



INTERNAL AFFAIRS

Te Tari Taiwhenua

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AML/CFT - Overview

- International background
- Money laundering and the financing of terrorism
- What are AML and CFT?
- The AML/CFT Act 2009
- Consequences of breach
- Advantages and disadvantages to businesses
- DIA's approach to supervision
- Questions after both presentations

Financial Action Task Force (FATF)



- the international AML/CFT standards setting body
- convened by the G-7 heads of state in 1989
- has expanded from the original 16 to current 36 members (including 34 jurisdictions and 2 regional organisations)
- New Zealand joined in 1991



The 36 Members of the FATF

Argentina	Greece	New Zealand
Australia	<i>Gulf Co-operation Council</i>	Norway
Austria	Hong Kong, China	Portugal
Belgium	Iceland	Russian Federation
Brazil	India	Singapore
Canada	Ireland	South Africa
China	Italy	Spain
Denmark	Japan	Sweden
<i>European Commission</i>	Republic of Korea	Switzerland
Finland	Luxembourg	Turkey
France	Mexico	United Kingdom
Germany	Netherlands, Kingdom of	United States

FATF (continued)



- issued 40 recommendations as to how jurisdictions might work together to prevent international money laundering from occurring
- these recommendations are occasionally updated
- introduced requirements to be implemented by the finance sector in order to protect the financial system
- extended the notion of 'money laundering' to a much wider range of predicate offences (i.e. not just the illicit trading of narcotics)
- after 9/11, FATF turned its attention to counter terrorist financing and introduced 9 'special' recommendations (similar to AML)

What is money laundering?

- Misnomer – not just money, refers to all property
- In very general terms:
 - helping another to disguise the origins of property
 - with *knowledge* that the property derives from criminal activity
- illegally acquired money >>> wash

What is terrorist financing?

- In general terms:
 - financing terrorism
 - with *knowledge* of this fact
- in NZ, defined in s. 8 of Terrorism Suppression Act 2002
- the reverse of money laundering
(e.g. lawfully acquired money >>> dirty)

Money Laundering in New Zealand

Section 243(2) of Crimes Act 1961

(inserted by section 15 of the Crimes Amendment Act 2003)

- *Subject to sections 244 and 245*
- *everyone is liable to imprisonment for a term not exceeding 7 years wh*



Actus reus

- *in respect of any property that is the proceeds of a serious offence*
- *engages in a money laundering transaction*

Mens rea

- *knowing or believing that all or part of the property is the proceeds of a serious offence*
- or
- *being reckless as to whether or not the property is the proceeds of a serious offence*

Serious offence – an offence punishable by imprisonment for a term of 5 years or more

Recklessness – person foresees that action gives rise to a risk and unreasonably takes it
(R v Harney (1987))

Section 243 of Crimes Act 1961

STOP AND THINK



What offence might have occurred if you were to recklessly accept the proceeds of crime on behalf of your customer?

Anti-Money Laundering and Countering the Financing of Terrorism Act 2009

Section 3

Purpose, includes -

- detect and deter money laundering and the financing of terrorism
- to maintain and enhance New Zealand's international reputation, where appropriate in the New Zealand context, by adopting recommendations issued by the Financial Action Task Force

Anti-Money Laundering and Countering the Financing of Terrorism Act 2009

- three supervisors
 - Reserve Bank
 - Financial Markets Authority
 - Department of Internal Affairs
- three reporting entities classes (s.5)
 - financial institutions (s.5)
 - casinos (s.5)
 - any person declared by regulations to be a reporting entity (i.e. financial advisors / trust and company service providers)

What is a financial institution?

- defined in section 5 of the Act
- carries out a specified financial activity in New Zealand in the ordinary course of business
- examples include :
 - accepting deposits or other repayable funds
 - lending to or for a customer
 - transferring money or value for a customer
 - managing individual or collective portfolios
 - investing, administering or managing money on behalf of other persons

What is a financial adviser?

- defined in regulation 16 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011
- a person who, in the course of arranging for a reporting entity to provide a relevant service to a customer or intended customer, is:
 - an individual who is required to be an authorised financial adviser; OR
 - an entity that provides financial adviser services in respect of a category 1 product(as these underlined terms are defined in Financial Advisers Act 2008)
- supervised under AML/CFT Act by Financial Markets Authority
- excludes lawyers, accountants, real estate agents who provide these services as an ancillary part of their professional services

What is a trust and company service provider?

