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Protecting the west, excluding the rest: The Impact of the AML/CTF Regime on Financial Inclusion in the Pacific, and Potential Responses

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**Protecting the West, excluding the rest:
The impact of the AML/CTF regime on financial inclusion in the Pacific,
and potential responses.**

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Financial inclusion is an important international policy goal. Remittances promote financial inclusion by contributing almost half a trillion dollars to the economies of developing countries each year and by giving people a strong reason to engage with formal financial services. In the Pacific, remittances represent a significant proportion of many countries' GDPs. The G20 has committed to reducing the global average cost of sending remittances to 5%. At the same time, financial service providers are facing increasingly onerous regulatory requirements to combat the global rise in money laundering and terrorism financing. In Australia, these requirements have led to the bank account closures of many money transfer operators, posing a real risk to financial inclusion, growth and stability in the Pacific. This paper examines the G20's goals for financial inclusion, the role of remittances in achieving these goals for the Pacific region, and the impact of AML/CTF regulations on the Australian remittance industry. A number of solutions are proposed to address the challenges facing the remittance industry in Australia.

I INTRODUCTION

Financial inclusion involves the delivery of financial services at affordable costs to all sections of society.¹ It is increasingly being seen as a significant international policy

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¹ FATF, *FATF Guidance: Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (February 2013), 12.

goal.² The commitment of the Group of 20 ('G20') to creating a more inclusive global financial system recognises that financial inclusion not only promotes development and reduces poverty, but enhances financial stability and financial integrity as well.³ At the Brisbane Summit in November 2014 the G20 adopted the 2014 Financial Inclusion Action Plan, which highlights ten action areas considered to be key to the advancement of financial inclusion over the next five years.⁴ One such goal is to reduce the cost of sending remittances.⁵ The G20 affirmed this goal in the High Level Statement on Remittances, approved at the Antalya Summit in November 2015.⁶

More than 250 million people live outside their country of birth⁷ and many migrants choose to send money back to their home country. These payments are called remittances. The remittance industry plays an important role in furthering financial inclusion because remittances through formal channels require recipients to engage with the financial system and provide them with the means to do so. The amount of money migrants transfer back to developing countries is more than three times the size of official development assistance and, excluding investments made by China, significantly exceeded foreign direct investment flows to developing countries in 2013.⁸ In some developing countries, remittances represent a significant proportion of the country's gross domestic product ('GDP').⁹

² Financial inclusion has been identified as a key goal of many international organisations, including the G20 and FATF. In April 2015 central bank governors and finance ministers from more than 30 countries across the G24 and Alliance for Financial Inclusion (AFI) Networks, together with stakeholders such as the IMF, World Bank, Financial Stability Board (FSB), the Bank for International Settlements, British Bankers' Association (BBA), United States Treasury and International Association of Deposit Insurers (IADI) all met to discuss financial inclusion at the seventh annual G24-AFI Policymakers' Roundtable: AFI, 'G-24/AFI policymakers discuss financial inclusion and global standards: Opportunities and risks', 30 April 2015 < <http://www.afi-global.org/news/2015/4/30/g-24afi-policymakers-discuss-financial-inclusion-and-global-standards-opportunities>>.

³ G20, *Financial Inclusion Action Plan* (2010).

⁴ G20, 'Brisbane Summit: G20 Leaders' Communiqué' (Statement, 15-16 November 2014) and G20, *2014 Financial Inclusion Action Plan (Global Partnership for Financial Inclusion, 2 September 2014)*, 2.

⁵ G20, *2014 Financial Inclusion Action Plan*, above n 4, 2.

⁶ G20, *High Level Statement on Remittances* (2015).

⁷ World Bank, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Financing for Development' (Migration and Development Brief No 24, Migration and Remittances Team, Development Prospects Group, 13 April 2015).

⁸ World Bank, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Forced Migration' (Migration and Development Brief No 23, Migration and Remittances Team, Development Prospects Group, 6 October 2014), 3.

⁹ For example, in 2013 remittances represented 52% of Tajikistan's GDP, 31% of the Kyrgyz Republic's GDP and 25% of the GDPs of both Nepal and Moldova: World Bank, 'Migration and Remittances', above n 6.

In theory, the G20's efforts to advance financial inclusion complement the G20's goal of strengthening the integrity of the global financial system. Expanding access to the formal financial system increases the reach and effectiveness of measures introduced to safeguard the system.¹⁰ However, measures introduced globally to achieve the latter goal are in fact hindering fulfilment of the first. In recent times, large-scale money laundering scandals¹¹ and the rise of well-financed extremist organisations have highlighted the need to strengthen measures protecting the financial system from abuse. Governments worldwide have introduced stringent compliance processes to curb money laundering and the funding of terrorism. Such processes pose a major challenge to the remittance industry worldwide even when the remittances represent scrupulously 'clean' money.

The United States has been the driving force behind the introduction of anti-money laundering and counter-terror financing ('AML/CTF') measures globally.¹² While such measures may be necessary to address problems affecting developed economies, they have unintended and far-reaching consequences that threaten financial inclusion in the developing world. In Australia, compliance with strengthened AML/CTF legislation has led to the bank account closures of many money transfer operators ('MTOs') operating in the Pacific region.¹³ Yet these MTOs do not pose the type of risk that prompted the regulatory push from abroad.

¹⁰ Hennie Bester et al, 'Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines' (2008) 5(2) *Genesis Analytics*, vi.

¹¹ See, for example, the case of HSBC: 'HSBC Exposed US Financial System to Money Laundering, Drug, Terrorist Financing Risks' (Homeland Security & Governmental Affairs Permanent Subcommittee on Investigations, 16 July 2012) <<http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks>>.

¹² This is the case because almost 90% of global foreign exchange transactions involve the US dollar and the majority of these transactions pass through two clearing networks in the US. Under the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* ("USA PATRIOT Act") of 2001, a federal law, all U.S. financial institutions are required to obtain, verify and record information that identifies each person and each legal entity that opens an account. As such, foreign banks are required to comply with US AML/CTF measures in order to clear funds for their customers. See Yalman Onaran, 'Dollar Dominance Intact as U.S. Fines on Banks Raise Ire', *Bloomberg Business* (online), 16 July 2014 <<http://www.bloomberg.com/news/articles/2014-07-15/dollar-dominance-intact-as-u-s-fines-on-banks-raise-ire>>.

¹³ Jonathan Capel, 'What next for remittances and money transfers in the Pacific?', *CGAP*, 12 June 2014 <<http://www.cgap.org/blog/what-next-remittances-and-money-transfers-pacific>>.

Remittances play a vital role in the Pacific region. In Samoa they are the single most important source of external income, accounting for a quarter of the country's GDP.¹⁴ In Fiji, remittances are the second largest foreign exchange earner after tourism.¹⁵ Studies have found that the impact of remittances extends far beyond the direct recipients and contributes significantly to the alleviation of poverty across communities.¹⁶ The impact of AML/CTF measures on the flow of remittances to the Pacific is thus an important social justice issue.

This paper seeks to examine the challenge to financial inclusion in the Pacific posed by stricter AML/CTF requirements, and explore possible solutions. The paper has six sections. Following this introduction we outline the G20's goals for improving financial inclusion worldwide and highlight the importance of remittances to achieving this aim. The third section focuses on the Pacific, examining the remittance industry in Australia and the contribution it makes to financial inclusion in the region. The paper then analyses the international and domestic AML/CTF regulatory frameworks, and discusses the compliance pressures faced by banks. The fifth section explores some of the creative solutions to the challenges facing financial inclusion in the Pacific; and the sixth section concludes.

II FINANCIAL INCLUSION AND THE WORK OF THE G20

i. The importance of financial inclusion

Almost half of the world's adult population – approximately 2 billion people – do not have access to a formal bank account.¹⁷ The majority of these people are concentrated in

¹⁴ Jeannette Francis, 'Remittances keep post-disaster economies afloat', *SBS News* (online), 24 December 2012 <<http://www.sbs.com.au/news/article/2012/12/24/remittances-keep-post-disaster-economies-afloat>> and World Bank, 'Migration and Remittances: Recent Developments', above n 7, 6.

¹⁵ Jeannette Francis, above n 11.

¹⁶ Richard Brown et al, 'Cents and Sensibility: the Economic Benefits of Remittances', chapter 3, *At Home and Away: Expanding Job Opportunities for Pacific Islanders Through Labour Mobility* (World Bank, 2006), cited in Richard Brown, Gareth Leeves and Prabha Prayaga, 'An analysis of recent survey data on the remittances of Pacific island migrants in Australia' (Discussion Paper No 457, School of Economics, University of Queensland, 2012), 1.

