of the entire group, but not distribute those funds amongst all members- designating themselves “primary owners”- a legally nonexistent term. In addition access to the information held by the Registrar of Companies is not immediate, normally requiring a letter before information is provided. Regularly the information provided is found to be out of date. The Registrar does enforce companies’ obligations to update their information and has initiated enforcement action in many cases. Company service providers are also not obliged to obtain any information on the ownership and control of the companies they form or to maintain any records. While trusts are recognized they are very rarely present or domestically established.

21. PNG has yet to undertake a review of the risk of its non-profit organisation (NPO) sector and the adequacy of its laws and regulations relating to NPOs. An important number of NPOs (associations legally speaking) do not focus on their initial claimed object and purpose and are often distributing profits outside of their object and purpose- . The legal framework provides for minimal registration and monitoring process of non-profit organizations. This deficiency renders information on the financing and expenditures of NPOs inaccessible to public and official scrutiny and consequently affects the transparency of the non-profit sector and makes it vulnerable to abuse for criminal purposes.

National and International Co-operation

22. There is a climate of mistrust and uncertainty across the public sector that prevents effective cooperation between agencies. The high level of systemic corruption amongst government agencies contributes to this lack of trust and consequently impedes information sharing, cooperation and assistance, within police and between agencies. Establishing formal arrangements that set out agreed processes will help to improve access to information and coordination between agencies.

23. PNG is an active member of well-developed regional networks of inter-agency cooperation and information sharing. This covers law enforcement and regulatory cooperation. Mechanisms are being developed to strengthen these information sharing and cooperation mechanisms.

24. PNG has yet to become a party to the Vienna Convention on drugs and psychotropic substances and the Palermo Convention on Transnational Organized Crime and fully implement both conventions. At the time of the onsite visit there appeared to be no plans for their adoption, but subsequently steps have been taken to identify necessary legislative amendments to enable PNG to join both conventions.

25. Under the *Mutual Assistance in Criminal Matters Act 2005 (MACMA)* competent authorities are given full powers to provide a wide range of mutual legal assistance- including identifying, freezing and seizing instruments and proceeds of crime. Dual criminality, construed broadly, is an optional, not a compulsory, ground for refusal of assistance. So far there has been one incoming request for mutual legal assistance on a possible ML offence.

26. The *Extradition Act* is comprehensive including ML and terrorism financing as extraditable offences. The provisions under this act are yet to be tested.

Primary Recommendations

27. Based on its assessment of risks and its review of the AML/CFT regime, the assessment team suggests the following essential priority action over the next 18 months:

- Establish a policy level inter-agency coordination mechanism, involving all relevant agencies, to prepare a national AML/CFT strategy, defining the main objectives and priorities of stakeholders. This national policy should be driven by a high-level, centralized leadership.
- Prioritise the development of capacity to conduct financial investigations and to “follow the money”, particularly in relation to proceeds of corruption. This should support a culture of going after the proceeds of offences by freezing and seizing those proceeds and seeking to confiscate them.
- Establish a firm legal basis for the freezing of funds belonging to persons or entities listed under UN Security Council Resolution 1267.

- Address deficiencies in the registration of companies and associations, giving the Registrar powers to impose administrative sanctions higher than currently provided for and providing sufficient resources to verify existing registrations and applications for registration.
- The FIU should be provided adequate resources to carry out the functions of receiving, analysing and disseminating financial intelligence, including being provided with additional staff and information technology capability. The FIU should ensure that financial intelligence is effectively disseminated in police and other relevant agencies, and that accurate statistical information concerning this dissemination is retained. Clear and effective measures are also required for ensuring the security and integrity of information held by the FIU.
- The role of police to investigate and prosecute ML offences should be further clarified in legislation, and this role should also form part of internal training and operational procedures. Police should actively pursue ML investigations. Police should also work closely with the OPP to develop the capability to effectively investigate and prosecute proceeds of crime matters.
- The legal framework for AML/CFT preventative measures should be improved to clarify more precisely the AML/CFT internal control and reporting obligations for reporting entities and to ensure that these obligations are mandatory and not discretionary.
- Clarify and strengthen the CDD requirements, and in some cases, tailor to specific sectors to ensure reporting entities are able to effectively identify and report suspicious transactions.
- Adopt a risk-based approach to implementing preventative measures, including STR reporting, beyond the banking sector.
- Ensure reporting entities and supervisory bodies have a clear understanding of what constitutes effective compliance and are able to identify and effectively sanction cases of non-compliance.
- Clarify in the legal framework which supervisory authorities are responsible for enforcing and monitoring compliance for various sectors of reporting institutions.

1. GENERAL

1.1. General information on Papua New Guinea

Geography and Demography

28. Papua New Guinea (PNG) is a country in Oceania, occupying the eastern half of the island of New Guinea and numerous offshore islands (the western portion of the island is a part of the Indonesian provinces of Papua and West Papua), covering a total area of 462,840 sq km. PNG is located in the south-western Pacific Ocean and shares a land border with Indonesia. Port Moresby is the country's capital. The mainland of the country is the eastern half of New Guinea Island, where the largest towns are also located, including Port Moresby and Lae. Other major islands within PNG include New Ireland, New Britain, Manus and Bougainville.

29. PNG is one of the most culturally diverse countries of the world. With a population of just under 7 million, more than 860 distinct indigenous languages exist with many different traditional societies. The three common languages are Tok Pisin, Hiri Motu and English. The official language is English. Most government documents are produced in English although Tok Pisin is frequently the language of debate in the National Parliament.

30. The PNG Constitution (preamble) declares the Fifth National Goal and Directive Principle for PNG to be for it to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization. The country is one of the world's least explored, culturally and geographically, and many undiscovered species of plants and animals are thought to exist there. PNG is mostly a rural country, with around 18% of its people living in urban centres, and a majority of the population living in traditional societies and practising subsistence-based agriculture.

31. The country's Human Development Index (HDI) is the second lowest in the Asia-Pacific Region³ and 61% of the population has no sustainable access to safe water. HIV infection rates are increasing at a pace that causes serious concern. During the time of the onsite visit there was an outbreak of cholera in the country.

Economy

32. Papua New Guinea is a developing country, with gross domestic product estimated in 2008 at US\$8.24 Billion⁴ and a GDP per capita estimated at \$US1253 for the same year. In 2008, real GDP growth was 6.6% and slowed moderately to 4.5% in 2009. Inflation averaged 6.9% in 2009 and inflationary pressures are forecast to persist the next two years, pushing the expected average rate of annual inflation to 7.2% in 2010-11⁵.

³ UNDP Human Development Index 2010: <http://hdr.undp.org/en/statistics/>

⁴ World Bank, World Development Indicators

⁵ Source: World Bank's Country Overview on Papua New Guinea, 2010 Update

33. At the time of the onsite visit the national currency, the kina, was trading at approximately 2.6 kina to the US dollar. The kina appreciated by 5.4% against the Australian dollar in 2009 and is likely to remain volatile in the next few years, owing to changes in global commodity prices and broad movements in the values of major trading currencies.

34. The economy of PNG is dualistic as an export-oriented, capital-intensive minerals sector operating in parallel to traditional rural subsistence. Agriculture currently accounts for 13% of GDP and supports more than 75% of the population. PNG's natural resources include gold, copper, oil, gas, timber and fish. Despite significant wealth generated from mineral exploitation over the last 20 years, the resources sector has provided relatively few jobs.

35. The mining sector is already a significant revenue stream for PNG, and the country is actively preparing for the exploration of its natural gas resources, proven reserves of which are ranked 43rd in the world at 226.5 billion cubic meters. This flagship project, representing an investment of US\$18 billion, provides the country with the opportunity to materially raise growth in the long-term. This project is sponsored by a consortium led by ExxonMobil. Estimates suggest that the project will yield the equivalent of 50 million barrels of oil in natural gas and lead to US\$3 billion in average annual export receipts starting in 2013-14. By one consortium partner's estimates, the project could turn PNG into the second largest liquid natural gas producer in East Asia, after Malaysia and past Indonesia, by 2017. The construction phase of this project will provide a boost to economic growth in the next few years. However, the government faces the challenge of ensuring transparency and accountability for revenues flowing from this and other large liquid natural gas projects⁶.

36. The Port Moresby Stock Exchange (PoMSX) had a market capitalization of K109 billion (approx US\$40 billion) at the end of 2010, which was a year on year increase of 118%. In 2010 the total number of listed entities reduced by one to 19.

37. The divide between the rich and the poor in PNG is substantial. The country's Gini index was estimated at 50.9⁷ in 1996, and 39% of the PNG population live on less than 1 US\$ a day⁸. The 2005 - 2010 Medium Term Development Strategy (MTDS) of the PNG Government places high emphasis on maintaining the infrastructure and on economic growth. Resource mobilization through public sector reform and expenditure management is an important element of the MTDS.

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

39. PNG has a small open economy and a concentrated financial sector with significant growth expectations and limited secondary markets. The financial sector is largely oriented to serve the

⁶ Summary from CIA World Fact Book on Papua New Guinea, 2010

⁷ If income were distributed with perfect equality, the index would be zero; if income were distributed with perfect inequality, the index would be 100.

⁸ World Bank

formal sector. Two thirds of financial sector assets are held by four locally incorporated banks, three of which are subsidiaries of foreign banking groups.

40. The global financial crisis had only a mild impact on PNG. The country has a robust pace of economic growth and its financial sector was largely insulated from global financial markets. Increased public spending helped sustain growth in the face of the indirect impact of commodity price declines.

Government and Political System

41. Papua New Guinea is a constitutional monarchy within the Commonwealth. The British monarch is represented by a Governor General, chosen by the Parliament for a six year term. The PNG Constitution provides for the independence of the three branches of Government: executive, legislative and judicial. Legislative power is held by a unicameral Parliament of 109 members, elected for 5-year terms. 89 members represent "open" constituencies, and the remainder represents 18 provincial constituencies, the Capital District and the Autonomous Region of Bougainville. Suffrage is universal for citizens over age 18.

42. Executive power is exercised by the National Executive Council (NEC), which consists of the Prime Minister (Chairman) and all Ministers, who are appointed by the Governor-General on the recommendation of the Prime Minister. The Prime Minister is proposed by the party or coalition with the most seats in the Parliament and appointed by the Head of State. At the time of the on site visit the Prime Minister was Grand Chief Rt. Hon. Sir Michael Thomas Somare.

43. The Constitution establishes the Supreme Court of PNG and the Supreme Court Act provides for the Court's powers and rules of practice and procedure. The Supreme Court is the highest court in PNG. The lower courts include the National Courts of Justice, Village Courts, and District Courts in urban centres presided over by stipendiary magistrates.

44. PNG is administratively organized according to 20 province-level divisions: eighteen provinces, the Autonomous Region of Bougainville and the National Capital District. Each province is divided into one or more districts, which in turn are divided into one or more Local Level Government areas. Provinces are the primary administrative divisions of the country. Provincial governments are branches of the national government. Each of the 18 provinces and the Autonomous Region of Bougainville has its own government, which may levy taxes to supplement grants received from the national government.

45. In 1988, a conflict began when the Bougainville Revolutionary Army (BRA) started to fight for the independence of the island of Bougainville and for financial compensation for land occupied by the Bougainville Copper Mine (jointly owned by the PNG Government and the Australian mining company Conzinc Rio Tinto). Some 7,600 civilians were killed during the fighting or died as a result of the armed operations. A ceasefire in 1998 was followed by a peace agreement in 2001. In March 2002 Parliament adopted legislation allowing for autonomy in Bougainville.

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

Legal System

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

48. PNG's national judicial system consists of the Supreme Court of Justice and the National Court of Justice (Constitution, section 99 (2)(c) and section 155 (1)). Below them, there are magistrates in District) and Village courts.

49. The Supreme Court and National Court are comprised of the Chief Justice, the Deputy Chief Justice and other judges. Currently, there are eighteen judges and three acting judges. The National Court has unlimited jurisdiction, which is exercised by a single judge. National courts have power to hear any case unless the Constitution gives the power to hear a particular case to another court. It deals with the majority of civil and criminal cases and also hears appeals from lower courts. There are resident National Court judges in a number of regional centres.

50. The Supreme Court is the highest court in PNG. It hears appeals from decisions made by the National Court, reviews decisions made by the National Court, gives opinions or advice on whether a proposed or already existing law is constitutional, develops rules of the underlying law and enforces human rights as provided under the Constitution. The Supreme Court is the final court of appeal and has original jurisdiction on constitutional matters. It sits as a bench of three or five judges. The Supreme Court includes all the judges of the National Court other than acting judges (Constitution, section 161). It is based in the capital, Port Moresby, and also sits in some regional centres.

51. District Court magistrates are appointed by the Judicial and Legal Services Commission. Tribunals may be established outside the national judicial system, as well as arbitral or conciliatory tribunals. Their powers to impose penalties are limited. The Constitution also provides for courts that may deal with matters primarily by reference to custom or in accordance with customary procedures or both (Constitution, section 172 (2)).

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

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

Structural Elements for Ensuring an Effective Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) System

Transparency and good governance

54. Corruption in PNG is a deeply structural problem. Some initial legislative steps have been taken to inject a certain degree of accountability, but historically rooted patronage systems that operate in an environment still based on ethnic and social fragmentation render these legislative changes ineffective. Narrow political bases and short time horizons have created incentives for Members of Parliament to focus on the distribution of favours targeted to their supporters, thus further reinforcing social fragmentation. Changes to laws and regulations alone are insufficiently effective to address this problem.⁹

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

56. The 2010 Corruption Perception Index (CPI) ranked PNG at 154 out of 178 surveyed countries, with a score of 2.1. PNG's ranking slipped from the 2008 ranking of 151¹⁰.

57. In PNG, corruption impedes efficient and fair delivery of the most basic state services and democratic rights. It is an ongoing concern that PNG has consistently ranked among the lowest in the last few years. The experience and perception of outside opinion has a big impact on a variety of factors influencing PNG's ongoing development - including investor confidence and the willingness

⁹ For further discussion of the patronage politics in PNG see Allen, Matthew, & Zahid Hasnain. 2010. "Power, Pork, and Patronage: Decentralization and the Politicization of the Development Budget in Papua New Guinea", in *Commonwealth Journal of Local Governance*, No. 6.

¹⁰ CPI score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). According to Transparency International, a score of less than 3.0 out of 10.0 indicates there is “rampant” corruption.

of donor agencies to engage with the country.

58. The Transparency International Global Corruption Report of 2008-09 showed for PNG, 40% of the business leaders polled globally reported that a bribe was required when dealing with a public institution. Of those polled, one in five believes they have lost business thanks to corruption, and that half believe their costs are inflated by at least ten percent due to corruption.

59. The World Bank's Worldwide Governance Indicators show that across the last three years, no measurable improvement has been achieved in the areas of "voice and accountability" and "political stability", while the situation is worsening in the areas of control of corruption and rule of law. In these last two indicators, PNG is in the lowest quartile in 2009. The indicator on control of corruption has deteriorated sharply since 2002, being at an especially low level in 2009.

60. Indicators related to "regulatory quality" remained roughly stable between 2007 and 2008, showing substantial improvement compared to 2006, and improved again in 2009. However, the indicator relating to "government effectiveness" sharply deteriorated in the period 2007-2009 compared to the period 2000-2003, as the indicator went from the 25-50th percentile range to a 0-25th percentile range on a global scale.

61. Corruption is endemic in PNG, at all levels of government, public sector organizations and, though to a lesser extent, in the private sector. The state of corruption in the forestry sector was notably highlighted by government agencies and others as critical, and the situation of governance and oversight in public-private partnerships was reviewed as poor, especially in light of the findings of the Commission of Inquiry into the Finance Department¹¹.

62. As reported by Transparency International¹², the legislature in PNG has not been very effective in performing its accountability function. The volatile party system, the lack of party loyalty and stability limit the ability of the legislature to act as a watchdog against corruption. Parliamentary committees generally do not operate to vet bills. Parliament did not sit for seven months of 2010.

Anti-Corruption Measures

63. While there are criminal offences provided for under the relevant laws to combat corruption in PNG, the effective implementation and policing of these laws remain highly problematic. Political will to eradicate corruption practices seems to be lacking.¹³

64. There are no specialist institutions with special powers or dedicated resources to tackle corruption offences. Offences of misappropriation of public funds carry relatively low penalties and the Directorate established in the Constabulary to investigate those offences is severely under-resourced.

¹¹ Transparency International, 2009 Annual Report on Papua New Guinea

¹² Transparency International, National Integrity Systems, Country Study Report 2003 on Papua New Guinea

¹³ *ibid*

65. PNG's Ombudsman Commission (PNGOC) is established under the Constitution and Organic Law to combat corruption through oversight of the Leadership Code. It does not have a role to investigate cases of corruption for criminal prosecution or proceeds of crime action. The Leadership Code sets out the responsibilities of office, specifying that leaders must not place themselves in a conflict of interest¹⁴ and that they are obliged to disclose their assets and incomes and prohibiting certain functions for leaders. The Leadership Code definition of *leader* covers mainly ministers, members of national and provincial legislatures, members of local level governments, constitutional office holders, heads of national and provincial departments and ambassadors. There are about 600 leaders and offices to which the Leadership Code applies.

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

67. Officials and civil society note that there is an environment of impunity, where case of large-scale corruption and misappropriation of public funds appear to take place largely without consequences. The Freedom House 2010 Country Report on PNG indicates that senior officials generally avoid investigation by claiming executive privilege or parliamentary immunity and have occasionally silenced accusers through defamation and libel suits.¹⁵ Recent moves to undermine the power of the Ombudsman Commission, for example, illustrate the lack of leadership to support processes where parliamentarians and senior officials are called to account for abuse of public finances.

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

69. Government efforts to fight corruption include the National Anti-Corruption Strategy 2010-2025, which was being finalized at the time of the on-site visit. The aim of the Strategy is to assist and support PNG to be more transparent and accountable and bring its legislation into line with the UN Convention Against Corruption.

70. Transparency of markets is affected by vertical integration of securities exchange, key market intermediaries and businesses in high-risk sectors including forestry, in PNG. In view of the rapid growth experienced in the past few years in the securities market, the Securities Commission is lacking important supervisory, oversight, regulatory and licensing authority to effectively monitor and

¹⁴ Section II-27 of the Constitution

¹⁵ Freedom House 2010 Country Report on Papua New Guinea;
http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7896&pf

control risks, serve as advocate of the interests of the general public, protect the rights of investors, enforce disclosure requirements in the interests of public transparency and enforce integrity standards.

1.2. General Situation of Money Laundering and Financing of Terrorism

71. The majority of proceeds of crime stem from corruption and fraud practices.

Corruption

72. Corruption is one of the main sources of illegal proceeds in PNG, especially related to misappropriation of public funds through fraudulent compensation claims as well as linked to the extraction industries and related licensing processes.

73. PNG faces very serious risks of ML from proceeds of domestic corruption (misappropriation of public funds), which is at an extreme level. PNG is experiencing rapid economic growth, very large scale foreign investment and an escalating crime rate. While the FIU is building its capacity, there is no clear political level commitment to ‘follow the money’ to tackle corruption and other crimes, and no demonstrated commitment to regulate and supervise AML/CFT obligations by financial sector regulators, which severely hampers the authorities’ ability to tackle financial aspects of corruption.

74. Misappropriation of government funds occurs using government payments which are generally placed through the banking sector in PNG and used to purchase real estate, vehicles, distributed in cash or moved offshore. Misappropriation also has significant effects on delivery of the most basic government services. For example, a 2009 Report of the PNG Ombudsman Commission reported that the education sector had misused US\$13.3 million in allocated funds, and that the European Union requested the return of \$61 million provided for teacher training and the purchase of library and text books.¹⁶

75. Fraud against the government is currently the most significant financially motivated crime in PNG. In April 2008, the Auditor General of PNG released a report indicating that approximately \$318 million annually is likely to have been stolen by corrupt officials in recent years.¹⁷ This together with recent intelligence indicates that the PNG government is likely to be losing a not insignificant share of budget revenues directly due to corruption, fraud and abuse of official office. Much of the fraud is reported to be committed with the collusion of persons within the government departments, and the national press is aggressive in reporting upon these cases when they are brought out into the open. Given the common use of commercial bank accounts for government administrative purposes, it is quite likely that the misused funds are processed through one or more of the commercial banks in Papua New Guinea.

¹⁶ Freedom House 2010 Country Report on Papua New Guinea

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

¹⁷ Papua New Guinea 2010 Country Brief, EStandards Forum, Financial Standards Foundation, at page 11;

<http://www.estandardsforum.org/system/briefs/305/original/brief-Papua%20New%20Guinea.pdf?1268430660>

76. Many of the fraud cases involving government officials are linked to Land Compensation, where the perpetrators identify a portion of land that has had some legal dispute or compensation claim attached to it, obtain paperwork in relation to the compensation claim and use that to loosely base their claim for compensation from the government. The perpetrators often seek assistance from persons who purport to be acting for the landholders and sign the paperwork to provide a veneer of legitimacy and plausible deniability for the government employees involved in the process. The perpetrators then obtain assistance of persons in the Department of Lands to process paperwork pertaining to the compensation claim and take the paperwork from the Department of Lands to identified facilitators in the Department of Finance. Once the cheque is drawn the perpetrators distribute funds to all persons involved in the scheme – often by cheque but sometimes by cash. This method was used in an offence that ultimately resulted in the successful restraint of K3.5 million in June 2010.

77. Some fraudulent compensation claim cases also involve fraudulent claims against the State loosely based upon some ‘event’, for example a village being burnt down, a person being shot etc. These events will be used as a trigger for claims against the State despite the fact that the village was burnt down by a rival clan and not by police at all, or the person who was shot was, again, shot by a rival clan and not by police. Similarly roads built across customary (clan owned) land are often used as a trigger because any number of people can claim some sort of affiliation with a piece of land and claim “compensation” as a result of damage done to land when roads are built. The fraud is then perpetrated through collusion of persons within relevant government departments paying out “compensation” for claims against the State that are never heard in court.

78. Other fraud schemes often involve construction projects, feasibility studies or development contracts, in which the perpetrators register a company with the company registry administered by the Investment Promotion Authority (IPA) that has a name that would indicate something to do with construction/ feasibility study / development / Memorandum of Agreement. They then open a bank account in that company’s name, seek the assistance of a facilitator in a relevant government department and submit a tender or project plan/application or paperwork suggesting that they act on behalf of the landowners. The perpetrators then obtain the relevant government approvals for the payment/awarding a contract/awarding the funds for development of an agricultural project/ approving the “feasibility study”. The perpetrators then rely on the assistance from a facilitator in the department of finance, treasury or provincial government and have a cheque drawn and all of the ‘facilitators’ are paid, to complete the fraud.

79. The least sophisticated fraud method requiring the least amount of involvement from officials from different departments is the sale of government assets, in which the perpetrators are typically in positions of trust in places like hospitals, PNG Power etc., with access to resources such as medical supplies or equipment and identify a potential buyer for the stock or equipment belonging to the government. The perpetrator then diverts the supplies or equipment to the buyer and receives payment from the buyer. The stock is then written off by the perpetrator as lost or stolen.

80. Due to weak anti-corruption safeguards and fast paced growth in the private sector there is a significant amount of alleged bribery underlying contractual agreements between resource owners

and resource developers.

81. Corruption is also a serious issue in party politics. There are several cases where party leaders negotiated with foreign business entrepreneurs to gain financial support to fund their political campaigns against, for example, concessional log harvesting or export permits, pending a successful election.

Illegal logging

82. There are strong indicators of large scale corruption and illegal logging in the forestry sector in PNG, which result in large-scale proceeds of crime which is confirmed by the authorities.¹⁸ NGOs estimate that a large majority of all logging practice in PNG is illegal, mainly due to the lack of prior and informed consent by traditional landowners and failures by authorities in PNG to enforce existing laws covering the sector, including management of timber concessions. The logging sector includes a network of over 40 private ports for export. Capacity for supervision is weak for logging concessions, extraction and export activities, payments, and the operation of ports. Monitoring some aspects of the sector is contracted to an independent third party verification / certification company. The logging sector in PNG is characterized by vertical integration, with key foreign companies operating in the sector controlling road construction, media outlets, financial services, private ports and major infrastructure projects across PNG. Legal frameworks to identify illegal logging, and to prosecute those involved and ‘follow the money’ have not met with a great deal of success.

Illicit drug production and trade

83. PNG is increasingly considered an emerging risk for transshipment of drugs and other illegal goods en route to Australia. Australian Customs authorities have identified significant risk associated with limited capacity in border control and the presence of organized crime groups. PNG relies on assistance from Australia to deter illegal cross-border activities primarily from Indonesia, including illegal narcotics trafficking¹⁹.

84. PNG is reported to be a major cannabis consumer. The 2003 UNODC Pacific Profile reported there were at least one million cannabis users in PNG and up to 350,000 daily users. Over the last decade, health officials, the media, law enforcement officers and researchers have all reported increased drug use, especially of cannabis, despite little systematic data collection to support this view. Trends toward increased use are often measured by arrest reports, while the PNG delegate at the 2006 Pacific Drug and Alcohol Research Network (PDARN) meeting noted a rapid increase in the number of people admitted to mental health services with cannabis-induced psychosis from 2000 to 2004, with close to 100 in 2004 alone cited as an indicator of the trend.

¹⁸ Freedom House 2010 Country Report on PNG cites a March 2009 Report by the PNG Ombudsman Commission that the government failed to account for tens of millions in the sales of mining and logging rights. http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7896&pf

¹⁹ Madonna Devaney, Gary Reid, Simon Baldwin; Situational analysis of illicit drug issues and responses in the Asia-Pacific region (2006), report prepared for the Australian National Council on Drugs

85. In early 2008, 40 kilograms of dried marijuana destined for Madang, final destination possibly overseas, was seized as part of a 24-hour crackdown in the Eastern Highlands. PNG police believed the 17 individuals detained were part of a major marijuana syndicate.

86. In January 2009 the media reported on a seizure by PNG police of US\$250 million in counterfeit notes and a quantity of powder suspected to be methamphetamine or cocaine. In addition, 10 kilograms of marijuana were seized. Furthermore, it has been estimated that there are 7500 injecting drug users in PNG.

87. International Narcotics Control Board prevented the importation of 12 tons of ephedrine and pseudoephedrine into PNG in 2002.

Arms trafficking

88. There are indications that arms trafficking is a serious issue in PNG, although firm figures were not available. It is clear that small arms use is relatively common in inter-ethnic violence, as well as robbery and urban crime.

Human Trafficking and Sexual Exploitation

89. The UNHCR's 2010 Trafficking in Persons Report²⁰ states that PNG is a source, destination, and transit country for men, women and children subjected to trafficking in persons, specifically forced prostitution and forced labour. Women and children are subjected to commercial sexual exploitation and involuntary domestic servitude; trafficked men are forced to provide labour in logging and mining camps. The report further states that government officials facilitate trafficking by accepting bribes to allow illegal migrants to enter the country or ignore victims forced into prostitution or labour, by receiving female trafficking victims in return for political favours, and by providing female victims in return for votes.

90. Domestic trafficking of women and children for the purposes of sexual exploitation and involuntary domestic servitude also occurs.

91. PNG does not fully comply with the minimum standards for the elimination of trafficking.²¹ PNG's efforts to remedy this issue are not clear as the UNHCR Report indicates that significant efforts are lacking, however, there have been recent efforts over the past 12 months to develop, in partnership with the International Organisation for Migration, new legislation criminalising trafficking in persons and people smuggling. The current legal framework does not contain elements of crimes that characterize trafficking and the government lacks victim protection services or a systematic procedure to identify victims of trafficking. In addition, PNG has yet to ratify the UN

²⁰ United States Department of State, *Trafficking in Persons Report 2010 - Papua New Guinea*, 14 June 2010, available at: <http://www.unhcr.org/refworld/docid/4c1883cf2d.html> [accessed 17 March 2011]

²¹ Ibid.

Convention on Transnational Organised Crime, or to adopt the 2000 UN Trafficking in Persons (TIP) Protocol.

Robbery and urban crimes

92. PNG has a high crime rate. Carjacking, armed robberies, and theft are problems particularly in and around major cities such as Port Moresby, Lae, Mount Hagen, and Goroka. The lack of jobs and difficulty of policing urban areas encouraged the development of "rascal gangs".

93. The UNODC 2010 International Statistics on Crime and Criminal Justice ranks PNG's indicator on robbery rate at the median - highest Quartile.

Money laundering typologies and trends

94. Authorities note a number of ML methods relating to placement in banks and other financial institutions, investment in real estate, investment in high-value vehicles, redistribution to Wantok groups, use of lawyers, etc.

95. The authorities do not have a clear understanding of the methods and trends of laundering the proceeds of those offences committed in PNG, for which the profits are generated in another jurisdiction (e.g. illegal logging, illegal fishing).

Attractiveness of Papua New Guinea for Money Laundering

96. Despite the fact that PNG has an unsophisticated financial sector, which makes it difficult to move foreign funds through the sector, proceed-generating crime tends to often translate into domestic ML as commercial banks are used most of the time in fraud schemes.

97. In addition, the lack of effective and appropriate governance, the low capacity of law enforcement and regulators and the general lack of compliance further renders PNG vulnerable to ML and related financial crimes.

Terrorism situation in Papua New Guinea

98. The risk of terrorism financing in the country is low²² and thus poses a minimal threat in the country. Regional assessments of risks from terrorism and TF conducted by regional organizations indicate relatively low risks amongst Pacific Islands, including Papua New Guinea. According to the local authorities, no TF cases have been reported or detected to draw statistics or experience from.

²² See e.g. the UK Foreign and Commonwealth Office (<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/papua-new-guinea>) "There is a low threat of terrorism". Other reports cite that although the conditions are such as to be conducive to terrorism, noting the "general lawlessness" in the Southern Highlands, there are no groups operating with terrorism as their primary tactic.

1.3. Overview of the Financial Sector

99. In PNG, the financial sector is small and largely oriented to serve the formal sector and provides little reach to the very large informal, rural and self-employed segments of the population. Approximately 85 percent of the adult population (about 3.9 million) lacks access to the formal sector. Around 600,000 people are included in the formal financial system. However, these numbers are growing as financial service providers seek to expand their services.

100. National authorities indicated alternative methods of payments services in the country are being developed. Consequently, and despite the fact that there is so far no specific legislation regarding electronic treatment of payment instruments, the Bank of PNG (BPNG) monitors new electronic and mobile payment services and systems entering the market and commits itself to working with the service providers and other stakeholders to develop the necessary legal and regulatory regime that will enable new, innovative and interoperable electronic payment systems to be introduced to the market.²³

101. Two thirds of financial sector assets are held by four domestically incorporated banks, three of which are subsidiaries of foreign banking groups. Authorized Superannuation Funds (ASFs) represent the next largest share of assets, two of which dominate and represent the longer term oriented institutional investors. Other deposit takers in the form of finance companies, savings and loans institutions and microfinance operators are all small in size and in aggregate. The insurance sector is constituted by a moderately dynamic non-life insurance sector and a nascent life sector. PNG has a small stock exchange, operating under the *Securities Act 1997* and licensed by the Securities Commission. There is no dematerialization or centralization of securities within a Central Securities Depository.

102. Despite rapid growth in recent years, PNG's financial system remained stable and avoided any direct impact of the recent global financial crisis. Since 2000, a favourable external environment and the introduction of financial sector reforms after a crisis through the 1990s provided a strong foundation for financial sector expansion. Total financial sector assets have increased to K23 billion as of March 2010 from K9.5 billion at the end of 2005, with banking sector assets comprising about 65 percent of the total.

103. A 'financial institution' is defined under section 3 of the *POCA*. The definition is conduct-based and therefore any person who engages in any activity stipulated therein is considered as a financial institution for purposes of *the POCA*. The *Interpretation Act of 1975* defines a 'person' under section 3 to include a legal person.

104. The *Banks and Financial Institutions Act 2000*, *Savings and Loans Societies Act 1995*, *Life Insurance Act 2000* and the *Superannuation (General Provisions) Act 2000* give the BPNG, as the central bank, the authority to license various 'financial institutions' to carry out prescribed activities pursuant to those enabling laws.

²³ Bank of Papua New Guinea, Press Release, Statement of Intent on Electronic and Mobile Payments Services

Structure of Financial Sector, 2009

	Number of institutions	Total assets	Proportion of Total Financial Sector Assets	Authorized/Registered / Regulated by
Commercial Banks	4	K15.5 billion	65%	Central Bank
Finance Companies	8	K662 million	2%	Central Bank
Savings and Loans Institutions	21	K730 million	3%	Central Bank
Microfinance Institutions	2	K120 million	<1%	Central Bank
Authorized Superannuation Funds	7	approx. K5 billion	21%	Central Bank
Non-life Insurance Companies	18	K1.179 billion	5%	Insurance Commission
Life Insurance companies and brokers	4	K172 million	1%	Central Bank
Stockbrokers	2			PoMSX

DNFBP Sector

	Legislation	Authorized/Registered by
Casinos	<i>Gaming Control Act 2007</i>	National Gaming and Control Board
Lawyers	<i>Lawyers Act 1986, Lawyers Trust Account Regulation 1990 and Professional Conduct Rules 1989</i>	PNG Law Society
Accountants	<i>Accountants Act 1996 , Accountants Regulation and Practice Regulation 1998,</i>	Accountants Registration Board
Dealers in precious metal and precious stones	<i>Central Banking Act 2000, Central Banking (Foreign Exchange and Gold) Regulation 2000</i>	Central Bank ²⁴
Real Estate	<i>Companies Act 1997, Investment Promotion Act 1992</i>	IPA ²⁵

Financial Activity by type of Financial Institution

Type of Financial Activity	Financial Activity	Financial Institution	Commercial names	AML/CFT regulator and supervisor
Deposit-Taking Institutions	Licensed or authorised to accept or collect deposits from the public.	Banks	Australia & New Zealand Banking Group (PNG) Ltd, Bank South Pacific Ltd, Maybank (PNG) Ltd, Westpac Bank (PNG) Ltd	FIU
		Licensed Financial Institutions	AGC (Pacific) Ltd, Credit Corporation Finance Ltd, First Investment Finance Ltd, Finance Corporation Ltd, Heduru Moni Ltd, Kina Finance Ltd, Pacific Capital Ltd, PNG Home Finance Ltd, PNG Microfinance Ltd, Nationwide Microbank Ltd, Resource Investment Finance Ltd	FIU
Savings & Loans	Authorised to accept or collect	Savings & Loan	Alekano, Air Niugini, CBO, East New Britain, Financial & Private,	FIU

²⁴ There are no specific laws on this but the legislation indicated provides the general power to the Central Bank to authorize such dealings.

²⁵ The legislation mentioned will apply only if persons/bodies involved in real estate register with the IPA or incorporate a company. Otherwise it remains unregulated.

Societies	deposits and give out to its members	Societies	Lae City Council Employees, Nasfund Contributions, Ailan, Mining and Petroleum SLS, PNG Cocoa Growers & Producers, PNG Power Staff, PNG Ports Corporation SLS, PNG University of Technology, Police & State Services, PTP, Sepik Savings, Teachers, Water board Staff, Federation of Savings and Loan Societies, Nambawan Savings & Loan Society.	
Life Insurance Business	Authorised to conduct life insurance business	Life Insurance Companies	Kwila Insurance, Life Insurance Corp (PNG), Pacific MMI Insurance, Capital Life Insurance Company.	FIU
		Life Insurance Brokers	Aon Risk Services, Asia Pacific Insurance Brokers, Marsh (PNG), Kanda International Insurance Brokers & Risk Consultants	FIU
Superannuation	Authorised to conduct activities as specified under the Superannuation Act.	Superannuation Funds	National Superannuation Fund, Nambawan Super, Defence Force Retirement Benefit Fund, OTML Superannuation Fund, Sios Workers Ritaia Fund, Aon Master Trust PNG.	FIU
		Investment Managers	Kina Funds Management, BSP Capital, National Capital.	FIU
		Fund Administrators	Aon Consulting (PNG), Kina Investment & Superannuation Services, SWRF Administration, IP Wealth Management.	FIU
Securities Trading	Stockbroking	Members of the PoMSX	present members of PoMSX are BSP Capital Limited and Kina Securities Limited	FIU
Bureau of Currency Exchange	Money changers		Best Nation Investment Ltd, Betta Rates Ltd, Usaha Jaya Ltd.	FIU
Special Licence of Overseas Remittances	Post PNG in partnership with Western Union			FIU

Banking Sector

105. The banking sector is licensed and supervised by the BPNG, PNG's central bank. Since 2000, when sector wide reforms were introduced, banking sector assets experienced an almost eightfold increase reaching more than K15.5 billion from 2000 to March 2010. The domestically owned Bank of South Pacific (BSP) is the largest, followed by subsidiaries of two Australian banks, ANZ and Westpac, and a subsidiary of the Malaysian bank, Maybank. In addition, there is a state-owned, non-deposit taking National Development Bank, which has historically had a primary function of providing accessible credit to people in rural areas but currently is somewhat dormant with assets of 1 percent of total banking assets.

Non-bank Financial Institutions (NBFIs) regulated by Bank PNG

106. NBFIs regulated and supervised by Bank of PNG include finance companies, savings and loans institutions and microfinance institutions. The sector holds more than K7 billion in assets.

Authorized Superannuation Funds (ASF)

107. BPNG supervises and licenses entities engaged in superannuation pursuant to section 7 of the *Superannuation (General Provision) Act 2000*. The ASFs are the largest NBFIs, holding more than 70 percent of total non-bank financial assets. Among the seven licensed ASFs, Nasfund and Nambawan stand out with almost K2 billion and K3 billion in assets respectively (together holding approximately 87 percent of total ASF assets). ASFs, in terms of assets size, are followed by the savings and loans societies, insurance companies (including general, life, and broker), and finance and microfinance companies.

Securities

108. The Securities Commission has licensed one stock exchange, Port Moresby Stock Exchange (PoMSX) which operates as the SRO for stock broking firms. The securities market in PNG includes listed securities (regulated by PoMSX), government bonds and superannuation services which are regulated by the BPNG and insurance securities which are regulated by the Insurance Commissioner.

109. The Securities Commission is established pursuant to the Securities Act 1997. The legal powers, functions and authorities of the Securities Commission are not clear in the Act. The Commission exercises no public supervisory or regulatory function over the PoMSX. There is no clear power for the Commission to withdraw the license or approval of the stock exchange even as a regulatory penalty for non-compliance or misuse. The Securities Commission has no powers to directly instruct or sanction brokers or regulate disclosure or licensing requirements.

110. 19 entities are listed on the PoMSX. Domestic Market Capitalization of securities listed on the PoMSX was K109.5 billion at the end of 2010. The market capitalisation showed a 118% growth year on year.

111. Only members of the PoMSX may offer stock broking services. At present there are two members of the PoMSX, BSP Capital Limited and Kina Securities Limited. These two entities also

own the PoMSX.

Insurance sector

112. BPNG regulates and licenses the life insurance sector under the terms of the *Life Insurance Act 2000*. The life insurance market is very small and stagnant, while the non-life insurance market is more substantial and growing in real terms. Total gross premiums in 2008 stood at K271 million for the non-life sector and K20 million for the life sector. Insurance density (premiums per capita) in PNG is US\$16 ranking 77th in the world and insurance penetration (premiums as a percentage of GDP) stand at 1.7 percent ranking 76th in the world.

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

Remittance

114. In addition to remittance companies working as agents for licensed banks in PNG, there are three authorized remittance companies conducting foreign remittance and one domestic remittance service through the Post Office. BPNG regulates remittance under the *CBA*.

Foreign Exchange

115. Two BPNG licensed money changers were operating at the time of the onsite visit.

1.4. Overview of the DNFBP Sector

Casino sector

116. PNG has plans to establish one casino and intends to tender for possible licensees in 2011. The casino will be licensed and regulated under the *Gaming Control Act 2007*. The authority responsible for administering this sector, the National Gaming & Control Board, has introduced in its licensing and regulatory requirements the *POCA* requirements of STR and CDD. This will take effect when the casino starts its activities.

Real Estate sector

117. The Real Estate sector in PNG, especially in Port Moresby, is growing with the increasing demand for accommodation and the rapidly rising value of real estate in PNG. Real estate companies are incorporated and registered under the IPA. However, according to the authorities, there is no obligation on the part of those persons to register properties for rental purposes, so not all real estate activities are regulated.

Dealers in precious metals and precious stones

118. Gold dealing activities in PNG were de-regulated in 1987, enabling all residents to buy and sell

gold within the country. For export purposes, a license must be obtained from the Central Bank before gold of any form can be exported overseas. A gold export license is valid for only one (1) year and may be renewed through a renewal application to the Central Bank. This applies to all precious metals unless it is declared otherwise by the Central Bank.

Trust and company service providers (TCSPs)

119. The regulatory framework for trusts and company service providers includes the *Trustees Companies Act 1966*, the *Trust Accounts Act 1951* and the *Companies Act*. It is not clear that independent TCSPs are operating in PNG under these statutes.

Lawyers, Notaries and Accountants

120. According to the authorities, lawyers are regulated by the *Lawyers Act*, the *Professional Conduct Rules* as well as other applicable legislation. Lawyers are also regulated by the *Lawyers Trust Account Act*. The Assessment team was unable to meet with the bar association during the onsite, despite repeated attempts. Serious concerns were raised in the report of the Commissions of Inquiry into the Finance Ministry regarding the collusion of a significant number of lawyers in fraudulent claims against the state and misappropriation of public funds.

121. Accountants are regulated under a regime based on the *Accountants Act 1996* and the *Accountants Registration and Practice Regulation 1998*.

1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements

122. The Investment Promotion Authority (IPA) established under the *Investment Promotion Act 1992* is responsible for administering the company registry pertaining to the establishment of legal persons or arrangements. The relevant codes to the creation and registration of legal persons are the *Associations Incorporations Act 1966* and the *Companies Act 1997*.

123. In addition the *Land Groups Incorporation Act* provides for legal recognition of the corporate status of certain customary and similar groups, and the conferring on them, as corporations, the power to acquire, hold, dispose of and manage land.

124. Any person may incorporate a company under the *Companies Act* in accordance with the incorporation requirements, which are that there should be a name for the company, one or more shares, one or more shareholders and one or more directors.

125. Similar requirements for Associations and Business Groups can be found in the respective Regulations. The name of shareholders, directors, members and the other information indicated at the time of the incorporation must be updated if necessary by the entity.

126. At the time of the on site assessment about 75,000 companies and over 5000 associations were registered with the company registry.

