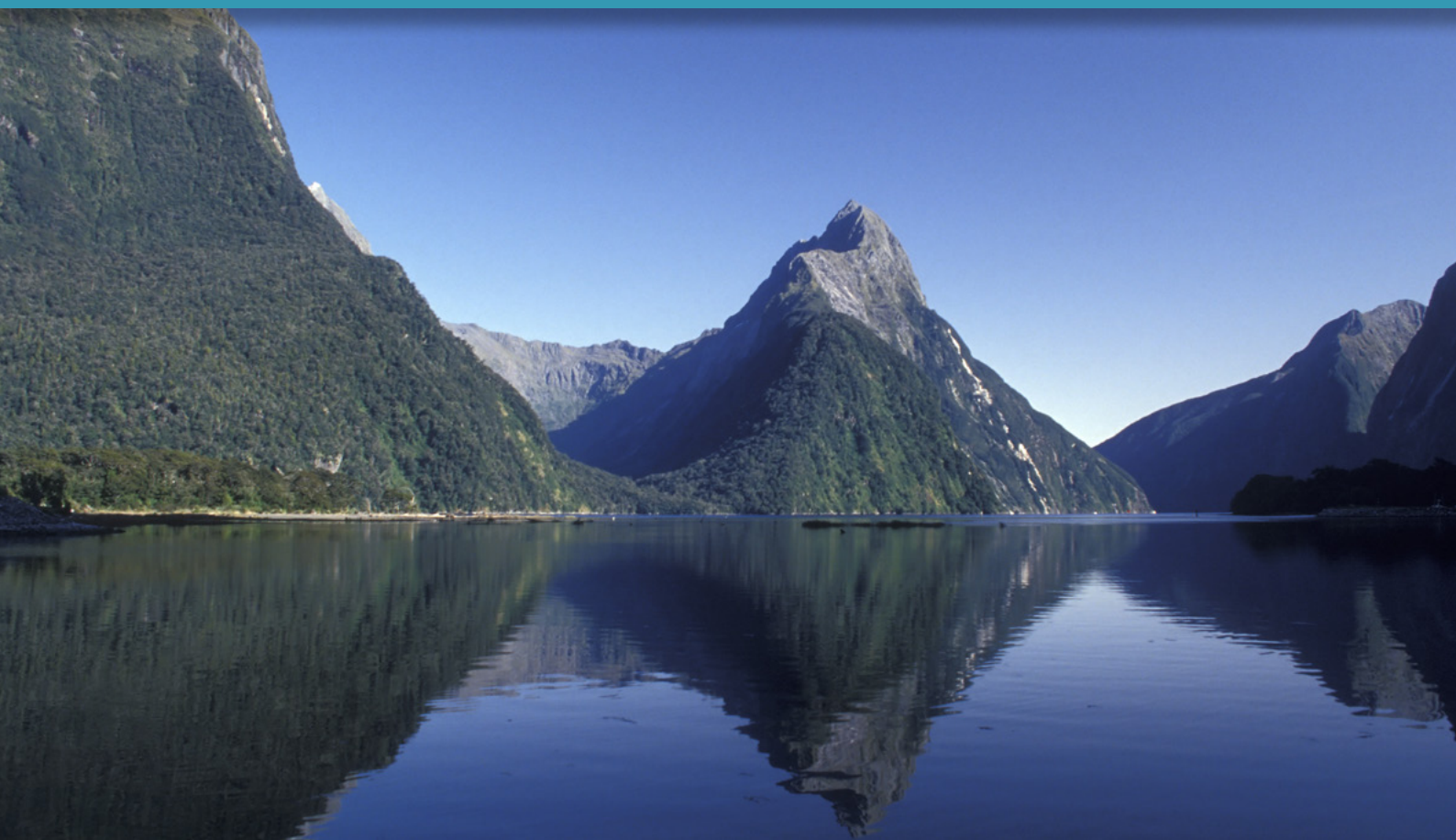
FATF

2ND FOLLOW-UP REPORT

Mutual Evaluation of New Zealand

October 2013



FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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CONTENTS

ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Business or Profession
FIU	Financial Intelligence Unit
FTRA	Financial Transactions Reporting Act 1996
LC	Largely compliant
MER	Mutual Evaluation Report
MVTS	Money Value Transfer Services
NBDT	Non-Bank Deposit Taker
NC	Non-compliant
NZX	New Zealand securities exchange
PC	Partially compliant
PEP	Politically Exposed Person
R	Recommendation
SCDD	Simplified Customer Due Diligence
SR	Special Recommendation
STR	Suspicious Transaction Report
TCSP	Trust or Company Service Providers
UN	United Nations

MUTUAL EVALUATION OF NEW ZEALAND: SECOND FOLLOW-UP REPORT

Application to move from regular follow-up

Note by the Secretariat

I. INTRODUCTION

The third mutual evaluation report (MER) of New Zealand was adopted on 16 October 2009, and the country was placed in a regular follow-up process.[1] New Zealand reported back to the FATF in October 2011 (first follow-up report). It was directed to report back in October 2013 on the basis that relevant legislation had been promulgated but would not come fully into force until 30 June 2013, and further initiatives being undertaken were not expected to come to fruition until the end of 2012/early 2013. In June 2013, New Zealand confirmed that it would report to the Plenary in October 2013 concerning the additional steps taken to address the deficiencies identified in the report and apply to be removed from regular follow-up at that time.

This paper is drafted in accordance with the procedure for removal from the regular follow-up, as agreed by the FATF Plenary in October 2008 and subsequently amended.[2] It contains a detailed description and analysis of the actions taken by New Zealand in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation, as well as a description and analysis of the other Recommendations rated PC or NC, and for information a set of laws and other materials. The procedure requires that a country *"has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core[3] and key[4] Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating"*.[5] New Zealand was rated PC or NC on the following Recommendations:

Core Recommendation rated NC (no core recommendations were rated PC): R.5
Key Recommendations rated PC/NC R.23 (NC), SR.III (PC)
Other Recommendations rated PC R.17, R.30, R.33, SR.VIII, SR.IX

1 www.fatf-gafi.org/topics/mutualevaluations/documents/mutualevaluationofnewzealand.html.

2 Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf.

3 The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

4 The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

5 FATF Processes and Procedures par. 39 (c).

Other Recommendations rated NC

R.6, R.7, R.8, R.9, R.11, R.12, R.15, R.16, R.18, R.21, R.22, R.24, R.29, R.34, SR.VI, SR.VII,

As prescribed by the Mutual Evaluation procedures, New Zealand provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 5 and 23, and Special Recommendation III (see rating above), as well as an analysis of all the other Recommendations rated PC or NC. A draft analysis was provided to New Zealand (with a list of additional questions) for its review, and responses were received. The final report was drafted taking New Zealand's comments into account. During the process, New Zealand provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper-based desk review* and by its nature is less detailed and thorough than a MER. The analysis focuses on the Recommendations that were rated PC/NC, which means that only part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper-based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATION

Since its mutual evaluation, New Zealand has amended its AML/CFT legislation to address shortcomings identified in the MER with regard to R5. As almost all of the 20 technical deficiencies are now addressed, New Zealand's current level of compliance with R5 is essentially equivalent to a level of LC.

KEY RECOMMENDATIONS

For R23, New Zealand has made significant progress in addressing the deficiencies identified in the MER, such that its overall compliance can be assessed at a level essentially equivalent to LC.

For SRIII, New Zealand substantially improved the communication aspects of its regime, and also made good progress to improve guidance, and monitoring of compliance. However, further work needs to be done, and the monitoring regime is not yet fully tested. Consequently, New Zealand's current level of compliance with SRIII cannot yet be considered to be essentially equivalent to LC.

OTHER RECOMMENDATIONS

New Zealand has made significant progress in relation to the other 21 Recommendations that were rated PC or NC. It has achieved a sufficient level of compliance with Recommendations 6, 7, 8, 11, 17,

18, 21, 22, 29, 30, and Special Recommendations VI, VII and IX. New Zealand has also made efforts to improve its compliance with Recommendations 9, 12, 15, 16, 24, 33, 34, and SRVIII although deficiencies remain and their implementation has not yet reached a level equivalent to an LC rating.

CONCLUSIONS

Overall, New Zealand has reached a satisfactory level of compliance with all six core Recommendations and all but one key Recommendation. It has not yet reached a satisfactory level of compliance with SR.III although it has taken concrete actions aimed at addressing the deficiencies identified in its 2009 MER.

The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. The Plenary does, however, retain some limited flexibility with regard to the key Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

Since the adoption of its MER, New Zealand has made significant overall progress. In 2009, 24 Recommendations were assessed as PC or NC, including 1 core Recommendation (R5) and 2 key Recommendations (R23 and SRIII). To the extent that this can be judged in a paper-based review, which does not examine effectiveness, New Zealand has taken sufficient action to bring its compliance to a level essentially equivalent to LC for 15 of these 24 Recommendations: R5 (core), R23 (key) and 13 other Recommendations (R6, 7, 8, 11, 17, 18, 21, 22, 29, 30, SRVI, SRVII and SRIX). New Zealand has also made some progress on the following 9 Recommendations, but their current level of compliance is equivalent to PC: Recommendations 9, 12, 15, 16, 24, 33, 34 and Special Recommendations III and VIII.

Given this significant progress overall, it is recommended that this would be an appropriate circumstance for the Plenary to exercise its flexibility and remove New Zealand from the regular follow-up process.

III. OVERVIEW OF NEW ZEALAND'S PROGRESS

A. OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since the adoption of its MER in 2009, New Zealand focused its attention on strengthening its AML/CFT legislative framework through the adoption of new preventive AML/CFT legislation—the *AML/CFT Act, 2009* (which was issued in October 2009 and came into full force and effect on 30 June 2013). New Zealand also issued a related set of implementing preventive AML/CFT measures. The legislation is supported by a National Risk Assessment (released in February 2011) which is currently being updated, as well as comprehensive guidance material and codes of practice to assist reporting entities with the implementation of the Act.

New Zealand also introduced several changes to its supervisory framework. The *AML/CFT Act, 2009* establishes three statutory supervisors for reporting entities subject to the Act: The Reserve Bank of New Zealand; the Financial Markets Authority; and the Department of Internal Affairs. The Act contains a range of functions and powers for the three supervisors, including a range of effective, proportionate and dissuasive criminal and civil administrative sanctions to enforce compliance with it.

New Zealand has also strengthened it registration and licensing regime for financial service providers and the insurance sector. Similar legislative action for Non-Bank Deposit Takers is currently under consideration by Parliament.

Finally, New Zealand introduced a new cross-border cash reporting regime which came into force on 16 October 2010, replacing the regime in force at the time of the mutual evaluation.

B. THE LEGAL AND REGULATORY FRAMEWORK

Since the adoption of the MER in 2009, New Zealand has completed key AML/CFT legislative steps:

- On 16 October 2009, New Zealand enacted the *Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act, 2009* which came into full force and effect on 30 June 2013. The Act was further complemented with five sets of implementing regulations, two of which have been in force for a number of years and three of which also came into full force and effect on 30 June 2013. One set of regulations to be specifically mentioned is the *AML/CFT (Cross-border Transportation of Cash) Regulations, 2010* which were enacted on 4 October 2010 and came into force on 16 October 2010 to address the shortcomings identified in the MER in relation to SRIX.
- The *Financial Service Providers (Registration and Dispute Resolution) Act, 2009* was enacted on 29 September 2008 and came into force on 1 April 2011. It requires all persons offering financial services to be registered and essentially improves compliance with R23 and, to some extent, also with R18 and SRVI.
- The *Insurance (Prudential Supervision) Act, 2010* was enacted on 7 September 2010 and is now in full force and effect. It requires all insurance companies to be licensed and prudentially supervised by the Reserve Bank of New Zealand, and improves compliance with R23.

The three statutory AML/CFT supervisors issued comprehensive guidance material and codes of practice to assist reporting entities with their implementation of the *AML/CFT Act, 2009*. The most relevant guidance material for this report is the *AML/CFT Beneficial Ownership Guideline* issued in December 2012 which provides information to assist in the identification and verification of a customer's beneficial owners. In April 2013, to further enhance reporting entities' understanding with the beneficial ownership requirements, the three AML/CFT supervisors further complemented the guideline with *"fact sheets"* including identification and verification requirements for different types of customers.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

RECOMMENDATION 5 – RATED NC

R5 (Deficiencies 1; 4; and 20): (1) There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements. (4) There is no requirement to understand the ownership and control structure of legal persons or arrangements. (20) There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements.

These three deficiencies are addressed. The *AML/CFT Act, 2009* requires financial institutions (FIs) (and reporting entities more broadly) to conduct customer due diligence (CDD) on a customer, any beneficial owner of a customer, and any person acting on behalf of a customer (s.11). According to the level of risk involved, FIs are obliged to take reasonable steps to verify any beneficial owner's identity so that the reporting entity is satisfied that it knows who the beneficial owner is (ss.16 and 24 set out identity verification requirements relating to standard and enhanced CDD). These requirements relate to both occasional transactions and business relationships between reporting entities and customers. In order to assist reporting entities to understand the concept of risk, the AML/CFT supervisors issued a non-mandatory *AML/CFT Risk Assessment Guideline*.

The term beneficial owner is defined under s.5 of the AML/CFT Act, 2009 as the individual who has effective control of a customer or person on whose behalf a transaction is conducted, or owns a prescribed threshold of the customer or person on whose behalf the transaction is conducted. The threshold for the purpose of the beneficial ownership definition is 25%, which is consistent with the FATF's approach: AML/CFT (Definitions) Regulations, 2011, regulation 5. Reporting entities are required to collect information about beneficiaries of customer that are trusts: AML/CFT (Requirements and Compliance) Regulations, 2011, regulation 6.

To assist reporting entities in meeting the CDD requirements for customers and beneficial owners, the three AML/CFT supervisors (the Financial Markets Authority, the Reserve Bank of New Zealand, and the Department of Internal Affairs which are discussed in detail regarding R23 below) issued a *Beneficial Ownership Guideline* in December 2012. In April 2013, this guideline was supplemented with *"fact sheets"* containing specific details on how to conduct CDD, including beneficial ownership, for clubs and societies, companies, co-operatives, sole traders and partnerships, and trusts as well as on how to determine whether a person is acting on behalf of a customer.

R5 (Deficiency 2): There is no requirement to obtain information on the purpose and intended nature of the business relationship.

This deficiency is addressed. The *AML/CFT Act, 2009* sets out requirements for simplified, standard, and enhanced CDD, and specify that reporting entities must collect information about the nature and purpose of the business relationship: ss.17, 21 & 25.

