ASIA-PACIFIC GROUP ON MONEY LAUNDERING

FINANCIAL ACTION TASK FORCE

Mutual Evaluation Report

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 and by the APG on 15 July 2010 during its annual meeting.

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PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF NEW ZEALAND

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of New Zealand was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by New Zealand, and information obtained by the evaluation team during its on-site visit to New Zealand from 20 April – 1 May 2009, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant New Zealand government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the FATF and APG Secretariats and FATF and APG experts in criminal law, law enforcement and regulatory issues: Ms. Valerie Schilling and Ms. Lia Umans from the FATF Secretariat; Mr. Lindsay Chan from the APG Secretariat; Mr. Boudewijn Verhelst, Deputy Director of the Belgian FIU (CTIF-CFI), Belgium (legal expert); Ms. Noriko Ikemoto, Official of the National Police Agency, Japan (law enforcement expert); Mr. Hüseyin Karakum, Deputy Head of the Financial Crimes Investigation Board (MASAK), Turkey (financial expert); and Mr. Amjad Iqbal, Junior Joint Director of State Bank of Pakistan (Central Bank), Pakistan (financial expert). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in New Zealand as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out New Zealand's levels of compliance with the FATF 40+9 Recommendations (see 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

[1] As updated in February 2009.

EXECUTIVE SUMMARY

4. 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

5. 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.[2]

6. 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.

7. 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.

8. 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.

9. 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 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.

10. 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.

[2] The AML/CFT Bill was enacted on 15 October 2009.

11. 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.

12. 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[3] 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

13. 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.

14. 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

[3] The AML/CFT Bill was enacted on 15 October 2009.

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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.[4]

32. 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 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] 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.

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

33. 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.

34. 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.

35. 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.

36. 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.

37. 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

38. 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 to 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.

39. 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.

40. 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

41. 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.

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

43. 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 chose 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.

44. 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.

45. 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.

46. 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

47. 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.

48. 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.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on New Zealand

Overview

49. New Zealand is located in Oceania, approximately 2 000 kilometres southeast of Australia. New Zealand comprises two main narrow and mountainous islands, the North Island and the South Island, separated by the Cook Strait, and a number of smaller outlying islands. The total land area is approximately 268 000 square kilometres. The population of New Zealand is 4.2 million of which approximately one million live in Auckland.

Economy

50. New Zealand has a small open economy. It can be described as a mixed economy that operates on free market principles. It has sizeable manufacturing and service sectors complementing a highly efficient agricultural sector. Exports of goods and services account for around one-third of real expenditure gross domestic product (GDP) which was approximately 116.6 billion New Zealand dollars (NZD) in 2008. New Zealand's main trading partners are Australia, the United States, Japan, the European Union, Peoples' Republic of China and Chinese Taipei. It also has significant exports to other countries in Asia that have risen significantly in recent years.

System of government

51. New Zealand is a parliamentary democracy with a Westminster-style constitution consisting of key statutes, judicial decisions and constitutional conventions. Although it is a unitary state, it has a highly decentralised administrative structure. The whole state sector includes about 3 000 organisations, of which less than 40 are considered central government departments. The rest are mostly governed by a board or executive either elected or appointed by a minister. These organisations are responsible for implementing their own specific policies with regard to procurement, conflicts of interest and similar matters. Ministers are able to express their expectations through means such as ministerial letters of expectation directed to the managerial board, annual statements of intent agreed with the agency, or an emphasis on ethics in accountability documentation.

Legal system and hierarchy of laws

52. New Zealand's legal system is similar to other common law legal systems in the Commonwealth. In New Zealand, the courts' role is based on the constitutional principle that the judicial decision makers (the Judiciary) are independent of the policy makers (the Executive) and from the legislature (Parliament). Judges make decisions by interpreting the laws that are passed by Parliament. Parliament passes laws that represent policy decisions, which reflect the intention or interests of the citizens collectively. Hence the laws, once passed, are to be enforced as the formal expression of society's standards.

53. The court structure consists of (in descending order of precedence) the Supreme Court, the Court of Appeal, the High Court and over 60 regional District Courts. There are also a number of specialised courts and tribunals including the Family Court, Environment Court and Employment Court. Appeals from these courts and tribunals generally go to the High Court. Decisions of higher courts on issues of law are generally binding on lower courts. Legal counsel and judges frequently refer to analogous case law from the United Kingdom and other Commonwealth jurisdictions; such case law is not binding precedent, but can be highly persuasive. In 2003, New Zealand abolished final appeals to the Judicial Committee of the Privy Council and created a new Supreme Court of New Zealand as the final court of appeal.

54. As in most other Commonwealth jurisdictions, treaties cannot be directly applicable or self-executing. Where a proposed treaty action will create obligations for New Zealand that are inconsistent with existing domestic law, that law must be amended before New Zealand becomes a party. However, on occasions where potential inconsistencies between New Zealand's domestic law and some treaty obligations are identified in court proceedings, New Zealand courts regularly apply a presumption that domestic legislation should be read consistently with New Zealand's international obligations. But if the terms of the legislation are clear and unambiguous they must be given effect even if the result breaches New Zealand's international obligations. In that case, it would fall to Parliament to change the law.

Transparency, good governance, ethics and measures against corruption

Transparency in New Zealand

55. New Zealand has consistently ranked equal top in the Transparency International's Corruption Perception Index. In the 2008 Transparency International report, New Zealand ranked equal first with Denmark and Sweden out of 179 countries. New Zealand has signed and ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. It has also signed, but not yet ratified, the United Nations Convention Against Corruption (UNCAC); work is currently underway on the legislative changes needed before ratification can take place.

56. New Zealand has a commitment to openness and transparency in government. In 1982, New Zealand enacted the Official Information Act 1982 which is based on the principle that all official information should be publicly available. Any citizen, resident, or company in New Zealand can demand official information held by public bodies, state-owned enterprises and bodies which carry out public functions. The body has no more than 20 working days to respond and there are strict criteria for exemptions from releasing information. When requested, the Office of the Ombudsmen can review any denials of access. The Ombudsmen's decisions are binding, and there are limited sanctions for non-compliance. The Governor-General can issue a 'Cabinet veto' directing an agency not to comply with the Ombudsmen's decision. The veto, however, can be reviewed by the High Court. Government consists of national, regional and local spheres, which are distinctive, interdependent and interrelated. The powers of the law-makers (legislative authorities), governments (executive authorities) and courts (judicial authorities) are separate from one another.

Ethics and measures against corruption

57. On 30 November 2007, a new code of conduct, Standards of Integrity and Conduct, was issued by the State Services Commissioner under section 57 of the State Sector Act 1988. The new code superseded the previous code. The Public Sector Code of Conduct applies to all State Services employees.

58. The New Zealand Police (NZ Police) has its own Code of Conduct. This Code of Conduct applies to all New Zealand Police employees including: permanent, temporary or casual employees;

employees on overseas deployment; and persons intending to work for the NZ Police. Some government departments have their own codes of conduct and these are referred to in the relevant sections below.

59. The Office of the Judicial Conduct Commissioner was established in August 2005 to deal with complaints about the conduct of judges. The purpose of the Judicial Conduct Commissioner is to enhance public confidence in, and protect the impartiality and integrity of, the judicial system.

1.2 General Situation of Money Laundering and Financing of Terrorism

a. Money laundering in New Zealand

60. The authorities report that it is difficult to determine the extent of money laundering (ML) in New Zealand. However, every serious offence committed in New Zealand where proceeds of crime are generated could potentially lead to a money laundering offence. Below is a table showing the type and number of serious and other relevant offences prosecuted between 2004 and 2008.

Types and numbers of serious offences and other relevant offences prosecuted between 2004 and 2008

TYPE OF OFFENCE PROSECUTED	2004	2005	2006	2007	2008	TOTAL
Theft	21 794	22 991	23 497	22 767	24 557	**115 606**
Trafficking in stolen goods	4 116	3 912	4 446	4 520	4 569	**21 563**
Grievous bodily harm	1 967	1 948	2 320	2 734	2 819	**11 788**
Robbery	1 629	1 848	2 094	1 985	2 036	**9 592**
Fraud	859	1 908	2 382	1 987	2 269	**9 405**
Forgery	553	486	387	434	659	**2 519**
Drug trafficking	651	307	178	186	237	**1 559**
Extortion	221	173	212	254	269	**1 129**
Illegal restraint	199	157	251	216	286	**1 109**
Murder	246	119	215	181	191	**952**
Kidnapping	130	141	180	159	89	**699**
Participation in a criminal group	210	58	60	38	23	**389**
Environmental crime	63	68	118	114	77	**440**
Counterfeiting	44	30	37	80	7	**198**
Bribery and corruption	39	31	23	9	10	**112**
Terrorism	0	0	0	0	0	**0**
Human trafficking	0	0	0	0	0	**0**
TOTAL	**32 727**	**34 178**	**36 409**	**35 669**	**38 130**	**177 060**

61. There are no formal studies that estimate the cost of proceeds laundered from serious crime in New Zealand. However, there are some financial statistics that provide an indication of the value of funds laundered. For example, the NZ Police estimates that the combined profit from methamphetamine and cannabis sales is between NZD 1.4 billion and NZD 2.2 billion per annum. Regarding seized or confiscated criminal assets that relate directly to serious offending, the Official Assignee for proceeds of crime is holding assets worth over NZD 33 million as at 31 December 2008. Further, the New Zealand Police Financial Intelligence Unit (FIU) received suspicious transaction reports with a combined value of

NZD 272 million during the 2008 calendar year. It is important to note that suspicious transaction reports are based on a subjective view that a transaction is related to money laundering. Based on these examples, it is assessed as likely that the extent of ML in New Zealand equates to over a billion dollars annually.

