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Economic Cooperation**

Counter Terrorism Working Group

Protecting designated non-financial businesses
and professions (DNFBPs) from terrorist financing



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**Protecting designated non-financial businesses and
professions from terrorist financing**

Counter-Terrorism Working Group

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Acronyms

AGD	Attorney-General's Department
AFP	Australian Federal Police
AML/CTF	Anti-money laundering/counter-terrorism financing
ARS	Alternative remittance system
APEC	Asia-Pacific Economic Forum
APG	Asia/Pacific Group on Money Laundering
AUSTRAC	Australian Transactions Reports and Analysis Centre
CTWG	Counter Terrorism Working Group
CDD	Customer due diligence
DNFBP	Designated non-financial business and profession
DFAT	Department of Foreign Affairs and Trade
FATF/GAFI	Financial Action Task Force on Money Laundering / Groupe d'action financière
FIU	Financial intelligence unit
FSRB	FATF-style regional body
ML/TF	Money laundering/terrorist financing
NPO	Not-for-profit organisation
SRO	Self-regulatory organisation
STR	Suspicious transaction report
TF	Terrorist/terrorism financing
TSCP	Trust and company service provider

Foreword

The traditional focus of technical assistance and capacity building¹ in counter-terrorism financing has been on financial institutions. There has been less focus on addressing the vulnerabilities faced by non-financial businesses and professions in relation to terrorist financing. Yet such entities, collectively known as Designated Non-Financial Businesses and Professions (DNFBPs)² can be misused to assist in the financing of terrorism in a number of ways. Money from terrorists' illicit fundraising activity needs to be laundered, effectively distributed, and used by the organisation, as well as to be kept hidden from authorities. DNFBPs provide opportunities to launder funds to achieve these purposes. In this regard, DNFBPs can be used to transfer or store value outside the heavily regulated sectors, or provide advice on how affairs can be structured to minimise the chance of detection. The Financial Action Task Force on Money Laundering / Groupe d'action financière (FATF/GAFI) has recognised the risks and imposed obligations on DNFBPs, acknowledging the potential for abuse that exists within these sectors. Economies within the Asia-Pacific Economic Cooperation (APEC) are not immune from such challenges.

Since 2001, APEC Leaders and Ministers have consistently called for stronger measures among APEC economies to counter money laundering and terrorist financing (ML/TF) as an integral part of APEC's broader human security agenda. In direct response to the priorities set by APEC Leaders in recent years – most recently the 'Integrate to Grow, Innovate to Prosper' pillar of the APEC Leader's Growth Strategy declared at 20th APEC Summit in Vladivostok – this project furthers the development and promotion of national policies and regional level responses to combat ML/TF. Money launderers and terrorist financiers continually look for new methods to obscure the origins of funds to give legitimacy to their activity, and in doing so, may exploit the non-financial business and professional sectors in order to facilitate the laundering of illicit funds and the financing of terrorist activities. As a result, agencies involved in ML/TF prevention need to remain vigilant to such practices to ensure AML/CTF programs, processes, and training match the ever-changing levels of ML/TF risk.

To help combat this issue, Australia led an initiative which aims to assist public sector officials from APEC economies in best practice approaches to protecting DNFBPs against terrorist financing. The project has been led by the Department of Foreign Affairs and Trade (DFAT), in collaboration with Australian AML/CTF agencies and international counterparts, and is part of the planned measures included in the Australian APEC Counter-Terrorism Action Plan (CTAP). The project received Counter Terrorism Working Group (CTWG) endorsement in February 2012 and is supported by funding from the Australian Agency for International Development (AusAID).

The project was first conceived as a dialogue among key stakeholders that are invested in and affected by this issue, with the intention of both *protecting* the sector and *preventing* terrorist abuse of DNFBPs. The key objectives of the project are to:

- *Promote* greater awareness of the risks posed by terrorists channelling funds through designated non-financial businesses and professions

¹ From an anti-money laundering/counter-terrorism financing (AML/CTF) regime perspective.

² The FATF's suggested definition of designated non-financial businesses and professions (DNFBPs) encompasses casinos, real estate agents, dealers in precious metals, dealers in precious stones, legal practitioners, notaries and other lawyers, accountants, and trust and company service providers.

- *Enhance* the risk assessment capabilities of the participating economies.

The main beneficiaries of the project are the APEC economies of Indonesia and the Philippines. Other economies including Peru, Malaysia, Chinese Taipei, Mexico and the United States have also participated and contributed to the discussions and Australia's strategic thinking on the issue. As a core outcome, it is hoped that the project will lead to more effective policy responses and implementation of robust regulatory frameworks to protect the non-financial business and professional sector. More broadly the program provides unique benefits for APEC members to develop and demonstrate best practice in the region. Such opportunities heighten the value of APEC membership.

This report presents the key findings of the research and workshop activities that have occurred throughout the 12-month project. The report outlines the level of terrorist financing risk posed to DNFBPs generally and the current preventative mechanisms in place to combat these risks. The report also presents an overview of the extent of regulation of non-financial businesses and professions in the broader APEC region, including Australia. It is hoped that although variations in legislative and regulatory practices exist, such a comparative approach may serve to encourage the sharing of experiences and best practice approaches to DNFBP regulation among APEC members and beyond.

Executive Summary

The international recognition of the risks and vulnerabilities associated with money laundering and terrorism financing is evidenced by the creation of the Financial Action Task Force (FATF/GAFI) in the late 1980s. The FATF is an inter-governmental body whose purpose is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. First issued in 1990, the FATF Recommendations were subsequently revised in 1996, 2001 (following the September 11 attacks on the United States), 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and intended for universal application.³

The FATF has long expressed concern that certain non-financial businesses and professions may be vulnerable to becoming involved in illicit transactions that may facilitate money laundering and financing of terrorism. In 2003, the Recommendations were revised to include designated non-financial businesses and professions (DNFBPs) within the global AML/CTF regulatory regime. As a result of this review, FATF designated the following categories of non-financial businesses and professions: casinos, real estate agents, dealers in precious metals, dealers in precious stones, trust and company service providers, legal practitioners, notaries, other legal professionals and accountants who provide services to external clients. Many governments around the globe were now required to examine the need to extend the application of their AML/CTF legislation to specified services within these businesses and professional sectors.

The money laundering risks posed to non-financial businesses and professions are well documented in the AML/CTF literature.⁴ The potential vulnerability of these sectors prompted FATF to publish a series of guidance papers for the non-financial business and professional sectors, namely the legal profession, accountants, dealers in precious metals and stones, real estate agents and trust and company service providers.⁵ More recently, FATF members have conducted an operational level study on the ML/TF vulnerabilities of the legal profession.⁶ Other multilateral policy groups such as the Egmont Group of Financial Intelligence Units (The Egmont Group) are currently examining ML/TF through the trade of diamonds and other precious metals.⁷

While the means by which DNFBPs may be misused to facilitate money laundering are well documented, the vulnerabilities faced by DNFBPs in relation to terrorist financing are less clear. However DNFBPs may be misused to assist the financing of terrorism in a number of ways. Money from terrorists' illicit fundraising activity may need to be laundered, effectively distributed, and used by the organisation, as well as to be kept hidden from authorities. DNFBPs provide opportunities to launder funds to achieve these purposes.

³ At the time of writing, the new International Standards had only just been implemented. Therefore, FATF members had not yet been assessed on the new FATF Methodology. The new round of evaluations will begin in 2014. The FATF currently comprises 34 member jurisdictions and two regional organisations, representing most major financial centres in all parts of the globe.

⁴ For an Australian example, Choo K-K R, Smith R G, Walters J & Bricknell S. 2011. Perceptions of money laundering and financing of terrorism in a sample of the Australian legal profession, in *Research and Public Policy Series*, Australian Institute of Criminology, Canberra; see also FATF Guidance papers below.

⁵ The range of FATF Guidance papers include the legal profession (October 2008); accountants (June 2008); dealers in precious metals and stones (June 2008); the real estate sector (June 2008) and trust and company service providers (June 2008).

⁶ FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, June 2013.

⁷ Forthcoming publication.

The present study examines the specific terrorist financing risks posed to non-financial businesses and professions in APEC economies. This report is a culmination of both a review of public source information and the results of workshop activities undertaken as part of the Australian-led project over 2012-13.

The study shows there is a general lack of information on the size and scope of DNFBP sectors in APEC economies and specifically on the terrorist financing risks they face. This finding was consistent with the views of workshop participants who agreed there was no 'one size fits all' approach to the regulation of DNFBP sectors. The report notes that the context of each economy's terrorist financing activities determines its regulatory approach and economies' DNFBP regulations must be tailored for the specific business and professional sector of that economy.

Generally, information on terrorist financing in the business and professional groups of the participating APEC economies was limited. This finding is consistent with the results of aforementioned studies.⁸ Contributing to this finding is most likely the lack of empirical information (namely terrorist financing cases) which involve DNFBPs. Participating APEC economies reported a limitation in assessing the level of risk amongst those businesses and professionals operating within legislative controls (i.e. regulated entities) and it is among the non-regulated sectors where levels of risk may be higher. This was certainly the case for the professional sectors (such as lawyers and accountants). As a result, APEC economies are encouraged to remain vigilant in protecting both the formal and informal business and professional sectors from potential abuse by terrorist financiers.

In terms of the currency of the research, it is important to note this project took place in the transition period between the former 40+9 Recommendations and the implementation of the revised FATF Standards. Therefore, economies' regulatory and legislative approaches to DNFBPs were reviewed based on data from the former (3rd) round of FATF Mutual Evaluations. A further review of such approaches after the 4th round of evaluations would be beneficial, given the information provided in the 3rd round is now largely out-dated and may not reflect current regulatory practices.

In terms of future research, the provision of terrorist financing case studies and further typology studies on the flow of funds from DNFBPs would be beneficial, if available. The role of certain DNFBPs in channelling funds through NPOs may also warrant further research. As noted above, a review of information contained in the forthcoming FATF 4th round of mutual evaluations may provide a more up to date picture of economies' current progress on DNFBP regulation

⁸ FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, June 2013; see also FATF Guidance papers as cited above.

Introduction

In October 2001, the FATF expanded its mandate beyond anti-money laundering to include countering the financing of terrorism and issued a set of special recommendations on terrorist financing to complement existing standards aimed at countering the global issue of money laundering.⁹ These special recommendations contain a set of measures aimed specifically at combating the funding of terrorist acts and terrorist organisations.

A major concern for global standard setters such as the FATF and domestic regulatory authorities is that as banking and other financial institutions work toward full compliance with anti-money laundering/counter-terrorism financing (AML/CTF) legislation, those seeking to facilitate or engage in acts of terrorism may increasingly target alternative funding channels, such as the professional and non-financial business sectors. Before examining the ways in which DNFBPs can be misused to finance terrorism, it is important to first consider the terrorist financing lifecycle (collection, transmission and use of funds) and how funds can be raised, moved and used in each phase of the cycle. Second, this section will briefly review some of the challenges to detecting and deterring terrorist financing. Third, the scope and methodology of the report will be presented, followed by an analysis of the workshop activities undertaken as part of the 12-month project. Finally, the limitations of the research will be examined.

Money laundering vs. terrorist financing

The early work of the FATF and other international bodies largely focused on the similarities between money laundering and terrorist financing and often approached the topic with the same lens.¹⁰ While terrorist financing does share many similarities with money laundering, it can take many forms, and transactions involving terrorist financing often display unique characteristics. The literature on terrorist financing developed since 2001 emphasises that terrorist financiers, like criminal enterprises, are showing increasing adaptability and opportunism in meeting their funding requirements.¹¹ Terrorist organisations continue to demonstrate the ability to tap into a range of resources to move funds within and between organisations, through the conventional financial sector, via modes such as cash couriers and, perhaps the most well documented, through alternative remittance systems and the not-for-profit sector.

Money laundering usually involves processing illicit profits in ways which mask ownership and make the funds appear to have come from legitimate sources.¹² Traditionally, the money laundering cycle involves a three-stage process:

- **Placement.** Introducing illegal funds into the formal financial system.
- **Layering.** Moving, dispersing or disguising illegal funds or assets to conceal their true origin (for example, using a maze of complex transactions involving multiple banks and accounts, or corporations and trusts).

⁹ The FATF issued 8 Special Recommendations on Terrorism Financing in October 2001, following the September 11 terrorist attacks. The FATF issued a ninth Special Recommendation on Terrorism Financing in October 2004.

¹⁰ FATF, *Terrorist Financing*, 29 February 2008, pp. 5.