1.5. Overview of strategy to prevent money laundering and terrorist financing

AML/CFT Strategies and Priorities

127. Although PNG has some of the relevant laws on AML/CFT and the appropriate organizations to administer and implement these laws, there is no specific policy or strategy for combating ML or terrorist financing. It is not clear that AML/CFT has been built into the agenda to combat corruption. Nonetheless, according to the authorities, one of the seven pillars of the government's Vision 2050 provides for a broad 'Security and International Relations' objective that may provide the gateway for the government to develop appropriate and more targeted policies on AML/CFT.

128. The most important Act to guide AML policy is the *POCA* adopted in 2005. *POCA* criminalizes ML, creates some basic obligations for AML preventative measures by financial institutions and sets out detailed proceeds of crime powers and procedures. An FIU has been established in the police.

129. The authorities indicate that the draft National Anti-Corruption Strategy 2010-2025 (which is part of PNG's implementation of the UN Convention Against Corruption) prioritizes international crime cooperation in all its facets as a means to curb corruption.

130. To date, according to the PNG authorities, a contingent from the DJAG, the OPP, the Police, the FIU and Customs assume both a strategic and policy role regarding AML/CFT implementation given their respective portfolios. In particular, the Legal Policy & Governance Branch of DJAG continues to pursue AML/CFT as one of its core responsibilities, which is aligned with the DJAG's overall Corporate Plan.

131. According to the authorities, new initiatives may be developed after this evaluation process. This would include measures aiming at coordinating subsequent mutual evaluations and implementing MER recommendations. A submission is before cabinet regarding the establishment of a committee on AML/CFT and international cooperation.

The institutional framework for combating money laundering and terrorist financing

Ministries

Ministry of Finance

132. The Finance Ministry is responsible for administering the *Public Finance (Management) Act 1995* which establishes the Consolidated Revenue Fund into which forfeited proceeds of crime are paid and used for other government purposes.

Ministry of Justice and Attorney General (DJAG), including central authorities for international co-operation

133. DJAG is the central authority for international cooperation and plays a leading role coordinating AML/CFT measures across government.

134. The Minister responsible for internal security matters (Police) administers the ISA which addresses terrorism and TF issues. This may overlap with the Department of Prime Minister and National Executive Council and DJAG.

Ministry of Foreign Affairs

135. Ministry of Foreign Affairs serves as diplomatic gateway for international cooperation, development assistance, treaty arrangements and receiving UNSCRs.

Ministry responsible for the law relating to legal persons and arrangements

136. The Minister for Trade, Commerce and Industry is responsible for providing policy advice to the IPA regarding the implementation of the legislation mentioned above.

Committees or other bodies to co-ordinate AML/CFT action

137. PNG authorities have made a submission to the NEC to establish a Committee on AML/CFT and international cooperation. There is also a working group between the FIU, BPNG and compliance staff of the four commercial banks.

Criminal justice and operational agencies

The Financial Intelligence Unit (FIU)

138. The FIU is established within the National Fraud and Anti-Corruption Directorate of the Police. In addition to its classical FIU functions, the PNG FIU has a role to supervise and ensure compliance and pursue investigations of ML.

Law enforcement agencies including police and other relevant investigative bodies

139. The Police is responsible for enforcing court orders and conducting investigations into profit generating crime. The National Fraud and Anti-Corruption Directorate is responsible for investigating all fraud and corruption matters including ML and other profit generating crime. Various units of the police, including Interpol, TCU and the Drug Squad have AML/CFT roles.

Prosecution authorities including specialized confiscation agencies

140. The OPP is responsible for representing the State in prosecution of ML/FT offences and representing a requesting country in extradition proceedings. It is also responsible for proceedings under the POCA and other criminal laws, practices and procedures including the Leadership Code that may be applicable to ML/FT predicate offences. A three person unit specialized in proceeds of crime has been established within the OPP. Committal proceedings are undertaken by the Police Prosecutors..

Customs service

141. The Papua New Guinea Customs Service cooperates with the BPNG, Police and Interpol in implementing AML/CFT measures under customs powers and functions.

Specialized drug agencies, intelligence or security services, tax authorities

142. The National Narcotics Control Board and the National Intelligence Organization have powers under their respective laws and directives to identify, provide surveillance and detect ML/FT activities.

143. The Internal Revenue Commission (taxation) has powers under relevant laws which may be complimentary to AML/CFT controls.

Task forces or commissions on ML, FT or organized crime

144. The Transnational Crime Unit (TCU) is a multi-agency unit which is responsible for investigating various predicate offences. Activities are undertaken jointly by the FIU and TCU..

Financial sector bodies

145. BPNG, as the Central Bank is responsible for authorizing the licensing of financial institutions including banks, NBFIs and life insurance companies.

146. The Office of the Insurance Commissioner is an independent regulator for the general insurance industry and is under the Department of Finance & Treasury.

147. The PoMSX is a self regulatory organisation. It is licensed by, but not regulated or supervised by the Securities Commission. The Securities Commission has very limited financial sector supervision. The PoMSX is in private hands. Only members of the PoMSX may offer stock broking services. At present there are two members of the PoMSX, BSP Capital Limited and Kina Securities Limited. These two entities also own the PoMSX.

148. The Stock Exchange is authorized to make its own rules, exclude from membership those of poor character and integrity, suspend or discipline members, monitor compliance with and enforce its rules, and adopt listing rules. It does not appear that the PoMSX is not subject to any effective form of public oversight, supervision or regulation whether with respect to integrity standards or operational risk of the securities settlement system.

DNFBP and other matters

149. The National Gaming & Control Board is responsible for regulating the gaming industry, including the proposed casino.

150. The Law Society, the Accountants Registration Board and the Institute of Chartered Management Accountants are responsible respectively for the regulation and supervision of lawyers and accountants but neither group is being monitored for compliance with AML supervision so far.

Supervisor or other competent authority, or SRO, for DNFBP

151. These DNFBPs are not, so far, supervised by competent authorities or SROs with regard to AML/CFT compliance.

Mechanisms relating to non-profit organisations (NPOs)

152. NPOs are not supervised with regard to AML/CFT compliance. Registration requirements are very limited and these organizations are not supervised or controlled. NPOs benefit from a tax exemption and there are some controls for transparency and accountability set down by the tax authorities.

Overview of policies and procedures

153. There is no mechanism pertaining to a risk based assessment in place yet. However, the local authorities acknowledge the need to have one given the current uniform application of the CDD and STR requirements under *POCA*.

154. According to the authorities, there are microfinance institutions in PNG established primarily to provide banking services to the people who have irregular income or are unable to meet the CDD requirements and high banking fees of the commercial banks. Authorities indicated they wish to develop a mechanism to have such clients provide some means of identification for purposes of the *POCA*, but to a lesser extent than the one required by the banks.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1. Criminalization of Money Laundering (R.1 & 2)

2.1.1. Description and Analysis

Legal Framework:

155. The offence of ML and the penalties applicable have been laid down in the *POCAss* 34 and 35.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):

156. Section 34 of the *POCA* criminalizes ML, subsection 2 of which reads as follows:

“A person engages in money- laundering if the person-

- (a) engages, directly or indirectly, in a transaction that involves money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime; or
- (b) receives, possesses, disposes of or brings into Papua New Guinea money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime; or
- (c) conceals or disguises the source, existence, nature, location or control of money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime.”

157. Section 35 (1) criminalizes negligent money laundering:

“A person who receives, possesses, conceals, disposes of or brings into Papua New Guinea money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence.

Penalty: If the offender is a natural person –a fine of K10, 000.00 or imprisonment for 2 years, or both; If the offender is a body corporate –a fine of K50, 000.00”

158. Sub-sections (b) and (c) of section 34 broadly- though not literally- mirror sub-sections b(i) and a(ii) respectively of the definition of ML in article 6 (1) of the Palermo convention. For sub-section (a) the defining element of the *actus reus* is that the perpetrator “engages in a transaction” that involves proceeds of crime. Whilst there may be some doubt as to whether that covers the same actions as “conversion or transfer” of proceeds of crime as covered under sub-section (a) of article 6 (1) of the Palermo convention it was explained by country authorities that this is actually possibly the broadest definition of all the different acts encompassing any action in relation to proceeds of crime. Though there is an argument to be made that engaging in a transaction is narrower than the “conversion” of proceeds since the former would appear to require two parties whereas the latter does not, the practical implication of that difference is insignificant. The wording is thus considered adequate.

159. In addition the *Criminal Code* contains a provision at section 410 for the receiving offence which reads as follows:

“A person who receives any thing that has been obtained by means of–

- (a) any act constituting an indictable offence; or
- (b) any act done at a place outside Papua New Guinea that–

- (i) if it had been done in Papua New Guinea would have constituted an indictable offence; and
- (ii) is an offence under the laws in force in the place where it was done, knowing it to have been so obtained, is guilty of a crime.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding seven years.”

The Laundered Property (c. 1.2):

160. ML concerns the money or property that constitutes proceeds of crime. Under section 1 of *POCA*, property includes “money and all other property, real and personal including an enforceable right of action and other intangible or incorporeal property”. According to section 10, “proceeds” are wholly or partly, directly or indirectly derived from the underlying offence. The fact that the term to be defined “property” contains in the definition the same term does not add clarity and leaves the question of what exactly property means. The authorities indicated it incorporates anything of value, making reference to the definition of property in the *Criminal Code* which states “property” includes every thing, animate or inanimate, capable of being the subject of ownership. The further clarification offered by “real and personal including an enforceable right of action and other intangible or incorporeal” does generally appear to encompass the same assets as the definition of property in the Palermo convention. Thus, for practical purposes, the offence extends to any type of property that directly or indirectly represents the proceeds of crime.

Proving Property is the Proceeds of Crime (c. 1.2.1):

161. There is no requirement that there be a conviction of any person of the crime that constitutes the predicate for ML. It was explained by the authorities that the *POCA* was based on the Australian *POCA* that similarly does not require a conviction to be able to convict someone for ML. For serious offences the *POCA* explicitly allows for property to be designated proceeds in the absence of a conviction for an offence.

The Scope of the Predicate Offences (c. 1.3 and c. 1.4)

162. The ML offence covers all proceeds of crimes. The term crime is not defined in *POCA*. The authorities explained that crime was intended to be understood within the ordinary meaning of the term as covering all offences. Given the subsequent focus on proceeds of indictable offences as being subject to confiscation (see below under 2.3) it would appear that indeed the legislator’s intention was to define money laundering in reference to such offences - defined in section 3 as those for which the penalty is at least one year. However, criminal provisions are generally to be interpreted strictly. The term crime is defined in the *Criminal Code* as one of the three categories of offences- together with misdemeanours and simple offences. It is not further defined with reference to e.g. a certain threshold of penalties. The criminalization of the different types of conduct in the *Criminal Code* and elsewhere is set out in the table below.

FATF Categories of predicates	Provisions under statutes in Papua New Guinea
Participation in an organized criminal group	Criminal Code – section 8
Terrorism, including FT	<i>Internal Security Act 1993</i> – section 3
Trafficking in human beings and migrant smuggling	Criminal Code ss218,219, 220, 221, 222, 351 & 353 <i>Migration Act s16</i>
Sexual exploitation, including sexual exploitation of children	Criminal Code – Part IV, Division 2A & 2B Criminal Code –s214
Illicit Trafficking in Narcotic Drugs & Psychotropic Substances	<i>Dangerous Drugs Act 1952</i> –s3 and 4 <i>Customs Act 1951</i> –ss151 and 160
Illicit arms trafficking	<i>Firearms Act 1978</i>
Illicit trafficking in stolen and other goods	Criminal Code – s380
Corruption and bribery	Criminal Code (Part III, Division 2 s61-s62, S87-97, Part III, Division 3 ss99-116, Division 5ss119 -120)
Fraud	Criminal Code – ss175, 176, 181, 241, 242, 381, 382,s407, 408, Part VI, Division I, Subdivision F,G & , 434, 482,PartVI,Division 4,Subdivision A
Counterfeiting currency	Criminal Code (Part III, Division 7) <i>Central Banking Act, Banks & Financial Institutions Act, Central Bank (Foreign Exchange & Gold) Regulation 2000.</i>
Counterfeiting and piracy of products	Criminal Code – s477 <i>Trade Marks Act 1978</i> – ss75, 76, 77, 80 <i>Trade Marks Regulation 1979</i>
Environmental Crime	<i>Environment Act 2000</i> – ss11, 12, 13, 44, 45, 49, 73, 74(6), 77(2)- (5), 80, 81, 87, 88, 95, 102, 104, 107, 108, 110, 112, 114, 115, 121, 122, 123, 130, 131.
Murder, grievous bodily harm	Criminal Code ss298, 299, 300, 315, 319
Kidnapping, illegal restraint and hostage – taking	Criminal Code – ss220, 221, 350, 351, 353, 354
Robbery or theft	Criminal Code- s386 s387 , s372
Smuggling	<i>Customs Act 1951</i> – s31, 149, and 150 of <i>Customs (Amendment No. 10 of 2005) Act</i> Criminal Code – ss68, 69, 77
Extortion	Criminal Code – ss88, 391
Forgery	Criminal Code Part VI, Division 3ss462-487 <i>Trade Marks Act 1978</i> – s40
Piracy	Criminal Code –s81,s82 & s83
Insider trading and market manipulation	<i>Companies Act 1997</i> – ss118, 123, 126 & 413(2), 127(6) <i>Securities Act 1997</i> –Part VI, ss102, 108 & 111.

163. The scope of the human trafficking offence and the arms trafficking offence are very narrow and the PNG authorities are currently considering draft legislation introducing full coverage of human trafficking offences.

Extraterritorially Committed Predicate Offences (c. 1.5):

164. The *POCA* does not include any provisions on the extraterritoriality of the underlying offence. If it is to be understood as a “crime” within the meaning of the *Criminal Code* then the ML offence would only apply to crimes committed within the territory of PNG. However, the authorities argued that the wording in sub section (b) “brings into PNG money or property (...) proceeds of crime” shows that the legislator’s clear intention was that “crime” could also refer to conduct committed outside of PNG. That does appear the most reasonable reading of that clause- although there is a possibility that this refers to the situation in which the crime is committed within PNG but the profits are located abroad (e.g. a fraud perpetrated from within PNG targeting foreigners).

Laundering One’s Own Illicit Funds (c. 1.6):

165. The *POCA* does not address self-laundering explicitly but the authorities indicated nothing would prevent laying a charge against a person for both the predicate offence and the laundering of the proceeds thereof.

Ancillary Offences (c. 1.7):

166. The *Criminal Code* sets out the ancillary offences. Sections 509-511 (attempt), 7 (enabling, counselling, aiding, procuring), 8 (offences committed in prosecution of a common purpose) and 10 (accessories after the fact) are ancillary offences applicable to all offences under PNG law including the offence of ML as set out in the *POCA*.

Liability of Natural Persons (c. 2.1) and The Mental Element of the ML Offence (c. 2.2):

167. The offence as set out above, applies to one or other of the proscribed dealings with money or other property in circumstances where the person knows or ought reasonably to know that the money or other property is proceeds of crime. Accordingly a person who knowingly engages in the ML activity (assuming that this means that they know the property is proceeds of crime) commits a ML offence.

168. The fact that the mental state of a person can be inferred from objective factual circumstances is confirmed by case law:

“The state of mind when a person applies property is a question of fact for the trial judge to determine on all the facts presented before him. And when the judge considers the facts on how the property was applied, he uses the ‘ordinary standards of reasonable and honest people’ test”. (State-v-Ramoi [1993] PNGLR 390 at 392 per Salika J)

169. The offence of ML applies to persons who “ought reasonably to know” the property is proceeds of crime. This phrase expressly allows the knowledge of the defendant to be inferred or attributed to him or her from the circumstances of the case.

Liability of legal persons (c. 2.3) and parallel criminal, civil or administrative proceedings (c. 2.4):

170. Under the *Interpretation Act 1975*, ‘person’ includes (a) a corporation sole (b) a body politic or corporate. Therefore, the ML offence under the *POCA* which refers to a ‘person’ also includes ‘legal person’.

171. In addition sub-section (3) of section 34 makes explicit reference to the penalty to be incurred for ML “if the offender is a body corporate”.

172. There are no administrative penalties available for penalizing legal persons for money laundering under *POCA*. However, there is nothing precluding a criminal prosecution for ML, concurrent with a civil confiscation proceeding under the *POCA* or for example an administrative forfeiture under the *Customs Act 1951*.

Sanctions for ML (c. 2.5):

173. The penalties for persons, both natural and legal, found guilty of ML, are either deprivation of liberty (for natural persons) or a fine or both (for natural persons). Section 34 (3) provides:

“A person who engages in money –laundering is guilty of an offence.

Penalty: If the offender is a natural person –a fine of K100, 000.00 or imprisonment for 20 years, or both; or

If the offender is a body corporate –a fine of K500, 000.00.”

174. And for negligent ML in accordance with section 35:

“Penalty: If the offender is a natural person –a fine of K10, 000.00 or imprisonment for 2 years, or both;

If the offender is a body corporate –a fine of K50, 000.00.”

175. Section 19 of the Criminal Code explicitly provides that a person liable to imprisonment for life or for any other period, may be sentenced to imprisonment for any shorter term, thus allowing for a lower sentence where that is appropriate.

176. The deprivation of liberty imposed under the *POCA* for ML offenses are similar or more severe to those of other countries in the region (Philippines 7-14 years, Malaysia – 7 years; Australia: 5-25 years; Indonesia – 5-15 years, Singapore – 7 years, Thailand, 1 to 10 years) and more severe than for other crimes under PNG law. As such they may be considered dissuasive- and proportionate given the possibility to impose a lower sentence to take into account the circumstances of the offence. Considering that so far there has been no conviction for ML it is difficult to establish the effectiveness of the sanction regime. Concerning the fines, a fine of K100,000 (approx US\$38,750) for natural persons and K500,000 (approx 193,750 USD) for companies may be considered on the low side when compared to the prison terms, particularly given the possibility for the court to apply either a jail term or a prison sentence. Given the wide spread nature of corruption and the amounts involved, it is unsure whether such a term is considered dissuasive.

Statistics (applying R.32)

177. There is currently one case in which a charge has been laid for ML. This is the first case charging ML. In addition there has been one confiscation, non-conviction based, involving ML of K1.3 million.

Analysis of effectiveness

178. Considering that so far no convictions for ML have been obtained it is not possible to evaluate the effectiveness thereof. The mission was informed of one charge having been laid for ML in a fraud case. That case is still ongoing.

179. Considering the substantial amount of proceeds generated in PNG particularly through the very widespread misappropriation/embezzlement of government funds, the numbers of cases of ML are very low. Investigative authorities should develop their capacity to “follow the money” and investigate ML offences in parallel with predicate offences.

2.1.2. Recommendations and Comments

180. Not all categories of offences contained in the FATF list “designated categories of offences are currently criminalized under PNG law to a sufficiently wide extent- notably human trafficking and arms trafficking, both of which are prevalent in the territory of PNG. Moreover it is not sure to what extent those not designated “crimes” in so many words would constitute predicate offences for ML. Though it appears to have been the intention of the legislator to include crimes committed abroad -as explicitly provided for under the receiving offence- that is not explicit in the ML offence.

181. Authorities should consider amending the current provision on ML in the *POCA* to make reference to “proceeds of unlawful activity” rather than proceeds of crime. Unlawful activity in section 3 should be amended to make reference to an indictable or foreign indictable offence.

182. In addition authorities should comprehensively criminalize arms trafficking and trafficking in human beings and include those offences as predicate offences.

183. The FIU and other investigative and prosecutorial authorities should enhance their focus on the proceeds of unlawful activity, rather than concentrating solely on the unlawful activity itself (see further under 2.7) and charge ML offences in all cases involving significant profit generating crime.

184. To ensure credible investigations of ML, additional resources should be made available to the FIU and other investigative agencies for dealing with ML investigations as a matter of priority.

185. Authorities should increase the fines for ML so they are commensurate with the prison terms and dissuasive given the amounts of proceeds generated.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none">• Uncertainty as to the applicability of the ML offence to certain categories of offences not defined as crimes and to foreign crimes• Not all categories of offences- arms trafficking and human trafficking- currently criminalized under PNG law• Effectiveness not demonstrated

R.2	PC	<ul style="list-style-type: none"> • Effectiveness of sanctions not demonstrated • Fines not proportionate or dissuasive
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2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework:

186. The ISA sections 2, 3 and 6 are relevant to the financing of terrorism and terrorist organizations.

Criminalization of Financing of Terrorism (c. II.1):

187. Section 2 of the *ISA* defines terrorism as:

“the use of violence for political ends or any use of violence for the purpose of putting the public or any section of the public in fear”.

188. Section 3 of the *ISA* reads as follows:

“A person who–

(b) practises, encourages, supports or advocates(...)terrorism, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 (US\$38,750) or imprisonment for a term not exceeding 14 years, or both.”

189. Section 6 *ISA* reads as follows:

“(…) a person who–

(b) aids, assists or supports (whether financially or otherwise) a proscribed organization; or

(c) solicits or invites aid, assistance or support (whether financial or otherwise) for a proscribed organization; (...)

is guilty of an offence.

Penalty: On summary conviction, a fine not exceeding K10,000.00 (US\$3,875) or imprisonment for a term not exceeding seven years, or both.”

190. Under the Constitution (s158(2)) in interpreting the law, the courts ‘should give paramount consideration to the dispensation of justice.’ In practice, the courts have used this provision to apply broad discretion in their interpretation of the law. The courts approach issues of statutory interpretation by reference to a number of sources, including the cultural context of Papua New Guinea. The authorities indicate that a ‘fair and liberal’ interpretation of the term ‘support’ would include *any* type of material support by any means, be it direct or indirect and that it would cover both the provision and the collection of such support. Arguably it does, but it is not certain.

191. Concerning the terrorist act, section 3 only makes reference to supporting “terrorism”. Article 2 (1) (b) of the Convention on the Suppression of the Financing of Terrorism defines a terrorist act as

“(…) intended to cause death or serious bodily injury to a civilian (...) when the purpose of

such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”.

192. The wording of the definition of terrorism in *ISA* mentions “the use of violence (...) for political ends”. Authorities explained that even the threat or the intention to use violence would be covered and as such would cover acts “intending to cause death or serious bodily injury”. “Intimidation of the population or compelling the government or international organization to act or abstain” is covered by “political ends (...) and “putting the public in fear”.

193. Terrorism as defined in *ISA*, does not cover the acts constituting an offence within the scope of and as defined in the treaties listed in the annex to the Convention on the Suppression of the Financing of Terrorism, six of which have been ratified by PNG.

194. Section 6 mentions explicitly that it is an offence to support- financially or otherwise- a proscribed organization and includes an explicit reference to soliciting support (ie collection of funds as under article 2 of the FT Convention). An organization can be declared a proscribed organization by the Head of State when it is engaged in or encourages terrorism.

195. There is no criminalization of providing support to an individual terrorist. Although the authorities argue that this would be covered by the support for the terrorist act- this would not be wholly adequate. The “financing of the individual terrorist” is useful precisely to cover those situations in which a link with an act cannot be established.

196. Support is referenced together with “encourages, (...) or advocates” and should thus be read to refer to material as opposed to verbal support which are covered by encouraging or advocating. Authorities explained that such support is not limited in any way- covering the widest array of support both from legal and illegal sources.

197. Sections 3 and 6 criminalize “support” to terrorism. Whether that support is directed to any particular act or any subsequent act takes place is not relevant.

198. Attempt and ancillary offences are covered under the *Criminal Code* (see above under 1.7) and applicable to all offences under PNG law include the support of terrorism and proscribed organizations.

Predicate Offence for Money Laundering (c. II.2):

199. The support of terrorism and of a proscribed organization qualify as offences, whereas (see under 1.3) ML refers to “proceeds of crime”. Considering the available penalties for both offences, it is highly likely that they qualify as crimes.

Jurisdiction for Terrorism Financing Offence (c. II.3):

200. There is no reference to territoriality in the *ISA* and hence the general provisions of the *Criminal Code* are deemed to apply. Section 12 of the *Criminal Code* provides that where offences are of such a nature that they comprise several elements and only some of those occur in PNG then the person liable for those is guilty of an offence of the same kind, and is liable to the same

punishment, as if all the subsequent elements of the offence had occurred in PNG. Thus for the support for terrorism offence to apply it is not necessary that the subsequent terrorist acts take place within PNG.

The Mental Element of the FT Offence (applying c. 2.2 in R.2):

201. The discussion on the mental element for ML above applies to the terrorism financing offence.

Liability of Legal Persons and Sanctions (applying c. 2.3, c. 2.4 & c. 2.5 in R.2):

202. As noted earlier under the *Interpretation Act 1975*, ‘person’ includes (a) a corporation sole (b) a body politic or corporate and thus the word ‘person’ in the *ISA* covers legal persons. Penalties for the support of a terrorist act amount to a fine of up to K100,000 (US\$38,750) and a prison term of 14 years and for support of a terrorist organization a fine up to K10,000 (US\$3875) and prison term of 7 years or both. In addition under section 8, the government may issue an exclusion order against a person excluding him from all or certain parts of PNG territory. Finally under section 23, the court may, in addition to imposing the relevant penalty, order the forfeiture to the State of any money, or property, which the court considers had been used or was intended to be used for the purpose of terrorism or by or for the benefit of the proscribed organization. Based on the variety of sanctions and the length of the prison terms, the sanctions framework under PNG law for the FT offence is considered to provide for proportionate, dissuasive and effective sanctions.

Analysis of effectiveness

203. So far no prosecutions for support of terrorism have been conducted. It should be noted that at present the risk of terrorism in PNG is very low.

2.2.2.Recommendations and Comments

204. In view of the deficiencies identified above, PNG authorities should criminalise the financing of an individual terrorist. Whilst the assessment team is prepared to follow the authorities in their broad interpretation of the term *support*, it would nevertheless be preferable that it be made explicit in the *ISA* that support for terrorism includes the collections of funds for terrorism. In addition terrorism should be defined so as to explicitly incorporate the acts listed in the UN instruments mentioned in the annex to the FT Convention.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • Definition of support unclear • Coverage of “terrorist act” not sufficiently wide • Financing of individual terrorist not criminalized

2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1. Description and Analysis

Legal Framework:

205. PNG law has both a conviction and a non-conviction based confiscation regime laid down in part 3 of the *POCA*. The *ISA* contains provisions for the forfeiture of terrorism related offences. The confiscation regime in the Act was modelled on the *Australian Proceeds of Crime Act (Commonwealth) 2002*.

206. Key provisions in relation to the confiscation regime are:

- Section 38 - Restraining orders based on suspicion of an indictable offence (charge / conviction based);
- Section 39 - Restraining orders based on suspicion of a serious offence (civil / non-conviction based);
- Section 42 - Exclusion from restraining orders;
- Section 58 - Conviction based forfeiture of tainted property;
- Section 59 - Non-conviction based forfeiture of restrained property upon proof of a serious offence;
- Section 71 - Automatic forfeiture or restrained property upon conviction for a serious offence;
- Sections 77 and 78 – Protection of the interests of innocent third parties.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):

207. Conviction based confiscation is provided for in section 58 of the *POCA* which provides that:

“(1) The Court must make an order that property specified in the order is forfeited to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) a person has been convicted of 1 or more indictable offences; and
- (c) the Court is satisfied that the property to be specified in the order is tainted property.

(2) The Court may make an order that property specified in the order is forfeited to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) a person has been convicted of 1 or more indictable offences; and
- (c) Subsection (1)(c) does not apply; and
- (d) the Court is satisfied that the property to be specified in the order is tainted property.”

208. The apparent contradiction between the compulsory confiscation provided for under sub-section (1) and the discretionary confiscation provided for under sub-section (2) was explained by authorities with reference to the *Australian Proceeds of Crime Act* which contains a similar provision but distinguishes between the compulsory confiscation of proceeds and the discretionary confiscation of instruments. That distinction is lost in this section since it makes reference to “tainted property” which according to section 3 covers:

“(a) proceeds of an offence;

- (b) property used in, or in connection with, the commission of an offence;
- (c) property intended to be used in, or in connection with, the commission of an offence”

thus covering both proceeds and instruments. The confusion between the two subsections is of no consequence for compliance with R 3 however.

209. The term proceeds is defined in section 10 of *POCA* which reads:

- “(1) Property is proceeds of an offence if –
 - (a) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
 - (b) it is partly derived or realised, whether directly or indirectly, from the commission of the offence, whether the property is situated within or outside Papua New Guinea.
- (2) Proceeds of an offence includes –
 - (a) property into which any property derived or realised directly from the offence is later converted or transformed; and
 - (b) income, capital or other economic gains derived or realised from that property since the offence.”

210. Regarding the confiscation of equivalent value section 81 provides that:

- “If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to such an order, and, in particular –
 - (a) cannot, with the exercise of due diligence, be found; or
 - (b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property; or
 - (c) is located outside Papua New Guinea; or
 - (d) has been mingled with other property that cannot be divided without difficulty, the Court may, instead of ordering the property, part or interest to be forfeited, order the person to pay to the State an amount equal to the value of the property, part or interest.”

211. Section 58 makes reference to indictable offences (offences with a maximum term of at least one year imprisonment) -thus covering both ML, terrorism financing and predicate offences. The property to be confiscated must be tainted property- thus covering both proceeds and instruments. The definition of proceeds covers all property derived directly or indirectly from the crime, including income and other benefits regardless of whether the property is held by third parties (discussed in more detail below). Section 81 provides for confiscation of equivalent value.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2) and Ex Parte Application for Provisional Measures (c. 3.3) :

212. Section 38 deals with provisional measures and to the extent relevant reads as follows:

- “(1) The Court must order that –
 - (a) property must not be disposed of or otherwise dealt with by any person;
 - (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances set out in the order,
 - (c) the Public Prosecutor applies for the order; and
 - (d) a person has been convicted of, or has been charged with, an indictable offence, or it is proposed that he or she be charged with an indictable offence;
 (...).

- (2) The order must specify, as property (..) any 1 or more of the following –
 - (a) all or specified property of the suspect;
 - (...)
 - (c) specified property of another person (...) that is subject to the effective control of the suspect;
 - (d) specified property of another person (...) that is tainted property.
- (3) The application for the order must be supported by an affidavit of a police officer stating –
 - (a) if the suspect has not been convicted of an indictable offence –that the police officer suspects that the suspect committed the offence; and
 - (b) if the application is to restrain property of a person other than the suspect –that the police officer suspects that:
 - (i) the property is subject to the effective control of the suspect; or
 - (ii) the property is tainted property; and
 - (c) the grounds on which the police officer holds the suspicions.”

213. The restraining order is very wide covering both tainted property- whether under control of the suspect or of a third person and all property of or under the control of the suspect- thus also ensuring security for possible subsequent payment of a pecuniary penalty order. According to section 40(2) a restraining order may be made ex parte.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

214. Investigative tools to assist law enforcement are provided for under *POCA* including search warrants for tainted property (section 113), production orders (property-tracking documents) (s.153) search warrants (property-tracking documents) (s.159) monitoring orders (s.161) and disclosure of government information (section 164). These investigative powers may only be used where the police have been authorised to do so by a magistrate. Reference is made to part 2.6 (c 28.1) concerning the powers of law enforcement for a more in depth discussion and to the deficiencies noted there in the powers to search and seize property.

Protection of Bona Fide Third Parties (c. 3.5):

215. Section 77 of *POCA* provides as follows:

“(1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under Subsection (2).

(2) If a person applies to the Court for an order about the person’s interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person’s interest if the Court is satisfied –

- (a) that the applicant was not involved in committing an offence in relation to which forfeiture of the property is sought, or a forfeiture order against the property was made; and
- (b) if the applicant acquired the interest when, or after, the offence was committed — that the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, proceeds of an offence or property used, or intended to be used, in or in connection with the commission of an offence.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under Subsection (2).”

216. Similarly, under section 42 a third party may apply for exclusion of property from a restraining order if it can be shown that the property in question does not constitute proceeds or instruments of the relevant offence. These sections adequately protect the rights of third parties allowing for a claim up until 6 months after the confiscation order was issued.

Power to Void Actions (c. 3.6):

217. Under section 170 (Order to declare a transaction void), an application may be made to the court to declare the whole or a part of a transaction void if the purpose of the transaction was to defeat the objects of *POCA*. “Defeating the objects” of *POCA* is a broad formulation and thus provides for discretion of the court in determining whether to void an action. The declaration may not be made if a third person, unconnected to the relevant offence acquired an interest in the property in good faith and for sufficient consideration.

Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

218. As noted above in the introduction, the *POCA* also provides for confiscation of property in the absence of a conviction. According to section 39 a court must order a restraining order in relation to either property belonging to or under the control of a person of whom there are “reasonable grounds to suspect” he has committed a serious offence or proceeds of that offence held by a third party.

219. If the court is satisfied that the person did engage in conduct constituting the serious offence, the property is confiscated. Subsection 1 of section 59 makes it clear that there need not be a finding as to the commission of a particular offence and subsection 3 of section 59 states explicitly that the raising of a doubt as to whether the person engaged in the conduct constituting a serious offence is not sufficient to avoid a confiscation order. Clearly then a confiscation order can be made on the balance of probabilities in the absence of a conviction. The conclusions above in relation to the making of an equivalent value pecuniary penalty order and the rights of third parties apply equally to non-conviction based confiscation under *POCA*.

Statistics (applying R. 32)

220. PNG’s first restraining order was obtained in November 2009. So far in total 4 restraining orders have been issued (2 conviction based, 2 non-conviction based) involving conspiracy to defraud, theft, official corruption, misappropriation, obtaining goods by false pretences and ML with a total of approximately K5.2 million. One non-conviction based confiscation order worth K1.3 million has been issued involving conspiracy to defraud, obtaining by false pretences, misappropriation and ML. One of the conviction based restraining order was obtained on 17 November 2010 (while the assessment team was in PNG). That related to 4 charges, 2 each for obtaining goods by false pretence (s.404(1) (a) and misappropriation contrary to section 383A (1)(a). The property concerned is worth about K800,000.

Analysis of effectiveness

221. Considering the substantial amount of proceeds generated in PNG particularly through the very widespread misappropriation/embezzlement of government funds, the numbers of confiscations and the use of both criminal and civil confiscation provisions are very low. In addition their overall confiscation rate for instruments of crime is low, with few cases of such confiscation reported to the assessment team.

2.3.2. Recommendations and Comments

222. Confiscation is at the heart of an effective AML regime the ultimate aim of which is to deprive criminals of their ill gotten gains. Findings of inquiries and analysis by key agencies lead the FIU to estimate that between 25% and 50% of the government budget may be lost to corruption and the evidence for such behaviour abounds and is not hard to find. As part of their anti corruption agenda and a wider strategy on combating ML, PNG authorities should:

- Ensure relevant agencies, particularly the FIU and the National Fraud and Anti Corruption Directorate, are sufficiently resourced to be able to gather that evidence and follow up on it by mounting investigations and bringing charges, focusing on the money flows and ensuring their return to the public purse.
- Develop the capacity of investigative and prosecutorial authorities to “follow the money” and take proceeds of crime action whenever investigating a predicate offence.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none">• Deficiencies in tracing powers• Lack of demonstrated effectiveness and use of the confiscation provisions

2.4. Freezing of funds used for terrorist financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

223. There is currently no framework for freezing terrorist related assets under UNSCRs. Section 23 of the ISA provides for confiscation of property upon conviction of the offences of supporting terrorism, or property used by or on behalf of or for the benefit or assistance of the proscribed organization (see under 2.2).

Freezing Assets under UNSCR 1267 (c. III.1):

224. There is currently no system in place to implement UNSCR 1267. It is not clear that the Foreign Ministry passes on UNSCR lists from the PNG Permanent Mission in New York to competent authorities in PNG that may ultimately be responsible to implement the requirements of UNSCR 1267.

Freezing Assets under UNSCR 1373 (c. III.2):

225. Under the *ISA* the Head of State, acting upon advice may declare an organization a proscribed organization if he is of the opinion that it is engaged in, or is likely or about to be engaged in or promoting or encouraging, or is likely or about to promote or encourage, terrorism.

226. There is no system under PNG law providing for the freezing of funds belonging to organizations designated as terrorist.

Freezing Actions Taken by Other Countries (c. III.3):

227. In view of the lack of a domestic system for designation and freezing assets, there is no system for consideration of requests made by other countries.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

228. There is no system for freezing funds controlled by proscribed organization.

Communication to the Financial Sector (c. III.5) and Guidance to Financial Institutions (c. III.6):

229. The lists are not being communicated to the financial sector. There is no obligation on financial institutions or others to freeze funds belonging to designated entities.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7) and Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

230. Under the *ISA* a person affected by the designation as a proscribed organization may lodge an appeal.

Access to frozen funds for expenses and other purposes (c. III.9):

231. This criterion cannot be discussed in the absence of a system of freezing terrorist funds.

Review of Freezing Decisions (c. III.10):

232. This criterion cannot be discussed in the absence of a system of freezing terrorist funds.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

233. As set out under section 2.3, the relevant criteria under Recommendation 3 apply to terrorism financing cases. In addition section 23 of the *ISA* provides for the confiscation of funds or property, which the court considers had been used or were intended to be used for the purpose of terrorism or by or on behalf of or for the benefit of a proscribed organization. At the time of the on-site, there were no proscribed organizations.

Protection of Rights of Third Parties (c. III.12):

234. Reference is made to the discussion under c 3.6.

Enforcing the Obligations under SR III (c. III.13):

235. In the absence of a system for freezing assets belonging to entities designated by the UN Security Council or proscribed by the Head of State this criterion cannot be discussed.

Analysis of effectiveness

236. No organization has ever been proscribed under the *ISA*. In practice the banks do conduct checks against the lists when using other commercially available databases that include the names on those lists.

2.4.2. Recommendations and Comments

237. PNG authorities (Ministry of Foreign Affairs and implementing agencies) should develop and implement policies and procedures to implement the relevant UNSCRs.

238. PNG authorities should establish the legislative framework ensuring the immediate freezing of funds belonging to persons or entities designated under UNSCR 1267 and ensuring the distribution of the lists of persons and entities so designated among financial institutions. The obligation for financial institutions to freeze should be enforceable by financial supervisors.

239. In addition *ISA* should be amended to ensure the freezing of all assets belonging to organizations declared proscribed, including a detailed procedure for de-listing requests, to enable designating individuals as terrorists and to enlarge the scope of the terrorist offence.

240. Under both systems procedures should be provided for allowing access to funds for humanitarian purposes.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none">• There is currently no system in place allowing for the freezing of UNSC designated persons and entities• The domestic system for designation does not provide for the freezing of assets of entities so designated• No directions given to financial institutions to check for matches with the 1267 consolidated list

Authorities

2.5. The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1. Description and Analysis

RECOMMENDATION 26

Establishment of FIU as National Centre (c. 26.1):

241. In May 2007, pursuant to s13 of the *POCA*, PNG established a FIU within the Police. Section 14 of the *POCA* states that the functions of the FIU are:

- (a) to receive ‘cash transaction reports’ (CTRs), international funds transfer (IFT) reports and ‘suspicious transaction reports’ (STRs) issued by cash dealers under ss 23 and 24 of the Act); and
- (b) to refer such reports to an authorised officer; and
- (c) to compile statistics and records, make recommendations arising out of any information received, issue guidelines to cash dealers and advise the Minister; and
- (d) to identify training requirements and provide training for cash dealers about transaction record –keeping and reporting obligations; and
- (e) to consult with any relevant person, institution or organisation in exercising its powers or duties; and
- (f) to conduct investigations for the purposes of the Act.

242. The FIU is therefore authorized to receive CTR, IFT, and STR reports. The *POCA* further provides that “a cash dealer that has reported a transaction in accordance with this Division must, if requested to do so by the FIU, give the FIU any further information that it has about the transaction” (s 24(4)). However, the *POCA* does not deal with analysis of reports received from cash dealers or with the dissemination of intelligence derived from these reports. The FIU advise that the ability to analyze and disseminate information is implied from the statutory functions and general purpose of the FIU.

243. A function of the FIU, contained in s 14(b) of the *POCA*, is to refer reports to an authorized officer. Further, the powers of the FIU to inspect premises of a cash dealer (s15), to apply for enforcement orders (s18), and powers relating to suspicious currency movements (ss31 – 33) are specifically restricted to authorized officers. The term “authorized officer” is defined in s4 of the *POCA*, which states

“the Commissioner of Police may authorize in writing a police officer who is a member of the FIU to perform functions under Division 1 of Part 2 (FIU functions, including supervisory powers), or a police officer to perform functions under Division 3 of Part 2 (tainted cross border currency) of the *POCA*”.

On 16 October 2007 the Commissioner of Police issued a written notice authorizing the named police officers listed in that notice to carry out the functions of an authorized officer.

244. The function of the FIU (set out in s 14(b)) to refer reports to an authorized officer, leads to an element of uncertainty as to whether a member of the FIU who is not an authorized officer may nonetheless be involved in the analysis of STR and CTR reports made by cash dealers.

245. Cash dealers send STR, IFT and CTR reports to the FIU by email in Excel spreadsheets. These reports are then copied into a master spreadsheet and this is used to manage the information held by the FIU. At the present time all STR reports that have been sent to the FIU, numbering approximately 1000, are managed under the one spreadsheet. CTR and IFT reports are also managed in excel, with monthly reporting numbers averaging about 30,000 transactions. The current tools of the FIU for management of information restrict that unit's ability to effectively analyse and disseminate intelligence analysis. FIU has limited capability or capacity to receive, store and to analyze the financial information.

246. The FIU advised that they have provided very limited dissemination of financial intelligence to police, due largely to the unit's belief that this would not be acted upon. An overall lack of trust and integrity within police, and concerns with the level of corruption is also a factor in the low level of dissemination.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

247. In 2007 the FIU issued detailed STR Guidelines to banks. The guidelines are intended to assist cash dealers and their staff in identifying and reporting suspicious transactions, and include advice on identifying suspicious activity, how and when reports are required to be made, the form to be used, and the statutory protections and obligations upon making a suspicious transaction report.

248. Draft STR guidelines have been prepared for NBFIs, lawyers and accountants, and at the time of the on-site visit these drafts had been disseminated to those sectors for consultation, but had not been issued.

249. Included with the STR Guideline is a comprehensive STR reporting form in excel format to assist with electronic reporting. The reporting template covers a description of unusual/suspicious events or transactions, transaction details, the identity of persons conducting transactions, details of beneficiary accounts (the account into which the money was deposited or received), details of remitting account (the account from which money was withdrawn or sent), and the details of the person reporting. The STR reporting template also includes guidelines for understanding the STR reporting obligations, examples of five types of corruption as set out in the PNG National Anti-Corruption Strategy, and a list of 'red flags' related to proceeds of corruption. The 'red flags' reflect the immediate priority to identify cases of corruption.