R5 (Deficiency 3): There is no requirement to identify natural persons acting on behalf of legal persons and verify their authority to act.

This deficiency is addressed. In addition to the identification requirement in s.11 (see deficiency 1 above), ss.16(1)(c), 20(1) and 24 of the *AML/CFT Act, 2009* set out identity verification requirements related to standard, simplified and enhanced CDD, and specify that reporting entities must take reasonable steps to verify the identity and authority to act of any persons acting on behalf of customers. As mentioned above in relation to deficiency 1, the AML/CFT supervisors provided guidance facilitating the implementation of this requirement through the *"fact sheet"* on how to determine whether a person is acting on behalf of a customer.

R5 (Deficiency 5): There is no requirement to conduct on-going due diligence on the business relationship.

This deficiency is addressed. The *AML/CFT Act, 2009* requires reporting entities to conduct on-going due diligence and account monitoring to ensure that the business relationship and the transactions relating to that business relationship are consistent with the reporting entity's knowledge about the customer and the customer's business and risk profile, and to identify any grounds for reporting a suspicious transaction (s.31). When conducting on-going CDD and account monitoring, a reporting entity must, at a minimum, regularly review:

- the customer's account activity and transaction behaviour, and
- any customer information obtained under the CDD provisions of the Act or, in relation to an existing customer, any customer information the reporting entity holds about the customer.

R5 (Deficiency 6): Financial institutions are not required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions.

The deficiency is addressed. The *AML/CFT Act, 2009* contains enhanced CDD requirements (ss.22-25). These measures include identification requirements, including beneficial ownership, identity verification and additional requirements to obtain information about both the nature and purpose of the intended business relationship and the source of funds or wealth of the customer. Enhanced due diligence is mandatory where:

- the customer is a trust or another vehicle for holding personal assets, a non-resident customer from a country that has insufficient AML/CFT systems or measures in place, or a company with nominee shareholders or shares in bearer form, and
- a reporting entity considers that the level of risk involved is such that enhanced CDD should apply to a particular situation.

Additional enhanced CDD measures are required where a reporting entity has identified the customer or beneficial owner of the customer to be a politically exposed person (s.26–see also discussion regarding R6 below).

R5 (Deficiency 7): There is no requirement to verify the legal status of customers who are legal persons and arrangements.

This deficiency is addressed. Standard and enhanced CDD provisions (ss.15 and 23 of the *AML/CFT Act, 2009*) include requirements to collect and verify a person's full name, date of birth, address or registered office and company identifier or registration number. As mentioned above in relation to deficiencies 1; 4; and 20, the three AML/CFT supervisors issued *"fact sheets"* containing specific details on how to conduct CDD, including beneficial ownership for clubs and societies, companies, co-operatives, sole traders and partnerships, and trusts.

R5 (Deficiency 8): There is no requirement to verify existing facility holders where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

This deficiency is addressed. The *AML/CFT Act, 2009* specifies that a reporting entity is not required to obtain or verify any documents, data or information previously obtained and verified for the purpose of carrying out CDD in accordance with the Act unless there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the documents, data or information previously obtained: s.11(4). When in doubt, the reporting entity must renew the CDD and identity verification. In addition, standard CDD should to be undertaken in relation to an existing customer where, according to the level of risk involved:

- there has been a material change in the nature and purpose of the business relationship, and
- the reporting entity considers that it has insufficient information about the customer (s.14).

Reporting entities are required to regularly review the CDD information that they hold in accordance with the on-going due diligence requirements in s.31 (see also discussion regarding deficiency 5 above).

R5 (Deficiency 9): The CDD threshold (NZ$9,999.99) for wire transfers is too high.

This deficiency is addressed. Wire transfers under the *AML/CFT Act, 2009* are not treated as occasional transactions. Specific requirements relating to wire transfers are included in ss.27 and 28 of the Act. In particular, full originator information must be obtained according to the level of risk, and the identity of the originator must be verified so that the reporting entity is satisfied that the information is current and correct. The *AML/CFT (Exemptions) Regulations, 2011* exempt wire transfers of NZD 1 000 (EUR 607) and below from ss.27 and 28 (which relate to identity requirements and verification) (regulation 5), but this threshold is consistent with the FATF requirements. To assist reporting entities with the implementation of the wire transfer requirements, the three AML/CFT supervisors issued an *AML/CFT Guideline on wire transfers*.

R5 (Deficiency 10): The cash-only focus of the "occasional" and "on behalf of" CDD requirements in the Financial Transactions Reporting Act 1996 (FTRA) is inconsistent with Recommendation 5, which does not limit the CDD requirements to cash transactions.

This deficiency is addressed. CDD obligations under the *AML/CFT Act, 2009* specifically extend to both business relationships and occasional transactions (as well as separately to wire transfers and correspondent banking relationships). Occasional transactions under the Act are cash transactions that occur outside of a business relationship, and are above the applicable threshold of NZD 9 999.99 (EUR 6 075) or above which is prescribed in the *AML/CFT (Definitions) Regulations, 2011* (regulation 10). The definition of cash in s.5 of the Act also includes a range of bearer negotiable instruments (BNI, i.e., bill of exchange, cheque, promissory notes, bearer bonds, traveller's cheques, money orders, postal orders or similar orders). These regulations expand the definition of occasional transaction to include all transactions involving:

- travellers cheques of NZD 5 000 (EUR 3 035) or more (regulation 12);
- money orders or postal orders of NZD 1 000 (EUR 607) or more (regulation 13);
- currency exchange of NZ 1 000 or more (regulation 14);
- cash-redeemable stored value instruments NZD 1 000 or more (regulation 15); and
- non-cash redeemable stored value instruments NZD 5 000 or more (regulation 15).

All other transactions are likely to be wire transfers (subject to separate CDD requirements as explained above in relation to deficiency 9) or undertaken in connection with a business relationship held with a reporting entity so will be directly or indirectly subject to AML/CFT requirements.

R5 (Deficiency 11): There is no requirement to identify all persons on whose behalf a facility is established. If there are three or more facility holders, only the principal facility holder's identity need to be verified.

This deficiency is addressed. The CDD obligations in the *AML/CFT Act, 2009* apply to all business relationships and not any more to facilities, as was the case under the previous AML legislation. Relevant provisions are ss.14; 18; and 22 which specify the circumstances when standard, simplified, and enhanced CDD must be undertaken.

R5 (Deficiency 12): The authorities were not able to confirm definitely that there are no anonymous accounts that were created before the FTRA and related CDD obligations came into force (1996).

The *AML/CFT (Requirements and Compliance) Regulations, 2011* require reporting entities to conduct at least standard CDD on existing anonymous accounts as soon as practicable after the reporting entity becomes aware that the account is anonymous (regulation 4). This means that over time as these accounts come to the attention of reporting entities, they will cease to be anonymous.

As explained in detail in relation to deficiency 8 above, s.14 of the *AML/CFT Act, 2009* requires reporting entities to carry out CDD on existing customers, according to the level of risk involved. This would cover anonymous accounts. While the implementation of the new AML/CFT legislation and related regulations will ensure that anonymous accounts will cease to exist over time, as of now, the authorities are still not able to confirm that there are no anonymous accounts. Consequently, this deficiency is only partially addressed.

R5 (Deficiencies 13 and 18): (13) There is no requirement that CDD should be done on the basis of reliable documents from an independent source. (18) The implementation of Recommendation 5 is undermined by allowing financial institutions to verify the identity of customers without reference to photographic identification.

These two deficiencies are addressed. The *AML/CFT Act, 2009* requires verification of identity to be done on the basis of documents, data, or information issued by a reliable and independent source (s.13). In addition, the three AML/CFT supervisors issued an *Identity Verification Code of Practice, 2011* to help reporting entities comply with certain obligations in the Act—in particular procedures and documents for identity verification, which include different forms of photographic identification. This code of practice, which came into force on 30 June 2013, is not mandatory. However, it specifies that a reporting entity fully complying with the code of practice is deemed to be compliant with the relevant obligations in the Act, consistent with s.67(1)(a) of the Act dealing with the legal effect of codes of practice. A reporting entity can also comply with the relevant obligations if it puts in place other equally effective means: s.67(1)(b).

R5 (Deficiency 14): The provisions which allow for the verification of the customers identity following the establishment of the business relationship are not consistent with the FATF Recommendations because they do not also require that the money laundering risks are effectively managed and it be essential not to interrupt the normal course of business.

This deficiency is addressed. The *AML/CFT Act, 2009* requires verification of identity as it relates to simplified CDD to be undertaken prior to the transaction or establishment of the business relationship: s.20(2). Verification of identity as it relates to standard CDD (s.16(2)) and enhanced CDD (s.24(2)) must also be undertaken before establishing a business relationship or undertaking an occasional transaction. However, verification of identity may be completed after the business relationship has been established if:

- it is essential not to interrupt normal business practice;
- money laundering (ML) and terrorist financing (TF) risks are effectively managed through procedures of transaction limitations and account monitoring; and
- verification of identity is completed as soon as is practicable once the business relationship has been established: ss.16(3) and 24(3).

These provisions are fully consistent with the FATF requirements.

R5 (Deficiency 15): Financial institutions are not legally required to carry out CDD on existing customers on the basis of materiality and risk.

This deficiency is addressed. The *AML/CFT Act, 2009* contains obligations to carry out CDD on existing customers, according to the level of risk involved (s.14). For details, see deficiency 8 above.

R5 (Deficiency 16): There is no explicit requirement with respect to the actions financial institutions must take if identification cannot be completed satisfactorily.

This deficiency is addressed. The *AML/CFT Act, 2009* specifies that if CDD in accordance with the Act is not undertaken, a reporting entity must:

- not establish a business relationship with the customer;
- terminate any existing business relationship with the customer;
- not carry out an occasional transaction with or for the customer; and
- consider whether to make a suspicious transaction report (s.37).

R5 (Deficiency 17): It has not been established that financial institutions are implementing the CDD requirements effectively.

This deficiency is not yet addressed. Sections 130-136 of the *AML/CFT Act, 2009* establish a supervisory regime, with new powers and enforcement mechanisms (see detailed discussion in relation to R23 below). This includes active monitoring (e.g., desk-based audits and on-site visits) by the supervisors and the submission of annual reports on compliance by reporting entities to their supervisors. Even though the sections dealing with AML/CFT supervisors came into force on 16 October 2009 (when the Act received Royal Assent), the detailed requirements for FIs only came into full force and effect on 30 June 2013. As a result, effective implementation will need to be evaluated on a continuing basis from now on.

R5 (Deficiency 19): The requirement to verify existing facility holders where the financial institution has a suspicion of terrorist financing is not set out in a straightforward manner in the law and, therefore, not very well understood by the private sector.

This deficiency is addressed. The *AML/CFT Act, 2009* contains an obligation to carry out enhanced CDD when a reporting entity considers that the level of risk is such that enhanced CDD should apply in a particular situation: s.22(1)(d). This obligation is further supplemented by the *AML/CFT (Requirements and Compliance) Regulations, 2011* (regulation 5A) which contains an explicit trigger for enhanced CDD where the reporting entity develops a suspicion of ML or TF with respect to an existing customer. This trigger also applies to customers with whom no relationship is ultimately established and to customers conducting a transaction below the occasional transaction threshold.

RECOMMENDATION 5, OVERALL CONCLUSION

The 2009 MER identified 20 deficiencies in relation to R5. Based on the important progress made since the adoption of the MER 18 of these deficiencies are now fully addressed while one deficiency

is only partially addressed and another one not yet addressed), New Zealand's current level of compliance with R5 is now essentially equivalent to LC.

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

RECOMMENDATION 23 –RATED NC

R23 (Deficiencies 1 and 2): (1) Other than registered banks, no category of financial institution is subject to any regulation and supervision for compliance with AML/CFT requirements. (2) There is no designated competent authority to ensure the compliance of financial institutions (other than registered banks) with AML/CFT requirements.

From a technical point of view, these deficiencies are addressed. As indicated above in relation to R5 (deficiency 17), ss.130-136 of the *AML/CFT Act, 2009* establish a supervisory regime, with new powers and enforcement mechanisms. As of 30 June 2013, when the Act came into full force and effect, all FIs are subject to AML/CFT measures. New Zealand reports that these institutions are actively supervised for compliance. The authorities supported this statement by providing details regarding various outreach initiatives and face-to-face meetings the individual supervisors undertook from 2010 to 2013 to ensure that reporting entities have a good understanding of what the new AML/CFT regime requires and to aim at effective implementation from 30 June 2013 onwards. In addition, New Zealand also provided the FATF Secretariat with detailed forms and worksheets of a confidential nature which the supervisors have developed and have started to use for conducting desk-based reviews and on-site inspections of supervised entities. Finally, the authorities provided numbers of reviews and inspections that the three supervisors conducted by the end August 2013.

The *AML/CFT Act, 2009* establishes the Reserve Bank of New Zealand as the AML/CFT supervisor for banks, life insurers, and Non-Bank Deposit Takers (NBDTs) (s.130). This is in addition to its existing role as prudential regulator under the *Reserve Bank of New Zealand Act, 1989* and the *Insurance (Prudential Supervision) Act, 2010*.

The Financial Markets Authority is the AML/CFT supervisor for issuers of securities, trustee companies, futures and options dealers, collective investment schemes, brokers, and financial advisers. This is in addition to its roles as market conduct regulator by enforcing securities, financial reporting and company law as they apply to financial services and securities markets. To ensure that the one licensed securities exchange New Zealand (NZX) will also be supervised for AML/CFT purposes. The *Financial Markets Conduct Bill*, which became law on 13 September 2013, contains a provision amending s.130 of the *AML/CFT Act, 2009* to provide, *inter alia*, that the Financial Markets Authority supervises for AML/CFT purposes anyone operating a 'financial product market", which includes securities exchanges. This change will become effective on a date to be appointed by the Governor-General by Order in Council, which is expected to be sometime in 2014 (or 1 April 2017 if the rest of the Act has not been brought into force before).

The Department of Internal Affairs is the AML/CFT supervisor for casinos, non-deposit-taking lenders, money changers, and other reporting entities that are not supervised by the Reserve Bank

or the Financial Markets Authority. This is in addition to its role as regulator of casinos under the Gambling Act 2003.

R23 (Deficiency 3): No legal and regulatory measures are available to prevent criminals from holding management positions or controlling interest in financial institutions other than for banks and, to a limited extent, for securities companies.

