

ILLICIT FINANCIAL FLOWS

PURPOSE

To strengthen Australia's anti-money-laundering (AML) regime, and prevent the flow of funds derived from corruption into and out of Australia, including by:

- establishing a public register showing the beneficial (i.e. real) owners of companies;
- extending, auditing and enforcing 'customer due diligence' or 'know your customer' (KYC) requirements on the part of banks, financial institutions and key professions and industries, including real estate; and
- ensuring accessible information on 'politically exposed persons' (PEPs) or government officials known or suspected of having benefited from corruption, to ensure transparency in their movements and prevent international transfer of any ill-gotten gains.

THE PROBLEM

International transfer, laundering and hiding of proceeds of corruption is basic to making that corruption possible, with devastating effects on political, social and economic development in the "victim" communities – including Australia and developing countries in Africa, and in our own region, Papua New Guinea (PNG) and Pacific countries. Illicit financial flows can also have many negative effects in recipient countries like Australia, including funding organised crime, contributing to local corruption, and distorting real estate and luxury goods markets.¹

According to evidence from PNG (Operation Task Force Sweep), corrupt senior officials have used opportunities through regular travel to Australia, business relationships, or their relatives in Australia to invest corruptly obtained funds in Australian real estate. There are also indications of the proceeds of corruption in China, Russia, Indonesia, the Solomon Islands and Malaysia being placed into Australian real estate, bank accounts, and other liquid assets and being laundered through casinos, remittance service providers and banks.

Australia and other G20 countries are major recipients of illicit funds from developing countries. We have an obligation to combat the misuse of their financial systems for the purpose of laundering proceeds of corruption, but Australia's current policies, laws and institutions are failing to prevent corruption proceeds from entering the financial system.

HISTORY AND PREVIOUS RECOMMENDATIONS

Australia has ratified international conventions addressing the threat of Illicit financial flows dating back to the 1988 **Vienna Convention**; the 2000 **Palermo Convention** which provides laws regulating civil forfeiture and criminalisation of money laundering and corruption; and the 2004 **UN Convention Against Corruption (UNCAC)** which criminalises concealment and laundering of the proceeds of corruption (Article 23) and provides mechanisms for preventing money laundering preventive and dealing with the proceeds of corruption (Article 14).

An effective regime to combat money laundering reduces the incidence and impact of corruption in victim countries by preventing offenders from enjoying the spoils of their crime. Banks and other financial entities, as well as lawyers, accountants and real estate agents (Designated Non-

Financial Businesses and Practices (DNFBPs)) must know their account holders and those with whom they do business. This also includes the ability and obligation to identify customers who are politically exposed persons (PEPs), ascertain the source of their funds and reject transactions that cannot be identified as being from legitimate sources. Appropriate regulatory oversight is needed of the behavior of banks, other financial entities and DNFBPs, accompanied by regulatory sanction, fines or criminal penalties for failures or deliberate infractions.

Since 1989, the **Financial Action Task Force (FATF)** has set international standards to combating money laundering.² In 2014, Australia also joined other G20 Leaders in committing to the next G20 Anti-Corruption Action Plan, including working to implement FATF's recommendations on on anti-money laundering, stolen asset recovery, PEPs and the denial of entry to the corrupt and their assets. Australia also led the development, and committed to implement, new G20 **High Level Principles on Beneficial Ownership Transparency** – the ability to identify the true owners of corporate vehicles which, as 'shell' or 'secret' companies, are often used to transfer and hide proceeds of corruption.³

However, there are grave concerns over Australia's efforts to fulfill these commitments. FATF's last review of Australia's anti-money-laundering system, in 2014, noted that Australia remains an 'attractive destination' for corruption-related proceeds flowing into real estate from the Asia-Pacific region,⁴ and has more to do to demonstrate that its methods have effectively disrupted, deterred or prevented the laundering of proceeds of corruption and other crimes in and through Australia.