250. In addition to the formal guidelines, the FIU has a monthly working group meeting with compliance officers of the four commercial banks in PNG and the BPNG, and this forum has been used to provide more detailed guidance on reporting suspicious transaction activity.

Access to Information on Timely Basis by FIU (c. 26.3-4):

251. Section 52 of the *Banks and Financial Institutions Act 2000* provides that information obtained and maintained by a commercial bank must be kept confidential and that it is an offence to disclose such information unless it is disclosed under 'compulsion and obligation' of law. However, a cash

dealer that has reported either an STR or CTR must, if requested to do so by the FIU, give any further information that it has about the transaction (s24(3), *POCA*). It is an offence punishable by a fine of K50,000 or imprisonment for 5 years, or both, for a cash dealer to fail without reasonable excuse to comply with a request by the FIU pursuant to s 24(4). This provides a statutory basis for access by the FIU to bank information associated with an STR or CTR.

252. Although the *POCA* has provision for police, including staff within the FIU, to obtain production and monitoring orders, and search warrants (including for foreign offences), there was no indication that these powers had ever been used. The *POCA* (Division 5 of Part IV) also has provision for the Minister to direct the person in charge of a government agency to disclose, either to the Minister or to a named police officer any document or information that is in his possession, control, or within access of that person (s164, *POCA*).

253. Officials advised the evaluation team that staff in the FIU will commonly obtain a search warrant issued by a Magistrate pursuant to s 6 of the *Search Act 1977* for further information, and that this has the advantage of providing access to a wider range of banking information than would be covered by, for example, the request process under s24(4) of *POCA*.

254. The FIU has no electronic access to administrative information held by other Government agencies in PNG, but instead must make specific requests for this directly to the agency concerned. A combination of the limited number of databases within PNG and limited staffing within agencies can lead to delays in receiving responses when requesting information.

255. At the present time the FIU appears unable to access tax information based on the present tax secrecy legislation (s9, *Tax Act*), although this has not been tested before the courts. Company formation and other company relating information is held by the Investment Promotions Authority (IPA), but again, there is no on-line access to this information, and the FIU has experienced extreme difficulty obtaining information from the IPA, both in terms of delays and in relation to the quality of company information available.

256. Immigration arrival cards with passengers declarations of cash are not made available to the FIU.

257. The FIU is located within the National Fraud and Anti-Corruption Directorate of Police, and as such has access to police information. However, the evaluation team was informed that there is no functioning intelligence system or information database within Police, meaning that the FIU has severely restricted access to any form of law enforcement information. This extended, for example, to there being no criminal history database.

Dissemination of Information (c. 26.5):

258. The *POCA* (s14) sets out the functions of the FIU, but has no reference to the dissemination of financial information to domestic authorities for investigation of ML or FT. In addition, the *POCA* has no restrictions or impediments that control the use or dissemination of information gathered from STR and CTR reports.

259. The FIU advised the evaluation team that based on there being no legal impediment in the *POCA*, they are able to disseminate information to relevant agencies. No statistics were available on the level of dissemination to government agencies for investigation of ML or FT, although indications were that very little, if any such dissemination is in practice occurring.

Operational Independence (c. 26.6):

260. Section 13 of the *POCA* establishes the FIU as a unit within the Police. However, the *POCA* has no further provision relating to the command, control or operational independence of the FIU. Based on the FIU having been established in the police, the operational independence of that unit is subject to the provisions of the *Police Act 1998*.

261. Section 8 of the *Police Act* provides that the Governor-General in person is the Commandant of the Police Force, but then states that the Commandant has no power of command, control or direction of the Force. The role of the Governor-General in terms of being the Commandant of Police is unclear. The Commissioner of Police, appointed under s9 of the *Police Act*, has ultimate authority to command and control the Police, and except as is provided for in the *Police Act* or by any other enactment, no person who is not a member of the police has any power of command within that agency (s5, *Police Act*). In the sense that the FIU is a statutory entity established within the Police, it would appear to have sufficient operational independence and autonomy from undue influence from outside of the Police.

262. However, under the *Police Act* the Head of State, acting on the advice of the National Executive Council, may remove the Commissioner of Police from office if this is considered to be in the interest of the State (s9(5)(h), *Police Act*). Similarly, where the Commissioner, after inquiry, is satisfied that a member of police has failed to meet reasonable standards of performance or ability, the Commissioner may dismiss that member from the force (s55, *Police Act*), and the *Police Act* further states that no pension shall be payable to a member who is dismissed from the force (s 101, *Police Act*).²⁶ Therefore the overall operational independence of the Police from undue influence seems uncertain, which in turn raises concerns with the operational independence of the FIU from undue influence or interference.

263. A further concern is that the FIU has no formally approved structure and continues to be significantly under-resourced. Formal approval of the National Fraud and Anti-Corruption Directorate structure by the Department of Personnel Management (DPM) is a prerequisite to being able to advertise positions, and to attract staff, including upon promotion, into the FIU. Although systemic corruption and large scale misappropriation of government funds are the priority for the FIU, there appears to be little commitment from the PNG government towards ensuring the longer term viability of that unit, and this in turn may lead to an environment where there is potential for undue pressure or interference to arise.

²⁶ During the on-site visit by the evaluation team to Papua New Guinea Prime Minister in fact removed the Commissioner of Police from office.

Protection of Information Held by FIU (c. 26.7):

264. The *POCA* has no provision for the protection or dissemination of information by the FIU. There is a general provision in the *Police Act* relating to secrecy of police records (s 142, *Police Act*), but this is of limited effect, stating simply that records shall not be shared outside of police unless for some special reason it is proper to make these available or a court orders these to be made available. The Police appear to have no form of security classification in place, and information that is held and disseminated by the FIU is not subject to security classification or control.

265. The FIU is located within the National Fraud and Anti-Corruption Directorate premises, which is a standalone police building that is occupied only by that Directorate. Access to these premises is restricted and access to the FIU office is further restricted to authorized persons. However, the physical security measures in place are minimal, and any person inside the building would be able to access the FIU work area.

266. Information is stored on a server within the FIU office and computers in the office have shared access to this. STR and CTR information is stored in Excel form, with files backed up to an external hard drive, and this is also retained within the FIU office. Access to information is via individual log in and password, but the information is otherwise not subject to any additional security measures or offsite back-up of records.

Publication of periodic reports (c. 26.8):

267. The FIU has yet to publish an ‘annual report’ or similar document, although a ‘Fraud Methodology Report’ was provided by the FIU to the banks in September 2010. There have been no other reports published.

Consideration to joining the Egmont Group (c. 26.9-10):

268. The PNG FIU has commenced the process of applying for Egmont Group membership, with the assistance of AUSTRAC. The initial response from the Egmont Group pointed to legislative changes that would be required before the membership request could be proceeded with. Once the process for membership has been further advanced the FIU will look to establish clear processes for the exchange of intelligence consistent with the Egmont Group statement of purpose and principles.

269. The PNG FIU pursues an open policy of information exchange with other FIUs in keeping with the Egmont Principles of Information Exchange. The FIU has faced some problems in other regional FIUs not agreeing to share information, citing non-membership of Egmont as a barrier to cooperation.

Adequacy of Resources – FIU (R. 30.1)

270. The FIU suffers from an acute lack of resources to perform its many functions including those envisaged under R.26. The internal structure for all government agencies in PNG must be formally approved by the DPM. The power was subsequently delegated to respective departmental heads, in the FIU’s case the Commissioner of Police. The Commissioner of Police would therefore have the

power to staff the FIU. In 2007 police changed the structure of its then Fraud Squad, to create a National Fraud and Anti-Corruption Directorate – the FIU is one of four units within this Directorate. This was an internal change by Police and the formal structure of the Directorate has yet to be approved by the DPM. This continues to have a detrimental impact on the proper resourcing and therefore the operational capability of the FIU.

271. When established in 2007 the FIU had seven full time staff (and an establishment strength of nine staff) – the Commissioner’s gazette notice of 16 October 2007 appointed the seven named FIU staff as authorized officers, including a Chief Inspector as the head of the unit. The FIU currently has three staff (and a member of the Australian Federal Police seconded to the unit), with a Detective Senior Sergeant as the officer in charge. Until the structure of the Fraud and Anti-Corruption Directorate is approved by the DPM, police are unable to advertise and permanently fill the officer in charge position. Similarly, no new or existing staff can be promoted in the FIU and this in turn impacts on the ability of the FIU to attract new staff. In addition, the FIU has no operating budget for the forthcoming year.²⁷

272. The current resourcing situation means that the FIU is unable to fulfil its statutory role of both FIU and AML supervisor. The seconded AFP officer within the FIU provides significant assistance to the FIU in its core functions of analysis, regulation and investigations.

Professional standards and training – FIU (R. 30.2-3)

273. All Police staff are subject to the professional standards obligations of the Police, and also to the public officials code of conduct issued under the *Public Service Management Act*. FIU staff are part of the Criminal Investigations Division of Police, and include two senior, experienced police investigators. The FIU staff are aware of the requirements to maintain high levels of confidentiality and professional conduct.

274. FIU staff have received various training on ML and FT, including Australian Mutual Legal Assistance Training and training provided by AUSTRAC (the Australian FIU). FIU staff have attended international training programs, including APG related training workshops, and analyst training has been delivered on-site to FIU members. In addition, a member of the Australian Federal Police has been permanently attached to the FIU since June 2009.

Statistics (R.32)

275. The FIU was unable to provide statistics concerning the FIU activities.

²⁷ At the time of the on-site visit water supply to the Fraud and Anti-Corruption Directorate building had been stopped because police had failed to pay outstanding water charges.

Effectiveness

276. The FIU has very dedicated and competent staff, and is receiving highly valuable financial reporting information from the banking sector. There is significant potential for this unit to make a valuable contribution to law enforcement and also the financial sector integrity in PNG, but at present the lack of resources (particularly in terms of staff) prevent this potential from being realized.

2.5.2. Recommendations and Comments

277. Delays by the Commissioner of Police in formalizing the structure of the National Fraud and Anti-Corruption Directorate, and also therefore the structure of the FIU, are a significant impediment to the ability of the FIU to develop and to fulfil its statutory function.

- Establishing a formal structure within this Directorate should be a priority for the PNG government.

278. The FIU has inadequate resources, including insufficient staff numbers and a lack of information technology, to undertake its current functions of receiving, analyzing and disseminating financial intelligence, not to mention the current AML supervisory functions that are in addition to this.

- The current resourcing of the FIU should be reviewed and a commitment given to ensuring that this situation is urgently addressed.
- The FIU should implement a suitable data management and analysis system to support the analysis function.

279. Currently, the FIU has both the financial intelligence and AML/CFT supervisory role. Although it has the expertise to carry out the financial intelligence role, it does not have experience or adequate human resources to comprehensively supervise cash dealers.

- It is recommended that the lead AML/CFT supervisory role be taken on by the relevant prudential supervisory agencies for each of the financial sectors.

280. The current statutory arrangements for removal of police from office and the impact of this (including, for example, the consequential loss of any pension entitlements), creates a potential for undue influence on or interference with the FIU by police. Security of employment is fundamental to ensuring that staff can address high priority fraud and anti-corruption issues facing PNG without interference.

- The FIU should be protected from undue influence and interference, through some form of independent review process so that staff will not be unfairly or improperly dismissed from police when properly preparing financial intelligence or conducting investigations.

281. Although systemic corruption and large scale misappropriation of government funds are the priority for the FIU, there appears to be little commitment from the PNG government towards ensuring the longer term viability of that unit, and this in turn may lead to an environment where there

is potential for undue pressure or interference to arise.

- The Government should support the independent operation of a well resourced FIU as part of a national strategy to combat corruption and other profit driven crime.

282. The *POCA* does not currently provide statutory controls relating to the storage, access, analysis or dissemination of financial information held by the FIU.

- Improved statutory and operational controls are required to ensure that this information is effectively protected from misuse.

283. A number of reasons were provided by the FIU for its lack of dissemination of financial intelligence within police, including their belief that such information would not be acted as police only responded to complaints, and very limited instances were provided of dissemination to other agencies. However, a primary function of the FIU is to provide relevant investigative agencies with financial intelligence to support the investigation of ML, FT and predicate offences.

- The FIU should, as a matter of priority, seek to ensure dissemination of financial intelligence to relevant agencies, and to retain statistics on this.

284. The FIU at present has inadequate access to government agency information, including through a lack of formal arrangements that identify an agreed process for access to information, and a lack of information technology capability. This severely limits the extent of analysis of financial information by the FIU.

- The FIU should have adequate access to government held information.
- Formal arrangements between the FIU and relevant agencies, including the IRC and the IPA, should be entered to clarify the process for access to information.

285. The FIU presently has limited statistical information concerning its AML/CFT activities. Ready access to such information would assist the FIU to demonstrate effectiveness, and better enable feedback and typologies reporting.

- The FIU should establish a process for collection of comprehensive statistics on its activities.

286. In September 2010 the FIU provided banks with a report on ML typologies. An annual report may also include typology information regarding ML/FT trends or activities to help raise greater awareness of these activities.

- However, as a priority, the FIU should consider an annual report on its AML/CFT activities, and this may include information on staffing and resources, key priorities, and objectives for the FIU.

287. The FIU should look to extend the number of formal memorandum of understandings that it has, particularly with other Pacific Islands Forum member countries (the FIU has entered an MOU with the Solomon Islands FIU) and other key regional FIUs.

288. The FIU should continue to pursue the application for membership of the Egmont Group.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.26	NC	<ul style="list-style-type: none">• Insufficient resources for FIU to fulfil its statutory function• Lack of dissemination of financial intelligence to investigative or other agencies• Inadequate statutory controls on storage, use and dissemination of financial information reported to the FIU• Inadequate access to wider government agency information• FIU does not have industry knowledge, capacity or sector expertise for AML/CFT supervisory role• Potential for undue influence of FIU staff• Inadequate statistical information concerning AML/CFT activities within FIU• Insufficient public reports on AML/CFT statistics, typologies or trends

2.6. Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R. 27 & 28)

2.6.1. Description and Analysis

RECOMMENDATION 27

289. The Royal Papua New Guinea Constabulary (Police) is PNG's national police force and the primary law enforcement agency in Papua New Guinea, having jurisdiction for criminal offence investigations involving ML, TF and all predicate offences (including the offence of supporting terrorism). The Commissioner of Police, appointed under s9 of the *Police Act*, has ultimate authority to command and control the Police, and except as is provided for in the *Police Act* or by any other enactment, no person who is not a member of the police has any power of command within police (s5, *Police Act*).

290. Police prosecutors are responsible for prosecuting all offences that are proceeded with summarily. Police also lay charges upon indictment and are responsible for the committal proceedings, but once a matter is referred for trial then the OPP will take responsibility for laying the indictment and the subsequent prosecution (see section 525 of the Criminal Code)]. The OPP is at present part of the DJAG, although proposals are being advanced to create an independent OPP. The OPP is also responsible for proceeds of crime, and extradition proceedings and provides assistance to mutual assistance requests.

Designated agency to ensure ML, FT and predicate offences are properly investigated (27.1)

291. The *POCA* establishes the FIU within the Police, and as noted, this unit is located within the police National Fraud and Anti-Corruption Directorate. Section 14(d) of the *POCA* provides that one of the functions of the FIU is to conduct investigations for the purposes of the Act, which includes the offence of ML (s34, *POCA*). ML is a serious offence and police have authority to investigate all serious offences under Papua New Guinea law. However, s14(d) of the *POCA* appears to have created an expectation within police that sole responsibility for ML investigations rests with the FIU. And hence, there appears to be little or no indication that Police generally were aware of the offence of ML or that Police outside of the FIU were carrying out any investigations of ML activities. There have been no convictions for ML and while reference was made to one charge of ML possibly having been laid, no details about this case were available.

292. Similarly, there was no indication that Police (outside of the FIU) had an awareness of or had initiated proceeds of crime investigations.

293. The FIU advised of having referred five proceeds of crime matters to the OPP, including the restraint of a house valued at K400,000 (US\$155,000) and another valued at K550,000 (US\$200,000), the successful forfeiture of bank funds (of approx K1.3million), and the civil forfeiture proceedings in the amount of K3.4million (still before the court at the time of the onsite visit). The National Fraud and Anti-Corruption Directorate referred two matters to the OPP. The OPP took conviction based restraint action in both cases. In February 2010 the OPP established a specialist

'Proceeds of Crime Unit' within the OPP, with the intention to develop specific expertise on proceeds of crime matters. This is a very positive development for PNG, and although reliant on investigations being referred to the OPP, having this expert capability will help to ensure matters are properly prosecuted. The OPP has worked very closely with the FIU, including on the three proceeds matters referred to above.

294. However, the FIU has a serious lack of resources. It has just three staff (and an Australian Federal Police adviser), but has the financial intelligence and the AML supervisory functions, as well as the function of conducting investigations for the purposes of the *POCA*. Given, amongst other things, the level of systemic corruption and misappropriation of government funds within PNG, the FIU currently has an impossible task with the resources it is given.

295. In terms of recommendation 27, and the 'proper' investigation of ML, FT and predicate offences, the capability and capacity of police presents the most significant issue. Very little information was available to the evaluation team concerning overall police law enforcement activities, resources or priorities. The *Police Act* refers to there being an Annual Report on Police activities, but no such report was available. There was uncertainty as to the total number of police (thought to be approximately 4,500).²⁸ While there appears to be no criminal history or other law enforcement database, and a lack of electronic or other forms of specialist investigative capability, the greatest concern was the apparent level of mistrust within police and across other agencies. This in turn seriously impedes the ability to obtain information, assistance or agency cooperation for serious crime investigations. The overall impression was of an inability to effectively investigate serious predicate offences.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):

296. There is no statutory authority to allow Police to postpone or waive the arrest of a person, or to delay the seizure of the money for the purpose of identifying persons involved in the commission of a serious offence. However, there is also no law to prevent police from doing this. As in most jurisdictions, police in PNG have a discretion whether and if so, when, to arrest any person. Similarly, there appears to be no impediment to Police allowing money or other items to carry on in the postal system to their destination, for the purpose of identifying who the intended recipient is.

Additional elements

Special Investigative Techniques, cooperation, or information on ML and FT (27.3-6):

297. Police advised that in practice they have limited specialist investigative techniques available for serious crime investigations. Instead, reliance is placed on more general investigative procedures such as questioning and search warrants. Police do not, for example, have electronic surveillance or undercover policing capabilities. Similarly, police have yet to establish either a permanent or

²⁸ During the on-site visit government budget announcements in the media stated that the police budget was K256.7 million.

temporary group to specialize in proceeds of crime, although there is a National Fraud and Anti-Corruption Directorate within the Criminal Investigation Division of police. There have been no joint investigations undertaken in PNG.

RECOMMENDATION 28 (investigative powers)

Powers of production, search and seizure (c 28.1)

298. Police have general powers of search and seizure for the investigation of serious offences, including ML, FT and predicate offences.

299. The search powers contained in the *POCA* are of limited effect for general criminal investigation purposes. Sections 15 – 18 of the *POCA* provide inspection powers for the FIU to undertake its supervisory role for AML/CFT purposes. However, these provisions do not include an ability to search for and seize evidence for the purposes of criminal investigations. Similarly, ss113 – 127 of the *POCA* relate to obtaining and executing a warrant to search for tainted property, and the subsequent management of this property. Pursuant to s154, Police may obtain a production order relating to any ‘property tracking document’, but information obtained under a production order may not be used as evidence in criminal proceedings against the person (s156(1)). Section 159 enables police to apply for a search warrant, but again this is only for the purpose of locating a ‘property tracking document’. The provisions for monitoring orders (s161 – 163, *POCA*) relate to information about transactions conducted through an account (s161(1), *POCA*), and there appears to be no restriction on the use of this information in criminal proceedings.

300. The general search and seizure powers for Police are consolidated in the *Search Act 1977*, which is stated to apply, notwithstanding the provisions of any other law, to any search whether by or under this Act or any other law (s2, *Search Act*). The search warrant provision in the *Search Act* enables police to enter any named premises or vehicle, to search for and seize evidence of an offence. However, there is no legal obligation on any person to assist Police, to produce information or documents, or to respond to questions. The general search warrant power is outdated and does not provide the range of measures to effectively investigate ML, financing of terrorism, and underlying predicate offences.

Power to take witness statements (28.2):

301. Members of police, including the FIU, are able to take witness statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences, and in related actions.

Recommendation 30 (Law enforcement and prosecution authorities only)

Adequate structure, resources, etc (police and FIU) (30.1):

302. The internal structure for all government agencies in PNG must be formally approved by the DPM. In 2007, Police changed the structure of its then Fraud Squad, to create a Fraud and Anti-Corruption Directorate – the FIU is one of four units within this Directorate. This was an internal

change by Police and the formal structure of the Directorate has yet to be approved by the DPM. This continues to have a detrimental impact on the proper resourcing and therefore the operational capability of the FIU. [refer 2.5 for further comment on FIU resources]

Professional standards and training – FIU (R. 30.2-3)

303. All police are subject to the professional standards obligations of the Police, and also to the public officials code of conduct issued under the *Public Service (Management) Act 1995*. Police have received little or no training on ML, FT or proceeds of crime investigations.

Statistics (R.32)

304. Police and the FIU provided very limited statistical information. There has been one ML investigation, but no ML prosecutions in PNG. A number of proceeds of crime actions have been taken.

Effectiveness

305. The overwhelming level of systemic corruption amongst government agencies leads to a lack of trust and consequently impedes information sharing, cooperation and assistance, within police and between agencies. In addition, the *POCA* states that it is a function of the FIU to investigate offences under that Act, including ML, and police see the FIU as responsible for ML investigations. This undermines effectiveness of investigation of ML.

2.6.2. Recommendations and Comments

306. Due to lack of trust between agencies and the police view that the FIU is responsible for ML investigations, police have taken no action to initiate ML investigations, training or awareness raising within Police. There has been no ML prosecutions in PNG.

- PNG must take positive steps to clearly identify and articulate the police responsibility to investigate ML, and Police should actively pursue ML investigations.

307. Production order and search warrant provisions in the *POCA* are limited to property tracking documents and are not available for the criminal investigation of ML, FT or predicate offences. The search warrant provided for in the *Search Act 1977* is limited to entry, search and seizure, and has no obligation upon the person searched in terms of providing information or assistance (e.g. access to computers, disclosure of documents, etc).

- PNG should update what are outdated search warrant powers, to ensure police have effective statutory powers to investigate ML, financing of terrorism and underlying predicate offences.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Uncertainty over responsibility for investigating money laundering • Very limited money laundering investigations or prosecutions • Systemic corruption undermines police ability to properly investigate ML or FT
R.28	PC	<ul style="list-style-type: none"> • <i>POCA</i> powers unduly restricted • <i>Search Act</i> powers outdated and limited in application • Effectiveness not demonstrated

2.7. Cross Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Legal Framework:

308. The legal framework relating to the declaration or disclosure for cross border movement of currency in PNG is based on a combination of foreign exchange regulations (contained in the *CBA* and the *Central Bank (Foreign Exchange & Gold) Regulation 2000*), and customs enforcement powers that are used to enforce prohibited or restricted import and export of goods (contained in the *Customs Act 1951* and *Customs Prohibited Exports Regulation 1963*). In addition, the *POCA* includes provision for restraint and seizure of currency at the border where this is shown to be tainted property.

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

309. The following comments relate only to currency (bank notes or coins), as there is no reference in cross border regulations relating to bearer negotiable instruments (BNI) as defined by the Interpretative Note to SR IX.

310. Section 80 of the *CBA* empowers the making of regulations for the control of foreign exchange, including regulations regarding the taking or sending of currency (both PNG and foreign currency) into or out of PNG (s 80(2)(d) & (g)). Section 80(2)(j) enables regulations to be made to introduce penalties for the breach of those regulations. The manner of making those regulations and the prescribed penalties are provided under s 97 of the *CBA*.

Export of currency

311. Section 7(1) of the *Central Bank (Foreign Exchange & Gold) Regulation 2000* makes it an offence to take PNG currency or any foreign currency out of PNG unless it is authorized by the Central Bank. The penalty is prescribed under section 33(2) which is a fine of K100, 000 (US\$38,750) or 'an amount equal to 25% of the total value of the funds or property involved.' Whichever of these penalties is the greater will apply, or alternatively a default penalty of

imprisonment for a term not exceeding five years. This provision also serves as the basis under which customs officers use their powers of search, seizure and detention under the *Customs Act* to assist the Central Bank in enforcing that regulation.

312. A second provision has also been made in respect of taking currency out of PNG, contained in the *Customs (Prohibited Exports – 2008 Budget Amendments) Regulations 2007*, restricting the taking of currency in excess of K20,000 (US\$7,750) without written authority of the BPNG, or an authorized dealer of foreign exchange.

313. The Outgoing Passenger Card has a requirement to disclose PNG currency or Foreign currency equivalent, in line with the Central Bank (Foreign Exchange & Gold) Regulations, but the legal basis for inclusion of this requirement on the passenger cards is uncertain. No information was available on the number of reports that were made – indications were that no such reports have in practice been made, and no cross border currency reporting or information is provided to the FIU.

314. PNG reported one case involving a breach of the foreign exchange reporting requirements, involving a failure by an individual to disclose to the Central Bank the removal from PNG of PNG currency in excess of K50,000 (US\$19,375). The individual travelled to Australia and on arrival made a currency disclosure. In this case PNG authorities obtained information from Australia via a mutual assistance request (i.e. the incoming passenger card and cross boarder movement physical currency form from Australia). When the person returned to PNG, he was prosecuted for having failed to make a currency disclosure, he was convicted and ordered to pay a fine of K100,000. However, there was no other information or statistics on sanctions applied or enforcement action on cross border currency reporting.

Import of currency

315. The *Customs Personal Effects Regulation 1995* (s3) provide that a passenger is required to make a declaration of an amount as specified by the Central Bank. PNG advise that the Central Bank has specified this amount to be K20,000 (US\$7,750) or foreign currency equivalent, and this is the amount that is set out on the immigration arrival card for incoming passengers. Again, the legal basis for inclusion of this requirement is unclear and in practice no information or reporting from this mechanism is made available to the FIU.

316. Under the *Customs Act* it is an offence to breach a regulation. Section 193 of that Act sets out the fine for making a false declaration, and s163, 164 & 165 provide for other penalties that may be imposed.

317. However, where a person indicates they have in their possession currency in excess of K20,000, this has no apparent consequence, as there is no further information required from the person – PNG has no ‘border cash reporting’ form or similar mechanism. Officials indicated that such a person would be expected to seek Central Bank approval to import this amount of currency, but were uncertain of how this might be achieved in practice, and indications were that the person would be likely to proceed through the border unimpeded.

318. There are no controls in place for sending or receiving currency or BNI via the postal service or in containerized cargo.

Request Information on Origin and Use of Currency (c. IX.2):

319. In the event of a failure to declare currency in excess of the indicated amount, or a person making a false declaration regarding the carriage of currency across the border, PNG officials advise that a customs officer has various powers under Subdivision C (General Powers) & D (Powers of Arrest) of the Customs Act. These powers include s131 (covering the production of documents and other information regarding seized items) and ss16B and 136 (covering the power to question). A person is not required to answer questions from a customs officer if the answers would tend to incriminate that person (s136(3), *Customs Act*).

Restraint of Currency (c. IX.3):

320. Section 31 of the *POCA* provides that an “authorised officer” may seize and detain any currency that is being imported into or exported from PNG if -

“The amount is not less than the equivalent of K5,000 (US\$1937) or a higher amount prescribed by regulation for this paragraph; and
there are reasonable grounds for suspecting that it is tainted property.”

321. Section 32 further provides that currency detained under s 31 may not be detained for more than 24 hours after it is seized. However, a magistrate may order its continued detention for a period not exceeding 3 months from the day it is seized, if satisfied that there are reasonable grounds for suspecting the property is tainted property, and its continued detention is justified while either its origin or derivation is further investigated, or consideration is given to the institution (in PNG or elsewhere) of criminal proceedings against a person for an offence with which the currency is connected. A further order to detain the currency may be made for up to 2 years.

322. The term “authorized officer” is defined in the *POCA* and, for the purposes of Division 1 of Part 2, means a police officer who is also a member of the FIU and who is authorized in writing by the Commissioner of Police. Presently there are only two people in PNG who are authorized officers for the purposes of the *POCA*.

323. The above provisions apply only to currency and do not extend to BNI.

324. In addition, a customs officer may seize any thing found on a person as a result of a search conducted under s125(1) that would afford evidence with respect to a contravention of any Customs-related law; or that are goods the importation or exportation of which is prohibited, controlled or regulated under the *Customs Act* or any other Act of Parliament.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):

325. Other than the information contained on the immigration arrival card, which is indicative only of there being an amount of currency in excess of K20,000 (US\$7,750), there is no information available to be retained by Customs.

Access to Information by FIU (c. IX.5):

326. The FIU advised that they do not receive information from Customs concerning cross border transportation of cash or BNI.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

327. While there is cooperation between Customs, Immigration and related authorities in terms of border management issues in general, there is no indication that this extends to issues related to the implementation of SR IX.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

328. PNG Customs has established a central liaison point within the Intelligence Section of the organization. It is from this office 'requests for information' are sent to and received from international counterparts. The reason it is maintained by the intelligence section is so that the information used is for official purposes and also the privacy and confidentiality of the information are maintained.

329. PNG Customs is also affiliated to world bodies like the World Customs Organisation (WCO), Asia Pacific Economic Cooperation (APEC), Regional Intelligence Liaison Office (RILO) and the Oceania Customs Organisation (OCO) through whom requests can be forwarded. Membership to these organizations enables Customs administrations to enter into MoUs regarding the exchange of information. There are standard reports that are sent through designated websites which are used to gather statistics and then later disseminated to member countries including the Customs Enforcement Network Communication (CENCOMM).

330. Information related to ML and FT can be sent to and requested from other Customs administrations through the Customs secured websites such as the CENCOMM. As an organizational strategy and consistent with the WCO SAFE Frameworks of Standards, the PNG Customs is embarking on Customs to Customs partnership and Customs to industry partnership in securing the global trade by utilizing intelligence-driven decision making and risk assessment without impeding too much on international trade. Doing so results in overall promotion of socio-economic growth.

331. All of the above mechanisms will be called upon for exchange of information relating to cross border transportation of currency as and when this information is available.

Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)

332. Section 7(1) of the *Central Bank (Foreign Exchange & Gold) Regulation 2000* creates an offence to take PNG currency or any foreign currency out of PNG unless it is authorized by the Central Bank. The penalty for removing PNG or foreign currency from PNG without Central Bank approval, prescribed under section 33(2) of the *Central Bank (Foreign Exchange & Gold) Regulations 2000*, is a fine of K100,000 (US\$38,750); or ‘an amount equal to 25% of the total value of the funds or property involved, whichever of these penalties is the greater will apply’. Alternatively a default penalty of imprisonment for a term not exceeding five years will apply.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or FT (applying c. 17.1-17.4 in R.17, c. IX.9):

333. There is no specific provision relating to cross border transportation of currency for purposes of ML or FT.

Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):

334. There is no provision for the confiscation of currency in the cross border situation based on UNSCRs.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

335. As indicated, the PNG Customs has various international networks and connections, and these are intended to enhance the mutual exchange of customs intelligence information. In the event of the detection of an unusual shipment of gold, precious metals or precious stones, customs would cooperate with the relevant foreign customs service to ensure the appropriate action is taken.

Safeguards for Proper Use of Information (c. IX.13):

336. The general public service requirement of safeguarding government information and data under the *Public Service (Management) Act 1995*, and the General Orders apply. For instance, s 50(b) of that Act states that it is a disciplinary offence for a public servant who, except as authorized in the course of official duty, does or divulges, directly or indirectly, any confidential information concerning public business or any matters of which he has official knowledge.

Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):

337. There appeared to be no such programs in place in PNG.

Supra-National Approach: Timely Access to Information (c. IX.15):

338. There appeared to be no information collected concerning SR IX, including by supra-nationals.

Statistics (R.32)

339. No statistics on the collection of cross border currency reports were available from PNG.

Adequacy of Resources – Customs (R.30)

340. The PNG Customs appears to be well structured and generally to have adequate resources to fulfil its role. There is a structured training model in place and staff are subject to standards of professional conduct, including confidentiality. The PNG Customs Service Plan 2010-2012 sets out the core functions of the Customs Service, which includes border security, community protection, trade facilitation and revenue collection. PNG Customs Officers carry out the functions of immigration, including at Jackson’s International Airport, Port Moresby. Customs have an overall staff of approximately 500, with 19 customs stations servicing both land and sea entry points. Increased resources would help improve effectiveness, but the issues regarding cross border currency reporting are to do with a lack of legal framework to allow enforcement, rather than a lack of resources. If the legal requirement was in place, then PNG Customs would be well placed to manage implementation of this. Training in ML and FT is required to raise general awareness of Customs staff.

2.7.2. Recommendations and Comments

341. The legal framework for cross border currency reporting is focused on foreign exchange control and is not designed for responding to ML and FT risks. There is provision in the *POCA* that deals specifically with seizure and detention of currency at the border, but this is restricted to currency that is suspected to be tainted property.

342. PNG should develop and implement a comprehensive system for the declaration or disclosure for cross border transportation of cash or BNI in keeping with the FATF standards.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none">• No AML/CFT border currency reporting system in place• No information available to FIU concerning cross border currency movements• No statistics available on reports made under foreign currency controls• No training for border enforcement staff on SRIX systems

3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

3.1. Risk of money laundering or terrorist financing

Risk

343. AML/CFT preventative measures included in the *POCA* 2005 cover the range of financial institutions required by the international standards, however the government is introducing the implementation of those requirements on a staged basis commencing with the banking sector. Other sectors do not yet seem to be aware of their obligations under the *POCA*. The FIU, as the regulator under *POCA* 2005, has prioritized the banking sector for initial implementation of *POCA* preventative measures. This prioritization reflects the low levels of resources of the regulator and the higher risks for ML in the banking sector in PNG. The prioritization of the banking sector does not reflect a proven low risk of ML and TF in other sectors in PNG. The FIU is taking steps to support implementation beyond the banking sector in the coming months.

344. PNG has not given directions to financial institutions in relation to low risk scenarios. The FIU has given guidance to banks on high risk categories of customers to guide the implementation of CDD measures and account monitoring. This is reflected in Section 3.2 and 3.4 below.

345. It should be noted that the scope of products offered in the general insurance sector indicates that the risk of ML through insurance schemes is likely to be low.

Regulatory approaches in Papua New Guinea

346. PNG does not appear to have an established regulatory practice of administrative rule making and enforcement beyond the primary statutes, despite various financial sector laws providing for the issuance of standards through enforceable directions and regulations. As is set out below, despite rule making powers in the *POCA* and sector-specific statutes, regulatory authorities have not taken up these powers to issue rules.

347. PNG's approach to regulation does not appear to yet include statutes or regulations which provide tools for administrative enforcement by fines or monetary penalties. Enforcement of laws, regulations and other rules appear to rely on licensing conditions (administrative), civil actions and criminal prosecution with penalties to be applied by the courts. Authorities were unable to provide any examples, even beyond the financial sector, of regulations in PNG which are enforceable through administrative financial or other penalties, or examples of enforcement of civil penalties by the courts.

348. There is a need to develop administrative regulation making and enforcement powers, with appropriate checks and balances, which would allow the regulator to issue administrative sanctions that include fines and other monetary penalties.

Law / Regulation / Other Enforceable Means

349. Part 2 of the *POCA* sets out the regime of AML/CFT preventative measures operating in PNG.

350. The *POCA* provides that the Head of State, acting on advice, may issue regulations necessary to give effect to the Act. This has not yet occurred. The Central Bank and other regulatory authorities in PNG have powers to issue enforceable regulations and directions, although this has not yet occurred in relation to AML/CFT measures.

351. Section 14 of the *POCA* gives the FIU, as the AML/CFT regulator, power to issue guidelines to cash dealers. These guidelines are not enforceable. The FIU does not have clear powers to introduce enforceable regulations or other measures to support implementation of the *POCA*.

352. The FIU has prepared a number of guidelines on CDD, STR reporting and record keeping under s14 of the *POCA*. These are intended to add practical examples and guide institutions to implement their obligations under the *POCA* without creating new obligations. Two Guidelines have been issued after consultation with the banking sector. Four others have been drafted and are with the relevant sectors for consultation ahead of their being issued by the FIU. None of these Guidelines are enforceable and do not represent 'other enforceable means' in the meaning of the FATF Assessment Methodology as they do not create new obligations. However these guidelines may have legal value by making explicit a number of implicit primary obligations contained in *POCA* and thus would likely carry some weight with a court considering the extent of the legal obligations under the *POCA*. In general, these Guidelines are not taken into account when determining ratings for R5 to R8.

Guidelines Issued to Banks

<i>Guidelines issued by the FIU under S.14 of the POCA</i>			
Title	Date of preparation	Covered Sectors	Notes
Guideline 1 – Suspicious Transaction Reporting	2007	Banks	Covers 'cash dealers', but only sent to banks
Guideline 2 - Customer Due Diligence and Record Keeping	2007	Banks	Covers 'cash dealers', but only sent to banks

Draft Guidelines

<i>Draft Guidelines prepared by the FIU</i>
Guidelines for NBFIs – STRs, CDD and record keeping
Due Diligence in relation to Government Cheques & Payments
Guidelines for Accountants – STRs, CDD and record keeping
Guidelines for Lawyers – STRs, CDD and record keeping

3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1. Description and Analysis

353. Legal Framework: The *POCA* sets forth CDD and recordkeeping requirements in PNG for all cash dealers. Cash dealers are defined in section 3 of the *POCA* as:

- a) a financial institution; or
- b) a person who carries on a business of an insurer or an insurance intermediary; or
- c) a person who carries on a business of a securities dealer or a futures broker; or
- d) a person who carries on a business of dealing in precious metals and stones; or
- e) a person who carries on a business of collecting, holding and delivering cash as part of a business of providing payroll services; or,
- f) an operator of a gambling house, casino or lottery; or
- g) a trustee or manager of a unit trust; or
- h) a trustee, administrator or investment manager of a superannuation scheme, other than a closed –end scheme; or
- i) a notary; or
- j) a person who carries on a business of dealing in real estate or high value items including antiques; or
- k) a person who carries on a business of underwriting share issues and participation in such issues; or
- l) a person who carries on a business of providing –
 - i) advice to undertakings on capital structure, industrial strategy and related questions; and
 - ii) advice and services relating to mergers and the purchase of undertakings; or
- m) a money –broker; or
- n) a person who carries on a business of providing portfolio management and advice; or
- o) a person who carries on a business of safekeeping and administration of securities; or
- p) a person who carries on a business of providing credit reference services; or
- q) a person who carries on a business of providing safe custody services; or
- r) a legal practitioner when acting for a client in a financial or real estate transaction, to the extent that he or she receives funds in the course of his or her business, for deposit or investment or to settle a real estate transaction; or
- s) an accountant, to the extent that he or she receives funds in the course of his or her business for deposit or investment; or
- t) any other prescribed business.

354. The BPNG is authorized under s5 of the *Banks and Financial Institutions Act 2000* to encourage and promote sound practices in relation to prudential matters by financial institutions. Section 27 of the Act authorizes the BPNG to issue prudential standards for the institutions under its supervisory authority. Pursuant to s8(1)(c) of the *Central Bank Act 2000*, the Bank of PNG is authorized to supervise and license banks, credit and other financial services. BPNG licenses, authorizes and supervises:

- Banks (including Microfinance Banks)
- Savings and loan societies
- Currency exchanges
- Money remitters
- Finance companies
- Life insurance companies

- Life insurance brokers
- Superannuation funds
- Superannuation investment managers
- Superannuation fund managers

355. To date, the BPNG has issued no enforceable regulations or prudential requirements related to CDD obligations or encompassing the principles of Basel Core Principle 18 (abuse of financial services).

356. The BPNG's authority to monitor compliance with CDD obligations of the financial institutions under its supervisory authority is based on its general prudential authority under the *Banking and Financial Institutions Act*. Pursuant to this authority, BPNG has begun basic monitoring of compliance with CDD obligations of some financial institutions during on-site inspections. Banks operating in PNG have confirmed that inspection reports received from BPNG following on-site inspections generally include some recommendations for improving compliance with AML obligations.

357. The BPNG lacks authority to impose administrative fines or penalties for non-compliance with any prudential standards, AML/CFT internal control requirements, or CDD obligations. Pursuant to ss14 and 15 of the *BFIA*, BPNG may impose conditions on a license, vary or revoke a license if a financial institution under its supervisory authority fails to comply with obligations under the license agreement.

358. Sections 54-55 of the *BFIA* permit the BPNG to impose civil or criminal penalties upon a financial institution which can only be enforced through court proceedings. Following Supreme Court decisions calling into question the BPNG's ability to prosecute directly, BPNG now seeks the OPP's assistance to take forward prosecutions to enforce sanctions through the courts.

359. To date, no administrative fines, penalties, adverse licensing actions have been imposed upon any financial institution in PNG for non-compliance with any AML/CFT obligations. Nor have any civil or criminal actions been initiated against any financial institutions for non-compliance.

360. Section 5 of the *Insurance Act 1995* designates the Insurance Commissioner as the official responsible for administration of the *Insurance Act*. The Act also empowers the Insurance Commissioner to grant and revoke licenses of insurers, brokers and loss adjusters (ss17-19), require filing of returns or reports to be filed by insurers, brokers or adjusters (s29), carry out inspections and investigations (ss34 and 38), issue directives for breaches of provisions of the Act (s35), and approve internal written control procedures of insurers, brokers and loss adjusters (s47). Although the Insurance Commissioner has powers to audit, investigate and inspect licensees, there are no provisions in the *Insurance Act* related to AML/CFT or CDD obligations. Due to lack of resources and perceived low risk, the Insurance Commission has not taken steps to implement AML/CFT controls in the insurance sector. The Insurance Commissioner is planning to review the *Insurance Act* in late 2011, and intends to reflect AML/CFT controls under an updated *Insurance Act*.

361. The Securities Commission is established and authorized pursuant to the *Securities Act 1997*,

and began to operate in 2008. The Securities Commission does not have any powers to supervise or regulate the securities sector, nor license players in the securities sector except for the Stock Exchange (s20). The Securities Commission does not have a clear power to sanction the Stock Exchange and no powers to set rules or monitor compliance with AML or CDD obligations under the *POCA*.

