

Lexbridge

PROJECT REPORT
DEVELOPMENT OF A PACIFIC MODEL LEGAL FRAMEWORK
FOR NON-CONVICTION-BASED CRIMINAL ASSET CONFISCATION
AND MONEY LAUNDERING OFFENCE PROVISIONS

FINAL REPORT ON CONSULTATION STAGE

September 2023



Table of Contents

- 1. Introduction 3
- 2. Project objectives 4
- 3. Overview of consultation process stages 6
 - 3.1. Deliverable 1: Concept Paper 6
 - 3.2 Deliverable 2: Associated outreach materials 7
 - 3.3 Deliverable 3: Outreach and consultation activities 7
- 4. Consultation outcomes/responses 10
 - 4.1 Key themes 10
 - 4.2 Questionnaire responses 11
 - 4.3 Conclusions 14
- 5. Plan and Methodology for future stages of the Model Law project..... 15
 - 5.1 Development of Policy Paper 15
 - 5.2. Development of the Model Framework 15
 - 5.3. Development of implementation support, training and resources 16
- 6. Conclusion 18

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1. Introduction

This paper presents a summary of the outreach and consultation undertaken from December 2022 to September 2023 on a proposal to develop a model anti-money laundering (AML) and proceeds of crime (POC) asset confiscation legal framework (the Model Framework). The Model Framework is intended to reflect best practice legal standards and to be tailored for adoption and implementation by Pacific Island countries.

It is envisaged that the overall project will be delivered through a series of stages culminating in supported delivery and implementation of the Model Framework within receiving countries:

Stage 1

Development and promotion of the concept in consultation with Pacific Island countries who may benefit from the Model Framework.

Stage 2

Development of a tailored policy paper setting out the key policy considerations underpinning the Model Framework.

Stage 3

Drafting the Model Framework including the AML offence regime, the POC confiscation and forfeiture regime, and the international cooperation regime.

Stage 4

Development and delivery of the implementation support and training program and resources.

The team envisages Stages 2 to 4 of the project could be focussed on development of the Model Framework for implementation initially in one specific 'early-adopter' country. The process of development and delivery would then be replicated for other beneficiary countries in the region.

This report presents an overview of Stage 1 of the project, the consultation phase, which was supported and funded by ABA ROLI and completed in September 2023. It is important to note that although the dedicated consultation phase of the project has been completed, consultation will remain an ongoing key part of subsequent stages of the project, to ensure the Model Framework is fit for purpose and meets the needs and policy aims of countries in the region. Stages 2 – 4 are currently unfunded.

Stage 1 of the project has been undertaken by a multidisciplinary team of experts within Lexbridge. The team together bring decades of hands-on practical experience in working on AML and combatting the financing of terrorism (CFT) projects in the Pacific, advising governments on compliance with international obligations and standards, and working on major legislative development projects, including across cross-cultural settings in the Pacific region.

The following sections of the report summarise the objectives of a model law, anticipated benefits for receiving Pacific Island countries, the key activities undertaken in the consultation process and the results of the consultations. The report then outlines the plan and methodology envisaged for how, subject to future funding, Stages 2-4 of the project could be taken forward.

2. Project objectives¹

The key goal of the project is to assist Pacific Island countries in their efforts to combat the threat of money laundering linked to corruption and organised crime, through the development and supported delivery of the Model Framework.

The overall project would aim to achieve this key goal through three main objectives:

Objective 1

Identify policy positions, practices, interests and concerns that may affect the establishment of an effective AML legal framework in individual countries in the region through direct consultation.

Objective 2

Develop a comprehensive model law, including both conviction and non-conviction-based (NCB) criminal asset confiscation and recovery measures, a framework of related offences such as money laundering and dealing with property reasonably suspected of being the proceeds of crime and provisions for international cooperation.

Objective 3

Develop supporting instruments and materials to assist jurisdictions to effectively adopt and implement the Model Framework. Provide training and person-to-person implementation support.

A key feature of the Model Framework will be the introduction of a NCB POC asset confiscation and forfeiture regime. NCB POC confiscation laws have been proven to be a highly effective method to confiscate the POC from those who profit from, but distance themselves from the criminal act. This is particularly important in transnational crime cases where frequently convictions cannot be secured in the country where the predicate offence occurred.