62. According to NZ Police records, between 31 December 2003 and 30 June 2008, 197 investigation files associated with money laundering were created. Over 75% of the files investigated by the 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, making up 10% of the total ML associated files. Other common predicates were robbery, theft, child pornography, blackmail, and burglary.

63. Most money laundering occurs through the regulated financial system; however, the complexity usually depends on the sophistication of the offenders involved. For example, the laundering of proceeds of crime can range from the sale of a stolen item and the deposit of those monies into a retail bank account, to multiple transfers of illicit drug money through shelf company trust accounts. There appears to be a higher degree of sophistication in laundering the proceeds of crime now than in previous years. The purchases of real estate, the use of professional services and foreign exchange dealers have been popular means to launder funds since 2007. Prior to this, the majority of proceeds of crime were laundered through retail bank accounts. Organised crime groups and individuals in New Zealand have been observed using the following money laundering methods.

Use of the retail banking sector, credit cards, cheques, stored-value cards, promissory notes, etc.

64. The most common method of ML noted by the NZ Police is the simple deposit of funds into a bank account and transferring them to other nominated accounts. Funds can then be moved around the banking system or telegraphically transferred internationally. Stored-value cards are an emerging method of laundering proceeds of crime. Funds are loaded onto a plastic card affiliated with a credit company such as Visa. Depending on the type of card, it can be used to withdraw cash from over a million Visa automatic teller machines around the world. Cards can be reloaded with funds up to an annual limit. In some instances, more than one card can be issued for one account. The purchase of bonus bonds[5] is also noted.

Cash conversion

65. This method simply involves the exchange of lower denomination currency into higher denominations. It is commonly used by organised crime groups and individuals involved in the illicit drug trade who typically sell illicit drugs for low denomination amounts.

Currency exchange

66. This method involves converting either New Zealand currency into foreign currency or vice versa. This method of money laundering has been used by transnational organised crime groups involved in the illicit drug trade in New Zealand.

[5] The Bonus Bonds Trust (BBT), established by the BBT Deed, is New Zealand's largest retail unit trust. The purchaser is issued with units (*i.e.* Bonus Bonds). Each Bonus Bond provides the purchaser with an undivided beneficial interest in the net assets of the BBT and is subject to the terms of the BBT Deed. The BBT differs from most unit trusts in one important and unique respect. Investment returns in the BBT are not distributed proportionally as income. Instead they are placed in a pool and distributed as tax-paid cash prizes to those holders of Bonus Bonds that are selected, at random, in the monthly prize draw.

Purchase of portable valuable commodities (gems, precious metals etc.)

67. There have been examples of individuals with links to organised crime groups using the proceeds of crime to purchase valuable commodities and then storing them in safety deposit boxes or at locations/properties known to the offender. This money laundering method enables the offender to store the value of the proceeds of crime.

Purchase of valuable assets (real estate, vehicles etc.)

68. Using the proceeds of crime to purchase real estate remains a common money laundering method. In 2006, an Auckland-based operation targeted several individuals involved in the manufacturing and distribution of methamphetamine. Proceeds action identified property, including real estate, vehicles and cash in excess of NZD 1 million.

Remittance services/alternative remittance services, and money or value transfer services

69. The use of remittance services, such as Western Union, Moneygram and Asian money remitters in the formal sector are a potential method used to remit proceeds of crime. A recent case in Auckland featured in excess of NZD 3 million from the proceeds of a drugs operation being remitted overseas through a formal remittance service provider. The alternative remittance and underground banking sectors are also potential avenues through which the proceeds of crime can be laundered and that provide added anonymity since the sector is by nature unregulated and largely invisible.

Casino, pub and club gambling, horse racing

70. Intelligence reporting from the Department of Internal Affairs (DIA) notes the use of gaming machines found in casinos, pubs and clubs, and casino table games for ML. The launderer uses proceeds of crime to load credit onto gaming machines and gambles a small amount before cashing out the remaining credit left on the machine. The remaining credit is paid out in either cash or cheque. Proceeds are also laundered at casino table games where a launderer purchases a large number of gambling chips but only gambles a small amount before cashing the remaining chips. Proceeds of crime are often divided amongst associates to launder funds through gambling. This method minimises the chance of detection by casino staff as well as the loss of the proceeds of crime before the funds are cashed out. Typically, launderers bet against each other on games such as black versus red or odd versus even in roulette.

71. Of the 25 219 suspicious transaction reports submitted to the FIU from 2004 to 2008, only 638 (2.5%) were provided by casinos or gaming operators. Known Asian organised crime group members have been identified as frequenting New Zealand's main casinos and are often designated as 'high rollers' or 'VIPs' (very important persons) due to the large amounts they gamble. An operation in 2007 resulted in a number of top VIP gamblers at a major New Zealand casino being charged with drug offences involving millions of dollars. It is believed that some of the proceeds were laundered through the casino.

72. Another popular method used to launder funds is through the use of New Zealand Racing Board 'TAB' accounts. Funds are deposited by numerous people into a non-interest bearing TAB account in one part of the country, only to be withdrawn in another part of the country by the account holder. The TAB now utilises software that can detect whether an account is being used for betting or not. Where the account does not appear to be legitimate, they can put a stop to withdrawals.

Co-mingling (business investment)

73. This method of money laundering involves the proceeds of crime being mingled with shelf companies and sent offshore, or mixed with earnings from a legitimate company. Anyone can register a

company, so long as it has one director (who must meet the qualification requirements of section 151 of the Companies Act). There is no limit on the number of companies of which any one person (so qualified) can be the director. In one suspected money laundering case, over a thousand companies were registered to one individual and operating out of a single address in Auckland.

Use of nominees, trusts, family members or third parties

74. The use of trusts, family members or third parties have been used to assist with hiding the proceeds of crime and are seen as vehicles to protect assets from confiscation.

Use of professional services (lawyers, accountants, brokers etc.)

75. The perceived anonymity of lawyer trust accounts and the protection of lawyer/client confidentiality make trust accounts an attractive option for organised crime groups laundering funds. In one incident, proceeds of crime were deposited into a trust fund and sent to an offshore account held by a shelf company owned by the money launderer. The funds were then repatriated to the launderer in the form of a mortgage for a property. Inquiries revealed the money launderer and his associates were involved in a multi-million dollar ecstasy importation into New Zealand.

b. Financing of terrorism in New Zealand

76. The New Zealand authorities consider the risk of terrorist financing (FT) to be low. This assessment results from the investigation of all suspicious property reports (SPRs) submitted to the FIU pursuant to section 43 of the Terrorism Suppression Act 2002 (TSA). These investigations found no confirmed evidence of FT and, consequently, there have been no prosecutions or convictions for FT in New Zealand. Information and statistics relating to SPRs and their use is included in section 2.5 of this report.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of New Zealand's Financial Sector

77. New Zealand is not a major financial centre. The majority of financial activities are domestic. The New Zealand financial system comprises 18 registered banks, around 105 non-bank deposit takers (consisting of at least 60 finance companies, 10 building societies and 35 credit unions), life insurers and friendly societies. The registered banks, which had a total of NZD 400 billion in assets as at 31 December 2008, are the dominant participants in the sector. The share of the sector held by finance companies and building societies that provide deposit taking and lending services is NZD 18 billion in assets held.

78. One noteworthy aspect of the New Zealand banking system is that it is almost entirely foreign owned, with about 96% of the total banking assets being held by subsidiaries or branches of foreign banks. Of the 18 registered banks, only three smaller banks are New Zealand-owned. Of the 15 foreign-owned banks, 10 are operating as branches of banks incorporated overseas, and five are local subsidiaries of foreign parent banks. The four biggest banking groups, which are controlled by Australian banks, represent 89% of the total assets of the banking system.