Customer Identity

362. Reliable official documentation to identify persons and legal entities is a major challenge in PNG due to the fact that a significant portion of the population lives in remote villages and rural areas where access to financial services is not common. In some small villages, literacy is a challenge, and some people lack birth certificates and records and may not know the date of their birth. Many of these small villages are not reached by state services which normally provide certain official documents that can confirm identity of persons, as some of these villages are not connected to a national road network.

363. With rapid growth in the financial services sector, many people who have never had access to financial services are being reached, however, many of these people still do not have access to modern forms of identity documentation. The FIU has recognized this challenge and has provided for alternative possibilities of identity verification to ensure that most of the population, including those in remote and rural areas will be able to produce documentation that will enable financial institutions to be able to reasonably confirm identity in the most reliable methods currently available.

364. Similar challenges exist with respect to production of official and reliable identity documentation for legal entities. Although all companies must register in accordance with procedures stipulated in the *Companies Act*, the company registration infrastructure which is managed by the IPA also faces challenges. Although the IPA maintains a computer database which contains company records (registration, certificates of incorporation, etc), this information is not available online and not all information has been entered into the electronic database yet (envisaged completion: June 2011). The systems for maintaining and updating company records is manual and inefficient, and thus presents obvious challenges for those required to enforce company registration obligations and those who need to independently verify company records.

Prohibition of Anonymous Accounts (c. 5.1):

365. Section 36 of the *POCA* prohibits the opening of an account with a cash dealer in a false name. This provision does not expressly prohibit the opening of, nor maintenance of anonymous accounts. Although s20 of *POCA* requires cash dealers to verify each customer's identity, this requirement does not go far enough to prohibit the existence of accounts in anonymous form, nor does it require the conversion of anonymous accounts to those in which identity is accessible.

When CDD is required (c. 5.2):

366. *POCA* s20(1) requires cash dealers to verify customer identity documentation when (a) entering into a business relationship or (b) carrying out a transaction. Pursuant to *POCA* s24(2), aside from identity documentation, no further information about the customer or the transaction is required

to be collected unless there are reasonable grounds to suspect that the transaction may be relevant to an investigation or prosecution. Although *POCA* s20(1) requires collection of some CDD information in advance of doing business, it appears that this requirement can be eroded by *POCA* s24(2) and the 'reasonable excuse' exception set forth in *POCA* s20(6).

367. The *CDD and Recordkeeping Guideline 2007* elaborates on the CDD requirements and guides cash dealers to satisfy themselves as to the true identity of the customer when (a) entering into a continuing business relationship with a customer, or in the absence of that relationship, when conducting a transaction of K10,000 (US\$3,875); (b) when carrying out an electronic funds transfer of K10,000; (c) when there is a suspicion of a ML offence; or (d) when there are doubts about the reliability or accuracy of the customer identification information previously obtained.

Identification measures and verification sources (c. 5.3):

368. Section 20(1) of the *POCA* sets forth the obligation of cash dealers to satisfy themselves with respect to the identity of customers. Section 20(2) obliges a cash dealer to require that customers produce identity documents such as (a) a birth certificate, passport or other means of identification approved by the FIU or (b) for a body corporate – a copy of its certificate of incorporation.

369. The *CDD and Recordkeeping Guideline 2007* provides guidance for alternative means for verifying customer identity. Although the provisions of this Guideline are not enforceable, the two lists of possible (Category A and Category B) identity documents assist implementation.

370. Section 14 of the *CDD Guideline* sets forth identity documents for identifying natural persons. It provides a wide array of officially verifiable documents (Category A – Official Documents²⁹), two of which can be sufficient to meet the identity requirement for a natural person. If two “Category A” are not available, one document from Category A, and two reference letters from Category B letters can suffice in combination to meet the identity requirements. If no Category A documents are available, then 3 (Category B) reference letters are acceptable.

371. This provision further requires that one identity document should contain photo identification, however, authority is given to cash dealers to waive this requirement in their discretion where they are satisfied the person’s identity is adequately verified through other means.

372. The *CDD guideline* recognizes that in PNG many individuals may not have passports or birth certificates, or even know the exact date of their birth. Although not all the listed documents would constitute official, reliable, and independent source documents, in the context of PNG, this wide array of alternatives is an adequate balance between reasonableness in ensuring reliability of identity documentation, while allowing for the potential extension of financial service to people in unbanked areas of the country.

²⁹ Bulleted items 13 and 14, however are not documents.

373. The *CDD Guideline* encourages the use of a risk-based approach in cases where official identity documentation is not available. Bankers indicated they systematically use a risk-based approach in circumstances where official identity documents are not available by imposing transaction limits on the accounts where there is any doubt or uncertainty.

374. Section 15 of the *CDD Guideline* suggests that identity of unincorporated businesses, associations, or self-employed persons can be established by verifying identity of the person with the largest share of the business in accordance with the same rules of verifying identity of natural persons.

375. Sections 16 - 18 of the *CDD Guideline* suggests that a corporate body should provide a Certificate of Incorporation issued by PNG or the government of another country, together with the following information of each authorized signatory: (a) full name and any other names used; (b) date and place of birth; (c) permanent address or PO Box; (d) occupation; and (e) signature.

Identification of Legal Persons or Other Arrangements (c. 5.4):

376. Section 20(3) of *POCA* requires cash dealers to take reasonable measures to ascertain whether a person is acting for another when opening an account or executing a transaction. Section 20(4) requires cash dealers to establish the identity of persons for whom or for whose ultimate benefit the client is acting. Section 20(4), however is subject to a “reasonable excuse” exception provided in s20(6), which does not appear to be clarified or defined. Section 22 of the *CDD Guideline* reiterates the *POCA* requirement.

377. Cash dealers are required to ascertain whether a client is acting on behalf of another (or others), and further require that the identity of the principle(s) is documented. These provisions do not include a requirement for the cash dealer to obtain evidence of the existence of authority for the agent to act on behalf of the principle(s), nor do they require that identity documentation is obtained for both agent and principle(s).

378. Section 20(b) of the *POCA* is elaborated by ss16-18 of the *CDD Guideline* which sets out that a Certificate of Incorporation/Registration is sufficient identity documentation for companies. There is no requirement to further verify the legal status or existence of the legal person(s) or arrangement(s) by other means, like in the case of trusts.

379. Although s15 of the *CDD Guideline* calls on cash dealers, in the case of unincorporated businesses or associations, to establish identity of natural persons who are the partner, proprietor or owner with the largest share of the business, this provision does not necessarily reach all potential parties that might hold power or influence over executive decisions, or, for example, trustees in the case of trusts, or directors or managers in the case of legal entities. There is also no requirement for cash dealers to document the legal form, the identity of officers, directors or managers, director, or obtain proof of the legal instrument setting forth the power to bind the legal person or arrangement. Therefore these requirements do not meet international standards.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

380. Although s20 of the *POCA* sets requirements for CDD and ss15 -18 of the *CDD Guideline* set forth some steps for ascertaining and documenting identity of customers (natural and legal persons), there is no clear requirement to ascertain the identity of the beneficial owner. Section 20 (2) of *POCA* requires the cash dealer to ascertain whether a client is acting on behalf of another, but there is no requirement to ascertain or document the identity of the beneficial owner, understand the ownership or control structure, or identify the person(s) who exercise ultimate and effective control. These requirements do not meet the international standards for identification of beneficial ownership.

Information on Purpose and Nature of Business Relationship (c. 5.6):

381. There is no binding obligation on financial institutions to obtain information on purpose and nature of business relationship or the purpose for which accounts are to be used. The obligation to collect CDD information under *POCA* s21(2)(a) is limited to “name, address and occupation (or where appropriate, the business) or principal activity of each person.” The obligation to obtain information to understand the purpose for which the account is established (in order to understand the types of transactions expected to flow through the account) appears to be lacking. This provision is also subject to *POCA* s21(6) which provides a legally ambiguous “reasonable excuse” exception to this obligation. Without this information, a financial institution lacks sufficient information to understand the expected transaction profile of the customer, which is necessary to know what types and volumes of transactions would be normal for the client. Without the ability to clearly understand the expected transaction profile of a customer, it is not possible to monitor for unusual or suspicious transactions.

382. In practice, banks in PNG indicated that due to home-country AML/CFT requirements or group standards, and for purposes of assessing credit risk in lending, banks obtain information on the type and nature of the client’s intended use of accounts. However, it is not clear that sufficient CDD information of this type is collected regarding clients that do not make use of loan products or services. In PNG, this would be a very large portion of the banking customer base.

383. The only provision which requires inquiry into the purpose of the business relationship, or the nature / purpose of the funds in the account is section 24(2) of the *POCA*. However, this information is only required to be obtained after a suspicious transaction that may be relevant to the investigation or prosecution of a serious offense is detected. Therefore, the CDD provisions in *POCA* do not meet the requirement for this international standard.

384. Some NBFIs may collect CDD information for purposes of assessing credit risk, but it is not clear that this information would be sufficient to enable staff to identify “usual” transactions, which must be understood fairly clearly in order to identify unusual or suspicious transactions. Further, such information may not be documented by cash dealers for clients that do not involve lending instruments or other credit facilities. Therefore, the requirement to obtain sufficient CDD information on each client to understand the nature and purpose of the business relationship is not met.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

385. Neither the *POCA* nor other related laws or regulations contain any obligation to conduct ongoing due diligence throughout the nature and course of a business relationship. Section 24 of the *POCA* only requires that cash dealers enquire into the purpose of a transaction or origin of funds after a determination that the transaction may be related to an investigation or prosecution and an STR is to be filed. There is no requirement to undertake reviews of transactions, or ensure data, documents or information collected pursuant to the CDD process is updated. This does not meet the international standard.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

386. No provisions in the *POCA*, nor in other relevant law, or regulation or other enforceable means, set forth any obligation to distinguish higher risk customers from other clients.

387. Section 19 of the *CDD Guideline* encourages cash dealers “to perform additional customer due diligence measures for higher risk categories of customer, business relationships or transactions.” Section 20 defines enhanced due diligence as: (a) establishing the source of a customer’s wealth and funds; and (b) conducting regular and on-going monitoring of the customer’s transactions.

388. The *CDD Guideline* issued pursuant to s21 of *POCA* sets forth examples of high risk customers which include: (a) Politically Exposed Persons; (b) all non-resident customers – especially customers who are from countries or regions or industries where a high amount of crime is known to exist; (c) Customers that work in certain industries or occupations where crime is known to exist, and provides a few examples (e.g., where earning potential is high and is subject to controls or permits, like mining, forestry or fishing; casinos; real estate agents; dealers in precious metals or stones; and legal professionals and accountants). Other examples of high risk categories include (d) non face-to-face customers and (e) legal persons or arrangements.

389. In view of the seriousness of the domestic corruption situation in PNG, the FIU has developed draft guidance to mitigate risks in relation to misappropriation of public funds. The draft *Guideline on Due Diligence in Relation to Government Cheques and Payments* identifies high-risk situations and measures to conduct enhanced CDD to mitigate those risks. In its final form, it is intended to elaborate on the legal obligations in the *POCA* at ss.19-20, rather than create new legal provisions. At the time of the onsite visit the Guideline was in draft form. The Guideline intends to require financial institutions to conduct enhanced due diligence before accepting any cheque drawn on any government account for processing and payment, initially above the threshold of K2,000,000 (US\$774,000). Examples of the draft requirements include:

- At least two officers of the financial institution must approve in writing acceptance of such cheque and document that there is no evidence of fraud.
- Check the business of the payee company, to identify its assets, number of employees, previous projects, company accountant and persons who control the company.
- Examine the company accounts to identify whether the company has a transaction history consistent with legitimate business.

- Check the directors to ensure against adverse actions in relation to previous offences/suspicious transactions, conflicts of interest, negative media reports or criminal connections of the director.
- Examine any previous payments received from government with particular focus on how funds were disbursed.
- Examine the documentation provided and ensure that the payment complies with the *Public Finances (Management) Act of 1995*, *Public Finances (Management) Regulation of 1996*, the Central Supply & Tenders Board Good Procurement Manual, the Finance Management Manual and the relevant Department guidelines and any other applicable legislation or guidelines.
- Examine the financial affairs/accounts of public service employees who were involved with the payment at any stage.
- Screen the transaction against the FIU suspicious transaction listing, PEP list and high risk persons lists to identify whether the directors and associates are inappropriately involved.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

390. None of the current laws, regulations or other enforceable means permit application of reduced or simplified CDD measures when appropriate.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

391. None of the current laws, regulations or other enforceable means permit application of reduced or simplified CDD measures to customers resident in another country.

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):

392. None of the current laws, regulations or other enforceable means permit application of reduced or simplified CDD measures.

Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

393. The *CDD Guideline* issued pursuant to s21 of *POCA* sets forth some examples, as guidance of high risk customers.

Timing of Verification of Identity—General Rule (c. 5.13):

394. Although *POCA* s20(5) requires cash dealers to establish customer identity before executing the transaction, or reject and report the transaction when identity cannot sufficient be established, this requirement is significantly eroded by *POCA* s20(6) which provides a ‘reasonable excuse’ exception to the following requirements:

- confirming identity when entering into relationship or executing a transaction [s20(1)];
- ascertaining if person is acting on behalf of another [s20(3)];
- confirming identity of person or beneficiary for whom client is acting [s20(4)]; and
- rejecting and reporting transactions to the FIU [s20(5)].

As there is no objective definition of the “reasonable excuse” exception, it requires interpretation by those who must implement as well as authorities who should monitor compliance, and this will allow inconsistent interpretations which result in abuse. As the law creates the ambiguity as to when, or under what circumstances customer identity must be established, the “reasonable excuse” exception can undermine the customer identity requirements.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):

395. No provision in law, regulation or other enforceable means provides for the possibility of delay in verification of customer identity.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

396. Section 20(5) of the *POCA* states that cash dealers must not proceed with a transaction if satisfactory evidence of identity is not produced unless directed to do so by the FIU. Cash dealers must also report such attempted transactions to the FIU.

397. Section 20(6) of the *POCA* indicates that a criminal penalty can be imposed (K50,000 for persons (US\$19,375); K250,000 (US\$96,875) for legal entities) if a cash dealer fails without “reasonable excuse” to comply with the customer identity provisions. However, the FIU has no legal power to monitor compliance with this requirement.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

398. No law, regulation or other enforceable means requires terminating a business relationship when CDD requirements are not fulfilled.

Existing Customers—CDD Requirements (c. 5.17):

399. No law, regulation or other enforceable means requires cash dealers to apply CDD requirements to existing customers or within any timeframe.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

400. No law, regulation or other enforceable means requires cash dealers to perform CDD requirements on existing customers, including anonymous or fictitious accounts.

RECOMMENDATION 6

401. The rising level of corruption in PNG is widely and openly acknowledged in the public media (both local and international), by government officials as well as civil society and the general public. This indicates that domestic PEPs represent a category of high risk customers.

Foreign PEPs—Requirement to Identify (c. 6.1):

402. The *POCA* has no specific requirements for implementation of risk management procedures for PEPs. Section 21 of the *CDD Guideline* mentions PEPs as an example of a high risk customer.

Section 20 of this Guideline requires cash dealers to establish the source of wealth for high risk customers, and conduct regular and ongoing monitoring of the transactions of high risk customers. These provisions do not make any distinction between foreign or domestic PEPs, rather they are simply defined as individuals entrusted with prominent public functions. This definition may cover both foreign and domestic PEPs, but to date, no case law exists on this issue.

403. There is no requirement in law, regulation or other enforceable means to take any steps to undertake to identify foreign PEPs at account opening or screen beneficial owners for PEP status. Nor is there any obligation to screen the client base for clients that might have become a PEP.

404. Banks operating in PNG, however, use software systems to identify foreign PEPs as clients or beneficial owners and regularly screen the client base for clients who might have become PEPs.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

405. No laws, regulations or other enforceable means require cash dealers to obtain management approval to open an account or continue an established business relationship when a client or beneficial owner has been identified as a foreign PEP.

406. However, some subsidiaries of foreign banks have sophisticated systems in place which require management approval prior to opening an account of a foreign PEP, identifying a foreign PEP as a beneficial owner, or continuing a relationship with a client that has become a foreign PEP.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

407. Section 20 of the *CDD Guideline* guides cash dealers to take reasonable steps to establish the source and wealth of funds of higher risk customers; and section 21 provides that PEPs are an example of a higher risk customer. These provisions do not distinguish between foreign or domestic PEPs.

408. In discussions with banks, local subsidiaries of some foreign owned banks indicated they have implemented systems to query the source and wealth of foreign PEPs.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

409. Section 20 of the *CDD Guideline* guides cash dealers to conduct regular and ongoing monitoring of transactions of higher risk customers. Section 21 provides that a PEP is an example of a higher risk customer. These provisions do not distinguish between foreign or domestic PEPs, and no official interpretation or case law is available on the issue.

410. In discussions with local subsidiaries of foreign owned banks, some indicated they have implemented systems to conduct enhanced and ongoing monitoring of transaction activity of foreign PEPs.

Domestic PEPs—Requirements (Additional Element c. 6.5):

411. Section 21 of the *CDD Guideline* defines PEPs as individuals entrusted with prominent public

functions and does not distinguish between foreign or domestic PEPs. However, the FIU encourages banks to treat domestic PEPs as high risk customers, and has sent to all banks a list of officials of PNG which the FIU considers to be entrusted with prominent public functions.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

412. PNG is party to the UN Convention Against Corruption (UNCAC).

413. The FIU has developed draft guidance to mitigate risks in relation to misappropriation of public funds involving domestic PEP. The draft Guideline on Due Diligence in Relation to Government Cheques and Payments is discussed in section 3.2 under the section on enhanced CDD in high-risk situations.

RECOMMENDATION 7

414. All four commercial banks and one finance company operating in PNG maintain correspondent banking relationships. In practice, the three commercial banks which are subsidiaries of foreign banks, rely on their group headquarters to establish and maintain correspondent banking institutions. The one locally incorporated bank appears to pursue international standards in the absence of binding obligations in PNG.

Requirement to Obtain Information on Respondent Institution (c. 7.1):

415. There are no laws, regulation or prudential requirements issued by the BPNG which require financial institutions or cash dealers (as defined in *POCA*) to implement risk control measures in regard to correspondent relationships, nor gather information about any respondent businesses to determine the reputation, quality of supervision or whether it has been subject to a ML or TF investigation or regulatory action. In fact, *POCA* s20(8) clearly states that the CDD requirements contained in *POCA* do not require production of any evidence of identity “if the applicant is a cash dealer.” Although there is no mention of correspondent banks, nor is “applicant” defined, this provision appears to emphatically state that no internal control procedures at all are necessary with respect to correspondent banks. This is not consistent with required preventative measures concerning correspondent banks.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

416. There are no requirements for cash dealers to obtain a copy of any respondent institution’s internal AML/CFT controls or assess for their adequacy or effectiveness. However, some of the local subsidiaries of foreign banks have such internal requirements in place. Banks without foreign ownership and which are not subject to stricter AML/CFT controls are not obligated under laws of PNG to collect such information, nor share this information with correspondent institutions.

Approval of Establishing Correspondent Relationships (c. 7.3):

417. There are no requirements for internal management approval prior to the establishment of new correspondent relationships. Banks operating in PNG indicated that their corporate internal control

procedures require this as a result of home country AML/CFT obligations. However, no PNG bank could recall establishing any new correspondent relationships in the past few years.

418. The BPNG informed the Evaluation Team that prior BPNG approval is required before financial institutions may establish new correspondent relations. Most banks in PNG were unaware of this requirement and the Evaluation Team was unable to find it in any law, regulation or other type of directive. In practice, license application forms require listing correspondent banks as part of the license application process.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

419. There is no requirement in law, regulation or other enforceable means obligating financial institutions to document the respective AML/CFT responsibilities of each other with respect to their correspondent relationship.

Payable Through Accounts (c. 7.5):

420. There are no payment systems which allow for transactions that operate as payable through accounts.

RECOMMENDATION 8

Misuse of New Technology for ML/FT (c. 8.1):

421. There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through misuse of technologies.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

422. There are no laws, regulations or other enforceable means requiring financial institutions to have policies or procedures in place to address specific risks associated with non-face-to-face transactions or relationships.

423. The BPNG has issued a press release (*Statement of Intent on Electronic and Mobile Payment Services*, dated 27 May 2010) which recognizes that electronic and mobile payments and alternative methods of payment services have been introduced in PNG recently. This press release welcomes these new developments yet recognizes the need to balance operating these services with high standards of safety, security and cost-effectiveness, as well as adequate consumer protections. The press release encourages providers of such services to meet with BPNG to outline plans and enable the BPNG to understand the implications of the products on the retail payments system.

Analysis of Effectiveness

424. While *POCA* requirements are binding on all financial institutions, in practice they are only being implemented in the banking sector and by the post office remittance agents. In addition, credible supervision of CDD requirements has not yet taken place in the sector which is applying the

POCA (ie banks). The BPNG admitted that no fines or penalties of any kind have ever been assessed against a bank in PNG for non-compliance with any AML or CDD requirements.

425. Financial institutions face serious challenges in conducting CDD and related preventative measures in a society with a large informal sector, corruption issues and proliferation of crime. In addition, there are significant challenges with identity systems for natural persons and poor transparency of legal persons.

426. There are only four licensed banks in PNG, three of which are foreign owned, and thus subject to stricter AML/CFT obligations, and one local bank.

427. Provisions in the *POCA* show significant gaps in relation to the scope and depth of CDD and related preventative measures. Beyond the *POCA*, there are very few enforceable AML/CFT obligations to which the banks are subject under PNG law, regulation or other enforceable means in the areas of CDD/ Know Your Customer (KYC), or mitigating risks with respect to high risks clients or accounts, including PEPs, or new technologies.

428. In practice, the banks appear to follow much higher standards than mandated by PNG laws with respect to CDD/KYC, high risk clients and transactions, including PEPs, and new technologies, in order to preserve their reputation in the global banking arena, and because stricter obligations are imposed by home supervisors or supervisors in jurisdictions in which a subsidiary may be located.

429. Although the FIU is taking pro-active steps (preparation of a draft *Guideline in Relation to Government Cheques and Payments*) to stem the misappropriation of the state budget from corruption, it is clear that there remains a lack of capacity, resources and policy-level inertia to effectively use AML prevention measures to enhance effectiveness of current efforts to reduce corruption.

430. The absence of onsite inspections to monitor compliance with *POCA* provisions together with the lack of clarity in the FIU's authority to conduct inspections undermines effectiveness of mandatory CDD requirements.

431. The *CDD and Recordkeeping Guideline 2007* issued by the FIU make a commendable attempt to meet some of the international CDD/KYC standards and higher risks related to client categories and transactions, but none of these are enforceable, nor can non-compliance be penalized. Therefore these measures are ineffective.

432. Although *POCA* s20 obliges cash dealers to establish the identity of client before executing a transaction, and reject the transaction and report to the FIU if identity is not sufficiently established, *POCA* ss20(6) and 21(1) allow for an (undefined) "reasonable excuse" exception. This exception invites potential for abuse, not only forcing those who must comply to guess what exactly it means (and how it will be enforced), but also impedes the ability of any authority to objectively monitor compliance. Additionally, such ambiguity creates a risk of legal challenge to the obligation on the grounds of excessive vagueness.

433. The authority of the FIU (or other supervisory authority) to monitor compliance with all CDD requirements is not clear. *POCA* s15 appears to give the FIU authority to inspect all documents, records, etc. However *POCA* s15(2) limits FIU compliance monitoring authority to compliance with reporting obligations rather than compliance with all AML/CFT internal control obligations, many of which include CDD requirements. As a result, compliance monitoring and enforcement are not likely to be effective.

434. Given these legal ambiguities together with the lack of resources of the FIU to undertake the limited compliance monitoring stated in *POCA* s15, it is unclear how compliance can be effectively ascertained or non-compliance can be sanctioned.

435. The requirement for prior written approval of the Central Bank to engage in correspondent bank relations is an ineffective control on transaction risks with respondent banks. This measure does not effectively prevent financial institutions from engaging in unauthorized correspondent relations, nor have any sanctions been imposed for non-compliance. Further, *POCA* s20(8) states in rather absolute and unequivocal language that no CDD controls or requirements apply to counterparties which are cash dealers.

3.2.1. Recommendations and Comments

436. There is an absence of enforceable regulations issued pursuant to legislation, which leaves critical gaps in the framework of preventative measures required to effectively implement international AML/CFT requirements, and in particular CDD requirements.

437. All financial institutions should be alerted of their obligations under the *POCA* and required to commence CDD and other AML/CFT controls in keeping with their legal obligation.

438. Ensure that CDD obligations are implemented through effective, risk-based supervision, regulatory and monitoring systems by adequately resourced supervising agencies.

439. PNG should include the following obligations on all reporting parties in law or regulation:

- Prohibit opening and maintaining anonymous accounts.
- Improve requirements for when CDD measures must be undertaken.
- Improve customer identity verification requirements, particularly for legal persons.
- Require financial institutions to identify beneficial owners of corporations, and other forms of legal persons and arrangements.
- Require financial institutions to conduct on-going due diligence of customers because customers which are honest today may turn to criminal activities in the future.

440. PNG should issue enforceable instructions to:

- Require collection of CDD information and data so that financial institutions have a clear understanding of the expected transaction profile of customers, in order to be able to identify usual transactions which is necessary to be able to identify suspicious transactions.
- Clarify requirements for obligatory enhanced due diligence measures.

- Require financial institutions to apply CDD obligations which meet international standards to existing customers on a risk sensitive basis, and stipulate a deadline for full compliance.

441. Clarify or eliminate the “reasonable excuse” exception to CDD requirements in *POCA* ss20(6) and 21(1) to ensure concrete CDD obligations, including when an exception would apply. This is necessary to clarify cash dealers’ internal control obligations, and to enable supervisory officials to effectively enforce the CDD requirements in a way that is predictable, rather than discretionary, and easily subject to abuse.

442. PNG should issue enforceable instructions to require all reporting parties to:

- Implement risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.
- Obtain senior management approval for establishing business relationships with a PEP.
- Take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP.
- Conduct enhanced ongoing monitoring on PEPs.

443. PNG should consider modifying *POCA* s20(8) which affirmatively states that no due diligence measures are necessary when the client/counterpart is a cash dealer. PNG should also issue enforceable instructions to require those institutions pursuing cross-border correspondent banking and other similar relationships with relevant reporting parties to:

- Gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to an ML or FT investigation or regulatory action.
- Assess the respondent institution’s AML/CFT controls, and ascertain that they are adequate and effective.
- Obtain approval from senior management before establishing new correspondent relationships and document the respective AML/CFT responsibilities of each institution.

444. PNG should issue enforceable instructions to require all reporting parties to:

- Take such measures to prevent the misuse of technological developments in ML or FT schemes.
- Take measures to mitigate risks associated with non-face-to-face business relationships or transactions.
- Manage the risks to effective CDD procedures that arise from non-face-to-face customers.

3.2.2. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • Many CDD requirements are not enforceable • Prohibition against anonymous accounts establishment or maintenance of anonymous accounts is absent. • Requirements regarding establishing and verifying identity, as well as the form of CDD requirements of different types of persons (ie. trustees, directors, etc.) and documenting powers of legal persons and arrangements are deficient and vague. • There is no clear or enforceable requirement to identify beneficial owners, understand the ownership/control structure, or understand who ultimately exercises effective control over a legal person or arrangement. • There is no requirement to obtain documentation to understand the nature or purpose of the business relationship. • No requirement to conduct on-going due diligence. • There are no enforceable provisions to ensure compliance with enhanced due diligence measures for higher risk customers. • Requirements to conduct CDD prior to account opening or executing transactions are not enforceable. • No enforceable requirement obliges cash dealers to apply CDD measures to existing customers, or accounts which may be anonymous. • Effective implementation of CDD measures has not been tested through comprehensive supervision.
R.6	NC	<ul style="list-style-type: none"> • There is no requirement to identify foreign PEPs. • No requirement for senior management approval to establish a business relationship with a foreign PEP. • No requirement to take reasonable measures to establish the source and wealth of foreign PEPs. • No provisions require ongoing monitoring of transactions of foreign PEPs.
R.7	NC	<ul style="list-style-type: none"> • There are no laws, regulation or other enforceable means which require financial institutions to: implement risk control measures for correspondent relationships, nor gather information on correspondent relationships or to obtain a copy of any correspondent institution's internal AML/CFT controls or assess them for effectiveness. • There is no requirement in law, regulation or other enforceable means to document the respective AML/CFT responsibilities of correspondent relations.
R.8	NC	<ul style="list-style-type: none"> • There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through misuse of technologies.

3.3. Third Parties And Introduced Business (R.9)

3.3.1. Description and Analysis

Legal Framework:

445. There are no obligations in law, regulation or other enforceable means related to CDD requirements with respect to third parties and introduced business. The CDD obligations which are stated in the *POCA* and the FIU Guideline on *CDD and Recordkeeping* apply directly between financial institutions and all customers for whom they execute transactions.

446. Foreign banks in PNG have indicated that their internal controls require them to follow requirements based on international standards which are imposed by home supervisors. The local bank has internal control procedures which require completing CDD measures on all customers directly.

447. No CDD requirements have been implemented in insurance, securities or other NBFIs sectors.

3.3.2. Recommendations and Comments

448. In the absence of an obligation which holds reporting entities solely responsible for collecting CDD information on each customer with whom they provide services, PNG should provide for comprehensive controls in the case of reliance on intermediaries or other third parties.

449. Require institutions relying on agents or brokers to obtain CDD information to obtain from the agent or broker full CDD information upon request and without delay in cases where insurance companies or securities companies rely on agents or brokers to provide financial services directly to clients, where general client files are physically maintained by the agent or broker, rather than at the corporate headquarters.

450. The legal framework must also require that the main financial institution takes steps to ensure that the agents and brokers have adequate CDD control requirements in place and that they are subject to supervision and prudential regulation.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none">• Lack of clear obligation which holds reporting entities solely responsible for full compliance with all elements of CDD with respect to each customer,• lack of AML/CFT regulatory controls on the operation of third parties.

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Legal Framework:

451. The (identical) financial secrecy provisions can be found in s83 of the *CBA* and s52 of the *BFIA*. Section 2 of these identical provisions prevents the disclosure of protected information or documents. Protected information or protected documents are defined as information

“produced under or for the purposes of this Act, and containing information relating to the affairs of any person other than a document that has already been lawfully made available to the public.”

Inhibition of Implementation of FATF Recommendations (c. 4.1):

452. The *POCA* requires reporting entities to submit disclosures of financial data, identity information and other relevant information concerning financial activities of customers pursuant to the suspicious transaction reporting obligation (s24) and cash threshold reporting obligation (s23).

453. Under s83(6) of the *CBA* and s52(6) of the *Banks and Financial Institutions Act 2000*, it is not an offence if the disclosure of protected information or the production of protected information is made under compulsion or obligation of law.

454. The FIU has confirmed that it has received STRs and CTRs from all banks operating in PNG, and has had no problems in obtaining additional follow up information concerning additional facts or data upon request. Bank secrecy provisions do not inhibit implementation of the FATF Recommendations.

Effectiveness

455. As yet the BPNG does not appear to have been sharing information with the FIU concerning compliance monitoring of banks under supervision. It is unclear whether this relates to bank secrecy or inter-agency cooperation issues.

3.4.2. Recommendations and Comments

456. Due to the unclear legal framework regarding functions of all authorities with AML/CFT responsibilities, the legal basis for information sharing is uncertain (see also ss 6.3 and 6.5 of this report).

- Clarify the legal frameworks for disclosure and sharing of information between all authorities with AML/CFT responsibilities.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	Unclear legal framework for disclosure and sharing of information

3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1. Description and Analysis

Legal Framework:

457. Key obligations for record keeping are set out in law as required under the FATF standard. Section 2 of the *POCA* addresses reporting and record keeping obligations of cash dealers and sanctions for non-compliance with those obligations. The definition of cash dealers in the *POCA* results in the widest range of financial institutions being included in record keeping requirements.

458. Record keeping obligations in the *POCA* refer to the retention of ‘documents’. Section 3 provides a very wide definition of a ‘document’ to mean a record of information in any form, including:

- (a) a written or printed thing, including a map, plan, graph or drawing;
- (b) a record that is kept in electronic form, including any record that can be accessed in Papua New Guinea;
- (c) a photograph;
- (d) a disk, tape, film sound –track or other thing in which sound or other data is embodied;
- (e) a film, negative, tape or other thing in which a visual image is embodied.

459. The FIU has issued *Guidelines on CDD and Record Keeping* to banks under s14 of the *POCA*. This is only intended to serve as guidance and does not create any additional obligations in relation to record keeping.

460. The FIU has also developed a draft *Guideline on Due Diligence in Relation to Government Cheques and Payments*. This guideline gives useful directions on retention of CDD documentation and documents obtained during verification of customer activity and profile as well as documenting decisions of transaction monitoring. The Guideline, once issued, will not be binding.

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

461. Section 19 of the *POCA* defines minimum retention periods for documents. Account opening documents must be kept for 7 years after the day when the account is closed. Deposit box opening documents must be kept for 7 years after the day when the person ceases to use the deposit box. In any other case, records must be kept for 7 years after the day when the relevant transaction took place.

462. Section 21 sets out a provision for record keeping, without minimum retention periods for records that are to be kept by cash dealers. The obligation requires, in the absence of a reasonable excuse to the contrary, a cash dealer to establish and maintain records of all transactions of at least K200 (US\$77); or equivalent in foreign currency and prescribes the details of what a transaction record must show. Section 21(3) makes it clear that it does not limit any other obligation of a cash dealer to keep documents.

463. Section 28 sets out the circumstances when cash dealers are to retain records. The section

covers the minimum retention periods discussed above for a financial transaction carried out by a cash dealer, including, but not limited to, opening or closing an account, operating an account, using a deposit box, transferring funds telegraphically, international funds transfers and making a loan.

Section 28(2) sets out a number of exceptions to record keeping requirements, including (a) not requiring documents to be kept for a single deposit, credit, withdrawal, debit or transfer of an amount of less than K200.00 (US\$77); or (b) a document that is not a document given to the cash dealer by or for a customer; and need not be retained to preserve a record of the financial transaction concerned.

464. Recordkeeping provisions found in *POCA* s28 require cash dealers to maintain documents “that relate to a financial transaction carried out by the cash dealer.” In view of the requirements of the international standards (ie., to keep transaction records from 5 years of the date the transaction is executed; and to maintain other KYC documents 5 years from the time the relationship with the client has ended), the *POCA* provisions lack clarity as to whether customer identity documents are considered transaction records (maintained for the shorter duration) or as KYC-type documents (maintained for the longer period). This ambiguity leads to uneven implementation and enforcement.

Record-Keeping for Identification Data, Files and Correspondence (c. 10.2):

465. The s21 provision for record keeping addresses CDD records, but unlike s28 it does not set minimum retention periods for records that are to be kept by cash dealers. The obligation requires, in the absence of a reasonable excuse to the contrary, a cash dealer to obtain and maintain identity documents in accordance with s20. Section 21 specifically mentions retaining a copy of the evidence obtained for identification, including occupation, address, etc. It also calls for records of documents used for verification of identity, the nature of transactions, etc.

466. None of the sections in the *POCA* clearly covers a requirement to retain business correspondence.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

467. The law enforcement agencies experience delays and generally access financial information through the use of a search warrant, though this is not legally required.

468. Section 28(3) requires documents to be kept on microfilm or in a way that makes retrieving them, or the information in them, reasonably practicable.

469. The Central Bank further requires authorized institutions, as a risk management requirement, to have two different locations as back up sites to store data for business continuity in the event of an unexpected event.

Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):

470. Section 22 of the *POCA* requires any cash dealer that initiates an electronic transfer of K10,000 (approx. US\$3,875) to include full information of the originator including:

- Name of the originator

- Originator's account number or unique reference number
- Originator's address or customer identification number

Inclusion of Originator Information in Cross-Border and Domestic Wire Transfers (c. VII.2):

471. Section 22 of the *POCA* makes no distinction between domestic or cross-border wire transfers, therefore the provision is equally applicable to both domestic and cross-border transfers.

Maintenance of Originator Information (“Travel Rule”) (c.VII.4):

472. There is no provision requiring intermediaries and beneficiaries in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5) :

473. PNG has not adopted risk-based procedures for wire transfers not accompanied by originator information. All banks interviewed indicated that originator information is always included in cross-border wire transfers, because whenever this information is missing, transactions are always returned with a request to supply complete originator information. Banks confirmed that in practice their internal control rules require they provide full originator information on all wire transfers.

474. There is no obligation under PNG law requiring financial institutions to consider restricting or terminating a business relationship with financial institutions that fail to meet requirements under SRVII.

Monitoring of Implementation (c. VII.6):

475. The requirements of SR VII that are in place in PNG are not being effectively monitored for compliance. Pursuant to its general prudential supervisory authority, the BPNG has begun to monitor banks' compliance with the *POCA* AML obligations related to wire transfers. Supervision has not yet taken place with the NBFIs and post office on their wire transfer business. The depth of monitoring and supervision that is going on is not sufficiently documented. To date, the BPNG has not yet imposed any sanctions for non-compliance with any AML obligations on any financial institutions in PNG.

Application of Sanctions (c. VII.7: applying c.17.1 – 17.4):

476. The penalty for non-compliance with the *POCA* requirement is a fine of K50,000 (US\$19,375) for natural persons or imprisonment for two years; and for a legal entity the fine is K250,000 (US\$96,875). To date, no penalties have been imposed on any PNG banks for non-compliance with SR VII or any other AML obligations.

Effectiveness

477. In practice, it seems clear that banks are routinely keeping records for at least 7 years and usually longer. The situation with non-bank financial institutions is less clear.

478. The absence of comprehensive AML/CFT supervision by the BPNG and Securities Commission means that it is not possible to confirm that record keeping obligations are being implemented across the financial sector. This undermines effectiveness.

479. In the absence of specific requirements for financial institutions on how to deal with incoming wire transactions that lack originator information, it is not possible to ascertain compliance regarding financial institutions which are intermediaries or beneficiaries of such wire transfers.

480. Comprehensive supervision of SR VII requirements is lacking. Although banks state that they comply with SRVII requirements in accordance with their internal controls, it is not possible to confirm overall compliance, which undermines effectiveness.

3.5.2. Recommendations and Comments

481. The *POCA* should include a clear obligation to retain records of business correspondence.

482. As the international standards require separate records maintenance time periods for 'transaction records,' as opposed to 'other types' of CDD documentation (ie., identity and other KYC documents), it is necessary to clearly distinguish these 2 categories of documents to eliminate confusion on the required maintenance period for purposes of implementation and compliance monitoring.

483. PNG should ensure that comprehensive AML/CFT supervision is undertaken across the financial sector to ensure implementation of record keeping and SR VII requirements.

484. Requirements for including full originator information in wire transfers should be obligatory as a general rule, to wire transactions equal to or greater than K3,000 (US\$1,162.50), whether sent as an out-going transfer, received by a beneficiary bank as an incoming transfer, or received as an intermediary bank.

485. There should be an obligation for financial institutions to implement a risk-based approach in dealing with incoming wire transfers which lack sufficient originator information from financial institutions fail to meet SR VII obligations.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • Business correspondence is not clearly covered in <i>POCA</i> obligations • Ambiguity in the law on the distinction between what constitutes 'transaction records' and what constitutes 'other client file documentation' will lead to ineffective implementation and uneven enforcement of records maintenance requirements. • A lack of supervision across the financial sector means that effective implementation cannot be confirmed.

SR.VII	PC	<ul style="list-style-type: none"> • <i>POCA</i> record keeping requirement does not cover retention of wire transfer transaction data received by an intermediary bank that does not contain full originator information • Obligations concerning a risk-based approach for how financial institutions should deal with wire transfer transactions lacking full originator information when received by beneficiary banks is lacking. • Lack of supervision across the financial sector means that effective implementation cannot be confirmed.
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3.6. Monitoring of Transactions and Relationships (R.11 & 21)

3.6.1. Description and Analysis

RECOMMENDATION 11

Legal Framework:

486. There are no provisions for monitoring of transactions under the *POCA*.

487. The two Guidelines issued by the FIU under s14 of the *POCA* guide financial institutions to conduct scrutiny of any transactions undertaken by customers to ensure that the transaction being conducted is consistent with the institution's knowledge of the customer, the customer's business and risk profile. The Guidelines also guide cash dealers to establish and maintain records of the transactions. These Guidelines were addressed to all cash dealers but were in practice only sent to the banks. The Guidelines are intended to add practical examples and guide institutions to implement their obligations under the *POCA* without creating new obligations.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

488. There are no specific requirements under the current laws, regulations or other enforceable means for financial institutions to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

Examination of Complex & Unusual Transactions (c. 11.2):

489. Financial institutions are also not required to examine as far as possible the background and purpose of any such transaction and to document their findings.

Record-Keeping of Findings of Examination (c. 11.3):

490. According to the authorities, all licensed/authorized institutions are required to keep information for a period of seven years. However, there are no specific formal requirements relating to retention of findings of transaction monitoring, as required under the international standards.

RECOMMENDATION 21

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

491. Financial Institutions in PNG are not specifically required to pay special attention to countries not or insufficiently applying the FATF recommendations in the process of customer identification.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

492. There is no obligation to examine transactions with no apparent or visible lawful purpose from such jurisdictions. This requirement is only indirectly mentioned in the *Guideline on CDD and Record Keeping* issued by the FIU under s14 of the *POCA*, where “*high risk customers*” are notably defined as “*from countries or regions or industries where a high amount of crime is known to exist.*”

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

493. The current legal regime does not provide for the application of counter-measures regarding countries which are known not to (or insufficiently) apply the FATF recommendations.

Analysis of Effectiveness

494. The absence of clear requirements in the *POCA* for financial institutions to monitor customers’ transactions is inconsistent with the international standards.

495. Interviews of commercial foreign banks revealed that they employ various measures for monitoring customers’ accounts and transactions for complex or unusual transactions or unusual patterns of transactions. This is in response to their group policies, which reflect home supervisor requirements. In 2010, the FIU has received 532 STRs, all reported by the banks. This indicates that banks to some extent had effective monitoring measures in place.

496. There was no indication that NBFIs conduct any systematic monitoring of customers’ transactions.

3.6.2. Recommendations and Comments

497. In order to achieve compliance with the international standards and effective AML/CFT measures, the authorities should issue enforceable regulations:

- Requiring that financial institutions pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.
- Requiring financial institutions to examine as far as possible the background and purpose of any such unusual transactions; to document their findings and to keep these findings available for competent authorities for at least five years.

