



ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING.



FINANCIAL ACTION TASK FORCE

# Mutual Evaluation Report - *Executive summary*

Anti-Money Laundering and Combating the  
Financing of Terrorism

# New Zealand

16 October 2009

New Zealand is a member of the FATF and the Asia-Pacific Group on Money Laundering (APG). This evaluation was conducted by the FATF and APG and was adopted as a 3rd mutual evaluation by the FATF at its Plenary on 16 October 2009.

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## MUTUAL EVALUATION REPORT OF NEW ZEALAND

### EXECUTIVE SUMMARY

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in New Zealand as of the time of the on-site visit (20 April – 1 May 2009), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out New Zealand's levels of compliance with the Financial Action Task Force (FATF) *40+9 Recommendations* (see the attached table on the *Ratings of Compliance with the FATF Recommendations*).

#### 1. Key Findings

2. New Zealand, which is a member of both the FATF and the Asia-Pacific Group on Money Laundering (APG), has recently completed an extensive review of its AML/CFT regime, and the legal framework that underpins it. On 25 June 2009, the Anti-Money Laundering and Countering Financing of Terrorism Bill (AML/CFT Bill) was introduced in Parliament for its first reading. It was referred to Select Committee thereafter and reported back to Parliament on 14 September 2009.<sup>1</sup>

3. Between 2004 and 2008, 197 investigation files associated with money laundering were created. Over 75% of the files investigated by the New Zealand Police (NZ Police) over this period related to fraud-associated activity (predominantly Internet-banking fraud). Drug-related activity is the second most investigated offence associated with money laundering (ML), making up 10% of the total ML associated files. Other common predicates were robbery, theft, blackmail, and burglary.

4. Most money laundering occurs through the financial system; however, the complexity usually depends on the sophistication of the offenders involved. There appears to be a higher degree of sophistication in laundering the proceeds of crime now than in previous years. Since 2007, the purchase of real estate, the use of professional services and foreign exchange dealers have been popular means to launder funds. Prior to this, the majority of proceeds of crime were laundered through retail bank accounts.

5. The New Zealand authorities consider the risk of terrorist financing (FT) to be low. This assessment results from the investigation of all suspicious transaction reports (STRs) and suspicious property reports (SPRs) submitted to the financial intelligence unit (FIU) pursuant to the Terrorism Suppression Act (TSA). None of these investigations found any confirmed evidence of FT and, consequently, there have been no prosecutions or convictions for FT in New Zealand.

6. The ML offences are largely in line with international requirements, but for a few technical deficiencies. The statistics demonstrate that the offence is being actively enforced. The confiscation regime is generally sound, and is put to frequent and effective use. Confiscation without conviction (civil

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<sup>1</sup> The AML/CFT Bill was enacted on 15 October 2009.

forfeiture) is not currently available in New Zealand, but is provided for in the Criminal Proceeds (Recovery) Act, which will come into force on 1 December 2009.

7. The Ministry of Justice is the lead agency in New Zealand for AML/CFT measures. It is co-ordinating and implementing the current AML/CFT review that is being undertaken by the New Zealand Government. New Zealand has adequate and effective mechanisms in place for domestic co-ordination and co-operation, both at the policy and operational levels.

8. Overall, New Zealand's measures relating to criminalisation, provisional measures, confiscation and international co-operation are quite robust. However, compliance with the FATF standards relating to preventive measures for both the financial and designated non-financial businesses and professions (DNFBP) sectors shows a number of essential gaps. Important elements are not addressed in either law, regulation, or other enforceable means. New Zealand's AML/CFT reforms, which are meant to substantially address these issues, should be implemented as soon as possible.

9. Key recommendations made to New Zealand include: continue the initiated reforms of the AML/CFT system; ensure that the AML/CFT Bill currently before Parliament is enacted without undue delay<sup>2</sup> enabling the introduction of broader preventative measures applicable to all financial institutions and DNFBP; enhance regulation and supervision for AML/CFT purposes; ensure that the competent authorities which are ultimately designated to ensure compliance with AML/CFT requirements are provided with adequate funding, staff and technical resources, and AML/CFT training; introduce licensing requirements and comprehensive 'fit and proper' criteria for all financial institutions (not just banks); and introduce effective, proportionate and dissuasive civil or administrative sanctions, applicable to financial institutions and DNFBP, for failure to comply with AML/CFT requirements.

## **2. Legal systems and Related Institutional Measures**

10. New Zealand has criminalised money laundering under both the Crimes Act and the Misuse of Drugs Act. The offences cover the conversion or transfer, concealment or disguise, possession and acquisition of property in a manner that is largely consistent with the 1988 United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). However, there are a few technical deficiencies in that proof of an additional purposive element is required where the ML is: i) a concealment or disguise unrelated to a conversion, and ii) the sole acquisition, possession and use of indirect proceeds. Also the use of direct proceeds by the predicate offender is not covered. It is not necessary that a person be convicted of a predicate offence to establish that assets are the proceeds of a predicate offence and convict someone of laundering such proceeds. New Zealand has adopted a combined threshold and list approach to predicate offences. All "serious offences" and "specified drug offences" are predicate offences for money laundering. All 20 designated categories of predicate offences are covered, albeit there is an insufficient range of offences related to illicit arms trafficking. There is also a broad range of ancillary offences to the money laundering offences. Liability for money laundering extends to both natural and legal persons and the requisite intentional element may be inferred from objective factual circumstances. Engaging in a ML offence is punishable by imprisonment up to seven years for natural persons. However, the range of sanctions for legal persons is not clear or demonstrated, and consequently, it cannot be considered to be effective, proportionate and dissuasive. The statistical figures (669 charges, 140 convictions, acquittals unknown, between 2004 and 2008) are proof of an active enforcement of the AML provisions; however, the effective enforcement of autonomous ML offences needs to be tested further.

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<sup>2</sup> The AML/CFT Bill was enacted on 15 October 2009.