¹⁷ World Bank, *Global Financial Development Report 2014: Financial Inclusion* (World Bank, 2014).

developing economies, where banks are often physically inaccessible to parts of the population.¹⁸ One of the greatest barriers to financial inclusion is also affordability.¹⁹ Worldwide, reducing the costs associated with formal banking could enable more than 500 million adults presently without bank accounts to enter the formal financial system.²⁰

Inclusion in the global financial system is fundamental for improving the livelihoods of the poor. Providing people in developing countries with access to financial services such as credit, savings, insurance, and payments assists them to manage their financial obligations and build better futures for their families.²¹ The immediate effect of access to finance is that it can help people pay for essential services such as clean water, electricity and housing without taking time off from work to physically pay the bills.²² Longer term, it provides people with a means to save for and invest in their education and health, as well as their own businesses – providing the opportunity to rise out of poverty.²³ Financial inclusion can also allow the poor to insure against unfavourable events to avoid falling deeper into poverty should such an incident occur.²⁴

ii. *The G20's goals*

The recent global financial crisis prompted a wide and sweeping range of regulatory responses overseen by the G20.²⁵ The aim of the response has been to build a stable and

¹⁸ FATF, *FATF Guidance*, above n 1, 12.

¹⁹ The expense associated with bank accounts is the second most commonly cited reason globally for not having a bank account. The first most commonly cited reason is a lack of funds: Asli Demirguc-Kunt and Leora Klapper, 'Measuring Financial Inclusion' (Policy Research Working Paper 6025, The World Bank Development Research Group Finance and Private Sector Development Team, April 2012), 19.

²⁰ *Ibid.*, 4.

²¹ Center for Financial Inclusion, *About Financial Inclusion 2020* <<http://www.centerforfinancialinclusion.org/fi2020/about-fi-2020>>.

²² World Bank, 'Universal Financial Access is vital to reducing poverty, innovation key to overcoming the enormous challenge, says President Jim Yong Kim' (Press Release, 11 October 2013).

²³ *Ibid.*

²⁴ Christine Lagarde, 'Empowerment Through Financial Inclusion' (Address to the International Forum for Financial Inclusion, Mexico, 26 June 2014).

²⁵ Ross P Buckley, 'The G20's Performance in Global Financial Regulation' (2014) 37(1) *University of New South Wales Law Journal* 63; and Kevin Davis, 'Regulatory Reform Post the Global Financial Crisis: An Overview' (Report, Melbourne APEC Finance Centre, RMIT University, March 2011) 2 <http://www.apec.org.au/docs/11_CON_GFC/Regulatory%20Reform%20Post%20GFC-%20Overview%20Paper.pdf>.

resilient global financial system that promotes confidence and growth.²⁶ However, the reforms have been based predominantly on the highly developed financial systems of the Northern Hemisphere.

The widespread exclusion of people from the formal financial system in developing countries increases inequality, creates economic distortions and slows economic growth and development.²⁷ Recognising this has driven the G20 to focus on bringing the world's unbanked population into the financial system through a number of measures aimed at advancing financial inclusion.

At the Pittsburgh Summit in September 2009, G20 leaders made a commitment to improve access to financial services for the poor.²⁸ This included establishing the Financial Inclusion Experts Group ('FIEG'), which developed nine principles for innovative financial inclusion that were endorsed by the G20 during the Toronto Summit in June 2010.²⁹ FIEG also recommended the creation of the Global Partnership for Financial Inclusion ('GPFI') to carry forward the G20's commitments on financial inclusion and to maximize the impact of the G20's work through broad stakeholder participation.³⁰

The GPFI was established at the Seoul Summit in November 2010.³¹ At the same time, G20 leaders endorsed the first Financial Inclusion Action Plan ('FIAP').³² In doing so, the G20 recognised that financial inclusion for individuals and organisations should be a key feature of the global growth and development agendas.³³

²⁶ G20, *2014 Financial Inclusion Action Plan*, above n 4, 3.

²⁷ Ibid.

²⁸ G20, 'Pittsburgh Summit: Leaders' Statement' (Statement, 25 September 2009), 41.

²⁹ G20 Financial Inclusion Experts Group, 'Innovative Financial Inclusion' (ATISG Report, 25 May 2010) and Global Partnership for Financial Inclusion (GPFI), *Principles and Report on Innovative Financial Inclusion* <<http://www.gpfi.org/publications/principles-and-report-innovative-financial-inclusion>>.

³⁰ G20, *Financial Inclusion Action Plan* (2010), 3.

³¹ Global Partnership for Financial Inclusion (GPFI), *G20 Principles for Innovative Financial Inclusion* (Alliance for Financial Inclusion Paper, April 2011), 7.

³² G20, *2014 Financial Inclusion Action Plan*, above n 4, 3.

³³ Ibid.

The G20 made significant progress towards improving financial inclusion during the first three years of the FIAP's implementation. Between 2011 and 2014 approximately 700 million formerly financially excluded people gained access to financial services, either through bank accounts or mobile money services.³⁴ A review of the G20's progress in implementing the original FIAP shows that many of its objectives have been achieved.³⁵ While 'financial inclusion' was a relatively new concept five years ago, the work of the G20 has prompted policymakers worldwide to commit to creating a more inclusive global financial system.

Despite these achievements, substantial work is still required to assist the 2 billion people and over 200 million businesses that remain excluded from the formal financial system. In 2014 the G20 was tasked with reviewing and updating the FIAP to ensure further progress is made.

The G20 leaders endorsed the updated FIAP at the Brisbane Summit in November 2014.³⁶ The latest version of the FIAP includes ten action areas which members of the G20 consider crucial to advancing financial inclusion over the next five years.³⁷ Three of these action items relate specifically to international payment systems:

- 8. Help to analyse and consider ways to address the MTO bank account closure issue;*
- 9. Reduce the cost of sending remittances; and*
- 10. Expand opportunities for innovative technologies to grow responsible financial inclusion.*³⁸

These new FIAP goals recognize that remittances provide an important avenue towards greater financial inclusion.³⁹

³⁴ The substantial increase in the number of financially included people is not due solely to the actions of the G20, as a trend towards greater use of mobile money was already occurring independently of the G20. Nevertheless, the G20's action plan has made a significant contribution towards promoting financial inclusion. The World Bank, 'Massive Drop in Number of Unbanked, says New Report', Press Release, 15 April 2015 <<http://www.worldbank.org/en/news/press-release/2015/04/15/massive-drop-in-number-of-unbanked-says-new-report>>.

³⁵ G20, *2014 Financial Inclusion Action Plan*, above n 4, Annex 2, 14-20.

³⁶ G20, 'Brisbane Summit: G20 Leaders' Communiqué', above n 3.

³⁷ G20, *2014 Financial Inclusion Action Plan*, above n 4, 2.

³⁸ G20, *2014 Financial Inclusion Action Plan*, above n 4, 2.

iii. *The role of remittances*

Money sent back by migrants assists those in some of the poorest parts of the world to pay for basic needs such as food and shelter, and contributes to poverty alleviation through providing the financial means to access health and education. Remittances also act as a form of insurance for the poor, particularly in times of conflict, political instability or natural disasters.⁴⁰ In Vanuatu, 93% of households reported that remittances were an important part of the recovery following Cyclone Pam in 2015.⁴¹ Remittance flows tend to increase during times of need.⁴² For example, during the ten days after Cyclone Evan hit Samoa in 2012, the volume of incoming remittances increased by 92%.⁴³ These remittance flows have a direct impact on the poor as they go directly to the people and communities who need them most rather than through governments and official agencies, as does development aid money.⁴⁴

Remittance flows to developing countries have increased exponentially in the past thirty years, from \$22 billion in 1985-1989 to an estimated \$436 billion in 2014.⁴⁵ This figure is projected to grow to reach \$476 billion by 2017.⁴⁶ Such statistics highlight the growing significance of remittances to aid and development worldwide.

³⁹ G20 Plan to Facilitate Remittance Flows, 2.

⁴⁰ World Bank, 'Migration and Remittances: Recent Developments', above n 7, 5.

⁴¹ Shelter Cluster, 'Shelter and Settlement Vulnerability Assessment – Final Report: Cyclone Pam Response' (May 2015) <http://www.reachresourcecentre.info/system/files/resource-documents/reach_vut_report_shelter_and_settlements_vulnerability_assessment_after_cyclone_pam_may_2015_1.pdf>, 37.

⁴² Dilip Ratha, 'The hidden force in global economics: sending money home' (TEDx Talk, October 2014) <https://www.ted.com/talks/dilip_ratha_the_hidden_force_in_global_economics_sending_money_home/transcript?language=en>.