498. The authorities should also establish means to inform financial institutions of concerns about weaknesses in the AML/CFT systems of other countries and to enact countermeasures against such countries.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	NC	<ul style="list-style-type: none"> • There are no provisions for monitoring of transactions under the <i>POCA</i> • Financial institutions are not required to pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose • Financial institutions are not required to examine as far as possible the background and purpose of any such transaction, to document their findings and to keep these findings available for competent authorities • Other than the banks, there is no implementation of monitoring measures in the non-bank financial sector
R.21	NC	<ul style="list-style-type: none"> • No requirement to give special attention to transactions with persons in countries that do not sufficiently apply FATF Recommendations • No obligation to examine transactions with no apparent or visible lawful purpose from non-compliant jurisdictions • No effective means to inform financial institutions or establish counter-measures

3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

3.7.1. Description and Analysis

RECOMMENDATION 13 & SRIV

Legal Framework:

499. Section 24 of the *POCA* requires cash dealers to report suspicious transactions in relation to serious offences as set out below:

“24. Cash dealers to report to suspect transactions.

(1) This section applies to a cash dealer that is a party to a transaction.

(2) If the cash dealer has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a serious offence, it must –

- (a) take measures to find out –
 - (i) the purpose of the transaction; and
 - (ii) the origin of the funds; and
 - (iii) where the funds will be sent; and
 - (iv) the name and address of the person who will receive the funds; and

(b) give a report of the transaction, in accordance with Subsection (3), to the FIU within 3 working days of the time that the cash dealer first becomes aware of the transaction.

(3) A report required by Subsection (2)(b) must –

- (a) be given in writing or in a manner approved by the Minister; and
- (b) include the particulars about the transaction mentioned in Subsection (2)(a) and Subsection (3); and
- (c) include any prescribed particulars; and
- (d) include a statement of the grounds on which the cash dealer holds the suspicion; and
- (e) be signed or otherwise authenticated by the cash dealer.

(4) A cash dealer that has reported a transaction in accordance with this Division must, if requested to do so by the FIU, give the FIU any further information that it has about the transaction.

(5) A cash dealer that fails without reasonable excuse to comply with Subsections (2) and (4) is guilty of an offence.”

500. Section 3 of the *POCA* defines key terms in the *POCA*, including a serious offence:

“serious offence” means –

- (a) an indictable offence for which the maximum penalty is death or imprisonment for 3 years involving –
 - (i) unlawful conduct constituted by or relating to Section 34; or
 - (ii) unlawful conduct by a person that causes or is intended to cause a benefit to the value of at least K10, 000.00 for that person or another person; or
 - (iii) unlawful conduct by a person that causes, or is intended to cause, a loss to the State or to another person of at least K10, 000.00; or
- (b) an indictable offence specified in the Regulations;

501. The *POCA* sets out definitions of a number of key terms for reporting and record keeping obligations, including reporting STRs. Section 19 sets out that a ‘transaction’ includes a proposed transaction.

Requirement to Make STRs on ML and FT to FIU (c. 13.1 & IV.1):

Covered institutions

502. Section 14 of the *POCA* sets out that one of the FIU’s functions is to receive STR reports from cash dealers. Under s24, the obligation to file an STR with the FIU is mandatory on all cash dealers. As discussed in section 3.1 above, the definition of cash dealers in the *POCA* results in all financial institutions being covered by the obligation and the scope of coverage of reporting institutions is in keeping with the international standards. In practice, only the banking sector has been made aware of the *POCA* obligations and received guidance to report STRs. No STR reporting is taking place beyond the banking sector.

Scope of obligation

503. The *POCA* sets out an obligation for filing an STR when a cash dealer has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a ‘serious offence’. Under the *Interpretation Act 1975*, ‘person’ includes (a) a corporation sole and (b) a body politic or corporate and thus the word ‘person’ in the *POCA* covers legal persons. The formulation of information ‘relevant to the investigation or prosecution’ is very wide and would include funds that are the proceeds of a criminal activity. The definition of a ‘serious offence’ at s3, however, does not include the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. For example, arms trafficking and human trafficking are not comprehensively covered.

504. Under s3, the definition of ‘serious offence’ appears to be intended to apply a threshold approach to cover predicate offences, however the drafting of the clause raises some confusion and may be a drafting error. Under s3, the definition of ‘serious offence’ clause (a) defines a serious offence as an indictable offence for which the maximum penalty is death or imprisonment for 3 years involving (i) unlawful conduct constituted by or relating to s34, which is the ML offence. It appears that the lawmakers meant 3 years or more. Although criminal law is to be interpreted strictly, given that the death penalty was also mentioned, this would imply that the provision was intended to cover offences with a scale of penalties ranging between 3 years and death.. The international standard requires coverage of all serious offences as predicates and, at a minimum, coverage of all 20 categories of designated offences. The FATF standard provides for a number of ways to achieve this. It is apparent that all categories of offences are included in the definition of serious offences although arms trafficking and human trafficking are not as yet comprehensively criminalised.

505. In the definition of serious offence, clauses (a)(ii) and (a)(iii) are an inclusive disjunction and, in addition to the 3 year penalty threshold, effectively result in setting a monetary threshold of K10,000 (US\$3,875) for a serious offence that is not related to ML.

506. The definition of ‘serious offence’ at s3 provides for including a more comprehensive definition of a serious offence, however, at the time of the onsite visit, regulations had not been issued under the *POCA* to include coverage of any other offences and removal of monetary thresholds for suspicion of collection of funds to support terrorism. Urgent issuance of a regulation to rectify the definition of serious offence would clarify the scope of obligations to report an STR.

Test for suspicion (objective / subjective)

507. The STR reporting obligation at s24 is an objective test of suspicion. Through the STR Reporting Guidelines and guidance included on the STR reporting form template, the FIU has provided additional objective criteria for forming reasonable suspicion.

STRs Related to Terrorism and its Financing (c. 13.2):

508. The obligation at s24 of the *POCA* covers information that may be relevant to the investigation or prosecution of a person for a ‘serious offence’. This is wide enough to oblige a cash dealer to report suspicion of legitimate funds used for financing of terrorism or in preparation for another serious offence. As noted previously (section 2.2) there are some deficiencies in the definition of

terrorism financing.

509. Guidance has not been provided to support objective criteria for forming reasonable suspicion of terrorism financing.

Attempted Transactions and no Reporting Threshold for STRs (c. 13.3 & IV.2):

510. Section 19 of the *POCA* defines that a ‘transaction’ includes a proposed transaction. This has the effect of applying the whole STR reporting obligation at s24 to attempted transactions for both ML and FT.

511. The definition of a ‘serious offence’ at s3 of the *POCA* has the effect of placing a threshold of K10,000 (US\$3,875) on STRs for FT when terrorist funds do not also involve ML. There are no monetary thresholds in relation to reporting suspicion of ML.

Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

512. Involvement of tax matters in ML or FT schemes would not be grounds to stop STR transaction reporting. There are a range of indictable tax offences under the definition of serious offence and reasonable grounds to suspect a tax offence would trigger the STR reporting obligation.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

513. N/A

RECOMMENDATION 14

Protection for Making STRs (c. 14.1):

514. Section 30 of the *POCA* sets out a comprehensive protection from liability for cash dealers from any action, suit or proceeding for making a report to the FIU. This covers STRs, CTRs, international funds transfers and any additional information requested by the FIU and provided by the cash dealer. The safe harbour protection is extended to a cash dealer and an officer, employee or agent of a cash dealer, acting in the course of that person’s employment or agency.

Prohibition Against Tipping-Off (c. 14.2):

515. Section 25 of the *POCA* sets out a prohibition against a cash dealer disclosing information relating to STRs. This covers the corporation and an officer, employee or agent of the cash dealer, requiring that they not disclose any information from which a person could reasonably be expected to infer that the suspicion had been formed or that the information had been given to the FIU. Section 25 provides dissuasive criminal sanctions for tipping off in the case of individuals, with natural persons liable to criminal sanction of –a fine of K50,000 (US\$19,375) or imprisonment for 5 years, or both. The sanction for a body corporate is less proportionate or dissuasive, because it is limited to a fine of K250,000 (US\$96,875).

516. Section 37 of the *POCA* sets out an addition prohibition against tipping off and sets out

additional penalties for prejudicing investigations by disclosing information:

A person who –

- (a) knows or suspects that a report is being prepared or has been sent to the FIU; and
- (b) discloses information or another matter; and
- (c) knows or has reasonable grounds to suspect that disclosing the information or matter is likely to prejudice an investigation of an offence, or possible offence, of ML, is guilty of an offence and liable to a fine of K10,000 (US\$3,875) or imprisonment for 2 years, or both.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

517. There are no laws or regulations or measures to ensure that the names and personal details of staff of the financial institutions that make an STR are kept confidential by the FIU.

RECOMMENDATION 19

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

518. PNG requires all cash dealers to report cash transactions above a threshold of K10,000 (US\$3,875) as well as inbound and outbound international transfers above K10,000 executed by electronic funds transfer. This is set out in detail in s23 of the *POCA*.

519. While this obligation has been in force on all cash dealers since 2005, the FIU only developed a reporting format for CTRs in late 2009 and only gave instructions to the banking sector to report CTRs since early 2010. NBFIs and other reporting parties do not seem aware of their obligations and have not been further instructed or guided to report CTRs, despite the obligation in the *POCA*. While a significant number of CTRs and IFT reports are being received across the banking sector, compliance is not consistent between all banks.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

520. CTR reports are maintained in a computerized form within the FIU and are available to the FIU for AML/CFT investigation purposes.

Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

521. Systems for reporting CTRs are subject to strict safeguards on the same basis as STRs within the FIU. The obligations on tipping off in the *POCA* as discussed at Recommendation 14 above apply equally to STRs, CTRs and international funds transfer reports.

Guidelines for Financial Institutions with respect to STR and Other Reporting (c. 25.1)

522. The FIU has issued comprehensive guidelines to assist banks to implement and comply with the STR reporting obligation. *Guideline 1 on Suspicious Transaction Reporting* was issued to banks in 2007 which comprehensively guides banks to identify and report STRs. The *Guideline on STRs* addresses how to identify STRs, how to report STRs and red flag indicators of suspicion.

523. Included with the *Guideline on STRs* is a comprehensive STR reporting form in excel format to assist with electronic reporting. The reporting template covers a description of unusual/suspicious event or transaction, transaction details, identity of person conducting transaction, details of beneficiary account (the account into which the money was deposited or received), details of remitting account (the account from which money was withdrawn or sent), and the details of person reporting.

524. The STR reporting template also includes guidelines for understanding the STR reporting obligations, examples of five types of corruption as set out in the PNG National Anti-corruption Strategy, and a list of 'red flags' related to proceeds of corruption. The 'red flags' reflect the immediate priority to identify cases of corruption.

525. The FIU has prepared a draft *Guideline on Due Diligence in Relation to Government Cheques and Payments*. This guideline reflects the priority on combating the proceeds of corruption through the banking sector and while it does not create new obligations, it does provide guidance on high risk scenarios and makes explicit a number of implicit primary obligations contained in *POCA*. The draft Guideline provides further in-depth guidance on practical implementation of the CDD obligations included in the *POCA* in the context of accepting government cheques and payments, including 'red flags'.

526. In its present draft form, the *Guideline on Due Diligence in Relation to Government Cheques and Payments* does not reiterate the need to file an STR when a financial institution identifies a suspicion or is unable to complete CDD. This should be rectified as a matter of priority.

Feedback to Financial Institutions with respect to STR and Other Reporting (c. 25.2):

527. Limited feedback is provided to banks on STR reporting and has not yet been provided to other financial institutions. The FIU holds monthly working group meetings with compliance officers of the commercial banks, which are the only institutions that the FIU expects to report STRs. These working group meetings are an excellent opportunity for feedback and information sharing and should be encouraged.

528. The FIU has also produced a summary of typologies for ML in PNG based on STRs received, which has been shared with the banks as feedback.

529. Discussion with the banks indicates that there is a need for further feedback from the FIU to the banks.

Statistics (R.32):

530. Although the *POCA* came into force in 2005, no STRs were reported until 2008. Since that time STRs have only been received from the banking sector. During 2010 the FIU received 1049 STRs.

Table: Suspicious Transaction reports (section 24)

Year	Banks	Other institutions	Total
2005			
2006			
2007			
2008	94		94
2009	348		348
2010	1049		1049
TOTAL	1491		1491

Table: CTR reports – cash above K10,000 (section 23 (1)(a))

Year	Banks	Other institutions	Total
2010	350245		350245
TOTAL			

Table: International funds transfer reports – (section 23 (1)(B & c))

Year	Banks		Other institutions		total	
	Inward	Outward	Inward	Outward	Inward	outward
2009						
2010	8021	28995			8021	28995
TOTAL	8021	28995			8021	28995

Effectiveness

531. PNG has a large and rapidly expanding economy with increasing depth and diversity of financial markets. There are very significant money flows in PNG and conditions of very high crime and extreme corruption provide an important context when considering the effectiveness of STR reporting regime. While the *POCA* formally requires all financial institution in PNG to report STRs, the FIU has only given further instruction and guidance to the four commercial banks to report STRs. Typologies of laundering the proceeds of large scale public sector corruption in PNG consistently indicate direct placement in the banking sector, and this is the basis for prioritisation on combating proceeds of corruption through the banking sector through STR reporting.

532. It is apparent that the STR reporting regime is operational within the banking sector in PNG. The absence of a binding obligation to actively monitor unusual transactions undermines the effectiveness of implementing the STR reporting obligations, however it is apparent that the banks operating in PNG do implement transaction monitoring systems. This is either in response to home supervisor requirements for foreign subsidiaries, or in response to more stringent group-wide compliance measures in the case of a locally incorporated bank with foreign branches. This also reflects the recognition by most banks of the extreme levels of government sector corruption and vulnerability of the banking sector.

533. All banks in PNG are reporting STRs, although it is not clear that this is yet at a rate commensurate with rates of crime and corruption. From discussion with the FIU, it is clear that STRs provided by the banks generally do indicate suspicion of ML and include high-value information

which is used for analysis and preliminary investigation by the FIU and, in some cases, dissemination to other police units.

534. The STR reporting regime is deficient outside of the banking sector, where STR reporting is non-existent. This undermines the effectiveness of the STR reporting regime. The lack of effective implementation beyond the banking sector reflects the severe lack of resources in the FIU, as the AML regulator, to guide and ensure compliance with those obligations outside of the banking sector.

535. The lack of resources of the FIU prevents it from assessing AML/CFT compliance, effectiveness of internal controls or reporting requirements of banks and other financial institutions.

3.7.2. Recommendations and Comments

536. PNG should issue regulations under the *POCA* to enhance the definition of serious offence to bring the STR reporting obligation into line with the international standards. This should include coverage of predicate offences and reporting of all suspicions of TF, regardless of any monetary thresholds.

537. Authorities should:

- Extend implementation of the STR reporting provisions to non-bank financial institutions
- Clarify the definition of serious offence to read “punishable by *at least* 3 years”.
- Issue STR reporting guidelines to cover NBFIs
- Commence supervision of cash dealers to ensure compliance with STR reporting obligations to ensure effective implementation.
- Provide further feedback to cash dealers on STRs to support more effective implementation.

538. The draft *Guideline on Due Diligence in Relation to Government Cheques and Payments* should be extended to all financial institutions and should reiterate the need to file an STR when a financial institution is unable to satisfactorily complete CDD and chooses to not continue with a transaction or relationship. This should be rectified as a matter of priority.

539. Once resources are available, further feedback should be provided from the FIU to reporting institutions to support improved reporting.

540. Once further resources are available, the prioritization of STR reporting on government sector corruption should be expanded to other high-risk sectors, including proceeds from illegal logging, fraud, drug trafficking, arms trafficking, human trafficking and other crimes prevalent in PNG.

3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none"> • The scope of predicate offences covered by the STR reporting obligation does not fully cover human trafficking and arms trafficking • Scope of implementation – direction only given to banking sector to implement STR obligations • Lack of effective implementation among institutions other than banks • The rate of STR reporting, even amongst the banks, does not reflect the extreme levels of profit driven crime in PNG.
R.14	LC	<ul style="list-style-type: none"> • Taking into account the corruption environment and the lack of effective supervision of the obligation, effectiveness cannot be confirmed.
R.19	C	
R.25	PC	<ul style="list-style-type: none"> • Guidance and feedback only given to banks • Guidance for NBFIs remains in draft form • Guidance for STRs does not address TF <p><i>This is a composite rating</i></p>
SR.IV	PC	<ul style="list-style-type: none"> • Scope of implementation – direction only given to banking sector to implement STR obligations • There are gaps in the definition of TF • There is currently a monetary threshold on the reporting of suspicion of FT involving legitimate funds

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

3.8.1. Description and Analysis

RECOMMENDATION 15

541. At the time of the onsite visit *POCA* controls were implemented in the banking sector and Postal Service. Regulators have not made NBFIs aware of their obligations to implement internal AML/CFT controls pursuant to the *POCA* despite the existence of the legal requirement on all cash dealers in PNG.

Legal Framework:

542. Section 26 and 27 of the *POCA* sets out obligations for cash dealers to establish and maintain internal controls:

“26 (1) A cash dealer must establish and maintain internal procedures –

- (a) to identify persons to whom an employee is to report any information that comes to the employee’s attention in the course of employment, and that gives rise to knowledge or suspicion by the employee that another person is engaged in money –laundering; and
- (b) to enable any person identified under Paragraph (a) to have reasonable access to information that may be relevant to deciding whether sufficient basis exists to report the matter to the FIU; and
- (c) to require the identified person to report the matter to the FIU, if he or she decides that sufficient basis exists to do so.

27 (1) A cash dealer must establish and maintain internal procedures –

- (a) to make its employees aware of domestic laws about money –laundering, and the procedures and policies established and maintained by it under this Act; and
- (b) to train its employees to recognise and handle ML transactions.”

543. Both ss26 and 27 have criminal sanctions for non compliance of K50,000 (US\$19,350) or 5 years imprisonment or both for natural persons; and K250,000 (US\$96,750) for a body corporate.

Establish and Maintain Internal Controls to Prevent ML and FT (c. 15.1, 15.1.1 & 15.1.2):

544. Section 27 of the *POCA* requires financial institutions to establish and maintain internal AML/CFT procedures. The obligation is limited to making employees aware of domestic AML laws and training on identifying STRs. Section 27(1)(a) implies a requirement for wider procedures for internal procedures to make employees aware of the cash dealer’s own procedures and policies Given the general nature of the obligation at s27(1) and the poor wording of s27(2) it appears that STR reporting is covered, but CDD obligations are less clear.

545. There is a clear obligation in *POCA* s26 requiring cash dealers to designate a compliance officer as the person responsible to whom an employee is to report suspicion of ML and to report those matters considered an STR. The obligation does not require the compliance offer to be at a

management level.

546. Section 26(b) provides for the compliance officer to have reasonable access to information to determine whether the information may meet the test of an STR.

547. BPNG has indicated that it expects entities licensed under the BFIA to have internal policies, procedures and controls, including for AML. BPNG indicates that in the case of banks, onsite supervision includes checking whether or not the bank has AML policies and controls. This is not evident for other sectors.

548. In practice, most commercial banks appear to have resourced AML/CFT compliance functions to combat the serious ML risks in PNG to a level exceeding the requirements in the *POCA*. In some cases the compliance officer is not at a management level and may not have access to all relevant information within the bank.

549. The post office has appointed a compliance officer, but it is not clear that they have direct access to all the information required to carry out this function.

Independent Audit of Internal Controls to Prevent ML and FT (c. 15.2):

550. There is no clear obligation on banks or other financial institutions in PNG to have adequately resourced internal audit functions to test compliance with AML/CFT controls within the financial institutions. In practice, the commercial banks appear to include AML/CFT as part of their internal audit.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

551. *POCA* s27(b) requires cash dealers to maintain internal procedures for training employees to recognise and handle ML transactions. While poorly worded, this appears to relate to STR reporting. Employee training requirements do not clearly extend to CDD, tipping off, record keeping and the like.

552. The FIU has conducted training workshops with banks, in particular compliance and front-line staff on AML/CFT concerns. Banks are conducting in-house training for their staff on a wider range of AML measures than required under the Act.

Employee Screening Procedures (c. 15.4):

553. BPNG requires integrity screening of employees only at the level of fit and proper controls over directors and executives. There are no requirements for screening and integrity checking to ensure high standards when hiring employees.

554. Given the situation of crime in PNG, financial institutions implement a number of controls to ensure integrity of new staff. A number of financial institutions noted that they face significant challenges with the integrity of employees and threats from internal fraud. Some banks employ reserve constables with certain police powers to identify cases of internal fraud. Such special constables are empowered to arrest persons, lay charges and conduct summary prosecutions.

RECOMMENDATION 22

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

555. A number of locally incorporated financial institutions from PNG have foreign branches or subsidiaries. These include a bank, a finance company and others.

556. Under the *Companies Act 1997* any foreign branch or operation incorporated as a branch or subsidiary of a PNG company is considered as part of the entity and required to comply with PNG laws. AML/CFT obligations on cash dealers in the *POCA* thus apply to any branch or subsidiary of a PNG institution as well as the laws of their host country.

557. No instructions have been given to PNG financial institutions to ensure that their foreign branches or subsidiaries apply AML/CFT measures consistent with PNG's requirements.

558. There is no requirement on PNG financial institutions to pay particular attention to ensure that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations are applying PNG AML/CFT requirements.

559. There is no obligation on PNG financial institutions to apply the higher standard in cases where the minimum AML/CFT requirements of the home and host countries differ. In practice, the locally incorporated bank recognises that the AML/CFT requirements of foreign host jurisdictions' are more stringent than those in PNG and seeks to apply them across the group.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable to Implement AML/CFT Measures (c. 22.2):

560. There are no requirements in PNG for financial institutions to inform the regulator in PNG when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures when prohibited by local (i.e. host country) laws, regulations or other measures.

Effectiveness

561. The lack of coverage of AML/CFT controls beyond the banking sector undermines effectiveness of internal controls.

562. The depth and scope of the requirements for internal controls is lacking. The relatively high levels of internal control by the banks are a result of adopting best practice and pursuit of group standards. Foreign group standards are significantly higher than local standards. In the case of one locally incorporated institution, local group standards have been set to meet the requirements of the host country for their branches and subsidiaries, thereby resulting in higher standards being applied in PNG. In this case significant resources are being applied to support a strong compliance function and cooperate with the FIU on reporting STRs.

563. Controls over foreign branches have not yet been put in place.

3.8.2. Recommendations and Comments

564. Financial institutions should be required to:

- establish and maintain AML/CFT procedures, policies and controls to cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligations.
- develop appropriate compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level.
- ensure compliance officers have access to necessary information to vet unusual and suspicious transactions
- maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.
- establish ongoing employee training across all relevant elements of AML/CFT
- Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

565. Regulators should require PNG financial institutions to:

- ensure that foreign branches or subsidiaries apply AML/CFT measures consistent with PNG's requirements.
- pay particular attention to ensure that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations are applying PNG AML/CFT requirements.
- apply the higher standard in cases where the minimum AML/CFT requirements of the home and host countries differ.

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • Implementation of internal controls has occurred beyond the banking sector and post office. • No requirement to establish and maintain comprehensive AML/CFT procedures, policies and controls. • Develop appropriate compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level. • No requirement for well resourced and independent audit function to test AML/CFT compliance. • No requirement for screening new employees to ensure high standards when hiring employees. • Limited supervision has not been undertaken to test effectiveness of implementation and this is only in the banking sector.
R.22	NC	<ul style="list-style-type: none"> • No obligations on foreign branches or subsidiaries of PNG financial institutions to apply AML/CFT measures consistent with PNG's requirements. • No obligations to apply the higher standards of AML/CFT obligations in cases where the home and host country differ.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework:

566. Neither the *POCA 2005*, the *CBA*) nor the *BFIA* addresses the licensing of shell banks or prohibits relationships with shell banks.

Prohibition of Establishment Shell Banks (c. 18.1):

567. There is no clear prohibition of the establishment of shell banks in PNG, although in practice banking licenses are not provided to shell banks.

568. Section 10 of the *BFIA* sets out the process of applying for a banking license. The BPNG has issued application forms and documentary requirements for a banking license pursuant to that section. Neither the *BFIA* or the Application for License Forms include a requirement for details of physical presence in PNG or mind and management located within PNG.

569. All four banks operating in PNG have a physical presence in the country with meaningful mind and management located within PNG. As such, there are no shell banks licensed or authorised to operate as banks in PNG.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

570. There are no legal or supervisory requirements in place that directly prohibit licensed banks from dealing with shell banks in other countries. At the time of licensing a bank, the BPNG requires the institutions to seek prior written approval to establish correspondent banking relationships. BPNG does consider the reputation and bona fides of correspondent bank, but indicates that it would not permit correspondent relationships with a shell bank.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

571. There are no legal or supervisory requirements in place that require banks to satisfy themselves that their respondent institutions are not in a correspondent banking relationship with a shell bank. In fact, *POCA* s20(8) unequivocally states that no CDD/identity requirements apply to counterparts who are “cash dealers.” Such provision enhances the risk that financial institutions may inadvertently execute transactions with a shell bank.

3.9.2. Recommendations and Comments

572. PNG should issue binding rules or obligations on banks in PNG to:

- Prohibit the formation and operation of shell banks in PNG
- Prohibit banks in PNG from entering into or maintaining correspondent relationships with shell banks
- Satisfy themselves that respondent institutions are not in a correspondent relationship with a shell bank.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	<ul style="list-style-type: none"> • No clear legal requirement for banks to have a physical presence in the country • No prohibition from banks in PNG entering into or maintaining correspondent relationships with shell banks • No requirement for banks to satisfy themselves that correspondent institutions are not, themselves, in a correspondent relationship with a shell bank.

Regulation, supervision, guidance, monitoring and sanctions

3.10. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 & 25)

3.10.1. Description and Analysis

573. There are four regulatory and supervisory authorities operating in PNG that have some role in supervising AML/CFT obligations. The FIU is the only authority clearly authorized in the *POCA* to monitor compliance. Other regulators rely on broader powers in sector specific laws and regulations to monitor and enforce compliance. Sector specific powers of regulators beyond the FIU are not clearly available to enforce the requirements set out in the *POCA*.

The FIU as AML/CFT regulator

574. Section 15 of the *POCA* authorizes the FIU to monitor compliance of cash dealers with reporting obligations under s23 (General Reporting Obligation) and 24 (Cash Dealers to Report Suspect Transactions) of the Act, however the monitoring authority does not extend to CDD requirements in the *POCA*.

575. Section 14 of the *POCA* provides a function of the FIU to issue guidelines to cash dealers. This power does not extend to creating new obligations and the guidelines are not clearly enforceable. Section 178 of the *POCA* provides authority to issue regulation. This enables the FIU or another agency to develop regulations for the Head of State, acting on advice, to issue. These should be necessary or convenient to be prescribed for giving effect to this Act.

Bank of PNG

Banking and Financial Institutions

576. Pursuant to s8(1)(c) of the *CBA*, the BPNG is authorized to supervise and license banking, credit and other financial services as empowered by this Act or by any other law of PNG.

577. The BPNG has various powers to license, regulate and supervise banks and NBFIs under the

BFIA. The functions of the Central Bank under the *BFIA* are to:

- promote the general stability and effective working of the financial system in PNG
- License financial institutions
- supervise the licensed financial institutions
- promote, encourage and enforce proper standards of conduct and sound and prudent business practices amongst Authorized Institutions
- suppress or aid in suppressing illegal, dishonourable or improper practices of Authorized Institutions.

Life insurance

578. BPNG supervises and licenses entities engaged in the life insurance sector, pursuant to s12 of the *Life Insurance Act 2000*. The functions of the Central Bank under the Act include:

- licensing of life insurance companies
- supervising compliance with the provisions of this Act and any prudential standards
- promoting, encouraging and enforcing proper standards of conduct and sound and prudent business practices in the life insurance industry
- evaluating the effectiveness of carrying out those practices
- suppressing or aiding in the suppression of illegal or improper practices within the life insurance industry.

Superannuation

579. BPNG supervises and licenses entities engaged in superannuation pursuant to s7 of the *Superannuation (General Provision) Act 2000*. The functions of the Central Bank under the is Act include:

- licensing of trustees, investment managers and fund administrators
- supervising compliance with the provisions of this Act and any prudential standards
- promoting, encouraging and enforcing proper standards of conduct and sound and prudent business practices in the superannuation industry including the issue of prudential standards
- evaluating the effectiveness of carrying out those practices
- suppressing or aiding in the suppression of illegal or improper practices within the superannuation industry

Insurance Commissioner - General Insurance

580. Section 5 of the *Insurance Act 1995* designates the Insurance Commissioner as the official responsible for administration of the *Insurance Act*. The Act empowers the Insurance Commissioner to:

- Grant and revoke licenses of insurers, brokers and loss adjusters (ss17-19)
- carry out inspections and investigations (ss34 and 38)
- issue directives for breaches of provisions of the Act (s35)
- petition for winding up business of licenses insurers (s60)

581. These powers vest in the Insurance Commissioner powers to supervise and license players in the insurance sector. The Insurance Commission is located within the Department of Finance and Treasury.

582. Section 74 of the *Insurance Act* gives powers to the Head of State to issue regulations to serve the Commission. Although the Insurance Commissioner has authority to issue directives (s35) with respect to breaches of the Act or to require compliance with its provisions or other forms of rules, the Act does not authorize the Insurance Commissioner to enforce compliance by direct imposition of penalties. As a result penalties may only be enforced by a court.

583. No provisions in the *Insurance Act* set forth any AML obligations of players in the insurance industry, nor do any provisions authorize the Insurance Commissioner to monitor compliance with AML obligations. The only authority in this regard is delegated to the FIU which under s14 of the *POCA* is responsible for monitoring compliance with suspicious transaction and threshold reporting obligations.

Securities Commission

584. The Securities Commission is established and authorized pursuant to the *Securities Act 1997*. Although the Commission was established in 1997 and operated to issue one license at that time for the PoMSX, practically it only began to operate in 2008. The legal powers, functions and authorities of the Securities Commission are not clearly or expressly listed in the Act, but are set forth as follows:

“ ... the Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties.”

585. The functions of the Securities Commission under the Act are as follows:

- to approve a body corporate as a stock exchange (s20)
- to receive evidence (s8)
- release information (s9)
- take evidence for an overseas commission or body (s10)
- employ experts (s11)
- bring cases to court (s12)
- inspect books, papers, documents or records regarding money or property managed, supervised, controlled or held in trust by issuers, promoters (s92)
- bring actions in the public interest for those liable for violating insider trading prohibitions (section 111)

586. The Commission exercises no public supervisory or regulatory function over the Stock Exchange, other than to approve its operation under s20. Pursuant to s21 the Commission has veto power over amendments to Stock Exchange rules. There is no clear power for the Commission to withdraw the license or approval of the stock exchange even as a regulatory penalty for non-compliance or misuse. Regulations may be developed by the Stock Exchange and issued by the Head of State with regard to the securities sector (including prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act; and providing for such other matters, not inconsistent with the Act, as are contemplated by or necessary for giving full effect to the provisions of the Act and for its due administration (s137).

587. The Securities Commission has no powers to directly instruct or sanction brokers or regulate disclosure or licensing requirements which severely limits the capacity of the Commission to protect rights of investors and ensure the sector operates with integrity and in the interests of the general

public.

588. The Stock Exchange is authorized to make its own rules, exclude from membership those of poor character and integrity, suspend or discipline members, monitor compliance with and enforce its rules, and adopt listing rules. It does not appear that the PomSX is not subject to any effective form of public oversight, supervision or regulation whether with respect to integrity standards or operational risk of the securities settlement system. As a result, it is further not clear that activities or actors involved in trading on the Stock Exchange are subject to any form of integrity standards, or that the Stock Exchange is operating in the interests of the general public, or even safety and soundness.

589. The *Securities Act* criminalizes stock market manipulation (s95), false trading and market rigging (s96), false statements in relations to securities (s97), fraudulent inducement (s98), insider trading (s102) and provides for civil (s100) and criminal liability (s108) for violations. The Commission has powers to pursue cases of these offences, including taking prosecutions and pursuing litigation in the courts.

Competent authorities - powers and resources: Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Adequacy of Resources – Supervisory Authorities (R.30)

590. The *POCA* sets forth various AML/CFT obligations of cash dealers, which include:

- Verifying customers identity (s20)
- Establish and maintain customer records (s21)
- Including originator information on wire transfers (s22)
- Cash threshold reporting obligations (s23)
- Suspicious transaction reporting obligations (s24)
- Confidentiality obligations (s25)
- Maintain internal reporting procedures (s26)
- Training (s27)
- Recordkeeping (s28)
- Maintain a register of original documents released (s29)

591. The FIU is responsible, pursuant to s15 of *POCA* for monitoring compliance of reporting entities with suspicious transaction and cash threshold reporting requirements. The *POCA* does not give the FIU authority to supervise or monitor compliance with any other AML obligations under *POCA*. Section 16 provides that the Commissioner of Police may authorize the FIU to go onsite to any cash dealer for the purpose of inspection as set out at s15.

592. The *POCA* does provide, at s14, a role for the FIU to enforce compliance with AML/CFT preventative measures including CDD, record keeping and internal controls through investigation of offences relating to breaches of the preventative obligations. While this may imply a role in supervising those requirements, the narrowly defined scope of inspection powers at s15(2) – which limits inspections to compliance with reporting requirements - undermines this more inclusive reading.

593. The FIU is also authorized under the *POCA* (ss15 and 16) to compel production of documents and enforce penalties for non-compliance, but only for STR/CTR reporting requirements.

594. The FIU currently consists of three staff members, and lacks capacity to carry out its core functions of receiving, analyzing and disseminating reports of suspicious transactions, let alone supervisory and enforcement roles.

595. The BPNG is beginning to assume a role in supervising AML/CFT preventative measures under its broader mandate of 'safety and soundness' of the financial sector. Under the *BFIA*, BPNG has the power to promote, encourage and enforce proper standards of conduct and suppress or aid in suppressing illegal, dishonourable or improper practices of Authorized Institutions. This language appears to attempt to provide a legal basis to undertake the function of supervision, regulation and enforcement of AML/CFT obligations for the entities under its supervisory power. At present there is no BPNG prudential standard or requirement related to AML/CFT. Since 2008 BPNG has begun to include AML/CFT elements in its supervision of banks' operational risk and has taken steps to advise banks on how to improve compliance with *POCA*. The only apparent enforcement mechanism at the BPNG's disposal to sanction non-compliance by financial institutions with AML/CFT obligations would be limiting, imposing additional requirements or revoking licenses.

596. There is no clearly designated authority to monitor compliance with the CDD and record keeping requirements set forth in the *POCA* ss20 or 21, as s15 of *POCA* limits FIU authority to monitor compliance with only s23 (General Reporting Obligations) and s24 (STR reporting). The criminal penalties for non-compliance with these requirements would be enforced by the FIU or police and public prosecutors and sanctions would be applied through the courts on conviction. There is no clearly designated authority to monitor compliance with internal AML/CFT control obligations which are not reporting obligations.

597. Section 54 of the *BFIA* sets forth penalties for violation of provisions of the law. However, the BPNG lacks authority to impose administrative fines for non-compliance with provisions of the law or prudential standards. Section 56 of this law sets forth provisions concerning prosecutions and other actions. These provisions indicate that fines and penalties may only be enforced in civil or criminal court.

598. BPNG officials acknowledged that when instances of non-compliance are identified through the on-site inspections, only a report is sent to the financial institution recommending that the deficiencies be corrected, and no other sanctions are applied. BPNG officials stated that financial institutions are required to report remedial actions to the BPNG within a certain timeframe, and all institutions under its supervision always take appropriate action to remedy all deficiencies.

599. The Supervision Department of the BPNG has 30 staff who supervise financial institutions. There are 4 units under the Banking Supervision Department made up of: (1) Banks and Finance Companies Unit; (2) Savings and Loans Societies Unit; (3) Policy and Licensing Unit; and Micro Finance Unit.

600. The Banking Supervision Department is responsible for licensing and supervision of 4 banks, 11 finance companies, 22 savings and loans societies, 4 currency exchanges including the post office (Post PNG). The Supervision Department of the BPNG appears to be relatively adequately resourced. It should be noted that while the financial sector of BPNG is relatively small, further capacity building and training is still needed as the financial sector is widely predicted to rapidly expand in the coming years.

601. There is not yet supervision of new technology products such as mobile banking services. The BPNG is short on capacity and experience to supervise the entities that are already providing these services in the jurisdiction. However, the BPNG is meeting with service providers in an effort to understand the features and risks of these services and is working to build supervision of these new services.

602. The Superannuation and Life Insurance Department of the BPNG has 11 staff. Its units are made up of the Life Insurance Unit, the Superannuation Unit and the Policy Unit. The Superannuation and Life Insurance Department is responsible for licensing and supervision of 4 life insurance companies, 4 life insurance brokers, 6 superannuation funds, 3 investment management companies, and 4 fund administrators. Given the small size of the superannuation and life insurance sector in PNG, the supervisory unit appears to be suitably staffed and resourced.

603. The Insurance Commission appears to have sufficient capacity for the supervision and licensing functions it currently undertakes. The Commissioner understands the risks and threats of AML in the sector and believes the Commission should have a role in supervision and monitoring compliance to mitigate them.

604. The *Securities Act* imposes no AML obligations on players in the securities sector, nor does it empower the Securities Commissioner to monitor compliance of securities players with AML obligations under the *POCA*. Only the FIU is authorized under the *POCA* to monitor compliance of reporting entities in the securities sector with suspicious transaction and cash threshold reporting obligations under the *POCA*.

Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Deterrent Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4)

605. Regulatory authorities having a role in AML/CFT measures in PNG include the FIU, BPNG, Insurance Commission and the Securities Commission.

606. A limited range of sanctions is available under the *POCA* to address breaches of AML/CFT requirements. The only sanctions available in the *POCA* are civil and criminal penalties which relate to breaches by all covered cash dealers. In addition, the BPNG and Insurance Commission appear to be able to exercise their supervisory sanctions and powers for breaches of *POCA* requirements as part of broader licensing provision. Sanctioning powers associated with licensing conditions are not clearly available to the Securities Commission.

607. While some sanctions are available for breaches of AML/CFT obligations in PNG, they are not effective, proportionate and dissuasive and do not provide a useful range of graded sanctions, as administrative sanctions are not available, except for licensing actions, and there is no evidence that any form of administrative sanctions have ever been applied for AML/CFT violations by any supervisory authority.

Criminal sanctions

608. A range of criminal sanctions are available in the *POCA* and the various sector specific statutes issued to license and regulate those sectors. Generally in PNG, enforcement of criminal sanctions would be a matter for the court to determine following investigation by the FIU, the Police or a regulatory authority and prosecution by OPP before the courts. These criminal sanctions would be decided by the courts on the same standard of proof as other criminal offences in PNG.

609. Sanctions in the *POCA* for offences in relation to requirements for CDD, record keeping, STR and CTR reporting, granting access to competent authorities, tipping off and some internal controls extend to a fine of K50, 000 or imprisonment for 5 years, or both, for natural persons and a fine of K250, 000 (US\$96,750) for bodies corporate.

610. The sanction for maintaining an anonymous account is less than those other offences, being 2 years jail and/or a K10,000 (US\$3,870) fine for natural persons and a fine of K50,000 for corporations.

Possible future provisions

611. The BPNG, as the central bank, has regulatory powers that allows it to issue regulations for AML/CFT preventative measures and sanction non-compliance with those regulations. The *CBA* provides a regulation making power under s97 and provides for sanctions for offences against the regulation of fines up to K500,000 (US\$193,750) or an amount equal to 25% of the total value of the funds or property involved and/or a term not exceeding five years. The same Act provides for the Central Bank Governor to issue Directives which are criminally enforceable with a fine up to K500,000 (US\$193,500 and/or five years imprisonment. For undefined offences under the Act, the same penalties apply, and where the offence is of a continuing nature a further default penalty of a fine not exceeding K5,000 (US\$1,938) per day for each day after conviction that the person continues to commit the offence.

612. The *BFA*, *Superannuation Act* and *Life Insurance Act* all provide parallel provisions for similar regulation making powers and however breaches to such regulations is an offence that may be prosecuted either summarily or on indictment with penalties not exceeding K100,000 (US\$38,750) and/or up to two years imprisonment.

613. The Central Bank is empowered to prosecute summary and indictable offences set out in the above Acts. There appears to be conflicting case law on the ability of regulators to prosecute these offences.

614. The *Insurance Act 1995* and the *Savings and Loan Societies Act 1961* have a range of offences with criminal sanctions, but these are generally limited to very low monetary amounts and no penal provisions for regulatory breaches or contraventions of regulations. The *Securities Act* does not have clear regulation making powers.

Civil Sanctions

615. Section 18 of the *POCA* provides for the FIU to pursue a civil sanction through the court to gain orders to enforce compliance with obligations under the *POCA*. If a cash dealer appears to have failed to comply with an obligation under Part 4 (facilitating investigation and preserving property), an authorized officer may apply to the Court for an order against the cash dealer or any officers or employees in such terms as the Court thinks necessary to enforce compliance with the obligation. The court may order financial penalties to be determined by the court in an instance where the cash dealer or officer or employee fails, without reasonable excuse, to comply with the original court order.

616. Section 172 of the *POCA* indicates that in proceedings before the court in relation to the *POCA* which are not a prosecution, the court will decide questions of fact on the balance of probabilities. This would support the FIU or another body taking civil action in relation to breaches of AML/CFT preventative measures by a financial institution.

617. Although both the FIU and other supervisory authorities may apply to the court for enforcement of civil sanctions, no civil sanctions have been employed to address any issue of non-compliance with AML/CFT obligations.

Possible future civil sanctions

618. The *CBA*, *BFIA*, *Superannuation Act* and *Life Insurance Act* all contain parallel provisions allowing the BPNG to commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting an offence under their respective Acts.

Administrative sanctions

619. PNG lacks a range of proportionate and dissuasive administrative sanctions. As discussed in section 3.1 PNG's approach to regulation does not appear to yet include statutes or regulations which provide for administrative enforcement by fines or monetary penalties. Enforcement of laws, regulations and other rules is only available through administrative penalties based on conditions on licenses actions, like curtailing or withdrawing of license. Authorities were unable to provide any examples, even beyond the financial sector, of regulations in PNG which are enforceable through administrative financial or other penalties.