79. New Zealand has 43 life insurance companies, with NZD 9 billion of assets, and 135 non-life insurance companies. The unit trusts and other managed funds represent NZD 37 billion in assets. The superannuation sector has a total of NZD 22 billion in assets. The financial system also includes money remitters, bureaux de change and providers of a wide range of financial management and advisory services (for example investment advisers, financial planners, share brokers, and insurance brokers). See below for a table of total numbers of each type of financial institution in New Zealand (as of September 2008), and

the types of financial activities that they perform. In the column for banks, the number of banks performing each particular financial activity is noted. Additionally, the last two rows of the chart indicate whether the financial institution is subject to AML/CFT requirements and has a regulator/supervisor (only registered banks have an AML supervisor at present, which is the Reserve Bank).

Financial activity performed by the different types of financial institutions

FINANCIAL ACTIVITY PERFORMED BY THE FINANCIAL INSTITUTION (SEE FATF DEFINITION OF "FINANCIAL INSTITUTION")	Banks (18)	Non-bank deposit takers 1 (105)	Non-bank non-deposit taking lenders (129+)	Life Insurers (43)	Trustees and Statutory Supervisors (11)	Fund Managers (431)	NZX brokers (26)	Financial Advisers (approx 8,000)	Money changers & MVT services2 (40+)	Custody Services (6+)
Acceptance of deposits and other funds from the public	13	v			v					
Lending3	17	v	v				v			
Financial leasing	7	v								
Transfer of money or value	17								v	
Issuing and managing means of payment	13	v	v							
Financial guarantees and commitments	15	v								
Trading in financial instruments	15					v	v			
Participation in securities issues and related financial services	11	v			v	v	v	v		
Individual and collective portfolio management.	8				v	v	v			
Safekeeping and administration of cash or liquid securities.	10				v	v	v			v
Other investing, administering or managing funds.	9			v	v	v				
Underwriting and placement of life and investment-related insurance.4	5	v		v				v		
Money and currency changing.	10								v	
Is the financial institution subject to AML/CFT requirements (Y/N)?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Designated regulator/supervisor	Reserve Bank	Reserve Bank (but not for AML/CFT purposes)	None		Securities Commission (but not for AML/CFT purposes)				None	

1. Includes finance companies (60+), building societies (10) and credit unions (35).
2. Includes currency exchange (20+) and money remitters (20+).

3. Includes consumer credit; mortgage credit; factoring with or without recourse; and finance or commercial transactions (including forfeiting).

4. Includes insurance intermediaries (broker and agents) listed as financial advisers.

Banks

80. The banks operating in New Zealand vary in the size and nature of their activities. The retail market is dominated by four large banks that are incorporated in New Zealand but foreign owned. To a varying degree, these banks also undertake a range of wholesale market activities, including corporate financing, and trading in financial markets. Two of the foreign bank owners of these banks also have a separately registered branch of the parent bank which undertakes wholesale market activities.

81. There are four other New Zealand incorporated banks, three New Zealand owned and one foreign owned, that operate in the retail and small business markets, although on a much smaller scale than the four largest banks.

82. The other banks present in New Zealand are all branches of large international banks, and the operations of their New Zealand branches are generally relatively small. These banks focus primarily on particular niches where they see themselves as having a comparative advantage, such as specific sectors of the corporate finance market, trading in financial markets and asset-backed financing, with two of them also offering retail products.

83. There is no limitation on the range of financial activities that a registered bank may undertake. However, conditions of registration limit insurance business to 1% of a New Zealand incorporated bank's consolidated assets. This limit does not apply to insurance business carried out by sister subsidiaries of a registered bank.

Non-bank deposit takers

84. Non-bank deposit takers (consisting of finance companies, building societies and credit unions) provide a range of financial services, some more extensive than others, which are similar to many of the financial services provided by registered banks.

85. During 2008, the number of finance companies has reduced substantially due to failures in the sector. There are now only a small number of such entities that are of a significant size or have an investment grade credit rating, with a larger number of surviving smaller institutions.

86. The credit union and building society sector has been more financially stable, although there has been a trend of amalgamations, which has slowly reduced the number of entities. Credit unions and building societies generally limit their activities to deposit taking and personal lending. Most entities in this sector are small in size (less than NZD 100 million).

Life insurance companies

87. Life insurance companies are, currently, not subject to any prudentially-based registration or licensing regime. These entities generally limit their activities to the underwriting of life and investment-related insurance.

Securities dealers

88. There is one registered exchange, the New Zealand Exchange Limited (NZX) which operates the securities market. As at 31 March 2009, there are 232 listed issuers with a total market capitalisation of NZD 57.40 billion. NZX participants, also called brokers, provide services including investment advising and trading services to investors, and securities issuance and underwriting to issuers.

Non-bank non-deposit taking lenders, money remitters and currency exchangers

89. The New Zealand authorities are not in a position to estimate or describe the value or volume of transactions that occur within these financial institutions because these entities are not currently subject to supervision by the authorities. An estimate has not yet been made of the number of entities operating informally in these sectors (*e.g.* without being registered as companies).

90. The bulk of the non-bank money or value transfer sector in New Zealand consists of money remittance entities. To date, the DIA has identified nine remittance companies (including providers of money orders) and 29 money changers; however, since the DIA has no formal register of remitters and money changers, and has no supervisory responsibilities for these sectors at present, there are likely to be more. A large proportion of the money remittance customer base uses remittance entities to send money to family members in other countries. Use of money remittance services is increasing, particularly with increased immigration to New Zealand. Figures from a 2006 World Bank report (At Home and Away: Expanding Job Opportunities for Pacific Islanders through Job Mobility) show remittances to the Pacific region have tripled over the past decade to reach 425 million United States dollars (USD). Tonga, Samoa and Fiji are the largest recipients of remittances in the Pacific, with remittance receipts accounting for a growing percentage of country GDP: 41.9% of Tonga's GDP; 26.3% of Samoa's GDP; and 6.7%of Fiji's GDP. Many of those sending and receiving money remittances are likely to be lower income earners who may not have access to the normal retail banking institutions. Therefore, cash based transactions can be considered the norm in the sector.

91. Although the sector in New Zealand is dominated by a single provider, Western Union, many of the Western Union franchises and outlets are based in local businesses, such as dairies (corner stores) and post shops. There is also evidence of an unknown number of informal providers, at least some of which probably operate a hawala-style remittance system.

b. Overview of designated non-financial businesses and professions (DNFBP)

92. The below table summarises the types of designated non-financial businesses and professions (DNFBP) operating in New Zealand and their estimated number (as at December 2008). It also sets out whether they are subject to AML/CFT requirements and the name of the relevant supervisor/regulator.

Types and numbers of designated non-financial businesses and professions (DNFBP)

Type of institution	Number present in New Zealand	Are these DNFBP subject to AML/CFT requirements (Yes/No)?	Supervisor/Regulator
Casinos/racing	6 + the New Zealand Racing Board	Yes	Department of Internal Affairs (DIA) Gambling Commission (but not for AML/CFT purposes)
Real estate agents	8 878 real estate agents	Yes	Real Estate Institute of New Zealand (REINZ) (but not for

Type of institution	Number present in New Zealand	Are these DNFBP subject to AML/CFT requirements (Yes/No)?	Supervisor/Regulator
			AML/CFT purposes)[6]
Dealers in precious metals and stones	Presently unknown	No	Not applicable
Lawyers	10 669 lawyers 1 580 firms	Yes	New Zealand Law Society (but not for AML/CFT purposes)
Accountants	31 293 chartered accountants	Yes	New Zealand Institute of Chartered Accountants (NZICA) (but not for AML/CFT purposes)
Trust and company service providers (TCSPs)	11 statutory corporate trustees Unknown number of other types of TCSPs	Yes No	No supervisor/regulator for AML/CFT purposes

Casinos

93. New Zealand currently has six casinos. In 2008, the total estimated gross expenditure on casino gambling in New Zealand was NZD 477 million. The total estimated gross amount wagered in casinos in 2008 was NZD 3 974 million. The casino industry in New Zealand is dominated by SKYCITY Entertainment Group Ltd, with casinos in Auckland, Hamilton and Queenstown and an interest in Christchurch Casino. SKYCITY Auckland Casino is by far the largest casino, being bigger than the other five casinos combined. In 2008, SKYCITY Auckland Casino generated gambling revenue in excess of NZD 370 million (compared to about NZD 103 million for the other five casinos put together).

94. Casinos operate gaming machines and a variety of table games including roulette, baccarat, poker, craps, pai gow and the like. All casinos must have a combination of table games and machines, and the number/mix of games is set by the Gambling Commission. A casino operating exclusively gaming machines is unlikely to be permitted under New Zealand law.

95. Casinos are regulated under the Gambling Act 2003 and are covered by the Financial Transactions Reporting Act 1996 (FTRA). Under New Zealand law casinos must be located at physical premises and a casino cannot be ship-based or conduct online gambling in New Zealand. Section 10 of the Gambling Act 2003 provides that no new casino licences may be granted, but that existing licences may be renewed (effectively limiting the number of casinos in New Zealand to the existing six). Section 11 of the Gambling Act stipulates that existing casinos may not increase the opportunities for casino gambling, and section 12 describes some examples of the kind of factors that would constitute such an increase.

