

ANTI-MONEY LAUNDERING AND CRIMINAL ASSET CONFISCATION PROJECT:

A MODEL LEGAL FRAMEWORK FOR THE PACIFIC & LAW REFORM PACKAGE FOR THE COOK ISLANDS

Project overview

Lexbridge Lawyers is working on a major anti-money laundering (AML) and criminal asset confiscation law reform project for the Pacific, coordinated through the Asia/Pacific Group on Money Laundering (APG) with donor funding provided by the Government of New Zealand. This is a groundbreaking AML project for the region, and has been specifically designed to help small to medium-sized jurisdictions. The project has two main deliverables:

- 1) development of a Model Legal Framework for Pacific Island jurisdictions; and
- 2) delivery of a legal framework tailored specifically for the Cook Islands, based on the Model Legal Framework, and developed in close consultation with the Cook Islands.

This project is very timely and is of global and regional significance as it is the first major law reform project of its kind following recent changes to the [Financial Action Task Force \(FATF\) recommendations in November 2023](#). These changes now require all member countries to have policies and operational frameworks that prioritise asset recovery and to establish non-conviction-based (NCB) confiscation regimes in their legal systems. As a result, many countries will need to develop new laws, policies and procedures in advance of future mutual evaluation assessment processes.

The Model Legal Framework that will be developed as part of this project will help Pacific Island jurisdictions to develop new laws to implement the amended FATF standards as well as meet their existing treaty obligations. A key feature of the Model Legal Framework will be the introduction of a comprehensive NCB proceeds of crime asset confiscation and forfeiture regime. NCB proceeds of crime confiscation laws have been proven to be a highly effective method to confiscate the proceeds of crime from those who profit from criminal activity but distance themselves from the criminal acts. This is particularly important in transnational crime cases where criminal convictions frequently cannot be secured in the country where the predicate offence occurred.

If adopted and implemented by Pacific Island jurisdictions, the Model Legal Framework would potentially be the most significant advancement in the Pacific Region to combat serious and organised crime for the past 20 years. The Model Legal Framework would provide multiple positive flow-on effects to the region, and would be a highly effective tool to combat corruption and foster stronger regional cooperation against transnational crime and illicit financial flows, with particular benefits for interoperability between jurisdictions through the use of comparable investigation and litigation processes. Having similar legislative provisions across these jurisdictions would also facilitate regional training and development.

The project is being led by a multi-disciplinary team of experts coordinated by Lexbridge Lawyers. Collectively the team has substantive expertise in the fields of AML and countering terrorist financing (CTF), criminal asset confiscation and international cooperation, criminal law

and law enforcement. The team together bring decades of hands-on practical experience advising governments on compliance with international obligations and standards and working on major legislative development projects, with the Pacific region being an area of specific expertise. The project team will be working in close consultation with APG, the Cook Islands and other relevant Pacific stakeholders, including multilateral fora such as the Pacific Islands Law Officers Network and the Pacific Islands Chiefs of Police.

The current phase of the project commenced in April 2024 and is projected to conclude in December 2025, with a possible extension to allow for delivery of additional implementation support including training programs.

Why this project is needed

States have obligations to prevent and punish money laundering, to deprive criminal networks and participants of their illicit gains, and to repatriate funds back to victim jurisdictions. Many countries—including those within the Pacific region—are not fully meeting these international obligations. Moreover, many fall short of the standards recommended by bodies such as the FATF as best practice to combat transnational crime and corruption effectively in their territories. One of the reasons for this is inadequate and outdated legal frameworks which are not well-suited to tackling modern transnational crime challenges.

Challenges to prosecution can include corrupt influences, a lack of investigative capability, or the transfer of proceeds of crime to jurisdictions which are unable to achieve confiscation in the absence of a criminal conviction—effectively making them a safe haven for criminals to conceal and enjoy their wealth.

As noted earlier, in late 2023 the FATF standards on asset recovery were revised and strengthened. Jurisdictions are now required to implement an NCB asset recovery regime, with flexibility in how the regime is implemented. All FATF member countries are evaluated periodically for compliance against FATF standards.

Within the Pacific region there are countries already applying NCB confiscation measures, including Papua New Guinea, Fiji, New Zealand and Australia. Such measures have been found to be highly effective and essential in confiscating criminal proceeds from those who profit from criminal activity, but distance themselves from the criminal acts. This is particularly relevant in transnational crime cases, where often a conviction cannot be secured in the country where the predicate offence occurred. NCB confiscation powers have proven to be a vital component of legal regimes capable of effectively combatting the activities of transnational criminal networks.