⁴³ L. Le De, J. C. Gaillard, W. Friesen, F. Matautia Smith, 'Remittances in the face of disasters: a case study of rural Samoa' (2015) 17(3) *Environment, Development and Sustainability* 654.

⁴⁴ Ibid.

⁴⁵ T. K. Jayaraman, Chee-Keong Choong and Ronald Kumar, 'Role of remittances in small Pacific Island economies: an empirical study of Fiji' (2011) 3 *International Journal of Economics and Business Research* and 'Banking the unbanked' – http://www.dfat.gov.au/trade/g20/development.html#gpfi_and_World_Bank, above n 7.

⁴⁶ World Bank, above n 7.

Sending remittances is a costly business. In 2013, the global market cost of transferring money home was \$37 billion – larger than the combined GDP of most Pacific Island nations.⁴⁷ Globally, migrants pay an average cost of 7.52% to transfer money home.⁴⁸ This figure is down from 10% in 2011.⁴⁹ The World Bank estimates that this reduction has resulted in an additional US\$30 billion sent to developing countries from migrants in G20 countries.⁵⁰ As part of its endorsement of the 2014 FIAP, the G20 made a recommitment to further reduce the global average cost of transferring remittances to 5%.⁵¹ During 2015 G20 member states developed National Remittance Plans outlining actions they would take to achieve the 5% target.⁵² Doing so would save migrants around \$14 billion per year⁵³ – a sum that could make a significant contribution going directly to the intended recipients, rather than to financial intermediaries. Decreasing the cost of remittances is thus an important step for reducing poverty as well as promoting financial inclusion.

III THE SITUATION IN THE PACIFIC

The Pacific is one of the least banked regions in the world.⁵⁴ The area is characterised by challenging physical geography, poor infrastructure, widespread poverty, and a high proportion of people living a subsistence-based lifestyle.⁵⁵ It is estimated that in some Pacific Island countries ('PICs'), less than 10% of the population has access to basic financial services.⁵⁶ The major barriers to financial inclusion include the physical accessibility of banks, low levels of financial competency and inexperience with using money.⁵⁷

⁴⁷ UNCTAD, 'Trends in Global Remittances and Opportunities for Development', Geneva 20 June 2014.

⁴⁸ World Bank, *Remittance Prices Worldwide* (Issue 13, March 2015), 5.

⁴⁹ G20, *High Level Statement on Remittances* (2015).

⁵⁰ *Ibid.*

⁵¹ G20 Plan to Facilitate Remittance Flows, 2.

⁵² G20, *Financial Inclusion Features Prominently in Antalya G20 Communiqué* <<http://www.gpfi.org/news/financial-inclusion-features-prominently-antalya-g20-communicu>>.

⁵³ World Bank, 'Migration and Remittances', above n 6, 1.

⁵⁴ PFIP, 'PFIP Fact Sheet', *Deepening Access*, Pacific Financial Inclusion Programme <<http://www.pfip.org/about/what-we-do/deepening-access/>>.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

In 2014 the Australian government restructured its aid program so that 90% of all its aid funding is now directed to the Asia-Pacific.⁵⁸ This regional focus reflects the fact that many of Australia's neighbours are politically fragile developing countries whose instability affects Australia's national security.⁵⁹ A key goal of Australia's foreign policy is now to 'promote prosperity, reduce poverty and enhance stability' within the Asia-Pacific.⁶⁰ Encouraging financial inclusion is fundamental to achieving these aims.

For a long time Australia has encouraged migrant workers from the PICs through schemes such as the Seasonal Worker Program.⁶¹ Within Australia, these migrants remit the highest percentage of their incomes home of any migrant groups in the country.⁶² Payments sent by migrant workers are vital to the economic development and political stability of the PICs.⁶³ It is estimated that remittances account for almost a quarter of the GDP of Samoa and Tonga, the two most remittance-dependent countries in the region.⁶⁴

Sending remittances from Australia to the PICs is expensive.⁶⁵ Among G20 countries, Australia has the fourth highest average cost of sending remittances and is above the global average, which was 7.52% in the third quarter of 2015.⁶⁶ Indeed, at the time of writing, the remittance corridor between Australia and Vanuatu is the most expensive worldwide, costing migrants an average of 20.61% to send money home.⁶⁷

⁵⁸ Commonwealth of Australia, *Australian Aid: promoting prosperity, reducing poverty, enhancing stability* (Department of Foreign Affairs and Trade, June 2014), 4.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Special Program visa (subclass 416) for the Seasonal Worker Program, <<http://www.immi.gov.au/Visas/Pages/416-SWP.aspx>>.

⁶² Jeannette Francis, 'Remittances keep post-disaster economies afloat', *SBS News* (online), 24 December 2012 <<http://www.sbs.com.au/news/article/2012/12/24/remittances-keep-post-disaster-economies-afloat>>.

⁶³ T. K. Jayaraman, Chee-Keong Choong and Ronald Kumar, 'Role of remittances in small Pacific Island economies: an empirical study of Fiji' (2011) 3 *International Journal of Economics and Business Research*, 5.

⁶⁴ World Bank, 'Remittances growth to slow sharply in 2015, as Europe and Russia stay weak; pick up expected next year' (Press Release, 13 April 2015) <<http://www.worldbank.org/en/news/press-release/2015/04/13/remittances-growth-to-slow-sharply-in-2015-as-europe-and-russia-stay-weak-pick-up-expected-next-year>>.

⁶⁵ Julie Bishop, Signing of Memorandum of Understanding with Westpac (Speech, Westpac Place, 8 September 2014).

⁶⁶ World Bank, *Remittance Prices Worldwide* (Issue n. 15, October 2015).

⁶⁷ Cleoffe Maceda, 'Which countries are the cheapest to send money to?', *Gulf News* (online), 8 April 2015 <<http://gulfnews.com/business/money/which-countries-are-the-cheapest-to-send-money-to-1.1488036>>.

Australian banks offer migrants two main ways to send money home: bank drafts and electronic transfers using the Society for Worldwide Interbank Financial Telecommunication ('SWIFT') network. Both methods involve fixed fees that are often disproportionate to the value of the remittance sought to be sent.⁶⁸ Additionally, these methods require both the sending and receiving parties to hold a bank account.⁶⁹ This requirement is a significant barrier for many migrants wishing to send remittances to the PICs, given the high rate of financial exclusion in that region.

Money transfer operators ('MTOs') have traditionally provided migrants with an attractive alternative to the banks. Australia has 5500 registered MTOs, which make about 80 million money transfers each year.⁷⁰ MTOs facilitate quick, inexpensive transfers of money overseas and do not usually require the sender or receiver to hold a bank account. MTOs operate through agents, who often run small businesses as well as handling money transfers. Generally an agent in one country collects the funds to be remitted and informs an agent in the receiver's country, who uses his or her own funds to distribute money to the receiver. At the end of the day, the agent in the home country deposits the collected funds in the MTO's bank account and the next day the MTO transfers this amount to the agent in the receiving country.

Using MTOs to send remittances saves migrants a lot of money. In September 2015, we conducted a comparison of the cost to send AU\$500 from Australia to Samoa using the SendMoneyPacific.org website. This comparison showed that MTOs charged less than half the amount charged by banks. Only two of the four major Australian banks offered remittance services, and both charged fees of more than 13% of the amount

⁶⁸ The average transfer of money out of Australia is \$300 and banks generally charge flat rates of about \$30 in addition to any margin they already make on exchange rates: Anthony Klan, 'Industry fights back in "terror" cash row', *The Australian*, 19 November 2014.

⁶⁹ Justin Pritchard, 'What is a Bank Draft?', *About Money* <http://banking.about.com/od/checkingaccounts/a/bank_drafts.htm>; Faith Davies, 'What is a SWIFT Money Transfer?', *eHow* <http://www.ehow.com/facts_5024126_swift-money-transfer_.html>.

⁷⁰ James Eyers, 'Banks pull plug on sending money overseas', *Business Review Weekly* (online), 13 February 2015 <http://www.brw.com.au/p/national/banks_pull_plug_on_sending_money_g374SweTINckNSxEsNeyUJ> and FATF, *Anti-money laundering and counter-terrorist financing measures: Australia Mutual Evaluation Report* (April 2015) <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>>, 82.

transferred.⁷¹ Remittances sent via these banks took three to five days to be transferred.⁷² By contrast, four MTOs offered same-day money transfers for fees of less than 5%.⁷³ Three of these MTOs offered to transfer remittances in less than an hour.⁷⁴ Furthermore, recipients received the funds in cash so were not required to hold a bank account.⁷⁵

Given that the majority of people in the PICs do not hold a bank account, the-cash-to-cash transfer services offered by MTOs are vital. However, banks still play a key role when migrants use MTOs to send money home. While it is not necessary for those sending and receiving funds to have bank accounts, MTOs and their agents do need to hold accounts in order to facilitate the transfers.