11. Terrorist financing is criminalised pursuant to sections 8 to 10 of the TSA which prohibit the provision or collection of property for terrorist acts or for the benefit of a terrorist entity; and making property, or financial or related services available to a designated terrorist entity. This legal basis is robust and faithfully mirrors the provisions of the International Convention for the Suppression of the Financing of Terrorism (FT Convention). The definition of the term “funds” covers assets of every kind and it is not necessary for the prosecutor to prove that the funds collected or provided were actually used, in full or in part, to carry out or to attempt to carry out a terrorist act. The same broad range of ancillary offences for money laundering applies equally to the terrorist financing offences. Terrorist financing is punishable by a term of imprisonment not exceeding 14 years. Terrorist financing is a predicate offence for money laundering. To date, New Zealand has had no FT prosecutions or convictions. However, in New Zealand’s particular context (including its low crime rate, no instances of proven terrorist financing in the country, and relatively small population and financial sector), the absence of prosecutions and convictions cannot be considered as a negative finding.

12. New Zealand has implemented a system of conviction-based confiscation that provides for the forfeiture of proceeds from crime and instrumentalities used in the commission of a serious offence. Generally, the legal framework of the seizure and confiscation regime is adequate, and is put to frequent and effective use. There are appropriate legal instruments at the disposal of the law enforcement authorities to identify and trace criminal assets through the application of the Proceeds of Crime Act (POCA). The management and disposal of the seized/confiscated property is efficiently organised.

13. New Zealand implements the CFT provisions of United Nations Security Council Resolutions S/RES/1267(1999) and S/RES/1373(2001) primarily through the provisions in the TSA which create a freezing regime that relies on the use of offence provisions rather than restraining orders. In practice, property is *de facto* subject to freezing action from the moment it becomes known that the property relates to a UN or domestic designated terrorist entity. On top of that, anybody (“financial institution or other person”) who is in possession or immediate control of property is required to file a suspicious property report (SPR) to the FIU where there are reasonable grounds to suspect that the property may be owned or controlled, directly or indirectly, by a designated terrorist entity, or is property derived or generated from such property. To date, no terrorist property has been detected, however, 54 SPRs have been filed to the FIU and were subject to further analysis and/or investigation. However, the results of this analysis and/or investigation showed that all reports were based on false name matches with the S/RES/1267(1999) list. The designation process for S/RES/1373(2001) involves preliminary examination by a designation committee that advances “statements of case” to designate an entity to the Prime Minister, who decides after consultation with the Attorney-General, to designate the entity as a terrorist entity in New Zealand. A foreign request for action is considered formally under this domestic designation procedure. New Zealand has not formally designated entities that are otherwise outside the scope of S/RES/1267(1999). The UN 1267 list of terrorist entities and any amendments are published in the Gazette and put on the NZ Police website, as well as notified by the police to financial institutions by way of e-mail. There are, however, some gaps in the communication network (particularly in relation to the DNFBP sectors) and, although some generic guidance has been provided concerning how and when to report, systemic clear and practical guidance on how to deal with transactions being effected outside of the traditional banking environment, and involving property other than funds, is definitely missing for the non-bank financial and other reporting sectors. Moreover, there is no adequate monitoring mechanism or arrangement in place in New Zealand for the banking sector and no monitoring at all of the other sectors, which is mainly due to the deficiencies in the supervisory regime.

14. The NZ Police Financial Intelligence Unit (the FIU) is a police FIU that was established within the NZ Police in 1996 and comes under the authority of the Police Commissioner. The FIU, which has been a member of the Egmont Group since 1997, is well-structured and funded, but is currently in need of further human resources. There are specific confidentiality provisions and security procedures in place to

guarantee the protection of the information by the FIU. The FIU has access to a wide range of financial, administrative and law enforcement information to enhance its ability to analyse STRs, SPRs and Border Cash Reports (BCRs). The FIU may request additional information from reporting institutions, but unless a court order is obtained, reporting institutions are not legally required to provide it. The FIU has issued guidelines, gives feedback to the reporting parties and holds an annual seminar on ML and financial crimes. Moreover, the FIU also publicly releases information periodically, including by issuing a newsletter (entitled “Money Talks”) that provides statistics, typologies and information about the FIU’s activities.

15. The NZ Police does not have specialised units in charge of investigating solely ML cases. However, the following units of the NZ Police are particularly relevant to AML/CFT and are regularly involved in ML investigations: *i*) Criminal Investigations Branch; *ii*) Special Intelligence Groups; *iii*) Proceeds of Crime Units; and *iv*) Organised and Financial Crime Agency. In addition, the Serious Fraud Office (SFO), a government department established under the Serious Fraud Office Act (SFOA), is responsible for the investigation and prosecution of serious or complex fraud, and related money laundering. Law enforcement authorities in New Zealand have an adequate legal basis for using a wide range of investigative techniques including controlled deliveries, undercover operations, interceptions and other forms of surveillance that balance the need for law enforcement with the need to protect civil rights. Technically speaking, there are currently undue restrictions on the use of production orders to compel bank account records, customer identification records and other records maintained by financial institutions, however, the law enforcement authorities rely heavily on the use of a search warrant, which currently serves the purpose of obtaining this kind of information in New Zealand. The NZ Police conducted 197 investigations with an ML aspect during 2004 and 2008. There have been few stand-alone ML investigations so far and the effective enforcement of autonomous ML offences still presents a real challenge that needs to be tested further.