620. The *POCA* does not contain any administrative sanctions to assist the FIU or any other regulatory authority to take direct action to remedy cases of non-compliance.

621. Each of the sector regulators, with the exception of the Securities Commission, have powers under their sector-specific acts to sanction by way of placing conditions on a license, or ultimately withdrawal of license in extreme cases. These administrative powers may be available in cases of

non-compliance of license holders with a legal obligation under another Act, including the *POCA*.

622. Under s14(f) of the *POCA* the FIU has a function to conduct investigations for the purposes of the Act. In addition to the ML offence, this would include investigating the various offences set out in the *POCA* for breaching regulatory requirements.

623. In addition, for criminal sanctions under the *POCA* it is expected that the FIU, BPNG and Insurance Commission, would be able to make a complaint to the police for a regulatory offence to be investigated and prosecuted before the courts. For criminal sanctions under the *BFIA*, the BPNG is able to directly enforce criminal provisions through prosecuting summary and indictable offences directly before the courts.

624. As mentioned above, the FIU is the designated authority for taking civil action to enforce compliance with *POCA* provisions through courts pursuant to s18 of the *POCA*. For other regulatory violations, it would be a matter for the various regulators to take actions in the courts. However, no evidence of imposition of civil sanctions was produced.

625. The BPNG, Office of Insurance Commissioner and Securities Commission are able to directly apply their administrative sanctions relating to conditions of license and ultimately withdrawal of license.

626. The *POCA* does not clearly set out whether the sanctions on cash dealers available in the *POCA* also relates to the directors and senior management. Section 171 of the *POCA* sets out how the state of mind of a person may be established in the Act and clearly indicates that offences in the *POCA* may be applicable to natural and legal persons.

627. The range of available sanctions is not broad or proportionate. BPNG has used written warnings with instructions to comply with specific instructions, but these are not accompanied with daily fines for noncompliance, as there appears that no legal basis exists for imposition of administrative penalties.

628. Under current arrangements, it is not clear if BPNG or other authorities can impose remedial measures other than monetary penalties for non-compliance with *POCA* obligations, including ordering regular reports from the institution on the measures it is taking, barring individuals from employment within that sector, replacing or restricting the powers of managers, directors, or controlling owners, imposing conservatorship or a suspension.

629. The FIU is limited to criminal penalties where an offence is committed.

Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7):

630. The BPNG is authorized to license banks and other financial institutions pursuant to s8(1)(c) of the *CBA*. Pursuant to ss2-3 of the *Savings and Loan Societies Act 1961*, the BPNG is authorized to

supervise and license savings and loan societies. Sections 7-23 of the *Superannuation Act 2000* empowers BPNG to license superannuation funds, investment managers and fund administrators. The BPNG issues licenses to life insurance companies, brokers and dealers pursuant to ss12-28 of the *Life Insurance Act* of 2000. The BPNG is authorized to license currency exchanges pursuant to the *Currency Exchange Act* and the Post PNG pursuant to the *Post Services Act*.

631. The BPNG is responsible for prudential supervision of all financial entities under its supervision, in accordance with s7(b) of the *CBA* .

632. Section 10 of the *BFIA* sets forth the licensing requirements for banks. The requirements include a 'fit and proper' test, elaborated in Schedule 2 of the Act, which requires application of a fit and proper test to directors and chief executives. Schedule 2(3) permits the BPNG to give regard to the previous conduct and activities in business or financial matters of the directors or chief executive in question and, in particular, whether there is any evidence that he has:

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) been engaged in or been associated with any financial loss due to dishonesty; incompetence or malpractice in the provision of banking business, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or un-discharged bankruptcies;
- (c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflects discredit on conducting banking business;
- (d) engaged in or associated with any other business practices or otherwise conducted one's self in a way to cast doubt on competence and sound judgment.

633. The language of the above provision indicates a clear understanding by the BPNG of measures to prevent criminals from owning or controlling financial institutions. Although it is not clear that the fit and proper test applies to majority shareholders, managers or beneficial owners, banks acknowledged that the BPNG applies the fit and proper criteria in practice to directors and executive officers as it frequently requests additional information and documentation in respect of these officers and in rare cases may reject an applicant for such position. It is therefore the perception of banks that the BPNG takes these requirements seriously.

634. The BPNG is required to apply a similar fit and proper test as that applied in the case of banks for licensing of insurance companies, agents and brokers. The fit and proper test applied in the case of these life insurance professionals, including officers and directors of applicant companies, is set forth in Schedule 2 of the *Life Insurance Act 2000*. This test includes identical criteria with respect to character fitness as that used for banks. Section 16 of the Act stipulates that a license shall only be granted to an applicant that satisfies the Central Bank that it meets the stated criteria, and Schedule 2 of this law sets forth fit and proper criteria as well as criteria for character fitness.

635. *Superannuation Act 2000* contains identical fit and proper character fitness provisions as the banking law.

636. There are no requirements in the *Insurance Act 1995*, covering general insurance, that consideration be given to character fitness, or past criminal record in the licensing requirements.

637. There are no requirements in the *Securities Act* or other law or regulation which require character fitness or criminal background check screening of applicants for securities sector licenses (stock exchange, brokers, or dealers), or majority owners, directors or managers of applicant entities.

638. Currency Exchanges are licensed and prudentially supervised by the BPNG. Currency exchanges are licensed in accordance with similar fit and proper standards and criteria to which banks and other financial institutions are subject.

639. Money remitters (Moneygram, Western Union) conduct their operations pursuant to existing banking licenses, but their transactions are processed and settled through their own settlement systems rather than the operational systems of the banks, so there is no effective surveillance by the licensee banks over the clients or transaction activity of money remitters.

Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1):

640. PNG has not ensured that financial institutions are subject to adequate AML/CFT regulation and supervision to effectively implement AML/CFT standards. The full range of financial institutions operating in PNG are legally subject to *POCA* requirements, however only the banks are effectively regulated or supervised or aware of their requirements.

641. The BPNG has, over the past several years, substantially enhanced the quality and frequency of on-site supervision of entities for which it has prudential oversight responsibilities. This was confirmed by several of the supervised institutions, and it was also indicated that BPNG conducts joint supervisory inspections with supervisors of neighbouring jurisdictions to cover branches located outside the country. This supervision is beginning to include AML/CFT elements set out in the *POCA* as part of the module on operational risk. The depth and scope of this supervision is not yet at the level required to effectively monitor compliance with the *POCA*. Further, serious ambiguities in legislative articulation of important AML/CFT obligations appear to create unnecessary challenges for reporting entities and supervisory officials to understand what exactly constitutes compliance and what would be considered inadequate compliance.

642. The Insurance Commission appears to have an adequate prudential supervision system in place to oversee development of the insurance sector, but the need for improvement in the legal framework for implementing AML/CFT obligations in players of the sector is urgently needed, as well as improving the system for regular compliance monitoring. The Insurance Commissioner needs adequate legal authority to supervise implementation and compliance of AML/CFT obligations throughout the sector as well as adequate tools to enforce compliance and penalize non-compliance without recourse to courts.

643. The securities sector appears to be completely unregulated and in view of the grave risks of criminal activity in this sector the entire supervisory regime needs vast improvement. No AML/CFT controls are in place, and an appropriate supervisory authority needs legal power to enforce obligations to implement AML/CFT controls throughout the sector, monitor compliance and penalize non-compliance.

644. Currency exchanges are licensed and prudentially supervised by the BPNG. However, implementation of AML/CFT obligations in this sector has not yet been undertaken, due to lack of designated authority to supervise and monitor compliance of AML/CFT obligations.

645. Money remitters operating separate to commercial banks are authorized by BPNG, but do not yet undergo effective supervision or compliance monitoring for AML.

646. Money remitters (Moneygram, Western Union) operate pursuant to banking licenses of licensed banks, their transactions, however, are not processed through the operational system of banks, therefore banks do not have any surveillance over their operations. Money remitters indicated that they follow strict internal AML/CFT policies which they believe meet international standards. However, there is no effective supervision or compliance monitoring of Money remitters.

647. The BPNG indicated that money remitters are given BPNG authority to operate by “Letter of Approval” rather than any formal licensing process. Conditions of this authority are contained in each approval letter. However there is no specific regulatory criteria which stipulates conditions to be met on the basis of which authorization to operate would be granted.

Effectiveness

648. Imprecise or ambiguous legislative provisions for important AML/CFT preventative measures including internal controls impede clear understanding by reporting entities of requirements for compliance. This is likely to hinder effective monitoring, perpetuate uneven application of the standards.

649. While the FIU is the only agency clearly authorized to monitor and enforce compliance with AML/CFT controls, the FIU consists of three staff members and lacks capacity to undertake the supervisory functions delegated to it under *POCA*, let alone its core functions of receiving, analyzing and disseminating reports of suspicious transactions.

650. Since 2008, the BPNG has been including compliance monitoring of AML/CFT obligations in on-site inspections for banks. However, the legal basis for supervision, regulation and compliance monitoring of financial institutions under supervision of the BPNG is unclear.

651. Neither the Insurance Commission nor the Securities Commission is empowered to regulate or monitor compliance with AML/CFT obligations of entities under their supervisory jurisdiction.

652. Effective, proportionate and dissuasive criminal, civil or administrative sanctions are not available in PNG. The focus on criminal sanctions undermines effectiveness. To date, no sanctions in any covered sector have been imposed for non-compliance with any AML/CFT obligations.

653. AML/CFT supervisory practice is not established in PNG and the lack of supervision of any covered sector up until now undermines effectiveness.

654. Even in the absence of proportionate sanctions, the FIU lacks capacity to enforce compliance through the criminal sanctions due to severe resource constraints. Prosecuting a criminal sanction would be resource intensive and should be reserved for the most severe breaches.

655. In the absence of a regime of administrative fines, there is some practice of PNG regulatory authorities issuing a notice to an entity which is in breach of a regulatory offence and negotiating a settlement for the breach prior to the matter being charged and prosecuted, although generally only in the context of summary offences. It is not clear if this practice has been pursued by BPNG, Securities Commission or the Office of the Insurance Commission.

656. Although there exists provisions for fit and proper screenings and character fitness screenings in the *BFIA* and the *Superannuation Act* which are applied when considering granting of licenses or approval of executive officers and directors, it is not clear if these provisions are applied to majority shareholders, managers and beneficial owners of applicants for licenses.

657. Neither the *Insurance Act* nor the *Securities Act* contain provisions on character fitness screenings in the licensing of entities that operate in those sectors.

658. There are significant risks from vertical integration of securities exchange, key market intermediaries and businesses in high-risk sectors including forestry, in PNG. In view of the rapid growth experienced in the past few years in the securities market, the Securities Commission is lacking important supervisory, oversight, regulatory and licensing authority to effectively monitor and control risks, serve as advocate of the interests of the general public, protect the rights of investors, enforce disclosure requirements in the interests of public transparency and enforce integrity standards.

659. Prudential supervisory authority is not being used by financial supervisory officials to effectively implement or monitor compliance with AML obligations.

660. The supervisory, regulatory and licensing/registration regime applicable to money remitters is not clear and does not appear in law or regulation. Therefore, the degree of AML supervision, regulation and compliance monitoring is not clear, nor how penalties are imposed for any kind of non-compliance.

3.10.2. Recommendations and Comments

661. The scope of implementation of regulation and supervision is limited to the banking sector.

- Implementation of AML/CFT obligations and associated regulation, supervision and

monitoring should be rolled out to other reporting sectors beyond the banking sector. This should be prioritized on the basis of a risk-based approach.

662. Significant gaps in the legal framework for supervising all preventative measures should be comprehensively addressed including:

- establish a clear statutory basis for supervision, monitoring and enforcement of all AML/CFT preventative measures, beyond STR/CTR reporting.
- apply prudential regulations to those institutions subject to the Core Principles which are also relevant to AML/CFT purposes. These should include (i) licensing and structure; (ii) risk management processes to identify, measure, monitor and control material risks; (iii) ongoing supervision and (iv) global consolidated supervision.

663. Ensure the Securities Commission has an adequate legal framework to engage in supervision, regulation and oversight of the securities market.

- Ensure the Securities Commission has adequate human and financial resources to effectively supervise and regulate the sector.
- The Securities Commissioner should be given enhanced regulatory, supervisory and sanctioning powers and adequate resources to cover all capital market intermediaries in comprehensive supervision, including for AML/CFT.

664. The designation of the FIU as the sole supervisory authority under the *POCA* is not matched by adequate resources and capacity to perform the function.

- Given the lack of resources in the FIU, all regulators should be empowered by statute and/or regulation to supervise, monitor and enforce compliance with AML/CFT measures.
- While the FIU is the only clearly designated supervisory authority for *POCA* provisions, ensure that the FIU has adequate staff to perform its function as regulator/supervisor under the *POCA*.

665. There is a need for greater involvement by sector-specific regulators in the production of regulatory guidance for each sector. This would improve the regulatory guidance within each sector as supervisory authorities have a deeper understanding of the financial services and products as well as how these may be abused by criminals.

- Existing supervisory authorities should directly contribute to the FIU issued sector-specific guidance on effective implementation of preventative measures.

666. The ability of the BPNG to manage financial sector risks and enforce compliance with AML/CFT obligations under its prudential authority is deficient, as this power is currently with the FIU.

- Greater cooperation between the FIU and BPNG and clearer regulatory powers of both are recommended to coordinate AML/CFT supervision.

667. Enhance procedures and specialist capacity for AML/CFT supervision across all supervisory agencies, including:

- Develop supervision manuals for AML/CFT supervision of all relevant sectors.
- Increase training and skill development for supervisory staff in all relevant agencies.

668. Address gaps in AML/CFT controls with licensing of financial institutions:

- Ensure that fit and proper criteria, including criminal background checks, are applied to managers, majority shareholders and beneficial owners of financial institutions.
- Clarify the licensing or registration requirements and regulatory regime to which money remitters are subject, including the fit and proper test to which they are subject.

669. Address risks associated with vertical integration of securities exchange, key market intermediaries and businesses in high-risk sectors including forestry, in PNG. In relation to sanctions:

- Ensure effective, proportionate and dissuasive criminal and administrative sanctions are available
- Ensure supervisors have authority to impose administrative (including monetary) penalties without resort to the courts
- Clarify by regulation that BPNG is designated to implement administrative sanctions for breaches of the *POCA*
- Ensure that sanctions are applicable to directors and senior management of financial institutions for breaches of AML/CFT requirements.
- Implement available sanctions to support improved compliance with AML/CFT obligations.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	NC	<ul style="list-style-type: none"> • Effective, proportionate and dissuasive criminal and administrative sanctions are not available • It is not clear that the FIU, BPNG or Securities Commission are designated to implement administrative sanctions for AML breaches • It is not clear that sanctions are applicable to directors and senior management of financial institutions • Effectiveness has not been demonstrated
R.23	NC	<ul style="list-style-type: none"> • Legal basis for supervision and monitoring compliance with AML/CFT obligations beyond reporting obligations is unclear. • Existing laws and regulations are not clear with respect to which supervisory authorities are responsible for monitoring compliance with AML obligations in financial sector entities. • Although the BPNG applies fit and proper criteria as a part of licensing procedures with respect to entities under its supervision regarding executive officers and directors, this is not done with respect to majority shareholders,

		<p>managers or beneficial owners.</p> <ul style="list-style-type: none"> • With respect to the insurance sector, a fit and proper test is applied to executive officers and directors of insurance companies, brokers and loss adjusters, but not in respect of AML/CFT concerns to ensure that criminals or their associates are prevented from owning or occupying positions of influence in entities in this sector. • There is no public supervisory authority that is responsible for licensing capital market intermediaries. • Supervisory and licensing framework for money remitters does not exist in enforceable law or regulation, or other enforceable means. • Money remitters are not subject to effective compliance supervision with respect to AML obligations. • Although on-site inspections by BPNG of banks have been conducted to monitor compliance with AML obligations, no on-site inspections have yet been conducted in any other entities subject to AML obligations, and no sanctions for non-compliance have been imposed.
R.25	PC	<ul style="list-style-type: none"> • At the time of the onsite, limited guidelines had been issued by authorities in respect of AML/CFT requirements, but these had not been extended to NBFIs • This is a composite rating
R.29	NC	<ul style="list-style-type: none"> • Supervisory authorities lack adequate powers to monitor and ensure compliance by financial institutions. • There are no provisions in law, regulation or other enforceable means giving supervisors adequate powers to supervise, regulate, monitor compliance or impose penalties for non-compliance with AML obligations.

3.11. Money or Value Transfer Services (SR.VI)

3.11.1. Description and Analysis (summary)

670. In addition to remittance companies working as agents for licensed banks in PNG, there are three authorized remittance companies conducting foreign remittance and one domestic remittance service through the post office.

Legal Framework:

671. Section 80 of the *CBA* provides for the authorization of money transfer agents by the BPNG. Section 80 provides that regulations made under s97 of the *CBA* may cover the control of foreign exchange, appointment of authorized dealers in foreign exchange and the taking or sending out of the country of currency, prescribed securities and the like. The section also provides for setting offence provisions in addition to those available at s97.

672. The Authorization for remittance companies is given as a certificate of an authorized dealer in foreign exchange who is given permission to conduct remittance.

673. On 1 June 2007 the BPNG issued requirements under s80 titled 'Requirements for Foreign Exchange Dealer License for Authorized Non-Banks Financial Institutions.' This covers licensing and operating requirements.

674. Section 14 of the *Postal Services Act* sets out arrangements for money orders and postal orders. Under this section, Post PNG may make arrangements for the issue and payment of domestic and international money orders and postal orders and for the accounting for, and remittance of, moneys required for that purpose. The domestic remittance system through the postal service (Salim Moni Kwik) is authorized directly under the *Postal Services Act*.

Designation of Registration or Licensing Authority (c. VI.1):

675. Remittance services operating within PNG register with BPNG and are provided a Letter of Authority from BPNG to conduct remittance business as a foreign exchange dealer.

676. The IPA also registers commercial remittance companies of this type of companies under the *Companies Act 1997*. This is done prior to their registration with the BPNG.

Application of FATF Standards (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

677. Remittance agents are covered by all relevant sections of the *POCA*, as they fall within the definition of a cash dealer.

Monitoring of Value Transfer Service Operators (c. VI.3):

678. BPNG has commenced onsite supervision for remittance companies for compliance with foreign exchange regulations, but this has not yet covered AML issues.

List of Agents (c. VI.4)

679. The BPNG indicates that it maintains a list of agents of remittance dealers.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

680. Sanctions available in the *POCA* are equally applicable to all cash dealers, including remittance companies. Please see the discussion at section 3.10 for further details.

681. Revocation of License is available to regulators as a sanction. Failure to comply with the prudential and compliance requirements of the *CBA*, the *BFIA*, the *Central Banking Regulation*, and foreign exchange controls may constitute a breach and result in the revocation of the Foreign Exchange Dealer license.

Adequacy of Resources

682. The FIU and the BPNG lack adequate resources for conducting onsite supervision, issuing guidance, etc.

3.11.2. Recommendations and Comments

683. PNG authorities should ensure that:

- remittance service providers implement *POCA* provisions
- effective guidance is provided to remittance service providers
- supervision of remittance providers should include AML/CFT compliance
- effective sanctions should be used to support supervision of the sector

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	• No adequate regulation or supervision of remittance providers

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

Legal Framework:

684. DNFBPs, with the exception of TCSPs, are subject to the same CDD in the *POCA* as entities in the prudentially regulated sectors. They are as follows:

- Verifying customers identity (s20)
- Establish and maintain customer records (s21)
- Including originator information on wire transfers (s22)
- Cash threshold reporting obligations (s23)
- Suspicious transaction reporting obligations (s24)
- Confidentiality obligations (s25)
- Maintain internal reporting procedures (s26)
- Training (s27)
- Record keeping (s28)
- Maintain a register of original documents released (s29)

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):

685. Implementation of the CDD requirements set forth in the *POCA* have not commenced at all in any DNFPB sectors in PNG. DNFBPs have not been notified of their obligations under the *POCA* beyond gazettal of the Act.

686. The above *POCA* provisions contain specific penalties for non-compliance, which the FIU is authorized to enforce through a formal criminal action in court. Neither the respective supervisory authorities for each DNFPB sector nor the FIU is responsible for compliance monitoring of obligations for CDD, record keeping, internal controls, wire transfers, etc.

687. The FIU has issued a *Guideline on CDD and Record Keeping*. This *Guideline* provides no specific guidance on implementation of CDD requirements tailored toward the unique business practices of the DNFPB sectors. The FIU is currently in the process of drafting Guidelines for lawyers and accountants, but as of November 2010, none had been formally issued.

688. The FIU is only authorized under *POCA* to monitor compliance with reporting obligations, and currently lacks capacity to undertake this obligation. Further, no transaction reports have been received by the FIU from any DNFPB sectors.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 & 8-11 to DNFBP) (c.12.2):

689. The situation for DNFBPs to implement AML/CFT requirements covering R.6 and 8-11 is the same as financial institutions. See section 3.2 for details.

Effectiveness

690. The *POCA* obligations extend to DNFBPs, however there is no awareness in the DNFBP sectors and no implementation of the requirements.

4.1.2. Recommendations and Comments

691. The basic AML/CFT legal framework in PNG should be modified to effectively:

- Ensure all CDD requirements pursuant to international standard are mandatory, assessable and enforceable obligations of all DNFBPs
- Ensure requirements consistent with international standards are adopted to require DNFBPs to mitigate risks in relation to:
 - PEP customers and transactions
 - new technologies and non-face-to-face transactions
 - transactions involving intermediaries and third parties
- Ensure all DNFBPs are subject to record keeping obligations and are required to give special attention to transactions which are unusually large, complex and appear to lack lawful or economic purpose.
- Ensure DNFBPs are subject to effective supervision, regulation and compliance monitoring in respect of all AML/CFT.
- Ensure an authority with sufficient capacity can issue Guidelines specifically tailored to DNFBPs and provide feedback when necessary on implementation issues.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	Although DNFBPs are subject to <i>POCA</i> obligations, no AML obligations have yet been implemented in any DNFBP sectors.

4.2. Monitoring transactions and other issues (R.16) (applying R.13-15, 17 & 21)

4.2.1. Description and Analysis

Legal Framework:

692. All obligations for monitoring, STR reporting, internal controls and sanctions included in the *POCA* are applicable to the DNFBPs present in PNG, with the exception of TCSPs. See section 3 and 4.1 above for description of the *POCA* requirements and the extent to which they meet international standards.

693. Implementation of the STR requirements set forth in the *POCA* has not commenced at all in any DNFBP sectors in PNG. DNFBPs have not been notified of their obligations under the *POCA* beyond gazetting of the Act.

694. There are no provisions to implement Recommendation 21 in the *POCA* or any other statute or regulation in PNG.

Suspicious Transaction Reporting and tipping off/safe harbour (R.16)

695. Section 24 of the *POCA* requires that cash dealers are to report suspicious transactions in relation to serious offences. See section 3.7 above for an analysis of the STR reporting obligations which apply equally to DNFBPs. Sections 25 and 37 of the *POCA* set out prohibitions against a cash dealer disclosing information relating to STRs. See section 3.7 for details of the obligations which apply equally to DNFBPs.

Internal control requirements for DNFBP (applying R.15)

696. Section 26 and 27 of the *POCA* sets out obligations for cash dealers to establish and maintain internal controls. See section 3.8 for a discussion of these obligations which apply equally to DNFBPs.

697. The *Gaming Control Act* does not add significant internal control obligations to assist in future AML/CFT measures in that sector.

Effectiveness and Statistics (R.32)

698. PNG has a large and rapidly expanding economy with increasing depth and diversity of financial markets. There are very significant money flows in PNG and conditions of very high crime and extreme corruption. While the *POCA* formally requires all DNFBPs in PNG to report STRs, the FIU has only given further instruction and guidance to the four commercial banks to report STRs.

699. Typologies of laundering the proceeds of large-scale public sector corruption in PNG includes use of legal professionals and other intermediaries in the DNFBP sector. Given the prioritization on combating proceeds of corruption there is a need to include STR reporting amongst these sectors.

700. The lack of effective implementation beyond the banking sector reflects the severe lack of resources in the FIU, as the AML regulator, to guide and ensure compliance with those obligations

outside of the banking sector.

4.2.2. Recommendations and Comments

701. Authorities should ensure that obligations for monitoring, STR reporting, internal controls and sanctions are included in the *POCA* are applicable to the DNFBPs present in PNG.

702. DNFBPs should be notified of their obligations under the *POCA* and supported in implementing those provisions through support of SROs.

703. The FIU should be adequately resourced to take on this regulatory and supervisory task for DNFBPs and the subsequent increase in STRs received.

704. Although there are no casinos licensed in PNG at present, authorities should prepare enforceable AML/CFT regulations and practical guidelines to ensure that when the planned casino is licensed under the *Gaming Control Act* it is not able to be abused for ML in PNG.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none">• While all DNFBPs present in PNG are covered by legal obligations in the <i>POCA</i>, they do not appear to be aware of the reporting or internal control requirements and are not taking steps to implement their obligations.• There is no effective implementation in any DNFBP sector.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Legal Framework:

705. The only AML/CFT requirements applicable to DNFBPs are set forth in the *POCA*. See section 3.10 for details.

706. Neither designated supervisory authorities nor any SROs are tasked with responsibilities for oversight, supervision, regulation or monitoring compliance of AML/CFT obligations of DNFBPs. The FIU is authorized to monitor compliance with reporting requirements of all DNFBPs, but has no authority for monitoring compliance with other AML obligations of DNFBPs set forth in the *POCA*.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

707. The legal framework for supervision and regulation of casinos is set forth in the *Gaming Control Act 2007*. This Act is quite comprehensive in setting forth gaming activities that are allowed, and designates the Gaming Control Board as the supervisor and licensing authority empowered to regulate the gaming sector throughout the country. The extent of regulatory detail contained in this Act indicates there is a good understanding of the risks with regard to criminal risks endemic in casino and gambling activities.

708. Section 40 of the *Gaming Control Act* sets forth licensing procedures and requirements. It prohibits any more than one casino license to be granted within the first 10 years of the Act becoming effective. Section 47 of this law contains provisions regarding suitability of character as among the criteria for consideration by the Gaming Control Board in making decisions on granting of licenses. Although s49 authorizes the Gaming Control Board to conduct investigations into the background of applicants, no provision expressly prohibits a person, or persons who are directors, managers or beneficial owners of an entity applying for a casino license from obtaining a PNG casino license that has a criminal background.

709. Currently, no casinos operate in PNG, as no casinos have yet been licensed. Officials of the Gaming Control Board have stated that over the past several years they have dedicated significant time and resources to shutting down illegal gaming establishments. Several raids on these a few years ago appear to have a sufficiently deterrent effect as there has been a significant reduction in the number of new illegal gambling establishments being detected.

710. There is however, a significant building construction project in the centre of Port Moresby which the public understands to be construction of what will be the first casino. However, the Gaming Control Board has stated that no licenses for casinos have been granted, nor have any legal or enforceable agreements been entered by any parties promising the granting of a casino license, as no invitations or tenders for casino license applications been made public.

711. The Gaming Control Board is presently occupied with regulating the lotteries and consolidating

a tax and audit system of bookmakers. Bookmakers are licensed by the Gaming Control Board but report to the Internal Revenue Commission for auditing and tax purposes.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

712. Compliance monitoring of AML/CFT obligations of DNFBPs, limited to reporting obligations, is delegated to the FIU rather than designated supervisory authorities or SROs. The FIU consists of three persons and lacks capacity to undertake its main core functions, and therefore has not undertaken any compliance monitoring activities in any of the DNFPB sectors.

713. It is not clear whether powers available to SRO having a role in overseeing the professional conduct of lawyers and accountants are able to sanction the conduct of their members for breaches in relation to requirements under the *POCA*.

Guidelines for DNFBPs (applying c. 25.1):

714. There have been no specific Guidelines issued by supervisory authorities, SROs or the FIU with special focus on AML obligations or DNFBPs. The FIU has issued in 2007, more general *Guidelines on CDD and Record Keeping* and a *Guideline on Suspicious Transaction Reporting*, which are general in nature and applicable to all reporting sectors. Draft guidelines have been prepared by the FIU for lawyers and accountants.

715. DNFBPs in PNG could benefit greatly from awareness-raising and training programs to increase awareness of the AML obligations to which they are subject. However, the FIU lacks capacity for this kind of outreach due to limited resources. Issuing AML Guidelines by designated supervisory authorities with input from the individual DNFPB sectors would go far to raise awareness and understanding of entities and professionals in these sectors about implementation of AML obligations.

Adequacy of Resources – Supervisory Authorities for DNFBPs (R.30)

716. Under the current regime which delegates sole powers of supervision and enforcement of AML obligations of all DNFPB sectors to the FIU, adequate capacity and resources are not available for effectively undertaking the steps necessary for effective implementation of AML requirements in the DNFPB.

4.3.2. Recommendations and Comments

717. AML supervision, regulation and compliance monitoring of the DNFPB sector is not effective. Serious attention by policy level officials is needed to consider a system which can be more effective within the PNG environment, and dedicate resources to serious improvements in the legal framework, supervision, regulation, and compliance monitoring. The legal framework needs improvement to enable supervisory enforcement of AML/CFT obligations throughout the DNFPB sector and the ability to monitor compliance and enforce penalties and fines in instances of non-compliance.

718. Although there are no casinos licensed in PNG at present, authorities should prepare for regulation, supervision and monitoring of casinos to enforce comprehensive AML/CFT obligations in

the sector to ensure that the casino which will be licensed under the *Gaming Control Act* it is not able to be abused for ML in PNG.

719. PNG should conduct a risk analysis to identify the categories of DNFBPs which should be given priority to enforce AML/CFT requirements.

720. Discussions should be undertaken with the regulators and SROs of the DNFBP sectors to determine the extent of their role in monitoring and ensuring compliance and to raise awareness of AML/CFT obligations on each sector. Given the extremely heavy workload of the FIU, the government should closely consider which agency should be responsible for AML/CFT supervision of DNFBP sectors.

721. AML/CFT guidance should be issued for each of the DNFBP sector to reflect specific ML/TF risks in each sector.

4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> • Although DNFBPs are subject to <i>POCA</i> obligations, no AML obligations have yet been implemented in any DNFBP sectors. • No DNFBPs are subject to any supervision, regulation or compliance monitoring for AML obligations.
R.25	PC	<ul style="list-style-type: none"> • Guidelines for DNFBPs have been prepared, but remain in draft form. • This is a composite rating

4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Other Vulnerable NFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

722. PNG has included financial businesses and professions that may be vulnerable to ML. Under the *POCA*, lotteries and gambling are included in the list of cash dealers covered by AML/CFT obligations.

723. The *POCA* provides a clear mechanism to include other businesses as reporting parties in the future. The definition of a cash dealer at s3(t) allows the government to prescribe any business as a cash dealer for the purposes of STR reporting, CDD and other AML/CFT controls.

724. During the onsite visit, authorities identified the risks of ML through purchase of high-value vehicles in PNG. At present dealers in high-value vehicles are not included in the definition of cash dealers.

Modernization of Conduct of Financial Transactions (c. 20.2):

725. The Government of PNG, through BPNG, is pursuing a number of strategies to encourage more modern and secure techniques for conducting financial transactions and include a greater portion of the population in the formal financial system. BPNG is working to improve payment systems, including electronic and mobile payments services through the PNG National Payments System Development Policy, launched in late 2009.

726. Limited electronic and mobile payments instructions and alternative methods of payments services have recently been introduced in PNG. This reflects increased penetration of mobile phones and improvement in telecommunication infrastructure. Close to 80% of the population is within wireless coverage areas.

727. BPNG is monitoring new electronic and mobile payment services and systems entering the market and has indicated that it is considering regulatory approaches to develop a bank-led model of mobile phone banking and remittance. This is likely to include interoperable electronic payment systems. In 2010, BPNG publicly called for any potential providers of electronic and mobile payments systems to meet with the BPNG and outline their plans.

4.4.2. Recommendations and Comments

728. PNG should consider inclusion of motor vehicles dealers as reporting parties, given the noted risks for ML through investment in vehicles in PNG.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	This recommendation is fully observed

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

Legal Framework:

729. Under PNG law the relevant codes for the creation and registration of legal persons are the *Associations Incorporations Act 1966* and the *Companies Act 1997*. In addition the *Land Groups Incorporation Act* provides for legal recognition of the corporate status of certain customary and similar groups, and confers on them, as corporations, the power to acquire, hold, dispose of and manage land. At present the Registrar of Companies is conducting a final public consultation to amend the *Companies Act* to provide the IPA with the authority to impose administrative sanctions and allowing for online registration of companies.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

730. At present, PNG relies on a system of central registration to gather and obtain information on the natural persons controlling and owning companies and associations. The Office of the Registrar of Companies (the Registrar) is responsible for registration of both companies and associations and for carrying out the enforcement powers and functions of the Registrar. Both are administratively located with the IPA.

Companies

731. Under s11 of the *Companies Act* a company requires at least one issued share and a shareholder, having limited liability for the obligations of the company and one or more directors. Articles of association/constitutional documents are not a legal requirement. Transfer of shares is done by entry of the name of the transferee in the share register held by the company. It is a requirement of the *Companies Act* that before a company can exist as a legal entity, it must first be registered with the Registrar of Companies. It is an offence under the *Companies Act* for companies or persons to conduct business without proper registration. Foreign companies or any company which has foreign shareholding, directorship, management or control must apply for certification within 30 days of registration of the company in PNG before carrying on business.

732. To register with the Registrar a proposed director or secretary of the company must file, amongst others:

- Name of proposed company.
- Address of registered office.
- Address for service.
- Director(s) including consent form containing name, address and date of birth
- Shareholder(s) including consent containing name address and (for natural persons) date of birth

And, where relevant

- Company secretary(s) including consent form containing name, address and date of birth
- The constitution of the company.

733. Changes of shareholders or directors must be notified to the Registrar. Failure to notify is punishable by a fine of up to K5000 (US\$1,937).

734. Submission of false information to the Registrar is punishable by a fine of up to K200,000 and a prison term of up to 5 years.

735. Every year a company is required to file an annual return containing amongst others the company's financial statements, activities undertaken, and any changes in shareholders, directors or company secretaries.

736. A foreign enterprise wishing to conduct business in PNG may either register itself or decide to establish a subsidiary under PNG law. An application must be made for a formal certificate under the *Investment Promotion Act 1992*. A foreign enterprise is a business entity which is wholly owned or that is 50 percent or more owned or controlled and managed by non-citizens. All foreign companies incorporated or registered under the *Companies Act*, must apply within one month for Certification under IPA. If shareholders of the foreign company are natural persons, for each individual, a CV or Personal Profile, a police clearance report, a copy of a passport and a Bank reference or statement from a bank in PNG or overseas must be submitted. If the shareholders are corporate bodies, then the following are required:

- Latest financial statement for the shareholding company/ultimate holding company;
- Register of shareholders and directors of the companies (top ten if listed on a stock exchange);
- Register of shareholders and directors of the ultimate holding company (top ten if listed on a stock exchange);
- Copies of Certificates of Incorporation.

737. Where there is a substantial change in ownership of an enterprise, the enterprise must notify the IPA within 14 days from the date of change. Failure to do so will result in a penalty of up to K2000 (US\$775).

738. These requirements apply where the change in ownership, shareholding or beneficial ownership or control in a company is more than 10 percent in any year or represents a change of more than 25 percent in the ownership of the enterprise as from the date of certification. It is an offence for a foreign enterprise to operate without an IPA certificate. A penalty of up to K100,000 may be imposed or a default penalty fine of up to K10,000. It is also an offence for a person to make a statement or furnish information that is false or misleading in a material particular. A fine of up to K50,000 (US\$19,375) may be imposed.

739. If companies fail to file annual returns or do not submit notices required within 18 months after they are due the Registrar may remove the companies from the registry.

Associations

740. Under the *Association Incorporation Act* it is possible to incorporate an association. There are no formal requirements for an association other than the appointment of a public officer. Incorporation is a prerequisite for any association wishing to acquire, hold or dispose of property. Materially for incorporation, an association may only pursue certain purposes (providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or other objects useful to the community) and is not allowed to pay any sum in the nature of dividend to its member. Any possible profits have to be applied towards its stated goal.

741. An application for incorporation of an association must specify:

- the name of the association;
- the objects and purposes of the association;
- the place or places where the association was formed and is carried on; and
- the full name, address and occupation of the applicant.

742. The application for incorporation shall include the rules that relate to the association. The Registrar has adopted model rules for associations. The Registrar may refuse to incorporate an association that has opted not to follow the model rules if the Registrar is of the opinion that the rules adopted do not comply with the *Associations Incorporation Act*. Several matters, specified in the Schedule to the Act, are required to be covered in the rules such as the name, the objects and purposes, qualifications (if any) for membership of the association and the names, constitution, membership and powers of the general committee, board of management or other governing authority of the association (the committee). Any alteration to the rules or objects and purposes must be notified to the Registrar within one month. Failure to do so is punishable by a penalty of K40 (US\$15).

743. The public officer is a natural person who ordinarily resides in PNG. He may hold any position in the association except auditor. Failure to notify the Registrar of the appointment of a public officer is punishable by a fine of K20 (US\$7).

744. The committee must have the financial affairs of the association audited at least once every 12 months. Failure to do so is punishable by a penalty of K40 (US\$15).

745. Associations must register with the tax authorities to be able to benefit from advantageous tax treatment (0%).

746. Where the Registrar has reasonable cause to believe that an incorporated association has ceased to exist or that the transactions or nature of an incorporated association are or is such that it has not, or has ceased to have, the prescribed qualifications for incorporation, the Registrar may cancel the incorporation of the association.

747. At the time of the onsite visit there were approximately 75,000 companies and 5000 associations.

Incorporated Land Groups

748. Finally under the ILG Act, the *Registrar of Incorporated Land Groups* (ILGs) may recognize a customary group of persons as an incorporated land group, by issuing to it a certificate of recognition. The register contains copies of all certificates issue to ILGs. An ILG requires a constitution which sets out, amongst others:

- the name of the group;
- the qualifications for (and disqualifications, if any, from) membership of the group;
- the title, composition, membership and manner of appointment of the committee or other controlling body of the group; and
- the manner in which the group acts.

749. An ILG may:

- acquire, hold and dispose of customary land and rights in or in respect of customary land, in the manner (if any) and to the extent (if any) allowed by custom;
- acquire, hold and dispose of other land and rights in or in respect of other land;
- use and manage the land, or enter into agreements for the use or management of it;
- borrow money or accept property on credit for the purposes of the preceding provisions of this subsection; and
- distribute any product of the land or any profits arising out of the use or management of it.

750. A person who wilfully provides false information makes to the registrar is guilty of an offence punishable by a penalty of a fine not exceeding K200 (US\$77) or imprisonment for a term not exceeding six months.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

751. Although legally law enforcement and other authorities should be able to access the files held by the registrar and swiftly obtain the company records, in practice it is a cumbersome process and police have been using search warrants in certain cases. This is not a requirement though and in practice the registrar has required that a letter for request of information be sent before providing information from the registry. Currently the paper based registration is being converted to an electronically held database. It is envisaged that this transition will be completed by middle 2011.

Prevention of Misuse of Bearer Shares (c. 33.3):

752. The only shares that a company incorporated under PNG law can issue are registered shares.

Analysis of effectiveness

753. If the system worked as it is supposed to, then in most cases it would be possible to identify at least the persons ultimately owning a company and also, barring complicated contractual arrangements, the persons controlling the legal persons. That is to say in most cases it would be possible, in theory, to identify the beneficial owner. The only exception is where a foreign company (or a PNG company owned by a foreign company) is itself owned by another company in which case

the registry would not have any information on the shareholders (and thus ultimate owners) and management of those companies.

754. Practitioners who make use of the information contained in the registry indicated that it was frequently incomplete and out of date. Moreover, for law enforcement agencies it frequently takes a long time to get a response: as a matter of practice, not of law, the IPA has required that law enforcement send a letter before it can provide information to them. To facilitate information exchange it has concluded an MoU with the Internal Revenue Commission.

755. The authorities indicated that in relation to companies, PNG nationals are often paid to provide nominee services to assist foreigners circumvent the requirements of the IPA Act or the formalities as registering as an overseas company. Thus a high number of apparently national companies are in fact foreign companies, yet no indication is given of the nominee function of the nationals acting as shareholders and thus, no truthful information on the real owners of the companies is available in the register. In some cases a domestic company, as opposed to individual, will be asked to front.

756. On associations, hardly any checks are ever carried out on the persons exercising control and again frequently the information contained in the register is inaccurate. The penalties for the provision of incorrect information or other non-compliance are very low. In two cases the Registrar cancelled the incorporation of an association. There are many cases in which an association will in fact be making profits but such cases are only discovered by accident, no structural review is ever undertaken of the associations' finances, neither by the IPA nor by the tax authorities.

757. Authorities indicated that it was impossible to check the accuracy of information supplied to the registry. They are aware that frequently the information is incorrect but their resources are too limited to cope with the current situation. In cases where no information has been supplied to the Registrar for a long period of time, those companies will be de-registered, about 4,000-5,000 per year. In addition the Registrar frequently undertakes action against companies or their directors that have not fulfilled their duties under the *Companies Act* initiating legal action against them for failure to pay annual returns (169 cases so far) or other breaches. However, frequently companies will disappear or deregister following an incident involving them only to reappear under a different name (but with the same people in control) soon thereafter. The Registrar has no powers to impose administrative penalties for failure to comply with the *Companies Act*, the penalties mentioned are imposed by the Courts.

758. Finally there is a lot of abuse of the ILGs. Frequently a smaller group of people within a customary group represents itself as the "primary owner" of the land and receives all the benefits for the use of the land for itself rather than for the benefit of the entire group, abusing its trustee position, assuming it was ever was given one in the first place. There are many instances of a smaller group of people acting as such without the consent of the larger group. Because the groups are often registered far away from the lands in question verification is often difficult, but suffice it to say here that the concept of "primary owner" itself is non-existent. All customary held land is held on behalf of *all* members of the group, not of a few. Currently there is a bill whose purpose is to amend the *ILG Act* to ensure all ILG funds are received in a bank account held on behalf of the entire customary group,

which is regularly audited.

5.1.2. Recommendations and Comments

759. The Registrar of Companies should consider ways in which law enforcement authorities be granted more immediate access to company information.

760. Authorities should consider amending *Companies Act* to allow for the imposition of administrative fines by the Registrar in cases in which companies do not comply with their obligations to provide information to the Registrar.