The vast majority of registered remittance providers in Australia have traditionally held bank accounts with the big four banks.⁷⁶ This is no longer the case. Since 2010 these banks, along with Australian branches of foreign banks, have systematically closed the accounts of many MTOs and their agents.⁷⁷ Banks have also refused to open new accounts for MTOs wishing to be banked.⁷⁸

This de-risking trend has dramatically increased in the past two years and poses a serious threat to the Australian remittance industry, and consequently to the promotion

⁷¹ On 26 September 2015 the total cost for sending AU\$500 from an Australian bank account to a Samoan bank account cost AU\$68.78 (13.76%) at Westpac and AU\$84.48 (16.9%) at ANZ. Remittance services were not offered by the Commonwealth Bank of Australia or National Australia Bank: Send Money Pacific <<http://www.sendmoneypacific.org/compare/list/4/australia-to-samoa-500.html>>. It should be noted that ANZ only charged AU\$19.37 (6.4%) to transfer money using the ANZ Pacific Money Transfer Card. However, this required the recipient to have the card, which has an initial issue fee of AU\$24.95.

⁷² Send Money Pacific <<http://www.sendmoneypacific.org/compare-cost-send-money-pacific-fiji-kiribati-papua-new-guinea-samoa-solomon-islands-tonga-tuvalu-vanuatu/list/4/australia-to-samoa-500.html>>.

⁷³ On 26 September 2015 the total cost for sending AU\$500 in cash from Australia to Samoa cost AU\$18.81 (3.76%) with Pacific Way Money Transfer, AU\$20.38 (4.08%) with MoneyGram, AU\$21.07 (4.21%) with Xpress Money, AU\$24.17 (4.83) with IMEX Money Transfer and AU\$27.72 (5.54%) with Western Union: Send Money Pacific <<http://www.sendmoneypacific.org/compare/list/4/australia-to-samoa-500.html>>.

⁷⁴ Xpress Money, MoneyGram and Western Union.

⁷⁵ Send Money Pacific <<http://www.sendmoneypacific.org/compare-cost-send-money-pacific-fiji-kiribati-papua-new-guinea-samoa-solomon-islands-tonga-tuvalu-vanuatu/list/4/australia-to-samoa-500.html>>.

⁷⁶ Sources say about 75% of registered remitters would have been serviced by the big banks a few years ago, but it is a much smaller percentage today: James Eyers, above n 64.

⁷⁷ Australian Remittance and Currency Providers Association (ARCPA), *About our Association and the Industry* <http://www.arcpa.org.au/?page_id=298>.

⁷⁸ Ibid.

of financial inclusion in the PICs as well. According to the World Bank, seven MTOs went out of business in Australia in the first quarter of 2015.⁷⁹ It is unlikely to be a coincidence that the average cost of sending remittances from Australia has risen each quarter during the past year, increasing from an average of 8.88% in the third quarter of 2014, to 9.24% in the third quarter of 2015.⁸⁰ By contrast, the global average cost has fallen from 7.9% to 7.52% during the same period.⁸¹

The primary cause of the account closures has been a convergence of issues related to AML/CTF measures.⁸² These include a decreased risk tolerance as a result of high compliance costs and monetary fines, as well as pressure from foreign banks to comply with international AML/CTF measures.

IV AML/CTF AND THE THREAT TO FINANCIAL INCLUSION

i. International AML/CTF measures

Financial systems are vulnerable to misuse. In the United States, laws designed to protect the financial system from abuse date back to 1970, with the establishment of the Bank Secrecy Act.⁸³ The integrity of financial systems was predominantly regulated on a domestic level until the 1980s, when organised crime – in particular, the narcotics trade – became increasingly international.⁸⁴ Coordinating financial regulation at an international level then became imperative.⁸⁵

In 1989 the inter-governmental Financial Action Task Force (‘FATF’) was established to set regulatory standards and to promote the national implementation of measures

⁷⁹ World Bank, above n 47, 6.

⁸⁰ World Bank, *Remittance Prices Worldwide*, above n 66, Annex Table 2.

⁸¹ *Ibid.*

⁸² AFI, above n 2.

⁸³ Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970 (31 U.S.C. 5311 et seq.), commonly referred to as the Bank Secrecy Act or BSA.

⁸⁴ Basel Committee on Banking Supervision (BCBS), *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering* (December 1988), 1.

⁸⁵ *Ibid.*

aimed at safeguarding the integrity of the international financial system.⁸⁶ In 1990 the FATF released Forty Recommendations.⁸⁷ The goal of the original FATF Recommendations was to combat the misuse of financial systems by persons laundering drug money.⁸⁸ The Recommendations were revised in 1996 to include all forms of money laundering, and were further expanded to deal with the issue of terrorist financing after September 11, 2001.⁸⁹ Endorsed by over 190 countries, the Recommendations are now recognised as the international standard for AML/CTF.⁹⁰

In 2009 the FATF initiated a review of its Recommendations, which resulted in the publication of the second revised Recommendations in February 2012.⁹¹ While the high-level principles contained in the original Recommendations remain mostly unchanged, the revisions introduced a number of new elements such as tax offenses and financial sanctions related to the proliferation of weapons of mass destruction.⁹²

Of particular relevance to financial inclusion is the fact that the updated Recommendations also place an increased emphasis on risk.⁹³ The FATF first introduced risk as an element of financial regulation policy in 2003, but limited the concept to specific Recommendations.⁹⁴ For many years the term was not clearly defined, something that the FATF itself acknowledged in 2010.⁹⁵ The new Recommendation 1 promotes a strengthened risk-based approach ('RBA') to AML/CTF, providing that countries should require financial institutions to 'identify, assess and take effective action to mitigate their money laundering and terrorist

⁸⁶ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations* (February 2012), 7.

⁸⁷ FATF, *The Forty Recommendations of the Financial Action Task Force on Money Laundering 1990* (April 1990).

⁸⁸ FATF, *International Standards*, above n 80, 7.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ International Monetary Fund (IMF) Legal Department, 'Revisions to the Financial Action Task Force (FATF) Standard' (Information Note to the IMF Executive Board, 17 July 2012), 3.

⁹² International Monetary Fund (IMF) Legal Department, 'Revisions to the Financial Action Task Force (FATF) Standard' (Information Note to the IMF Executive Board, 17 July 2012), 3 and Financial Crimes Enforcement Network (FinCEN), 'FATF Issues Revised Recommendations', *The Financial Action Task Force*, United States Department of the Treasury, <<http://www.fincen.gov/international/fatf/>>.

⁹³ International Monetary Fund (IMF) Legal Department, 'Revisions to the Financial Action Task Force (FATF) Standard' (Information Note to the IMF Executive Board, 17 July 2012), 3.

⁹⁴ Louis de Koker, 'Aligning anti-money laundering, combating of financing of terror and financial inclusion: Questions to consider when FATF standards are clarified' (2011) 18(4) *Journal of Financial Crime* 371.

⁹⁵ *Ibid.*

financing risks.⁹⁶ The RBA requires regulators to apply enhanced measures in areas of high risk, but allows them to take a simplified approach where there are lower risks involved.⁹⁷ Unfortunately, many banks have introduced stricter rules to manage high-risk customers but have not introduced simplified measures for people who pose a low risk.

Financial inclusion helps to protect the integrity of the global financial system by expanding the reach and effectiveness of AML/CTF regimes, as by definition the financially excluded are beyond the reach of AML/CTF regulation.⁹⁸ Promoting financial inclusion has been on the FATF's agenda since 2010.⁹⁹ In 2012, the FATF Ministers noted that financial exclusion poses a real risk to the effective implementation of the revised Recommendations.¹⁰⁰ In light of these concerns the FATF created a guidance paper, which aims to assist financial regulators to implement an AML/CTF system that aligns with the goal of financial inclusion.¹⁰¹

The FATF reiterated its commitment to promoting financial inclusion in October 2014, when it warned against wholesale de-risking and encouraged banks to manage customers on a case-by-case basis rather than terminating relationships with certain categories of customers such as remittance providers.¹⁰² In June 2015 the FATF announced that it was developing guidelines for applying the RBA to MTOs, which will address the issue of access to banking services for MTOs.¹⁰³ The FATF also stated that

⁹⁶ FATF, *International Standards*, above n 80, 11.