This issue has been largely resolved through the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* and the *Insurance (Prudential Supervision) Act, 2010.* New Zealand reported that further measures are in progress to fully resolve this issue through the *Non-Bank Deposit Takers Bill* (*NBDTs Bill*) amending the *Reserve Bank of New Zealand Act, 1989* (see also discussion regarding deficiency 1 above).

The *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* established a register to prohibit certain people from being involved in the management or direction of registered financial service providers. This prevents an individual or a legal person falling into one of the categories below from being a controlling owner, director, or senior manager:

- an undischarged bankrupt;
- a person prohibited from being a director or promoter of, or concerned in the management of, an incorporated or unincorporated body under the *Companies Act, 1993*, the *Securities Act, 1978*, the *Securities Markets Act, 1988*, or the *Takeovers Act, 1993*;
- a person subject to a management banning order under the *Securities Act, 1978*, the *Securities Markets Act, 1988*, the Takeovers Act, 1993, or subject to an order under s.108 of the *Credit Contracts and Consumer Finance Act, 2003*;
- a person who has been convicted of an offence against ss.11, 12, or 41 within the past five years;
- a person who has been convicted of an offence under ss.217 to 266 of the Crimes Act, 1961 within the past five years;
- a person who has been convicted of a ML or FT offence; or
- a person who is subject to a confiscation order under the *Proceeds of Crime Act, 1991*.

All insurance companies in New Zealand are required to be licensed under the s.15 of the *Insurance (Prudential Supervision) Act, 2010*. This Act provides as follows.

- All directors and relevant officers (Chief Executive Officer, Chief Financial Officer, appointed actuary) will be required to meet the Reserve Bank's Fit and Proper Standard (ss.18, 34, 35 and 36). These standards include prohibitions against persons with criminal convictions or who have been convicted of a serious offence. The Reserve Bank has powers to remove persons who do not meet the Fit and Proper Standard (ss.39 and 40).

- The Reserve Bank is required to consider ownership when issuing an insurance licence (s.19) and must be satisfied about meeting the requirements before the ownership of a licensed insurer can be changed (ss.26, 27 and 28).

The *NBDTs Bill*, which was introduced to Parliament in August 2011, and received its second reading in August 2012, contains provisions which, if enacted, will ensure that criminals will be prevented from holding management positions or controlling interest in NBDTs. Pending enactment of the *NBDTs Bill*, New Zealand will not have fully addressed the deficiency identified but has made important progress since the 2009 MER.

R23 (Deficiency 4): There are no fit and proper tests for senior management in the insurance sector or for participants in the securities sector (other than NZX members).

From a technical point of view, this deficiency has been largely resolved through the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* and the *Insurance (Prudential Supervision) Act, 2010.* Further measures are in progress to fully address the deficiency through the proposed NBDTs regime.

Financial services providers, including those in the insurance or securities sectors, are subject to fit and proper tests in the context of their registration requirements. The qualifications for registration are specified in s.13 of the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008*. To be qualified to register, a person (manager; senior manager; or any individual who is a controlling owner; director; or senior manager of a legal person) must be disqualified regarding criminal convictions, as explained above in relation to deficiency 3.

R23 (Deficiency 5): There are no measures in place to license or register natural and legal persons providing MVTS or foreign exchange services.

This technical deficiency is addressed. Money value transfer services (MVTS) and foreign exchange services qualify as financial services under the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* and are thus subject to registration and licensing requirements under this Act (see deficiency 4 above).

R23 (Deficiency 6): Financial institutions (other than registered banks) are not subject to registration or licensing.

From a technical point of view, this deficiency has been largely resolved through the Financial Service Providers (Registration and Dispute Resolution) Act, 2008, the Insurance (Prudential Supervision) Act, 2010, and the Financial Advisers Act, 2008. Further measures are in progress to fully address the deficiency through the proposed NBDTs regime.

All financial service providers, including banks, are subject to registration requirements under the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008*. In addition, the *Insurance (Prudential Supervision) Act, 2010* requires every person who carries on an insurance business in New Zealand to hold a licence. Finally, NBDTs will be required to be registered and licensed under the proposed changes to the *Reserve Bank of New Zealand Act, 1989* through the *NBDTs Bill*. In

addition, Part 3 of *the Financial Advisers Act, 2008*, which came into force on 1 July 2011, requires that financial advisers who provide advice in respect of investment-linked insurance products or securities need to be licensed and are subject to fit and proper criteria.

To illustrate implementation, New Zealand provided some figures about the number of licenses issued for the insurance sector. As at 30 June 2013, 94 provisional licences had been issued to insurers, of which 54 had received a full licence. The licensing process is still on-going, but concludes on 9 September 2013.

R23 (Deficiency 7): The insurance and securities sectors, although sectors covered by the Core Principles, are not currently subject to prudential regulation and, consequently measures that apply for prudential purposes are not also applied in a similar manner for AML/CFT purposes.

From a technical point of view, this deficiency is addressed. Following commencement of the *AML/CFT Act, 2009* on 30 June 2013, the securities and insurance sectors are subject to comprehensive AML/CFT requirements and AML/CFT regulatory and supervisory requirements.

RECOMMENDATION 23, OVERALL CONCLUSION

The 2009 MER identified seven technical deficiencies in relation to R23. Four of these deficiencies are addressed through legal amendments which are already in full force and effect. Three of the deficiencies are largely addressed through the same legal amendments, while further progress to fully address them is dependent on enactment of the *NBDTs Bill*. In addition, New Zealand provided details which indicate that implementation of the new supervisory regime has started and is being sustained; however, as mentioned before, due to the nature of the analysis conducted for a follow-up report in combination with the fact that the supervisory structure is relatively new, the effectiveness of the supervisory regime cannot be assessed. New Zealand's technical compliance with R23 can be considered to be essentially equivalent to LC.

SPECIAL RECOMMENDATION III – RATED PC

SRIII (Deficiency 1): The monitoring mechanism to ensure compliance with the obligation to take freezing action pursuant to S/RES/1267(1999) and S/RES/1373(2001) is inadequate for the banking sector and non-existent for the other relevant sectors.

This deficiency is partially addressed. Since the mutual evaluation, New Zealand has significantly improved its supervisory regime and even though the regime was established recently, clear strategies for monitoring compliance with the *AML/CFT Act, 2009* were developed. While these strategies will ensure that compliance with SRIII is indirectly monitored, there is no specific focus on SRIII implementation by reporting entities. Nevertheless, further work is in progress to improve SRIII compliance monitoring.

As explained in the 2009 MER, New Zealand implements both S/RES/1267(1999) and S/RES/1373(2001) through ss.9 and 10 of the *Terrorism Suppression Act, 2002* which provide for a *de facto* freezing mechanism. As a result, to comply with the law, any FI or any other person who is directed to deal with funds owned or controlled by a designated terrorist entity, or make funds

available to a designated terrorist entity must refuse to deal with, or (if in possession of the funds) effectively freeze those funds.

The *AML/CFT Act, 2009* (s.40) requires reporting entities to make a suspicious transaction report (STR) if a person conducts or seeks to conduct a transaction through a reporting entity and the reporting entity has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to the enforcement of, among other enactments, *Terrorism Suppression Act, 2002.*

New Zealand reports that reporting entities, including financial institutions, will be actively monitored for compliance with the STR obligations under the *AML/CFT Act, 2009*, and that each of the three supervisors has developed a supervisory regime responding to the risks specific to their sectors. Therefore, there will be some differences in approach, although some general principles remain. The Ministry of Justice is working with all three supervisors and other relevant agencies to improve the incorporation of SRIII monitoring requirements into each of their supervisory regimes.

The Department of Internal Affairs is the supervisor for the largest portion and variety of reporting entities. Its supervisory regime is designed on the *AML/CFT Act, 2009*, which does not differentiate between compliance with and supervision for combating ML and FT. Rather, reporting entities must consider the FT risk associated with their business in the same way that they consider the ML risk. The supervisory programme will include checks to ensure that reporting entities' risk assessments and programmes have adequate and effective measures to address both aspects. The Department does not have a handbook for supervision but will use checklists including both ML and FT aspects. The use of thematic inspections as a general regulatory tool is planned by the Department for larger entities or where high risk areas have been identified through desk-based reviews or general on-site inspections. This can be extended specifically to FT, including compliance with SRIII requirements, if needed. New Zealand reports that the use of thematic inspections will likely increase as the regime matures.

The Reserve Bank of New Zealand takes a similar approach, in that its supervisory regime does not explicitly distinguish between ML and FT risks, and therefore does not explicitly monitor compliance with SRIII requirements. Instead, it will focus on monitoring and supervising reporting entities' compliance with the *AML/CFT Act, 2009*, including reporting entities' obligations to file STRs. As explained above, the type of conduct necessary to comply with SRIII (e.g., asset freezing), particularly in the banking industry, would necessarily generate an STR or a suspicious property report. Monitoring and supervision of STR obligations is a standard part of the Reserve Bank's desk-based reviews and on-site inspections. New Zealand reports that the resources prepared by the Reserve Bank to assist in the performance of its monitoring role (including a specific compliance register) include lists of matters to consider when assessing a reporting entity's compliance with its STR obligations.

The Financial Markets Authority takes a similar approach in that it does not explicitly monitor compliance with SRIII, but does monitor compliance with STR reporting obligations. While the Authority has checklists to assist their assessments during desk-based reviews and on-site visits, these checklists do not explicitly include reference to SRIII.

SRIII (Deficiency 2): The communication of designations, particularly to the DNFBP, money remitters and securities sectors, is not satisfactorily organised.

This deficiency is substantially addressed. Since the 2009 MER, New Zealand has significantly improved the communication of UN and domestic designations to FIs (including money remitters and the securities sector) and casinos.

New Zealand reports that since 2009, it has designated 17 terrorist entities under the *Terrorism Suppression Act, 2002*. These are purely S/RES/1373(2001) designations and do not include S/RES/1267(1999) designations. Section 23 of the *Terrorism Suppression Act, 2002* requires designations to be notified in the New Zealand Gazette and in any other way that the Prime Minister directs to the designated entity and to any other persons or bodies.

For each batch of these domestic designations, a communications plan was created to reach the following targeted audiences: the New Zealand public; the financial industry (which includes money remitters and the securities sector); the designated entities; and relevant foreign governments. The goal of the communications plan is to inform key audiences of the designation and explain its effect in practical terms for the public and financial industry. The communication channels used for these announcements include the New Zealand Gazette, a Prime Ministerial press statement, "*fact sheets*", diplomatic engagement, and information about the designations on the New Zealand Police website. In addition, the Terrorism Designation Office sends terrorist designation notifications to financial service providers, including money remitters and the securities sector, whenever there is a new terrorist group designated, or additional information has been provided by overseas partners. The following organisations are already on the dissemination list for updates to any changes to the UN or New Zealand terrorist designation list: the New Zealand Racing Board; the New Zealand Association of Credit Unions; Sky City and Dunedin Casinos; the New Zealand Law Society and the Real Estate Institute of New Zealand. New Zealand is continuing its work in this area. In particular, the New Zealand Police are reviewing options for keeping the distribution of these notifications current including: implementing RSS feed functionality, developing an automated e-mail subscription service, and leveraging off of the Financial Service Providers Register.

The United Nations (UN) sends regular updates on the terrorist designations (additions and revocations) to New Zealand. On the basis of the UN updates, the New Zealand Police update the Police internal databases and New Zealand's domestic list of designations. The Police then send new alerts or changes to New Zealand Customs, New Zealand Security Intelligence Service, New Zealand Immigration, and the National Assessments Bureau. With regard to the private sector, the FIU within the New Zealand Police updates all major banks and FIs with any changes to the UN or New Zealand terrorist designation list. It is using its new IT tool (goAML – see also discussion in relation to R30, deficiency 1 below) to send alerts to all registered reporting entities. New Zealand reports that there are currently about 2 000 reporting entities registered with goAML. The Ministry of Justice is working with the FIU to put a system in place through goAML for dissemination of information to reporting entities on the list of designations in combination with the entities' corresponding responsibilities.

SRIII (Deficiency 3): Insufficient practical guidance is given, particularly to DNFBPs and financial institutions, other than banks, on how to effectively implement the freezing obligations.

This deficiency is partially addressed. New Zealand has made progress to address the deficiency identified, including with regard to DNFBPs and FIs which are reporting entities. However, further work is needed to ensure effective outreach and guidance for those persons and entities that are not subject to the *AML/CFT Act, 2009*. New Zealand reports that its Terrorist Designations Office is continuing to improve the number and type of organisations that receive information about the terrorist designation lists and their financial reporting responsibilities.

In 2013, New Zealand's FIU published an updated the *Suspicious Transaction Guideline* to clarify reporting obligations for reporting entities under the *AML/CFT Act, 2009*. This guideline specifically applies to all financial institutions, casinos, lawyers, and real estate agents, including specific sector-by-sector examples of suspicious transactions. The guideline also contains a separate section on when and how to submit STRs concerning FT-related designations. Nevertheless, the updated guideline suffers from the same limitations as did the guidance which was in place at the time of the mutual evaluation. In particular, there is no advice on: how to behave when confronted with a possible freezing decision or possible terrorist presence; how to deal with transactions being effected outside of the traditional banking environment; or how to deal with property other than funds.

SRIII (Deficiency 4): Effectiveness issues: The absence of adequate monitoring throughout the system, the insufficiencies noted regarding guidance to the non-bank reporting entities and communication (particularly to the DNFBPs), the deficient implementation by certain DNFBPs, and the fact that these measures have not yet been tested in practice means that the effectiveness of the system is not established.

Overall, New Zealand has taken important actions to address the deficiency but the nature of this report does not allow undertaking a more detailed analysis of the effectiveness. Moreover, little or no information is available specifically in relation to SRIII compliance by DNFBPs.

As indicated above in relation to deficiency 2, New Zealand has significantly improved its communication strategy in relation to FT related designations. New Zealand reported provided an example to illustrate the effectiveness of concerted cooperation and communication between relevant government agencies. The specific case involved the Ministry of Foreign Affairs; the Ministry of Justice; the FIU; and the Companies Office. In June 2013 the Ministry of Foreign Affairs received information that three companies mentioned in a Wall Street Journal article doing business in Georgia were registered in New Zealand. The Ministry of Foreign Affairs alerted relevant agencies such as the Ministry of Justice and the Companies Office. Enquiries by the Ministry of Justice discovered that the Companies Office's Risk Profiling Team had already been monitoring these companies as high risk and that the FIU was processing an STR that had already been received in respect of one company. The Companies Office promptly investigated the matter. One company had already been de-registered in May 2013 and the remaining two companies did not have presence in their registered offices. Subsequently the Companies Office commenced removal action to de-

register the companies from the register. In this respect inter-agency communication and monitoring of designations has now been tested in practice and appears to be effective.