¹¹ See Williams, P. 2005. 'Warning indicators, terrorist finances, and terrorist adaptation,' *Strategic Insights*, Vol. IV, No.1, US Naval Postgraduate School. For an in-depth analysis on Al-Qaeda and Jemaah Islamiyah, see Abuza, Z. 2003. 'Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiyah,' *NBR Analysis*, National Bureau of Asian Research, Vol. 14: No.5, December.

¹² AUSTRAC, *Money Laundering in Australia 2011*, pp. 8.

- **Integration.** Investing these now distanced funds or assets in furtherance of criminal activity or legitimate business, or purchasing high-value assets and luxury goods. At this stage the funds or assets appear to have been legitimately acquired.¹³

Unlike the traditional money laundering cycle, some experts view the terrorist financing process through an alternative model, namely the *collection, transmission and use* of funds.¹⁴ The initial collection of funds can either occur from clean money or from criminal activity. The transmission or movement of funds consists of a series of transactions designed to conceal the origin of the funds, much like a money launderer or criminal would do. Lastly, the funds are used for a terrorist act or to support the broader organisation (refer Box 1: Risk Assessment workshop: Singapore).

Collection of funds

Terrorist financiers are known to use a variety of methods to collect or raise funds to support and promote their objectives. While most money laundering funds derive from other criminal offences, such as drug trafficking, kidnapping or robbery, the source of terrorist funds are frequently legitimate.¹⁵ Examples of legitimately obtained income may include charitable contributions (via not-for-profit organisations and *hawala*¹⁶, for example), salaries, sale of assets or welfare benefits. According to the FATF, these types of legitimate sources of funds can be described as *financing from below*.¹⁷ These ostensibly legitimate social or charitable activities are needed to provide a 'veil of legitimacy' for organisations that promote their objectives through terrorism. Other sources of money may be raised through state sponsorship and popular support among communities, or what FATF describes as *financing from above*.¹⁸

According to the FATF, there are numerous examples of terrorist attacks being self-funded, including through family and other non-criminal elements. Small amounts of money can be raised by individual operators using cash, savings, use of credit cards or the proceeds of legitimate businesses. For example, in the case of the 7 July 2005 London transport bombings, the bombings were planned inside the United Kingdom by British citizens who raised all the money locally for the attacks. Given the plotters only used cash which did not cross any national borders, it was difficult to track their financial activities. The official UK police report stated that:

'Current indications are that the group was self-financed. There is no evidence of external sources of income. Our best estimate is that the overall cost is less than GBP 8,000.'

*'The group appears to have raised the necessary cash [for overseas trips, bomb making equipment, rent, care hire] by methods that would be extremely difficult to identify as related to terrorism or other serious criminality.'*¹⁹

Moreover, the FATF suggests that because terrorist groups can often be highly decentralised, a relatively autonomous financial facilitator can contribute funds to the operation without directly being involved in the planning or facilitation of the attack.²⁰ Such factors make it extremely difficult for investigators to identify the sources of terrorist financing.²¹

¹³ AUSTRAC, *Ibid*, pp. 9.

¹⁴ Williams, C. 2010. *Potential and emerging areas of terrorism financing* presented at AUSTRAC workshop in Sydney. FATF also uses a similar model, although they focus on the ways terrorists *raise, move and use* funds.

¹⁵ FitzGerald, V. 2003. 'Global Financial Information, Compliance Incentives and Conflict Funding', Working Paper no. 96, *QEH Working Paper Series – QEHWPS96*.

¹⁶ A system for remitting money, primarily in Islamic societies, in which a financial obligation between two parties is settled by transferring it to a third party, as when money owed by a debtor to a creditor is paid by a person who owes the debtor money. Hawala transactions are usually based on trust and leave no written record.

¹⁷ FATF, *Terrorist Financing*, pp. 11.

¹⁸ *Ibid*, pp. 11.

¹⁹ FATF, *Terrorist Financing*, pp. 14.

²⁰ *Ibid*, pp. 14.

²¹ According to investigators from the AFP's Terrorism Financing Intelligence Unit (TFIU), as reported in 'The accountant's guide to terrorism financing', In the Black website, 27 November 2012.

Transmission of funds

According to the FATF, terrorist financiers have tended to favour three main methods to move or transfer value. These include the financial system, the physical movement of money (mainly through cash smuggling via couriers), and through the international trade system.²² The formal financial sector has always been an attractive option given the speed and ease with which funds can be moved within the international financial system.²³ The movement of physical currency across borders via cash couriers continues to be a favoured option among terrorists and their associates, particularly in developing economies that are predominately cash-based, have poor electronic banking systems or among the unbanked.²⁴ Jemaah Islamiyah (JI) operatives, for example, were known to have used personal couriers to facilitate the movement of money throughout Southeast Asia to fund the Bali bombings.²⁵ However, the FATF notes that cash couriers have been known to be active even within Europe and between countries with functioning financial systems.²⁶ In such cases, moving money via cash couriers takes place to avoid detection by authorities.

Perhaps the most well documented of these transmission methods has been the misuse of alternative remittance systems (ARS), charities or other NPOs to disguise the use of the above methods to transfer value. Services such as those provided by an ARS or an NPO are attractive to terrorist financiers due to high levels of anonymity, weak regulatory oversight and their ability to transmit funds to, from and within high-risk conflict zones.²⁷

Another method for transferring value has been through the smuggling and trading of commodities such as precious metals and stones. Indeed, the FATF notes that 'the high intrinsic worth and their compact nature appear to make the gold and diamond sectors attractive as a cover for laundering illegal funds as well as a laundering vehicle in and of itself.'²⁸ The role of precious metals and stones dealers in relation to terrorist financing vulnerabilities will be discussed in the forthcoming section on DNFBPs.

Use of funds: Financing the organisation, financing the operation

A successful terrorist organisation, like most criminal groups, needs to be able to build and maintain an effective financial infrastructure. For this they must develop sources of funding, a means of laundering those funds and then finally a way to ensure that the funds can be used to obtain material and other logistical items needed to commit terrorist acts.²⁹ In the case of al-Qaeda's Southeast Asian affiliate Jemaah Islamiyah, Abuza explains: 'money is important to JI, but only as much as it needs funds to buy weapons, explosives, pay for transport, maintain safe-houses, and bribe local officials. But if you strip away the terrorist act itself, terrorists require the same infrastructure on which transnational crime relies.'³⁰

Terrorist financing requirements fall into two general areas: (1) raising funds, such as for direct costs associated with specific operations and (2) broader organisational costs to develop and maintain an infrastructure of organisational support. Funding for specific terrorist operations may include, for example, expenses for travel, explosive materials/weapons and vehicles. The funding required to

²² FATF, *Terrorist Financing*, pp. 21.

²³ FATF, *Guidance for Financial Institutions in Detecting Terrorist Financing*, 29 February 2008.

²⁴ For example, according to a 2010 report on global financial inclusion, of the bankable population in the Philippines (estimated at 42.1 million people), approximately 69% of the population is unbanked. McKinsey & Company, 'Banking on mobile to deliver financial services to the poor,' in *Global Financial Inclusion: Achieving full financial inclusion at the intersection of social benefit and economic sustainability*, pp. 27.

²⁵ Abuza, Z. 2003. *Ibid.* pp 22.

²⁶ FATF, *Terrorist Financing*, pp. 23.

²⁷ Levitt, M. and Jacobson, M. 2008. *The Money Trail: Finding, Following and Freezing Terrorist Finances*. Washington D.C.: Washington Institute for Near East Policy.

²⁸ FATF, *Report on Money Laundering Typologies 2002-2003*, February 14, 2003, p. 19.

²⁹ FATF, *Guidance for Financial Institutions in Detecting Terrorist Financing*, *Ibid.*

³⁰ Abuza, Z. 2003. *Ibid.* pp 10.

maintain a terrorist network, organisation or cell is generally used to recruit members, provide training, promote ideology, fund general infrastructure and living costs, and support the families of terrorists.³¹ According to Abuza, while funding terrorist operations can be relatively cheap, maintaining terrorist organisations does cost a significant amount of money:

‘...recruits need training, they need to travel, safe houses need to be bought, operatives are constantly on the move and need funds for living expenses as well as false identity papers and travel documents, and of course funds are needed for equipment and bomb making materiel.’³²

Indeed, it has been estimated that of al-Qaeda’s income, ‘about 10% [is spent] on operational costs. The other 90% goes on the cost of administering and maintaining the organization [sic].’³³

Authorities and experts agree that funding a terrorist attack itself is not necessarily a costly exercise.³⁴ According to the FATF, the attacks on the London transport system had an estimated cost of GBP 8,000. The Bali bombings, which killed 202 people and led to the estimated loss of more than 1 billion in tourist revenue for Indonesia, cost an estimated USD 35,000 to 50,000 to plan and execute.³⁵ As Abuza argues, ‘it is not the intrinsic value of money, but the capabilities that it gives terrorist organisation, that justifies targeting terrorist financing.’³⁶

Front companies and gatekeepers: How to disguise terrorist funds

While the formal/informal banking sectors and charities continue to be favoured methods of sourcing and moving terrorist funds, the non-financial business and professional sectors are not immune from becoming involved in facilitating terrorist financing. Money from terrorists’ licit and illicit fundraising activity needs to be laundered, effectively distributed, and used by the organisation, as well as to be kept hidden from authorities. DNFBPs provide opportunities to launder funds to achieve these purposes. In this regard, DNFBPs can be used to transfer or store value outside the heavily regulated sectors, or provide advice on how affairs can be structured to minimise the chance of detection.

There are two principal ways in which those in the DNFBP sector can become involved in the financing of terrorism: first, DNFBPs may generate terrorist funds which may or may not require laundering (depending on how the funds were initially raised); and secondly, DNFBPs may give advice to their clients, assist, encourage or otherwise facilitate terrorist financing or launder the funds generated by the illegal activities of their clients.³⁷

Like money laundering, those seeking to facilitate terrorist financing have often used conventional business structures and commercial activities. Central to legitimate business activity is the need to create corporate entities with which to carry out business transactions and to buy and sell property and other assets to expand opportunities and to maximise profits. Legitimate businesses provide terrorists with a convincing cover and salary, generate revenue, and may be used to conceal the transportation of terrorist materiel, alongside legitimate goods.³⁸ Abuza points out that the modus operandi of many al-Qaeda cells, particularly in Southeast Asia, was to establish businesses which could be used to finance terrorist activity.³⁹ The two most important, according to Abuza, were shell companies – ‘...corporate entities established with a minimum amount of capital, without substance or

³¹ In the Black, ‘The accountant’s guide to terrorism financing.’ *Ibid.*

³² Abuza, Z. 2003. *Ibid.* pp 10.

³³ As reported in Ashley, Sean P. (2012). ‘The Future of Terrorist Financing: Fighting Terrorist Financing in the Digital Age.’ *Penn State University Journal of International Affairs*, Vol. 1, No. 2, pp. 10.

³⁴ See FATF *Terrorist Financing*, 2008, pp. 7; Abuza, Z. 2003, *Ibid.* pp. 10.

³⁵ According to FATF estimates, the Bali bombings cost approximately USD \$50,000. FATF, *Terrorist Financing*, pp. 13. Abuza reports a slightly lower estimate at approximately \$35,000. Abuza, Z. 2003. *Ibid.* pp. 10.

³⁶ Abuza, Z. 2003. *Ibid.* pp. 10.

³⁷ For a review of the perceptions of ML/TF in the Australian legal profession, see Choo K-K R, Smith R G, Walters J & Bricknell S. 2011. ‘Perceptions of money laundering and financing of terrorism in a sample of the Australian legal profession’, in *Research and Public Policy Series*, Australian Institute of Criminology, Canberra.

³⁸ Kaplan, E. ‘Tracking down terrorist financing.’ Council on Foreign Relations: *Backgrounder*. April 4, 2006.

