PNG: new AML framework

Written by Paul Toua, Elizabeth Moran and Lauren Moscovis
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Papua New Guinea (**PNG**) has overhauled its anti-money laundering and counter terrorist finance framework with the introduction of the following legislation:

- *Anti-Money Laundering and Counter Terrorist Financing Act 2015*;
- *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015;*
- *Mutual Assistance in Criminal Matters (Amendment) Act 2015;*
- *Proceeds of Crime (Amendment) Act 2015;* and
- *United Nations Financial Sanctions Act 2015,*

(**AML Framework**)

What is it?

The AML Framework, led by the *Anti-Money Laundering and Counter Terrorist Financing Act 2015* (**AML Act**), was implemented to allow the PNG Government greater powers to "detect and deter money laundering and terrorist financing" in PNG. It operates in line with the *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015* and the *Proceeds of Crime (Amendment) Act* 2015 which amended the *Proceeds of Crime Act 2005* and the *Mutual Assistance in Criminal Matters (Amendment) Act 2015* to clarify and expand upon financial institution's obligations under the AML Framework. The AML Framework is brought within international standards by the *United Nations Financial Sanctions Act* 2015, which gives effect to Article 41 of the Charter of the United Nations.

This article outlines the key provisions of the AML Act.

What are the key changes?

What is a financial institution?

The AML Act imposes various obligations on financial institutions with regards to the prevention of money laundering and counter terrorism. Financial institutions need to be aware of those obligations; non-compliance with these new requirements can result in serious criminal penalties.

A financial institution is defined under the AML Act to mean any person or unincorporated entity that conducts in PNG one or more of the activities listed below for or on behalf of a customer:

- acceptance of deposits and other repayable funds from the public, including private banking;
- lending;
- financial leasing (other than with respect to arrangements relating to commercial products;
- transfer of currency or value;
- issuing and managing means of payment (e.g. credit cards, traveller's cheques);
- issuing financial guarantees and commitments;
- trading in bearer negotiable instruments; foreign exchange, exchange, interest rate and index instruments, transferable securities, commodity futures trading;
- participation in securities issues and the provision of financial services related to such issues;

- individual and collective portfolio management;
- safekeeping and administration of physical currency, bearer negotiable instruments, or liquid securities on behalf of other persons;
- underwriting and placement of insurance, including insurance intermediation by agents and brokers; or
- currency changing.[1]

Establishment of FASU

The AML Act established the Financial Analysis and Supervision Unit (**FASU**), which is an operationally independent unit within the Bank of PNG. Its functions include carrying out financial intelligence and analysis concerning suspected money laundering, terrorist, financing, proceeds of crime and associated offences, supervising financial institutions, developing risk assessments, and enforcing compliance.[2]

Registration with FASU

Financial institutions are required to register with FASU for the purpose of the AML Act.[3] A failure to register will result in a penalty of:

- For an individual – a fine not exceeding K25,000;
- For a body corporate – a fine not exceeding K50,000.[4]

Risk assessments and AML/CTF Program

Financial institutions are also required to undertake risk assessments which identify and assess the level and nature of money laundering and terrorist financing risk that the financial institution may reasonably be able to expect to face in the course of its business. This must be in writing, and must be maintained and updated as required to take into account new and emerging risks.[5]

Financial institutions are then required to implement an AML/CTF program, which must be based on the risk assessment conducted. The program must include effective procedures, policies and controls for managing and mitigating the risks identified in the risk assessment stage, monitoring these risks, and complying with the due diligence requirements imposed by the Act.[6] The program must be approved by senior management.

Customer Identification

Financial institutions must conduct ongoing due diligence in respect of all of its business relationships.[7] This due diligence must be conducted on all customers, any beneficial owner of the customer, any person or unincorporated entity acting on behalf of the customer, and a beneficiary of an insurance party,[8] and must be verified by reliable and independent source documents, data or information.[9]

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[1] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 5(1) definition of "financial institution".
[2] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 72.
[3] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 57.
[4] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 58.
[5] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 6.
[6] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 7.
[7] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 17.
[8] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 21.
[9] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 16.

Financial institutions can undertake customer due diligence from one of three categories in order to verify the identity of customers and the purposes of their financial transactions.
We have summarised these categories in the below table:

	Simple Due Diligence	Standard Due Diligence	Enhanced Due Diligence
Circumstances where each apply	• If standard or enhanced due diligence are not required; and • The customer is not resident in a high risk country; and • The financial institution does not suspect MLTF; and • The customer is a low risk customer.[10]	• If a new customer wants to establish a business relationship with a financial institution (i.e. opening a new account); or • If a customer wishes to carry out an occasional transaction of an amount equal to or greater than K20,000.00 either as a single transaction or several transactions that seem to be linked; or • If the financial institution doubts the truthfulness or adequacy of previously obtained customer information; or • If the financial institution suspects money laundering or terrorist financing involving the customer.[11]	If the financial institution takes the view that the customer is: • A resident of a high risk country; or • Involved in a high risk business activity; or • Is a politically exposed person; or • Is a high risk; or • Is not physically present for the purposes of identification; or • If the risk of money laundering or terrorist financing is high; or • If electronic funds equal to or greater than K2,500.00 are transferred.[12]
Identity Requirements	Financial institution must obtain information that is necessary to establish identity, which may include: • For a natural person: name and address. • For a body corporate: corporate name, address of registered office,	Financial institution must obtain: • For a natural person: full name, address, date and place of birth, occupation, sufficient information to allow the financial institution to understand the purpose and nature of the intended business relationship; and • For a body corporate: corporate name,	Financial institution must obtain: • The same identification information as is required in standard due diligence; and • Information relating to the source of the assets or the wealth of the customer; and • Where the beneficiary of an insurance policy is a body corporate or