SPECIAL RECOMMENDATION III, OVERALL CONCLUSION

The 2009 MER identified three technical deficiencies and one effectiveness issue in relation to SRIII. As explained above, all three of these deficiencies are partially addressed, one is substantially addressed, and the measures taken will improve implementation and effectiveness over time. While further progress is still needed -and work to that effect is scheduled to be undertaken- New Zealand has made important progress since the adoption of its MER. Nevertheless, its current level of compliance with SRIII cannot yet be considered to be essentially equivalent to LC.

VI. DEVELOPMENTS REGARDING THE OTHER RECOMMENDATIONS RATED PC OR NC: R6, R7, R8, R9, R11, R.12, R15, R.16, R17, R18, R21, R22, R.24, R.29, R.30, R.33, R.34, SRVI, SRVII, SR.VIII, AND SR.IX

RECOMMENDATION 6 – RATED NC

R6 (Deficiency): New Zealand has not implemented any AML/CFT legislative measures regarding the establishment and maintenance of customer relationships with PEPs.

This deficiency is largely addressed. The definition of a politically exposed person (PEP) included in s. 5 of the *AML/CFT Act, 2009* mirrors the definition in the FATF Glossary and applies to individuals holding prominent public functions in overseas countries as well as their family members and close associates.

Section 26(1) requires reporting entities to determine whether the customer or any beneficial owner is a PEP and conduct enhanced CDD consistent with s. 22(2). Section 26(2) provides that when it is determined that a customer and/or beneficial owner with whom it has established a business relationship is a PEP, the reporting entity must:

- obtain senior management approval to continue a business relationship, and
- take reasonable steps to obtain and verify information about the source of wealth and funds of the customer or beneficial owner.

These requirements are consistent with R6 in relation to situations where the business relationship is already established or the occasional transaction already conducted. However, there is no specific requirement to obtain senior management approval for establishing business relationships with a PEP, as is also required by R6.

Reporting entities are required to conduct enhanced on-going monitoring once the institution has determined that it has entered into a relationship with a PEP: s.31(4).

RECOMMENDATION 6, OVERALL CONCLUSION

New Zealand has implemented most of the required AML/CFT measures regarding the establishment and maintenance of customer relationships with PEPs. Its current level of compliance with R6 is therefore essentially equivalent to LC.

RECOMMENDATION 7 – RATED NC

R7 (Deficiency): New Zealand has not implemented any AML/CFT legislative measures concerning the establishment of cross-border correspondent banking relationships.

This deficiency is fully addressed. New Zealand clarified that outside the banking sector, FIs do not have correspondent relationships with other FIs. Financial institutions with a correspondent banking relationship are referred to as "the correspondent". The *AML/CFT Act, 2009* requires that the correspondent which has, or proposes to have, a correspondent banking relationship must, according to the level of risk involved, conduct enhanced CDD: s.29(1). Based on s.29(2), the correspondent must:

- gather enough information about the respondent to understand fully the nature of its business;
- determine from publicly available information the reputation of the respondent and whether and to what extent the respondent is supervised for AML/CFT purposes, including whether the respondent has been subject to a ML/TF investigation or regulatory action;
- assess the respondent's AML/CFT controls to ascertain that they are adequate and effective;
- have approval from its senior management before establishing a new correspondent banking relationship;
- document the respective AML/CFT responsibilities of the correspondent and the respondent; and
- be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent:
    - has verified the identity of, and conducts on-going monitoring in respect of, those customers; and
    - is able to provide to the correspondent, on request, the documents, data, or information obtained when conducting the relevant CDD and on-going CDD.

RECOMMENDATION 7, OVERALL CONCLUSION

New Zealand has implemented the necessary AML/CFT measures concerning the establishment of cross-border correspondent banking relationships. As a result, New Zealand's current level of compliance with R7 is essentially equivalent to LC.

RECOMMENDATION 8 – RATED NC

R8 (Deficiency): New Zealand has not implemented adequate AML/CFT measures relating to the money laundering threats regarding new or developing technologies, including non-face-to-face business relationships or transactions.

This deficiency is addressed. The *AML/CFT Act, 2009* requires a reporting entity to, in addition to standard CDD, undertake any additional measures that may be required to mitigate and manage the risk of new or developing technologies or products that might favour anonymity from being used in the commission of a ML or FT offence (s.30). This could include conducting enhanced CDD consistent with s. 22(5) and on-going CDD consistent with s.31(4).

Reporting entities are also required to have an AML/CFT programme including adequate and effective procedures, policies and controls for preventing the use, for ML or FT, of products and transactions that might favour anonymity: ss.56(1) and 57(i).

As discussed in detail in relation to R5 above (deficiencies 13 and 18), the three AML/CFT supervisors issued an *Identity Verification Code of Practice* to help reporting entities comply with certain obligations in the *AML/CFT Act, 2009*, in particular procedures for identity verification, including for non-face-to-face transactions.

RECOMMENDATION 8, OVERALL CONCLUSION

Through the AML/CFT Act, New Zealand has introduced the necessary AML/CFT measures relating to the ML threats regarding new or developing technologies, including non-face-to-face business relationships or transactions. As a result, New Zealand's compliance with R8 is now essentially equivalent to LC.

RECOMMENDATION 9 – RATED NC

R9 (Deficiencies 1 and 2): (1) There is no requirement to obtain relevant customer identification data from the third party. (2) There is no obligation for institutions relying on third parties to take adequate steps to satisfy themselves that copies of the identification data and other relevant documentation that relate to the CDD requirements will be made available from the third party upon request without delay.

These two deficiencies are addressed. The *AML/CFT Act, 2009* provides that reliance on CDD conducted by third parties (other than agents) is only permitted if identity information is passed on prior to the establishment of the business relationship or the execution of an occasional transaction: ss.32(1)(a) and 33(2)(c). Related verification information must be passed on within five days.

R9 (Deficiency 3): There is no provision that stipulates that ultimate responsibility for customer identification and verification will remain with the financial institution relying on the third party.

This deficiency is addressed. The *AML/CFT Act, 2009* explicitly provides that a reporting entity relying on a third party to conduct a CDD procedure is responsible for ensuring that CDD is carried out in accordance with the Act and any corresponding regulations: ss.32(2) and 33(3).

R9 (Deficiency 4): There is no requirement for institutions to satisfy themselves that the third party is regulated and supervised, and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommendation 10.

This deficiency is partially addressed. Although the *AML/CFT Act, 2009* does not contain an explicit requirement in this regard, s.33-36 of the Act only permits reliance for CDD on:

- reporting entities to which the provisions of the AML/CFT Act, 2009 apply;
- persons located and resident in another country who have sufficient AML/CFT systems and measures in place, and are regulated or supervised for AML/CFT purposes;
- agents (which under New Zealand common law are equivalent to being part of the reporting entity itself); or
- members of designated business groups (a mechanism specifically provided for in s.36 of the Act that allows groups of entities meeting certain criteria to share some compliance responsibilities and rely on one another for CDD purposes).

New Zealand authorities are of the view that, because responsibility for complying with the Act remains with the reporting entity relying on a third party, there is an implicit requirement for institutions to satisfy themselves that the third party is regulated and supervised, and has measures in place to comply with the CDD requirements set out in R5 and R10. Nevertheless, the current situation in New Zealand does not fully meet the FATF standard because a specific requirement in this regard (either in law, regulation or OEM) is needed.

R9 (Deficiency 5): There is no provision that stipulates that a competent authority should take into account information available on whether countries in which third parties can be based adequately apply the FATF Recommendations.

This deficiency is partially addressed. There is no enforceable requirement that reporting entities should take into account information available on whether countries in which third parties can be based adequately apply the FATF Recommendations. However, New Zealand authorities report that this will necessarily be a consideration for supervisors in monitoring compliance with the Act, which only allows reliance on third parties in other countries if that party is resident in another country with sufficient AML/CFT systems and measures in place and who is regulated or supervised for AML/CFT purposes. The three AML/CFT supervisors have issued a comprehensive joint *Countries Assessment Guideline* on how to assess whether another country's regulatory environment adequately applies the FATF Recommendations. New Zealand further explains that the supervisors' monitoring activities will include assessing compliance with the reporting entities' CDD obligations under the Act. In addition, as part of their supervisory activities, the supervisors will also be monitoring reporting entities' compliance with s.33(2) referred to above and will be in a position to detect whether a reporting entity is relying on persons/entities from jurisdictions which do not adequately apply the FATF Recommendations.

R9 (Deficiency 6): Effective implementation of the existing requirements could not be fully established due to the shortcomings in the supervisory structure.

This deficiency is not yet addressed. As set out in detail in the discussion regarding R23 above, an AML/CFT supervisory regime with three competent supervisors responsible for the monitoring and enforcement of the requirements of the *AML/CFT Act, 2009* has been established. While the supervisory regime is in place, the supervisors only recently started monitoring compliance given that the Act came into full force and effect on 30 June 2013. As a result, it is too early to assess effective implementation.

RECOMMENDATION 9, OVERALL CONCLUSION

The 2009 MER identified five technical deficiencies and one effectiveness issue in relation to R9. Three of the technical deficiencies are fully addressed; the two others are only partially resolved. In addition, it is too early to assess the effectiveness of the regime. While New Zealand has clearly made progress with regard to R9, its current level of compliance with the Recommendation is not yet essentially equivalent to LC.

RECOMMENDATION 11 – RATED NC

R11 (Deficiencies 1 and 2): (1) There is no explicit requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. (2) There is no requirement for financial institutions to examine as far as possible the background and purpose of all unusual transactions.

These two deficiencies are addressed. The *AML/CFT Act, 2009* specifically requires enhanced CDD to be carried out in any circumstance where a customer seeks to conduct, through the reporting entity, a complex, unusually large transaction or unusual pattern of transactions that have no apparent or visible economic or lawful purpose: s.22(1)(c). In addition, a reporting entity's AML/CFT compliance programme must include at a minimum adequate and effective procedures, policies, and controls for examining, and keeping written findings relating to:

- complex or unusually large transactions; and
- unusual patterns of transactions that have no apparent economic or visible lawful purpose: s.57(g).

The *AML/CFT Programme Guideline* issued by the three AML/CFT regulators also contains details on written findings for both categories of unusual transactions.

R11 (Deficiency 3): There is no requirement for financial institutions to set forth the findings of such examinations in writing and to keep them available for competent authorities for at least five years.

This technical deficiency is fully addressed. As explained above in relation to deficiencies 1 and 2, reporting entities are required to keep written findings in relation to the two specified categories of unusual transactions. In addition, reporting entities are required to keep records relating to risk

assessments, AML/CFT programmes, and audits as well as any other records (for example, account files, business correspondence, and written findings) for a period of 5 years after the end of the business relationship relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship: s.51(1) and (2). Making this information available to competent authorities is specially provided for in s.51(3), which requires a reporting entity to make records relating to risk assessments, AML/CFT programmes, and audits available to its AML/CFT supervisor on request.

RECOMMENDATION 11, OVERALL CONCLUSION

The 2009 MER identified three technical deficiencies and one effectiveness issue in relation to R11. As explained above, these three deficiencies are addressed and it can be concluded that New Zealand's current level of compliance with R11 is essentially equivalent to LC.

RECOMMENDATION 12 – RATED NC

R12 (Deficiency 1): The deficiencies identified in section 3 of this report with regard to Recommendations 5, 6 and 8 to 11 apply equally to DNFBPs.

This technical deficiency is substantially addressed because, as indicated above, New Zealand has significantly improved its compliance with Recommendations 5, 6, and 8 to 11, and these requirements apply equally to DNFBPs.

R12 (Deficiency 2): Casinos are only required to perform CDD for occasional customers engaging in financial transactions exceeding the NZD 9 999.99 (EUR 6 075) threshold which is higher than the USD/EUR 3000 threshold for casinos in Recommendation 12.

This deficiency is substantially addressed. Under the *AML/CFT (Definitions) Regulations, 2011* (regulation 11), the occasional transaction threshold for casinos has been reduced to NZD 6 000 (EUR 3 642) which is more consistent with the FATF recommended level than before.

R12 (Deficiency 3): Scope issues: Dealers in precious metals and stones, and company service providers are not subject to AML/CFT requirements. The circumstances in which lawyers and accountants are subject to the requirements of the FTRA are limited to occasions where they receive funds in the course of the customers' business for the purposes of deposit or investment or for the purpose of settling real estate transactions. Real estate agents are only subject to the FTRA requirements in the instances that they receive funds in the course of their business for the purpose of settling real estate transactions.

While some progress has been made, a serious scope issue remains and as a result, this deficiency is not yet addressed. New Zealand reports that the scope and extent to which DNFBPs need to be included under the AML/CFT regime will be considered as part of the second phase of the AML/CFT reform which is expected to start in the fall of 2013. The Ministry of Justice is currently carrying out initial scoping work on the phase II reform, including setting timeframes for policy development, consultation and the legislative process. While the ultimate timing of the reform will be subject to

Government approval and priorities, it is anticipated that the phase II reforms will be enacted and in force by 2017.

Casinos are reporting entities under the *AML/CFT Act, 2009*. Additionally, TCSPs have been included as reporting entities under the Act through the *AML/CFT (Definitions) Regulations, 2011* (regulation 17). However, these regulations are subject to a transitional exemption (regulation 20) for persons who might otherwise undertake captured activities, if those activities are undertaken in the ordinary course of business as a lawyer, accountant, conveyancing practitioner or real estate agent. As was noted in the 2009 MER, lawyers, accountants and real estate agents remain subject to the Financial Transactions Reporting Act, 1996 (the former AML Act) in limited circumstances which are not consistent with the FATF Recommendations. Moreover, the provisions of this Act – with the exception of the STR reporting and record keeping requirements – are seriously deficient (as described in the 2009 MER) and these DNFBPs are otherwise not monitored and supervised for AML/CFT purposes. Dealers in precious metals and stones are not yet subject to AML/CFT requirements.

R12 (Deficiency 4): Effectiveness issue: It has not been established that accountable DNFBP are implementing the AML/CFT requirements relating to R. 12 effectively.

This deficiency is not yet addressed. The *AML/CFT Act, 2009* establishes a supervisory model, with new powers and an enforcement regime. New Zealand reports that effectiveness in relation to those DNFBPs which are currently subject to the Act will need to be reassessed now that the Act came into full force and effect on 30 June 2013.