Certain international obligations require member States to be effective in their efforts to investigate and prosecute money laundering, and to deprive persons and criminal enterprises of their illicit gains, and repatriate funds back to victim jurisdictions, particularly in corruption cases.² Many countries - including those within the Pacific region - are not fully meeting international obligations, and money laundering prosecution and criminal asset confiscation rates remain worryingly low. One of the reasons for this is inadequate and outdated legal frameworks which are not well suited to tackling the transnational crime challenges of the 21st century. The Model Framework will be fit not just for current challenges but also those of the future.

The Model Framework will enable adopting countries to not only meet their existing international treaty obligations, but also to implement best practice standards such as those recommended by the Financial Action Task Force (FATF).³ The FATF Recommendations set out a comprehensive and consistent framework of measures for countries to implement in order to combat money laundering and terrorist financing. A key FATF best practice recommendation is that:

Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-

¹ The drivers for and objectives of the project are discussed in further detail in the Model Framework Concept Paper of March 2023.

² For example, those arising under the 1988 *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, to which many Pacific island countries are party: <https://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>.

³ FATF (2012-2022), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, www.fatf-gafi.org/recommendations.html.

conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation.⁴

The Model Framework would allow receiving countries to meet this best practice standard for AML/CFT by providing for a sophisticated framework of NCB POC confiscation laws.

The FATF recently published the following outcome from its Plenary meeting held in June 2023 with respect to their review of the current recommendations concerning criminal asset confiscation.

The FATF has continued its work to revise the FATF Standards relating to asset recovery in line with its priority to strengthen countries' measures to deprive criminals of their ill-gotten gains. The FATF aims to provide a new suite of tools which countries should use to effectively freeze, seize, and confiscate criminal property, both domestically and through international cooperation. A key milestone was reached at this Plenary to advance the reforms, which the FATF aims to approve in full in October 2023 related to Recommendations 4 and 38.⁵

If the FATF determines that NCB forfeiture is the applicable standard for countries to meet all requirements for Recommendation 4, there will be an increased demand for assistance to develop laws in advance of mutual evaluation assessment processes. A comprehensive model law focused on the needs of smaller Pacific Island countries would provide a time and cost-effective solution.

The Model Framework will also provide for enhanced investigative powers and sophisticated offence provisions, which will facilitate efficient and effective AML investigations and prosecutions, whilst providing robust due process protections to ensure the civil liberties of accused. The Model Framework will also include provisions relating to international cooperation mechanisms to enable adopting countries to cooperate more effectively internationally in their AML and asset confiscation efforts.

The intention is for the Model Framework to provide a stand-alone legal framework capable of fully replacing existing legal regimes, to eliminate the need for countries having to adopt a patchwork of amendments and additions to update their legislative regimes. However, the Model Framework will also be capable of adoption and implementation in individual parts. This will allow for adaptation and customisation by countries based on their individual circumstances and policy settings. For example, some countries might prefer to adopt specific components of the Model Framework to update and supplement their existing legislative regime to ensure it meets international standards and achieves improved operational outcomes in light of their particular policy aims.

If adopted and implemented by a majority of Pacific Island countries, the Model Framework would potentially be the most significant advancement in the Pacific Region to combat financial crime for the past 20 years. As outlined in the Concept Paper, the Model Framework can be reasonably expected to provide multiple positive flow-on effects to the region, and will be a highly effective tool to combat corruption in the region and foster stronger regional cooperation against transnational crime and illicit financial flows.

⁴ Ibid, page 12.

⁵ FATF, 'Outcomes FATF Plenary, 21-23 June 2023': <https://www.fatf-gafi.org/en/publications/Fatfgeneral/outcomes-fatf-plenary-june-2023.html>

3. Overview of consultation process stages

The consultation phase of the project funded by ABAROLI entailed three sets of deliverables:

Key deliverables	
1. Develop a concise paper on the value of model POC law and AML offence provisions (Model Law) for Pacific countries and a feedback form.	
2. Develop associated outreach materials.	
3: Plan and conduct initial outreach to promote the concept of a model law	3A: After development of concept paper – conduct virtual and/or in person presentation/briefing to/meetings with the following four multilateral stakeholders.
	3B. Where useful to complement the multilateral outreach, conduct bilateral virtual and/or in person presentations/briefings to/meetings with stakeholders, including the offer of a training presentation or tutorial on key features of an effective asset freezing and confiscation system.
	3C. Deliver final report.