Accountants

96. The New Zealand Institute of Chartered Accountants' Annual Report confirms that it has 31 293 members internationally. More than 27 000 accountants are affiliated with the government or with corporate entities without involvement of client's funds. Only 1% of them would be acting as company auditors.

6 The Real Estate Agents Act 2008 replaces the REINZ with a Real Estate Agents Authority, to be established in November 2009.

Dealers in precious metals and stones

97. There are four dealers in bullion operating in New Zealand. However, since dealers in precious metals and stones are generally unregulated for AML/CFT purposes, it is not known how many other types of wholesale or retail dealers in precious metals and stones are doing business in New Zealand.

Lawyers

98. The total number of New Zealand Law Society members was 10 669 (1 424 Barristers Sole and 9 245 Barristers and Solicitors), as of 31 December 2008. These members were part of 1 580 law firms.

Real estate agents

99. The Real Estate Institute of New Zealand reported that it had 8 878 real estate agents as of 31 December 2008.

Trust and company service providers

100. There are 11 corporate and statutory trustees which fall within the FATF definition of a "financial institution" pursuant to the FTRA. Other types of trust and company service providers are generally unregulated for AML/CFT purposes. Consequently, it is unknown how many such entities exist.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

Legal persons and other types of entities

101. Bodies corporate in New Zealand are incorporated or registered under the following Acts: the Building Societies Act, the Charitable Trusts Act, the Companies Act, the Co-operative Companies Act, the Incorporated Societies Act, and the Industrial and Provident Societies Act. Furthermore, the following Acts allow voluntary associations to register: the Friendly Societies and Credit Unions Act and the Unit Trusts Act. Financial reporting is regulated by the Financial Reporting Act.

102. ***Companies:*** A company is an incorporated entity. Companies usually have a profit-making motive; however, this is not a prerequisite. A company can also be used as a non-profit vehicle. In order to incorporate a company, an application for incorporation must be completed and lodged with the Registrar of Companies together with consents from the company's directors and shareholders. The Registrar will then issue a certificate of incorporation. The provisions of the Companies Act govern companies. However, a company can adopt a constitution that alters some of the provisions of the Act. The Securities Commission oversees the disclosure required to be made by any person issuing securities to the public. The Companies Act, which is overseen by the Registrar of Companies, also places obligations on the directors of companies and specifies what accounting records companies must keep. An auditor must be appointed unless a unanimous resolution is passed by the company's shareholders not to do so.

103. ***Partnership (including Limited Partnership):*** A partnership is not a separate legal entity. It is a relationship between two or more persons carrying on business in common with a view to profit and it is governed by the provisions of the Partnership Act. A limited partnership is a separate legal entity, with two classes of partners. These are: 1) general partners, who are jointly liable for the debts and liabilities of the limited partnership if it is not able to satisfy them; and 2) limited partners, who have limited liability. General partnerships cannot be incorporated. A limited partnership may, however, apply for registration. In order to register, the general partner(s) must certify that the proposed partners of the limited partnership have entered into a partnership agreement and that it complies with the Limited Partnerships Act. In all cases the partnership deed or agreement serves as the governing document. The Securities Commission

oversees the disclosure required to be made by any person issuing securities to the public. The Registrar of Companies is responsible for the registration of limited partnerships and has investigative powers in respect of limited partnerships. General partnerships are not required to prepare financial statements and have those statements audited. However, in order to prepare an income tax return, the partnership will generally need to have financial statements prepared. Information about ownership of general partnerships does not have to be disclosed to the public. Limited partnerships are required to prepare financial statements, and have those statements audited, under section 75 of the Limited Partnerships Act. This information (amongst other information) must be provided to the Registrar of Companies. Information about the limited partnership is subsequently available on a publicly accessible register, and will include the name and address of the limited partnership and each general partner (but will not include details of the limited partners, although this information is filed with the Registrar).

104. ***Other types of entities:*** The following other types of bodies corporate also exist and may be registered: credit unions, friendly societies and incorporated societies. These are discussed in more detail in section 5.3 of this report.

Legal arrangements

105. ***Express trusts***: A trust is not a separate legal entity. It is an arrangement under which persons (trustees) hold property for the benefit of others (beneficiaries). Trusts that have exclusively charitable purposes are known as charitable trusts. Trusts are governed under the Trustee Act 1956. If a trust is charitable, its trustees may choose to incorporate as a Board under the Charitable Trusts Act 1957. The trustees of a charitable trust may also apply to be registered under the Charities Act 2005, however, that Act does not confer any legal status on the trustees. Trusts that are not charitable cannot register. A trust may be established by deed appointing the trustee and providing the trustee to hold assets for the benefit of a beneficiary. Trustees have a duty to account to the trust's beneficiaries. This generally requires the trustees to have financial statements prepared on an annual basis. Trustees are under a duty to account and should have financial statements prepared on an annual basis. Under the Charitable Trusts Act, the Attorney-General provides oversight in relation to the administration of charitable trusts.

106. ***Unit trusts:*** Unit trusts are investment vehicles set up to enable members of the public, as beneficiaries of the trust, to participate in the income and gains of money or property held by a trust. The provisions of the Unit Trusts Act govern unit trusts. Unit trusts have to register a prospectus if they are offering securities to the public. The Securities Commission oversees the disclosure required to be made by any person issuing securities to the public. Any issuer issuing unit trusts to the public is required to have a trust deed administered by a trustee. Unit trusts are required to register with the Companies Office and to file annual reports with the relevant supervisory authority.

107. ***Superannuation schemes and KiwiSaver schemes:*** A superannuation scheme is much like a unit trust, although it must be established principally for the purpose of providing retirement benefits. A superannuation scheme is governed by the Superannuation Schemes Act. A Kiwisaver scheme is a specialised form of a superannuation scheme governed by the provisions of the KiwiSaver Act. The Government Actuary is responsible for registering KiwiSaver schemes and superannuation schemes. KiwiSaver schemes and superannuation schemes are required to file annual reports with the relevant supervisory authority. In respect of superannuation schemes, trustees must provide the Government Actuary and members with an annual report. The Government Actuary is tasked with regulatory oversight of superannuation and KiwiSaver schemes, and has powers to direct trustees to operate such schemes in a specified manner.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

108. New Zealand, which is a member of both the Financial Action Task Force (FATF) and the Asia-Pacific Group on Money Laundering (APG), is currently completing an extensive review of its AML/CFT regime, and the legal framework that underpins it. As part of this process, officials assessed and consulted on options for compliance with the FATF Recommendations that seek to avoid excessive compliance burdens and are appropriate to New Zealand's circumstances. Following consultation with the industry, in September 2008, the Cabinet approved a reform of New Zealand's AML/CFT regime, based on several objectives and principles. The objectives are to: *i)* detect and deter ML/FT; *ii)* maintain and enhance New Zealand's international reputation through compliance with the FATF Recommendations and other international instruments, such as the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (FT Convention); and *iii)* contribute to public confidence in the financial system.

109. The specific principles underlying the reforms are:

- Compliance with international obligations relating to AML, unless there are very compelling reasons why particular obligations cannot be met at this time, or exemptions or lower levels of compliance are warranted.

- A 'best fit' for New Zealand, justified on the basis of a cost, benefit and risk analysis that takes into account costs on government and business that are justified by the likely benefits, the level of ML risk in New Zealand, and the likely consequences of non-compliance with the FATF requirements.

- Compatibility with Australian regulatory requirements where consistent with New Zealand's circumstances and requirements.

- Consistency with AML/CFT legislation in FATF member countries to minimise compliance costs for international investors and financial institutions, unless this is inconsistent with New Zealand's circumstances and requirements.

- Consistent regulation and supervision across sectors where feasible, while at the same time recognising sector differences.

- Transparent regulation, rules and sector guidance that are accessible and provide certainty to business and supervisors.

- Effective and coordinated implementation (including information-sharing mechanisms) to achieve the overall objectives of the framework.

- Regulation and supervision that go no further than is necessary to achieve the stated objectives and which are implemented in ways that minimise compliance costs on industry to the extent feasible.