RECOMMENDATION 12, OVERALL CONCLUSION

While New Zealand has taken some initial action with regard to the deficiencies identified in the MER, New Zealand's level of compliance with R12 is not yet equivalent to LC.

RECOMMENDATION 15 -RATED NC

R15 (Deficiency 1): Financial institutions are not required to establish and maintain internal AML/CFT policies, procedures and controls, and to communicate these to their employees.

This deficiency is addressed. The *AML/CFT Act, 2009* requires reporting entities to establish, implement, and maintain a compliance programme that includes internal procedures, policies, and controls to manage AML/CFT compliance responsibilities: s.56(1). Section 57 sets out the minimum requirements for these procedures, policies, and controls to be adequate and effective, including: CDD; STR reporting; record keeping; examining and keeping written findings of unusual transactions; etc. The requirements extend to internal communication of and training in, those procedures, policies, and controls for senior managers, the AML/CFT Compliance Officer and any other employee that is engaged in AML/CFT related duties on AML/CFT matters.

R15 (Deficiency 2): Financial institutions are not required to designate a Compliance Officer at the management level who has timely access to records.

This deficiency is not addressed. While s.56(2)-(4) requires reporting entities to designate an employee as an AML/CFT Compliance Officer to administer and maintain its AML/CFT programme and report to a senior manager of the reporting entity, there is no indication that the Compliance Officer should be at management level or should have timely access to records.

R15 (Deficiency 3): There is no requirement to maintain an adequately resourced and independent internal audit function to test compliance.

This deficiency is only partially addressed. Reporting entities are required to ensure that their risk assessment and AML/CFT programmes are audited every two years (or at any other time at the request of the relevant AML/CFT supervisor) by an independent person appointed by the reporting entity: s.59. However, there is no requirement for that audit to include sample testing and be adequately resourced.

R15 (Deficiency 4): There is no requirement to conduct on-going employee training in relation to AML/CFT.

This deficiency is addressed. As indicated above in relation to deficiency 1, AML/CFT compliance programmes must include adequate and effective procedures, policies, and controls for training senior managers, the AML/CFT compliance officer and any other employee engaged in AML/CFT related duties (s.57). In addition, the *AML/CFT Programme Guideline* (referred to in the discussion of deficiency 2 in relation to R11) specifies what the main purpose of the training should be, including its scope, the nature of the training, its frequency and delivery.

R15 (Deficiency 5): Financial institutions are not required to put screening procedures in place to ensure high standards when hiring employees.

This deficiency is only partially addressed. AML/CFT compliance programmes must include adequate and effective procedures, policies, and controls for vetting senior managers, the AML/CFT Compliance Officer and any other employee that is engaged in AML/CFT related duties (s.57). The AML/CFT Programme Guideline also contains some details on what vetting of someone's background would involve. However, neither the Act nor the guideline specify what high standards such people should meet. The New Zealand authorities also refer to the requirements for controlling owners, directors and senior managers, including fit and proper requirements, in the Financial Service Providers (Registration and Disputes Resolution) Act, 2008; the Insurance (Prudential Supervision) Act, 2010 and the *NBDTs Bill*. However, these requirements do not extend to employees.

RECOMMENDATION 15, OVERALL CONCLUSION

The 2009 MER identified five technical deficiencies in relation to R15. Two of the deficiencies are addressed, a third one is only partially addressed, and two others are not yet addressed. While New

Zealand has made progress and improved its compliance with R15, its level of compliance is not yet essentially equivalent to LC.

RECOMMENDATION 16 – RATED NC

R.16 (Deficiencies 1, 2, 3 & 4): (1) The deficiencies identified with regard to Recommendations 13 to 15, and 21; and Special Recommendation IV apply equally to DNFBPs. (2) DNFBPs are not obliged to have AML/CFT procedures, policies and controls in place. (3) DNFBPs are not required to communicate these policies and procedures to their employees. (4) Scope issues: Dealers in precious metals and stones, and company service providers are not subject to AML/CFT requirements. Lawyers and accountants are subject to the requirements of the FTRA only when they receive funds in the course of that person's business for the purposes of deposit or investment or for the purpose of settling real estate transactions. Real estate agents are only subject to the FTRA requirements in the instances that they receive funds in the course of their business for the purpose of settling real estate transactions.

While some progress has been made, the four deficiencies are not yet addressed. As indicated above, New Zealand has improved its level of compliance with R15 and R21 but the level of compliance of R15 is not essentially equivalent to LC. Casinos and TCSPs (subject to exemptions) are required to have AML/CFT procedures, policies and controls in place and communicate them to their employees. However, as indicated above in relation to R15, these do not fully meet the FATF requirements. The scope issue with regard to DNFBPs is discussed in detail in relation to R12 (deficiency 1).

R.16 (Deficiency 5): Effectiveness issues: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 16 effectively. Also, overall, a very low number of STRs has been submitted by DNFBPs, which puts into question the effective implementation of the reporting requirement for DNFBPs.

While some progress has been made, this deficiency is not yet addressed. The AML/CFT Act, 2009 establishes a supervisory model, with new powers and an enforcement regime. New Zealand reports that effectiveness in relation to those DNFBPs that are currently subject to the Act will need to be reassessed after full implementation of the AML/CFT Act in June 2013.

New Zealand further reports that, since the Mutual Evaluation in 2009, its FIU has increased engagement and outreach activity with partner agencies and has established a Liaison and Training Manager position. This role will facilitate the exchange of information and best practices in terms of STR reporting between the FIU and the reporting entities, including relevant DNFBPs, both under the *AML/CFT Act, 2009* and the *Financial Transactions Reporting Act, 1996*. In addition, as described in more detail in relation to R30 (deficiency 1), the FIU has adopted a new IT solution (goAML) to ensure that STRs can be submitted electronically. While DNFBPs can currently use goAML on a voluntary basis, over time, this IT tool will be made mandatory for DNFBPs with the completion of the phase II reforms.

RECOMMENDATION 16, OVERALL CONCLUSION

While New Zealand has taken some initial action with regard to the deficiencies identified in the MER, New Zealand's level of compliance with R16 is not yet equivalent to LC.

RECOMMENDATION 17 – RATED PC

R17 (Deficiency 1): New Zealand has no effective, proportionate and dissuasive civil or administrative sanctions for financial institutions that breach AML/CFT requirements.

The technical deficiency regarding effective, proportionate and dissuasive civil or administrative sanctions is addressed. The *AML/CFT Act, 2009* (ss.91-97) establishes a range of criminal offences including: structuring of transactions; obstruction of an investigation relating to an STR; providing false or misleading information in relation to an STR; failing to report a suspicious transaction or keep records relating to a suspicious transaction. These offences attract penalties of up to two years imprisonment or and fines of up to NZD 300 000 (EUR 182 253) or both for individuals, and fines up to NZD 5 million (USD 3.9 million) for bodies corporate (s.100). Offences relating to the cross-border transportation of cash, obstruction of an AML/CFT supervisor, and providing false or misleading information to an AML/CFT supervisor (ss.101 -103; and 106 – 111) attract penalties of up to three months imprisonment or a fine of NZD 10 000 (USD 7 830) or both for individuals, and fines up to NZD 50 000 (EUR 30 379) (ss.105 and 112).

The *AML/CFT Act, 2009* also establishes a range of civil sanctions which apply when a FI fails to comply with any of the AML/CFT requirements, including, without limitation, CDD requirements, adequate monitoring of accounts, record keeping ,and establishing and maintaining AML/CFT programme (s.78). In response to an alleged civil liability act, supervisors may undertake one or more of the following actions:

- issue a formal warning;
- accept an enforceable undertaking and seek an order in the court for breach of that undertaking; and
- seek an injunction from the High Court and apply to the Court for a pecuniary penalty: ss.79-89.

The *AML/CFT Act, 2009* establishes pecuniary penalties ranging from NZD 100 000 to 200 000 (USD 60 763 to 121 526) for an individual, and NZD 1 million to 2 million (EUR 607 763 to 1.215 million) for a body corporate (s.90). A reporting entity engaging in conduct that constitutes a civil liability act commits an offence if the reporting entity engages in that conduct knowingly or recklessly (s.91).

Administrative sanctions provided in other relevant legislation

The Reserve Bank of New Zealand can also take action against registered banks for breaches of the *AML/CFT Act, 2009* based on s.77 of the *Reserve Bank Act, 1989*. This section provides that the Reserve Bank may recommend cancellation of the registration of a bank to the Minister of Finance; however, such cancellation can only be recommended on defined grounds that include:

- the bank not carrying on its business in a prudent manner;

- anything that materially adversely impacts on the bank's standing or financial position; and
- the bank not complying with a condition of registration.

In addition, based on provisions in ss.113 to 113B of the *Reserve Bank Act, 1989,* the Reserve Bank has the ability to take action—more specifically 'give directions' for material AML/CFT failures within registered banks (relevant to the consideration of a bank carrying on its business in a prudent manner). New Zealand further clarifies that so far, it has not considered it necessary to issue any such directions.

The *NBDTs Bill* (ss.55 and 56) will introduce the power for the Reserve Bank to issue similar directions to NBDTs, associated persons of NBDTs, and trustees of NBDTs for failure to comply with conditions of a licence, which may relate to, inter alia: incorporation and ownership; suitability of directors and senior officers; and size and nature of the business.

Finally, the *Insurance (Prudential Supervision) Act, 2010* provides the powers to give directions to an insurance company in cases where there are reasonable grounds to believe that the business of the insurer concerned has not been, or is not being conducted in a prudent manner: ss.143 and 144. New Zealand specifies that a breakdown in, or absence of, effective internal controls or CDD procedures might (in extreme circumstances) be reasonable grounds to believe that the insurer was behaving imprudently.

AML/CFT supervisory framework

New Zealand reports that the three AML/CFT supervisors issued in February 2011 an *AML/CFT supervisory framework* outlining the compliance tools and techniques supervisors will use (now that the AML/CFT Act, 2009 fully came into force and effect on 30 June 2013). The framework is meant to promote and enforce compliance and design supervisory strategies. It states that compliance actions taken by supervisors will be proportionate to the nature and severity of 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. The guiding principles are outlined in the framework and include taking a risk based approach, being accessible and relevant, proportionate and responsive, consistent and fair, transparent and accountable, and co-operative.

In addition, the Financial Markets Authority and the Reserve Bank of New Zealand have issued in June 2013 guidelines and additional clarification on their respective supervisory approaches. As an example, it can be mentioned that the Financial Markets Authority's focus is on ensuring that reporting entities have an adequate risk assessment and AML/CFT compliance programme in place, with satisfactory policies and procedures supporting them. A key area of that focus is that CDD policies and procedures are robust and are being adhered to.

R17 (Deficiency 2): Other than for registered banks, there is no designated authority to impose civil and administrative sanctions for breaches of AML/CFT requirements.

This deficiency is addressed. As indicated above in relation to R23, s.130 of the *AML/CFT Act,* 2009 establishes three supervisors: the Reserve Bank of New Zealand, the Financial Markets Authority, and the Department of Internal Affairs. A key function of supervisors is to investigate the reporting

entities they supervise and enforce compliance with this Act and regulations (s.131). The powers to carry out this function are provided for in s.132. The criminal, civil and administrative sanctions established under the Act are set out in detail in relation to deficiency 1 above.

R.17 (Deficiency 3): Effectiveness issue: The Reserve Bank has not yet demonstrated its ability to sanction AML/CFT breaches effectively since its power to apply administrative sanctions in the context of AML/CFT breaches is relative recent and remains untested.

The effectiveness issue is not yet addressed. New Zealand authorities report that, so far, no sanctions have been imposed in relation to breaches of AML/CFT requirements, pursuant to the *Reserve Bank Act, 1989*. The reason for the absence of any AML/CFT related sanctions is that the Reserve Bank did not identify any material failures relevant to the consideration of a bank carrying on its business in a prudent manner. The Reserve Bank expects that enforcement action for breaches of AML/CFT requirements will be primarily taken under the *AML/CFT Act, 2009*, which contains a range of criminal, civil and administrative sanctions, now that the Act is in force. In addition, New Zealand indicates that effectiveness of sanctions for breaches will be evaluated on an on-going basis now that the Act recently came into full force and effect.

RECOMMENDATION 17, OVERALL CONCLUSION

Since the 2009 MER, New Zealand has significantly strengthened its sanction regime; the effectiveness of which cannot yet be assessed given that implementation only recently started. Nevertheless, from a technical point of view, New Zealand's current level of compliance with R17 can be considered to be essentially equivalent to LC.

RECOMMENDATION 18 – RATED NC

R18 (Deficiency 1): The existing system does not explicitly prohibit the establishment and operation of shell banks and there are certainly opportunities that permit the establishment and operation of shell financial institutions as non-bank deposit takers (NBDTs).

New Zealand authorities report that the operation of the *AML/CFT Act, 2009*, the exercise of the Reserve Bank's registration and supervision powers and best practices adopted by registered banks, effectively ensure that shell banks do not exist or operate in New Zealand and that registered banks in New Zealand do not do business with shell banks offshore.

As described in relation to R23 above, all financial service providers, including banks, are subject to registration requirements under the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008*. The Act requires all providers of financial services to be registered on a public register. New Zealand provided an example to illustrate how the financial service providers register will be monitored going forward. Moreover, the *NBDTs Bill* will require all NBDTs to be licensed to undertake business. Finally, the *Companies and Limited Partnerships Amendment Bill*, which received its second reading and is awaiting final Parliamentary stages, will amend the *Companies Act, 1993* to require that any company which wishes to have a legal presence (e.g. be incorporated) in New Zealand must also have at least one director who lives in New Zealand or who lives in a prescribed enforcement country and is also a director of a company in that country. New Zealand clarifies that

only countries that have explicitly agreed to enforce the criminal fines in New Zealand's regulatory regime can qualify as a prescribed enforcement country. The relevant company director(s) will be held liable for the company's obligations under the Companies Act.

New Zealand reports that the Bill also proposes that further information will be required about the ownership and control of New Zealand companies and limited partnerships. The Registrar of companies will be given enhanced powers to deal with breaches of companies' legislation and to require that information about the beneficial ownership and ultimate controllers of New Zealand companies be provided. It is also proposed that the Registrar will be able to share this information with law enforcement agencies to be used for law enforcement purposes.

Since the 2009 MER, New Zealand has strengthened it registration and licensing regime of financial service providers. In addition, New Zealand has already taken additional steps (through the *NBDTs Bill* and the *Companies and Limited Partnerships Amendment Bill*) to further strengthen its registration regime for companies more generally and NBDTs in particular. However, pending the enactment of the two Bills, this deficiency can only be considered to be partially addressed.