16. New Zealand operates a declaration system – Border Cash Reports (BCRs) for incoming and outgoing physical cross-border transportations of cash exceeding NZD 9 999.99 (or the equivalent in foreign currency) being carried by a person or in their accompanying baggage, however, it has not implemented a declaration or disclosure system in relation to physical cross-border transportations of bearer negotiable instruments (BNI), and currency or BNI through the mail or containerised cargo. There is no legal basis for Customs officers to request and obtain further information upon discovery of a false declaration or failure to declare. Moreover, there are currently no provisions to restrain cash or BNI solely on the basis of a false disclosure or non-disclosure. However, Customs officers have the ability to restrain any goods, including cash and BNI, where there is a suspicion that the goods are connected to ML/FT. The detection of non-compliance with the BCR reporting obligation is very low, and the Customs has never used its powers of seizure and restraint in the ML/FT context. The completed BCRs are collected by Customs officers at airports and other ports of entry or departure, and forwarded to the FIU, where they are entered and maintained on a computerised database and analysed. Failing to make a declaration as required (without reasonable excuse) is an offence punishable by a fine not exceeding NZD 2 000, however, this criminal sanction cannot be considered as effective, appropriate and dissuasive.

### **3. Preventative Measures – Financial institutions**

17. New Zealand has implemented AML/CFT preventative measures through the application of the Financial Transactions Reporting Act (FTRA), the TSA and four related regulations. The AML/CFT requirements are further elaborated in several non-binding guidance documents – none of which fall within the FATF definition of “other enforceable means”. These measures and requirements apply equally to the entire financial sector. However, it is not possible to establish whether preventative measures are being implemented effectively since there is no systematic monitoring of compliance through the supervisory system.

18. Overall, New Zealand’s compliance with the FATF standards relating to customer due diligence (CDD) shows a number of essential gaps. Important elements are not addressed in either law, regulation, or other enforceable means. There is no legal requirement for financial institutions to have measures in place to: identify the beneficial owner; understand the ownership and control structure of the customer; identify and verify that natural persons acting on behalf of legal persons and purporting to act on behalf of the customer are authorised to do so; verify the status of a legal person or arrangement, including the provisions regarding the power to bind the legal person or arrangement; conduct ongoing due diligence on the business relationship to ensure that transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and source of funds; or perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. Additionally, financial institutions are not required to identify: all facility holders (other than the principal facility holders) when there are three or more facility holders; when carrying out occasional transactions that are wire transfers below the NZD 9 999.99 threshold; and when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. Financial institutions are only required to obtain information on the purpose and intended nature of the business relationship when the amount of “cash” involved in the transaction exceeds the prescribed amount (currently NZD 9 999.99). Where the customer’s identity cannot be verified satisfactorily, financial institutions are not prohibited from opening accounts, commencing business relationships or performing transactions. Even though it is not explicitly stated, the application of the FTRA prevents financial institutions from keeping anonymous accounts or accounts in fictitious names, but the CDD requirements of the FTRA do not apply to accounts opened before the FTRA entered into force in 1996. In addition, there is a need for clarification of the verification requirements to ensure that the documents being used are reliable and from an independent source. Finally, the obligation to conduct CDD when the financial institution has a suspicion that the transaction may be related to an FT offence (apart from instances involving a person who has been designated by New Zealand or another country pursuant to S/RES/1267(1999) or S/RES/1373(2001)) is not clearly understood by all financial institutions. The AML/CFT Bill that has recently been introduced in Parliament will address deficiencies relating to Recommendation 5. The New Zealand authorities should ensure that this legislation is passed and enacted in due course.

19. There is no requirement for financial institutions to put in place appropriate risk management systems to determine whether a potential customer or beneficial owner is a politically exposed person and if so, to apply enhanced customer due diligence measures as outlined in Recommendation 6. Moreover, there are no specific enforceable requirements for financial institutions to perform enhanced CDD measures in relation to cross-border correspondent banking and other similar relationships, as outlined in Recommendation 7. Finally, there is no obligation on financial institutions to have policies in place to prevent the misuse of technology for ML/TF and to address any specific risk associated with non-face-to-face business relationships or transactions.

20. The FTRA allows for the use of third parties or introduced businesses in some specific circumstances; however, financial institutions are not obliged to obtain actual customer due diligence information and verification documents from the third parties that they are relying on. Furthermore, there is no obligation on financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available by the third party upon request and without delay. In addition, the current legislation does not have a specific provision stipulating that the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

21. There is no financial secrecy law that inhibits the implementation of the FATF Recommendations. When carrying out wire transfers, financial institutions are not required to include full originator information in the accompanying message or payment form, or comply with the other requirements of Special Recommendation VII. In relation to every transaction that is conducted, financial

institutions must keep such records as are reasonably necessary to enable transactions to be readily reconstructed at any time by the NZ Police. Financial institutions are also required to maintain such customer identity verification records as are reasonably necessary to enable the customer to be readily identified. Identification records relating to a customer (facility holder), or a person on whose behalf the customer has acted, must be retained for not less than five years after the person ceases to be a customer. Any other records relating to the verification of any person must be retained for not less than five years after the verification is carried out. The FTRA does not specifically require business correspondence (other than CDD and transaction records) to be retained.

22. The FTRA does not explicitly require 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. Although some of the guidance issued does emphasise these characteristics for the identification of suspicious transactions and gives numerous examples in that regard, these documents are not enforceable. There are some mechanisms in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries/jurisdictions, but no specific provisions for financial institutions to apply counter-measures in situations where countries/jurisdictions do not sufficiently apply the FATF Recommendations. The efforts to inform financial institutions of the actions taken by the FATF are a step in the right direction and should be formalised.

23. New Zealand has a reporting regime in which all financial institutions are required to submit STRs and SPRs (including attempted transactions, regardless of the amount) to the FIU. Overall, the STR reporting regime is being implemented effectively and the levels of reporting by the individual financial institutions is consistent with the character of New Zealand's financial sector – 95% of which is dominated by banks, in terms of volume of activity. However, the effectiveness of the reporting system could be further enhanced by clarifying the legal requirement to report STRs related to terrorist financing in circumstances other than a connection to a designated entity. No criminal or civil action may be brought against a person who fails to file an STR/SPR in good faith. Tipping-off is prohibited in the context of filing an STR, and should be extended to the context of filing an SPR. There is no provision that would prevent the reporting of suspicious transactions involving tax matters. The SPR reporting obligation applies to a broader range of persons than the STR reporting obligation, and is focused on the terrorist property of designated persons/entities. A financial institution or other person in possession or control of suspected terrorist property who fails to make an SPR as required commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding one year. With respect to legal persons, the court can impose a fine; however, the level of fines is unspecified. New Zealand is currently in the process of considering the feasibility and benefits of implementing a transaction database that would record all transactions above a fixed threshold.