The FATF was critical of Australia's lack of enforcement action against 'reporting entities'⁵ including banks and financial institutions, and its lack of legislation covering high-risk sectors including real estate agents and legal professionals.⁶ Points of weakness include failures to:

- prevent the inflow of illicit proceeds from high corruption risk countries;
- repatriate any proceeds of corruption in the last 5 years (and less than \$10 million ever);
- enforce the Criminal Code against money laundering facilitators (e.g. banks, real estate agents, lawyers, accountants, high-value asset dealers) in any individual cases;
- force banks or other entities to terminate business involving the proceeds of crime;
- audit banks' customer due diligence (CDD) in relation to PEPs; and
- recommend and ensure effective PEP identification methods.

These issues raise significant questions as to whether **AUSTRAC** (Australia's Financial Intelligence Unit, or FIU) has been delivering on its mandate; and whether the **Australian Federal Police (AFP)** has an effective mandate to investigate money laundering offences committed by entities such as banks and other entities 'regulated' by AUSTRAC. Along with the AFP's limited record in restraining and repatriating illicit assets sourced from foreign corruption, Australia has a policy of not sharing financial intelligence with FIUs that are not members of the Egmont Group.⁷ Recent foreign aid cuts, reducing aid to its lowest level for 40 years, will have further effects.

In 2015, TI also published its first review of G20 countries' progress in implementing the new **High Level Principles on Beneficial Ownership Transparency**:⁸

Very strong framework
United Kingdom (UK)
Strong framework
Argentina, France, Italy
Average framework
Germany, India, Indonesia, Japan, Mexico, Russia, Saudi Arabia, South Africa, Turkey
Weak framework
Australia, Brazil, Canada, China, South Korea, United States (US)
Very weak framework
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Despite Australia's leadership in establishing these principles, the review found that G20 leaders were better at making promises than keeping them, that G20 governments need to tighten up their rules relating to companies, banks, and those who help the corrupt, and that governments are not doing enough to help banks, accountants, lawyers and other businesses to do their jobs to identify corrupt customers so they can turn away the money. Australia was rated as one of six countries with only a weak framework for implementing the principles.

TI AUSTRALIA'S POSITION

Australia's **anti-money laundering and counter terrorism financing** (AML/CTF) regime is currently under statutory review by the Australian Government. The Australian Government must use this process, and take increased steps to implement its obligations as identified in the 2015 Financial Action Task Force Mutual Evaluation Report, with special emphasis on:

- subjecting *designated non-financial businesses and professions* (DNFBPs), especially the real estate industry and lawyers, to anti-money laundering obligations;
- applying relevant measures to high-risk non-government organisations; and
- ensuring a listing of domestic and international Politically Exposed Persons (PEPs) is available to the public as well as reporting institutions; and requiring AUSTRAC to audit the identification and due diligence on PEP accounts by regulated entities.

The Australian Government must also fulfil its G20 commitments regarding reforms to ensure that **'secret' or 'shell' companies** cannot be used to transfer and hide the proceeds of corruption through non-recording and non-disclosure of their true, beneficial owners.

Finally, the Australian Government must take greater steps to **promote international co-operation to restrict illicit financial flows** through: improved visa controls; repatriation of illicit assets; and improved anti-money laundering/counter terrorism financing collaboration through restored aid to Pacific neighbours, cooperation with the Asia-Pacific Group on Money-Laundering, and intelligence sharing with regional Financial Integrity Units.

¹ See Louis de Koker, The Conversation, 13 October 2015: <https://theconversation.com/much-more-can-be-done-to-keep-foreign-criminal-funds-out-of-australian-property-48986>.

² FATF Mutual Evaluation of Australia <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>.

³ See Emile van der Does de Willebois, Emily M. Halter, Robert A. Harrison, Ji Won Park and J.C. Sharman, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, World Bank Publications, 2011; Michael G. Findley, Daniel L. Nielson and Jason Sharman, *Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism*, Cambridge University Press, 2014.

⁴ FATF Mutual Evaluation of Australia, p7

⁵ Ibid, p10

⁶ Ibid, p9

⁷ The Egmont Group of Financial Intelligence Units (FIUs) was established at a meeting at the Egmont Arenberg Palace in Brussels, Belgium, to establish an informal network of FIUs for the stimulation of international co-operation against money laundering and financing of terrorism.

⁸ See TI 2015, *Just for Show? Reviewing G20 Promises on Beneficial Ownership*: https://www.transparency.org/whatwedo/publication/just_for_show_g20_promises.