R18 (Deficiency 2): There is no prohibition on financial institutions for entering into, or continuing, correspondent relationships with shell banks.

This deficiency is addressed. The *AML/CFT Act, 2009* explicitly prohibits reporting entities from establishing or continuing a business relationship with, or allowing an occasional transaction to be conducted through it by a shell bank, or an FI that has a correspondent banking relationship with a shell bank (s.39).

R18 (Deficiency 3): There is no legal requirement for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

This deficiency can be considered to be addressed. In addition to the requirement in s.39 mentioned above, s.29 requires an FI which has (or proposes to have) a correspondent banking relationship with a respondent FI to conduct risk based, enhanced CDD in relation to correspondent accounts that are used (or are proposed to be used) for payments to, or receipts from, foreign FIs including:

- gathering enough information about the respondent to understand fully the nature of the respondent's business;
- determining from publicly available information the reputation of the respondent and whether and to what extent the respondent is supervised for AML/CFT purposes, including whether the respondent has been subject to a ML or FT investigation, or regulatory action; and
- assessing the respondent's AML/CFT controls to ascertain that those controls are adequate and effective.

New Zealand reports that, except for five small locally-owned banks that operate only in New Zealand, all registered banks are either branches or subsidiaries of large and reputable international banks. These banks are also subject to internal policies set by their head offices in relation to

respondent FIs that are aimed at ensuring the banks have good practices in this area and prevent dealings with shell banks.

RECOMMENDATION 18, OVERALL CONCLUSION

The 2009 MER identified three technical deficiencies in relation to R18. Two of these deficiencies are addressed and New Zealand has initiated further legal action aimed at addressing the third. Based on this analysis, New Zealand's current level of compliance with R18 is assessed to be essentially equivalent to LC.

RECOMMENDATION 21 – RATED NC

R21 (Deficiency 1): There is no requirement for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

This deficiency is addressed. The *AML/CFT Act, 2009* requires a reporting entity to conduct enhanced CDD when establishing business relationships with, or conducting an occasional transaction for any non-resident customer from a country with insufficient AML/CFT systems or measures in place: s.22(1). In addition, the three AML/CFT supervisors issued the *AML/CFT Countries Assessment Guideline* which is designed to help reporting entities decide when an assessment of another country's AML/CFT regulatory environment is required, and provides guidance on how to undertake this assessment.

R21 (Deficiency 2): There is no requirement to examine as far as possible the background and purpose of such business relationships and transactions, to set forth the findings of such examinations in writing and to keep such findings available for competent authorities and auditors for at least five years.

Reporting entities required to conduct enhanced CDD, as referred to in s.22(1) above, must obtain information about the nature and purpose of the business relationship, and information relating to the source of funds or wealth of the customer (s.25).

While there is no specific requirement to set forth the findings of such examinations in writing, reporting entities are more generally required to keep records relevant to the establishment of the business relationship (including identity and identity verification records) as well as transaction records (ss.49-51). It could be expected that these records also include the written findings regarding the background and purpose of the business relationships and transactions. Such records must be kept for a period of five years from the completion of the transaction or cessation of the business relationship. Transaction records must be kept for a longer period if specified by AML/CFT supervisors or the Commissioner of Police (s.49). Given the absence of a specific requirement for written findings, this deficiency is largely (but not fully) addressed.

R21 (Deficiency 3): New Zealand has no legal basis to apply counter-measures.

This deficiency is addressed. The *AML/CFT Act, 2009* provides for regulations to be issued that prohibit or regulate the entering into of transactions or business relationships between a reporting

entity and any other person (including in a specified overseas country): s.155. Although this legal basis to apply counter-measures is already in force, no corresponding regulations have been issued to date.

New Zealand provided background information on how a similar mechanism has already been effectively used in many instances concerning Security Council sanctions based on New Zealand's *United Nations Act, 1946*. It is therefore expected that there would be no challenges to effectively implementing the mechanism created under the *AML/CFT Act, 2009*.

RECOMMENDATION 21, OVERALL CONCLUSION

Since the adoption of its MER, New Zealand has made significant progress with regard to the three technical deficiencies in relation to R21 by enacting legal provisions in the *AML/CFT Act, 2009* which largely meet the FATF requirements. As a result, New Zealand's current level of compliance with R21 is assessed to be essentially equivalent to LC.

RECOMMENDATION 22 – RATED NC

R22 (Deficiencies 1, 2, 3 & 4): (1) There are no requirements to ensure that foreign branches and subsidiaries observe appropriate AML/CFT standards. (2) There is no legal provision that obliges financial institutions to pay particular attention with respect to branches and subsidiaries in countries which do not or insufficiently apply FATF Recommendations. (3) There are no requirements to apply higher standards where requirements between the host and home country differ. (4) There is no provision that requires financial institutions to inform their home country supervisor when they are unable to observe appropriate AML/CFT measures.

Deficiencies 1, 3 and 4 are fully addressed, but deficiency 2 is not. The *AML/CFT Act, 2009* requires reporting entities to ensure that their branches and subsidiaries in a foreign country apply, to the extent permitted by the law of that country, measures broadly equivalent to those set out in the Act (s.61). Reporting entities are also required to comply with corresponding regulations that impose requirements concerning on-going CDD, risk assessments, AML/CFT programmes, and record keeping. If the law of the foreign country does not permit the application of those equivalent measures by the branch or the subsidiary located in that country, the reporting entity must inform its AML/CFT supervisor accordingly, and take additional measures to effectively handle the ML/FT risk. These provisions address deficiencies 1, 3, and 4. However, deficiency 2 is not addressed because there is no specific provision obliging FIs to pay particular attention with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.

RECOMMENDATION 22, OVERALL CONCLUSION

Since the adoption of the 2009 MER, New Zealand has significantly strengthened its preventive measures regarding foreign branches and subsidiaries through relevant provisions in the *AML/CFT Act, 2009*. Only one of the four deficiencies is not yet fully addressed. Consequently, New Zealand's current level of technical compliance can be considered to be essentially equivalent to LC.

RECOMMENDATION 24 – RATED NC

R24 (Deficiencies 1 and 2): (1) There are no designated competent authorities for DNFBPs with responsibility to ensure AML/CFT compliance, and no supervisory resources have been allocated for this purpose. (2) DNFBPs are not subject to adequate monitoring to ensure compliance with AML/CFT requirements.

While progress has been made with regard to casinos and TSCPs, DNFBPs subject to the former AML Act are not yet subject to supervision. In addition, there still remains a significant scope issue which is discussed in detail in relation to R12 (deficiency 1). As a result, these deficiencies are not yet addressed. New Zealand reports that the scope of and extent to which the remaining DNFBPs need to be included under the AML/CFT regime will be considered as part of a planned second phase of reform.

Based on s.130 of the *AML/CFT Act, 2009* and regulation 17 of the *AML/CFT (Definitions) Regulations, 2011*, the Department of Internal Affairs has supervisory responsibility for casinos and TCSPs. As discussed in more detail in relation to R30 (deficiency 3) below, the Department has improved its structure and increased its financial and human resources to meet its AML/CFT supervisory function.

R24 (Deficiency 3): The deficiencies identified in section 3.10 of this report in relation to the range of sanctions available to deal with breaches of AML/CFT requirements also applies to DNFBPs.

This technical deficiency is addressed. The range of sanctions available to supervisors (discussed in relation to R17 above) will apply equally to those DNFBPs that are subject to the *AML/CFT Act, 2009* (casinos and certain TCSPs).

RECOMMENDATION 24, OVERALL CONCLUSION

While New Zealand has taken some action with regard to the deficiencies identified in the MER, New Zealand's level of compliance with R24 is not yet equivalent to LC.

RECOMMENDATION 29 – RATED NC

R29 (Deficiency 1): Other than for registered banks, there is no supervisor with any powers to monitor and ensure compliance with AML/CFT requirements, and the Reserve Bank's role in relation to registered banks' compliance is very limited.

This technical deficiency is addressed. As explained in detail in relation to R23 above, s.130 of the *AML/CFT Act, 2009* establishes three supervisors to monitor compliance of reporting entities with the requirements of the Act: the Reserve Bank of New Zealand; the Financial Markets Authority; and the Department of Internal Affairs. Section 131 of the Act sets out the functions of an AML/CFT supervisor which are:

- monitor and assess the level of risk of ML/TF across all of the reporting entities that it supervises

- monitor the reporting entities that it supervises for compliance with the Act and regulations for the purpose of developing and implementing a supervisory programme;
- provide guidance to the reporting entities being supervised in order to assist those entities to comply with the Act and regulations;
- investigate the reporting entities being supervised and enforce compliance with the Act and regulations; and
- co-operate through the AML/CFT co-ordination committee (or any other mechanism that may be appropriate) with domestic and international counterparts to ensure the consistent, effective, and efficient implementation of the Act.

AML/CFT supervisors have all of the necessary powers to carry out their functions under the Act: s.132(1). Without limiting the power provided for in subsection (1), an AML/CFT supervisor may:

- on notice, 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 the reporting entities it supervises by:
    - producing guidelines;
    - preparing codes of practice;
    - providing feedback on reporting entities' compliance with obligations under the Act and regulations; and
    - 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 in accordance with ss.46-48 (STRs), and 137-140 (use and disclosure of information) by communicating or making arrangements to communicate information obtained by the AML/CFT supervisor in the performance of its functions and the exercise of its powers under the Act;
- in accordance with the Act and any other enactment, initiate and act on requests from any overseas counterparts; and
- approve the formation of, and addition of members to, designated business groups (see also discussion regarding R9 above): s.132(2).

New Zealand shared with the FATF Secretariat the (confidential) detailed procedures and templates the Reserve Bank developed in relation to its three main supervisory tools: on-site inspections, desk-based reviews and thematic surveys. The Reserve Bank has also developed a supervisory

programme setting out its objectives regarding its supervisory activities, including numbers of inspections, reviews and surveys. New Zealand reported that by the end of August 2013 (two months after the Act came in full force and effect), the Reserve Bank had conducted four on-site inspections of four banks. The Reserve Bank expects that it will be able to maintain that level of supervisory on-site inspection activity at a rate of approximately two per month on average.

R29 (Deficiency 2): Supervisors do not have any authority to conduct inspections of financial institutions to ensure AML/CFT compliance and the Reserve Bank has not yet made use of this authority.

From a technical point of view, this deficiency is addressed. However, implementation has only recently started and cannot yet be assessed. As explained above in relation to deficiency 1, AML/CFT supervisors are specifically empowered to conduct on-site inspections of their reporting entities (ss.132(2)(b)of *AML/CFT Act, 2009*). New Zealand reports that from 30 June 2013 supervisors have started to conduct both on-site inspections and desk-based reviews. Information relevant to the inspections and reviews will include the details provided by reporting entities in their annual reports (which are required based on s.60 of the Act and the schedule in the *AML/CFT (Requirements and Compliance) Regulations, 2011*). In addition, the supervisors are empowered to compel reporting entities to produce records/documents/information relevant to the conduct of the on-site inspections and the supervisors' other supervisory activities (s.132(2)(a)).

In addition, New Zealand clarified that although the Reserve Bank has had powers under the *Reserve Bank Act, 1989* to conduct on-site inspections, including for AML/CFT, the Reserve Bank has not conducted any AML/CFT specific monitoring or supervision pursuant to this Act. Instead, the Reserve Bank has focused its AML/CFT efforts for the last three to four years on preparing for the commencement of the new AML/CFT regime and has started active AML/CFT monitoring and supervision of its reporting entities from 30 June 2013.

R29 (Deficiency 3): Other than the Reserve Bank's powers in relation to registered banks, there are no supervisors with any powers to compel the production of records or to gain access to financial institution records for the purpose of supervising compliance with AML/CFT requirements, and the Reserve Bank's powers to do so (in relation to registered banks) are very limited and predicated on first obtaining a court order.

This technical deficiency is addressed. As mentioned in relation to deficiency 1 above, s.132(a) clearly outlines the ability for supervisors to compel the production of, or access to, records. This power can be executed without a court order.

R29 (Deficiency 4): Other than the Reserve Bank, there is no supervisor with any powers to enforce and sanction breaches of the AML/CFT requirements, and the Reserve Banks' powers have not yet been used due to the fact that the Reserve Bank's supervisory powers were only recently extended to include AML/CFT matters.

The technical deficiency is addressed but the effectiveness issue is not yet resolved. As indicated above in relation to deficiency 1, s.131 clearly gives to AML/CFT supervisors (including the Reserve Bank) the power to "investigate the reporting entities it supervises and enforce compliance with

this Act and regulations". Sections 91 to 105 set out the offences for non-compliance with the Act, including penalties for non-compliance. As indicated above in relation to deficiency 1, s.132(1) provides that an AML/CFT supervisor has all the powers necessary to carry out its functions under this Act.

As indicated above in relation to R17 (deficiency 1), the *Reserve Bank Act, 1989,* the *Insurance (Prudential Supervision) Act, 2010,* and the *NBDTs Bill* contain provisions empowering the Reserve Bank of New Zealand to give directions in relation to material AML/CFT failures within registered banks and insurance companies, and other material matters within NBDTs. New Zealand clarified that, so far, it has not considered it necessary to issue any such directions.

RECOMMENDATION 29, OVERALL CONCLUSION

Through relevant provisions in the *AML/CFT Act, 2009*, New Zealand has made significant progress in addressing the four technical deficiencies identified in the 2009 MER. New Zealand provided details which indicate that implementation of the new supervisory regime has started and is being sustained; however, due its recent nature, effectiveness cannot yet be assessed. However, New Zealand's technical compliance with R29 can be considered to be essentially equivalent to LC.

RECOMMENDATION 30 – RATED PC

R30 (Deficiency 1): The FIU is in need of further resources to address the backlog, particularly of border cash reports, waiting to be input into the FIUs system.

This deficiency is addressed. New Zealand reports that its FIU has increased the number of full time employees by more than 70% since the mutual evaluation on-site visit in 2009. The authorities provided an organisational chart with concrete numbers of staff. The FIU has created a Field Intelligence Officer position and increased the number of analysts. Extra Intelligence Support Officers have also been recruited to reduce the backlog of STRs and border cash reports which was identified at the time of the mutual evaluation. In addition, the FIU has established the new positions of Liaison and Training Manager and Senior Research Officer. Finally, the FIU has adopted a new IT solution (goAML) to ensure that STRs can be submitted electronically both via individual and batch processing. This will lead to improved STR implementation and reporting on the one hand and STR analysis and dissemination on the other hand. New Zealand reported that over 90% of STRs are currently submitted via goAML.