24. There are no requirements to implement internal AML/CFT controls as is required by Recommendation 15. However, when considering a breach of CDD or STR reporting requirements, a court may have regard to the existence and adequacy of procedures established by the financial institution to ensure compliance with these requirements.

25. There are no shell banks that are registered as “banks” in New Zealand or legally authorised to operate as registered banks. However, there is risk that any entity can carry out banking business as a “non-bank deposit taker” simply by registering the company with the Companies Office and not using the word “bank” in its name. By not using the word “bank” in its name, an entity remains outside the registration requirements of the Reserve Bank. However, nothing prevents it from carrying out banking business. Though shell banks may not be deliberately approved or permitted to continue their operations in New Zealand, the existing procedures allow the establishment and operation of shell financial institutions that conduct banking activity.

26. Currently, only registered banks have a designated competent authority responsible, to some limited extent, for ensuring compliance with AML/CFT requirements. The rest of the financial sector is not subject to any supervision for compliance with AML/CFT requirements. These are serious gaps in the scope of the supervisory framework which affect the ratings relative to Recommendations 17, 23 and 29. However, New Zealand has identified competent authorities who will, once new AML legislation comes into effect, have responsibility for ensuring that the following financial institutions adequately comply with AML/CFT requirements: non-bank deposit takers, life insurance companies, securities market participants and other types of financial service providers, money or value transfer service (MVTS) providers and foreign exchange dealers.

27. The Reserve Bank Act confers powers on the Reserve Bank of New Zealand to register and undertake prudential supervision of registered banks. The objective of the Reserve Bank's supervision of registered banks is to promote and maintain the overall soundness and efficiency of the financial system and to avoid significant damage to the financial system that could result from the failure of a registered bank. The Reserve Bank applies fit and proper tests to the potential owners and senior managers at the time of a bank's application for registration, and thereafter on an on-going basis. In determining whether a bank should be registered or is carrying on its business in a prudent manner, the Reserve Bank can have regard to a number of factors. Since October 2008, one of the factors that may be considered is any existing (or proposed) AML/CFT policies, systems and procedures. However, because the Reserve Bank is not specifically designated as being responsible for supervising and enforcing compliance with the FTRA generally, its role as an AML/CFT supervisor is very limited. Moreover, the Reserve Bank does not have any ability to carry out an on-site inspection without a court order. Whenever need arises, a court order can be obtained and the inspection itself would be carried out by an investigator appointed by the Reserve Bank. However, there is no regular inspection program or evidence to show that inspections have been carried out to evaluate compliance with AML/CFT requirements.

28. Public issuers of securities, fund managers and life insurance companies are not currently subject to any prudentially-based registration or licensing regime. Directors and senior management of life insurance companies are not evaluated on the basis of "fit and proper" criteria, including those relating to expertise and integrity. Moreover, there are currently no legal provisions in force that require non-bank MVTS providers or foreign exchange dealers to be licensed or registered.<sup>3</sup>

29. The FTRA only provides for criminal sanctions in relation to breaches of its requirements. Breaches of the CDD and record keeping requirements are offences punishable by a fine not exceeding NZD 20 000 (for natural persons) and NZD 100 000 (for legal persons). A breach of the STR reporting requirements is an offence punishable by a term of imprisonment not exceeding six months or a fine not exceeding NZD 5 000 (for natural persons) and a fine not exceeding NZD 20 000 (for legal persons) (FTRA s.22). The TSA provides for criminal sanctions in relation to breaches of the SPR reporting requirements. Breaching these requirements is an indictable offence punishable by a term of imprisonment not exceeding one year (for natural persons). For legal persons, the court can impose a fine, however, the quantum of such fines is not specified. The NZ Police is responsible for bringing prosecutions under the FTRA and TSA. Some criminal sanctions have been applied to financial institutions for FTRA violations by way of criminal prosecution. A total number of 65 convictions were obtained between 2004 and 2008. No civil or administrative sanctions are available for breaches of AML/CFT requirements, except in relation to registered banks. Additionally, there is no ability to impose disciplinary and financial sanctions, or to withdraw, restrict or suspend the financial institution's licence, where applicable, other than in respect

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<sup>3</sup> However, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 has now been passed, requiring negative assurance checks on criminal records of directors and senior managers to be undertaken as part of new registration systems relating to providers of financial services. This Act comes into force in December 2010.

of registered banks. Finally, the range of available sanctions available is not sufficiently broad and proportionate. Overall, it can be stated that the absence of effective regulation and supervision in the financial sector is an important shortcoming in New Zealand's AML/CFT regime.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

30. The following designated non-financial businesses and professions (DNFBP) are covered by the FTRA: *i*) casinos; *ii*) real estate agents; *iii*) lawyers or incorporated law firms; *iv*) conveyancing practitioners or incorporated conveyancing firms; and *v*) accountants (collectively referred to as Accountable DNFBP). AML/CFT preventive measures described above generally apply to all Accountable DNFBP in the same way as they apply to financial institutions.

31. Dealers in precious metals and stones, and trust and company service providers (other than lawyers and accountants) are not covered. Likewise, real estate agents are only subject to the AML/CFT requirements when receiving funds in the course of their business for the purpose of settling real estate transactions.