ABAROLI advised in August 2023 that regrettably internal funding issues within ABAROLI meant that ABAROLI needed to cancel deliverable 3B. Accordingly, the Lexbridge project team was not in a position to proceed with the full range of bilateral outreach that had been envisaged to consult on and promote the model law project. This has meant that we have not been able to have as thorough engagement as we would have hoped. However, despite this, through the multilateral outreach and bilateral outreach the team was able to conduct within funded deliverables, the team were able to reach a sufficient range of interlocutors to attain representative feedback on which to base sound conclusions as to the ideal approach to development of the Model Framework. The data, methodology of analysis and conclusions drawn are outlined in the report below on Deliverables 1, 2, 3A and 3C.

3.1. Deliverable 1: Concept Paper

The Concept Paper was delivered in March 2023. The purpose of the Concept Paper was to establish a clear picture of the objectives of the Model Framework, how the project would be developed and of the key considerations and challenges that the team would need to address.

The Concept Paper was developed by the Lexbridge team drawing on their extensive collective experience in the field and from research into relevant international legal obligations and developing standards. Empirical study was undertaken to identify characteristics of the experiences of countries in the Pacific region and the challenges faced by them in combatting money-laundering. A comparative analysis was undertaken to identify the common experiences of countries across the region as well as the important differences between countries relevant to operations in this space.

In developing the Concept Paper, the team's research was supplemented by consultative meetings with key stakeholders working in the field and region. Meetings were held with Australian agencies such as the Pacific Branch of the Attorney-General's Department (AGD), the

Office of the Pacific and Transnational Crime team of the Department of Foreign Affairs and Trade (DFAT), the Australian Federal Police (AFP) and the Australian Transaction Reports and Analysis Centre (AUSTRAC). These meetings provided valuable insights and understandings of the factors and challenges that the Model Framework project would need to address.

In finalising the Concept Paper, the team also benefited from consultation with ABA ROLI. ABA ROLI's input further helped ensure the Concept Paper would be fit or purpose to help guide and shape the project's development.

3.2 Deliverable 2: Associated outreach materials

To support outreach, the Lexbridge team developed a suite of materials, including concise informational handouts for interested parties, slides and talking points to support presentations at bilateral and multilateral conferences, and a detailed stakeholder questionnaire. These were provided to ABAROLI in March 2023 and tailored as needed for specific stakeholder engagement.

The questionnaire was designed with a view to gauging stakeholder interest and eliciting feedback that will shape the Model Framework to ensure it meets the individual needs of beneficiary countries. The team disseminated the questionnaire in hard-copy, electronic, and online survey formats to facilitate stakeholder access and maximise the quantity and diversity of feedback.

Additionally, the team developed a stakeholder contact list and consultation tracking document to actively chart stakeholder consultation progress and identify gaps in stakeholder engagement. These documents supported the Lexbridge team in identifying relevant stakeholders in potential recipient countries to ensure that consultation activities would reach all interested groups and that the fullest range of views could be taken into account in the design of the Model Law.

3.3 Deliverable 3: Outreach and consultation activities

The Lexbridge team approached outreach activities with a view toward flexibly harnessing a range of engagement methods and media in order to maximise stakeholder access and input.

The Lexbridge team drew on the depth of its network of contacts in government agencies and non-government organisations throughout the Pacific to raise awareness of the project initially via emails and phone calls. Meetings were conducted with relevant stakeholders both in-person and virtually.

In order to maximise exposure and feedback, the team took up opportunities to present at a number of bilateral and multilateral conferences and fora. At each of these engagements the team took the opportunity to hear from audiences about the aspects of the Model Framework which most interested them, most concerned them or about which they wished to understand more. This input was then fed into subsequent stakeholder engagements.

Engagement with multilateral organisations

The team engaged with several important multilateral organisations and associations with interests in the AML/CFT space in the Pacific region. Some of the key organisations engaged with as part of the consultation process are identified and described in the table below.