R30 (Deficiency 2): Even though the Reserve Bank's supervisory role with regard to AML/CFT is currently limited and the actual resources dedicated to AML/CFT arrangements for banks is insufficient to meaningfully make use of the supervisory powers it has available.

This deficiency is addressed. New Zealand reports that since the mutual evaluation on-site visit in 2009, the Reserve Bank has established a dedicated AML/CFT team and increased the number of equivalent full time staff from three to five. The Reserve Bank is confident that it now has sufficient funding to cover expected operational and capital expenditure to fulfil its AML/CFT supervisory obligations.

R30 (Deficiency 3): The Securities Commission, Ministry of Economic Development and the Department of Internal Affairs currently lack the necessary structure, staff, funds and technical resources for the AML/CFT supervision of the insurance and securities sectors, MVTS providers and foreign exchange dealers.

This deficiency is addressed. The Reserve Bank of New Zealand is now also responsible for the supervision of the insurance sector and will be responsible for the licensing of the NBDTs sector once the *NBDTs Bill* is enacted and in force (although trustee supervisors will be responsible for supervising the NBDT sector). As indicated above, the Reserve Bank is confident that it has sufficient funding to cover expected operational and capital expenditure to fulfil its AML/CFT supervisory obligations.

The *Financial Markets Authority Act, 2011* establishes the Financial Markets Authority as the new regulator of New Zealand's financial markets, and financial market participants. In doing so the Act restructured and updated the current regulatory framework to, inter alia, allow co-ordination of technical resources. The Act consolidates into the Financial Markets Authority the roles of the former Securities Commission and the Government Actuary, and some regulatory work done by the Ministry of Economic Development. It disestablished the Securities Commission. This consolidation of skills and responsibilities has been accompanied by increased funding. The Financial Markets Authority received funding of NZD 24 million (EUR 14.582 million) for the financial year 2011-2012 year (the budget of the former Securities Commission was NZD 18 million or EUR 10.936 million). The budget further increased to NZD 28 million (nearly EUR 17 million) for the financial year 2012-2013 year, but will fall back to NZD 26 million (or EUR 15.792 million) for 2014-2015 and beyond. The new Financial Markets Authority is set to grow substantially as it creates new divisions focusing on enforcement and providing intelligence into developing trends and risks in the financial sector. The Financial Markets Authority is currently employing more staff and increased its staff from 75 to 135 (number of staff at the end of August 2013). Currently the Financial Markets Authority's Commercial Supervision team has 7.5 equivalent full time officers available for AML/CFT supervision with extensive experience in regulatory oversight, audit and AML/CFT compliance. The Manager of the Commercial Supervision team reports to the Head of Compliance Monitoring.

New Zealand reports that the Department of Internal Affairs has a capital and operating budget sufficient to meet its legislated AML/CFT supervisor function, including funding for 12 full time equivalent staff members. The Department of Internal Affairs has already established a regulatory relationship with the two largest MVTS and foreign exchange dealers (outside the banking system). The Department of Internal Affairs has engaged a business analyst with AML/CFT experience who met with MVTS and foreign exchange dealers to gain an understanding of how these businesses operate, and created an audit (inspection) model and operating manual for staff.

R30 (Deficiency 4): Competent authorities in the supervisory area do not receive sufficient AML/CFT training on the specific aspects of conducting comprehensive AML/CFT supervision, including inspections.

This deficiency is addressed. The *Reserve Bank of New Zealand* now has a dedicated AML/CFT team comprising (when fully staffed) five fulltime equivalent staff. All existing AML/CFT team members have AML/CFT experience and have received training relevant to their roles. The experience of the

current team members includes experience in other jurisdictions; some with AML compliance experience in reporting entities and regulatory experience at regulators with AML/CFT roles (both domestic and international). One team member is accredited with the Association of Certified Anti-Money Laundering Specialists (ACAMS). Another team member has AML accreditation from an international business school. In addition, one member of the Prudential Supervision Department has received assessor training. AML/CFT training continued in the lead up to full implementation of AML/CFT requirements on 30 June 2013.

New Zealand reports that, as of 30 June 2013, the Department of Internal Affairs has an adequate training and recruitment budget to ensure it has the required, suitably skilled (and knowledgeable) staff. The Department of Internal Affairs' AML/CFT manager is a member of ACAMS, has attended APG mutual evaluation training, including assessor training, and the Central Bank Seminar on 'how to implement a risk based framework for AML and CFTs' (UK). The Department's staff make extensive use of resources available from other jurisdictions with appropriate AML/CFT measures, attend various AML/CFT conferences and web seminars, and utilise open source and text books on AML/CFT as well as mentoring and coaching from their AML/CFT manager. Finally, a business analyst with AML/CFT experience was engaged to gain an understanding of the types of services the reporting entities supervised by the Department of Internal Affairs offer, and created an audit (inspection) model and operating manual for staff. Most of the staff who will carry out inspections have been recruited and while the Wellington team is currently at full strength, as of the end of August 2013, there were two vacancies in the Auckland team. All current staff completed in-house training in relation to the AML/CFT Act as well as regulatory theory and practice. They also completed an external training course (in conjunction with the Reserve Bank) on auditing and interviewing.

New Zealand reports that staff of the Financial Markets Authority receive regular and adequate training to undertake their AML/CFT responsibilities. The Manager of the team is a member of ACAMS and has attended several AML/CFT related seminars/conferences in Australia and New Zealand. Another staff member attended the Central Bank Seminar on "How to implement a risk based framework for AML and CFT" in the UK. Two other staff members are currently undergoing accreditation with ACAMS. Staff also have access to online resources, including relevant material published by Complinet as well as ACAMS and the Association of Certified Fraud Examiners (ACFE).

RECOMMENDATION 30, OVERALL CONCLUSION

Since the adoption of the 2009 MER, New Zealand has taken important steps to increase the resources of its FIU and three designated AML/CFT supervisors. In addition, staff of the supervisors received the necessary training which was clearly lacking at the time of the mutual evaluation on-site visit. New Zealand's current level of compliance can therefore be considered to be essentially equivalent to LC.

RECOMMENDATION 33 – RATED PC

R33 (Deficiency): Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons because: (1) the Companies Register does not contain such information; (2) companies are not

required to maintain such information; and (3) company service providers are not required to collect such information.

The *AML/CFT (Definitions) Regulations, 2011* (regulation 17) include TCSPs within scope of the *AML/CFT Act, 2009*[6]. As a result, certain TCSPs are required to undertake CDD, including the requirements to identify beneficial owners of their customers, hold this information for five years, and make it available to AML/CFT supervisors. They are now subject to active monitoring and supervision for compliance with AML/CFT requirements by the Department of Internal Affairs, and are subject to the same sanctions for non-compliance and penalties for offences as all other reporting entities.

Even though there is not yet a legislative requirement for companies to maintain beneficial ownership information, any company wishing to engage in a business relationship or undertake transactions through a reporting entity is required to produce this information. Reporting entities are required to collect and hold this information in accordance with the *AML/CFT Act, 2009* and make it available to competent authorities upon request.

As mentioned above in relation to R18 (deficiency 1), *the Companies and Limited Partnerships Amendment Bill* (which received its second reading in Parliament on 2 July 2013 and is expected to go through its final Parliamentary stages before the end of 2013) proposes amendments to the *Companies Act, 1993* to tighten requirements around company directors and company registration. The main change will require all New Zealand companies to have one New Zealand-resident director.

New Zealand-resident directors will be responsible for ensuring that companies provide accurate information to the Registrar of Companies and will be liable if companies breach their filing requirements under the *Companies Act, 1993*. The Registrar of Companies will also be given enhanced powers to deal with breaches of companies' legislation. Companies found to have provided false information will be removed from the register, and any person found to be acting as a director of such a company may be banned from acting in that capacity for up to ten years. Similar provisions are also intended to be put in place for limited partnerships.

RECOMMENDATION 33, OVERALL CONCLUSION

New Zealand currently relies on strengthened beneficial ownership requirements as part of the general CDD requirements under R5 and R12 but it cannot be determined that information on the ultimate beneficial owners is accessible and/or up-to-date in all cases. The *Companies and Limited Partnerships Amendment Bill* will, if enacted, strengthen company registration requirements and requirements regarding companies' directors. Although important, this is still work in progress. Consequently, New Zealand's current level of compliance with R33 is not yet equivalent to LC.

[6] This inclusion does not however include persons who undertake this activity in the ordinary course of business as a lawyer. Lawyers (along with accountants, conveyancers and real estate agents) remain exempt from the regime and will be considered for coverage through a planned second phase of AML/CFT reforms.

RECOMMENDATION 34 – RATED NC

R34 (Deficiency): There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of trusts.

As indicated above in relation to R33, the *AML/CFT (Definitions) Regulations, 2011* (regulation 17) include (certain) TCSPs within scope of the *AML/CFT Act, 2009*. They are required to conduct CDD, including beneficial ownership. If a trust engages with a reporting entity, then it will be subject to enhanced CDD: s.22(1)(a). All reporting entities are subject to record keeping requirements and need to make them available to competent authorities upon request.

While there is still no general obligation for charities to be registered, those charities that have been registered on a voluntary basis under the *Charities Act, 2003* and that are trusts must identify their officers, including trustees. The Charities Commission verifies this information using trust deeds but also conducts and risk-based audits of information that charities provide, including (in some cases) criminal history checks of officers. Amendments to the *Charities Act, 2003* are expected to be enacted later in 2013, including expanding the definition of officer to include those who exert significant influence or control over the running of a charity.

RECOMMENDATION 34, OVERALL CONCLUSION

As for R33, New Zealand currently relies on strengthened beneficial ownership requirements as part of the general CDD requirements under R5 and R12 for meeting the requirements of R34. However, it cannot be determined that information on the ultimate beneficial owners is accessible and/or up-to-date in all cases. Consequently, New Zealand's current level of compliance with R34 is not yet equivalent to LC.

SPECIAL RECOMMENDATION VI – RATED NC

SRVI (Deficiency 1): There is no designated authority to register or license MVTS providers or maintain a current list of them.

From a purely technical point of view, the deficiency is addressed. New Zealand has taken the necessary technical measures to address this deficiency by creating a registration requirement and making MVTS providers subject to AML/CFT supervision and licensing requirements. New Zealand provided the necessary details indicating that implementation has started and is being sustained; however, given the nature of this report, it is difficult to assess effectiveness.

As mentioned before in relation to R23, all financial service providers, including money or value transfer services (MVTS), are subject to registration requirements under the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008.* The Financial Service Providers Register is kept by the Registrar of Companies. The Registrar of Companies enables competent authorities to check MVTS providers' compliance with the registration requirements. While based on s.130 of the *AML/CFT Act, 2009*, the Department of Internal Affairs is the AML/CFT supervisor for MVTS providers ; the Department has no legislative authority regarding MVTS registration on the Financial Service Providers Register. The *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* designates the Financial Markets Authority as the primary enforcement authority in relation to the registration requirement.

In 2011, the Financial Markets Authority conducted a review of known MVTS and entered into direct contact with the unregistered businesses in order to ensure that they applied for registration on the Financial Service Providers Register with the Registrar of Companies (within the Ministry of Business, Innovation and Employment). Through this process a total number 430 of MVTS, including sub-agents, have been identified. New Zealand reports that it believes that the active engagement between the Financial Markets Authority and the Registrar of Companies has helped achieving a high level of compliance with the registration requirement. The Financial Markets Authority and the Registrar of Companies are not aware of any MVTS that are currently in breach with the registration requirement.

SRVI (Deficiency 2): There is no system in place to monitor MVTS providers and ensure their compliance with the FATF Recommendations.

From a purely technical point of view, this deficiency is addressed. As indicated above in relation to deficiency 1, the Department of Internal Affairs is the AML/CFT supervisor for MVTS providers. As far as the registration requirement is concerned, the Registrar of Companies is the primary enforcement authority for monitoring and enforcement systems have been in place since December 2010. Enforcement action would usually start with correspondence informing the MVTS of their registration obligation; however, if a satisfactory resolution cannot be achieved consensually, the Financial Markets Authority has the power to prosecute MVTS under s.11 of the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008.*

SRVI (Deficiency 3): The range of sanctions is not effective, proportionate and dissuasive as there are no administrative or civil sanctions that may be applied to MVTS providers who breach the AML/CFT requirements.

This deficiency is addressed. As discussed in relation to R17 above, reporting entities, including MVTS providers, are subject to a broad range of sanctions under the *AML/CFT Act, 2009*. In addition, the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008,* makes non-registered persons operating a financial service, including MVTS providers, liable on conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding NZD 100 000 (EUR 60 728), or to both in the case of an individual; or in the case of a legal person to a fine not exceeding NZD 300 000 (EUR 182 184): s.11.

SRVI (Deficiency 4): MVTS providers are not required to maintain a list of their agents and make that list available to the competent authorities.

From a technical point of view, this deficiency is addressed. Using its powers under s.132 of the *AML/CFT Act, 2009*, the Department of Internal Affairs can request MVTS providers to provide information on their agents and sub-agents as and when required. The Department has a current list of 430 MVTS providers and their agents and sub-agents. The DIA supervises 144 of these MVTS providers for AML/CFT purposes. The most important reason for the difference between 144 MVTS providers supervised in comparison with the 430 registered is that often MVTS are sub-agents of money remittance businesses.

SRVI (Deficiency 5): The authorities have not taken sufficient action to identify informal remittance channels and make these operators subject to AML/CFT requirements.

As explained in detail in relation to deficiency 1, this deficiency is partially addressed. All MTVS providers, including those operating through informal remittance channels, are required to be registered under the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008* and compliance with the registration requirement is monitored by the Financial Markets Authority. However as the nature of informal remittance channels in New Zealand is not yet well documented, it is unclear whether this sector will be generally compliant with the *Financial Service Providers (Registration and Dispute Resolution) Act, 2008*. This will be assessed as part of the post-implementation review of the Act scheduled for 2016. The FIU continues to undertake analysis and intelligence work in relation to STRs from money remitters as well as specific intelligence products relating to the money remittance industry.

SRVI (Deficiency 6): The application of the FATF Recommendations to MVTS providers suffers from the same deficiencies as identified in relation to the rest of the financial sector (see sections 3.1 to 3.10 of this report).

This deficiency is largely addressed. Implementation of the *AML/CFT Act, 2009* means that MVTS are subject to overall comprehensive AML/CFT obligations and active monitoring and enforcement by AML/CFT supervisors (see discussion with regard to preventive measures for the financial sector above), as other financial services providers.