32. The obligations to report STRs and SPRs, the protection for reporting and the prohibition on tipping off applicable to STR reporting apply to all DNFBP. Generally, the authorities should identify and analyse the reasons why the level of reporting by Accountable DNFBPs is low, and undertake the necessary action to enhance the effectiveness of the reporting by this sector. With respect to lawyers, it should be noted that authorities have brought prosecutions for failing to report suspicious transactions. Despite this, the assessment team was informed that lawyers do tend to rely on the banking sector to detect suspicious transactions.

33. Presently, there are no designated competent authorities with responsibility for supervising Accountable DNFBP for compliance with their AML/CFT obligations pursuant to the FTRA. Although the Department of Internal Affairs (DIA) has responsibility for supervising casinos for compliance with the Gambling Act and ensuring generally that the casino sector is not abused for the illicit purposes, the DIA is not yet a designated authority for AML/CFT purposes. The DIA is also responsible for ensuring that casinos comply with their detailed operating procedures (Minimum Operating Standards). While some MOS relate to AML and capture some parts of the FTRA, they are not specifically focused on AML/CFT, and the DIA has no authority to impose direct sanctions or otherwise enforce breaches of the FTRA. A regulatory and supervisory regime should be created for casinos and other DNFBPs to ensure their compliance with the AML/CFT requirements. Once appropriate authorities have been designated, they should be provided with adequate powers and resources to perform their functions, including powers to monitor and sanction. Currently, breaches of the FTRA requirements are punishable only by criminal sanctions, which are applied by the courts by way of criminal prosecution by the NZ Police (see above description). New Zealand should provide for effective, proportionate and dissuasive administrative and civil sanctions applicable to both natural and legal persons.

34. The New Zealand Government has considered applying AML/CFT requirements to non-financial businesses and professions (other than a DNFBP) that are at risk of being misused for ML/FT. In particular, race and sports betting conducted by the New Zealand Racing Board (NZRB) was considered to be sufficiently high risk to justify making it subject to AML/CFT requirements.

#### **5. Legal Persons and Arrangements & Non-Profit Organisations**

35. In preventing the use of legal persons for illicit purposes, New Zealand relies primarily on a centralised system of company registration, corporate record keeping and financial reporting requirements, and the investigative powers of competent authorities. All New Zealand companies are subject to the

provisions of the Companies Act, which establish the statutory office of the Registrar of Companies (the New Zealand Companies Office) and the Companies Register. Although the Register contains useful information about the legal ownership of domestic legal persons, and the legal control of both domestic and overseas legal persons, it contains no information about the beneficial ownership and control of legal persons (*i.e.* the natural person(s) who ultimately own(s) or control(s) the legal person), which is the focus of Recommendation 33. Each company's registered office must make available to anyone the company records, share register and accounting records. Although share registers are kept, this information may not be accurate since companies are not required to verify it. Beneficial ownership and control may be further obscured because it is possible to issue shares to nominees. Moreover, since overseas companies are not required to keep a copy of their share register in New Zealand, it is not possible for the competent authorities to obtain this information, other than through a potentially lengthy mutual legal assistance process. Overall, adequate, accurate and current information on beneficial ownership is not necessarily available to the competent authorities in a timely fashion.

36. New Zealand is a common law jurisdiction that has a system of trust law. Express trusts are extremely common and foreign trusts are recognised. Natural or legal persons can act as the settlor, trustee or beneficiary of a trust, and the same person may act in all three capacities for the same trust. There is no general obligation to register a trust; however, trusts constituted for charitable purposes may voluntarily register in the Charities Register, and there is a strong incentive to do so for taxation exemption purposes. The Charities Register is a fully searchable on-line register that is available without charge to the public and competent authorities on a timely basis. For the purposes of Recommendation 34, the Charities Register suffers from the same deficiencies as the Companies Register. Although the Register contains useful information about the legal ownership and control of charitable trusts, it contains no information about beneficial ownership and control (*e.g.* of legal persons who may be parties to a charitable trust). Moreover, Registry information is not verified to confirm its accuracy concerning the ownership and control of a charitable trust, although a review is performed to ensure that the trust does, indeed, have a legitimate charitable purpose.

37. New Zealand's non-profit organisation (NPO) sector is significantly populated by four forms of entities, namely *i)* charitable trusts and societies; *ii)* incorporated societies; *iii)* industrial and provident societies; and *iv)* friendly societies, benevolent societies, and working men's clubs. The New Zealand government has not yet undertaken a review of its NPO sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for terrorist financing by virtue of their activities or characteristics, or the sector's potential vulnerabilities to terrorist activities. However, such a review is planned for the near future. NPOs are subject to various requirements concerning financial reporting and record keeping, although the extent of such requirements depends on the legal status of the NPO and whether it is subject to the Income Tax Act or receives funding assistance from government agencies. NPOs are not generally required to maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees. However, NPOs are required to submit some of this information to the Companies Office and/or the Charities Commission. The Charities Commission has the legal powers and institutional capacity to meet the requirements of SRVIII in relation to that portion of the NPO sector that is comprised of registered charities, and it is in the process of establishing its credentials as the primary regulatory and supervisory authority for the charitable sector.

## **6. National and International Co-operation**

38. The New Zealand authorities co-operate and co-ordinate effectively at both the policy and operation level. The Ministry of Justice is the lead agency on the co-ordination and implementation of the current AML/CFT review which is being undertaken by the New Zealand Government. This process involves all law enforcement, prosecution, policy and prospective AML supervision agencies. In

recognition of this, two interdepartmental groups have been established to provide governance and oversight of project work.

39. New Zealand has ratified and substantially implemented the relevant sections of the Vienna, Palermo and FT Conventions.