- defined in regulation 17 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011
- involves carrying on one or more specified activities as the sole or principal part of your business
- specified activities include:
 - acting as a formation agent of legal persons or arrangements:
 - arranging for a person to act as a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
 - providing a registered office, business address, or a correspondence or an administrative address for a company, a partnership, or any other legal person or arrangement
- definition is wide and not centered around financial activity
- excludes lawyers, accountants, real estate agents who provide these services as an ancillary part of their professional services

What is anti-money laundering and countering the financing of terrorism?

- **not** “money laundering” or “financing of terrorism”
- not intended to eradicate money laundering and terrorist financing, but merely to take steps to frustrate these activities
- the imposition of measures on reporting entities to mitigate the risk of their businesses being abused by criminals,
e.g.
 - identify your clients, and
 - report suspicious transactions with a view to preventing your business from abuse by criminals

Obligations under the Act

Start with sections 56 – 60

In summary:

- appoint AML/CFT officer
- undertake written risk assessment in line with the Act
- draft and implement AML/CFT programme

Role of AML/CFT officer

- if reporting entity has employees, must be an employee
- must report to senior management
- must gain expertise in AML/CFT matters
- must ensure ongoing compliance with AML/CFT programme
- should have sufficient time to devote to duties
- acts as point of contact with supervisor

Risk assessment

- must comply with section 58 (see guideline on supervisors' websites)
- must demonstrate that business has considered its risks, specifically:
 - nature, size and complexity of your business;
 - products and services you offer;
 - the methods by which you deliver products and services
 - client types;
 - countries you deal with;
 - institutions you deal with;
 - material produced by supervisor / FIU
- must be completed before AML/CFT programme started
- should be capable of interpretation by business



Risk assessment – in other words:

- If your business were to be used by money launderers, what scenarios do you envisage?
- Can you envisage multiple scenarios?
- How would you rank them?
- Now take steps to mitigate these risks.

AML/CFT programme

- must comply with section 57
- must be built on the risk assessment
- should establish a compliance culture in your business
- should be understood by all senior management and client facing staff
- see guideline on supervisors' websites

AML/CFT programme

What is it?

A written documents that includes **adequate** and **effective** procedures, policies and controls for –

- vetting relevant staff
- training relevant staff
- complying with customer due diligence requirements (initial and ongoing)
- ongoing transaction monitoring and reporting suspicious transactions
- record keeping
- ensuring AML/CFT procedures, etc remain current

AML/CFT programme (contd.)

- examining and recording:
 - complex or unusually large transactions
 - unusual patterns of transactions that have no apparent commercial rationale
 - any other matter which you consider to be relevant to ML/FT
- monitoring, examining and recording business relationships and transactions from countries that do not have NZ-equivalent AML/CFT requirements;
- preventing anonymity;
- determining when enhanced customer due diligence might be required
- considering who may conduct customer due diligence on your behalf
- ensuring ongoing compliance with AML/CFT programme

Other AML/CFT requirements

- keep risk assessment and AML/CFT programme under review and up-to-date
- audit every two years by independent auditor
- file AML/CFT annual report with supervisor

Extraterritoriality

- Generally, the Act applies to business done in New Zealand
- However, it covers relevant activities conducted by a reporting entity wherever they take place, whether in New Zealand or overseas.
- Representatives trading overseas in the name of the reporting entity must comply with the Act and the reporting entity's AML/CFT programme.
- Consider international conflicts and group procedures.

Penalties for non-compliance

- Civil penalties (per breach)
 - individual – fines of up to \$200,000
 - body corporate – fines of up to \$2 million
- Criminal penalties (per offence)
 - individual – fines of up to \$300,000 and / or 2 years' imprisonment
 - body corporate – fines of up to \$5 million
- Formal warnings, enforceable undertakings, injunctions

Advantages to business

- Commercial advantage as requires businesses to get to know their customer
 - customer less likely to abscond
 - business can understand customer's background and needs
- Facilitates overseas transactions in multiple jurisdictions due to equivalence

Disadvantages to business

- Costs – direct and indirect
- Complexity of AML/CFT regime
- Penalties for breach

DIA's supervisory goals

- Until June 2013
 - make contact with reporting entities
 - educate
- July 2013 onwards
 - continue to educate
 - desk-based audit
 - on-site inspection
 - where appropriate, support OR take action

Also be aware:

- the Act comes into full force on 30 June 2013
- the Act is the principal legislation
- there are several sets of underlying regulations
- further regulations are due to be issued before 30 June 2013
- there are guidelines and other relevant documents on the supervisors' websites.

Disclaimer

This presentation is provided as a general overview and should not be relied on to ensure full compliance with the Act.

Thank you

Any questions?



If you are supervised by DIA, we would welcome the opportunity of meeting with you.