³⁹ Abuza, Z. 2003. *Ibid.* pp 34.

commercial purpose, that generated few (if any) profits, and whose primary purpose was to purchase materials or cloak other aspects of terrorist operations.⁴⁰ The FATF further recognises terrorist financing may be a particular risk in business sectors which do not require formal qualifications (i.e. trades) where starting a business does not require substantial investments.⁴¹ The FATF suggests the ‘...risk that a business will divert funds to support terrorist activity is greater where the relation between sales reported and actual sales is difficult to verify, as in the case with cash-intensive businesses’.⁴²

Professional advisers also play a central role in facilitating these activities and both legitimate business people and those seeking to launder funds are able to make use of the services that professionals provide to expand their operations.⁴³ There is concern professional advisers could become party to facilitating the financing of terrorism on behalf of their clients. On the other hand, professionals themselves may seek to generate terrorist funds, including where they have acquired funds illegally from their clients, or otherwise engaged in dishonest business practices, and wish to disguise their origins. By offering a ‘veil of legitimacy’, the use of professionals can inadvertently provide even greater discretion through the application of legal professional privilege.⁴⁴

Professionals may also be targeted by those wishing to hide the source of terrorist money owing to the fact that laundering has become a higher risk activity for those who make use of the regulated financial services sector. If the activity becomes too difficult owing to the presence of effective regulatory measures, terrorist financiers may seek out easier and less risky channels of disguising funds. In the words of the FATF:

Regardless of the strength and effectiveness of AML/CTF controls, criminals will continue to attempt to move illicit funds undetected and will, from time to time, succeed. They are more likely to target the DNFBP sectors if other channels become more difficult. For this reason, DNFBPs...may be more or less vulnerable depending on the effectiveness of the AML/CTF procedures applied in other sectors.⁴⁵

Detecting terrorist financing

The inclusion of counter-terrorism financing in the global regulatory regime has expanded the monitoring of financial transactions considerably. Attempts to detect and interdict terrorist financing are usually dealt with through existing mechanisms to combat money laundering. Indeed, in some jurisdictions, the only available tools law enforcement officials have to combat terrorism are anti-money laundering laws.⁴⁶

Experts hold that it can be significantly more challenging to detect and identify terrorist financing than potential money laundering and other suspicious activity.⁴⁷ Transactions facilitating terrorist financing often do not exhibit the same characteristics as conventional money laundering. For example, terrorist financing may involve very small amounts of money and the appearance of innocence (such as purportedly charitable activities), and can involve a variety of sources (such as business, criminal activity, self-funded, and state sponsors of terrorism). According to the FATF:

⁴⁰ Abuza, Z. 2003. *Ibid.*

⁴¹ FATF, *Terrorist Financing*, 29 February 2008, pp. 13.

⁴² *Ibid.* pp. 13.

⁴³ Choo K-K R, Smith R G, Walters J & Bricknell S. 2011. ‘Perceptions of money laundering and financing of terrorism in a sample of the Australian legal profession.’

⁴⁴ The preservation of professional legal privilege has been especially problematic in connection with the implementation of AML/CTF obligations. See He P. 2006. Lawyers, notaries, accountants and money laundering. *Journal of Money Laundering Control*, 9(1): 62-70. It is important to note that the area of legal professional privilege and professional secrecy is complex, with subtle differences in application from country to country, see FATF *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, June 2013.

⁴⁵ FATF, *RBA Guidance for Dealers in Precious Metal and Stones*, 17 June 2008, pp. 4.

⁴⁶ Abuza, 2003. *Ibid.* pp. 62.

⁴⁷ According to investigators from the AFP’s Terrorism Financing Intelligence Unit (TFIU), as reported in ‘The accountant’s guide to terrorism financing’, In the Black website, 27 November 2012; FATF *RBA Guidance for Legal Professionals*, 23 October 2008.

...the characteristics of terrorist financing make its detection difficult and the implementation of mitigation strategies may be challenging due to considerations such as the relatively low value of transactions involved in terrorist financing, or the fact that funds can be derived from legitimate as well as illicit sources.⁴⁸

Further the FATF notes that where funds are derived from criminal activity, then traditional monitoring mechanisms that are used to identify money laundering may also be appropriate for terrorist financing.⁴⁹ However, because transactions associated with terrorist financing are often of such small monetary value, these are often significantly below thresholds set by anti-money laundering laws. Where funds are from legal sources, it is even more difficult to determine if they could be used for terrorist purposes. In addition, the actions of terrorists may be overt and outwardly innocent in appearance, such as the purchase of materials and services to further their goals, with the only covert fact being the intended use of such materials and services purchased.

One of the significant challenges to international CTF efforts is the continuing evolution of terrorist financing methods and the inability of governments and international institutions to adequately respond in a timely manner. Reporting institutions often lack the capacity to identify suspicious transactions related to terrorist financing. This can hamper the efforts of authorities to make use of financial information to assist in terrorist financing investigations.⁵⁰

At the core of AML/CTF risk management is a range of preventive activities known broadly as 'Customer Due Diligence' (CDD). CDD comprises the collection and verification of initial Know Your Customer (KYC) information (i.e. details obtained from client identification procedures) and ongoing monitoring of customers and their transactions, such as suspicious transaction reports (STRs).⁵¹ By not undertaking proper identification procedures and conducting due diligence on their clients' or customers' activities, including acceptance of a new client or customer, DNFBPs may unwittingly provide assistance in terrorist financing activities.

Additionally, specific persons and entities may be the subject of terrorist financing sanctions. In such cases a listing of persons and entities to which such sanctions apply and the obligations on DNFBPs to comply with those sanctions are decided by the United Nations Security Council (in the case of al-Qaida) and individual countries. Professionals or business owners may commit a criminal offence if they undertake business with a listed person or entity, or their agent, in contravention of applicable sanctions.

Scope of the current report

This report is intended to inform policy makers and operational level officers within APEC economies of the potential vulnerabilities non-financial businesses and professions face in relation to terrorist financing. As outlined below, the report includes snapshots of workshop activities that occurred throughout the project period over 2012-13. These snapshots are intended to provide examples of how economies can address on a more practical level the challenges faced in regulating the non-financial business and professional sector. The report includes, where possible, input from workshop participants on various approaches adopted by their respective economies on this issue.

DNFBPs provide a range of services and activities that vastly differ, both in their methods of delivery, and in the depth and duration of the relationships formed with customers, and the size of the

⁴⁸ FATF, *RBA Guidance for Legal Professionals*, 23 October 2008, pp. 12.

⁴⁹ *Ibid.*

⁵⁰ According to an AUSTRAC expert speaker at the Jakarta Capacity building workshop, 21-22 May 2013.

⁵¹ AUSTRAC refers to these reports as suspicious matter reports. If a reporting entity forms a suspicion at any time while dealing with a customer (from the enquiry stage to the actual provision of a designated service, or later) on a matter that may be related to an offence, tax evasion, or proceeds of crime, they must submit a suspicious matter report (SMR) to AUSTRAC. See AUSTRAC website, http://www.austrac.gov.au/suspicious_matters.html

operation. DNFBPs may also have different regulatory requirements at the national/state level than at the state or provincial level. As a result, it is beyond the scope of this report to provide high-level guidance for APEC economies, rather each economy and its national authorities should aim to establish an active dialogue and partnership with its DNFBP sectors and related self-regulatory organisations⁵² that will be mutually beneficial in protecting these sectors from terrorist financing.

Methodology

Led by Australia, the project team comprised officials from the Department of Foreign Affairs and Trade (DFAT) and the Australian Transaction Reports and Analysis Centre (AUSTRAC), along with input from the Australian Attorney-General's Department (AGD). In addition the project team consulted with the Australian Federal Police's Terrorism Financing Investigations Unit (TFIU) on draft versions of this report.

Australia collaborated with several international organisations, including the FATF and the Asia/Pacific Group on Money Laundering (APG) in developing and delivering this activity. The economies of Peru, Malaysia, Chinese Taipei, Mexico and the United States also participated and contributed to the discussions and Australia's strategic thinking on this issue.

In preparing this report, the project team has utilised literature and initiatives from the following sources:

- Reports produced by international organisations such as the FATF and the APG
- Research initiatives undertaken by academics and consultants either within individual jurisdictions or across jurisdictions
- Research initiatives undertaken by individual jurisdictions
- Research initiatives undertaken by AML/CTF supervisors and the private sector.

Workshops

Risk assessment workshop: Singapore

The first of three activities planned under the project involved a risk assessment workshop held in Singapore on 19-20 November 2012. Twenty-five participants from eight APEC economies and relevant experts – from financial intelligence units, police and justice agencies, the FATF and the APG were in attendance. Malaysia, the United States and Chinese Taipei also attended on a self-funded basis.

The workshop aimed to promote a greater awareness of the risks posed by terrorists channelling funds through DNFBPs in three participating APEC economies (Indonesia, the Philippines and Peru), and to enhance the risk assessment capabilities of the participants. As a basis for discussions, Australia drafted a series of scoping papers on the economies represented at the workshop. The purpose of these scoping papers was to provide workshop participants with a baseline understanding of each economy's approach to countering terrorist financing and DNFBP regulation.

Each scoping paper outlined:

- A review of each economy's overall approach to countering ML/TF, the size of the ML/TF problem, legal framework and general approach to regulation in the DNFBP sector.

⁵² Defined by the FATF as a body that represents a profession (e.g. lawyers, notaries, other independent legal professions or accountants), and which is made up of member professionals, has a role in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type functions.

- A review of current (or lack of) regulations applied to each industry, for example barriers to entering each industry; any customer identification requirements for providing services; auditing requirements; any self-regulatory mechanisms (i.e. self-regulatory organisations) and the disciplinary mechanisms established by legislation. Also considered in the exercise was an estimate of the size and income source of each industry, where possible.
- A consideration of each economy's compliance with related FATF Recommendations (formerly R.12 (DNFBPs – CDD), 16 (DNFBPs – Other measures), 20 (Other non-financial businesses and professions), 24 (Regulation and supervision of DNFBPs) and 25 (Guidance and Feedback)).⁵³

Overall, the workshop highlighted that there is a general lack of information on the size and scope of DNFBP sectors in APEC economies and the terrorist financing risks they face. Participants suggested that undertaking terrorist financing case studies and further typology studies on the flow of funds from DNFBPs would be beneficial. The role of DNFBPs in channelling funds, particularly through non-government organisations (NGOs), was also raised as a topic for further research.

Workshop participants completed a number of interactive activities designed to boost their capacity to assess risk. Using an internationally recognised risk model, economies worked with a professional facilitator to complete a series of simple matrices and risk-rate a range of products and services offered by DNFBPs. Economies were able to generate a final 'score' which corresponded to an overall level of risk for each product or service (See Box 1: Risk Assessment workshop, Singapore).

Capacity building workshop: Jakarta

Building on the risk assessment discussions held in November 2012, a follow-up capacity building workshop was held in Jakarta on 21-22 May 2013. Thirty participants attended the workshop (including two observers from Russia), which addressed some of the key issues and challenges faced by Indonesia in their efforts to protect non-financial businesses and professions from terrorist financing. The workshop – opened by APEC Counter Terrorism Working Group (CTWG) chair, Ambassador Harry Purwanto – highlighted recent advances in ways to combat terrorist financing through DNFBPs, new methods used by terrorist groups and some of the challenges faced in developing effective counter-terrorism legislation and enforcement programs.

Workshop participants completed a number of practical exercises designed to acquire insight into real-world situations as they relate to terrorist financing activities. Using a fictitious scenario, economies worked with a professional facilitator to explore the various ways in which funds could be channelled through the DNFBP sector without triggering Indonesia's AML/CTF reporting requirements. Some of the suggested techniques used by participants included moving funds via cash couriers, structuring amounts to avoid transaction threshold reporting, and using false identification details to acquire/lease properties.

At the conclusion of the workshop, participants worked with a facilitator to build their capacity to develop action plans aimed at improving decision-making and interagency coordination, the two areas that continue to be a challenge in implementing policy measures (see Box 2: Capacity building workshop, Jakarta & Manila).

⁵³ While normally such a review would include a consideration of economy's compliance with related FATF Recommendations (formerly R.12, 16, 20, 24 and 25), it was agreed by project members that given the very recent revision of the Standards the information presented would likely be out-dated and therefore may not reflect current regulatory practices. It is also important to note that under the former 40+9 framework, Recommendations relating to DNFBPs (R.12, 16, 24) were considered non-core/key FATF Recommendations.

Capacity building workshop: Manila

The third and final activity under the project aimed to address some of the key challenges faced by the Philippines in their efforts to protect DNFBPs from money laundering, terrorist financing and corruption. Thirty participants attended the four-day capacity-building workshop in Manila on 11-14 November 2013. In the workshop, participants gained a better understanding of assessing the risks posed to the DNFBP sector in the Philippines and ways to mitigate these risks through the development of guidelines.

Introductory sessions exploring the methods used by money launderers, terrorist financiers and corrupt officials in the various DNFBP sectors further increased participants' awareness of the issues facing the non-financial industry cohorts.