40. The Mutual Assistance in Criminal Matters Act (MACMA), along with the POCA, provides an extensive structured framework for international assistance in criminal matters (including ML/FT) by allowing requests from and to New Zealand with any country. Additionally, New Zealand is party to a number of conventions and treaties that include mutual legal assistance (MLA) obligations. State parties may choose to apply for MLA under an applicable convention or treaty, or under the rules set out under the MACMA. Alternatively, New Zealand may consider ad hoc requests. Where the condition of dual criminality applies, there is no legal or practical impediment to rendering assistance where both New Zealand and the requesting country have criminalised the conduct underlying the offence. New Zealand law provides for a range of mechanisms that enable it to provide mutual legal assistance for use in ML/FT investigations and prosecutions, including where these take place in foreign jurisdictions. Additionally, the MACMA allows for foreign confiscation or restraining orders, and such procedures apply equally to laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in the commission of any ML, FT or predicate offence. A foreign country may also request assistance in obtaining one of the domestic orders available under the POCA. A particular feature of the MLA regime lies in the principle that the possibility to comply with MLA requests involving certain coercive actions does not depend upon a decisive domestic criterion, but from the penalty level as provided in the requesting country. Although this threshold condition may restrict New Zealand's ability to provide MLA, including in the context of provisional and confiscation measures, the New Zealand authorities have, nevertheless, been able to get around this problem by using other measures in their domestic framework.

41. The Extradition Act provides a solid legal framework that allows for an effective extradition policy. It gives the competent authorities great latitude in responding to extradition requests that are not treaty based or otherwise specifically governed by the Act. The formalities surrounding the extradition regime are not overly rigid and are applied in a flexible manner, as the statistical figures confirm. However, New Zealand's ability to extradite in cases involving illicit arms trafficking may be restricted by the fact that New Zealand has not criminalised a sufficient range of offences in this designated predicate offence category.

42. New Zealand has implemented effective measures to facilitate international co-operation by law enforcement, customs authorities and the FIU in contexts other than the formal MLA process and generally provides a wide range of such co-operation in a rapid, constructive, and effective manner. New Zealand does not refuse co-operation on the ground that offences also involve fiscal matters. However, international cooperation in relation to AML/CFT is impeded in the financial sector as there are not yet designated competent authorities for AML/CFT, other than the Reserve Bank which is competent for AML/CFT to a limited extent in its prudential supervision. However, the Reserve Bank needs more powers and resources to exercise its supervisory powers effectively for AML/CFT purposes, including powers of inspections, the ability to access customer-specific information, and the possibility to impose monetary penalties. These supplementary powers would also enhance the Reserve Bank's capacity to exchange information with its international counterparts.

43. The Reserve Bank should ensure that it exercises its supervisory powers effectively for AML/CFT purposes, including inspections and the ability to access customer-specific information, which would also enhance information exchange with its international counterparts.

## **7. Resources and Statistics**

44. The majority of the competent authorities appear to be adequately resourced and structured to effectively perform their current designated functions. However, the FIU is in need of further resources to address its backlog of BCRs and the Reserve Bank's actual resources dedicated to AML/CFT arrangements for banks is insufficient to meaningfully make use of the supervisory powers it has available. The Securities Commission and DIA 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. Finally, 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. It is also important that all supervisory authorities be allocated sufficient resources to implement the AML/CFT requirements identified in the draft AML/CFT Bill, once enacted.

45. New Zealand maintains comprehensive statistics regarding STRs received, analysed, and disseminated, as well as statistics relating to money laundering investigations, prosecutions and convictions. New Zealand also keeps comprehensive statistics of mutual legal assistance and extradition matters. However, the SFO does not keep statistics on international co-operation and the FIU lacks statistics on whether international requests for assistance made/or received were granted or refused, or how many spontaneous referrals it made to foreign authorities.

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
<b>Legal system</b>		
1. ML offence	LC	<ul style="list-style-type: none"> <li>ML criminalisation is not fully consistent with Recommendation 1 because the prosecution must prove an additional purposive/intent element in relation to the ML activities of: concealment/disguise, and in relation to the third-party sole acquisition, possession and use of indirect proceeds.</li> <li>The self-laundering use of proceeds is not covered.</li> <li>There is not a sufficient range of offences in the designated predicate offence category of illicit arms trafficking.</li> </ul>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>The range of sanctions for legal persons is not clear or demonstrated, and consequently, it cannot be stated that they are effective, proportionate and dissuasive.</li> </ul>
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>The seizure and confiscation regime does not apply to a sufficient range of offences in the designated predicate offence category 8, illicit arms trafficking (other than trafficking in biological, chemical and nuclear weapons).</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> <li>This Recommendation if fully observed.</li> </ul>
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements.</li> <li>There is no requirement to obtain information on the purpose and intended nature of the business relationship.</li> <li>There is no requirement to identify natural persons acting on behalf of legal persons and verify their authority to act.</li> <li>There is no requirement to understand the ownership and control structure of legal persons or arrangements.</li> <li>There is no requirement to conduct ongoing due diligence on the business relationship.</li> <li>Financial institutions are not required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions.</li> <li>There is no requirement to verify the legal status of customers who are legal persons and arrangements.</li> <li>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.</li> <li>The CDD threshold (NZD 9 999.99) for wire transfers is too high.</li> <li>The cash-only focus of the “occasional” and “on behalf of” CDD requirements in the FTRA is inconsistent with Recommendation 5, which does not limit the CDD requirements to cash transactions.</li> <li>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.</li> <li>The authorities were not able to confirm definitely that there are no anonymous accounts that were created before the FTRA and</li> </ul>