761. Authorities should consider ways to prevent companies/associations controlled by persons involved in companies previously deregistered from being registered and to ensure a PNG national is not fronting on behalf of a foreigner, whether by requesting further information from those individuals or conducting checks against historical records in the Company Registry. In addition particularly the activities and financial statements of the associations should be subjected to more scrutiny.

762. To allow the Registrar to undertake more thorough due diligence and take action in respect of the natural persons related to companies and associations registered, authorities should consider substantially increasing resources of the IPA. To ensure a greater degree of compliance penalties for registering inaccurate or false information in respect of associations and ILGs need to be increased.

763. Authorities should consider submitting the amendments of the *ILG Act* as proposed to Parliament to ensure more equitable use and distribution of the profits yielded by land held by customary groups to all members of the group.

764. Authorities should ensure to gather information on the natural persons that are significant shareholders of foreign companies that are shareholders in companies registered in PNG.

5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none">• Access to the information held by the registry is cumbersome• Information in the registry often unreliable• Limited effectiveness of <i>Companies Act</i> and <i>Association Act</i>• Beneficial ownership information not available in cases of foreign corporate shareholdings

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1. Description and Analysis

Legal Framework:

765. No specific Act applies.

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1) and Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

766. Under PNG law it is possible to establish a trust under common law, but there are no specific statutory provisions that govern them.

767. Several trusts have been established for public statutory purposes and are governed by enabling statute.

768. Authorities and practitioners indicated that although it is possible to establish trusts for private purposes they believed such use was extremely limited. They did not know of the establishment of any private trust in PNG. There is no obligation to register them.

769. In the event that a trust would be established for private purposes, the service provider employed, e.g. a lawyer, would not be under any obligation to collect information on the settler, or beneficiary. General investigative powers would be available to obtain certain information from financial institutions or service providers.

5.2.2. Recommendations and Comments

770. Although the authorities indicate that there are no private trusts registered in PNG, there is no procedure for gathering information on beneficial ownership information on private trusts. Authorities should establish a process to ensure there is systematic collection of beneficial ownership information on trusts, e.g. by requiring those that professionally act as trustees (lawyers and others) to collect all relevant information on the settler and the beneficiary.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	PC	<ul style="list-style-type: none">No procedure for gathering information on settlors, trustees and beneficiaries of private trusts

5.3. Non-Profit Organizations (SR.VIII)

5.3.1. Description and Analysis

Legal Framework:

771. At present there is no comprehensive legislation dealing with NPOs as such. Since all NPOs are associations the *Associations Incorporation Act* is applicable by virtue of their legal form. There are no laws in PNG regulating fundraising and expenditure by NPOs. PNG does not currently have any central coordinating mechanism or specific policy to regulate and monitor the NPO Sector.

772. The IPA registers these organizations, primarily under the *Associations Incorporation Act 1966*. Christian associations with at least four health facilities or a health worker training school recognized by the Nursing Council or the Medical Board may also be registered under the *Christian Health Services of PNG Act 2007*. There are no formal requirements for an association other than the appointment of a public officer. Incorporation is a prerequisite for any association wishing to acquire hold or dispose of property. Materially for incorporation, an association may only pursue certain purposes (providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or other objects useful to the community) and is not allowed to pay any sum in the nature of dividend to its member. Any possible profits have to be applied towards its stated goal.

773. An application for incorporation of an association must specify:

- the name of the association;
- the objects and purposes of the association;
- the place or places where the association was formed and is carried on; and
- the full name, address and occupation of the applicant.

774. Declared associations receive an income tax exemption under Section 25(a) of the *Income Tax Act*.

775. At the time of the onsite visit there were approximately 5000 associations in PNG, and the evaluation team was informed that their number is currently increasing sharply.

776. The requirement for NPOs to declare the type of activity conducted by the organization during the registration process is not formally followed by any monitoring mechanism to verify the consistency of NPOs activities with their initial declared purpose and there is therefore no clear overview of respective NPOs' activities in PNG.

777. It was also pointed out to the evaluators during the mission that a growing number of associations do not focus on their initial claimed object and are in reality created with the intent to collect funds for a different purpose, especially in remote rural areas. Thus, the absence of a clear registration and monitoring process of non-profit organizations and of a central coordination mechanism undermines the transparency of their financing and expenditures.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

778. To date, no review of adequacy of laws and regulations of NPOs has been conducted.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

779. At the time of the on-site mission, no effective outreach or awareness had been undertaken with a view of protecting the sector from ML and terrorism financing abuses has been done yet.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

780. Authorities do not formally supervise the NPO sector and verify what information they maintain.

781. No study has been conducted to establish which NPOs account for a significant portion of the financial resources under control of the sector and a substantial share of the sector's international activities.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

782. No effective follow up has been made by the registration authority to monitor NPOs activities and to determine whether they are operating within their initial or alleged scope of activities.

783. The IPA has no specific powers of supervision following registration. For example, the Registrar cannot conduct on-site missions to verify whether associations are acting within their stated purpose and NPOs registered under the Associations Incorporation Act are not required to maintain a list of their members. The only requirement for NPOs after registration is to declare a change of name, under section 9 of the *Associations Incorporation Act* and to notify the registrar of the appointment of any public officer (section 14).

784. In addition, tax authorities also require resources and expenses details from NPOs but they have informed the assessment team that no on-site verifications are conducted.

785. Some non-profit organizations are represented within the main forum for dialogue between the Government and civil society, the Consultative Implementation and Monitoring Council (CIMC). The CIMC was established by the National Executive Council after the National Economic Summit of February 1998. Working through the CIMC, the Government has established the Informal Sector Committee, including representatives of government and nongovernment organizations. However, the effectiveness of the CIMC's activities have been hampered by the lack of a clear, up-to-date, and well documented description of the constraints to informal sector activity. Therefore, the committee initiated the formulation of the review. Data collected by the CIMC are publicly available and accordingly could function as a source of information on a number of NPOs, however this does not include any information regarding funds or ownership and it is not possible to assess as to what degree the active NPOs of PNG are represented by the Committee.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

786. There are currently no specific and systematic oversight rules supervising NPOs. Consequently, there cannot be any attached measures in place to sanction violation of it.

787. Theoretically, according to section 34 of the Associations Incorporation Act, “where the Registrar has reasonable cause to believe that an incorporated association has ceased to exist or that the transactions or nature of an incorporated association are or is such that it has not, or has ceased to have, the prescribed qualifications for incorporation, the Registrar may send by registered post to the person appearing by any notice lodged in the office of the Registrar to be the public officer of the association, a notice requiring him, within a period of one month from the date of the notice, to satisfy the Registrar that the association has not ceased to exist or has ceased to have the prescribed qualifications for incorporation, as the case may be”.

However, the absence of systematic monitoring of NPOs activities makes this provision difficult to put into practice.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

788. The IPA registers these organizations, primarily under the *Associations Incorporation Act 1966*, more occasionally under the *Christian Health Services of PNG Act 2007* or the *National Volunteer Service Act 1990*. There are no formal requirements for an association other than the appointment of a public officer. An application for incorporation of an association must specify the name of the association, the objects and purposes of the association, the place where the association was formed and is carried on and the full name, address and occupation of the applicant.

789. Practitioners who make use of the information contained in the registry indicated that it was frequently incomplete and out of date.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

790. NPOs are not required to maintain and make available information to appropriate authorities.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

791. Although legally law enforcement and other authorities should be able to access the files held by the registrar and swiftly obtain the associations records, in practice it is a very cumbersome process and requires a search warrant issued by a court. For law enforcement agencies it frequently takes a long time to get a response from the IPA, and as a matter of practice, not of law, the IPA has required that law enforcement have a search warrant before it can provide information to registered associations.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1-3):

792. There is no mechanism of cooperation, coordination or information sharing on NPOs. In this regard, the creation of the Consultative Implementation and Monitoring Council (CIMC) in 1998 can be seen as a first initiative from the government to create a coordination mechanism.

793. Moreover, it has been indicated to the evaluators during the on-site visit that the government was planning to launch a cooperation and information sharing system within the fifth Pillar of its “Vision 2050”.

Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):

794. International cooperation has not been demonstrated in regard to NPOs.

5.3.2. Recommendations and Comments

795. The assessors recommend that, authorities should:

- Undertake a review of the adequacy of existing laws and regulations that relate to non-profit organizations with a view to enhancing transparency;
- Take effective measures to ensure proper registration of NPOs and ensure they are easily accessible to the appropriate authorities;
- Enact measures requiring NPOs to maintain and make available to appropriate authorities, sufficiently detailed records of domestic and international transactions to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization;
- Create an effective integrated information gathering and sharing system;
- Develop a lasting central coordination mechanism between NPOs;
- Carry out outreach with the NPO sector with a view to protecting the sector from abuse for criminal purposes;
- Take effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector;

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> • No effective registration of NPOs • No review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for FT • No effective monitoring mechanism for NPOs including the registration of NPOs and the ability to monitor sources of funds for NPOs. • No measures in place to sanction violations of oversight rules by NPOs • No outreach or awareness raising

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31 & R. 32)

6.1.1. Description and Analysis

Legal Framework:

796. There is no specific legislation dealing with AML/CFT related domestic cooperation.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

797. There are significant challenges for interagency cooperation in setting AML/CFT policy and coordinated implementation of existing AML measures. There is little evidence of political level commitment to inter-agency cooperation to support effective AML/CFT implementation.

798. While coordination within agencies in the Law and Justice Sector is relatively good (for example between DJAG, RPNGC and OPP), cooperation and coordination with and between Departments and agencies outside that Sector (different regulators, IRC, Foreign Affairs, Customs etc) has not been well supported. This is evidenced by significant gaps in coordination leading up this assessment and an absence of information sharing over a significant period.

799. There is no mechanism in place specifically for domestic AML/CFT cooperation and coordination. However, there are various structured inter-agency mechanisms in place in PNG for cooperation and coordination between agencies on operational law enforcement and policy matters.

800. For example, police host the TCU, which is a joint agency office involving police, customs, fisheries and immigration, and reflects a model that has been established in ten Pacific Island countries, the Solomon Islands TCU being the most recently established. The PNG TCU is located at the police training college at Bomana and at the time of the on-site evaluation had three police staff assigned to the unit. However, at the time of the on-site visit no other agency had staff assigned to the TCU, and the level of interagency cooperation within the TCU was unclear.

801. Other arrangements include the Customs Service Joint Agency Group (JAG), involving Immigration, Police and Fisheries, which meets monthly to discuss customs border enforcement related matters. Memorandums of understanding are in place between police, customs and fisheries that include exchange of information. This forum does not yet address AML/CFT issues.

802. The Department of Prime Minister hosts the Office of Security Coordination and Assessment (OSCA) which provides secretariat services to the National Security Advisory Council (NSAC), chaired by the Prime Minister. Any security issues such as AML/CFT are discussed by the Council.

803. In addition to the NSAC the Department of Prime Minister and DJAG co-chaired the development of PNG's draft 'National Anti-Corruption Strategy'. It previously provided the Director of the National Anti-Corruption Alliance (NACA), but that position and NACA itself is funded by

AusAID. The Commissioner of Police chairs NACA, the Chief Ombudsman is the Deputy Chair, and a large number of government senior executives are members of this alliance. AML/CFT is within the scope of the group's role given its responsibility for investigating corruption.

804. There is no formal, ongoing inter-agency policy mechanism in place concerning the development and implementation of policies and activities to combat ML and TF. Officials advised that a close relationship exists between the DJAG, and other agencies, especially the FIU, Police and the OPP.

805. The DJAG has drafted a cabinet proposal to establish a National Coordination Committee. This submission has already been put forward to Cabinet for consideration. Once it is established it will serve as a conduit under which relevant agencies will participate and develop policies and strategies on AML/CFT. The Committee will be co-chaired by the DJAG and Treasury. Although this Committee is forthcoming, the DJAG has used its affiliation with the APG as the primary point of contact to coordinate AML/CFT matters domestically. This has included the facilitation of International Crime Cooperation Workshops which significantly served as an awareness of the respective roles and responsibilities of agencies in terms of AML and International Cooperation. These awareness programs have included agencies such as Customs, Immigration, Internal Revenue Commission (Tax Office), the IPA, Central Bank, TCU and even some DNFBBPs such as the Law Society and the Society of Accountants. Hence, DJAG is taken as the coordinating agency on these matters which include the Mutual Evaluation.

Recommendation 30 – Resources (Policy Makers)

806. Within the DJAG the Legal Policy and Governance Branch (LPG) is responsible for AML/CFT policy advice to the PNG Government. This includes advice on international legal obligations arising from UN Conventions and proposals for PNG to ratify these. The LPG is also responsible for domestic policy coordination of cross-agency responses to AML/CFT, and has advanced proposals to the NEC for establishing a formal AML/CFT National Coordination Committee. In addition, departments in PNG are responsible for drafting laws for enactment, and therefore the LPG is responsible for all AML/CFT legal drafting. The LPG is responsible for the development of policy on AML/CFT, drafting the Cabinet submissions, explanatory memorandum and the drafting instructions for the Legislative Drafting Council. The LPG may assist in drafting bills if specifically instructed by the Minister. These bills will serve as drafting instructions when forwarded to the Legislative Drafting Counsel.

807. Although support is provided to the LPG from various agencies for developing AML/CFT policy, the lion's share of the workload rests with that group. With just six staff, this is a large commitment, and there is a case for additional resources to support the important role of the LPG.

808. The FIU has a significant role to play in inter-agency coordination on regulatory issues. The severe staff shortages make this role impossible to achieve. Inter-agency coordination between BPNG and the FIU is needed.

Measures to review the effectiveness of systems for combating ML and FT (applying R.32):

809. PNG has not undertaken a review of the effectiveness of systems for combating ML and FT in the country.

6.1.2. Recommendations and Comments

810. There are mechanisms in place in PNG to enable inter-agency coordination. However, the overwhelming level of systemic corruption amongst government agencies contributes to a lack of trust and consequently impedes information sharing, cooperation and assistance, within police and between agencies. Establishing formal arrangements that set out agreed processes will help to improve access to information and coordination between agencies.

811. The formal AML/CFT Coordinating mechanism should be approved by the National Executive Council and established as soon as possible.

812. PNG should undertake a national AML/CFT risk assessment and use this and the findings of this assessment to develop and implement AML/CFT policies and activities to address national priorities and establish an appropriate coordination mechanism.

813. Inter-agency coordination between all relevant agencies should be improved.

6.1.3. Compliance with Recommendation 31 & 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none">• No formally established AML/CFT coordinating committee• A lack of effective mechanisms for coordinating activities between regulatory agencies• Lack of inter-agency coordination of competent authorities involved in AML/CFT has undermined effectiveness• Effectiveness not demonstrated
R. 32	NC	<ul style="list-style-type: none">• Inter-agency coordinating mechanisms have not been used to review the effectiveness of the national AML/CFT system on a regular basis

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

814. At the time of the on-site mission, PNG had not ratified the Vienna Convention or the Palermo Convention.

Ratification of AML Related UN Conventions (c. 35.1), CFT Related UN Conventions (c. I.1) or implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2):

815. At the time of the on-site mission, PNG had not ratified the Vienna Convention or the Palermo Convention. It does have some legislation dealing with the production and sale of drugs laid down in the *Drugs Act*. PNG acceded to the UN Convention on the Suppression of the Financing of Terrorism on September 30, 2003.

816. As yet there is no legislation to implement UN SCRs 1267 and 1373. There is no process by which the lists of designated entities and persons under UNSCR 1267 are sent from the PNG mission at the UN to PNG authorities and thus for dissemination of those lists amongst relevant public agencies and private institutions in PNG. There is a process for designating an organization as a proscribed organization under the *ISA*.

Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):

817. PNG signed and ratified the UN Convention against Corruption on the 16th of July 2007 and will be amongst one of the first parties to that convention to be evaluated under the newly established evaluation mechanism.

6.2.2. Recommendations and Comments

818. PNG should become party to the relevant UN conventions within the shortest possible timeframe and establish a mechanism for giving effect to UNSC 1267 and to complement the domestic designation process with a freezing mechanism for the entities so designated. Reference is made to the comments made in the relevant sections of the report, 2.1-2.4 and 6.3 and 6.4.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none">• Vienna and Palermo conventions not ratified and not fully implemented
SR.I	NC	<ul style="list-style-type: none">• No procedure for distribution of 1267 lists• Domestic designation process deficient• Weaknesses in implementation of TF Convention.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

819. Mutual legal assistance (MLA) is governed by the provisions of the *MACMA* (*MACMA*) and by ss128-152 of *POCA* and is applicable to all foreign countries requesting assistance or to whom PNG requests assistance. PNG has not so far concluded any mutual legal assistance treaties with foreign countries. The provision of assistance is not conditional upon the conclusion of any treaty between a requesting country and PNG.

Widest Possible Range of Mutual Assistance (c. 36.1):

820. The types of legal assistance that may be provided under *MACMA* include:

- a. taking evidence (ss13 and 14)
- b. the production of documents and articles (ss13 and 15)
- c. requesting search warrants (ss 21 and 47)
- d. requesting restraining orders (s 48)
- e. transferring persons in custody for testimony or other purposes or arranging for the travel of any person to the requesting country for the purpose of giving evidence voluntarily (s33)
- f. enforcing foreign forfeiture or foreign pecuniary penalty orders (s41)

on behalf of a requesting state. In addition the following sections under *POCA* are relevant to certain types of assistance available under *MACMA*:

- g. Section 128 on the search for and seizure of tainted property (instruments used or intended for use in an offence and the proceeds of an offence)
- h. Section 134-138 applying for restraining orders

821. Section 5 states that *MACMA* does not limit the provision of international assistance to the assistance provided for under *MACMA*. Therefore, although the service of documents is not explicitly provided for, such assistance would be available to requesting countries, considering how limited such assistance is in comparison to other assistance explicitly provided for.

822. Requests for assistance under *MACMA* in a criminal matter must be made to the Minister for Justice or a person authorized by the Minister to receive requests by foreign countries (s7). A request must be in writing and must include a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws including the maximum penalty for each criminal offence and a description of the purpose of the request and of the nature of the assistance being sought (s7).

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

823. As yet the practice under this *MACMA* is very limited (see below under effectiveness) but the structure of the Act is geared towards being cooperative and providing assistance where possible. The assistance to be provided is not limited to the assistance mentioned in the *MACMA* and does not require a treaty before providing assistance. Dual criminality is an optional rather than a compulsory ground for refusal. To facilitate timely action the Minister may authorize a person to deal with the

requests on his behalf. The LPG of DJAG is responsible for processing the requests, though it has not yet been formally authorized by the Minister under *MACMA*. LPG indicated that it would encourage a requesting country to submit an informal request prior to the filing of the formal request to ensure that when that formal request is submitted, it can be dealt with as promptly as possible. According to foreign liaison officers stationed in PNG, PNG is on the whole cooperative when asked to provide informal assistance and generally makes every effort to assist in the most efficient way possible.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

824. According to section 9, assistance must be refused by the Minister if the request relates to a political offence, the request is believed to be discriminatory, providing assistance would prejudice PNG's sovereignty or the request relates to an offence for which the person concerned has already been acquitted or has undergone punishment.

825. According to section 10 the Minister may refuse a request when the foreign offence had it occurred in PNG would not have constituted an offence according to PNG law, ie dual criminality is a discretionary ground for refusal.

826. These grounds for refusal are not unduly restrictive in nature. PNG does not require a treaty to be able to provide assistance. As noted dual criminality under *MACMA* is a discretionary, not a compulsory ground for refusal.

827. The commencement of judicial proceedings or a conviction is not required for investigative steps such as obtaining a search warrant, but a restraining order may only be obtained in PNG at the request of a foreign country if criminal proceedings have commenced or are "about" to commence in the requesting country (s48 *MACMA* and 138 *POCA*).

Efficiency of Processes (c. 36.3):

828. Upon receipt of a request, the Minister will forward it to the LPG who will draft a letter of acknowledgment, indicating that the request is being considered and providing the action officer for purposes of liaison. LPG will then advise the Minister of the nature/substance of the request and whether it can be executed or not, taking into account the optional and mandatory grounds for refusal. Assuming those do not pose impediments, LPG then considers the request in light of the checklist of what should be contained in an incoming request. If there is a need for further information the requesting country can forward those changes/additions directly to LPG without the need for another formal request. The request is then processed and relevant agencies such as the OPP and police will be involved for purposes of obtaining evidence, court applications and executing judicial orders for purposes of the request. LPG would be responsible for overall coordination and the items requested would then be forwarded to the Minister, certified and then formally sent to the requesting country.

829. The LPG encourages informal communication prior to the request so appropriate advice can be given to the requesting country on making a request. So far however, the process exists in theory only since it is yet to be applied in practice. A handbook is currently being developed to document this process.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

830. There is nothing in *MACMA* that would preclude assistance solely on the basis of the possible involvement of tax matters. In fact *MACMA* explicitly indicates that “criminal matters” includes “criminal matters relating to revenue (including taxation and customs duties”).

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

831. A request for mutual legal assistance cannot be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs. Banking secrecy or confidentiality cannot be raised to object to a search warrant or a production order under *MACMA*.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

832. The competent authorities can use their existing powers to search, seize and restrain property and to access information to provide legal assistance to requesting jurisdictions. As previously noted these powers are limited (see section 2.6).

Avoiding Conflicts of Jurisdiction (c. 36.7):

833. If ever a conflict arose between jurisdictions, the relevant authorities of PNG (most likely the Police, OPP and DJAG) would consult with the requesting country in order to establish which venue is the most appropriate. No formal mechanism exists however, authorities consider that informal mechanisms would work adequately.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):

834. The answers given are equally valid for terrorism financing cases.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

835. As noted dual criminality under *MACMA* is an optional, not compulsory ground for refusal. It has not been tested in practice yet, this implies that in theory even e.g. foreign forfeiture orders could be executed in PNG in the absence of dual criminality, though in practice that is not likely. Oddly, for restraining orders upon foreign request under *POCA* (to which sections 47 and 48 *MACMA* refer) there is a requirement for dual criminality since the central term of reference there is the “foreign indictable offence” which is defined as an offence under foreign law that would have constituted a crime under PNG law had it been committed within PNG territory. In the absence of practice it is difficult to ascertain how restrictively it would be applied, but given that in principle it is possible to provide even compulsory measures in the absence of dual criminality, it may be assumed that for less intrusive measures dual criminality will not be required in practice.

836. The dual criminality test for “foreign indictable offence” is based on conduct; categorization or denomination do not impose an impediment in that regard.

Requests for Provisional Measures and Confiscation, Equivalent value (c. 38.1 and 38.2):

837. Under *POCA* and *MACMA*, a search warrant may be issued for “tainted property” in relation to a foreign indictable offence and it can be restrained or seized. “Tainted property” is defined as

proceeds of and instruments used or intended for use in an offence. As explained, since this is in relation to a foreign indictable offence this entails a- conduct based- dual criminality test.

838. As far as forfeiture orders are concerned, section 41 of *MACMA* enables the enforceability of a foreign forfeiture order or foreign pecuniary penalty order, thus allowing for the confiscation of property of equivalent value. No provisional measures are available to restrain/seize property of equivalent value.

Coordination of Seizure and Confiscation Actions (c. 38.3):

839. As noted above, PNG can take action on requests involving seizure and confiscation actions of other countries but no specific arrangements for coordinating such action are in place since no such case has arisen so far .

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):

840. The answers given are equally valid for terrorism financing cases.

Asset Forfeiture Fund (c. 38.4):

841. PNG is currently considering establishing an asset forfeiture fund. Currently under the *Public Finance (Management) Act* all public monies are to be paid into the Consolidated Revenue Fund (CRF). Section 76 of *POCA* authorizes the Commissioner of Police to dispose of any property that has been forfeited to the State and have the proceeds paid into the CRF. This includes other liquid proceeds i.e. money that has been forfeited as well. All monies in the CRF are used to sustain the country's budget.

Sharing of Confiscated Assets (c. 38.5):

842. The *MACMA* allows the Minister to enter into an arrangement with a foreign country to share with that country the property or amount forfeited or paid under a foreign forfeiture order or foreign Pecuniary Penalty Order (Section 44). In addition, in relation to ordinary forfeiture orders obtained by the Public Prosecutor under the *POCA* in proceedings conducted in PNG, a foreign country may apply to have its interests as a third party recognized by the court, if the foreign State has an interest in the forfeited property (sections 77 and 78).

Additional Element (R 38) – Recognition of Foreign Non Criminal Confiscation Orders:

843. The provisions in relation to enforcement of foreign confiscation orders apply equally to both conviction and non-conviction based confiscation orders.

Statistics (applying R.32):

844. So far there has been one request for mutual legal assistance from Australia.

Analysis of effectiveness

845. PNG has received its first mutual assistance request from Australia this year. The request was made through the diplomatic channel and then conveyed to the DJAG. To date the request has been acknowledged and DJAG is in the process of having appropriate agencies obtain the information/evidence required. A setback in obtaining that information on a timely basis may be resource availability at the time and the court process. Since this is the first incoming request under the *MACMA*, DJAG has facilitated a discussion of the Act's application and other operational aspects amongst the OPP and TCU. This assisted the stakeholders in formulating a work plan to serve as a template/precedent for future MLA requests which can then be processed effectively and on a timely basis.

846. In addition PNG made a successful MLA request to Australia. The matter concerned the smuggling of more than K10,000 to Cairns in breach of the threshold stipulated under the *CBA*. PNG obtained the relevant 'Incoming Passenger Declaration' and the Cross Border Currency Movement forms from the Customs authorities through a formal MLA request. That information was used in a PNG court where the offender was convicted and ordered to pay a fine of K100,000.

6.3.2. Recommendations and Comments

847. Authorities should consider concluding mutual legal assistance treaties with relevant countries. Consideration should be given to authorizing LPG under s7 of *MACMA* to receive MLA requests.

848. Authorities should consider introducing provisional measures for property of equivalent value.

849. Consideration should be given to devising a mechanism for determining the most appropriate venue for prosecuting a case which is dealt with by different jurisdictions.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<ul style="list-style-type: none"> • Deficiencies in the scope of the ML offence • Limited investigative measures • No consideration given to devising a mechanism for determining the most appropriate venue. • Little demonstrated effectiveness
R.37	LC	<ul style="list-style-type: none"> • Little demonstrated effectiveness
R.38	LC	<ul style="list-style-type: none"> • Range of provisional measures upon foreign request not complete • No demonstrated effectiveness
SR.V	PC	<ul style="list-style-type: none"> • Deficiencies in the scope of the FT offence • Limited investigative measures • No demonstrated effectiveness

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

850. The Act governing the conditions and process for extradition is the *Extradition Act 2005*. The Act distinguishes between requests made by Pacific Island Forum (Forum countries) and non-forum countries, basically with a lower standard of evidentiary requirements for Forum countries. To date PNG has not concluded any extradition treaty with a foreign country.

Money Laundering as Extraditable Offence (c. 39.1):

851. An 'extradition offence' is defined under section 7(1) (a) of the *Extradition Act* as an offence against a law of the requesting country, for which the maximum penalty is death or imprisonment for a period of not less than 12 months and the conduct that constitutes the offence, if committed in PNG would constitute an offence in PNG for which the maximum penalty is death or imprisonment for a period of not less than 12 months. Since the maximum penalty for ML is 20 years, it constitutes an extraditable offence (always assuming the maximum penalty in the requesting country is more than 12 months). As can be seen from the definition, the dual criminality test is conduct based.

852. The extradition regime is laid out in the *Extradition Act*. The request must be in writing and directed to the Minister and relate to an extradition offence (which is an offence against the laws of both the requesting country and PNG that has a minimum penalty of 12 months gaol). For Forum countries, the requesting country must now produce the original arrest warrant issued in that country after which the Magistrate must issue a surrender or extradition warrant if the person consents to the extradition. In the absence of consent the Magistrate must issue a surrender warrant (ss15-21). The OPP presents that warrant to the courts in PNG to have it endorsed as a PNG warrant (s12). For non-forum countries more supporting documents is required as provided under s32. For all countries the Minister has the final say with regard to surrendering a person.

Extradition of Nationals (c. 39.2):

853. According to s51 of the *Extradition Act* the Minister may refuse to extradite a person on the grounds that he is a PNG citizen, but in that case the person may be prosecuted- if the Minister considers there is sufficient evidence, in which case he is taken to have engaged in the conduct in PNG so that that the *Criminal Code* and the Criminal processes of investigation, arresting and prosecuting the person will apply.

Cooperation with requesting country (c 39.3)

854. Under s51 the Minister must consider whether there is sufficient evidence in PNG to prosecute the person. Under s50 of *MACMA* the Minister may request a foreign country to take evidence or produce documentation for a defendant where such evidence is considered necessary. Sections 52-60 provide for the admissibility of foreign evidence. If evidence is located in another country apart from the requesting country then a MLA request under *MACMA* can be made by PNG.

Efficiency of Extradition Process (c. 39.4):

855. So far no persons have been extradited to foreign countries under the *Extradition Act*. The conditions applicable are not overly burdensome. It is not clear how the courts will deal with possible

future appeals under the *Extradition Act*. PNG received one request for extradition in late 2006, but ultimately the person was transported out of PNG by the government before extradition proceedings which were before the courts could be completed to give effect the request. In September 2006, Australian authorities made an extradition request to PNG in relation to an Australian national who was transiting through PNG. The person was the subject of an Interpol Red Alert Notice seeking assistance in apprehension of the person. A copy of the Red Alert Notice was forwarded to PNG by Australia with a request for provisional arrest pending extradition. Police made an arrest on that basis and the accused was granted bail. Australia made a formal request for extradition via diplomatic channels to the Public Prosecutor. The Public Prosecutor applied for an arrest warrant and as the person did not appear before the court a subsequent arrest warrant was issued under the Extradition Act. The Court's provisional warrant of arrest required the arrest and detention of the accused to await Extradition Proceedings, but he was transported out of PNG by the government while this matter was before the courts.³⁰

Statistics (applying R.32):

856. So far there have been no cases of extradition.

6.4.2. Recommendations and Comments

857. The Extradition Act and the processes described therein do not give rise to any comments.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	<ul style="list-style-type: none"> No demonstrated effectiveness
R.37	LC	<ul style="list-style-type: none"> No demonstrated effectiveness
SR.V	PC	<ul style="list-style-type: none"> No demonstrated effectiveness

³⁰ Papua New Guinea, Defence Force Board of Inquiry Report, 13 December 2006, 16 March 2007.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Recommendation 40 and Special Recommendation V

Legal Framework:

858. There is no privacy legislation in PNG and no general legal impediment to prevent competent authorities from providing the widest range of cooperation to their foreign counterparts. There are various arrangements, including membership of international organisations, through which a wide range of international cooperation is able to be provided. PNG's participates in the South Pacific Leaders Forum, and as part of this forum in the 1992 Honiara Declaration on Law Enforcement Cooperation, the 1997 Aitutaki Declaration and the 2000 Biketawa Declaration and subsequently the Nasononi Declaration. This forum has centred on improved international cooperation, especially amongst forum member countries. Each of these arrangements is intended to express the Forum member's collective commitment to responding to security challenges, including the adverse effects of globalisation such as transnational crimes, and unlawful challenges to national integrity and independence.

Widest Range of International Cooperation (c. 40.1)

859. PNG is able to provide both formal and informal means of international cooperation across a range of competent agencies, although this ability is restricted by the limited amount of information held centrally by competent authorities, and also by the environment of corruption and levels of mistrust amongst agencies, which in turn affects the individual willingness to cooperate or share information. In addition, there are specific legislative restrictions on access to or disclosure of certain types of information that will impede international cooperation (e.g. s 83 (Secrecy of banking information), *CBA*; s 9(6) (Secrecy of income tax information), *Income Tax Act 1959*).

FIU

860. Officials advised that the FIU has entered into a memorandum of understanding with the Solomon Islands FIU for the purposes of information sharing arrangements.

861. The *POCA* does not explicitly empower the FIU to share information with foreign counterparts. The *POCA* has no restrictions or impediments that control the use or dissemination of information gathered from STR and CTR reports.

862. The FIU advised the evaluation team that they are able to share information with foreign counterparts since there are no legal conditions for doing so in the *POCA*. No statistics were available on the level of information sharing with foreign counterparts. The FIU staff indicated a clear willingness to share information.

863. In its role as AML/CFT regulator / supervisor, there are no clear enabling provisions in the *POCA* or other statutes to enable sharing of information with foreign regulators. The FIU would be able to enter into arrangements with the BPNG and Securities Commission to make use of their

established channels for international cooperation.

864. Resource constraints within the FIU may affect the ability of the FIU to negotiate and enter into bilateral agreements with foreign FIUs and AML/CFT regulators.

Law enforcement

865. In 1976 the Police was admitted as a member of the International Criminal Police Organisation (Interpol), and in 2002 was connected through SPEXNET and the I-24/7 Interpol network, via the Interpol regional office in Canberra. The Interpol National Central Bureau Konedobu (PNG) now has access to the various Interpol databases and electronic network of communications with all Interpol member countries.

866. Police to police requests are facilitated through the Interpol network, and in addition, the PNG Interpol office provides information to the Immigration service and other agencies.

867. Police to police memorandum of understanding on information sharing entered with the Australian Federal Police. In addition, the Australian Federal Police have police liaison officers located at the Australian High Commission in Port Moresby, whose role is to facilitate cooperation and assistance between the PNG police and the AFP.

Bank of PNG

868. The *CBA* gives BPNG very wide range of powers to enter into arrangements to cooperate very widely with other regulatory bodies, whether in PNG or with other foreign counterparts. Section 92 of the Act makes it clear that these cooperation agreements can relate to any law which has a role for BPNG.

869. The Governor may enter into agreements with other regulatory bodies or authorities, whether in PNG or not for the purpose of assisting the Governor or the Central Bank to carry out its functions under this Act or any other laws.

870. Agreements under s92 would include issues covered by the *BFIA* and other sectoral laws coming under the BPNG's purview which may be used to supervise for and enforce compliance with the *POCA*. Section 92 indicates that as a practical matter, the Central Bank shall make agreements conditional on being 'authorized by regulation or direction'. The *CBA* gives the Governor direct power to make directions (s.98) and for the Head of State (on advice) to issue regulations. The Central Bank Governor may, by instrument in writing give such directions as necessary or convenient to be prescribed by directions for carrying out or giving effect to this Act.

Securities Commission

871. Section 10 of the *Securities Act* provides that the Commission has wide discretion to cooperate with foreign counterparts on the basis of a request and use its extensive powers of information collection at s8 to collect information and evidence to be shared with foreign counterparts. Section 8 extends to a wide range of special powers for information and evidence

collection, ranging from orders to produce records, enter premises, attend hearings, mandate them to answer questions and not disclose that they have attended a hearing.

872. Section 9 gives the commission sole discretion to release information gathered under s8 powers and s10 expressly provides that they may be collected for and shared with foreign counterparts:

Commission may take evidence for overseas Commission or body:

- (1) Where any securities commission or exchange, or other body in any other country with functions corresponding to those of the Commission, requests the Commission to inquire into any matter related to the functions of that securities commission or exchange, or other body, the Commission may subject to Subsection (2), receive in evidence any statement, document, information or any other thing that in the Commission's opinion is likely to assist the Commission in complying with a request.
- (2) The Commission shall not comply with a request under Subsection (1) unless the Commission is satisfied that compliance with the request will not substantially affect the performance of its other functions under this Act.
- (3) The Commission may exercise the powers set out in Section 8, and the provisions of that section shall apply, as far as they are applicable, in relation to a request under this section.
- (4) Evidence taken by the Commission under this section may be transmitted to the securities commission or exchange or other body on whose behalf the request was made in such manner as the Commission thinks fit.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):

873. Where international arrangements between agencies are in place, assistance in a timely, constructive and effective manner is able to be provided, for example, the Police is a member of Interpol; the Customs Service are a member of the Oceania Customs Organization and the World Customs Organization. Both networks provide systems and processes for exchange of information. However, where an agency is not aligned internationally under a formal arrangement, assistance will depend on requests between domestic agencies (e.g. the police Interpol office being requested to access company records), in which case assistance may not be available in a timely, constructive and effective manner. No information was provided to support effectiveness under this criteria.

Clear and Effective Gateways for Exchange of Information between Counterparts (c. 40.2):

874. Examples of existing gateways include Interpol's I-24/7 network access, and the Transnational Crime Unit Pacific TCU intelligence network access. The Customs Service is also linked through various international counterpart organizations, and this includes clear networks for exchange of information. However, further examples of international gateways for the prompt and constructive exchange of information between counterpart agencies are limited.

875. The Securities Commission is a member of IOSCO.

876. The Office of the Insurance Commission is a member of the International Association of Insurance Supervisor (IAIS) and is in the process of adopting their "Insurance Core Principles" (ICP), including ICP 28 relating AML/CFT. The Office of the Insurance Commission is working towards

signing the IAIS Multilateral Memorandum of Understanding (MMOU) with its counterparts to ensure easy sharing of information with one another.

877. The BPNG is also a member of the IAIS, which assists with sharing information with other life insurance regulators. BPNG is not yet a signatory to the MMOU on information sharing.

Spontaneous Exchange of Information (c. 40.3):

878. There was no information provided to indicate that spontaneous exchange of information is occurring between PNG institutions and their counterparts in other countries. However, the legal framework will generally allow for this to occur.

879. Enabling provisions for the Securities Commission to cooperate with foreign counterparts are very extensive and clearly provide for the Commission to exchange information spontaneously and upon request, and in relation to both ML and the underlying predicate offences.

880. There is no limitation on the scope of agreements which BPNG may enter into under the Central Bank Act which would block exchanges of information spontaneously and upon request, and in relation to both ML and the underlying predicate offences.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):

881. There is no legislative impediment to this occurring, provided that coercive powers are not required, and provided that sufficient resources are available.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

882. Although there is nothing in the Act to specifically enable the FIU to conduct enquiries on behalf of foreign counterparts, officials advise that there is no legal impediment to this, and that this would be simply a matter of having sufficient resources to respond to requests in a timely manner. This is also the reasoning underlying the conclusion of the memorandum of understanding entered with the Solomon Islands FIU.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

883. Similarly, investigations can be conducted on behalf of foreign counterparts, provided that these do not require the use of coercive powers, in which case the provisions of the *MACMA* would be called upon and require a formal request for assistance. In the case of the securities sector, it is clear that the Securities Commission could conduct investigations on behalf of foreign counterparts.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

884. Any conditions would be determined on a case by case basis. A common condition would be reciprocity and a prohibition on third party disclosure without prior consent, which conditions do not appear disproportionate or unduly restrictive.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

885. The secrecy provisions contained in the *Income Tax Act* would prevent the sharing of tax / fiscal information regarding individuals, but this does not imply that the provision of assistance is conditional upon the fact that fiscal matters may be involved.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

886. Assistance by way of providing information would be limited in these circumstances, but if the matter was sufficiently serious, then the ML offence may provide a means of reviewing the existence of domestic offences under which an investigation could be managed.

Safeguards in Use of Exchanged Information (c. 40.9):

887. PNG does not have a privacy code, but the general rules applicable to the protection of information held domestically by agencies applies equally to information that is passed to an agency from an international counterpart.

SPECIAL RECOMMENDATION V

Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5):

888. All of the above arrangements pertaining to recommendation 40 apply equally to investigations of terrorist activities, including terrorist financing.

Statistics (R.32)

889. No statistics were available to demonstrate effective implementation of agency to agency international cooperation.

Effectiveness

890. Competent authorities in PNG demonstrate a willingness to cooperate with foreign counterparts. There are various mechanisms in place (bilateral and multilateral agreements) for information sharing and cooperation on regulatory, legal and law enforcement matters that support effective AML/CFT implementation.

891. A key impediment faced by Papua New Guinea is impediments to information sharing by other FIUs. The PNG FIU has faced challenges in receiving cooperation from strategically important FIUs in the region, despite agreeing to enter into MoUs. This undermines effectiveness, although it is beyond the control of PNG.

6.5.2. Recommendations and Comments

892. Within the Pacific Forum countries there is a network of cooperation under the various leaders declarations, and this should be further developed, including by the FIU and financial sector agencies entering memorandum of understandings with Pacific Forum countries.

893. Regulatory authorities should ensure that their arrangements and mechanisms for international cooperation with foreign counterparts are able to address AML/CFT issues

894. While there are established mechanisms for law enforcement and customs to provide informal assistance, the domestic situation in PNG impedes domestic cross agency cooperation and therefore impacts on the effectiveness of these established mechanisms. Any measures to address the domestic environment will assist with international level cooperation.

895. The FIU should pursue further international cooperation, including additional agreements for information sharing with strategically relevant FIUs in the region.

896. The government should ensure the FIU has adequate human resources to undertake the necessary work to negotiate and enter into bilateral agreements with foreign FIUs and AML/CFT regulators and that secrecy and confidentiality laws do not impede the cross border sharing of information.

897. Law enforcement agencies should ensure that INTERPOL and other channels for police to police cooperation are effectively used to support ML/TF investigations.

898. Customs and tax authorities should ensure that they are able to effectively share information with foreign counterparts on AML issues.

899. Financial sector supervisors appear to have the legal basis for providing informal assistance, but the effectiveness of this remains untested.

900. BPNG should become a party to the IAIS MMOU to assist with sharing information with other life insurance regulators.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R 40	LC	<ul style="list-style-type: none"> Effectiveness not demonstrated
SR.V	PC	Effectiveness not demonstrated

OTHER ISSUES

7.1 Resources and Statistics

	Rating	Summary of factors relative Recommendations 30 and 32 and underlying overall rating
R.30	NC	<ul style="list-style-type: none">• The FIU has insufficient resources to carry out its financial intelligence function, let alone its supervisory role under the <i>POCA</i>• The Securities Commission has a severe lack of resources for fulfilling its regulatory functions
R.32	NC	<ul style="list-style-type: none">• There is an overall lack of meaningful statistics to support operational or policy related AML/CFT activities in PNG

7.2 Other relevant AML/CFT measures or issues

901. PNG presents several features that constitute both a ML risk and important challenges in the design and implementation of an effective AML/CFT regime.

902. PNG continues to face pervasive corruption. Officials and civil society note that there is an environment of impunity, where case of large-scale corruption and misappropriation of public funds appear to take place largely without consequences. Recent moves to undermine the power of the Ombudsman Commission, for example, illustrate the lack of leadership to support processes where parliamentarians and senior officials are called to account for abuse of public finances.

903. There is an absence of political level commitment to implement effectively an AML system that can be used to go after corruption. In addition to constituting a significant ML risk, this situation creates structural weaknesses which may impede the effectiveness of the AML/CFT regime.