⁹⁷ FATF, *FATF Guidance for a Risk-Based Approach: Prepaid Cards, Mobile Payments and Internet-based Payment Services* (June 2013), 27.

⁹⁸ Timothy Lyman and Wameek Noor, 'AML/CTF and Financial Inclusion: New Opportunities Emerge from Recent FATF Action' (Focus Note No. 98, CGAP, September 2014), 1.

⁹⁹ FATF, *FATF Guidance*, above n 1, 7.

¹⁰⁰ FATF, *Declaration of the Ministers and Representatives of the Financial Action Task* (20 April 2012), <<http://www.fatf-gafi.org/documents/documents/ministersrenewthemandateofthefinancialactiontaskforceuntil2020.html>>.

¹⁰¹ FATF, *FATF Guidance*, above n 1.

¹⁰² FATF, *FATF clarifies risk-based approach: case-by-case, not wholesale de-risking* (23 October 2014) <<http://www.fatf-gafi.org/topics/fatfgeneral/documents/rba-and-de-risking.html>>.

¹⁰³ FATF, 'Drivers for "de-risking" go beyond anti-money laundering / terrorist financing', 26 June 2015 <<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/derisking-goes-beyond-amlcft.html>>.

it was undertaking further work on financial inclusion and CDD.¹⁰⁴ Work on both these projects should be completed by the FATF in 2016.¹⁰⁵

ii. *Domestic AML/CTF measures*

In Australia, many of the FATF Recommendations have been incorporated into the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ('AML/CTF Act').¹⁰⁶ This includes implementing an RBA to regulation. When providing services to a customer, reporting entities must assess the risks of potential money laundering or terrorism financing to ensure they meet the minimum standards set out in the AML/CTF Act and AML/CTF Rules.¹⁰⁷

In June 2014 the AML/CTF Rules were amended to include additional customer due diligence ('CDD') requirements.¹⁰⁸ The revised AML/CTF Rules place a stronger emphasis on ongoing CDD and expand the factors that banks must consider when determining the ML/TF risk of customers.¹⁰⁹ Further amendments to the AML/CTF Rules are likely to occur in 2016 in response to two reviews: a statutory review required under the AML/CTF Act which is currently being undertaken by the Commonwealth

¹⁰⁴ Ibid.

¹⁰⁵ FATF, 'FATF takes action to tackle de-risking', 23 October 2015 <<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-action-to-tackle-de-risking.html>>.

¹⁰⁶ In 2005 Australia's compliance with the FATF Standards was assessed through a 'mutual evaluation' process. While Australia had implemented many of the original FATF Recommendations, its domestic legislation was not compliant in a number of areas. Notable for the purpose of this paper is the fact the FATF recommended that Australia should require all money transfer operators to be licensed or registered, and that AUSTRAC should maintain a comprehensive list of such service providers and their details: Financial Action Task Force, *Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: Australia* (2005), 158. This action has now been taken by Australia, which has required all remittance providers to register with AUSTRAC since November 2011: AUSTRAC, *Remittance Sector Register* <<http://www.austrac.gov.au/businesses/enrolment-and-remittance-registration/remittance-sector-register>>. Australia recently underwent another mutual evaluation process to assess compliance with the revised FATF Recommendations. The report of this process, released in April 2015, revealed that Australia's revised AML/CTF regime is more in line with FATF Standards, though deficiencies remain: FATF, *Anti-money laundering and counter-terrorist financing measures: Australia Mutual Evaluation Report* (April 2015), 9.

¹⁰⁷ AUSTRAC, 'Obligations under the AML/CTF Act', *AML/CTF Act*, Australian Government <<http://www.austrac.gov.au/businesses/legislation/amlctf-act>>.

¹⁰⁸ AUSTRAC, *Customer due diligence*, Commonwealth of Australia <<http://www.austrac.gov.au/businesses/obligations-and-compliance/customer-due-diligence>>.

¹⁰⁹ King & Wood Mallesons, 'Getting to know your customer: new anti-money laundering know your customer and customer due diligence rules', *Knowledge and Insights*, 21 May 2014 <<http://www.kwm.com/en/au/knowledge/insights/getting-to-know-your-customer-new-anti-money-laundering-know-your-customer-and-customer-due-diligence-rules-20140521>>.

Attorney General's Department and the fourth FATF mutual evaluation, which released its findings in April 2015. The latter review found Australia was not compliant with a number of FATF Recommendations.¹¹⁰ The government has also undertaken to review the registration of remittance providers under the AML/CTF Act in response to findings released in September 2015 by the Working Group on Remittance Account Closures.¹¹¹

The AML/CTF Act is policed by the federal government agency AUSTRAC, which ensures businesses and financial institutions comply with five core obligations:

1. *Enrolment: all regulated businesses need to enrol with AUSTRAC and provide prescribed enrolment details;*
2. *Establishing and maintaining an AML/CTF program: to help identify, mitigate and manage the money laundering and terrorism financing risks a business faces;*
3. *Customer due diligence: identifying and verifying the customer's identity, and ongoing monitoring of transactions;*
4. *Reporting: notifying authorities of suspicious matters, threshold transactions and international funds transfer instructions; and*
5. *Record keeping: businesses are required to keep records of transactions, customer identification, electronic funds transfer instructions and details of AML/CTF programs.*¹¹²

The AML/CTF Act and AML/CTF Rules give AUSTRAC the power to refuse, suspend, cancel or impose conditions on the registration of remittance providers.¹¹³

¹¹⁰ FATF, *Australia Mutual Evaluation Report*, above n 64.

¹¹¹ Working Group on Remittance Account Closures, *Outcomes Statement*, September 2015 <<https://www.ag.gov.au/CrimeAndCorruption/AntiLaunderingCounterTerrorismFinancing/Documents/FC-Outcomes-report-Working-Group-on-Remittance-Account-Closures-Nov-2015.pdf>>.

¹¹² Attorney-General's Department, 'Domestic regulation', *Anti-money laundering and counter terrorism financing*, Australian Government

<<http://www.ag.gov.au/CrimeAndCorruption/AntiLaunderingCounterTerrorismFinancing/Pages/default.aspx>>.

¹¹³ FATF, *Australia Mutual Evaluation Report*, above n 64, 87. The power to suspend registration is found in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth), paragraph 59.4 and the power to cancel registration is found in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), s 75G.

Since the establishment of the AUSTRAC Remittance Sector Register in November 2011 AUSTRAC has used its powers to cancel the registration of eight MTOs, refuse the registration of seven MTOs, impose conditions on the registration of seventeen MTOs and suspend two MTOs from the register.¹¹⁴

According to the FATF, these actions have not been sufficient. The report released by the FATF after the fourth mutual evaluation review in 2015 criticised AUSTRAC's lack of enforcement action, as well as its difficulties in dealing with the remittance sector.¹¹⁵ In response to the latter criticism, Australian banks have been cautioned against closing MTO accounts due to fears it will drive the remittance industry underground.¹¹⁶ However, such requests are unlikely to have any impact unless changes are made to the current regulatory framework to ease the burden on banks.

iii. The impact of AML/CTF measures on the remittance industry

There is a major ongoing debate about whether the global AML/CTF regime represents a sensible approach to regulating AML/CTF risks, or whether the overzealous application of its rules may well be counter-productive by driving money transfers into informal channels and out of the regulated space altogether.¹¹⁷ The strict AML/CTF measures imposed on financial providers, both in Australia and abroad, are having a huge impact on the remittance industry in Australia. Unless changes are made, the current state of affairs poses a serious threat to financial inclusion in the PICs.

For small MTOs, complying with AML/CTF measures can be too onerous. Many MTOs operate by transferring individual remittances together as a lump sum through a single account. However, doing so does not satisfy the enhanced Know Your Customer (KYC) rules, as the payments cannot be traced to particular individuals. Banks are able

¹¹⁴ AUSTRAC, 'AUSTRAC continues to stamp out rogue remitters', *Media Releases*, Commonwealth of Australia, 5 February 2015 <<http://www.austrac.gov.au/media/media-releases/austrac-continues-stamp-out-rogue-remitters>>.

¹¹⁵ 'AUSTRAC tells banks not to cut off money remitters', *The Australian*, 22 April 2015.