<sup>4</sup> These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		<p>related CDD obligations came into force (1996).</p> <ul style="list-style-type: none"> <li>• There is no requirement that CDD should be done on the basis of reliable documents from an independent source.</li> <li>• The provisions which allow for the verification of the customer's identity following the establishment of the business relationship are not consistent with the FATF Recommendations because they do not also require that the ML risks are effectively managed and it be essential not to interrupt the normal course of business.</li> <li>• Financial institutions are not legally required to carry out customer due diligence on existing customers on the basis of materiality and risk.</li> <li>• There is no explicit requirement with respect to the actions financial institutions must take if identification cannot be completed satisfactorily.</li> <li>• Effectiveness issues – It has not been established that financial institutions are implementing the CDD requirements effectively. The implementation of R. 5 is undermined by allowing financial institutions to verify the identity of customers without reference to photo ID. 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. There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements.</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>• New Zealand has not implemented any AML/CFT legislative measures regarding the establishment and maintenance of customer relationships with PEPs.</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>• New Zealand has not implemented any AML/CFT legislative measures concerning the establishment of cross-border correspondent banking relationships.</li> </ul>
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
9. Third parties and introducers	NC	<ul style="list-style-type: none"> <li>• There is no requirement to obtain relevant customer identification data from the third party.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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 R. 5 and R. 10.</li> <li>• 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.</li> </ul>
10. Record keeping	LC	<ul style="list-style-type: none"> <li>• There is no explicit requirement for institutions to retain business correspondence other than those required for the purpose of enabling reconstructions of transactions.</li> <li>• Effective implementation of the existing requirements could not be</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		fully established due to the shortcomings in the supervisory structure.
11. Unusual transactions	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• There is no requirement for financial institutions to examine as far as possible the background and purpose of all unusual transactions.</li> <li>• 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.</li> </ul>
12. DNFBP – R. 5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>• The deficiencies identified in section 3 of this report with regard to Recommendations 5, 6 and 8 to 11 apply equally to DNFBPs.</li> <li>• Casinos are only required to perform CDD for occasional customers engaging in financial transactions exceeding the NZD 9 999.99 threshold which is higher than the USD/EUR 3 000 threshold for casinos in R. 12.</li> <li>• 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 customer'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.</li> <li>• Effectiveness issue: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 12 effectively.</li> </ul>
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>• The STR obligation does not apply to a sufficiently broad range of offences in the designated predicate offence category of illicit arms trafficking.</li> <li>• Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial institutions.</li> </ul>
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> <li>• The tipping off provision does not apply to one aspect of the reporting obligation (the obligation to report SPRs which relate to the terrorist-related property of designated persons/entities).</li> </ul>
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> <li>• Financial institutions are not required to establish and maintain internal AML/CFT policies, procedures and controls, and to communicate these to their employees.</li> <li>• Financial institutions are not required to designate a Compliance Officer at the management level who has timely access to records.</li> <li>• There is no requirement to maintain an adequately resourced and independent internal audit function to test compliance.</li> <li>• There is no requirement to conduct ongoing employee training in relation to AML/CFT.</li> <li>• Financial institutions are not required to put screening procedures in place to ensure high standards when hiring employees.</li> </ul>
16. DNFBP – R. 13-15 & 21	NC	<ul style="list-style-type: none"> <li>• The deficiencies identified with regard to Recommendations 13 to 15, and 21; and Special Recommendation IV apply equally to DNFBPs.</li> <li>• DNFBPs are not obliged to have AML/CFT procedures, policies and controls in place.</li> <li>• DNFBPs are not required to communicate these policies and procedures to their employees.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		<ul style="list-style-type: none"> <li>• 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.</li> <li>• Effectiveness issues: It has not been established that Accountable DNFBPs 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.</li> </ul>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• New Zealand has no effective, proportionate and dissuasive civil or administrative sanctions for financial institutions that breach AML/CFT requirements.</li> <li>• Other than for registered banks, there is no designated authority to impose civil and administrative sanctions for breaches of AML/CFT requirements.</li> <li>• 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.</li> </ul>
18. Shell banks	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• There is no prohibition on financial institutions for entering into, or continuing, correspondent relationships with shell banks.</li> <li>• There is no legal requirement for financial institutions to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• New Zealand has no legal basis to apply counter-measures.</li> </ul>
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> <li>• There are no requirements to ensure that foreign branches and subsidiaries observe appropriate AML/CFT Standards.</li> <li>• 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.</li> <li>• There are no requirements to apply higher standards where requirements between the host and home country differ.</li> <li>• There is no provision that requires financial institutions to inform their home country supervisor when they are unable to observe appropriate AML/ CFT measures.</li> </ul>
23. Regulation, supervision and	NC	<ul style="list-style-type: none"> <li>• Other than registered banks, no category of FI is subject to any</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
monitoring		<p>regulation and supervision for compliance with AML/CFT requirements.</p> <ul style="list-style-type: none"> <li>• There is no designated competent authority to ensure the compliance of FIs (other than registered banks) with AML/CFT requirements.</li> <li>• No legal and regulatory measures are available to prevent criminals from holding management positions or controlling interest in FIs other than for banks and, to a limited extent, for securities companies.</li> <li>• 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).</li> <li>• There are no measures in place to license or register natural and legal persons providing MVTs or foreign exchange services.</li> <li>• Financial institutions (other than registered banks) are not subject to registration or licensing.</li> <li>• 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.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• DNFBPs are not subject to adequate monitoring to ensure compliance with AML/CFT requirements.</li> <li>• 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 DNFBP.</li> </ul>
25. Guidelines & Feedback	LC	<ul style="list-style-type: none"> <li>• Guidance has not been provided for all financial institutions concerning how, in practice to identify legal persons/arrangements, beneficial owners and PEPs.</li> <li>• Guidance has not been provided to DNFBPs concerning how, in practice to identify legal persons/arrangements, beneficial owners and PEPs</li> <li>• Effectiveness issue: Existing guidance on the STR reporting obligation does not sufficiently address the obligation to report transactions related to terrorist financing outside the context of designated/listed entities, as demonstrated by the level of awareness of reporting entities on this issue.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	LC	<ul style="list-style-type: none"> <li>• There is no legal provision that authorises the FIU to obtain additional information from reporting parties when needed to properly undertake its functions.</li> <li>• Effectiveness issue: The FIU is in need of further resources to address the backlog, particularly of BCRs, waiting to be input into the FIU's system.</li> </ul>