Using a similar risk model employed at the Singapore and Jakarta workshops, participants completed a number of interactive activities designed to boost their capacity to assess risk. Participants worked with facilitators to complete a series of simple matrices and risk-rate a range of products and services offered by DNFBPs. Participants were able to generate a final 'score' which corresponded to an overall level of risk for each product or service. Participants were also asked to rate their perceptions of risk in the various DNFBP sectors from a ML/TF and corruption perspective.

Participants also undertook practical exercises designed to enhance their understanding of the compliance process, in particular, how to adapt an AML/CFT program to suit less sophisticated non-financial businesses and professions (i.e. sole proprietors, family-run jewellery stores).

Overall, participants gained increased knowledge and understanding of the revised FATF Recommendations in relation to DNFBPs, and improved their relationships with representatives from within each DNFBP sector in the Philippines (see Box 2: Capacity building workshop, Jakarta & Manila).

Limitations

As discussed in the Foreword, there is a general lack of terrorist financing case studies involving non-financial businesses and professions in general. While the empirical evidence is strong in relation to cases of money laundering involving non-financial businesses and professionals, there are very few examples indicating how funds are channelled through DNFBPs to finance terrorist operations. The limited examples known to law enforcement and other agencies are not sourced from APEC economies.

Other limitations to the report and broader project to date have included:

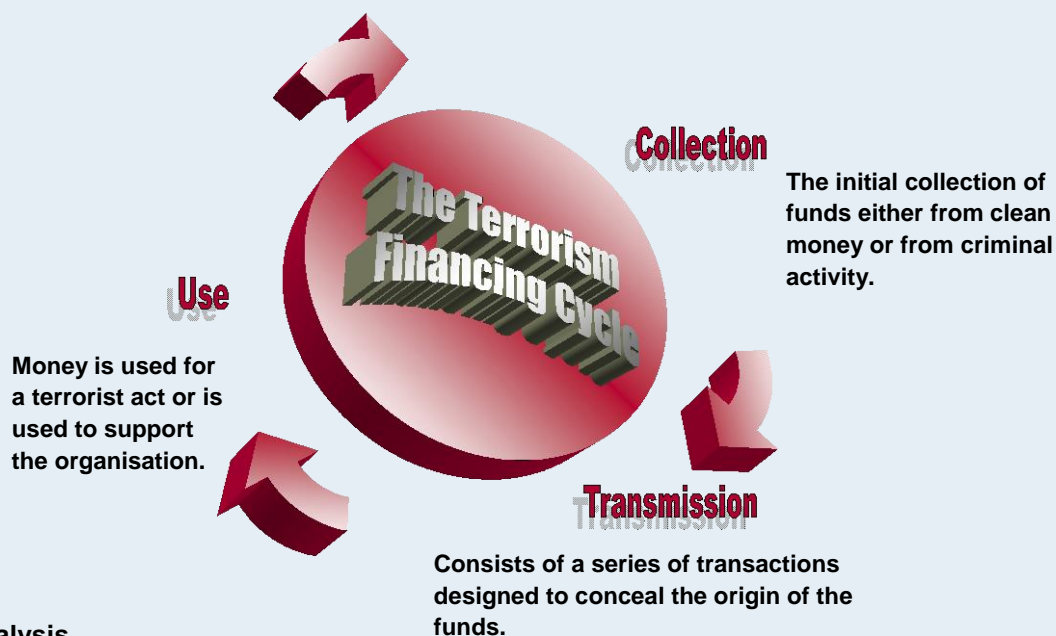
- Availability of current information on economies' CTF regulatory regimes. Most mutual evaluation reports completed in the FATF 3rd round are now largely out-dated.
- Conducting a desk-based review to fully assess the risk posed to certain industries is difficult without the direct input of industry.
- There is a wide range of regulatory approaches adopted by economies and there is no 'one size fits all' approach. Importantly, such regulatory approaches should be viewed within the context of economies' broader ML/TF situation.
- The fact that money laundering and terrorist financing have similar objectives in concealing financial resources and activities from the scrutiny of authorities and, in some circumstances, the use of similar techniques has resulted in the two activities being examined with the same lens. This has meant information reported by economies on their AML/CTF regimes has often focused more on AML measures than CTF measures.

- This report has considered the seven main FATF-designated non-financial business and professions. It is important to acknowledge this does not limit the inclusion of a range of 'other' types of DNFBP (motor vehicle dealers, arts and auction houses, pawnbrokers, for example) in economies' AML/CTF regulatory regimes. National authorities would need to assess and respond to the level of risk in the non FATF-designated categories of DNFBP in their respective economies.

Box 1. Risk Assessment workshop: Singapore

Risk Assessment methodology

Workshop participants completed a number of interactive activities designed to boost their capacity to assess risk. Using an internationally recognised risk model, economies worked with a professional facilitator to complete a series of simple matrices and risk-rate a range of products and services offered by DNFBCs. A final 'score' was generated which corresponded to an overall level of risk for each product or service. The financing of terrorism cycle was based on the following model (collection, transmission and use of funds).



Analysis

The lower risk results showing for some economies may be the result of stronger regulatory controls in place for some DNFBCs. Low risks in others may be a result of the low impact the individual businesses for the sector would have on the economy if compromised. Three out of four participating economies rated motor vehicle dealers as a high risk for TF, suggesting a high level of vulnerability for this industry across the economies.

It is important to note that while casinos were rated as having a high to extreme risk; this pertains to their money laundering risk only. From a terrorism financing perspective it was considered by participants as a sector that would be an unlikely typology.

Table 1: ML/TF risk ratings according to participants for listed industry sectors across APEC economies

Industry Sector				
Accountants	L	H	H	M
Lawyers	L	H	H	M
Precious Metals - Wholesale	H	M	M	H
Precious Metals - Retail	M	M	M	M
Precious Gems - Wholesale	N/A	M	M	H
Precious Gems - Retail	L	L	M	M
Company Service Providers	L	M	H	M
Casinos	M	N/A	E	M
Motor Vehicle Dealers*	M	H	H	H

Key: L = Low risk M = Medium risk H = High risk E = Extreme risk

* The exercise considered some of the FATF designated categories of DNFBC along with motor vehicle dealers.

Box 2. Capacity building workshops: Jakarta & Manila

Summary

Specifically designed separate workshops for Indonesia and the Philippines involved presentations, scenario playing and practical exercises to provide insights into real-world situations as they relate to terrorist financing activities. These activities were aimed at developing skills and techniques to support policy development, implementation and reporting, particularly in relation to terrorist financing and suspicious transactions.

Activities

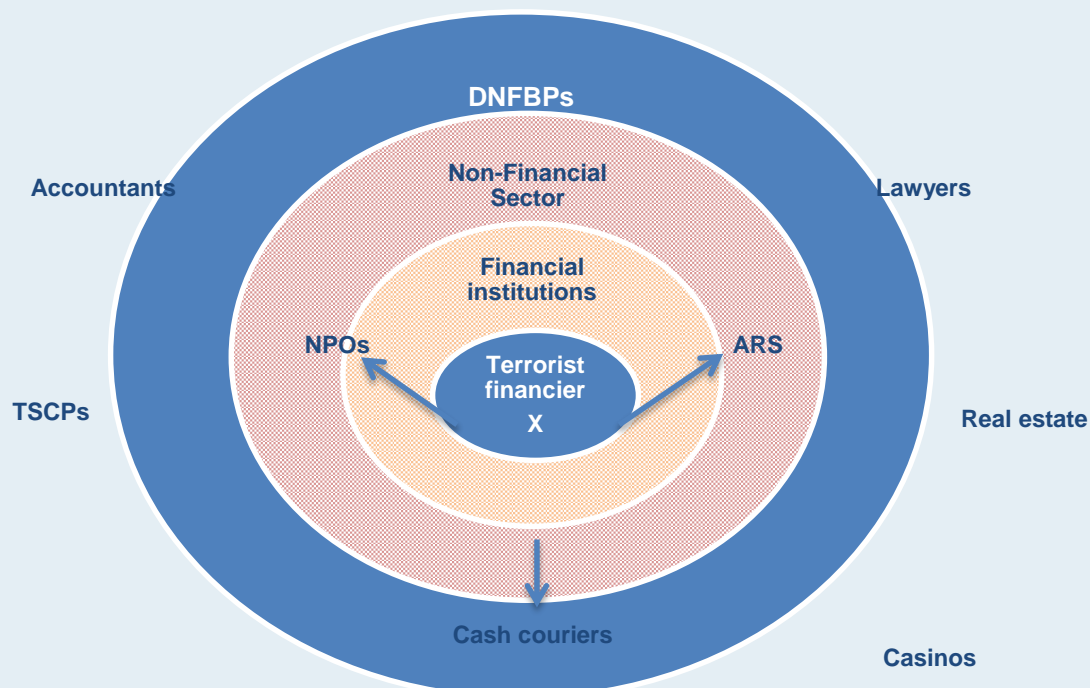
In both workshops, participants completed a number of practical exercises designed to acquire insight into real-world situations as they relate to terrorist financing activities. In Jakarta, participants worked through a fictitious scenario with a facilitator to explore the various ways in which funds could be channelled through the DNFBP sector without triggering Indonesia's AML/CTF reporting requirements. Some of the suggested techniques used by participants included moving funds via cash couriers, structuring amounts to avoid transaction threshold reporting, and using false identification details to acquire/lease properties.

At the conclusion of the Jakarta workshop, participants worked with a facilitator to build their capacity to develop action plans aimed at improving decision-making and interagency coordination, the two areas that continue to be a challenge in implementing policy measures. Tailored specifically for the Manila workshop, participants worked with the facilitators to build their capacity to develop guidance material, an area that continues to be a challenge for both regulators and industry alike in implementing the new legislation.

Terrorism financing through DNFBPs

Experts from Australia (AUSTRAC) described that as banks and other financial institutions work toward full compliance with AML/CTF regulations, terrorism financiers may seek alternative channels to fund operations. Typically, funds have been acquired through the misuse of alternative remittance systems and not-for-profit organisations; however, as regulatory oversight increases for these sectors and governments clamp down on such funding mechanisms, terrorist financiers may target the DNFBP sectors if other channels become more difficult.

Diagram 1. Channels for financing terrorism: Vulnerability of DNFBPs



Key:

ARS Alternative remittance systems (such as Hawala)

NPOs Not-for-profit organisations (charities)

TSCPs Trust and company service providers

Definition of Designated non-financial businesses and professions

In 2003, the FATF Recommendations were revised to include designated non-financial businesses and professions (DNFBPs) within the global AML/CTF regulatory regime. The DNFBPs identified by the FATF as posing heightened risk of money laundering/terrorism financing are:

- Legal practitioners, notaries, other legal professionals and accountants providing services to external clients
- Casinos
- Real estate agents
- Dealers in precious metals
- Dealers in precious stones
- Trust and company service providers.

Four Recommendations (12, 16, 24 and 25) were created which called for a range of preventive measures that DNFBPs, supervisory authorities/self-regulatory organisations, and other authorities should adopt to combat ML/TF in certain situations. Recommendation 12 mandated that the requirements for customer due diligence, record-keeping, and paying attention to all complex, unusual large transactions set out in Recommendation 5, 6, and 8 to 11 apply to DNFBPs in certain circumstances. Recommendation 16 extended the obligations of recommendations 11 (unusual transactions), 13 (reporting suspicious transactions), 14 (protection from legal liability, tipping off) and 15 (internal controls) to DNFBPs. Recommendation 24 required member states to establish a system of effective supervision or monitoring.

In February 2012, significant revisions to the FATF Recommendations were agreed by members, transforming the 40+9 Recommendations into the FATF Standards. Two key changes to the Recommendations were the incorporation of the former counter-terrorism financing recommendations into the main body of the standards and adding recommendations related to countering the financing of proliferation of weapons of mass destruction. The new *Methodology for assessing technical compliance with the FATF Recommendations and the Effectiveness of AML/CTF systems* sets out how the FATF will determine whether a country is sufficiently compliant with the 2012 FATF Standards⁵⁴ and whether its AML/CTF system is working effectively. As a result, the recommendations relating to DNFBPs are now mainly covered under Recommendations 22 and 23 and throughout the other Recommendations where relevant.

This section of the report introduces the seven FATF DNFBPs – namely, casinos, real estate agents, dealers in precious metals, dealers in precious stones, legal practitioners, notaries and other lawyers, accountants, and trust and company service providers – and examines how each category has been, or potentially could be implicated in facilitating terrorist financing.