[10] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 21.
[11] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 23.
[12] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 26

	Simple Due Diligence	Standard Due Diligence	Enhanced Due Diligence
	proof of incorporation, identity of directors. This information must be verified by the financial institution.[13]	address of registered office, proof of incorporation, identity of directors, provisions governing the authority to bind the corporation, and sufficient information to allow the financial institution to understand the nature and business of the corporation.[14]	an unincorporated entity, take steps to identify the beneficial owner of the beneficiary.[15]
Verification Requirements	A financial institution must be satisfied that the information is correct before carrying out a transaction.[16]	At a minimum a financial institution must: • Take reasonable steps to satisfy that the information obtained is correct; and • Take reasonable steps to verify the beneficial owner's identity; and • If a person is acting on behalf of the customer, take reasonable steps to verify their identity and authorisation.[17]	At a minimum a financial institution must: • Conduct the verification requirements for standard due diligence; and • Take reasonable steps to verify information relating to the source of the assets or the wealth of the customer.[18] A financial institution must verify this information before establishing a new business relationship or carrying out a transaction of an amount equal to or greater than K20,000.00.

An intentional failure to comply with these due diligence requirements will result in:

- For an individual – a fine not exceeding K 50,000 or imprisonment for a term not exceeding 5 years or both;
- For a body corporate – a fine of K1 million.[19]

[13] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 22.
[14] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 24.
[15] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 27.
[16] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 22.
[17] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 25.
[18] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 28.
[19] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 36(1).

Engaging in reckless conduct which contravenes these due diligence requirements will result in:

- For an individual – a fine not exceeding K250,000 or a three year imprisonment or both;
- For a body corporate – a fine of K500,000.[20]

Reporting Obligations

The AML Framework establishes a threshold reporting obligation for financial institutions. This means that financial institutions must report to FASU any transaction of an amount in physical currency, in the form of a bearer negotiable instrument, or an electronic funds transfer equal to or greater than K20,000. This may be carried out as a single transaction or two or more linked transactions.[21]

The financial institution must send the report to FASU within 10 working days from the transaction taking place.[22]

If a financial institution suspects on reasonable grounds that information known to it may be relevant to the detection of money laundering or terrorist financing, or any offence under the *United Nations Financial Sanctions Act 2015*, or any other indictable offence, it must make a separate suspicious matter report to FASU, detailing the relevant information.[23] The financial institution must not disclose to anyone, aside from FASU, that it is suspicious of a transaction.[24]

It is important to note that these two reporting obligations are separate. Fulfilment of one does not affect the obligation to fulfil the other. There may be instances where both a threshold report and a suspicious matter report will need to be returned to FASU. It is important to ensure that both these reporting obligations are fulfilled where appropriate in order to avoid criminal penalties.

A person who fails to make these reports face the following penalty:

- For an individual – a fine not exceeding K 500,000 or imprisonment for a term not exceeding 5 years or both;
- For a body corporate – a fine not exceeding K1 million

Record Retention

The AML Act demands comprehensive record keeping. For every transaction conducted through a financial transaction, the financial institution must keep records that enable that transaction to be readily reconstructed at any time.[25] Identification and verification information must also be readily available at any time.[26] The following records must also be kept:

- records relating to a risk assessment or audit;
- records relevant to the establishment of a business relationship with a customer; and
- other files including business correspondence and account files that can establish the nature of activities undertaken during an established business relationship with the customer.[27]

These records must be kept for at least seven years.[28]

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[20] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 36(2).
[21] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* ss 39(1)(2)
[22] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* ss39(3).
[23] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 41(1).
[24] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 44.
[25] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 47.
[26] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* 48.
[27] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 48.
[28] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 47(3).

Obligations applying to foreign branches and majority owned foreign subsidiaries

Financial institutions of PNG must ensure that its foreign branches and majority-owned foreign subsidiaries located outside PNG apply measures broadly equivalent to those set out in the AML Act to the extent permitted by law.[29]

What are the penalties for non-compliance?

Failure to fulfil these new obligations is a criminal offence and may result in a fine of K500,000 to K1 million or imprisonment, or both, for each breach. These serious penalties reflect PNG's commitment to preventing money laundering and terrorist financing in its borders.

Why is it important?

The AML Framework also represents an important turning point for PNG internationally. With the introduction of the AML Framework, PNG has moved from the Financial Action Task Force's grey list of countries prone to money laundering and terrorism financing, a move that will promote investment in PNG and make financial transactions more secure.

What next?

The AML Framework was passed on 30 July 2015 and commenced in PNG on 4 February 2016. It is important that all financial institutions (as well as their foreign branches and majority-owned foreign subsidiaries) are aware of their obligations under the AML Framework. This article highlights some of these important changes, but it is crucial that financial institutions obtain legal advice regarding their obligations and exposure under the AML Framework.

For more information on how the AML Framework affects you, please contact Paul Toua, Elizabeth Moran or Lauren Moscovis at PLN Australia.

[29] *Anti-Money Laundering and Counter Terrorist Financing Act 2015* s 54.

PLN Australia

Pacific Legal Network

Contact

For more information please contact:

Paul Toua
Special Counsel
T +61 409 769 785
E p.toua@pln.com.au

Elizabeth Moran
Solicitor
T +61 422 452 023
E e.moran@pln.com.au

Lauren Moscovis
Paralegal
T +61 415 213 232
E l.moscovis@pln.com.au

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