110. Legislation will be required in order to implement these changes. In September 2008, a draft version of the Anti-Money Laundering and Countering Financing of Terrorism Bill (AML/CFT Bill) was released for public consultation. After this consultation, a slightly altered Bill was introduced in Parliament for its first reading on 25 June 2009. It was referred to Select Committee thereafter with a report back date

to the House on 15 September 2009.[7] It is contemplated that the new legislation will incorporate the following elements that have been agreed, in principle, by the Cabinet:

- Compliance obligations in two phases, firstly financial institutions and casinos, and secondly certain types of non-financial businesses and professions.
- A regime for supervision, monitoring and enforcement involving multiple supervisors including the Reserve Bank, the Securities Commission, and the DIA.
- An enforcement regime including new civil and criminal offences.
- A set of core requirements including customer due diligence (CDD), suspicious transaction reporting, AML/CFT policies and practices, and a risk-based approach to allow resources to be allocated to activities in a way that reflects risk and minimises compliance costs.
- A set of objectives and criteria to guide regulatory development and implementation.

b. The institutional framework for combating money laundering and terrorist financing

Policy Agencies

111. The ***Ministry of Justice*** is responsible for criminal justice policy and development of the criminal law. It is the lead policy agency with respect to AML/CFT. It administers the FTRA and is responsible for the AML/CFT reform project. The Ministry also provides advice to the Minister of Justice who, under the Extradition Act, has various roles in relation to extradition requests (see section 6.4 of this report).

112. The ***Ministry of Economic Development (MED)*** develops policy relating to the regulation of New Zealand's capital markets, conduct of its participants, and the enforcement bodies that oversee the market, and provides advice to the Minister of Commerce. The MED administers financial sector legislation, including the Securities Act, the Securities Markets Act, the Financial Advisers Act, the Financial Services (Registration and Dispute Resolution) Act, and the Companies Act. The MED monitors the Securities Commission and incorporates the Registrar of Companies and the Official Assignee, which are described in more detail below.

113. The ***Ministry of Foreign Affairs and Trade (MFAT)*** is the Government's lead adviser and negotiator on foreign and trade policy, and diplomatic and consular issues. MFAT also provides legal advice on international issues. Under international practice, it is the formal channel for the Government's communications to and from other countries, and international organisations.

Criminal Justice and Operational Agencies

114. The ***Financial Intelligence Unit (FIU)*** was established by the New Zealand Police Commissioner within the NZ Police in 1996. It is the national centre that has been designated by the Commissioner of Police to receive suspicious transaction reports (STR) and border cash reports (BCR) pursuant to the FTRA, and suspicious property reports (SPR) pursuant to the TSA.

115. The ***New Zealand Police (NZ Police)*** is a unified national police agency and the primary law enforcement agency with responsibility for all community safety, road policing and investigations. It is

[7] On 15 October 2009, the new Anti-Money Laundering and Countering Financing of Terrorism Law was enacted with a view to implementing the reform of New Zealand's AML/CFT regime.

responsible for the investigation and prosecution of ML and offences under the TSA. The following specialised departments/agencies within the NZ Police are also relevant for the purposes of AML/CFT:

(a) The Criminal Investigations Branch (CIB) is primarily responsible for serious crime investigations, including ML/FT.

(b) The National Intelligence Centre (NIC) became operational in March 2009 and is the focal point for collecting and analysing intelligence in relation to New Zealand's criminal environment, including ML/FT. The FIU is located within the NIC.

(c) The Organised and Financial Crime Agency of New Zealand (OFCANZ) was established in July 2008 to provide a co-ordinated approach to organised crime in accordance with the Government's Organised Crime Strategy. The Agency takes a strategic approach to disrupting organised crime, working with information and resources from across government, in particular the Agency's partners with law enforcement, border and regulatory agencies, and financial authorities, as well as other government departments. Given that its focus is organised crime, much of its work may have a money laundering component.

116. The ***New Zealand Customs Service*** is principally concerned with managing security and community risks associated with the flows of people, goods and craft in and out of New Zealand, and by collecting customs and excise revenue. Customs officers operate at international airports and seaports while the Customs Service also has specialised investigations and intelligence units based in the three main centres. The Customs Service plays a major role in detecting, investigating and preventing the importation of drugs and other prohibited goods into New Zealand, and is also involved in commercial fraud investigations into possible breaches of the Customs and Excise Act 1996 (CEA).

117. The ***Solicitor-General*** is the principal legal adviser to government and the head of the ***Crown Law Office***. Criminal trials are prosecuted by Crown solicitors, who are private legal practitioners warranted to act on behalf of the Crown by the Solicitor-General. Money laundering and terrorist financing prosecutions are matters that would likely be proceeded against by indictment and the Crown would be responsible for the conduct of the criminal proceedings. Additionally, under the Proceeds of Crime Act (POCA) the Solicitor-General is responsible for bringing proceedings for restraint and forfeiture of criminal proceeds, which may follow any ML/FT criminal proceedings. Crown Law is also the agency responsible for processing requests relating to mutual legal assistance under delegated authority from the Attorney-General. The Crown Law Office also has responsibility for the court proceedings associated with certain extradition requests, although the final decision on extradition is made by the Minister of Justice.

118. The ***Official Assignee*** is located within the Insolvency and Trustee Service of the MED. The Official Assignee is responsible for the seizure, confiscation, management and disposal of assets under the POCA and the TSA. The Official Assignee manages these assets under the POCA and the TSA until they are either released or disposed of. The Official Assignee has a specialist Proceeds of Crime Unit specifically set up on his behalf to take custody and control of restrained and confiscated property by the order of the court.

119. The ***Serious Fraud Office (SFO)*** is a government department established under the Serious Fraud Office Act and is under the control of the Director of Serious Fraud, who reports to the Attorney-General. The SFO is responsible for the investigation and prosecution of serious or complex fraud. These investigations may have a money laundering component.

Financial Sector Agencies

120. The ***Reserve Bank of New Zealand*** is New Zealand's central bank. Its purpose and activities are governed by the Reserve Bank Act. Its overall purposes are to promote price stability, and a sound and efficient financial system. It does this by formulating and implementing monetary policy, managing the issuance of currency, overseeing the payment system, regulating non-bank deposit takers, and regulating and supervising the banking sector. Supervision of non-bank deposit takers is undertaken by trustee supervisors. New legislation providing for prudential supervision of insurers is currently under development. It has been agreed that the Reserve Bank will be the prudential supervisor for insurers.

121. The ***Securities Commission*** is an independent Crown Entity and reports to the Minister of Commerce. There are no matters on which the Commission is required to consult or notify the Minister of Commerce before exercising its statutory functions and powers. However, the Commission works with the Minister and MED in accordance with its statutory functions and powers on policy, regulatory matters, law reform and appropriations. It is New Zealand's main regulator for investments and is responsible for the enforcement, monitoring and oversight of the securities markets in New Zealand. It has a direct supervisory role over New Zealand's only officially registered exchange, the New Zealand Exchange Limited. The Securities Commission will also assume supervisory responsibility for financial advisers pursuant to the Financial Advisers Act which is expected to be fully implemented in 2010. Currently, the Securities Commission is not designated to supervise compliance with AML/CFT requirements, although the draft AML/CFT Bill recently submitted to Parliament contemplates that the Securities Commission will assume this responsibility in relation to issues of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers.[8]

122. The ***New Zealand Exchange Limited*** is a listed public company and the only registered stock exchange in New Zealand. It is statutorily required (pursuant to the Securities Markets Act) to conduct the share market in accordance with its conduct rules. In addition to the officially registered exchange, there also exists a trading facility operating under the name "Unlisted" that is not a registered exchange under the Securities Markets Act[9].

Designated Non-Financial Businesses and Professions (including SROs)

123. The ***Department of Internal Affairs (DIA)*** is the supervisor of casinos and other forms of gambling under the Gambling Act. This supervisory responsibility extends to monitoring compliance with AML procedures under Minimum Operating Standards for casinos, issued under the Gambling Act, but consistent with the Financial Transactions Reporting Act. Gambling inspectors employed by DIA are responsible for audit, investigation and enforcement functions in relation to compliance with the Gambling Act.

124. The ***Gambling Commission*** is a quasi-judicial body established under the Gambling Act and appointed by the Governor-General on the recommendation of the Minister of Internal Affairs. Among other things, it is responsible for licensing casinos and hearing applications in relation to casino licences. It also acts as an appeal body against certain decisions of the Secretary for Internal Affairs. The Gambling

8 The AML/CFT Bill was enacted by Parliament on 15 October 2009.

9 Unlisted is owned and operated by a joint venture company. Brokers on this market must be licensed in New Zealand as share brokers. Issuers remain bound by the obligations contained in their constitutions, the Securities Act, the Companies Act and the Financial Reporting Act, and by common law. Investors in companies quoted on Unlisted are not protected by the Securities Market Act's protections relating to insider trading, continuous disclosure, directors' and officers' relevant interest disclosure or substantial security holder disclosure.

Commission's administrative staff is employed by the DIA, but the Commission itself is independent from the Department in terms of exercising its functions and powers.

125. The ***New Zealand Racing Board*** (NZRB) is a government-appointed body established by statute (the Racing Act). It operates both racing and sports betting in New Zealand and has retail TAB outlets with 1 200 tote terminals and 800 on-course tote terminals. The annual gambling turnover in 2008 was over NZD 1.5 billion. The New Zealand Racing Board has net assets of over NZD 103 million.