⁵⁴ The FATF Standards comprise the FATF Recommendations, their Interpretive Notes and applicable definitions from the Glossary.

Legal professionals

Legal professionals were first included in the FATF Recommendations in 2003. The Recommendations issued at that time explicitly required legal professionals to undertake customer due diligence (CDD) and to submit STRs. Since 2003, competent authorities have been required to ensure that legal professionals are supervised for AML/CTF purposes.

The FATF Standards limit the legal and accounting professionals recommended for inclusion as regulated DNFBPs to those employed by firms providing professional services. Public accounting practitioners are limited to providing services to individuals and legal persons and tax agents are limited to providing limited services for tax matters to the public. This area of the industry derives the majority of its income from business and personal taxation, and accounting services. Those providing professional services internally, as employees of another business or organisation, are excluded.

The FATF Standards include legal and accounting professionals within the scope of regulated DNFBPs when preparing for and executing the following transactions:

- Buying and selling real estate
- Managing client money, securities and other assets
- Managing bank, savings or securities accounts
- Organising contributions to create, operate or manage companies
- Creating, operating, or managing legal persons or arrangements, and buying and selling business entities.

Legal and accounting professionals have been described as providing a 'gatekeeper' service in the facilitation of money laundering and/or terrorism financing. Gatekeepers are, essentially, individuals that 'protect the gates to the financial system.'⁵⁵ Legal professionals can potentially facilitate ML/TF in the provision of advice and legal assistance around investments, company formation, trusts and other legal arrangements. For a terrorist financier, there are many advantages in using a gatekeeper service to assist in disguising or moving terrorist funds. One, legal professionals have the knowledge and expertise to advise clients on how to organise certain accounts, such as trust and off-shore accounts, where and how to structure funds, the establishment of shell or legitimate companies, and/or the purchase of financial instruments or other assets such as real estate. Two, they can allow the use of their own trust accounts to facilitate the collection, transmission or use of funds. These actions, if used for illicit purposes, could be used to shape complex terrorist financing arrangements which act to conceal or legitimise the source of illegally derived funds.

Another perceived advantage to using a gatekeeper is the perception among criminals that legal professional privilege/professional secrecy will delay, obstruct or prevent investigation or prosecution by authorities if they utilise the services of a legal professional.⁵⁶

Despite the lack of empirical evidence concerning the involvement of DNFBPs as advisers and facilitators of terrorist financing, the potential vulnerability of legal professionals is clear. According to a 2013 report by the FATF on the ML/TF vulnerabilities of legal professionals, while there were few terrorist financing case studies that specifically mention the involvement of legal professionals, some mention the use of companies, charities and the sale of property.⁵⁷ The report notes similar methods and techniques could be used to facilitate either money laundering or terrorist financing, although the

⁵⁵ See FATF, *Global Money Laundering and Terrorist Financing Threat Assessment*, July 2010.

⁵⁶ FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, June 2013.

⁵⁷ *Ibid*, pp. 23.

sums in relation to the latter may be smaller, and therefore the vulnerability of legal professionals to involvement in terrorist financing 'cannot be dismissed'.⁵⁸

The range of activities carried out by legal and accounting professions is diverse and varies from one country to another. It is acknowledged by FATF members that full implementation of these specific Recommendations has not been universal.⁵⁹ As a consequence, a major part of the legal profession is not covered by global AML/CTF regulatory standards. It is therefore important that competent authorities understand the specific roles undertaken by different legal professionals within their respective economy/jurisdiction when assessing the vulnerabilities and risks that concern their professional sectors.

Casinos

Casinos are more commonly linked to money laundering activities than terrorist financing. The most typical money laundering scenario is an individual walking into a casino with cash to exchange for chips, proceed to play, and then cash in the chips for a cheque. The money launderer will then deposit the cheque into their own bank account, and claim it as 'clean' winnings.

It is important to note that consistent with research conducted by the FATF on this topic,⁶⁰ research undertaken throughout this project only found a handful of reported cases of suspected terrorist financing in the casino sector. Moreover, these cases were based on uncorroborated press reporting.⁶¹ This finding is supported by anecdotal evidence from workshop participants involved in this project who noted that they were '*not aware of information which involved the funding of terrorism via the casino sector, nor would it be a likely scenario*'. The aforementioned FATF paper suggests this may be due to the characteristics of terrorist financing that make it difficult to detect: characteristics such as the relatively low value of transactions involved in terrorist financing, or the fact that funds can be derived from legitimate as well as illicit sources.⁶²

However, as the above FATF paper points out, 'it would be a mistake to assume terrorist financing has not and could not occur in the casino sector'.⁶³ The alleged al-Qaeda cell members mentioned in press reporting in 2002 spent a reported USD \$100,000 at Casino Niagara in what Ontario officials suspect were money laundering attempts. US counter-terrorism officials allege that some of the men had secret sources of funds.

Real estate agents

Real estate agents are real estate professionals or companies who by representing the seller and/or the buyer act in a purchase and/or sale of property in a real estate transaction capacity and/or are exercising professional transactional activity, thus facilitating real property transfer.⁶⁴

While the role of agents varies in different jurisdictions, the core functions may include:

- Traditional exclusive (and non-exclusive) seller representation
- Traditional exclusive (and non-exclusive) buyer representation
- Representation of both buyer and seller in the same transaction

⁵⁸ FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, June 2013, pp. 23.

⁵⁹ *Ibid.*

⁶⁰ Financial Action Task Force, *Vulnerabilities of Casinos and Gaming Sector*, March 2009. This report identifies significant ML vulnerabilities and related case studies and typologies, but does not identify any instances of TF through the sector.

⁶¹ Walters, J. 'Buffalo duo likely tried to launder cash.' *The Toronto Star*, 20 September 2002.

⁶² *Vulnerabilities of Casinos and Gaming Sector* – March 2009, pp. 57.

⁶³ *Ibid.* pp. 57.

⁶⁴ Financial Action Task Force, *Risk-Based Approach Guidance for Real Estate Agents*, June 2008, <http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Guidance%20for%20Real%20Estate%20Agents.pdf>

- A number of agents representing sellers or buyers
- National and transnational referrals
- Amalgamation or interaction of functions of other professionals, e.g. notaries, lawyers, lenders, valuers
- Auctions.

There are several ways the real estate sector could be exploited for terrorist financing purposes. Terrorist organisations require bases for their operations and typically need to acquire safe houses for this purpose. The real estate sector may be implicated in the financing of terrorism through the purchase or leasing of such a property by a terrorist financier or via a gatekeeper (lawyer, accountant) or other professional. The real estate agent or broker may be unwittingly involved in this transaction, or complicit in acquiring the property on behalf of the terrorist organisation.

Workshop participants in Jakarta noted that false identification could be used to acquire property or sign a lease, hence avoiding detection by authorities. Moreover, workshop participants reported that in Indonesia, terrorists are more likely to 'homestay' in an informal room rental arrangement than acquire a formal rental property. These factors make detection of terrorist financing in the real estate sector increasingly difficult.

Dealers in precious metals and stones

The precious metals and stones industry has four key components: mining companies; refineries (turning rough diamonds into polished diamonds); manufacturers and retailers. All four components of the industry can be involved in buying or selling precious metals and stones. Retailers can include new and second-hand dealers of jewellery, precious stones, and precious metals. According to the FATF, the term 'dealer' can refer to any person engaged in these businesses.⁶⁵

The worldwide trade of precious metals and stones varies immensely, from modern international transactions conducted through the financial system, to localised informal markets.⁶⁶ Workshop participants noted jewellery businesses are often a 'family affair' and reliant on personal and community contacts. Moreover, jewellery shops are often side businesses for *hawaladars* (service providers of the *hawala* system) which makes it difficult for authorities to monitor and investigate illicit activity conducted within the industry.

Commodities such as diamonds and gold have unique physical and commercial properties which can be high value/low volume and in easily transportable quantities. Trading in such commodities to launder money or transfer value is attractive to terrorists because of the ease of concealment from authorities. Terrorists can move their assets by converting cash into diamonds or gold bullion, which then serves as a form of currency. By storing assets in such commodities, they are likely to maintain their value over a longer period of time and are easy to buy and sell outside the formal banking system. The liquidity of a diamond or bar of gold has the further advantage of being traded quickly and without detection. As Abuza notes, 'the liquid nature of gems, the anonymity of transfers, the ability to over-invoice, and the high-value per gem are all attractive to non-state actors.'⁶⁷

Precious gems: Diamonds

Armed struggles create opportunity for money launderers or terrorist financiers to hide their illicit gains. The links between the diamond trade and armed conflict are well documented and extensively

⁶⁵ FATF, *RBA Guidance for Dealers in Precious Metal and Stones*, 17 June 2008, pp. 2.

⁶⁶ *Ibid.* pp. 3.

⁶⁷ Abuza, 2003. *Ibid.* pp. 42.

covered elsewhere;⁶⁸ however, there are several key reasons why precious gems such as diamonds are particularly attractive to those seeking to launder or facilitate terrorist financing. By their nature diamonds are not considered monetary instruments and therefore can be used in lieu of currency in arms deals, money laundering, and other crimes. Diamonds are unique in that they have a high value/low volume ratio, are untraceable, odourless and can easily be carried on a person's body without detection. These factors make diamonds an ideal substance to smuggle criminal or other illicit proceeds across borders.

Precious metals: Gold

Gold is attractive to criminal and terrorist groups due to its physical characteristics: it can be smelted into any form, camouflaged, and smuggled across borders. Because its form can be altered, gold used in trade usually has no valid paper trail, making it an anonymous trading material.

In the 1997-1998 Report on Money Laundering Typologies, FATF experts considered for the first time the possibilities of laundering funds in the gold market. They identified at the time, the scale of laundering in this sector constituted a 'real threat'. Gold was identified as a popular option for launderers because of the following characteristics:

- A universally accepted medium of exchange
- A hedge in times of uncertainty
- Prices set daily, hence a reasonably foreseeable value
- A material traded on world markets
- Anonymity
- Easily changeable of its forms
- Possibility for dealers of layering transactions in order to blur the audit trail
- Possibilities of double invoicing, false shipments and other fraudulent practices.⁶⁹

Subsequent international typology reports continue to indicate that gold bullion is used in the layering and integration stages of money laundering.⁷⁰

There are a number of case studies which suggest terrorist organisations have converted cash into high-value and hard-to-trace commodities such as gold or precious stones in order to move assets outside the financial system. Analysis of the modus operandi of al-Qaeda (and its Southeast Asian affiliate, Jemaah Islamiyah) indicates gold smuggling was used to help finance operations.⁷¹ It was widely reported that during the invasion of Afghanistan in 2001, Taliban and other members of al-Qaeda smuggled their money out of the country via Pakistan using couriers that handled bars of gold.⁷² From Pakistan, couriers and *hawala* dealers were reported to then transfer the money to the Gulf region, where it was once again converted to gold bullion. One report estimates during one three-week period in late November to early December 2001, al-Qaeda transferred USD 10 million in cash and gold out of Afghanistan.⁷³

Moreover, gold is often used by *hawala* brokers to balance their books. *Hawaladars* routinely have gold, rather than currency, placed in markets around the globe. There is always a market for gold

⁶⁸ For a more detailed study of al-Qaeda's role in the illicit trade of diamonds and other precious metals and stones, see Global Witness. *For a Few Dollars More: How al Qaeda moved into the Diamond Trade*, April 2003; Farah, D. 'Al Qaeda's Road Paved with Gold.' *The Washington Post*, 17 February 2002.

⁶⁹ FATF, 1997-1998 *Report on Money Laundering Typologies*, 12 February 1998.

⁷⁰ See for example, the Egmont Group, *FIUs in Action: 100 Cases from the Egmont Group*, Egmont Group of Financial Intelligence Units. pp. 11; AUSTRAC *Typologies and Case Studies Report 2008: Case Study 29*; AUSTRAC *Typologies and Case Studies Report 2010: Cases 17 & 32*.

⁷¹ Abuza, 2003. *Ibid*, pp. 20.

⁷² FATF, *Terrorist Financing*, pp. 24.

⁷³ Global Witness. *For a Few Dollars More: How al Qaeda moved into the Diamond Trade*, April 2003.

given its cultural significance in many parts of the world, particularly in Southeast Asia, South and Central Asia, the Arabian Peninsula, and North Africa.⁷⁴

Trust and company service providers

The FATF definition of trust and company service (TSCP) providers includes: businesses acting as company formation agents; arranging or providing services as a company director or company secretary; providing office space or registered addresses; arranging or providing trustee services; or arranging or providing a service as a nominee shareholder.

