

# Review of New Zealand's AML/CFT Framework

## Terms of Reference

### 1. Background

The *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (the AML/CFT Act) forms a significant part of New Zealand's framework to combat money laundering, terrorism financing, and otherwise keep illicit funds out of the economy. The purposes of the Act are to:

- detect and deter money laundering and terrorism financing;
- to maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force; and
- to contribute to public confidence in the financial system.

Accordingly, the Act facilitates cooperation among reporting entities, AML/CFT supervisors, and various government agencies, in particular law enforcement and regulatory agencies.

Section 156A of the Act contains a requirement for the Ministry of Justice to review the operation of the Act and consider whether any amendments are required. This review must commence no later than 1 July 2021 and must be completed within one year (i.e. by no later than 30 June 2022).

### 2. Purpose and intended outcome

To review the operation of the AML/CFT Act and associated legislative instruments<sup>1</sup> with the aspiration that New Zealand becomes the hardest place in the world for money laundering, terrorism financing, and financing the proliferation of weapons of mass destruction. In doing so, the AML/CFT regime will help maintain a safe, trusted, and legitimate economy.

The review is the beginning of a conversation about how we the AML/CFT regime can become the best it can be. A "gold standard" AML/CFT regime is one which:

- maintains New Zealand's status as having a high quality and effective regime for combatting money laundering and terrorism financing
- does not compromise on the ease of doing business or unduly impacting the lives of New Zealanders, and

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<sup>1</sup> This will include all AML/CFT Regulations as well as any Codes of Practice and Class Exemptions issued under section 157 of the Act.

- contains sufficient tools to enable flexibility and ensure the regime responds to changing risks and new opportunities for addressing harm.

### **3. Objectives**

In accordance with the Review's 'Guiding Principles' set out below, to ensure the AML/CFT Act is effective, efficient, fit for New Zealand, and future proof, the review will examine:

- the performance of the Act and overall regime since 2017;
- whether any amendments to the Act are necessary or desirable; and
- consider recommendations from the Financial Action Task Force in New Zealand's 2021 Mutual Evaluation.

The Review will culminate in a report to the Minister of Justice which may include recommendations for reform of the AML/CFT regime.

### **4. Methodology**

The Review will commence with the publication of these Terms of Reference, the release of an issues paper, and an invitation for written submissions. Later stages of the Review will involve more detailed and targeted engagement with affected sectors and relevant stakeholders, in particular when we are developing recommendations on what changes are required.

In addition to conducting the statutory review, we are also considering what AML/CFT enhancements can be progressed earlier through issuing regulations, subject to Cabinet and Ministerial agreement. This process is occurring in parallel with a separate consultation document issued that relates to those issues. The intention is to provide advice to Ministers in approximately early 2022.

To support the review, we will also establish an Industry Advisory Group from key industry stakeholders and peak bodies. The purpose of this group is to provide the Review Team with advice and feedback about the approach we are taking to the review and is not a substitute to the broader public consultation we intend to conduct. In addition, we will engage with our Treaty Partners and the Privacy Commissioner where issues touch on their respective interests.

The Review will also consider the outcome and recommendations of New Zealand's 2021 Mutual Evaluation conducted by the Financial Action Task Force.

The Review will be conducted in accordance with the Review's Guiding Principles.

## **5. Consultation**

The private sector and the general public are both impacted by the regime's operation and are key stakeholders for the review. The protections afforded by AML/CFT to New Zealand can carry significant compliance costs for businesses. Concurrently, everyone is subject to increased scrutiny and required to provide increased levels of information about their identity in order to access financial services due to AML/CFT.

Accordingly, input from the private sector and public is crucial to a thorough review of the regime. This includes consulting with Māori as Treaty partners to ensure that any impacts the AML/CFT regime may have on rights protected by Te Tiriti o Waitangi are understood and mitigated.

## **6. Reporting**

The Ministry of Justice will present a report to the Minister of Justice in accordance with section 156A of the AML/CFT Act. Section 156A(3) requires the Minister of Justice to present a copy of the report to the House of Representatives as soon as practicable after receiving it.

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## Guiding Principles

The Review will be guided by the following principles as they relate to anti-money laundering and countering financing of terrorism:

- Create a financial **environment which is hostile** to serious and organised crime and national security threats by maintaining and enhancing our ability to detect and deter money laundering, terrorism financing, and financing the proliferation of weapons of mass destruction so that New Zealanders' economic wellbeing and security is protected;
- Appropriately and responsively **manage the risks New Zealand is exposed to** across the system through **clear obligations** on businesses, agencies, and the public which strike the appropriate balance between prescriptive obligations and performance expectations;
- Ensure policy, law enforcement, national security, regulatory and supervisory agencies within the regime have **proportionate and appropriate powers and functions** and are enabled to exercise them effectively and efficiently;
- Facilitate, support, and enhance **domestic and international collaboration and cooperation** between and within the private sector and government;
- Adopt **international best practices** where appropriate in the New Zealand context and ensure that New Zealand fulfils its **international obligations** and addresses matters of **international concern** so that New Zealanders' economic wellbeing and national security is protected;
- Work in **co-operation** with industry, public, and Māori to ensure the effectiveness and efficiency of our AML/CFT regime;
- Ensure the AML/CFT regime produces the **necessary type and quality of information** to support other frameworks which the regime intersects with and assist regulatory, supervisory and law enforcement agencies to combat money laundering, terrorism financing, and serious and organised crime;
- Ensure that **human rights and privacy considerations** are addressed and that intrusions on personal rights and freedoms are no more than is necessary to achieve the purpose of the AML/CFT regime;
- Support **efficient long-term administration** of the AML/CFT regime, including through enabling the use of technology.