27. Law enforcement authorities	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
28. Powers of competent authorities	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
29. Supervisors	NC	<ul style="list-style-type: none"> <li>• 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 powers to do so (in relation to registered banks) is inadequate.</li> <li>• 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.</li> <li>• Other than the Reserve Bank, there are no supervisors with any powers to compel the production of records or to gain access to</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		<p>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 is predicated on first obtaining a court order.</p> <ul style="list-style-type: none"> <li>• 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 Bank's 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.</li> </ul>
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>• The FIU is in need of further resources to address the backlog, particularly of BCRs, waiting to be input into the FIU's system.</li> <li>• 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.</li> <li>• The Securities Commission, MED and DIA 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.</li> <li>• 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.</li> </ul>
31. National co-operation	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
32. Statistics	LC	<ul style="list-style-type: none"> <li>• The NZ FIU does not keep statistics on whether international requests for assistance made/or received were granted or refused, or how many spontaneous referrals the NZ FIU made to foreign authorities.</li> <li>• The SFO does not keep statistics on international co-operation.</li> </ul>
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>• 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: <ul style="list-style-type: none"> <li>- the Companies Register does not contain such information;</li> <li>- companies are not required to maintain such information; and</li> <li>- company service providers are not required to collect such information.</li> </ul> </li> </ul>
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> <li>• There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of trusts.</li> </ul>
<b>International Co-operation</b>		
35. Conventions	LC	<ul style="list-style-type: none"> <li>• <i>Vienna and Palermo Convention</i>: The purposive elements in section 213 of the POCA required to prove third party money laundering are not in line with the Vienna and Palermo Conventions.</li> <li>• <i>FT Convention</i>: Financial institutions are not required to identify beneficial owners (see Article 18(1) which requires countries to implement sufficient measures to identify customers in whose interest accounts are opened) (see section 3.2 of this report).</li> </ul>
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>• The threshold condition for a range of coercive measures is unduly restrictive and may prevent New Zealand from responding to MLA requests from countries who do not meet the high threshold penalty for the underlying offence.</li> </ul>
37. Dual criminality	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed</li> </ul>
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li>• The threshold condition for a range of coercive measures is unduly restrictive and may prevent New Zealand from responding to MLA requests from countries who do not meet the high threshold penalty for the underlying offence.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Extradition capacity for money laundering is restrained by limitations to one of the designated categories of predicate offences as described in section 2.1 (dual criminality).</li> </ul>
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>• Effectiveness issue: the ability of the Reserve Bank to exchange</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		information for AML/CFT purposes is not yet tested
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR. I - Implement UN instruments	LC	<ul style="list-style-type: none"> <li>• <i>FT Convention</i>: Financial institutions are not required to identify beneficial owners (see Article 18(1) which requires countries to implement sufficient measures to identify customers in whose interest accounts are opened) (see section 3.2 of this report).</li> </ul>
SR. II - Criminalise terrorist financing	C	<ul style="list-style-type: none"> <li>• This Recommendation if fully observed.</li> </ul>
SR. III - Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The communication of designations, particularly to the DNFBP, money remitters and securities sectors, is not satisfactorily organised.</li> <li>• Insufficient practical guidance is given, particularly to DNFBPs and financial institutions, other than banks, on how to effectively implement the freezing obligations.</li> <li>• 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.</li> </ul>
SR. IV - Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>• Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial institutions.</li> </ul>
SR. V - International co-operation	LC	<ul style="list-style-type: none"> <li>• R. 36 and R. 38: The threshold condition for a range of coercive measures is unduly restrictive and may prevent New Zealand from responding to MLA requests related to terrorism financing from countries who do not meet the high threshold penalty for the underlying offence.</li> <li>• R.39: Extradition capacity for money laundering is restrained by limitations to one of the designated categories of predicate offences as described in section 2.1 (dual criminality).</li> <li>• R. 40: Effectiveness issue: The ability of the Reserve bank to exchange information for AML/CFT purposes is not yet tested.</li> </ul>
SR. VI - AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• There is no designated authority to register or license MVTS providers or maintain a current list of them.</li> <li>• There is no system in place to monitor MVTS providers and ensure their compliance with the FATF Recommendations.</li> <li>• 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.</li> <li>• MVTS providers are not required to maintain a list of their agents and make that list available to the competent authorities.</li> <li>• The authorities have not taken sufficient action to identify informal remittance channels and make these operators subject to AML/CFT requirements.</li> <li>• 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).</li> </ul>
SR. VII - Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• There is no general legal requirement for all wire transfers to be accompanied by full originator information.</li> <li>• There are no obligations on intermediary FIs in the payment chain to maintain all of the required originator information with the accompanying wire transfer.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
		<ul style="list-style-type: none"> <li>• There are no obligations to require beneficiary FIs 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.</li> <li>• The threshold for obtaining and maintaining full originator information in the case of wire transfers is too high.</li> </ul>
SR. VIII - Non-profit organisations	PC	<ul style="list-style-type: none"> <li>• No review of the NPO sector to identify FT risk and vulnerabilities.</li> <li>• No outreach on FT vulnerabilities.</li> <li>• Limited information on controlling minds behind NPOs.</li> <li>• Limited monitoring by the Companies Office or Charities Commission.</li> <li>• Record keeping obligations are not comprehensive.</li> </ul>
SR. IX - Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> <li>• The declaration system does not apply to bearer negotiable instruments, unaccompanied cash/BNI, and cash/BNI sent via mail or in containerised cargo.</li> <li>• The Customs do not have the authority to request and obtain further information regarding cash and BNI upon discovery of a false declaration.</li> <li>• The Customs are not able to stop or restrain currency or BNI solely for non-disclosure or on the basis of a false declaration.</li> <li>• The fines applicable for false or non-declaration are too low to be considered dissuasive.</li> <li>• Effectiveness issues: The Customs have not yet used their powers of seizure and restraint in the context of ML/FT. The detection of non-compliance with the BCR reporting obligation is very low. Few sanctions have been applied for non-compliance of declaration obligation.</li> </ul>