Corporate vehicles and trusts have long been identified by the FATF as posing a risk for money laundering/terrorist financing. Features of corporate vehicles that enhance the risk of ML/TF include:

- The ease with which corporate vehicles can be created and dissolved in some jurisdictions
- That a vehicle can be created as part of a series of multi-jurisdictional structures, in which a corporation in one jurisdiction is owned by one or more other corporations or trusts in other jurisdictions
- The use of specialised intermediaries and professionals to conceal true ownership
- The ease in which nominees may be used to disguise ownership, and corporations
- Other vehicles whose only purpose is to disguise the beneficial owner of the underlying asset.

Those seeking to facilitate terrorist financing have often used conventional business structures and commercial activities. Central to legitimate business activity is the need to create corporate entities with which to carry out business transactions to expand opportunities and to maximise profits. As outlined above, the cost of company formation in some countries can be only a few hundred dollars, and a number of company formation agents exist worldwide that can facilitate company creation and management at low cost and with very little (or no) customer identification measures.⁷⁵

The creation of shell companies further offers terrorist financiers the anonymity and tax-free status they require to launder or move illicit funds. The primary focus of several al-Qaeda cells, particularly in Southeast Asia, was to establish shell companies for this purpose.⁷⁶ The two most important, according to Abuza, were shell companies – ‘...corporate entities established with a minimum amount of capital, without substance or commercial purpose, that generated few (if any) profits, and whose primary purpose was to purchase materials or cloak other aspects of terrorist operations.’⁷⁷

⁷⁴ FATF, *Terrorist Financing*, pp. 24.

⁷⁵ For an in-depth study on misuse of corporate structures, see Sharman, J.C. 2011. *The Money Laundry: Regulating Criminal Finance in the Global Economy*. Ithaca: Cornell University Press.; Sharman, J.C., et al. *The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About it*. Washington D.C.: World Bank.

⁷⁶ Abuza, Z. 2003. *Ibid.* pp 34.

⁷⁷ Abuza, Z. 2003. *Ibid.*

The characteristics and regulation of DNFBPs in APEC economies

The following chapter outlines the experience of APEC economies in seeking to extend their AML/CTF regime to include non-financial businesses and professions.

Australia

The full range of designated non-financial businesses and professions (DNFBPs) exist in Australia. Casinos (mainly supervised at the state/territory level), bullion dealers, and lawyers are subject to some AML/CTF requirements. Notaries, real estate agents, accountants, and trust and company service providers (called professional company incorporation providers) also operate in Australia.

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) regulates services not businesses or professions. AML/CTF Act obligations arise from the provision of services rather than by virtue of being a particular business or profession. As such, mandatory CDD requirements apply to any person or entity that provides one or more 'designated services' specified in section 6 of the AML/CTF Act. Some mandatory CDD and record-keeping requirements continue to be in effect for cash dealers as specified in section 23 of the *Financial Transactions Act 1988* (FTR Act). Essentially within the DNFBP category this means casinos and bullion dealers have CDD obligations, and to a limited extent solicitors and motor vehicle dealers, which may have obligations under the FTR Act.

The Australian government is currently considering extending the application of the AML/CTF Act to specified services provided within the business and professional sectors.

Brunei

The DNFBP sector in Brunei includes real estate agents, dealers in precious metals and stones, lawyers, accountants and trust/companies service providers.⁷⁸ Casinos are not permitted to operate in the jurisdiction. There are less than 10 real estate companies operating in the country. The market for precious metals and stones is not developed in Brunei.

Shortly following its second mutual evaluation in 2010, Brunei reported that the Money Laundering (Amendment) Order 2010 had been approved on 22 July 2010. The main amendment, amongst others, was to include DNFBPs (in particular lawyers and accountants) as reporting entities. To date, some preventive measures have been put in place for some categories of DNFBP, but not all.

Canada

The DNFBP sector in Canada comprises casinos, real estate agents, accountants, lawyers, British Columbia notaries, public and notary corporations, and dealers in precious metals and stones. TSCPs are not separately recognised nor regulated in Canada.

⁷⁸ All figures provided for the DNFBP sector are taken from Brunei's second Mutual Evaluation Report, APG – 2nd Mutual Evaluation Report – Brunei Darussalam pp. 20.

Gaming is permitted under Canada's Criminal Code and regulated through provincial gaming legislation.⁷⁹ Casinos have reporting obligations with respect to STRs, terrorist property reports⁸⁰, large cash transactions, electronic funds transfers, and casino disbursements. Effective September 28, 2009, entities must also report casino disbursements involving amounts of CA \$10,000 or more, whether payments were made in cash or not.⁸¹ According to a typologies and trends report released by FINTRAC, in 2008-09 all of the 112 cases involving the casino sector were associated to suspected money laundering activity, with five of these cases also suspected to be related to terrorist activity financing and/or threats to the security of Canada.⁸²

Casinos, real estate agents and accountants have been subject to STR, CDD and record-keeping requirements since 2001.⁸³ Regulations enacted in June 2007 and came into force in June 2008 expanded requirements for these sectors. As of December 2008, whole or part of the PCMLTFA applies to legal counsel and legal practitioners, British Columbia notaries, public and notary corporations, and dealers in metals and precious stones. TCSPs are not separately recognised nor regulated as a discrete category of entity in Canada and do not fall under the AML/CFT regime.⁸⁴

Chile

Chile has a large and well-developed banking and financial sector with an established AML/CTF financing regime. However, limited information is available on Chile's non-financial business and professional sector.⁸⁵ Casinos, gambling houses and horse racing, customs general agents, auction houses, realtors/land developers, notaries and registrars, and sports clubs are subject to suspicious transaction reporting. Dealers in precious metals and stones, lawyers, accountants and TCSPs are not currently subject to STR requirements. The Chilean financial intelligence unit, La Unidad de Análisis Financiero (UAF) has issued various circulars in relation to CDD and other preventative measures to its reporting population.

People's Republic of China

The DNFBP sector in China comprises real estate agents, dealers in precious metals and stones, lawyers, accountants, notaries and TCSPs. Although China has recently strengthened the requirements applicable to trust service providers (i.e. trust investment companies), it is yet to apply specific AML/CTF measures to any other category of DNFBP.⁸⁶ Operating a casino (including internet casinos) is specifically prohibited under China's Penal Code, as is gambling or opening a gambling house. In recent years China has significantly strengthened the AML/CTF requirements applicable to trust investment companies and taken some action to strengthen CDD and record-keeping requirements in the real estate sector. However, according to the FATF, China has not yet extended comprehensive requirements to dealers in precious metals and stones, lawyers, notaries, and company service providers.⁸⁷

Hong Kong, China

⁷⁹ *Ibid.* pp. 214.

⁸⁰ Since 2002, Canadian reporting entities are required to send a terrorist property report to FINTRAC if they have property in their possession or control that they know is owned or controlled by or on behalf of a terrorist or terrorist group. This includes information about any transaction or proposed transaction relating to that property (MER, pp. 225).

⁸¹ FINTRAC Guideline for Casinos: <http://www.fintrac.gc.ca/re-ed/files/casinos-eng.pdf>

⁸² FINTRAC, *Money laundering Typologies and Trends in Canadian casinos*, November 2009.

⁸³ FATF *Third Mutual Evaluation Report - Canada*, pp. 309.

⁸⁴ *Ibid.*, pp. 29.

⁸⁵ Chile's most recent Mutual Evaluation, undertaken by GAFISUD, was published in December 2010 in Spanish only. It is available at: http://www.gafisud.info/documentos/eng/evaluaciones_mutuas/Chile_3ra_Ronda_2010.pdf

⁸⁶ In its 2007 MER, the Chinese authorities advised that the PBC has drafted a Gold Transaction Regulation that is to be approved by the State Council which would extend internal control, customer identification, record keeping and STR reporting to gold exchanges, gold transactions agents and other gold service providers. FATF – First Mutual Evaluation of China, pp. 120.

⁸⁷ FATF – *Mutual Evaluation of China: 8th Follow-up Report*, pp. 43-44.

Hong Kong, China has taken progressive steps to extend CDD and record-keeping obligations to all categories of DNFBP. Relevant regulatory/professional bodies have issued practice circulars/guidelines for compliance by the respective practitioners in the relevant DNFBP sectors. These practice circulars/guidelines draw practitioners' attention to the relevant FATF requirements, the importance of CDD and record-keeping measures and address sector-specific issues with a view to assisting practitioners' compliance.⁸⁸

Hong Kong does not have land-based casinos and in general, betting activities are closely monitored. Real estate agents have some AML/CTF obligations established by the Estate Agents Ordinance (cap 511) and additional legislation and conduct rules issued by the industry regulator.

All legal or natural persons (which include lawyers) in Hong Kong are bound by AML/CTF legislation. They are prohibited from dealing with proceeds of drug trafficking and other indictable offences, and are obliged to report suspicious transactions. AML/CTF obligations for legal practitioners are issued by the Law Society of Hong Kong (LSHK). The Law Society issued Guidelines on AML/CTF referred to as Practice Direction P, which took effect from 1 July 2008.⁸⁹ The CDD and record-keeping requirements under Practice Direction P are mandatory. Practitioners who fail to comply with the requirements are liable to disciplinary actions by LSHK ranging from a fine to suspension of a legal licence.

Indonesia

Most categories of DNFBPs (as defined by the FATF) are in operation in Indonesia, with the exception of casinos and gambling services (which are outlawed) and trust and company service providers. Indonesia's new AML Law (Law No. 8, Year 2010) introduced measures for a range of non-financial businesses as 'reporting parties' – property/property agent companies, motor vehicle dealers, gemstone and jewellery/precious metal dealers, and arts/antique dealers and auction houses. The professions – lawyers, accountants and notaries, are currently excluded. Other categories excluded from the regime include casinos and TSCPs (which are not relevant in the Indonesian context).

Given their inclusion as reporting parties, these reporting parties are now subject to the various preventive measures (CDD, STRs, and record keeping requirements) as set out under the 2010 AML Law. DNFBPs must also file a report for any transaction (using rupiah and/or foreign currency) with the amount of at least or equal to Rp500,000,000.00 (five hundred million rupiah, or equivalent to USD \$52,000) to Indonesia's FIU, PPATK.⁹⁰

Japan

Article 2 of Japan's AML/CTF law, the *Act on the Prevention of Transfer of Criminal Proceeds* (Law No. 22 of 2007) (the Act) encompasses the following DNFBPs as covered institutions: real estate agents and professionals, dealers in precious metals and stones (including antique dealers), postal service providers, and a range of legal professionals and accountants (including lawyers, judicial scriveners, certified administrative procedures specialists, certified public accountants and certified

⁸⁸ FATF, 4th Follow up report – Mutual Evaluation of Hong Kong, China, 19 October 2012, pps.29, 30-31. Accessed at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Follow%20up%20report%20MER%20Hong%20Kong%20China.pdf>

⁸⁹ *Ibid.* pp. 29.

⁹⁰ Currency exchange rate as at 13 November 2012.

public tax accountants).⁹¹ Casinos and internet casinos are prohibited by Articles 185 and 186 of the Japanese Penal Code.⁹²

Despite the uniform application of Japan's AML/CTF law to financial and non-financial institutions, the regime applied to DNFBPs varies across the sectors. Independent legal professionals (excluding attorneys) and accountants are subject to customer identification requirements as specified by their relevant industry association.⁹³ While dealers in precious metals and stones have also been subject to CDD requirements since 1 March 2008, there are currently no licensing or registration requirements in place. Similarly, apart from the requirement to be licensed, there are no specific CDD or reporting requirements on real estate agents.

Republic of Korea

Designated non-financial businesses and professions in Korea currently have no AML/CTF obligations except for casinos. While no AML/CTF obligations apply to trust and company service providers, trust companies are considered to be financial institutions and are therefore subject to licensing requirements and supervision by the Financial Supervisory Service (FSS).

Korea has 16 casinos open to foreigners and one casino that is open to both foreigners and Korean nationals. Since 22 December 2008, casinos have been required to perform CDD on both currency exchange and exchange of chips for cash or cheques. Casinos do not open or maintain accounts for customers. The Korea Casino Association has also established an AML business manual for casinos based on the AML Enforcement Guidelines so that individual casinos can establish their own internal guidelines.

The remaining sectors (legal professionals, including accountants, real estate agents and dealers in precious metals and stones) are generally subject to licensing requirements; however, there are no explicit AML/CTF requirements applied to these businesses and professions.