The **Pacific Transnational Crime Coordination Centre (PTCCC)** is a law enforcement body for coordinating a regional network of Transnational Crime Units in member states of the Pacific Islands Forum with a specific focus on challenging transboundary criminal activity.

The **Pacific Island Law Officers Network (PILON)** is a network of senior law officers from 19 Pacific Island countries, including Australia and New Zealand, who work together to contribute to a safe and secure Pacific by advancing key law and justice issues.

The **Pacific Islands Chiefs of Police (PICP)** is a coordinating body aimed at facilitating Pacific Police Chiefs to exchange information, share learnings, and form regional agreements.

The **Asia Pacific Group on Money Laundering (APG ML)** is a regional inter-governmental body, committed to effectively implementing the international standards against money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction.

The **Pacific Islands Forum Secretariat (PIFS)** is the governing body for the Pacific Islands Forum (PIF), the region's premier political and economic policy organisation.

The **United Nations Office of Drugs and Crime (UNODC)** is an organ of the UN which provides technical assistance, research and normative support to Member States to help them develop and implement comprehensive, evidence-based solutions to the complex and interconnected threats that they face at the national, regional and global levels.

The **Basel Institute on Governance (the Basel Institute)** is an independent, international non-profit organisation dedicated to preventing and combating corruption and other financial crimes and to strengthening governance around the world.

The team engaged with representatives of these organisations, in some cases on multiple occasions, to discuss the Model Framework. De-identified responses and feedback received are discussed below.

Bilateral engagements

In addition to the bilateral engagements undertaken by the team in the course of developing the Concept Paper, bilateral engagements with key agencies of governments across the Pacific region was a substantial aspect of the consultation process.

Members of the team reached out for consultation with representatives of attorneys-general's offices, foreign affairs ministries, prosecutorial agencies, courts, and police forces and law enforcement units with a focus on AML.

Conferences and presentations

The team appeared at a series of conferences and workshops throughout the Pacific Region during the consultation phase. Conferences and workshops the Lexbridge team participated in in connection with the Model Framework are set out in the table below.

Event	Dates
Cook Islands APG ML workshop	27-29 March 2023
Marshall Islands APG ML workshop	17-19 April 2023
Palau APG ML workshop	27 April 2023
Samoa PTCCC AML workshop	19 May 2023
ABAROLI conference on Public-Private Partnerships for Financial Integrity - presentation	30 August 2023
PILON Corruption Working Group webinar presentation on money laundering attended by approximately 150 regional participants from the law and justice sector.	21 September 2023

Conclusion

By approaching the consultation phase of the project through a variety of fora and media, the team was able to increase the breadth and range of feedback both qualitatively and quantitatively. For example, whereas certain stakeholders from supporter countries, with whom the team had prior relationships, remote means of engagement enabled more efficient engagement, for practitioners in potential beneficiary countries, direct person-to-person engagement proved crucial.

4. Consultation outcomes/responses

4.1 Key themes

A number of key themes emerged in the course of the team's consultations. These have been synthesised and summarised in the following sections.

Recognition of diversity

A recurring theme which came to light throughout the consultation phase was the diversity of circumstances and factors experienced by individual countries in the region. Whilst initially the team had a focus on identifying the relevant factors and challenges common to potential beneficiary countries in the region, through consultation the team gained a greater appreciation of the need to take into account in developing the Model Framework the unique combinations of factors that were applicable to the various potential beneficiary countries.

Some of the significant factors which in combination shaped the context in which potential beneficiary countries were operating in the AML/CFT space included:

- corruption issues;
- increased organised crime activity;
- tribal/ familial dynamics and mistrust of public institutions;
- challenges engendering political will for complex legislative reforms
- lack of enforcement/ implementation capacity, including financial and skills deficits;
- overly cumbersome procedural requirements, and
- lack of international and regional communication and cooperation.

Implementation support and training

Many stakeholders emphasised that development and delivery of the Model Framework without provision of implementation support and training would be of little value to many potential beneficiary countries. Advice was received from a number of stakeholders working in the field that where legislative reform projects like the Model Framework project tended to fall down in the region was in providing "a shiny new" set of laws that were adopted in law but were never utilised due to lack of implementation support. Stakeholders pointed the team to past examples of this.

