

AML / CFT

Anti-money laundering and countering financing of terrorism

Supervisory Framework



Introduction

Money laundering is the method by which criminals disguise the illegal origins of their wealth and protect and enjoy their assets. Financers of terrorism use similar techniques to money launderers, to avoid detection by authorities and to protect the identity of those providing and receiving the funds.

The Financial Action Task Force (FATF) is an international body responsible for combating money laundering and terrorist financing. FATF has issued a set of *Forty Recommendations*, which provide a comprehensive plan of action needed to fight against money laundering. A further *Nine Special Recommendations* deal specifically with the issue of terrorist financing. As a FATF member New Zealand is required to implement these 49 Recommendations.

The [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) (the Act) places obligations on New Zealand's financial institutions and casinos (reporting entities) to detect and deter money laundering and terrorism financing. Financial institutions are defined under the Act and include (among others): banks, life insurers, non-bank deposit takers, issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers, financial advisers, non-deposit taking lenders and money changers. The Act builds on the existing obligations on financial institutions set out under the Financial Transactions Reporting Act 1996 to bring New Zealand into line with FATF's Recommendations.

The obligations for reporting entities (established by part two of the Act) will come into force on a date to be appointed by the Governor-General by Order in Council. The Ministry of Justice are currently finalising the AML/CFT Regulations which will include the commencement date.

Shared Objectives

The shared objectives of the three supervisors are drawn from the purposes of the Act itself, and the functions of supervisors as specified in the Act. Below is an explanation of the actions, strategies, tools and techniques that will be used by the supervisors to achieve these objectives.

To detect and deter money laundering and the financing of terrorism. Supervisors will provide reporting entities with guidance and education to help them detect and deter those that seek to launder money and finance terrorism via the reporting entities' businesses. This will include the development of codes of practice, guidelines, sector risk analysis and feedback to reporting entities.

To contribute to public confidence in the financial system.

Supervisors will provide guidance to help reporting entities comply with the new regime. This will contribute to public confidence in the financial system. Supervisors will publish information on the application of the framework as well as key regulatory policies and processes.

To facilitate co-operation amongst reporting entities, supervisors and various government agencies, in particular law enforcement and regulatory agencies. Supervisors will actively co-operate with each other and with the Police's Financial Intelligence Unit. Supervisors will also work with the National Co-ordination Committee (see below), other government agencies, reporting entities and industry bodies to ensure a consistent approach to the new regime. Supervisors will work with reporting entities and deliver outreach and information in a variety of ways to help ensure that all entities are informed, aware of their obligations and how to comply with them.

To maintain and enhance New Zealand's international reputation.

Supervisors' work will be aimed towards the robust implementation of the new regime in order to enhance New Zealand's international reputation particularly in terms of compliance with the FATF Recommendations as appropriate in the New Zealand context. Supervisors will also work with the FIU to co-operate with and respond to requests from their international counterparts.

The AML/CFT framework

The Act

The basic framework for the new AML/CFT regime is set out in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The Supervisors

The government agencies tasked with supervision of the new AML/CFT regime include:

The Reserve Bank of New Zealand

- for banks, life insurers, and non-bank deposit takers

www.rbnz.govt.nz

The Securities Commission of New Zealand

- for issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers, and financial advisers

www.sec-com.govt.nz

The Department of Internal Affairs

- for casinos, non-deposit taking lenders, money changers, and other reporting entities not elsewhere supervised

www.dia.govt.nz

National Co-ordination Committee

The Act also established the AML/CFT co-ordination committee more commonly known as the National Co-ordination Committee (NCC). The NCC comprises of a representative from each of:

- Ministry of Justice
- New Zealand Customs
- Every AML/CFT supervisor
- Police
- Any other persons (who must be employees of a government agency) as are invited by (the chief executive of) the Ministry of Justice

The role of the NCC is to ensure that the necessary connections between the supervisors, Police, and other agencies are made in order to ensure the consistent, effective, and efficient operation of the regime.

Regulations

Regulations made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 will prescribe additional requirements in a number of areas. Regulations will be used for dealing with obligations and risk characteristics that may change in the medium term.

Exemptions

Regulatory and Ministerial exemptions can limit coverage of the Act. Regulatory exemptions automatically expire 5 years after the date on which they come into force, and ministerial exemptions may be granted for a maximum five-year time period which means there will be a regular opportunity to re-evaluate their appropriateness and necessity.

Codes of Practice

Codes of practice are intended to provide a statement of practice to assist reporting entities to comply with certain AML/CFT obligations. They will set out the suggested best practice for meeting obligations. Some codes will cover all sectors, while others will be applicable to specific sectors.