126. The ***Real Estate Institute of New Zealand Incorporated*** (REINZ) is the current regulatory body for the real estate industry recognised under the Real Estate Agents Act 1976.[10] Membership to the REINZ is compulsory under the 1976 Act for all licensed real estate agents. The Real Estate Agents Licensing Board is responsible for licensing real estate agents. The REINZ has no specific AML/CFT supervisory function but handles and investigates any complaints about real estate agents for any breaches of its code of ethics or the Real Estate Agents Act 1976. The REINZ refers more serious complaints to the Licensing Board.

127. The ***New Zealand Law Society*** is provided for in the Lawyers and Conveyancers Act. The society regulates the behaviour of all lawyers, but is not a designated supervisor for AML/CFT purposes. It can, however, deal with complaints and initiate disciplinary action where lawyers breach their obligations under New Zealand law, including the Financial Transactions Reporting Act (FTRA).

128. The ***New Zealand Institute of Chartered Accountants*** (NZICA) promotes controls and regulates the profession of accountancy in New Zealand. The Institute has no specific AML/CFT supervisory function, but can deal with complaints and initiate disciplinary action where accountants breach their obligations under New Zealand law, including under the FTRA.

Registries and Bodies Governing Legal Arrangements

129. The ***Companies Office*** is located within the MED. It houses the various registries with respect to different legal entities operating in New Zealand. Each of these registries has different powers and requirements which are discussed in detail in section 5 of this report. The registries include: the Register of Companies; Register of Building Societies; Register of Friendly Societies and Credit Unions; and Register of Incorporated Societies.

130. The ***Charities Commission*** is responsible for non-compulsory registration of charities and ensuring compliance with the Charities Act. It has a variety of functions that are outlined in section 5.3 of this report. The performance of the Charities Commission is monitored on behalf of the Ministers by the DIA. The DIA also administers the Charities Act.

c. Approach concerning risk

[10] The Real Estate Agents Act 2008 creates a new regulatory regime for the real estate industry which commences on 17 November 2009. The new Act removes regulatory functions from the REINZ and abolishes the Real Estate Agents Licensing Board. The new Act establishes the Real Estate Agents Authority as a Crown Entity, to provide independent occupational oversight of the real estate industry. The Authority will be responsible for licensing and regulation of the real estate industry in New Zealand. Although AML/CFT supervision is not a specific function of the Authority, it will have the function of investigating and initiating proceedings with respect to offences under the 2008 Act and any other enactment. New regulations governing the auditing of agents trust accounts are required to be promulgated and will commence on 17 November 2009. These regulations will replace the current Real Estate Agents Audit Regulations 1977.

131. New Zealand has adopted a risk-based approach to ensure that the resources and attention of reporting entities, supervisors, other competent authorities and the FIU are allocated to activities in a way that reflects risk. For example, higher risk areas receive proportionately more attention and resources as compared to lower risk activity. This has underpinned New Zealand's approach to AML/CFT and will continue to do so in the reforms ahead. Cabinet has confirmed the adoption of a risk-based approach to implementing the FATF Recommendations, and this will be implemented in the legislation that was approved by Cabinet and introduced in Parliament for its first reading on 25 June 2009.

132. The approach is precautionary in nature, concerned with minimising 'weak links' within the system. Evidence does not support New Zealand entirely exempting any category of financial institution or DNFBP from AML/CFT requirements. Over time, a National Risk Assessment will provide a framework for calibrating reporting entity activity and supervisory risk management in respect of particular types of financial institutions, customers, products and transactions, but it is unlikely that evidence will emerge to exempt entire categories.

133. It is also planned that the various actors within the AML/CFT system will undertake risk assessments depending on their respective roles. The framework will provide for supervisors and the FIU to clearly communicate expectations to reporting entities including by way of guidelines, public awareness campaigns (*e.g.* run in partnership with industry bodies) and training programs. Presently, the risk-based approach underpins the FIU's system for discerning risks (*e.g.* categories of reporting entity or product), which in turn informs its monitoring and setting of benchmarks (provided via guidance).

d. Progress since the last mutual evaluation

134. New Zealand has been making progress towards reforming the AML/CFT regime since the previous mutual evaluation. The TSA was amended in 2005 and 2007 in response to the FATF's recommendation that New Zealand should extend the terrorist financing offence to ensure that all funding of known or suspected terrorists or terrorist organisations is covered. At the same time, the reporting obligation was extended to include transactions suspected of relating to terrorist financing.

135. As well, new legislation and regulations were passed to strengthen the regulatory and supervisory framework for the financial sector. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP/RDR Act) was passed in September 2008 and is scheduled to come into force at the end of 2009/beginning of 2010. This Act will prohibit any person from being (or holding themselves out to be) in the business of providing financial services unless they are registered under the Act. Moreover, the Financial Advisers Act, which was also passed in September 2008 and which is expected to be fully implemented by 2010, will require all persons who give advice or undertake investment transactions on products such as securities, or provide financial planning services, to be authorised by the Securities Commission who will assume supervisory responsibility for the sector. The Reserve Bank of New Zealand (Registration and Supervision of Banks) Regulations 2008 make policies, systems and procedures to detect and deter money laundering and the financing of terrorism a matter that the Reserve Bank can take into account when it conducts prudential supervision of banks came into effect in 2008.

136. Additionally, the now-passed Criminal Proceeds (Recovery) Act will come into force on 1 December 2009. This Act reforms the POCA criminal forfeiture regime, repeals the POCA and introduces a civil forfeiture regime for confiscating criminal proceeds. Under the POCA, property that either represents the profits of criminal offending or was used to facilitate the commission of crime can be confiscated once a criminal conviction is secured. The major change once this Act is implemented is that a criminal conviction would no longer be required for property representing the proceeds of crime or the value of unlawfully derived income to be confiscated.

137. Other legislative changes have also been prepared and are currently before Parliament—in particular the Search and Surveillance Powers Bill. A draft version of the AML/CFT Bill, which will replace the FTRA, went through a public consultation process in September and October 2008. A final Bill was introduced in Parliament for its first reading on 25 June 2009. These proposed legislative changes are intended to bring New Zealand into greater compliance with the FATF Recommendations.[11]

138. New Zealand has also been working to reinforce the role of its FIU and has taken several actions to address some of the recommendations made in 2003. These actions relate to: *i)* enhancing the FIU's information technology (IT) capability; *ii)* increasing its human resources; *iii)* conducting strategic assessments of ML enforcement and FT vulnerabilities; and *iv)* providing feedback and guidelines on the reporting obligation.

[11] The AML/CFT Bill was enacted by Parliament on 15 October 2009.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R. 1 & 2)

2.1.1 Description and Analysis

Recommendation 1

139. New Zealand has criminalised money laundering under both the Crimes Act and the Misuse of Drugs Act. Three of these offences criminalise the laundering, acquisition and possession of proceeds generated by a serious crime (Crimes Act ss. 243, 244, and 245). The others (which mirror the first three offences) criminalise the laundering, acquisition and possession of proceeds of drugs offences (Misuse of Drugs Act s. 12B).

Consistency with the United Nations Conventions

140. New Zealand's money laundering 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).

Engaging in a money laundering transaction with proceeds of a serious crime:

141. Section 243(2) of the Crimes Act provides that money laundering is committed where the defendant engages in a "money laundering transaction".

(a) ***Physical element (actus reus):*** The defendant engaged in a money laundering transaction by dealing with the property or assisting another person (directly or indirectly) to deal with the property. The term "deal with" is defined very broadly, meaning to deal with the property in any manner and by any means, which includes, without limitation, disposing of the property, transferring possession of the property, bringing the property into New Zealand or removing the property from New Zealand (s. 243(1)).

(b) ***Purposive element:*** The defendant engaged in the money laundering transaction for the purpose of concealing the property or enabling another person to conceal it (s. 243(4)).

(c) ***Mental/moral element (mens rea):*** The defendant knew, believed, or was reckless as to whether all or part of the property is the proceeds of a serious offence.

(d) ***Predicate criminality:*** The proceeds were generated from a serious offence (i.e. an offence punishable by a term of five years imprisonment or more).

142. Although the provision refers to engaging in a money laundering "transaction" (s. 243(4)), the behavioural element is broader than conducting pure (financial) transactions, as the term covers any dealings with property that is proceeds of a serious offence. The definition of "deal with" in section 243 is sufficiently broad to include the concepts of conversion or transfer, concealment or disguise, and use, as is required by the Conventions. However, the fact that section 243 always requires proof that the ML activity

was committed for the purpose of concealing or helping someone else conceal the property raises the following issues.