¹¹⁶ *Ibid.*

¹¹⁷ In 2006 Passas noted that overly burdensome regulation might dissuade MTOs from operating through officially regulated channels. This risk remains true today – financial security can be undermined by the very rules and processes designed to strengthen it: Nikos Passas, 'Fighting terror with error: the counter-productive regulation of informal value transfers' (2006) 45 *Crime, Law and Social Change* 315, 334.

to verify individual payments through money transfer software that is often too costly for small businesses to maintain.¹¹⁸ It is particularly costly for MTOs, as they need to purchase software licences for multiple agents.¹¹⁹ For small businesses, holding more than one account is also very expensive.¹²⁰

In its recent mutual evaluation report, the FATF noted that small remittance businesses ‘lack capacity to implement Australia’s complex regulatory requirements and do not implement preventative measures in line with the FATF Standards.’¹²¹ In particular, the FATF was referring to the regulatory changes Australia made in 2011 to strengthen its monitoring of the remittance sector. These changes required MTOs to perform due diligence on their affiliate, provide agents and affiliates with a compliance program, train agents, monitor agent compliance, and monitor transactions across their entire network.¹²² FATF noted the requirements have proven too difficult and expensive for smaller MTOs.

Even larger MTOs have faced difficulties complying with the strengthened due diligence requirements. In January 2015 one of the world’s largest MTOs, MoneyGram, was fined AU\$122,400 by AUSTRAC for contravening Australia’s AML/CTF laws.¹²³ MoneyGram has approximately 800 affiliates in Australia, of which six were found to be unregistered remittance businesses.¹²⁴

The AML/CTF regulations also place a heavy burden on banks, particularly in relation to high-risk customers.¹²⁵ The remittance industry has been assessed as ‘high risk’ due

¹¹⁸ Interview with David Sio, General Manager at Pacific Way Financial Services, conducted by phone on 23 October 2014.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ FATF, *Australia Mutual Evaluation Report*, above n 64, 87.

¹²² Ibid.

¹²³ AUSTRAC, ‘MoneyGram, one of the world’s largest remitters, fined \$122,400 by AUSTRAC’, *Media Releases*, Commonwealth of Australia, 21 January 2015 <<http://www.austrac.gov.au/media/media-releases/moneygram-one-world's-largest-remitters-fined-122400-austrac>>.

¹²⁴ Ibid.

¹²⁵ Louis de Koker, ‘Lack of real action on remittances increases terrorist financing risk’, *The Conversation* (online), 30 November 2014 <<http://theconversation.com/lack-of-real-action-on-remittances-increases-terrorist-financing-risk-34706>>.

to its susceptibility to exploitation by serious and organised crime.¹²⁶ AUSTRAC and the Australian Crime Commission ('ACC') estimate that 10% of the \$30 billion transferred across Australia's borders by what AUSTRAC refers to as the "alternative" remittance sector each year is 'dirty money' – funds that are the proceeds of crime.¹²⁷ As a result, banks are required to spend more time monitoring the accounts of remittance providers.¹²⁸

In 2013, more than 95% of all international funds transfers in Australia were made by the banking sector.¹²⁹ In terms of value, money transfers made by MTOs accounted for AU\$66 billion – a mere 1.7% of the more than AU\$3.9 trillion transferred internationally.¹³⁰ Given these figures, the costs associated with maintaining MTO accounts and ensuring continued compliance with AML/CTF regulations far exceed the income they generate for banks.¹³¹ Many banks have thus chosen to close MTO accounts as the level of compliance is too high for such low levels of profits.

Banks also face significant fines and reputational damage if they make poor risk assessments. In 2012, HSBC made the largest bank settlement in US history when it was fined more than US\$1.9 billion for facilitating the transfer of hundreds of millions of dollars from Mexican drug trafficking organisations through the United States.¹³² The transfers occurred as a result of an inappropriate country risk rating and other deficiencies in their approach to identifying AML/CTF risks.¹³³

HSBC is just one of a number of banks found to have infringed AML/CTF regulations in recent years. In 2012 alone, total settlements related to AML/CTF compliance

¹²⁶ Paul Jevtovic, 'Moving towards a self-regulated alternative remittance sector: How Eligo National Task Force is strengthening the industry against money laundering exploitation by serious and organised crime' (Address to the Migration Institute of Australia, 31 October 2014).

¹²⁷ Ibid.

¹²⁸ Louis de Koker, above n 119.

¹²⁹ FATF, *Australia Mutual Evaluation Report*, above n 64, 83.

¹³⁰ Ibid.

¹³¹ Louis de Koker, above n 119.

¹³² US Department of Treasury, 'Treasury Department Reaches Landmark Settlement with HSBC', *Press Centre*, 11 December 2012 <<http://www.treasury.gov/press-center/press-releases/Pages/tg1799.aspx>>.

¹³³ 'HSBC Exposed US Financial System to Money Laundering, Drug, Terrorist Financing Risks' (Homeland Security & Governmental Affairs Permanent Subcommittee on Investigations, 16 July 2012) <<http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-financial-system-to-money-laundering-drug-terrorist-financing-risks>>.

breaches in the US exceeded US\$4 billion.¹³⁴ More recently, Commerzbank of Germany was forced to pay US\$1.5 billion and dismiss all employees linked to its failure to comply with US AML/CTF legislation.¹³⁵ BNP Paribas in France was also ordered to forfeit a staggering \$8.83 billion and pay a fine of \$140 million for violating US economic sanctions and disguising the origins of the payments in order to pass the money through the United States.¹³⁶

The above examples all occurred in the United States, which is significant as the United States plays a larger role in Australia's remittance industry than many may realise. Remittances are predominantly cleared through US dollars, so Australian banks require a US bank to settle the funds that are transferred.¹³⁷ Under US law, banks can be held liable for the AML/CTF compliance failure of any foreign bank whose funds they clear.¹³⁸ As a result, Australian banks are under pressure from their US counterparts to stop processing remittance transfers. Resisting this pressure could compromise the ability of Australian banks to transact in US dollars for all their customers.¹³⁹ As the General Manager of Westpac Pacific noted in an interview in 2014, Australian banks are 'too far down the line – our reliance on the US dollar means our hands are tied.'¹⁴⁰

For banks, the reputational damage caused by closing the accounts of MTOs trying to serve the world's poor pales in comparison to being found guilty of assisting to fund

¹³⁴ Thomas Fox, *The HSBC AML Settlement*, 'Lessons Learned for the AML Compliance Practitioner' *World Compliance*, (2012),

<http://www.worldcompliance.com/Libraries/WhitePapers/The_HSBC_AML_Settlement.sflb.ashx>.

¹³⁵ Ben Protess, 'Commerzbank of Germany to Pay \$1.5 billion in U.S. Case', *The New York Times* (online), 12 March 2015 <http://www.nytimes.com/2015/03/13/business/dealbook/commerzbank-pays-1-45-billion-to-settle-us-investigations.html?_r=0>.

¹³⁶ Nate Raymond, 'BNP Paribas sentenced in \$8.9 billion accord over sanctions violations', *Reuters* (online), 1 May 2015 <<http://www.reuters.com/article/2015/05/01/us-bnp-paribas-settlement-sentencing-idUSKBN0NM41K20150501>>; United States Department of Justice, 'BNP Paribas Sentenced for Conspiring to Violate the International Emergency Economic Powers Act and the Trading with the Enemy Act', *Justice News*, 1 May 2015 <<http://www.justice.gov/opa/pr/bnp-paribas-sentenced-conspiring-violate-international-emergency-economic-powers-act-and>>.

¹³⁷ Interview with Greg Pawson (General Manager, Westpac Pacific) and Peter Capell (Head of Compliance, Westpac Pacific) conducted in Sydney on 22 October 2014.

¹³⁸ *USA Patriot Act* (2001), s 312.

¹³⁹ James Eyers, above n 64.

¹⁴⁰ Interview with Greg Pawson (General Manager, Westpac Pacific) and Peter Capell (Head of Compliance, Westpac Pacific) conducted in Sydney on 22 October 2014.

terrorism.¹⁴¹ This is particularly true in the United States, where the issue of terrorism has been at the forefront of policy making since September 2001.

Given pressure from abroad, the costs associated with AML/CTF compliance and the penalties imposed for regulatory breaches, many Australian banks have chosen to leave the remittance sector. Of the big four banks in Australia, Westpac was the last bank to close down the accounts of its remittance customers. The decision to do so in November 2014 came amid pressure from its correspondent bank in the US, JP Morgan Chase, which Westpac uses to clear US dollar transactions.¹⁴² The pressure from the US bank is entirely understandable, as in January 2014 JP Morgan Chase was fined more than US\$2 billion for other unrelated breaches relating to AML/CTF compliance.¹⁴³

In November 2014 a group of twenty-four MTOs formed a class action against Westpac for its blanket ban on dealing with the remittance industry.¹⁴⁴ The Federal court granted an injunction, preventing Westpac from closing the accounts before a hearing on 23 December 2014. The MTOs argued that the bank's decision to close accounts was unconscionable, but the case settled with Westpac agreeing to continue to allow international money transfers from the MTOs until 31 March 2015.¹⁴⁵

As a result of the account closures, many small MTOs have been forced to close.¹⁴⁶ Fewer MTOs means less competition and more reliance on banks, which is already increasing the price of sending remittances. The alternative to expensive bank transfers is for remittances to move via informal means which leaves remitters without consumer protection,¹⁴⁷ does nothing for financial inclusion goals and, ironically, may tend to

¹⁴¹ James Eyers, above n 64.