7.2.2 Recommended Action

904. Authorities should ensure national counter-corruption efforts include strategies to address structural weaknesses which pervasive corruption brings to the effectiveness of the AML/CFT regime and complete an ML/TF risk-assessment of PNG.

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating³¹
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • Uncertainty as to the applicability of the ML offence to certain categories of offences not defined as crimes and to foreign crimes • Not all categories of offences- arms trafficking and human trafficking- currently criminalized under PNG law • Effectiveness not demonstrated
2. ML offense—mental element and corporate liability	PC	<ul style="list-style-type: none"> • Effectiveness of sanctions not demonstrated • Fines not proportionate or dissuasive
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Deficiencies in tracing powers • Lack of demonstrated effectiveness and use of the confiscation provisions
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • Unclear legal framework for disclosure and sharing of information
5. Customer due diligence	NC	<ul style="list-style-type: none"> • CDD requirements are not enforceable • Prohibition against anonymous accounts establishment or maintenance of anonymous accounts is absent. • Requirements regarding establishing and verifying identity, as well as the form of CDD requirements of different types of persons (ie. trustees, directors, etc.) and documenting powers of legal persons and arrangements are deficient and vague. • There is no clear or enforceable requirement to identify beneficial owners, understand the ownership/control structure, or understand who ultimately exercises effective control over a legal person or arrangement. • There is no requirement to obtain documentation to understand the nature or purpose of the business relationship. • No requirement to conduct on-going due diligence. • There are no enforceable provisions to ensure compliance with enhanced due diligence measures for higher risk customers. • Requirements to conduct CDD prior to account opening or executing transactions are not enforceable. • No enforceable requirement obliges cash dealers to apply CDD measures to existing customers, or accounts which may be

³¹ These factors are only required to be set out when the rating is less than Compliant.

		<p>anonymous.</p> <ul style="list-style-type: none"> • Effective implementation of CDD measures has not been tested through comprehensive supervision
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There is no requirement to identify foreign PEPs. • No requirement for senior management approval to establish a business relationship with a foreign PEP. • No requirement to take reasonable measures to establish the source and wealth of foreign PEPs. • No provisions require ongoing monitoring of transactions of foreign PEPs.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There are no laws, regulation or other enforceable means which require financial institutions to: implement risk control measures for correspondent relationships, nor gather information on correspondent relationships or to obtain a copy of any correspondent institution's internal AML/CFT controls or assess them for effectiveness • There is no requirement in law, regulation or other enforceable means to document the respective AML/CFT responsibilities of correspondent relations.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through misuse of technologies.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> • Lack of clear obligation which holds reporting entities solely responsible for full compliance with all elements of CDD with respect to each customer, • lack of AML/CFT regulatory controls on the operation of third parties
10. Record-keeping	PC	<ul style="list-style-type: none"> • Business correspondence is not clearly covered in <i>POCA</i> obligations • Ambiguity in the law on the distinction between what constitutes 'transaction records' and what constitutes 'other client file documentation' will lead to ineffective implementation and uneven enforcement of records maintenance requirements. • A lack of supervision across the financial sector means that effective implementation cannot be confirmed.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There are no provisions for monitoring of transactions under the Proceeds of Crime Act • Financial institutions are not required to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose • Financial institutions are not required to examine as far as possible the background and purpose of any such transaction, to document their findings and to keep these findings available for competent authorities • Other than the banks, there is no implementation of monitoring measures in the non-bank financial sector
12. DNFBP-R.5,	NC	<ul style="list-style-type: none"> • Although DNFBPs, with the exception of trust and company

6, 8–11		service providers, are subject to <i>POCA</i> obligations, no AML obligations have yet been implemented in any DNFBP sectors.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • The scope of predicate offences covered by the STR reporting obligation does not fully include human trafficking and arms trafficking • Scope of implementation – direction only given to banking sector to implement STR obligations • Lack of effective implementation among institutions other than banks • The rate of STR reporting, even amongst the banks, does not reflect the extreme levels of profit driven crime in PNG.
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> • Taking into account the corruption environment and the lack of effective supervision of the obligation, effectiveness cannot be confirmed.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • Implementation of internal controls has occurred beyond the banking sector and post office. • No requirement to establish and maintain comprehensive AML/CFT procedures, policies and controls. • Develop appropriate compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level. • No requirement for well resourced and independent audit function to test AML/CFT compliance. • No requirement for screening new employees to ensure high standards when hiring employees. • Limited supervision has not been undertaken to test effectiveness of implementation and this is only in the banking sector.
16. DNFBP– R.13–15 & 21	NC	<ul style="list-style-type: none"> • While all DNFBPs, with the exception of trust and company service providers, are covered by legal obligations in the <i>POCA</i>, they do not appear to be aware of the reporting or internal control requirements and are not taking steps to implement their obligations. • There is no effective implementation in any DNFBP sector.
17. Sanctions	NC	<ul style="list-style-type: none"> • Effective, proportionate and dissuasive criminal and administrative sanctions are not available • It is not clear that the FIU, BPNG or Securities Commission is designated to implement administrative sanctions for AML breaches • It is not clear that sanctions are applicable to directors and senior management of financial institutions • Effectiveness has not been demonstrated
18. Shell banks	NC	<ul style="list-style-type: none"> • No clear legal requirement for banks to have a physical presence in the country • No prohibition from banks in PNG entering into or maintaining correspondent relationships with shell banks • No requirement for banks to satisfy themselves that respondent institutions are not, themselves, in a correspondent relationship with a shell bank.

19. Other forms of reporting	C	<ul style="list-style-type: none"> • This recommendation is fully observed
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This recommendation is fully observed
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • No requirement to give special attention to transactions with persons in countries that do not sufficiently apply FATF Recommendations • No obligation to examine transactions with no apparent or visible lawful purpose from non-compliant jurisdictions • No effective means to inform financial institutions or establish counter-measures
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • No obligations on foreign branches or subsidiaries of PNG financial institutions to apply AML/CFT measures consistent with PNG's requirements. • No obligations to apply the higher standards of AML/CFT obligations in cases where the home and host country differ.
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • Legal basis for supervision and monitoring compliance with AML/CFT obligations beyond reporting obligations is unclear. • Existing laws and regulations are not clear with respect to which supervisory authorities are responsible for monitoring compliance with AML obligations in financial sector entities. • Although the BPNG applies fit and proper criteria as a part of licensing procedures with respect to entities under their supervision regarding officers and directors, this is not done with respect to majority shareholders, managers or beneficial owners. • With respect to the insurance sector, a fit and proper test is applied to insurance companies, brokers and loss adjusters, but not in respect of AML/CFT concerns to ensure that criminals or their associates are prevented from owning or occupying positions of influence in entities in this sector. • There is no public supervisory authority that is responsible for licensing capital market intermediaries. • Supervisory and licensing framework for money remitters does not exist in enforceable law or regulation, or other enforceable means. • Money remitters are not subject to effective compliance supervision with respect to AML obligations. • Although on-site inspections by BPNG of banks have been conducted to monitor compliance with AML obligations, no on-site inspections have yet been conducted in any other entities subject to AML obligations, and no sanctions for non-compliance have been imposed.
24. DNFBP— regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • Although DNFBPs, with the exception of trust and company service providers, are subject to <i>POCA</i> obligations, no AML obligations have yet been implemented in any DNFBP sectors. • No DNFBPs are subject to any supervision, regulation or compliance monitoring for AML obligations.

25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • Guidance and feedback only given to banks • Guidance for NBFIs remains in draft form • Guidance for STRs does not address terrorist financing • At the time of the onsite, limited guidelines had been issued by authorities in respect of AML/CFT requirements, but these had not been extended to NBFIs • Guidelines for DNFBPs have been prepared, but remain in draft form
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • Insufficient resources for FIU to fulfil its statutory function • Lack of dissemination of financial intelligence to investigative or other agencies • Inadequate statutory controls on storage, use and dissemination of financial information reported to the FIU • Inadequate access to wider government agency information • FIU does not have industry knowledge, capacity or sector expertise for AML/CFT supervisory role • Potential for undue influence of FIU staff • Inadequate statistical information concerning AML/CFT activities within FIU • Insufficient public reports on AML/CFT statistics, typologies or trends
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • Uncertainty over responsibility for investigating money laundering • Very limited money laundering investigations or prosecutions • Systemic corruption undermines police ability to properly investigate ML or FT
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> • <i>POCA</i> powers unduly restricted • <i>Search Act</i> powers outdated and limited in application • Effectiveness not demonstrated
29. Supervisors	NC	<ul style="list-style-type: none"> • Supervisory authorities lack adequate powers to monitor and ensure compliance by financial institutions. • There are no provisions in law, regulation or other enforceable means giving supervisors adequate powers to supervise, regulate, monitor compliance or impose penalties for non-compliance with AML obligations.
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> • The FIU has insufficient resources to carry out its financial intelligence function, let alone its supervisory role under the <i>POCA</i> • The Securities Commission has a severe lack of resources for fulfilling its regulatory functions
31. National co-operation	PC	<ul style="list-style-type: none"> • No formally established AML/CFT coordinating committee • A lack of effective mechanisms for coordinating activities between regulatory agencies • Lack of interagency coordination of competent authorities involved in AML/CFT has undermined effectiveness • Effectiveness not demonstrated
32. Statistics	NC	<ul style="list-style-type: none"> • Interagency coordinating mechanisms have not been used to

		<p>review the effectiveness of the national AML/CFT system on a regular basis</p> <ul style="list-style-type: none"> • There is an overall lack of meaningful statistics to support operational or policy related AML/CFT activities in PNG
33. Legal persons– beneficial owners	PC	<ul style="list-style-type: none"> • Access to the information held by the registry is cumbersome • Information in the registry often unreliable • Limited effectiveness of Companies Act and Association Act • Beneficial ownership information not available in cases of foreign corporate shareholdings
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> • No procedure for gathering information on settlors, trustees and beneficiaries of private trusts
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Vienna and Palermo conventions not ratified and not fully implemented
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • Deficiencies in the scope of the ML offence • Limited investigative measures • No consideration given to devising a mechanism for determining the most appropriate venue. • Little demonstrated effectiveness
37. Dual criminality	LC	<ul style="list-style-type: none"> • Little demonstrated effectiveness
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Range of provisional measures upon foreign request not complete • No demonstrated effectiveness
39. Extradition	LC	<ul style="list-style-type: none"> • No demonstrated effectiveness
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> • Effectiveness not demonstrated
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • No procedure for distribution of 1267 lists • Domestic designation process deficient • Weaknesses in implementation of TF Convention.
SR.II Criminalize terrorist financing	PC	<ul style="list-style-type: none"> • Definition of support unclear • Coverage of “terrorist act” not sufficiently wide • Financing of individual terrorist not criminalized
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • There is currently no system in place allowing for the freezing of UNSC designated persons and entities • The domestic system for designation does not provide for the freezing of assets of entities so designated • No directions given to financial institutions to check for matches with the 1267 lists
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Scope of implementation – direction only given to banking sector to implement STR obligations • There are gaps in the definition of terrorist financing • There is currently a monetary threshold on the reporting of suspicion of FT involving legitimate funds
SR.V International cooperation	PC	<ul style="list-style-type: none"> • Deficiencies in the scope of the FT offence • Limited investigative measures

		<ul style="list-style-type: none"> • No demonstrated effectiveness
SR.VI AML/CFT requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • No adequate regulation or supervision of remittance providers
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • <i>POCA</i> recordkeeping requirement does not cover retention of wire transfer transaction data received by an intermediary bank that does not contain full originator information • Obligations concerning a risk-based approach for how financial institutions should deal with wire transfer transactions lacking full originator information when received by beneficiary banks is lacking. • Lack of supervision across the financial sector means that effective implementation cannot be confirmed.
SR.VIII Non-profit organizations	NC	<ul style="list-style-type: none"> • No effective registration of NPOs • No review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for FT. • No effective monitoring mechanism for NPOs including the registration of NPOs and the ability to monitor sources of funds for NPOs. • No measures in place to sanction violations of oversight rules by NPOs • No outreach or awareness raising
SR.IX Cross-Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • No AML/CFT border currency reporting system in place • No information available to FIU concerning cross border currency movements • No statistics available on reports made under foreign currency controls • No training for border enforcement staff on SRIX systems

TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	<p>Investigative authorities should develop their capacity to “follow the money” and investigate ML offences in parallel with predicate offences.</p> <p>Consider amending the current provision on ML in the <i>POCA</i> to refer to “proceeds of unlawful activity” rather than proceeds of crime. Unlawful activity in section 3 should be amended to make reference to an indictable or foreign indictable offence.</p> <p>Comprehensively criminalize arms trafficking and trafficking in human beings and include those offences as predicate offences.</p> <p>FIU and other investigative and prosecutorial authorities should enhance their focus on the proceeds of unlawful activity, rather than concentrating solely on the unlawful activity itself (see further under 2.7) and charge ML offences in all cases involving significant profit generating crime.</p> <p>Additional resources should be made available to the FIU and other investigative agencies for dealing with ML investigations as a matter of priority.</p> <p>Increase the fines for money laundering so they are commensurate with the prison terms and dissuasive given the amounts of proceeds generated</p>
2.2 Criminalization of Terrorist Financing (SR.II)	<p>PNG authorities should criminalise the financing of an individual terrorist.</p> <p>Make explicit in the ISA that support for terrorism includes the collections of funds for terrorism.</p> <p>Terrorism should be defined so as to explicitly incorporate the acts listed in the UN instruments mentioned in the annex to the FT Convention.</p>
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	<p>Ensure relevant agencies, particularly the FIU and the National Fraud and Anti Corruption Directorate, are sufficiently resourced to be able to gather that evidence and follow up on it by mounting investigations and bringing charges, focusing on the money flows and ensuring their return to the public purse.</p> <p>Develop the capacity of investigative and prosecutorial authorities to “follow the money” and take proceeds of crime action whenever investigating a predicate offence.</p>
2.4 Freezing of funds used for terrorist financing (SR.III)	<p>Ministry of Foreign Affairs and implementing agencies should develop and implement policies and procedures to implement the relevant UNSCRs.</p> <p>Establish the legislative framework ensuring the immediate freezing of funds belonging to persons or entities designated under UNSCR 1267 and ensuring the distribution of the lists of persons and entities so designated among financial institutions. The obligation for financial institutions to freeze should be enforceable by financial supervisors.</p> <p>ISA should be amended to ensure the freezing of all assets belonging to organizations declared proscribed, including a detailed procedure for de-listing</p>

	<p>requests, to enable designating individuals as terrorists and to enlarge the scope of the terrorist offence</p> <p>Under both systems procedures should be provided for allowing access to funds for humanitarian purposes.</p>
<p>2.5 The Financial Intelligence Unit and its functions (R.26)</p>	<p>Delays by the Commissioner of Police in formalizing the structure of the National Fraud and Anti-Corruption Directorate, and also therefore the structure of the FIU, are a significant impediment to the ability of the FIU - establishing a formal structure should be a priority for the PNG government.</p> <p>The current resourcing of the FIU should be reviewed and a commitment given to ensuring that this situation is urgently addressed.</p> <p>The FIU should implement a suitable data management and analysis system to support the analysis function.</p> <p>It is recommended that the lead AML/CFT supervisory role be taken on by the relevant prudential supervisory agencies for each of the financial sectors.</p> <p>The FIU should be protected from undue influence and interference, through some form of independent review process so that staff will not be unfairly or improperly dismissed from police when properly preparing financial intelligence or conducting investigations.</p> <p>The Government should support the independent operation of a well resourced FIU as part of a national strategy to combat corruption and other profit driven crime.</p> <p>Improved statutory and operational controls are required to ensure that FIU information is effectively protected from misuse.</p> <p>The FIU should, as a matter of priority, seek to ensure dissemination of financial intelligence to relevant agencies, and to retain statistics on this.</p> <p>The FIU should have adequate access to government held information.</p> <p>Formal arrangements between the FIU and relevant agencies, including the IRC and the IPA, should be entered to clarify the process for access to information.</p> <p>The FIU should establish a process for collection of comprehensive statistics on its activities to assist the FIU to demonstrate effectiveness, and better enable feedback and typologies reporting.</p> <p>The FIU should consider an annual report on its AML/CFT activities, and this may include information on staffing and resources, key priorities, and objectives for the FIU.</p> <p>The FIU should extend the number of formal memorandum of understandings that it has, particularly with other Pacific Islands Forum member countries (the FIU has entered an MOU with the Solomon Islands FIU) and other key regional FIUs.</p> <p>The FIU should continue to pursue the application for membership of the Egmont Group.</p>
<p>2.6 Law enforcement, prosecution and</p>	<p>PNG must take positive steps to clearly identify and articulate the police responsibility to investigate money laundering, and police should actively pursue money laundering investigations.</p>

other competent authorities (R.27 & 28)	PNG should update outdated search warrant powers, to ensure police have effective statutory powers to investigate money laundering, financing of terrorism and underlying predicate offences.
2.7 Cross-Border Declaration & Disclosure (SR IX)	PNG should develop and implement a comprehensive system for the declaration or disclosure for cross border transportation of cash or BNI in keeping with the FATF standards.
3. Preventive Measures–Financial Institutions	
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>All financial institutions should be alerted of their obligations under the <i>POCA</i> and required to commence CDD and other AML/CFT controls in keeping with their legal obligation.</p> <p>Ensure that CDD obligations are implemented through effective, risk-based supervision, regulatory and monitoring systems by adequately resourced supervising agencies.</p> <p>Include the following obligations on all reporting parties in law or regulation:</p> <ul style="list-style-type: none"> • Prohibit opening and maintaining anonymous accounts. • Improve requirements for when CDD measures must be undertaken. • Improve customer identity verification requirements, particularly for legal persons. • Require financial institutions identify beneficial owners of corporations, and other forms of legal persons and arrangements. • Require financial institutions conduct on-going due diligence of customers because customers which are honest today may turn to criminal activities in the future. <p>Issue enforceable instructions to:</p> <ul style="list-style-type: none"> • Require collection of CDD information and data so that financial institutions have a clear understanding of the expected transaction profile of customers, in order to be able to identify usual transactions which is necessary to be able to identify suspicious transactions. • Clarify requirements for obligatory enhanced due diligence measures. • Require financial institutions to apply CDD obligations which meet international standards to existing customers on a risk sensitive basis, and stipulate a deadline for full compliance. <p>Clarify or eliminate the “reasonable excuse” exception to CDD requirements in <i>POCA</i> 20(6) and 21(1) to ensure concrete CDD obligations, including when an exception would apply. This is necessary clarify cash dealers’ internal control obligations, and to enable supervisory officials to effectively enforce the CDD requirements in a way that is predictable, rather than discretionary, and subject easily to abuse.</p> <p>Issue enforceable instructions to require all reporting parties to:</p> <ul style="list-style-type: none"> • Implement risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • Obtain senior management approval for establishing business

	<p>relationships with a PEP.</p> <ul style="list-style-type: none"> • Take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP. • Conduct enhanced ongoing monitoring on PEPs. <p>Consider modifying <i>POCA</i> 20(8) which affirmatively states no due diligence measures are necessary when the client/counterpart is a cash dealer, and issue enforceable instructions to require those institutions pursuing cross-border correspondent banking and other similar relationships relevant reporting parties to:</p> <ul style="list-style-type: none"> • Gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to an ML or FT investigation or regulatory action. • Assess the respondent institution’s AML/CFT controls, and ascertain that they are adequate and effective. • Obtain approval from senior management before establishing new correspondent relationships and document the respective AML/CFT responsibilities of each institution. <p>Issue enforceable instructions to require all reporting parties to:</p> <ul style="list-style-type: none"> • Take such measures to prevent the misuse of technological developments in ML or FT schemes. • Take measures to mitigate risks associated with non-face-to-face business relationships or transactions. • Manage the risks to effective CDD procedures that from non-face-to-face customers.
<p>3.3 Third parties and introduced business (R.9)</p>	<p>Provide for comprehensive controls in the case of reliance on intermediaries or other third parties.</p> <p>Require institutions relying on agents or brokers to obtain CDD information is able to obtain from the agent or broker full CDD information upon request and without delay in cases where insurance companies or securities companies rely on agents or brokers to provide financial services directly to clients, where general client files are physically maintained by the agent or broker, rather than at the corporate headquarters.</p> <p>Require that the main financial institution takes steps to ensure that the agents and brokers have adequate CDD control requirements in place and that they are subject to supervision and prudential regulation.</p>
<p>3.4 Financial institution secrecy or confidentiality (R.4)</p>	<p>Clarify the legal frameworks for disclosure and sharing of information between all authorities with AML/CFT responsibilities.</p>
<p>3.5 Record keeping and wire transfer rules (R.10 & SR.VII)</p>	<p>The <i>POCA</i> should include a clear obligation to retain records of business correspondence.</p> <p>As the international standards require separate records maintenance time periods for ‘transaction records,’ as opposed to ‘other types’ of CDD documentation (ie., identity and other KYC documents), it is necessary to clearly distinguish these 2</p>

	<p>categories of documents to eliminate confusion on the required maintenance period for purposes of implementation and compliance monitoring.</p> <p>PNG should ensure that comprehensive AML/CFT supervision is undertaken across the financial sector to ensure implementation of record keeping and SR VII requirements.</p> <p>Requirements for including full originator information in wire transfers should be obligatory as a general rule, to wire transactions equal to or greater than K3,000 (US\$1,162), whether sent as an out-going transfer, received by a beneficiary bank as an incoming transfer, or received as an intermediary bank.</p> <p>There should be an obligation for financial institutions to implement a risk-based approach in dealing with incoming wire transfers which lack sufficient originator information from financial institutions fail to meet SR VII obligations.</p>
<p>3.6 Monitoring of transactions and relationships (R.11 & 21)</p>	<p>Issue enforceable regulations:</p> <ul style="list-style-type: none"> • Requiring that financial institutions pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. • Requiring financial institutions to examine as far as possible the background and purpose of any such unusual transactions; to document their findings and to keep these findings available for competent authorities for at least five years. <p>Establish means to inform financial institutions of concerns about weaknesses in the AML/CFT systems of other countries and to enact countermeasures against such countries.</p>
<p>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)</p>	<p>Issue regulations under the <i>POCA</i> to enhance the definition of serious offence to bring the STR reporting obligation into line with the international standards. This should include coverage of predicate offences and reporting of all suspicions of terrorist financing, regardless of any monetary thresholds.</p> <p>Extend implementation of the STR reporting provisions to non-bank financial institutions</p> <p>Clarify the definition of serious offences to read “punishable by at least 3 years”.</p> <p>Issue STR reporting guidelines to cover NBFIs</p> <p>Commence supervision of cash dealers to ensure compliance with STR reporting obligations to ensure effective implementation.</p> <p>Provide further feedback to cash dealers on STRs to support more effective implementation.</p> <p>The draft <i>guideline on Due Diligence in Relation to Government Cheques and Payments</i> should be extended to all financial institutions and should reiterate the need to file an STR when a financial institution is unable to satisfactorily complete CDD and chooses to not continue with a transaction or relationship. This should be rectified as a matter of priority.</p> <p>Once resources are available, further feedback should be provided from the FIU to reporting institutions to support improved reporting.</p> <p>Once further resources are available, the prioritization of STR reporting on</p>

	<p>government sector corruption should be expanded to other high-risk sectors, including proceeds from illegal logging, fraud, drug trafficking, arms trafficking, human trafficking and other crimes prevalent in PNG.</p>
<p>3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p>Financial institutions should be required to:</p> <ul style="list-style-type: none"> • Establish and maintain AML/CFT procedures, policies and controls to cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligations. • Develop appropriate compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level. • ensure compliance officers have access to necessary information to vet unusual and suspicious transactions • Maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls. • establish ongoing employee training across all relevant elements of AML/CFT • Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees. <p>Regulators should require PNG financial institutions to:</p> <ul style="list-style-type: none"> • Ensure that foreign branches or subsidiaries apply AML/CFT measures consistent with PNG’s requirements. • Pay particular attention to ensure that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations are applying PNG AML/CFT requirements. • Apply the higher standard in cases where the minimum AML/CFT requirements of the home and host countries differ.
<p>3.9 Shell banks (R.18)</p>	<p>PNG should issue binding rules or obligations on banks in PNG to:</p> <ul style="list-style-type: none"> • Prohibit the formation and operation of shell banks in PNG • Prohibit banks in PNG from entering into or maintaining correspondent relationships with shell banks • Satisfy themselves that correspondent institutions are not, in a correspondent relationship with a shell bank.
<p>3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)</p>	<p>Implementation of AML/CFT obligations and associated regulation, supervision and monitoring should be rolled out to other reporting sectors beyond the banking sector. This should be prioritized on the basis of a risk-based approach.</p> <p>Establish a clear statutory basis for supervision, monitoring and enforcement of all AML/CFT preventative measures, beyond STR/CTR reporting.</p> <p>Apply prudential regulations to those institutions subject to the Core Principles which are also relevant to AML/CFT purposes. These should include (i) licensing and structure; (ii) risk management processes to identify measure, monitor and control material risks; (iii) ongoing supervision and (iv) global consolidated supervision.</p> <p>Ensure the Securities Commission has an adequate legal framework to engage in supervision, regulation and oversight of the securities market.</p> <p>Ensure the Securities Commission has adequate human and financial resources to</p>

	<p>effectively supervise and regulate the sector.</p> <p>The Securities Commissioner should be given enhanced regulatory, supervisory and sanctioning powers and adequate resources to cover all capital market intermediaries in comprehensive supervision, including for AML/CFT.</p> <p>The designation of the FIU as the sole supervisory authority under the <i>POCA</i> is not matched by adequate resources and capacity to perform the function.</p> <ul style="list-style-type: none"> • Given the lack of resources in the FIU, all regulators should be empowered by statute and/or regulation to supervise, monitor and enforce compliance with AML/CFT measures. • While the FIU is the only clearly designated supervisory authority for <i>POCA</i> provisions, ensure that the FIU has adequate staff to perform its function as regulator/supervisor under the <i>POCA</i>. <p>There is a need for greater involvement by sector-specific regulators in the production of regulatory guidance for each sector. This would improve the regulatory guidance within each sector as supervisory authorities have a deeper understanding of the financial services and products as well as how these may be abused by criminals.</p> <ul style="list-style-type: none"> • Existing supervisory authorities should directly contribute to the FIU issued sector-specific guidance on effective implementation of preventative measures. <p>The ability of the BPNG to manage financial sector risks and enforce compliance with AML/CFT obligations under its prudential authority is deficient, as this power is currently with the FIU.</p> <ul style="list-style-type: none"> • Greater cooperation between the FIU and BPNG and clearer regulatory powers of both are recommended to coordinate AML/CFT supervision. <p>Enhance procedures and specialist capacity for AML/CFT supervision across all supervisory agencies, including:</p> <ul style="list-style-type: none"> • Develop supervision manuals for AML/CFT supervision of all relevant sectors. • Increase training and skill development for supervisory staff in all relevant agencies. <p>Address gaps in AML/CFT controls with licensing of financial institutions:</p> <ul style="list-style-type: none"> • Ensure that fit and proper criteria, including criminal background checks, are applied to managers, majority shareholders and beneficial owners of financial institutions. • Clarify the licensing or registration requirements and regulatory regime to which money remitters are subject, including the fit and proper test to which they are subject. <p>Address risks associated with vertical integration of securities exchange, key market intermediaries and businesses in high-risk sectors including forestry, in PNG.</p> <ul style="list-style-type: none"> • Ensure effective, proportionate and dissuasive criminal and administrative sanctions are available • Ensure supervisors have authority to impose administrative (including monetary) penalties without resort to the courts
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	<ul style="list-style-type: none"> • Clarify by regulation that BPNG is designated to implement administrative sanctions for breaches of the <i>POCA</i> • Ensure that sanctions are applicable to directors and senior management of financial institutions for breaches of AML/CFT requirements. • Implement available sanctions to support improved compliance with AML/CFT obligations.
3.11 Money value transfer services (SR.VI)	<p>PNG authorities should ensure that:</p> <ul style="list-style-type: none"> • remittance service providers implement <i>POCA</i> provisions • effective guidance is provided to remittance service providers • supervision of remittance providers should include AML/CFT compliance • effective sanctions should be used to support supervision of the sector
4. Preventive Measures–Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<p>Ensure all CDD requirements pursuant to international standard are mandatory, assessable and enforceable obligations of all DNFBPs</p> <p>Ensure requirements consistent with international standards are adopted to require DNFBPs to mitigate risks in relation to:</p> <ul style="list-style-type: none"> - PEP customers and transactions - new technologies and non-face-to-face transactions - transactions involving intermediaries and 3rd parties <p>Ensure all DNFBPs are subject to recordkeeping obligations and are required to give special attention to transactions which are unusually large, complex and appear to lack lawful or economic purpose.</p> <p>Ensure DNFBPs are subject to effective supervision, regulation and compliance monitoring in respect of all AML/CFT.</p> <p>Ensure an authority with sufficient capacity can issue Guidelines specifically tailored to DNFBPs and provide feedback when necessary on implementation issues.</p>
4.2 Suspicious transaction reporting (R.16)	<p>Ensure that obligations for monitoring, STR reporting, internal controls and sanctions are included in the <i>POCA</i> are applicable to the DNFBPs present in PNG.</p> <p>DNFBPs should be notified of their obligations under the <i>POCA</i> and supported in implementing those provisions through support of SROs.</p> <p>The FIU should be adequately resourced to take on this regulatory and supervisory task for DNFBPs and the subsequent increase in STRs received.</p> <p>Although there are no casinos licensed in PNG at present, authorities should prepare enforceable AML/CFT regulations and practical guidelines to ensure that when the planned casino is licensed under the <i>Gaming Control Act</i> it is not able to be abused for ML in PNG</p>
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<p>AML supervision, regulation and compliance monitoring of the DNFBP sector is not effective. Serious attention by policy level officials is needed to consider a system which can be more effective within the PNG environment, and dedicate resources to serious improvements in the legal framework, supervision,</p>

	<p>regulation, and compliance monitoring.</p> <p>The legal framework needs improvement to enable supervisory enforcement of AML/CFT obligations throughout the DNFBP sector and the ability to monitor compliance and enforce penalties and fines in instances of non-compliance.</p> <p>PNG should conduct a risk analysis to identify the categories of DNFBPs which should be given priority to enforce AML/CFT requirements.</p> <p>Discussions should be undertaken with the regulators and SROs of the DNFBP sectors to determine the extent of their role in monitoring and ensuring compliance and to raise awareness of AML/CFT obligations on each sector. Given the extremely heavy workload of the FIU, the government should closely consider which agency should be responsible for AML/CFT supervision of DNFBP sectors.</p> <p>AML/CFT guidance should be issued for each of the DNFBP sector to reflect specific ML/TF risks in each sector.</p>
4.4 Other non-financial businesses & professions (R.20)	Consider inclusion of motor vehicles dealers as reporting parties, given the noted risks for ML through investment in vehicles in PNG.
5. Legal Persons and Arrangements & Non Profit Organizations	
5.1 Legal Persons– Access to beneficial ownership and control information (R.33)	<p>The Registrar of Companies should consider ways in which law enforcement authorities be granted more immediate access to company information.</p> <p>Consider amending <i>Companies Act</i> to allow for the imposition of administrative fines by the Registrar in cases in which companies do not comply with their obligations to provide information to the Registrar.</p> <p>Consider ways to prevent companies/associations controlled by persons involved in companies previously deregistered from being registered and to ensure a PNG national is not fronting on behalf of a foreigner, whether by requesting further information from those individuals or conducting checks against historical records in the Company Registry. In addition particularly the activities and financial statements of the associations should be subjected to more scrutiny.</p> <p>Allow the Registrar to undertake more thorough due diligence and take action in respect of the natural persons related to companies and associations registered.</p> <p>Authorities should consider substantially increasing resources of the IPA. To ensure a greater degree of compliance penalties for registering inaccurate or false information in respect of associations and ILGs need to be increased.</p> <p>Authorities should consider submitting the amendments of the <i>ILG Act</i> as proposed to Parliament to ensure more equitable use and distribution of the profits yielded by land held by customary groups to all members of the group.</p> <p>Authorities should ensure to gather information on the natural persons that are significant shareholders of foreign companies that are shareholders in companies registered in PNG.</p>
5.2 Legal Arrangements– Access to beneficial ownership & control	Authorities should establish a process to ensure there is systematic collection of beneficial ownership information on trusts, e.g. by requiring those that professionally act as trustees (lawyers and others) to collect all relevant information on the settler and the beneficiary.

information (R.34)	
5.3 Non-profit organizations (SR.VIII)	<p>Undertake a review of the adequacy of existing laws and regulations that relate to non-profit organizations with a view to enhancing transparency;</p> <p>Take effective measures to ensure proper registration of NPOs and ensure they are easily accessible to the appropriate authorities;</p> <p>Enact measures requiring NPOs to maintain and make available to appropriate authorities, sufficiently detailed records of domestic and international transactions to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization;</p> <p>Create an effective integrated information gathering and sharing system;</p> <p>Develop a lasting central coordination mechanism between NPOs;</p> <p>Carry out outreach with the NPO sector with a view to protecting the sector from abuse for criminal purposes;</p> <p>Take effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector;</p>
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	<p>The formal AML/CFT Coordinating mechanism should be approved by the National Executive Council and established as soon as possible.</p> <p>PNG should undertake a national AML/CFT risk assessment and use this and the findings of this assessment to develop and implement AML/CFT policies and activities to address national priorities and establish an appropriate coordination mechanism.</p> <p>Inter-agency coordination between all relevant agencies should be improved</p>
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>PNG should become party to the relevant UN conventions within the shortest possible timeframe and establish a mechanism for giving effect to UNSC 1267 and to complement the domestic designation process with a freezing mechanism for the entities so designated.</p>
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	<p>Authorities should consider concluding mutual legal assistance treaties with relevant countries. Consideration should be given to authorizing LPG under section 7 of <i>MACMA</i> to receive MLA requests.</p> <p>Authorities should consider introducing provisional measures for property of equivalent value.</p> <p>Consideration should be given to devising a mechanism for determining the most appropriate venue for prosecuting a case which is dealt with by different jurisdictions.</p>
6.4 Extradition (R. 39, 37 & SR.V)	<p><i>The Extradition Act and the processes described therein do not give rise to any comments</i></p>
6.5 Other Forms of Cooperation (R. 40 & SR.V)	<p>Within the Pacific Forum countries there is a network of cooperation under the various leaders' declarations, and this should be further developed, including by the FIU and financial sector agencies entering memorandum of understandings</p>

	<p>with Pacific Forum countries.</p> <p>Regulatory authorities should ensure that their arrangements and mechanisms for international cooperation with foreign counterparts are able to address AML/CFT issues</p> <p>The FIU should pursue further international cooperation, including additional agreements for information sharing with strategically relevant FIUs in the region.</p> <p>The government should ensure the FIU has adequate human resources to undertake the necessary work to negotiate and enter into bilateral agreements with foreign FIUs and AML/CFT regulators and that secrecy and confidentiality laws do not impede the cross border sharing of information.</p> <p>Law enforcement agencies should ensure that INTERPOL and other channels for police to police cooperation are effectively used to support ML/TF investigations.</p> <p>Customs and tax authorities should ensure that they are able to effectively share information with foreign counterparts on AML issues.</p> <p>BPNG should become a party to the IAIS MMOU to assist with sharing information with other life insurance regulators.</p>
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<i>Recommendations appear at other relevant sections.</i>
7.2 Other relevant AML/CFT measures or issues	Authorities should ensure national counter-corruption efforts include strategies to address structural weaknesses which pervasive corruption brings to the effectiveness of the AML/CFT regime and complete an ML/TF risk-assessment of PNG.
7.3 General framework – structural issues	

ANNEX 1. AUTHORITIES' RESPONSE TO THE ASSESSMENT



RESPONSE ON PAPUA NEW GUINEA MUTUAL EVALUATION REPORT NO: 01/2012

COMMENTS AS AT 08TH AUGUST 2011

A. GENERAL

1. In a short time being admitted as the 40th member of APG in 2009, PNG has taken giant steps to address AML/CFT issues. Unlike most countries that had more time to prepare after being admitted as an APG member before being subject to the evaluation process, PNG had to prepare itself within a very short time frame. PNG was not subject to the level of technical assistance most countries received prior to evaluation and that should be understood and appreciated in light of the overall ratings.
2. Our approach at the Plenary was to accept the MER and seek assistance to implement these recommendations.
3. We will therefore expect technical assistance from APG members and donors to address these shortfalls.
4. We have formed a Working Committee and await Cabinet's endorsement of the National Coordinating Mechanism (NCM) to meet formally and coordinate AML/CFT issues. The NCM will be chaired by the Secretary for Justice.
5. The Working Committee comprises of officials from DJAG, the OPP, the Customs, the FIU, the IPA and BPNG. It was chaired by the Secretary for Justice, Dr. Lawrence Kalinoe. The Committee met from Monday 1st –Wednesday 3rd August 2011 to review the MER and again during the weekend (6-7th August 2011) to prepare a Work Plan to implement the Recommendations, especially those with the NC and PC ratings. This is in anticipation of the proposed visit on 7-9th September 2011 by the World Bank led team to assist PNG implement the MER.

B. KEY FINDINGS

6. While PNG notes the finding that there's lack of political commitment to "follow the money" as indicated under paragraph 1 of the MER, it should also be noted that successive Governments from time to time have been concerned about gross maladministration, corruption and white collar crime wherein numerous Commissions of Inquiries and high level investigations have been appointed to address such concerns. It is only the implementation of such reports that hinders the general political will.
7. We also note that the issue of "follow the money" does not need political commitment. All it needs is for relevant organisations/agencies to train their officers in combating ML/TF. The

Government has given its political commitment in the passage of the POCA and our membership of APG.

8. Similarly, there is the political will to address the related UNCAC obligations, a commitment similar to AML/CFT. A draft national anti-corruption strategy is before Cabinet for its endorsement. This also includes Cabinet's endorsement for PNG to undergo its UNCAC Review under the second year cycle of review.
9. In relation to the reference under paragraph 2 indicating misappropriation of government funds, the FIU has developed and finalized the **Guidelines on Government Cheques and Payments**. It came into operation on 02nd June 2011. There has been some issues raised by the banks and the general business sector and we will be working in partnership with them to address the issues and concerns.
10. In relation to paragraph 6 of the MER regarding the draft legislation on human trafficking, PNG has undertaken initiatives to address human trafficking and people smuggling. Draft legislations to combat such offences have been developed and are now ready to be lodged with Cabinet for its endorsement. DJAG, in consultation with IOM had also completed a Research Paper on this issue and AML/CFT issues are noted.
11. PNG has also taken positive steps to address emerging issues such as drugs and pre-cursor chemicals and small arms and light weapons (SALW), ensuring that these offences are predicate offences for purposes of AML/CFT. Draft proposals are being developed. On SALW, PNG has participated in the UN Preparatory Committee meetings on a proposed Arms Trade Treaty (ATT) and will ensure that AML/CFT issues are considered in the final negotiations for an ATT, with specific reference to the inclusion of SALW.
12. While PNG notes that there are no mechanisms in place to implement UNSCRs 1373 and 1267, there is in fact the National Security Advisory Committee (NSAC), which advises the National Security Council on any security issues and such UN Resolutions can be implemented through this mechanism. The Office of Security Coordination and Assessment, housed within the Department of Prime Minister and NEC provides the secretariat services to NSAC.
13. While PNG notes general references to the inadequate provisions under our POCA, it should be noted that DJAG had earlier engaged the International Monetary Fund (IMF) in 2006 to review our POCA. Our desire to introduce amendments to the POCA was put on hold as a result of the APG mutual evaluation. We will now review and analyse both reports before introducing relevant amendments where necessary. Assistance will be sought where necessary.
14. We note the issues identified under Preventative Measures and advise that the draft Guidelines on Government Cheques and Payments has been finalized and now in operation since June 2011.
15. The FIU is yet to receive comments from relevant stakeholders in relation to the draft Guidelines on STR, Record Keeping and CDD for lawyers and accountants.

C. PRIMARY RECOMMENDATIONS

16. PNG notes the recommendation to implement the primary recommendations within 18 months and advises that a Cabinet Submission submitted to Cabinet in 2010 on the AML/CFT national coordinating mechanism will be retrieved and changes made to reflect the MER and the current political changes.
17. Once this is done, it will be the vehicle to drive the necessary changes within the timeframe prescribed. However, reliance on a formal coordinating mechanism should not be a bar to effectively coordinating AML/CFT issues. There does exist mechanisms already in place that can be utilized and these include the National Coordinating Mechanism for the Law and Justice Sector, the Office of the Chief Secretary, the Central Agency Coordinating Committee and the National Anti-Corruption Alliance, to name a few.

SPECIFIC RECOMMENDATIONS

18. PNG notes the basis of some ratings with reference to effectiveness and while we agree that there are no cases before the courts to test the effectiveness of our systems and processes, we are concerned that too much emphasis on cases before courts is indirectly encouraging such crimes to happen in the first instance. Emphasis should be placed on the adequacy of the legal framework to address such issues rather than number of matters before courts. If matters have come before the courts then they can be used to test the effectiveness but it should not be a factor having a direct bearing on the rating.
19. On SR.III, we note that one of the factors for a NC rating was there currently being no system in place to implement the relevant UNSCRs and advice that there does exist the National Security Council wherein security matters such as this are deliberated on and appropriate policy directions issued. To state that there are no systems in place is incorrect. This is also applicable to SR.1.
20. While on SR.III, Cabinet did issue specific directions for a Taskforce to be set up to implement the relevant UNSCRs and Terrorism Conventions/Protocols etc. That Taskforce will need to be re-established and we will provide further information on this.
21. On R.31, while we note that there is no formally established AML/CFT coordinating committee, we also advise that under the *Prime Minister and NEC Act*, the Chief Secretary coordinates the implementation of government policies and initiatives. Relevant heads of government departments and agencies are required to work with the Chief Secretary in implementing such policies and initiatives. There is therefore a mechanism to coordinate government policies and initiatives such as AML/CFT.
22. Although we have begun work on establishing a permanent and AML/CFT Committee by government, we already have a network of relevant government representatives working closely to coordinate AML/CFT measures and also implement the evaluation recommendations.
23. We note that we got a NC for R.26 which we think is not reflective of the fact that we already have an FIU which is exercising some of its roles and responsibilities under the POCA regardless of its resource constraints. As indicated in the report there has been STR reporting and some oversight of the CDD requirements.