From these engagements the team have identified that implementation support would be crucial at each phase of the project. For example, support would be required not just to aid implementation of laws once they had been adopted into law, but during the phase where it was undergoing passage through parliament. The team have therefore amended their planning to include, along with the Model Framework, example explanatory memoranda and parliamentary documents such as second reading speeches, which will facilitate the Model Framework's passage into law.

Another key aspect of this impetus for support throughout the process is to ensure that supplementary costs associated with legal reforms, beyond just the costs of drafting of the Model Framework, would also be funded.

Political will and industry support

Certain stakeholders, particularly from supporter country agencies with experience delivering projects in the region, noted that engendering the support of stakeholders who worked in law-enforcement and the justice sector in potential beneficiary countries would not be sufficient to ensure the success of the Project. It would also be crucial to foster political will to progress the reforms. This therefore became an area of stakeholder engagement the team looked to augment in the later months of the consultation phase and one which will have a renewed progress in forthcoming work.

Similarly, stakeholder engagement also identified the importance of engendering the support of the financial industry and private sector entities, which have implementation roles to play in the AML/CFT space in the Region. From our consultations, particularly with AUSTRAC and AFP we gained an appreciation of the importance of early consultation and input from industry.

Regional buy-in and cooperation mechanisms

As is demonstrated in the Concept Paper the team already had a developed understanding of the need for inclusion in the Model Framework of provisions for international cooperation mechanisms including mutual assistance provisions. What came out during consultation was a greater appreciation that the implementation support process would also need to maintain a focus on connecting local beneficiary countries agencies with regional networks.

4.2 Questionnaire responses

During the first half of 2023, the APG ML coordinated three AML and Criminal Asset Confiscation training programs which were delivered by Lexbridge team member Mr Michael Petty in the Cook Islands, Palau and Samoa. These training programs were attended by a range of participants including police, prosecutors, customs officers, immigration officers, marine enforcement officers, policy lawyers and for the Cook Islands, representatives from local financial institutions. At the conclusion of the four-day training course, participants were provided with an outreach presentation on the Model Framework and asked to complete a questionnaire which set out the key issues covered under the project. The questionnaire asked participants if they supported or opposed each initiative and to provide any comments with respect to that particular issue. The total number of responses received across all three countries was 51.

A complete table of the questions and responses is included at **Appendix A**. A summary and analysis of the responses follows.

Respondent sample profile

Whilst as noted above, the scope of consultation phase was somewhat curtailed, the team is satisfied that the sample of respondents were of sufficient number and diversity to provide a useful indication of views generally on the Model Framework proposal.

Questionnaire respondents were predominantly from law enforcement backgrounds. The team is of the view that there are additional stakeholder types whose views are either not represented or underrepresented, consultation with whom would be likely to produce greater diversity of perspectives allowing for a better-informed design and delivery of the Model Framework. Consultation with other relevant stakeholders in the justice sector, including members of the judiciary, law societies and public defender's offices, would be reasonably expected to result in a greater variety of perspectives and additional constructive criticism. Moving forward, the Lexbridge team will seek to target these groups in order to elicit their feedback on considerations

and concerns that will help direct the team's attention to areas of the project that may benefit from greater focus.

Overall support for proposed powers, orders and provisions

Questionnaire respondents were overwhelmingly supportive of inclusion of each of the proposed powers, orders and provisions. The lowest level of support for any individual item was 94%. The highest level of opposition for any particular proposals was 4%, with respect to NCB restraining orders, compulsory examination orders and unexplained wealth orders.

Levels of support and opposition were consistent across each of the jurisdictions surveyed, with no particular country showing any significant tendencies toward support for or opposition to any particular types of proposed powers, orders or provisions.

Significant considerations and concerns

Questionnaire respondents were asked to comment individually on each of the proposed powers, orders and provisions, and a substantial proportion did so. These responses will be drawn on by the team to inform the design and delivery of the Model Framework. Notable feedback received is discussed below. For a more comprehensive overview of questionnaire responses see **Appendix A**.