Codes of practice operate as a 'safe harbour'. The codes allow for flexibility and scope for innovation because reporting entities can opt out of a code of practice. If a reporting entity opts out of the code of practice, it must comply with the relevant statutory obligation by some other equally effective means. However, in order for this to be a defence to any act or omission by the reporting entity, the reporting entity must have provided written notification to its supervisor that it has opted out of compliance with the code and intends to satisfy its obligations by some other equally effective means.

Policy criteria for developing codes of practice

Decision-making for the policy development behind the Act was guided by agreed policy criteria. The same criteria apply to the development of codes of practice:

- compliance with international obligations relating to anti-money laundering, unless there are very compelling reasons why particular obligations cannot be met at this time or exemptions or lower levels of compliance are warranted
- a 'best fit' for New Zealand, justified on the basis of a cost, benefit and risk analysis that takes into account costs on government and business that are justified by: likely benefits; the level of money laundering risk in New Zealand; and the likely consequences of non-compliance with FATF recommendations
- compatibility with Australian regulatory requirements where consistent with New Zealand's circumstances and requirements
- consistency with AML/CFT legislation in other FATF member countries in expressing AML/CFT regulatory requirements to minimise compliance costs for international investors and financial institutions, unless this is inconsistent with New Zealand's circumstances and requirements
- consistent regulation and supervision across sectors where feasible, while at the same time recognising sector differences
- transparent regulation, rules and sector guidance that are accessible and provide certainty to business and supervisors
- effective and coordinated implementation (including information sharing and mechanisms) to achieve the overall objectives of the framework
- regulation and supervision that goes no further than is necessary to achieve the stated objectives and which are implemented in ways that minimise compliance costs on industry to the extent feasible.

Codes of practice will be found on the three supervisors' websites.

Guidelines

Guidelines can be issued by the three supervisors. Guidelines will assist reporting entities to determine exactly what their AML/CFT obligations are. Guidelines can either be for all reporting entities or sector specific.

Supervision

The following are functions and powers of the three AML/CFT supervisors:

Supervisor Functions

- Monitor and assess the level of risk of money laundering and the financing of terrorism across all of the reporting entities
- Monitor the reporting entities for compliance with the Act, regulations and develop a supervisory programme
- Provide guidance to reporting entities to assist them to comply with the Act and regulations
- Investigate reporting entities and enforce compliance with the Act and regulations
- Co-operate through the National Coordination Committee with domestic and international counterparts to ensure the consistent, effective, and efficient implementation of the Act

Supervisor Powers

- All the powers necessary to carry out the above functions

The supervisors may also:

- Require production of, or access to, all records, documents, or information relevant to its supervision and monitoring of reporting entities for compliance with the Act
- Conduct on-site inspections
- Provide guidance to reporting entities by:
 - Providing guidelines
 - Preparing codes of practice
 - Providing feedback on reporting entities' compliance with obligations under the Act and regulations
 - Undertaking any other activities necessary for assisting reporting entities to understand their obligations under the Act and regulations, including how best to achieve compliance with those obligations
- Co-operate and share information
- Initiate and act on requests from overseas counterparts
- Approve the formation of, and addition of members to, designated business groups

Guiding Principles

These functions and powers of the supervisors will be exercised in accordance with a core set of guiding principles to help achieve consistency and integrity in our supervisory approach. In some instances, sector specific circumstances may require sector specific solutions or strategies to be adopted. These principles will ensure that each supervisor uses its discretion and decision making powers in a consistent way.

A principles based approach to the supervision of reporting entities and enforcement of the Act and regulations, along with the flexibility inherent in the new regime (codes of practice particularly), allows supervisors to be responsive to emerging technologies and changing sector environments both nationally and internationally. By adopting and effectively employing the principles-based approach supervisors aim to establish and maintain co-operative relationships with reporting entities. This will help to achieve a consistent approach to AML/CFT regulation and encourage continuing compliance.

The guiding principles allow reporting entities to easily identify and understand the common approach that will be applied by all three supervisors.

1. Risk-based approach

A risk-based approach is a fundamental part of the new regime. Supervisors are adopting a risk-based approach to AML/CFT regulation to ensure the best allocation of government resources. The risk-based approach will ensure actions taken are targeted and informed (based on all information available to supervisors), as well as cost effective. The development of the national risk assessment by the Police's Financial Intelligence Unit and sector risk assessments by supervisors will inform the risk based approach. Similarly the risk-based approach allows businesses to allocate resources to activities in a way that reflects risk and minimises compliance costs.