143. To be fully consistent with the Conventions, the ML offence must cover the "conversion or transfer" of property for the purpose of: *i)* concealing or disguising its illicit origin; or, alternatively, *ii)* helping someone who is involved in the commission of the predicate offence to evade the legal consequences of his/her action. Section 243(4) explicitly covers the conversion/transfer of property for the purpose of concealing it. Section 243(4) also explicitly covers the conversion/transfer of property for the alternative purpose of helping someone else conceal it – a formulation that covers helping someone to evade the legal consequences of their action, provided that there is also a concurrent intention to conceal. This means that the only possible gap in the offence would be the narrow act of converting/transferring property, with no intention to conceal, but with the intention to help someone else to evade the legal consequences of his/her action. Nevertheless, the New Zealand authorities assert that even this unlikely possibility could be captured by laying charges under section 71[12] (accessory after the fact) and section 117[13] (obstruction of justice) of the Crimes Act. Overall, the assessment team is satisfied that New Zealand has criminalised all aspects of the conversion/transfer of proceeds.

144. In relation to "concealment or disguise", the only mental element required by Recommendation 1 is knowledge that the property is the proceeds of crime. According to section 243(1), "conceal" includes "to conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property", which largely mirrors the wording used in the Conventions. Also, the mere fact of converting the proceeds into another form is considered to be an act of concealment, including the intent to conceal (s. 243(1) – Wong v R (buying gambling chips), R v Liava'a (currency exchange)). Consequently, although the "concealment and disguise" activity is covered in case of conversion of the property, in all other circumstances, additional proof is required of the mental element that the ML activity was committed for the purpose of concealing or helping someone else to conceal the property.

Engaging in a money laundering transaction with proceeds of a specified drug offence:

145. The laundering of proceeds of specified drugs offences by engaging in a money laundering transaction is criminalised in section 12B(2) of the Misuse of Drugs Act. This offence mirrors the offence under the Crimes Act 1961, and suffers from the same technical deficiency.

Acquisition, possession and use of the proceeds of a serious offence

146. Recommendation 1 requires countries to criminalise the simple "acquisition, possession or use" of criminal proceeds where the only moral condition is the knowledge of the criminal origin of the proceeds. New Zealand has criminalised these activities in sections 246 and 243(3) of the Crimes Act.

147. Section 246 of the Crimes Act sets out a broad receiving offence that applies to "property", including "real and personal property, and any estate or interest in any real or personal property, money, electricity, and any debt, and any thing in action, and any other right or interest" (Crimes Act s. 2), in following terms:

(a) ***Physical element (actus reus***): The defendant receives any property stolen or obtained by any other crime.

12 Section 71(1): An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.

13 Section 117: Every one is liable to imprisonment for a term not exceeding 7 years who—…(e) pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction.

(b) ***Mental/moral element (mens rea):*** The defendant knew or was reckless as to whether the property had been stolen or illegally obtained.

(c) ***Predicate criminality:*** The received property was stolen or obtained by any other crime (*i.e.* criminal proceeds).

148. The act of receiving is considered completed "as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of, or control over, the property or helps in concealing or disposing of the property (s. 246(3)). In view of the broad range of activity covered by this "receiving" provision, it may be accepted that the acts of "knowing" acquisition and possession of criminal proceeds are criminalised to the satisfaction of the requirements of the relevant Conventions. Logically, that would also be the case for the "knowing" use of criminal proceeds, as this presupposes the taking into possession or having control over the property. The notion of "property" in the context of the receiving offence differs from the broader definition that applies for proceeds that may be the subject of money laundering (s. 243(1)), in that it does not cover the substitute or indirect assets.[14] However, this issue is mitigated because section 243(3) of the Crimes Act covers the acquisition, possession and use of both indirect and direct proceeds.

149. Section 243(3) of the Crimes Act makes it an offence to obtain or possess proceeds of crime.

(a) ***Physical element (actus reus):*** The defendant obtains (*i.e.* acquires) or has in his/her possession any property which is the proceeds of a serious offence that was committed by another person.

(b) ***Purposive element:*** The defendant obtained or possessed the property with the intent to engage in a money laundering transaction for the purpose of concealing or helping to conceal that property.

(c) ***Mental/moral element (mens rea):*** The defendant knew, believed, or was reckless as to whether all or part of the property is the proceeds of a serious offence.

(d) ***Predicate criminality:*** The proceeds were generated from a serious offence (*i.e.* an offence punishable by a term of five years imprisonment or more).

150. In relation to "acquisition, possession and use", the only mental element required by Recommendation 1 is knowledge that the property is the proceeds of crime. This is consistent with section 246, but not consistent with section 243(3) which also requires proof of an additional intentional element (*i.e.* the intent to engage in a ML transaction for the purpose of concealing or helping someone else conceal the property). Overall, this is a technical deficiency in relation to the criminalisation of the sole acquisition, possession and use of indirect proceeds by third party money launderers.

Acquisition and possession of the proceeds of a specified drug offence

151. The acquisition and possession of proceeds of specified drug offences is criminalised in section 12B(3) of the Misuse of Drugs Act. This offence mirrors the offence under the Crimes Act, and suffers from the same technical deficiency.

[14] "The property received must therefore be the property stolen or illegally obtained (or a part of it), not some other item for which the illegally obtained property has been exchanged"*; R v Lucinsky (1935)*

Definition of proceeds

152. All of New Zealand's money laundering offences extend to proceeds which are defined to include any "property" that is derived or realised, directly or indirectly, by any person from the commission of a serious offence or a specified drug offence (Crimes Act s. 243(1); Misuse of Drugs Act s. 12B).

153. "Property" is defined in both the Crimes Act and the Misuse of Drugs Act as real or personal property of any description, whether situated in New Zealand or elsewhere, whether tangible or intangible, and includes an interest (whether legal, equitable or any other right) in any such real or personal property. The notion of "proceeds" consequently covers all sort of benefits in whatever form, be it immediate products, substitute assets or investment yields. However, as described above, the definition in article 246 (receiving offence), does not apply to indirect proceeds.

154. It is not necessary that a person be convicted of a predicate offence to establish that assets were the proceeds of a predicate offence and to convict someone of laundering such proceeds. Furthermore, it is no defence that the accused believed that the property was the proceeds of a particular serious offence (or specified drug offence) when, in fact, it was the proceeds of another serious offence (or specified drug offence) (Crimes Act s. 243(5); Misuse of Drugs Act s. 12B(5)). Money laundering is a stand-alone offence that does not require proof of a specific predicate offence, *i.e.* a discrete serious offence, although the prosecution does need to demonstrate that the proceeds are derived from a serious offence as such (R v Allison)[15].

Predicate offences

155. 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. A "serious offence" is an offence punishable by imprisonment for a term of five years or more under New Zealand law (*i.e.* an indictable offence) (Crimes Act s. 243(1)). A "specified drug offence" is an offence pursuant to sections 6, 9, 12A or 12B of the Misuse of Drugs Act, and includes importing, exporting, producing, manufacturing, supplying, administering, selling, offering to sell or possessing a controlled drug (Class A, B or C) and cultivating a prohibited plant (*e.g.* marijuana) (Misuse of Drugs Act s. 12B(1)).

156. All 20 FATF designated categories of predicate offences are predicate offences for money laundering in New Zealand (see Annex 5 of this report for a list of predicate offences). However, there is a technical deficiency in that there is an insufficient range of offences in one designated category of predicate offence – illicit arms trafficking. Only the illicit trafficking of biological, chemical and nuclear weapons are predicate offences for ML. Although the importation of firearms or parts of firearms without a permit, is criminalised, the offence is only punishable by a maximum penalty of one year imprisonment (Arms Act 1988 s. 16). Consequently, it does not constitute a "serious offence" and, therefore, a predicate offence for money laundering.[16] The predicate offences for money laundering specifically and expressly

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15 "What the Crown must prove beyond reasonable doubt is that all or part of the property, the subject of the money laundering transaction, is the proceeds of a serious offence and that the accused either knew or believed that to be the case. Proof that the property was the proceeds of a particular proved serious offence is not necessary….".Proof that the property is the proceeds of a serious offence can be by inference properly drawn from the evidence. (R v Allison, 15/8/05, CA20/05).

16 To be noted that the Chemical Weapons Act (s7), Anti Personnel Mines Act (s5, 6, 8) and New Zealand Nuclear Weapons Free Zone, Disarmament and Arms Control Act restrict trading and carry a greater that 5 year penalty. Also, the Arms Amendment Bill (No.3) has had its first reading in Parliament and has been referred to the Law and Order Committee. It addresses the minimum legislative requirements for New Zealand's compliance with the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their

extend to conduct that occurred in another country, and which would have constituted a predicate offence had it occurred domestically (Crimes Act s. 243(1); Misuse of Drugs Act s. 12B(1)).

Self laundering

157. The offence of money laundering applies to "every one" who performs the actions covered by section 243(2) where the underlying ML activity is "dealing with" the property (including conversion, transfer, concealment or disguise, disposal and use). The wording of this provision is not exclusive of any person - author of the predicate offence or not - and there are no fundamental legal obstacles that would restrict its application to third party laundering. Furthermore, several case examples relate to the author of the predicate offence being convicted (also) for the laundering of the proceeds (R v Allison; R v Rolston; R v Liava'a).