Disclosure notices and production orders

Of the issues raised by respondents, the issue raised by the greatest number was in relation to the proposal for inclusion of a power for senior police officers to issue notices to financial institutions or agency heads to compel the disclosure of information. Respondents were generally supportive of the inclusion of such orders. However, many respondents noted concerns with senior police officers being granted this power, particularly where those officers were involved in the broader investigation, and the potential for abuse of this power. Respondents variously suggested that the power should reside with police commissioners, inspectors or that disclosure be at the discretion of agency heads.

The Lexbridge team will accordingly take a flexible approach to providing policy areas with a range of options for the classes of officials authorised to issue notices and the degree of discretion that agency heads or other recipients of notices may retain with respect to disclosure or production of relevant information.

Compatibility with privacy laws and privileges

With respect to disclosure notices and production orders, many respondents noted potential issues of consistency with privacy laws. Similarly in relation to compulsory examination orders, feedback was received that such orders would need to allow for legal professional privilege.

These comments emphasise the importance of the Model Framework being designed to be consistent with ancillary regimes, such as privacy laws. The team have developed a greater appreciation of the need for identification of any need for consequential amendments to legislation other than the primary statutes through which the Model Framework will be enacted.

Duration of orders

Several respondents expressed views with respect to the proposed duration for which orders such as freezing orders or restraining orders would remain in effect. However, notably there was a diverse range of views as to whether orders should be effective for a longer or more limited duration than that proposed. Where possible a flexible approach to the duration of orders may

be an important aim, with clear limitations complemented by extension mechanisms which can be effected with appropriate oversight but minimal procedural requirements.

Protection of innocent interests

Several respondents noted the need for protection of innocent interests with respect to particular types of orders, especially to allow for the living expenses of dependants who may not have had knowledge of any offending. Challenges were noted where tainted property was mixed with non-tainted property in which innocent persons may have interests. The team will consider whether a single overarching discretion to allow for innocent interests in the application of orders or specific exceptions tailored to each of the types of orders would be the most appropriate means by which to meet this policy need.

NCB orders

Respondents expressed concerns about the prospect of abuse of NCB restraining or forfeiture orders and noted the need for the elements of suspected offending to be clearly defined in order to mitigate this risk. Defining the elements to be satisfied, the standards of proof for these, and modes of reasoning by which courts may find these to have been met with respect to the NCB orders will be primary considerations in the development of the Model Framework. The team will give consideration to the viability of developing supporting materials such as judicial guidance manuals to assist judges and prosecutors in the interpretation of provisions.

Unexplained wealth orders

Various concerns were raised about the proposed unexplained wealth orders, including perceptions of bias and arbitrariness in their application given their lack of a connection to proven criminal offending. Such concerns, whilst again pointing to the need for clear and considered drafting, will also help the team to direct its attention to areas where there needs to be more fulsome explanation of the inherent safeguards built in to proposed powers.

Cultural considerations

Feedback was received about the need for the Model Framework to account for cultural practices. An example raised was the need for unexplained wealth orders to account for the practice of gifting wedding dowries. During future bilateral consultations in the context of developing the Model Framework for specific countries, the team will seek to gain an understanding of any cultural practices which should be factored into the structure.

Resources

A number of respondents noted that in order to implement effectively some of the mechanisms proposed for inclusion in the Model Framework it may be necessary to establish new dedicated teams within agencies. The team will factor into Model Framework proposals, estimates as to resources that may be required to implement proposed reforms and measures that may be adopted to minimise costs. Any government that is considering adopting the Model Framework and receiving support from the Lexbridge team will be advised of projected costs, so that the government can ensure funds are available within budgets before commitments are made to adopt the Model Framework and the team invests resources in delivery in that jurisdiction.

Asset management

More than one respondent noted with strong approval the proposal for inclusion of ancillary asset management powers in the Model Framework. Comments emphasised the challenges in maintaining asset values in tropical climates and in the absence of infrastructure to facilitate

appropriate storage. The team will consider how best to structure asset management provisions to overcome these challenges.

Regional cooperation

Several respondents noted the need for better collaboration across jurisdictions. International cooperation is a central policy objective underpinning the Model Framework. Multiple jurisdictions adopting the Model Framework will result in harmonisation of laws which will be a key facilitator of cooperation. In light of the strong interest expressed in building capacity for international cooperation, the team will consider how ancillary work around the Model Framework might support regional network building.