However, smaller Pacific Island countries lack NCB criminal asset confiscation laws, and have not moved to develop them yet, largely due to the cost and complexity of developing and implementing these laws. This project seeks to address that by developing a model legal framework with the needs of smaller jurisdictions as a specific focus. Having a regionally focused Model Legal Framework is intended to reduce substantially the development, training and implementation costs for smaller jurisdictions. The Cook Islands, as the first adopting country, will be the first to benefit from these reforms.

The Model Legal Framework

The Model Legal Framework will offer adopting countries, starting with the Cook Islands, the opportunity to have a comprehensive legal framework that will meet their existing treaty obligations and the FATF standards and equip them to meet not only the modern-day challenges of combatting transnational crime but also those of the future.

The Model Legal Framework will offer countries a comprehensive suite of AML/CTF provisions, which can be tailored to suit the needs of specific jurisdictions. It will be a stand-alone legal framework capable of fully replacing adopting countries' existing domestic AML/CTF laws, to eliminate the need for countries having to adopt a patchwork of amendments and additions to update their legislative regimes. However, the Model Legal 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 Framework to update and supplement their existing legislative regime to ensure it meets international standards and achieves operational outcomes in light of their particular policy aims. Crucially, it will be accompanied by a range of practical implementation and guidance materials, to support jurisdictions in uptake and use of the law. This reflects the overall goals of the project to support development of AML/CTF laws in the region that meet current international standards while also being fit for purpose for the needs of small jurisdictions and workable and effective in practice.

The project will promote a high degree of consistency in the legal frameworks adopted in each jurisdiction. This harmonisation of laws will facilitate international cooperation and improve the efficacy of collective AML/CTF measures across the region.

The Model Legal Framework will include:

- criminal asset tracing and freezing provisions;
- NCB and CB criminal proceeds confiscation provisions;
- provisions for the effective management and realisation of criminal assets;
- offences for money-laundering and related crimes;
- international cooperation provisions; and
- provisions for the protection of due process rights and innocent property interests.

Development of the Model Legal Framework builds on work undertaken by Lexbridge Lawyers between December 2022 to September 2023 with the support of the American Bar Association Rule of Law Initiative. Throughout 2023 Lexbridge Lawyers conducted a program of consultation throughout the Pacific region regarding the proposed Model Legal Framework. Through this program of extensive consultation the team were able to collate feedback from a broad range of stakeholders which will inform and shape development of the Model Legal Framework. A full overview of the consultation stage of the Model Law Project and feedback elicited is contained in the [Model Law Concept Paper](#) of March 2023 and the [Final Report on the Consultation Stage](#) of September 2023.

The current development of the Model Legal Framework is being taken forward by Lexbridge with the support of the APG and funding provided by the New Zealand Government.

The Model Legal Framework will provide adopting countries' law enforcement agencies with the tools needed to disrupt the financial flows that are the lifeblood of transnational criminal networks. As noted earlier, this will include provisions for NCB confiscation of the proceeds of crime. Such provisions will be complemented by sophisticated safeguards within the framework to protect due process rights and innocent property interests.

The Cook Islands law reform package

During consultation in 2023 on the development of the Model Legal Framework, many representatives of countries showed great support for the introduction of the proposed powers, orders and provisions in their respective jurisdictions. Of those, the Cook Islands was particularly supportive, and has chosen to be the first jurisdiction to undertake the initial development and implementation of a tailored form of the Model Legal framework, with the support of APG and Lexbridge Lawyers.

Lexbridge Lawyers will work with the Cook Islands Government and APG to:

- conduct a gap analysis of Cook Islands laws to identify deficiencies;
- develop a policy paper and law reform plan;
- draft the new legal framework, including any consequential amendments;
- draft supporting policy instruments to facilitate the passage of the laws, for example a policy paper and explanatory memorandum; and
- develop implementation support materials.

The Cook Islands law reform package will be developed in close consultation with stakeholders in the Cook Islands, across Government, the judiciary, and the law enforcement and justice sector. Drawing from the Model Legal Framework, the law reform project will provide a package of legislative reforms that accord with the Cook Islands' policy settings. This tailored package will be capable of adoption by the Cook Islands as a single reform package, including consequential legislative amendments, to fully replace existing Cook Islands AML/CTF laws, obviating the need for piecemeal amendments.

The model legislation, drafted by experts in the field, will be accompanied by documentation to support the legislative enactment process. Subject to funding, it is intended to be supported by tailored implementation training.

Further information:

For further information about the project, please see the project website at:

<https://www.lexbridgelawyers.com/anti-money-laundering-counteracting-the-financing-of-terrorism-and-anti-corruption/> or contact Lexbridge Lawyers at: ModelLegalFrameworkProject@lexbridgelawyers.com