Malaysia

All categories of DNFBP operate in Malaysia and are regulated under the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* (AMLATFA). Malaysia's financial intelligence unit, Bank Negara Malaysia (BNM) is responsible for monitoring and ensuring compliance with AML/CTF requirements under the AMLATFA, and has adequate powers and sanctions for those purposes.

Malaysia has taken a staged approach to implementing the AML/CTF regime across the various sectors, initially commencing with STR obligations and then followed by CDD, internal controls and record-keeping obligations. The staged approach to AMLATFA implementation is guided by the vulnerability of particular industries.⁹⁴

Malaysia also has a well-established system for ensuring the ethical and professional behaviour on the part of professionals such as accountants, auditors, and lawyers. This includes the existence of codes of conduct and good practices, as well as methods to ensure compliance such as registration, licensing, and supervision.

⁹¹ FATF, *Third Mutual Evaluation Report – Japan*, 17 October 2008, pp. 169. Accessed at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Japan%20full.pdf>

⁹² The Prefectural Public Safety Commission does license 'business parlours' and casino bars in accordance with Article 3 of the Act on the Control and Improvement of Entertainment and Amusement Business. However, exchanging chips from the entertainment for money or prizes is prohibited by the law. Source: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Japan%20full.pdf>, pp. 21.

⁹³ *Ibid*, pp. 172.

⁹⁴ Asia/Pacific Group on Money Laundering (APG) – *Mutual Evaluation Report on Malaysia*. Adopted 25 July 2007, pp. 6.

Mexico

All types of DNFBPs are active in the Mexican economy. At the time of Mexico's mutual evaluation in 2008, there were no AML/CTF legal or regulatory measures, nor supervision, for any of the categories of DNFBP, except for trust services which, by law, can be provided only by licensed financial institutions.⁹⁵ Casinos are prohibited by law, including slot machines, except during regional fairs in which case a temporary permit is required to operate a betting game hall. One to five such casino licenses are issued every year.⁹⁶

In October 2012 the Mexican Congress approved new legislation which designates and introduces reporting requirements in relation to the following 'catalogue' of services, which includes, *inter alia*, gambling and lotteries, real estate services, dealers in precious stones and metals, auctions and artwork, vehicle dealers, legal and accounting services and donations by non-profit organisations. Services provided by these DNFBPs are also subject to various cash thresholds. The legislation further imposes suspicious transaction reporting requirements on commercial establishments and notaries.⁹⁷

New Zealand

The *Anti-Money Laundering and Countering the Financing of Terrorism Act 2009* (AML/CFT Act) was passed on 16 October 2009.

The application of AML/CTF responsibilities for businesses and professions is being approached in two phases or tranches. The first phase largely covers financial institutions and casinos; the second phase will potentially extend coverage to real estate agents, lawyers, accountants, conveyancers, bullion dealers, jewellers and other high value dealers. New Zealand's six casinos are regulated under the *Gambling Act 2003* and the AML/CTF Act.

Papua New Guinea

The *Proceeds of Crime Act 2005* (POCA) sets out basic AML/CTF preventative measures applying to all the DNFBPs, with the exception of trust and company service providers 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.⁹⁸

Peru

Currently, most DNFBPs in Peru are subject to some AML/CTF regulatory controls. The Peruvian Government, particularly under the Humala Administration, have taken steps to implement AML/CTF reform in the DNFBP sector. Amendments under Law N° 29038 of June 2007 introduced amendments which brought the financial intelligence unit under the auspices of the Superintendency of Banking Insurance and Private Pension Funds (SBS) and extended the categories of DNFBP obligated to report suspicious transactions.

⁹⁵ FATF – *Mutual Evaluation of Mexico – Third Follow up Report*, October 2012, pp. 9.

⁹⁶ *Mutual Evaluation Report: Mexico*, pp. 13.

⁹⁷ See McClesky, C. 'Mexico Passes Long-Awaited Money Laundering Law,' *In Sight Crime*, 12 October 2012. It remains unclear however which commercial establishments are subject to STR requirements.

⁹⁸ Asia/Pacific Group on Money Laundering (APG)/World Bank, *Mutual Evaluation Report: Papua New Guinea*, 21 July 2011, pp. 30. Accessed 4 February 2013 at: http://www.apgml.org/documents/docs/17/PNG%20MER_July%202011.pdf

Legislative Decree N°1106 of April 2012 further strengthened Peru's AML/CFT regime by establishing the Peru Lawyers Association and Peru Accountants Association as supervisory agencies and granting Peru's FIU powers to regulate the AML/CFT system for all reporting entities (including supervision of public notaries). Importantly, authorities recognise that high-risk operations such as mining companies and dealers of explosives or chemical components used in drugs and explosives were important entities to capture in the Peruvian context. Despite these positive steps, there is a lack of specific regulations issued for the broad categories of DNFBP and currently no AML/CTF controls extended to the legal and accounting professions.

The Philippines

All categories of DNFBP operate in the Philippines. Trust departments of banks, trust corporations and investment houses are licensed by the banking regulator, Bangko Sentral ng Pilipinas (BSP), and are considered 'covered institutions' under the Philippine Anti-Money Laundering Act, the AMLA.⁹⁹

In March 2013, Philippine AML/CFT laws were strengthened to include persons ('covered institutions') that provide certain financial services to clients or customers, such as jewellers, lawyers and accountants, and company service providers. Dealers in precious metals and stones are subject to a cash transaction threshold (PHP1,000,000.00 or approximately USD 24 000). Casinos are yet to be legislated under the AMLA.

Russia

Russia has designated most categories of DNFBP but most are neither supervised nor registered specifically for AML/CTF purposes.¹⁰⁰ Russia's AML/CTF regime was implemented in two tranches: the first covering financial institutions, the gaming sector, the real estate industry and dealers in precious metals and stones. Therefore, the DNFBPs designated under tranche one are subject to the same preventive measures as financial institutions. The second tranche applies to lawyers, notaries and accountants and in general, are subject to a less stringent version of the obligations that apply to tranche one entities. Real estate agents, casinos and dealers in precious metals and stones are required to report suspicious transactions. Russia's FIU, Rosfinmonitoring, is responsible for supervising casinos and real estate agents.

Singapore

Up until recently, Singapore applied AML/CTF preventive measures to legal practitioners and trustees only (but not company service providers). Singapore has significantly strengthened its AML/CTF regime in relation to DNFBPs including extending reporting requirements applicable to lawyers who provide trust services and to casinos, which have had a physical presence in Singapore since 2010. Singapore has not yet applied preventive measures to accountants, trust service providers (other than trust companies and lawyers), company service providers, dealers in precious metals and stones and real estate agents. While not explicitly regulated for AML/CTF purposes, Singaporean authorities have plans in place to further strengthen the requirements for such DNFBPs.

Chinese Taipei

⁹⁹ Asia-Pacific Group on Money Laundering (APG)/World Bank – 2nd Mutual Evaluation of the Republic of the Philippines, Adopted 8 July 2009, pp. 31.

¹⁰⁰ FATF Second mutual evaluation report – Russian Federation, 20 June 2008. Accessed at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Russia%20ful.pdf>, pp. 12.

Dealers in precious metals and stones and trust businesses are the only designated non-financial service providers to be included in Chinese Taipei's AML/CTF regime, in accordance with the *Money Laundering Control Act* (MLCA). The establishment and operation of casinos are prohibited by law.¹⁰¹

The AML/CTF obligations that are imposed under the MLCA on financial institutions are equally applied to the jewellery sector. In January 2012, new regulations governing the reporting of transactions above certain amounts and suspected money laundering transactions by dealers in precious metals and stones came in force. According to the new regulations, CDD and record-keeping obligations for jewellery dealers are now applied for cash transactions above NT\$500,000 (approximately US\$16,850).

Jewellers in Chinese Taipei, in addition to dealing in precious metals and stones, also perform other functions associated with financial institutions such as currency exchange. The Ministry of Economic Affairs (MOEA) is the relevant AML/CTF supervisor for the jewellery sector and the ministry has issued a 'Checklist of Money Laundering Prevention Guidelines and Procedures' for jewellery businesses.

Thailand

Five of the seven FATF designated non-financial businesses and professions officially operate in Thailand: dealers in precious metals and stones, real estate agents, accountants, and lawyers. Notaries, TCSPs and casinos do not operate in the jurisdiction. Casinos are illegal. Thai laws do not permit the establishment or registration of trusts and TCSPs do not perform any of the functions in the FATF definition.

In 2009, section 16 of the Thai AML/CTF Law, the AMLA, was amended to extend reporting requirements to nine categories of DNFBP, including asset management companies, jewellery and gold shops, automotive hire-purchase businesses or car dealers, real estate agents/brokers, antiques shops, personal loan businesses, electronic card businesses, credit card businesses, and electronic payment businesses.

The United States

The *Annunzio-Wylie Anti-Money Laundering Act 1992* (US) (Annunzio-Wylie Act) permitted the Secretary of the Treasury to require any financial institution to file a report of a suspicious transaction. The AML/CTF legislation in the United States includes the *Currency and Foreign Transactions Reporting Act* (US) (known as the Bank Secrecy Act (BSA)), the *Money Laundering Control Act 1986* (US) (MLCA), and the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001* (US) (the PATRIOT Act).

Some AML/CTF provisions extend to all businesses and to all individuals. The Annunzio-Wylie Act requires all businesses to keep customer identification records for all currency transactions between USD \$3,000 and USD \$10,000. Section 31 USC 5331 requires all individuals involved in trade or business (except financial institutions which are covered by the BSA) to report currency received for goods in excess of USD \$10,000 to the Financial Crimes Enforcement Network (FinCEN), the financial intelligence unit in the United States.

The PATRIOT Act expanded the anti-money laundering program requirements to include broker-dealers, casinos, futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors. Informal value transfer systems (providers of remittance services) were

¹⁰¹ APG *Mutual Evaluation Report on Chinese Taipei*, 24 July 2007, pp. 145.

also included in the definition of financial institutions. The regime also includes dealers in precious metals, stones, or jewels. Professions in the United States, such as legal practitioners, are not subject to preventive AML/CTF requirements. Members of the professions; however, may of course be prosecuted for any criminal involvement in the financing of terrorism and for assisting ML/TF activities.¹⁰²

Viet Nam

Viet Nam's AML Decree No 74 includes some but not all DNFBP sectors. Article 6 of the Decree designates casinos, lawyers, real estate agents, and dealers in precious metals and stones as subject to AML/CTF requirements. Accountants and company service providers are not currently included as regulated entities, and it is unclear whether notaries have any obligations under the Decree. There are also gaps in the definitions of DNFBPs included in AML Decree No 74. For example, the definition of real estate agent is limited to companies.¹⁰³ In relation to issuing AML/CTF guidance to specific sectors, Viet Nam has to date tendered Circulars 148 (Ministry of Finance), 22 (12 (Ministry of Construction) which provide further guidance for the gaming and real estate sectors. Viet Nam is currently conducting research in relation to issuing guidelines for other categories of DNFBP as stipulated by AML Decree No 74.

¹⁰² Levi M & Reuter P 2006. *Money laundering*, in Tonry M (ed), *Crime and justice: A review of research* vol 34. Chicago: Chicago University Press: 289–386.

¹⁰³ APG *Mutual Evaluation of Vietnam*, 8 July 2009, p. 148. Accessed at.: <http://www.apgml.org/documents/docs/17/Vietnam%20ME1.pdf>

Conclusion and Recommendations

The most significant challenge for the present study was the overall lack of available data on terrorist financing in the economies examined. It was difficult to source current information on the size and scope of DNFBP sectors in APEC economies and specifically on the terrorist financing risks they face. This finding was consistent with the views of workshop participants who agreed the topic of DNFBPs was a 'tricky one' and economies have not readily focused on the terrorist financing risks in these sectors. This result is not surprising given that Recommendations relating to DNFBPs under the former 40+9 framework were considered non-core/key FATF Recommendations. As a result, countries have largely focused their AML/CTF efforts on the core/key Recommendations as a priority.

Workshop participants and participating officials agreed there was no 'one size fits all' approach to the regulation of DNFBP sectors. The general consensus was, it is the context of each economy's terrorist financing activities that will determine its regulatory approach, and economies' DNFBP regulations must be tailored for the specific business and professional sector of each economy.