Training and capacity building

Respondents also noted the need for training and capacity building to support implementation of the Model Framework once it is delivered in jurisdictions. Training and implementation support will be a central feature of the Model Framework. In addition to materials, person-to-person training will be offered to law enforcement and justice sector practitioners where requested.

4.3 Conclusions

Each of the countries chosen for analysis were overwhelmingly supportive of the proposed Model Framework and expressed positive views about its various aspects.

Representatives of government agencies of each country demonstrated a strong appreciation of the benefits the Model Legal Framework could have for their country, in particular by providing a NCB forfeiture mechanism to facilitate POC confiscation and improve interoperability between countries. In some cases, stakeholders demonstrated an eagerness to commence processes for the adoption of the Model Legal Framework at the earliest opportunity.

Some important distinctions arise with respect to the individual concerns and challenges of the individual countries under consideration. Of these countries Palau already has a US style civil forfeiture framework which has not been actively used. Some aspects of the model law were seen as beneficial to the investigation and confiscation of criminal proceeds in addition to existing laws in Palau. Both the Cook Islands and Samoa do not have a NCB legal framework and both saw considerable benefit to be achieved by adopting such provisions.

Some interlocutors have reiterated the importance of appreciating the diversity of needs across different Pacific countries, and have expressed the view that it will be important to ensure that the Model Framework would be supported by various implementing tools and materials, to help individual countries to develop relevant policy proposals and tailor the Model Framework to suit their needs.

5. Plan and Methodology for future stages of the Model Law project

The following outlines the three main phases of work that would be envisaged for the Model Framework project as a whole.

There are different ways in which these phases could be approached as a whole. For example, while they could be developed with all Pacific countries in mind, they could also be approached by focusing on one or two countries which have been especially supportive of the initiative. Subsequently, the products developed could be readily adapted for uptake across other countries. As noted earlier, the two countries identified as possible candidates for the latter approach are the Cook Islands and Samoa.

Either approach could be taken, and this will depend in large part on available funding and donor preferences. In our view, based on the responses received in the consultation phase, the latter approach is likely to be easier to achieve funding support for, and could be very effective in terms of demonstrating tangible outcomes for a specific country, which could then be replicated and tailored by the project team for other countries across the region. Adopting such an approach would also have the benefit of maintaining momentum by building on the keen interest generated among identified countries.

5.1 Development of Policy Paper

A policy paper would be developed in consultation/with the assistance of subject matter experts. The paper would comprehensively cover key policy and practice issues to be explored when developing an effective criminal assets confiscation regime, including:

- investigative and information-gathering tools to support proceedings;
- pathways for asset recovery;
- mechanisms to prioritise asset recovery in investigations;
- rationale underpinning conviction-based and non-conviction-based forfeiture;
- protection of third-party rights; and
- best practices for international cooperation.

5.2. Development of the Model Framework

Development of a Model Asset Confiscation Law

The policy paper would be used to inform the development of drafting instructions, which in turn would be used as the basis for the development of the Model Framework. The Model Framework would draw on relevant precedents, particular from jurisdictions that have effectively applied NCB forfeiture laws. The Model Framework will be developed in consultation with, and with the assistance of, subject matter experts. It will provide for both conviction-based confiscation and NCB confiscation options. It will also include a suite of protection measures ensuring judicial oversight of all applications, protection of innocent interests in property and provisions to address hardship issues which might arise.

Development of Model Money Laundering Offences

Model laws will be developed for the offence of money laundering and a complementary offence of 'dealing with property reasonably suspected of being proceeds of crime'. These will be informed by the policy paper, and draw on precedents from jurisdictions, particularly those which

have recently updated their money laundering offences. The Model Framework offence provisions would be developed in consultation with, and with the assistance of, subject matter experts and would be drafted to be fully compliant with current FATF assessment criteria.

Development of international cooperation provisions

Provisions will be developed relating to international cooperation mechanisms for countries to seek and provide mutual assistance in relation to POC proceedings. This is an important part of the Model Framework, given that almost all organised crime is transnational in nature – and therefore both formal and informal cooperation between States is vital to combat this. Such international cooperation provisions will assist adopting countries to cooperate more effectively internationally in their AML and asset confiscation efforts. Again, these provisions will draw on relevant precedents and will be developed in consultation with, and with the assistance of, subject matter experts.