¹⁴² James Eyers, above n 64 and Interview with Greg Pawson (General Manager, Westpac Pacific) and Peter Capell (Head of Compliance, Westpac Pacific) conducted in Sydney on 22 October 2014.

¹⁴³ Tracy Kitten, 'JPMorgan Chase Fines Exceed \$2 Billion', *Bank Info Security*, 7 January 2014 <<http://www.bankinfosecurity.com/chase-a-6356/op-1>>.

¹⁴⁴ James Eyers, above n 64 and Anthony Klan, 'Transfer firms win temporary Westpac reprieve', *The Australian* (online), 23 December 2014 <<http://www.theaustralian.com.au/business/financial-services/transfer-firms-win-temporary-westpac-reprieve/story-fn91wd6x-1227164634105>>.

¹⁴⁵ Anthony Klan, above n 132.

¹⁴⁶ James Eyers, above n 64.

¹⁴⁷ Jonathan Capel, above n 10.

support the very money laundering and other criminal practices which the AML/CTF measures are trying to combat.¹⁴⁸

V POSSIBLE SOLUTIONS

During 2015 the average cost of sending remittances to the Pacific region rose and a number of Australian MTOs closed their businesses.¹⁴⁹ Creative solutions are urgently required to prevent further increases in the cost of sending remittances and to ensure that the remittance industry is not driven underground, which could open a new ML/TF route that would threaten Australia's security. Relaxing regulation for low-risk customers in the PICs should be a priority so as to prevent AML/CTF measures from stymying financial inclusion. Limiting transfer sums, promoting the use of digital financial services and encouraging technological innovation are other measures that should also be considered in order to address the challenge currently posed to financial inclusion in the PICs.

i. Risk-based Regulation

In 2015 the Australian government amended the identity documentation required by MTOs so that customers sending money from Australia now only have to meet two identity verification checks rather than three.¹⁵⁰ While this step should be applauded, further steps could be taken to facilitate increased access to remittance services to the PICs.

The risk-based approach advocated by the FATF Recommendations permits financial institutions to use simplified due diligence ('SDD') measures for customers that are identified as low-risk.¹⁵¹ In its guidance, the FATF states that such measures would be

¹⁴⁸ Ibid.

¹⁴⁹ World Bank, above n 47, 6.

¹⁵⁰ *National Remittance Plan 2015 – Australia*, 3.

¹⁵¹ FATF, *FATF Guidance*, above n 1, 29 and Louise Malady, Ross P Buckley and Douglas W. Arner, 'Developing and Implementing AML/CFT Measures Using a Risk-Based Approach for New Payments Products and Services' (CIFR Paper No 028/2014 and University of Hong Kong Faculty of Law Research Paper No 2014/021, 19 June 2014).

‘particularly relevant for individuals who rely on remittances from family members living and working away from home.’¹⁵²

One example of an SDD measure is the establishment of tiered accounts. This approach would allow undocumented individuals to access very basic accounts such as mobile wallets, with limited functions and low transaction limits.¹⁵³ In order to access additional services or increase their transaction limit, customers would need to undergo more extensive identity verification.¹⁵⁴ Such an approach has been adopted in India, where the government amended the AML/CTF regulation to allow banks to provide basic savings accounts for poor customers without sufficient proof of identity. The accounts are subject to strict limitations and are operational for a period of twelve months, after which they can only be renewed if the customer provides evidence that he or she has applied for valid identity documents.¹⁵⁵

Providing flexibility around the identity verification process for low-risk customers is another measure that can be adopted to promote financial inclusion. In many rural or remote parts of the PICs, people do not have formal identification documents. As a matter of practicality, regulations should allow for creativity regarding the type of credible identity documents accepted for KYC purposes. References from employers or existing customers, village chiefs or religious leaders within the customer’s community are all examples of alternative forms of identification that could be used.¹⁵⁶

While flexibility is necessary, regulators must ensure that identification verification does not place an additional financial burden on those who are already financially excluded. De Koker has noted that allowing employers or village chiefs to verify identity can increase the power that those people hold over vulnerable members of the community and may lead to corrupt practices such as the imposition of verification fees

¹⁵² Ibid.

¹⁵³ Ibid, 30 and Timothy Lyman and Wameek Noor, above n 90, 8.

¹⁵⁴ Timothy Lyman and Wameek Noor, above n 90, 8.

¹⁵⁵ FATF, *FATF Guidance*, above n 1, 30.

¹⁵⁶ Timothy Lyman and Wameek Noor, above n 90, 8.

which may act as a further barrier to financial inclusion.¹⁵⁷ For this reason, the more options and flexibility provided to low-risk customers the better.

ii. *Limiting transfer sums to manage risk*

On average, migrants remit US\$200 per month.¹⁵⁸ Placing low transfer limits on remittance accounts could make it difficult for criminals to launder large sums of money, while allowing migrants to continue sending genuine remittances.

Many banks already impose transfer limits based on security or compliance concerns. In the US, transfers to Mexico from Wells Fargo are limited at US\$1500 per day, whereas the bank allows twice that amount to be transferred to Vietnam.¹⁵⁹ This reflects the fact that Mexico is estimated to be the third largest source of illegal money in the world.¹⁶⁰

These limits are still considerably higher than the average amount remitted by migrants each month. In order to reduce AML/CTF risk while still supporting financial inclusion, regulation could impose a much lower limit. The FATF Recommendations and guidance provide that regulators may significantly reduce the information required for international money transfers valued at less than US\$1000.¹⁶¹ For transactions of this size, the minimum information required is the name of the sender, the name of the recipient and a unique reference number for the transaction.¹⁶² Providers do not need to verify this information unless the transaction is viewed as suspicious or unusual.¹⁶³ Limiting remittance transfers to say US\$750 per day would allow migrants to send money home without banks having to fulfil onerous AML/CTF requirements for the transfers.

¹⁵⁷ Louis de Koker, above n 91, 369.

¹⁵⁸ Dilip Ratha, above n 38.

¹⁵⁹ Wells Fargo, *Wells Fargo ExpressSend Transfer Limits* <<https://www.wellsfargo.com/international-remittances/limits/>>.

¹⁶⁰ Dev Kar and Joseph Spanjers, 'Illicit Financial Flows from Developing Countries: 2003-2012', *Global Financial Integrity*, December 2014 <<http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf>>.

¹⁶¹ Timothy Lyman and Wameek Noor, above n 90, 10-12.

¹⁶² *Ibid.*, 12.

¹⁶³ *Ibid.*

It is important to note that migrants may sometimes need to exceed such limits, for example in the case of an emergency when they may wish to provide financial aid to friends and family.¹⁶⁴ Policies could allow for flexibility around transfer limits in times of known need, such as following a natural disaster in the receiver country.

iii. *Digitizing payments*

Digital financial services ('DFS') are globally recognised as an effective means to promote financial inclusion. DFS refers to the technologies available to deliver financial services from a broad range of providers to a wide range of recipients through mobile phones.¹⁶⁵ DFS is particularly well suited to the PICs as mobile technology is inexpensive and already relatively widespread. Encouraging the PICs to transition from cash economies would assist with managing ML/TF risks, but would also have many other benefits as well.

First, digital payments dramatically reduce the costs associated with transferring remittances. This paper has already highlighted the fee discrepancy between banks and MTOs using the example of sending AU\$500 from Australia to Samoa. In this example, the least expensive cash to cash transfer offered by an MTO was for AU\$18.81, or 3.76% of the total amount transferred.¹⁶⁶ By contrast, at the time KlickEx Pacific offered instantaneous money transfers via mobile phone for a cost of AU\$1.68, or a mere 0.34% of the money being remitted.¹⁶⁷ Increasing the use of DFS in the PICs would thus provide receiving parties with a much greater proportion of the funds sent to them.

¹⁶⁴ Louis de Koker, above n 91, 364.