Given the lack of available data, it was not surprising information on terrorist financing in the business and professional groups of participating APEC economies was limited. This finding is consistent with the results of other studies on this issue. Contributing to this finding is most likely the lack of empirical information (namely terrorist financing cases) which involves DNFBPs. Compounding this issue are that efforts to detect and interdict terrorist financing are usually only dealt with through existing mechanisms to combat money laundering. Indeed, in some jurisdictions, the only available tools law enforcement officials have to combat terrorism are anti-money laundering statutes. This can result in terrorist financing investigations proving 'too difficult' as a result of inadequate powers and/or lack of capacity by reporting institutions to identify such transactions.

DNFBPs provide a range of services and activities that vastly differ, both in their methods of delivery, and in the depth and duration of the relationships formed with customers, and the size of the operation. DNFBPs may also have different regulatory requirements at the national/state level than at the state or provincial level. As a result, it was beyond the scope of this report to provide high-level guidance for APEC economies, rather each economy and its national authorities should aim to establish an active dialogue and partnership with its DNFBP sectors and relevant SROs that will be mutually beneficial in protecting their non-financial sectors from terrorist financing.

In relation to AML/CTF guidance, Annex 1 provides a table which outlines the inclusion of DNFBPs in regulatory regimes across APEC economies. For each category, the related guidance material is annotated and a reference to the related material is provided (where possible). This enables participants to view other economies' approaches to regulating their DNFBP sectors and the type of guidance provided to that sector – bearing in mind; however, each economy will have different regulatory approaches depending on a range of factors unique to their jurisdiction.

This report has generally only considered the seven main FATF-designated non-financial business and professions. It is important to acknowledge this does not limit the inclusion of a range of 'other' types of DNFBP (motor vehicle dealers, arts and auction houses, pawnbrokers, for example) in economies' AML/CTF regulatory regimes. In some cases, the levels of risk may be higher in the non-FATF designated categories of DNFBP and in these cases economies need to engage with the relevant sector to address the differing levels of risk.

In relation to legal professionals, it is important to remember the range of activities carried out by this sector is diverse and varies from one economy to another. It is acknowledged by FATF members that full implementation of these specific Recommendations has not been universal. As a consequence, a major part of the legal profession is not covered by global AML/CTF regulatory standards. It is therefore important that competent authorities understand the specific roles undertaken by different legal professionals within their respective economy when assessing the vulnerabilities and risks concerning their professional sectors.

For the other sectors, casinos were not considered particularly vulnerable to terrorist financing. Research undertaken throughout this project only found a handful of reported cases of suspected terrorist financing in the casino sector. This finding is supported by anecdotal evidence from workshop participants involved in this project who noted that they were *'not aware of information which involved the funding of terrorism via the casino sector, nor would it be a likely scenario'*. The real estate sector remains vulnerable to terrorist financing in some of the economies examined. Use of false identification to acquire property or sign a lease remained a common method for avoiding detection by authorities. However, workshop participants reported that in the case of Indonesia, terrorists are more likely to 'homestay' in an informal room rental arrangement than acquire a formal rental property. These factors make detection of terrorist financing in the real estate sector increasingly difficult.

While the empirical evidence may not strongly support widespread misuse of the DNFBP sectors among APEC economies, the risk these sectors may wittingly or unwittingly become involved in such activity does remain an ongoing concern. Although it is most likely beyond the scope of most economies to assess the level of risk amongst those businesses and professionals that operate outside current legislative and professional regulatory controls, it is here the levels of risk may be higher. As a result, APEC economies are encouraged to remain vigilant in protecting both the non-business and professional sectors from potential abuse by terrorist financiers. Increased vigilance on behalf of the DNFBP sector may prevent further illicit activities from occurring, and has economic benefits beyond the sector itself.

Recommendations

Given the above findings, APEC economies may wish to consider the following recommendations:

- As a first step, conduct (or commission an external provider to undertake) a detailed risk assessment on the money laundering/terrorist financing risks unique to the specific business and professional sector in the relevant economy. *For example, the Indonesian financial intelligence unit hired a local Indonesian firm (the Indonesian Anti-Money Laundering Institute) to help conduct research, both on the size and on money laundering/terrorist financing across the DNFBP sector. This work was a useful first step towards understanding the risk of terrorists channelling funds through DNFBPs and how regulation might effectively address these risks.*
- Establish an active dialogue and partnership with the relevant economy's DNFBP sectors and related SROs and/or associations that will be mutually beneficial in protecting their non-financial sectors from terrorist financing.
- Conduct education campaigns for the non-financial businesses and professions covered by the economy's relevant AML/CTF legislation, or those at heightened risk of terrorist financing occurring. *Under the PPATK-AUSTRAC Partnership Program (PAPP), the Indonesian Anti-Money Laundering Institute along with the PAPP team conducted a range of education campaigns for the DNFBP sector across Indonesia.*

- As far as possible, maintain detailed records of terrorist financing cases involving DNFBPs and typologies that may be used.
- Publish AML/CTF guidelines in partnership with the relevant sector's SRO and/or associations.
- Seek opportunities to further build capacity in the area of counter terrorism financing more generally, and of terrorist financing through the DNFBP sectors more specifically. *For example, capacity building activities and workshops offered through economies' relevant FBRBs and other international fora.*

Future directions

In terms of future research, the provision of terrorist financing case studies and further typology studies on the flow of funds from DNFBPs would be beneficial, if available. The role of certain DNFBPs (gatekeepers in particular) in channelling funds through NPOs may also warrant further research. As noted in the outset of this report, a review of information contained in the forthcoming FATF 4th round of mutual evaluations may provide a more up to date picture of economies' current progress on DNFBP regulation.

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Annex 1. Characteristics and regulation of DNFBPs across APEC economies

Inclusion of non-financial businesses and professions in AML/CTF regimes across APEC economies

APEC Economy	FATF designated DNFBPs										"Other" DNFBPs		Guide lines/guidance notes
	Casinos	Lawyers	Accountants	Notaries	Real Estate Agents	Dealers in Precious Stones	Metals	TCSPs	Motor Vehicle dealers	Antiques/second hand dealers			
Australia	Yes	No	No	No	No	No	Yes*	No	Partially	No	Yes - gambling services and bullion		
Brunei Darussalam	N/A	No	No	No	No	No	No	Yes	No	No	No guidance published		
Canada	Yes	Partially**	Yes	No	Yes	Yes	Yes	N/A	No	No	Yes, for all designated DNFBPs		
Chile	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes, but only available in Spanish		
People's Republic of China	N/A	No	N/A	No	No	No	No	Yes	No	No	No guidance published		
Hong Kong, China	N/A	Yes	Yes	Yes	Yes	Partially	Partially	Yes	No	No	Additional Guidance note for TCSPs		
Indonesia	N/A	No	No	No	Yes	Yes	Yes	N/A	Yes	Yes	No guidance published		
Japan	N/A	Yes***	Yes	N/A	Yes	Yes	Yes	Yes	No	No	Yes - Lawyers (no URL)		
Republic of Korea	Yes	No	No	No	No	No	No	No	No	No	No guidance published		
Malaysia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes - all DNFBPs. Bank Negara guidance available.		
Mexico	Yes	No	No	No	No	No	No	Yes	No	No	No - law only just implemented		
New Zealand	Yes	No [^]	No [^]	N/A	No	No	No	Partially	No	No	Guidance for the FTR Act only		
Papua New Guinea	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	All DNFBPs covered by legislation, no effective implementation		
Peru	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	GAFISUD Best Practice Manual for DNFBPs (Spanish only)		
The Philippines	No	Partially ^{^^}	Partially ^{^^}	Partially ^{^^}	Partially ^{^^}	Yes	Yes	Partially ^{^^^}	No	Yes	No guidance published. Legislation only recently passed.		
Russia	Yes	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes, but only available in Russian		
Singapore	Yes	Yes	No	N/A	No	No	No	Partially	No	No	Yes, some guidelines available		
Chinese Taipei	N/A	No	No	No	No	Yes	Yes	Yes	No	No	Yes - dealers in precious metals/stones (no URL)		
Thailand	N/A	No	No	N/A	Yes	Yes	N/A	N/A	Yes	Yes	No guidance published		
United States	Yes	No	No	No	No****	Yes	Yes	No	Yes	Yes	Voluntary guide only for lawyers		
Viet Nam	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No guidance published		

Note: Table accurate as of February 2014.

* Bullion dealers only.

** Legal practitioners in Canada do not have AML/CTF obligations unless engaging in financial transactions (subject to certain exemptions).

*** Lawyers in Japan are exempt from STR reporting.

**** Real estate agents are defined as financial institutions but no rules have been set by FinCEN, therefore agents are not subject to AML/CTF requirements.

[^] Legal practitioners in New Zealand only have AML/CTF obligations when engaging in financial or real estate transactions.

^{^^} Legal practitioners, accountants and real estate agents in the Philippines are only captured when managing client money, securities or other assets; organisation of contributions for the creation, operation or management of companies; and buying and selling business entities.

^{^^^} Trust entities are considered to be Covered Institutions under Section 3(a) of AMLA.

Table 2. Guidance material for DNFBPs

APEC Economy	Guidelines/ guidance notes	Reference (URL if available)
Australia	Yes - gambling services and bullion	Casinos: www.austrac.gov.au/files/gn0803_gambling_services.pdf Bullion: http://www.austrac.gov.au/files/gn0901_bullion_definition.pdf
Brunei Darussalam	No guidance published	
Canada	Yes, for all designated DNFBPs	Casinos: www.fintrac-canafe.gc.ca/re-ed/files/casinos-eng.pdf Accountants: www.fintrac-canafe.gc.ca/re-ed/files/accts-eng.pdf Real Estate agents: www.fintrac-canafe.gc.ca/re-ed/files/real-eng.pdf
		Dealers in precious metals & stones: www.fintrac-canafe.gc.ca/re-ed/files/dprms-eng.pdf
Chile	Yes, but only available in Spanish	
People's Republic of China	No guidance published	
Hong Kong, China	Additional Guidance note for TCSPs	Lawyers: www.hklawsoc.org.hk/pub_c/professionalguide/volume2/default.asp?cap=24.17 Real Estate agents: www.eaa.org.hk/practice/documents/08-05_CRE.pdf
		Dealers in precious metals & stones: www.nd.gov.hk/pdf/pmpsd_guideline-e.pdf
		TCSPs: www.hkics.org.hk/media/publication/attachment/2141_AML%20Guidelines.pdf www.hkics.org.hk/media/publication/attachment/PUBLICATION_A_2317_GN10_AML%20companion_Final.pdf
Indonesia	No guidance published	
Japan	Yes - Lawyers (not available)	
Republic of Korea	No guidance published	
Malaysia	Yes - all DNFBPs	Bank Negara Malaysia, UPW/GP1[6]: AML/CTF sectoral guidelines 6 for DNFBPs (no URL available)
Mexico	No - law only just implemented	
New Zealand	Guidance for the FTR Act only	
Papua New Guinea	No guidelines.	All DNFBPs covered by legislation but no effective implementation.

Peru	GAFISUD Best Practice Manual for DNFBS (Spanish only)	www.gafisud.info/documentos/esp/cooperacion/Proyecto_APNFD-Mejores_Practicas_y_Legislacion_Modelo-esp.pdf www.mincetur.gob.pe/turismo/dgicm/leyes/RM_Nro_063_2009_MINCETUR.pdf
The Philippines	Not yet, jewellers only just legislated	
Russia	Yes, but only available in Russian	
Singapore	Yes for lawyers and casinos	Casinos: www.lawsociety.org.sg/forMembers/ResourceCentre/RunningYourPractice/StartingaPractice/ComplianceMatters/MeasuresonAntiMoneyLaunderingandCounterTerror/AntiMoneyLaunderingMeasures.aspx
		Lawyers: www.lawsociety.org.sg/Portals/0/ResourceCentre/RunningYourPractice/pdf/PD_of_Council_takes_effect_on_15Aug_2007.pdf
		Accountants: www.accountants.org.sg/Handbook/Vol%202/SAP/SAP%2019.doc
		Real Estate: www.iras.gov.sg/ESVPortal/resources/realestateguidelinesrevisedmas060607website1amended.doc
Chinese Taipei	Yes - dealers in precious metals/ stones	
Thailand	No guidance published	
United States	Voluntary guide only for lawyers	Casinos: www.fincen.gov/statutes_regs/guidance/pdf/FIN-2012-G004.pdf Lawyers: www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_taskforce_gtfgoodpracticesguidance.authcheckdam.pdf
		Precious metals & stones: www.fincen.gov/statutes_regs/frn/pdf/antimoneylaundering060305.pdf
Viet Nam	No guidance published	

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