5.3. Development of implementation support, training and resources

This phase would comprise development of both supporting materials and desktop training resources. As noted earlier, a key theme emerging from the consultation process was that this phase is crucial to the effectiveness of the initiative. Deficiencies in countries' legal frameworks constitute one of the factors underlying low rates of effective AML outcomes in the region. However, lack of capacity across a range of areas is also a major factor hindering effective AML measures. Supporting countries to implement the Model Framework and building understanding and capacity internally among domestic stakeholders will therefore be essential to secure the long-term effectiveness of the Model Framework. Below we elaborate on the two main streams of work we envisage for this phase.

Development of supporting materials

A range of materials would be developed to support the effective uptake and implementation of the Model Framework, which could be collated in a comprehensive Criminal Assets Confiscation Manual for justice sector practitioners including investigators, litigators/prosecutors and potentially judicial officers. These materials would be developed in consultation with, and with the assistance of, subject matter experts.

It is envisaged that they could include:

Commentary:

A description of how the powers and tools in the Model Framework would be intended to be applied in practice, to include:

- case examples;
- schematics (flow charts) on various asset recovery pathways;
- description of linkages between powers; and
- chronologies of events.

Template applications, affidavits and orders:

To include template applications for restraint and forfeiture orders.

Asset management operational manual:

To include template forms, flow charts and standard Operating procedures to effectively preserve and dispose of assets.

The Model Framework would ideally be accompanied by multijurisdictional and individual country implementation assistance, training (virtual and/or in-person) and materials. Training and guidance materials would be tailored to the Pacific Island region and, in particular, smaller jurisdictions which might otherwise consider implementation of such laws beyond their existing capability.

Development of Desktop Training Resources:

This would involve development of preliminary training materials, including a range of desktop hypothetical 'real-life' asset confiscation cases, with additional training modules to accompany the hypotheticals. The hypothetical examples would provide a basis upon which future training could be developed or delivered by a country itself in implementing the Model Framework. In addition, the training materials could include modules for training to be delivered to the judiciary on criminal asset confiscation laws.

6. Conclusion

This report has summarised the objectives of the Model Framework and anticipated benefits for receiving Pacific Island countries; the key activities undertaken in the consultation process; the results of the consultations, and the plans and methodology avenues for taking the project forward.

The project team is very appreciative of the support provided by ABAROLI for this initial consultation phase, which has been essential to launch the idea of the Model Framework and test the concept among Pacific countries. The overall assessment of the Lexbridge project team following the consultations is that the concept has been demonstrated to be viable—with consultations showing strong support for the proposed Model Framework across bilateral and multilateral stakeholders consulted.

The project team expresses appreciation also to all those stakeholders who engaged in the consultations and for their willingness to share their views.

We identified a number of countries who were especially receptive to the proposal and therefore could be candidates for initial uptake of a model law: the Cook Islands and Samoa. Representatives of government agencies of each country demonstrated a strong appreciation of the benefits the Model Framework could have for their country, in particular by providing a NCB forfeiture mechanism to facilitate POC confiscation. Stakeholders demonstrated an eagerness to commence processes for adoption of the Model Framework at the earliest opportunity.

The timing could not be better to take this project forward, given the anticipated upcoming changes to FATF recommendations regarding asset confiscation. Lexbridge's proposed Model Framework is perfectly suited to aid countries in meeting the higher standards raised by the anticipated changes in a timely fashion. Having a Model Framework in place will be of high value and immensely useful not just for the Pacific region, but for countries across other regions also.

The content of this report, together with the team's experience in conducting the consultations, and the contacts and networks formed throughout the consultations, will inform and support the drafting of the proposed model law and supporting materials.

The Lexbridge team is keen to build on the positive reception and momentum generated by the consultation phase, and to seek funding to support the next stages of the project as soon as possible. As indicated in the Concept Paper and in the Introduction to this paper, we consider that if adopted and implemented by a majority of Pacific Island countries, the Model Framework would potentially be the most significant advancement in the Pacific Region to combat financial crime for the past 20 years. The Model Framework would provide multiple positive flow-on effects to the region, and would be a highly effective tool to combat corruption in the region and foster stronger regional cooperation against transnational crime and illicit financial flows.