2. Accessible and relevant

Supervisors will at all times aim to foster compliance by assisting reporting entities to understand their obligations. Information and advice about regulations, requirements and procedures will be understandable and accurate. Information will be made available in ways that are tailored to best communicate with all types of reporting entities with aspects such as business size, culture, language, location, products and services all taken into account.

3. Proportionate and responsive

Supervisors' responses will be proportionate and responsive relative to the AML/CFT risk or potential impact involved.

4. Consistent and fair

Supervisors will endeavour to apply high standards, consistently and fairly, in similar circumstances. Where sector specific circumstances require sector specific solutions or strategies they will be as consistently and fairly applied as is reasonably possible.

5. Transparent and accountable

The appropriateness, fairness and consistency of decisions made by supervisors will be facilitated by the National Co-ordination Committee. Supervisors will promote accountability by publishing key regulatory policies and processes. Supervisors will aim to provide transparency in their decision making wherever possible.

6. Co-operative

Supervisors will co-operate with each other to achieve robust and consistent supervision of reporting entities as envisaged by the structure of the new regime. The supervisors aim to establish and maintain strong, co-operative relationships with reporting entities, government agencies (in particular law enforcement and regulatory agencies), as well as other organisations that will assist supervisors to achieve the shared objectives. These relationships will increase mutual understanding of the AML/CFT environment and promote solutions that will increase the effectiveness of the regime. The principle of co-operation extends internationally and supervisors will also work with the FIU to co-operate with and respond to requests from their international counterparts.

Compliance: Tools and techniques

The AML/CFT regime includes tools that allow supervisors to promote and enforce compliance and design supervisory strategies. The actions taken by supervisors to ensure compliance with the Act and regulations will be proportionate to the nature and severity of any non-compliance on a case by case basis. Decisions on enforcement actions will be made in accordance with the guiding principles in order to best achieve the shared objectives.

Regulatory Pyramid¹

Ideally most actions taken by supervisors *should* occur at the base of the pyramid. The goal of the education, co-operation and guidance approach is the compliance of all reporting entities with the new regime. Compliance is incentivised by the escalating punitive actions available to supervisors in the upper layers of the pyramid if non-compliance occurs. Supervisors will take decisive, proportionate actions at all levels of the regulatory pyramid to promote compliance with the new regime.



¹ The regulatory pyramid was first developed by John Braithwaite and Ian Ayres. See Ayers, I. and Braithwaite, J. 1992, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, New York

Education, co-operation and guidance

This area will be a particular focus for supervisors during the implementation phase (up until the Act comes into full force) of the new regime. The aim is to help all reporting entities understand their AML/CFT obligations and what they need to do in order to meet them. Supervisors are seeking to facilitate and encourage continuous compliance with the new regime.

Monitoring

Supervisors will use various methods to monitor compliance with the AML/CFT obligations. These will include inspections and analysis of annual reports submitted by reporting entities.

Investigations

Investigations will be carried out by supervisors to identify non-compliance.

Sanctions

Sanctions are regulatory tools that promote compliance by punishing non-compliance. Sanctions include formal warnings, performance injunctions, restraining injunctions and enforceable undertakings.

Civil liabilities

Civil liabilities relate to the failure of reporting entities to comply with any of their AML/CFT obligations including (without limitation): conducting the required customer due diligence; adequately monitoring accounts; obtaining satisfactory evidence of identity when entering or continuing a business relationship; entering or continuing a correspondent banking relationship with a shell bank; keeping the required records; . establishing, implementing or maintaining an AML/CFT programme; and ensuring branches and subsidiaries comply with requirements.

Supervisors can issue formal warnings; accept enforceable undertakings; apply to the court for an order directing compliance or monetary payment in relation to an enforceable undertaking; and seek an interim, performance or restraining injunction and pecuniary penalties from the courts against reporting entities for civil liability acts.

Criminal prosecutions

Criminal offences relate to suspicious transaction and border cash reporting, obstructing or misleading supervisors, and failing to provide information to supervisors or police. Civil liabilities conducted knowingly or recklessly are also criminal offences. Supervisors can prosecute reporting entities for offences under the Act.

Looking forward

The second phase of AML/CFT obligations is currently being considered by the Ministry of Justice. The second phase will potentially extend coverage to real estate agents, lawyers, accountants, conveyancers, bullion dealers, jewellers and other high value dealers.

After the Implementation phase of the new regime, the Ministry of Justice and three supervisors will work together with the National Co-ordination Committee to evaluate and review the efficiency and effectiveness of the new regime.