¹⁶⁵ Digital Financial Services (DFS) refers to a range of financial services (including credit, savings, loans, insurance and payments services) accessible via digital remote means (including e-money, mobile money, card payments and electronic funds transfers). This is in contrast to cash payments or traditional financial services accessed through physical means, such as visiting a bank branch. For more terminology definitions see Alliance for Financial Inclusion, Mobile Financial Services Working Group, *Mobile Financial Services: Basic Terminology* (March 2013) Guideline Note, No 1, <http://www.afi-global.org/sites/default/files/publications/mfswg_gl_1_basic_terminology_finalnewnew_pdf.pdf>.

¹⁶⁶ Send Money Pacific, <<http://www.sendmoneypacific.org/compare/list/4/australia-to-samoa-500.html>>.

¹⁶⁷ Ibid.

In addition to receiving more money from a digital transfer, recipients may also benefit by not having to take time off work and travel to collect their money from a bank branch. Worldwide, more than 40% of remittances are sent to rural areas.¹⁶⁸ Recipients in these areas often have to travel considerable distances to collect payments, which can be costly both in terms of transportation expenses and income foregone while travelling.¹⁶⁹ This is particularly true in the PICs, where many people live on remote islands.

Another benefit of sending remittances via digital means is that it increases transparency, which is beneficial for both regulators and the parties involved in the transaction. From a regulatory point of view, transferring money electronically improves the traceability of remittances, which assists banks and MTOs to satisfy AML/CTF compliance requirements.¹⁷⁰ Westpac has highlighted MoneyGram's sophisticated tracing technology as key to its continued relationship with the large MTO, as it enables the bank to satisfy its regulatory requirements.¹⁷¹

Digital payments provide greater security for senders and receivers of remittances, who are able to track their money online and keep digital records of the amount of money sent and received.¹⁷² This decreases the risk of 'leakage' associated with anonymous cash payments – where payments do not reach the recipient in full.¹⁷³ Once received, funds that are stored electronically are also safer than storing cash as they are not at risk of being lost, stolen or destroyed (such as during a natural disaster).

Perhaps most importantly, digital payments provide an important incentive for people to engage with DFS technology. Once people have received remittances this way, they are

¹⁶⁸ Global Partnership for Financial Inclusion (GPFI), 'The Opportunities of Digitizing Payments' (Report by the World Bank Development Research Group, the Better than Cash Alliance and the Melinda and Gates Foundation to the GPFI, 28 August 2014), 13.

¹⁶⁹ Ibid, 8.

¹⁷⁰ MoneyGram, the world's second largest MTO, uses sophisticated in-built technology to trace all its money transfers around the world. In an interview with the Pacific head of compliance at Westpac, Peter Capell, he stated that Westpac had partnered with MoneyGram because its digital systems complied with the 'know your customer' rules.

¹⁷¹ Interview with Greg Pawson (General Manager, Westpac Pacific) and Peter Capell (Head of Compliance, Westpac Pacific) conducted in Sydney on 22 October 2014.

¹⁷² Global Partnership for Financial Inclusion (GPFI), 'The Opportunities of Digitizing Payments', above n 154, 8.

¹⁷³ Ibid, 8.

more likely to use DFS to make payments, save money, and otherwise participate in the formal financial system through their mobile phone. Remittances can serve as the bridge to better use of DFS.

Despite these benefits, only a very small proportion of cross-border transactions currently use mobile money technology. In 2013, the value of international remittances sent through mobile phones was US\$10 billion, less than 2% of global remittance flows.¹⁷⁴ In the Pacific, implementation of DFS is at varying stages and differs in form from country to country. Nations such as Fiji and Papua New Guinea are relatively advanced, having introduced mobile banking services several years ago. By contrast, the availability of DFS in Vanuatu is relatively limited and Timor Leste only introduced its first pilot mobile banking program at the end of 2014.¹⁷⁵

Currently the way in which AML/CTF regulation is implemented creates a barrier to further development of DFS in the PICs. The implementation of the regulation should be simplified for low-value transfers to assist this useful tool to advance.¹⁷⁶

iv. Technological innovation

The development of mobile banking technology has had a huge impact on financial inclusion worldwide. As technology continues to advance, the development of further innovative solutions for reducing concerns around KYC while promoting financial inclusion should be encouraged.

An example of a creative solution is the possible use of camera phones or voice recognition software to verify the identity of customers in remote, sparsely populated

¹⁷⁴ World Bank, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Forced Migration' (Migration and Development Brief No 23, Migration and Remittances Team, Development Prospects Group, 6 October 2014), 13.

¹⁷⁵ Reuben Summerlin, 'Timor Leste's First Mobile Money Pilot Launched to Expand Access to Financial Services', UNCDF, 4 December 2014 <<http://www.uncdf.org/en/content/timor-leste's-first-mobile-money-pilot-launched-expand-access-financial-services>>.

¹⁷⁶ World Bank, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Forced Migration' (Migration and Development Brief No 23, Migration and Remittances Team, Development Prospects Group, 6 October 2014), 13.

areas within the PICs.¹⁷⁷ This would enable unbanked customers who pose little ML/TF risk to obtain simple bank accounts in scenarios where the cost of conducting conventional face-to-face CDD would normally be prohibitive.¹⁷⁸

The possible use of cryptocurrencies and block-chain technology is another example of how technological innovation could be used to further financial inclusion. In 2015 three of Australia's big four banks began trialling Ripple's peer-to-peer fiat and cryptocurrency exchange technology.¹⁷⁹ Ripple allows users to transfer in any currency and can provide same or next-day payment, making it a quick, simple and low-cost method of sending small remittances overseas.¹⁸⁰ Furthermore, the technology satisfies AML/CTF obligations because it is able to identify the payment originator for each individual payment.¹⁸¹

VI CONCLUSION

Financial inclusion is vital for the stability and integrity of the global financial system. It also greatly advances the lives of the poor through assisting with community development and the reduction of poverty. The importance of bringing the world's unbanked population into the formal financial system has been recognised by the public and private sector at all levels and has become a priority on the agendas of international bodies such as the G20 and the FATF.

Remittances play an increasingly significant role in promoting financial inclusion. By 2016, remittance flows to developing countries are expected to surpass half a trillion dollars.¹⁸² This figure vastly exceeds the amount of official development assistance worldwide. In the PICs, remittances account for a large proportion of many countries'

¹⁷⁷ Timothy Lyman and Wameek Noor, above n 90, 7.

¹⁷⁸ Ibid.

¹⁷⁹ Paul Smith, 'Westpac, ANZ trial Ripple payments, but big four reluctant on bitcoin', *Australian Financial Review*, 9 June 2015.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Anna Prokhorova, 'Remittances: Statistical Accuracy and Financial Benefits' (World Bank presentation at the UNECE capacity-building workshop on migration statistics, Almaty, Kazakhstan, 31 October – 1 November 2013), 4.

GDPs and are vital for people's livelihoods. Furthermore, these payments can serve to give the poor a reason to engage with the formal financial system by providing them with money that can be placed in a savings account, or used to acquire insurance against death or illness of a breadwinner. Doing so can lay a foundation from which the poor can climb out of poverty.

Around the world, the desire to combat money laundering and the financing of terrorism has seen the introduction of strict financial regulations that impose onerous compliance measures on financial providers. In Australia, such measures have proven too costly or too difficult for many small MTOs, who have been forced to close down. Other remittance providers have had their accounts closed by banks that have decided to exit the industry due to the associated risks and pressure from their US correspondent banks.

The closure of MTO accounts in Australia poses a serious threat to financial inclusion in the PICs. Without MTOs, migrants will be forced to transfer money through banks, which charge significantly higher fees and require recipients to hold bank accounts. Given that the majority of people in the PICS do not hold bank accounts, this is a major problem. Alternatively, migrants may choose to transfer money through informal means. Doing so leaves legitimate remitters without important consumer protections, increases the risk of illicit transfers in Australia and tends to defeat the efficacy of the FATF global regime.

In the first quarter of 2015 a further seven MTOs were forced to close and the average cost of sending remittances from Australia to the Pacific rose slightly while the global average cost decreased.¹⁸³ Addressing the issues facing the Australian remittance industry is thus an urgent priority upon which AUSTRAC could, and should, be providing more proactive leadership. This is particularly so given the Australian government's goals of promoting prosperity and stability within our region.

First and foremost, we suggest using a more nuanced, risk-based approach to implementing AML/CTF regulations to accommodate financial inclusion goals. Simplified KYC and SDD measures should be used for lower risk customers, such as

¹⁸³ World Bank, above n 47, 5.

those who are very poor and currently unbanked. Other solutions include limiting the amount of funds transferred, digitizing payments and encouraging greater use of technological innovation to reduce risks.