SPECIAL RECOMMENDATION VI, OVERALL CONCLUSION

Since the 2009 MER, New Zealand has made significant progress in addressing the technical deficiencies in relation to SRVI. Implementation is on-going and it is too early to assess effectiveness. Overall, New Zealand's current level of compliance with SRVI is assessed to be essentially equivalent to LC.

SPECIAL RECOMMENDATION VII - RATED NC

SRVII (Deficiency 1): There is no general legal requirement for all wire transfers to be accompanied by full originator information.

This deficiency is addressed. The *AML/CFT Act, 2009* requires a reporting entity that is an ordering institution to identify the originator of a wire transfer by obtaining the following information which must accompany the wire transfer:

- the originator's full name;
- the originator's account number or other identifying information that may be prescribed and allows the transaction to be traced back to the originator (currently no alternative is prescribed) and one of the following:
    - the originator's address;
    - the originator's national identity number;

- the originator's customer identification number; or
- the originator's place and date of birth: s.27(1).

In respect of wholly domestic wire transfers (between New Zealand FIs), ordering institutions may identify the originator by obtaining the originator's account number or any information that enables the transaction itself to be identified and traced to the originator, as long as the ordering institution is able to provide full originator information to the beneficiary institution within three working days of a request being made by the beneficiary institution: s.27 of the *AML/CFT Act, 2009* and regulation 7 of the *AML/CFT (Requirements and Compliance) Regulations, 2011*. New Zealand explains that this mechanism, which is consistent with the FATF requirements, was necessary to ensure that New Zealand banks' electronic payment transfer systems could continue to operate without complete system redesign and replacement. An exemption from these requirements for wire transfers of NZD 1 000 (EUR 607) or less is provided by regulation 5 of the *AML/CFT (Exemptions) Regulations, 2011*. This exemption is consistent with the FATF requirements. As indicated above with regard to R5 (deficiency 9), the three AML/CFT supervisors issued the *AML/CFT Guideline on wire transfers* to assist reporting entities with the implementation of the wire transfer requirements.

SRVII (Deficiency 2): There are no obligations on intermediary financial institutions in the payment chain to maintain all of the required originator information with the accompanying wire transfer.

This deficiency is addressed. The Act requires that any information received by a reporting entity that is an intermediary institution must be maintained by that reporting entity with the wire transfer accompanying the information: s.27(6).

SRVII (Deficiency 3): There are no obligations to require beneficiary financial institutions to apply risk based procedures when originator information is incomplete, or to consider restricting or terminating the business relationship with financial institutions that fail to meet the requirements of SR VII.

This deficiency is addressed. The Act requires a reporting entity that is a beneficiary institution to use effective risk-based procedures for handling wire transfers that are not accompanied by full originator information, and to consider whether the wire transfer in question constitutes a suspicious transaction: s.27(5).

SRVII (Deficiency 4): The threshold for obtaining and maintaining full originator information in the case of occasional wire transfers is too high.

This deficiency is addressed. Wire transfers are dealt with separately from occasional transactions in ss.27 and 28 of the Act. There is no prescribed threshold for wire transfers but there is an exemption from the CDD requirements for wire transfers under NZD 1000 (EUR 607): regulation 5 of the *AML/CFT (Exemptions) Regulation*. As explained above in relation to deficiency 1, this approach is consistent with the FATF requirements.

SPECIAL RECOMMENDATION VII, OVERALL CONCLUSION

New Zealand addressed the four technical deficiencies identified in its 2009 MER. As a result, New Zealand's current level of compliance with SRVII is considered to be essentially equivalent to LC.

SPECIAL RECOMMENDATION VIII – RATED PC

SRVIII (Deficiency 1): No review of the NPO sector to identify terrorism financing risk and vulnerabilities.

While some initial progress has been made, the deficiency is not yet addressed. New Zealand reports that is has not yet undertaken a comprehensive FT risk assessment of its non-profit organisation (NPO) sector although some progress in this area has been made. In February 2010, the Charities Services (formerly the Charities Commission) issued guidance for charities on the risks of ML and FT, which is available on the Charities Services' website (www.charities.govt.nz). The Charities Services has also recently implemented strategies to mitigate the risk posed to the charitable sector by terrorist groups operating as legitimate charities, and exploiting legitimate charities for financing and/or concealing the diversion of legitimate funds to terrorist interest. In addition, the Compliance Unit of the Charities Services is currently scoping a formal regulatory risk framework which will include a comprehensive risk profile and assessment regarding FT through the New Zealand charitable sector.

The FIU released the first National Risk Assessment (NRA) on ML and FT in February 2011 while the AML/CFT supervisors released sector risk assessments. These reports identified FT risks as an area where further work is required. The NRA is currently being updated with a view to releasing a new version of it by the end of 2013.

New Zealand further mentions that work is being undertaken to protect against the risks of New Zealand government's funds being provided to organisations that may have associations with terrorism. Risk assessments for activities funded by the NZ Aid Programme have been formalised since 1 July 2011. Risk assessments and risk registers are now mandatory for all activities. In addition, audited financial statements are now to be provided in prescribed circumstances including where untagged funding is provided to an organisation; funding is provided for the core functions of an organisation; the partner is high risk; and where funding provided is more than NZD 250 000 (195 000) per annum. In these instances, audit management letters are also sought.

Finally, the Ministry of Foreign Affairs and Trade (MFAT) introduced an accreditation process in mid-2010 which assesses Non-Government organisation (NGO) partner's financial systems and risk management capacity as well as their organisational, technical and governance capabilities. One set of NGO accreditations has been completed since the introduction of the process. These policies positively assess the risk of NGOs receiving NZ Aid funding.

SRVIII (Deficiency 2): No outreach on terrorism financing vulnerabilities.

While progress has been made, the deficiency is not yet addressed. The Charities Services, FIU, and MFAT have all undertaken work to better understand and identify the FT risks and vulnerabilities in the NPO sector. As mentioned above in relation to deficiency 1, the Charities Services issued guidance for charities on ML and FT risks in February 2010. It is currently working on a broader

project to identify and counter FT risks and vulnerabilities in the sector regulated by the Charities Services. This will include an outreach programme.

The FIU provides regular training on FT issues to assist the Charities Services in conducting outreach activities with the NPO sector. The FIU and the Charities Services have a Memorandum of Understanding with the aim to:

- promote public trust and confidence in charities through actively engaging in a partnership that:
    - enhances the regulatory framework where required, particularly in areas of common interest; and
    - provides protection, through education and investigative assistance, for administrators of charities against criminal abuse.
- facilitate the provision of information to Police to enable them to identify and investigate suspicious persons and transactions; and
- support the Charities Services in being an effective regulator of charities.

SRVIII (Deficiency 3): Limited information on controlling minds behind NPOs.

All registered charities under the *Charities Act, 2005* that are trusts must identify their officers, including trustees. Furthermore, entities are required to inform the Charities Services of any change of these persons over time. The Charities Services verifies this information. However, it is not compulsory for a charity to declare the position and/or role of those who may control or direct activities if they are not an officer in the entity. Moreover, the Charities Services does not currently hold significant data (only name, qualification to be an officer, appointment date, and in some cases their signature). The authorities have identified the limited identification data available as a risk and steps are being undertaken to improve the current situation. As a result, the current measures are limited in scope and the deficiency remains unaddressed.

SRVIII (Deficiency 4): Limited monitoring by the Companies Office or Charities Commission.

While progress has been made and further work is on-going, this deficiency is not yet addressed. The Charities Services has conducted over 900 investigations and monitoring reviews. The Charities Services has not yet detected any evidence of FT activity in the charitable sector. The Charities Services is looking at system enhancements that it believes will facilitate intelligence-driven monitoring across the sector. New Zealand reports that this work should result in informative characteristics and risk criteria, including identifying characteristics that might indicate charitable sector vulnerability as a vehicle for funding terrorism. Inland Revenue is also undertaking a review of its databases of entities registered as charitable to remove inactive or non-charitable organisations.

SRVIII (Deficiency 5): Record keeping obligations are not comprehensive.

While some work is initiated and progress has been made, the deficiency is not yet addressed. New Zealand advises that the definition of financial institution in the *AML/CFT Act, 2009* is activity based. Consequently, where an NPO is undertaking such financial activities it will be considered as an FI and be subject to the obligations of the AML/CFT Act, including the record keeping requirements. However, it can be expected that this would only occur in very limited instances.

Additionally, the Ministry of Business, Innovation and Employment has developed policy proposals as part of a review of the financial reporting framework in New Zealand. These proposals have been included in a *Financial Reporting Bill*, which is awaiting its final parliamentary stages. New Zealand reports that the Bill will assist compliance with the FATF framework by strengthening the financial reporting obligations of registered charities. The Bill will require charities to file financial reports which are prepared in accordance with standards approved by an external standard settings body. Charities that have an annual operating expenditure of over NZD 500 000 (EUR 306 383) will need to have these statements reviewed or audited by a qualified accountant. This is aimed at improving the transparency and accountability of registered charities.

SPECIAL RECOMMENDATION VIII, OVERALL CONCLUSION

Since the 2009 MER, New Zealand has made progress with regard to the four technical deficiencies identified. However, further work is needed to comply with the FATF requirements and as a result, New Zealand's current level of compliance with SRVIII remains at PC.

SPECIAL RECOMMENDATION IX – RATED PC

SRIX (Deficiency 1): The declaration system does not apply to bearer negotiable instruments (BNI), unaccompanied cash/BNI, and cash/BNI sent via mail or in containerised cargo.

This deficiency is addressed. The cross border transportation of cash provisions contained in the *AML/CFT Act, 2009*, which entered into force on 16 October 2010, repealed and replaced the border cash reporting provisions in force at the time of the mutual evaluation. The Act defines "cash" as physical currency and bearer-negotiable instruments (BNI). BNI include:

- a bill of exchange;
- a cheque;
- a promissory note;
- a bearer bond;
- a traveller's cheque;
- a money order, postal order, or similar order; or
- any other instrument prescribed by regulation (s.5).

The Act provides that every person who moves (brings, takes or sends) cash into or out of New Zealand, in excess of a prescribed amount (currently NZD 9 999.99 or EUR 6 075) must make a report concerning the cash: s.68. As well, every person who receives cash in excess of a prescribed

amount from outside New Zealand must also make a report: s.69. Section 70 sets out the conditions regarding the form and content of the report and indicates to whom the report needs to be submitted. The requirement to make a cash report expressly applies to both accompanied and unaccompanied cash, which would also include cash sent via mail or in containerised cargo. The enforcement of these provisions is the responsibility of the New Zealand Customs Service.

SRIX (Deficiency 2): The Customs do not have the authority to request and obtain further information regarding cash and BNI upon discovery of a false declaration.

This deficiency is addressed. The Act provides that breaches of any cross border declaration requirements under the Act or corresponding regulations qualifies, for the purposes of the *Customs and Excise Act, 1996*, as the importation or exportation of a prohibited good: s.114(2). Subsection (3) places a duty on every Customs officer to prevent the movement of cash that is in breach of the Act, and subsection (4) permits the use of the following powers under the *Customs and Excise Act, 1996* to enforce that duty:

- s.145 (questioning persons about goods and debt);
- s.148 (detention of persons questioned about goods or debt);
- ss.149, 149A, 149B, 149C(1) and (2), and 149D (which relate to search and seizure);
- ss.151 and 152 (which relate to examination of goods);
- s.161 (further powers in relation to documents);
- s.165 (copying of documents obtained during search);
- s.166 (retention of documents and goods obtained during search);
- ss.166A to 166F (which relate to seizure and detention of goods suspected to be tainted property); and
- ss.167 to 172 (which relate to search warrants and use of aids by Customs officers).

Additionally, under the *AML/CFT Act, 2009* Customs officers have new powers to require a specified person to provide access information and other information or assistance that is reasonable and necessary to allow the Customs officer to access data held in, or accessible from a computer or any other data storage device.

SRIX (Deficiency 3): The Customs are not able to stop or restrain currency or BNI solely for non-disclosure or on the basis of a false declaration.

This technical deficiency is addressed. As indicated above in relation to deficiency 2, s.114 of the *AML/CFT Act, 2009* provides that breaches of any requirement under the Act or any corresponding regulations qualifies, for the purposes of the *Customs and Excise Act, 1996*, as the importation or exportation of a prohibited good. Prohibited goods are liable to forfeiture under s.225(1)(a)(v) of the *Customs and Excise Act , 1996* and may be seized under s.226 of that Act by Customs. Since October 2010, Customs has used this provision 18 times and has seized approximately

NZD 1.8 million (EUR 1.103 million) of undisclosed or falsely disclosed cash. In two of these cases, Customs has initiated prosecution. New Zealand provided contextual information outlining that Customs has discretion on how to proceed where a case of non-declaration has been detected (e.g. non-declaration because of genuine mistakes are not kept on file; in the majority of cases, Customs takes seizure action but does not initiate prosecution; only in very severe cases, prosecution is initiated in addition to seizure action).

SRIX (Deficiency 4): The fines applicable for false or non-declaration are too low to be considered dissuasive.

This deficiency is addressed. The *AML/CFT Act, 2009* has increased the penalties for non-declaration and false declaration to a maximum of 3 months imprisonment or a fine of up to NZD 10 000 (EUR 6 075) for an individual, and a fine up to NZD 50 000 (EUR 30 375) for a body corporate (s.112). This increase in penalties, in combination with the ability for the New Zealand Customs Service to seize undeclared or falsely declared cash, ensures that New Zealand has dissuasive and appropriate fines and sanctions for failure to comply with its cross-border transportation of cash regime.

SRIX (Deficiency 5): Effectiveness issues: The Customs have not yet used their powers of seizure and restraint in the context of money laundering or terrorism financing. The detection of non-compliance with the border cash reporting obligation is very low. Few sanctions have been applied for non-compliance of declaration obligation.

Some progress has been made but the deficiency is only partially addressed. New Zealand provided the following figures regarding the number of border cash reports received: 1 194 in 2011, 2 034 reports in 2012 and 1 395 reports from 1 January until 31 July 2013. Details regarding seizure actions and the amount of money involved are mentioned in relation to deficiency 3 above. New Zealand further reported that its Customs does not maintain data on the number of false declarations or the number of non-declarations detected. The absence of these statistics does not allow for a more complete assessment of the effectiveness of the system put in place.

SPECIAL RECOMMENDATION IX, OVERALL CONCLUSION

Since its 2009 MER, New Zealand addressed the three technical deficiencies identified. In addition, progress is shown with regard to implementation but the nature of this report does not allow for full assessment of effectiveness. New Zealand's current level of compliance with SRIX is essentially equivalent to LC.