158. Where the money laundering activity relates to the acquisition and possession of proceeds (receiving), self laundering is not criminalised (Crimes Act s. 246); Misuse of Drugs Act s. 12B(3)). This is justified on the basis of a fundamental principle of domestic law (in New Zealand the principle of "a person cannot receive from himself" results from the double jeopardy prohibition as set out section 66 of the Bill of Rights, and affirmed in case law, *e.g. R v Keenan (1967)* and *R. v. Seymour (1954)*[17]. The double jeopardy principle does however not apply to the offence of knowing use of criminal proceeds, as this implies active behaviour of the predicate offender separate from the predicate offence. This means the use of proceeds by a self-launderer is not covered, and there is no fundamental principle of domestic law that would prevent it from being covered.

Ancillary offences

159. The Crimes Act sets out a broad range of ancillary offences which apply generally to all offences (including ML) under the Crimes Act or any other enactment (s. 1). The range of ancillary offences includes: conspiracy to commit (s. 66(2) and 310); attempt (s. 72); aiding and abetting (s. 66); inciting, counselling or procuring the commission of an offence (ss. 66 and 311); and being an accessory to the offence by knowingly receiving, comforting or assisting the perpetrator to escape after arrest, or avoid arrest or conviction (s. 71).

Additional elements

160. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted a predicate offence had it occurred domestically, that act will be presumed to constitute a predicate offence for money laundering (*i.e.* a serious offence or specified drug offence), unless the defendant puts the matter at issue (*i.e.* challenges this presumption) (Crimes Act s. 245(2); Misuse of Drugs Act 2B(8)).

Parts and Components and Ammunition (the Firearms Protocol), which supplements the Palermo Convention. The Arms Amendment Bill creates a new offence of contravening the legal requirements for importing or exporting firearms, restricted weapons, starting pistols, or ammunition, punishable by a maximum penalty of five years imprisonment (Part 2, Clause 38, New Sections 59A–59E).

17 "A person who has acquired possession by his or her own act of stealing cannot, so long as such possession continues, be guilty of receiving"

Recommendation 2

Scope of liability

161. The ML offences set out in the Crimes Act apply to all "persons" – the definition of which includes both natural and legal persons (s. 2(1)). As the Misuse of Drugs Act does not define 'person', the definition in section 29 of the Interpretation Act applies. This defines "person" as including a corporation sole, a body corporate, and an unincorporated body.

162. The ML offence of section 243 and its drug counterpart applies to persons who know or believe that they are dealing with criminal proceeds. The relevant provisions even go farther than this in that the offences also cover persons who are "reckless" as to whether the property is the proceeds of crime.

163. There is a gradation in the mental element that needs to be demonstrated, to the effect that the defendant either knew or believed, or at least was reckless as to whether all or part of the property was the proceeds of a serious offence. Wilful blindness is captured under the knowing and believing standard. The "reckless" standard is lower. It does not infer negligence however, but is interpreted as requiring that the accused had a conscious appreciation of the relevant risk, and performed the act nevertheless. The difference in standards is usually reflected by an appropriately corresponding penalty level.

164. In respect of the mens rea aspect, it is firmly established by New Zealand case law that the requisite intentional element of any offence, and consequently also the offence of money laundering, may be inferred from objective factual circumstances.[18]

165. Engaging in a ML offence is punishable by up to seven years imprisonment (Crimes Act s. 243(2); Misuse of Drugs Act s. 12B(2). The related offences of obtaining (*i.e.* acquiring) or possessing property with the intent to engage in a money laundering transaction is punishable by up to five years imprisonment (Crimes Act s. 243(3); Misuse of Drugs Act s. 12B(3)).

166. From the case law provided, the courts seem somewhat reluctant to impose stiff sentences in terms of imprisonment: the penalties varied from an imprisonment of 12 months to two years and two months. In all examples, the judge took into account mitigating circumstances and guilty pleas, although the general view was that the money launderer was nearly as culpable as the predicate (drug) offender. It should also be noted that in some cases the penalties were imposed on top of the penalty for the predicate offence, so the courts are mindful of the proportionality to the seriousness of the offence.

167. The relevant provisions only provide for a penalty of imprisonment. In the case of legal persons however, the court may rely on section 39(1) of the Sentencing Act to impose a fine. The quantum of the fine is not specified. The court must take into account the defendant's financial capacity and the circumstances of the offence when determining the amount of a fine (Sentencing Act ss. 40, and 7-10). In one case *(Moneyworld)* the company was fined NZD 102 400 on a section 243(2) charge, again taking into account mitigating circumstances and the amount of money involved. Unfortunately, no other examples of company fines were statistically available, making an (effectiveness) assessment impossible.

168. The criminal liability of the legal person does not preclude the personal liability of its managers or other involved natural persons, not does it prevent the imposition of civil or administrative sanctions such as dissolution of the company through enforced liquidation by the court (Companies Act 1993), cancellation of the registration (Industrial and Provident Societies Act 1908), prohibition to carry out certain activities (Friendly Societies and Credit Unions Act 1982) or revocation of a licence.

[18] R v Steane [1947] 1 All ER 813 at 816.

Recommendation 30 – Resources of prosecutorial authorities

169. The Solicitor-General is the principal legal adviser to government and the Head of the Crown Law Office. Criminal trials are prosecuted by Crown solicitors, who are private legal practitioners warranted to act on behalf of the Crown by the Solicitor-General. Money laundering and terrorist financing prosecutions are matters that would likely be proceeded against by indictment and the Crown would be responsible for the conduct of the criminal proceedings.

170. To the extent that the Crown Law Office, through the Solicitor-General, is responsible for combating ML/FT, the New Zealand authorities consider that there are no funding or resource issues currently. The services of the Deputy Solicitor-General, two Crown Counsel, one Associate Crown Counsel and one Assistant Crown Counsel are available to deal with any proceeds of crime issues. The Crown Law Office is unaware of any occasions where funding or resourcing has been an issue.

171. Crown counsel are held to high professional standards. All Crown Counsel hold current practising certificates as barristers and solicitors, and are required to adhere to the Public Sector Code of Conduct

172. Crown counsel who are acting on proceeds of crime matters are highly qualified and are all given on-the-job training. They are supervised by a senior Crown counsel with considerable experience in proceeds of crime.

Recommendation 32 – Statistics and effectiveness

173. The key agencies involved in ML investigations maintain annual statistics, in accordance with their operational requirements, which include the number of ML investigations and convictions.

174. The table below shows the number of charges laid for money laundering pursuant to the Crimes Act and Misuse of Drugs Act.

Number of Charges Laid for Money Laundering Offences, 2004 – 2008

Money Laundering: Total Charges Laid by Offence Description						
Offence Description	**Year**					
	2004	**2005**	**2006**	**2007**	**2008**	**TOTAL**
Engages in money laundering transaction	35	175	137	84	**172**	**603**
Obtain/possess property with intent to launder	1	5	2	7	**8**	**23**
Money laundering (Misuse of Drugs Act 1975)	2	6	4	9	**22**	**43**
Total	**38**	**186**	**143**	**100**	**202**	**669**

Notes:

1) The table presents charge-based data *i.e.* the number of criminal charges laid in courts. It does not represent the number of individuals charged, as an individual can face more than one charge.

2) *Source*: Ministry of Justice.

175. The following chart sets out the number of convictions for money laundering obtained pursuant to the Crimes Act and Misuse of Drugs Act.

Money Laundering: Total Convictions, 2004 - 2008

Offence Description	2004	2005	2006	2007	2008	TOTAL
Engages in money laundering transaction (Crimes Act)	15	31	13	22	45	126
Obtain/possess property with intent to launder (Crimes Act)	0	3	0	1	7	11
Money laundering (Misuse of Drugs Act)	0	2	1	0	0	3
Total	**15**	**36**	**14**	**23**	**52**	**140**

176. The apparent discrepancy between the number of charges and the conviction figures (only 20% of the charges seem to end up in a conviction) needs to be put in perspective. One single case may relate to multiple counts of ML that subsequently could result in one conviction. The statistics give no indication on the number of acquittals. Based on the information gathered on site, it could be concluded there were no convictions on stand-alone ML prosecutions, where the predicate criminality is unknown.

177. The statistical figures (669 charges, 140 convictions, acquittals unknown, between 2004 and 2008) are proof of an active enforcement of the AML provisions in terms of prosecutions and convictions. All convictions relate either to ML charges brought together with the predicate offence or to cases where the ML activity was split off from the initial charges, or where there was clear information or indications of the predicate criminal activity.

178. The fact that laundering activity is only criminalised when related to tainted property derived from serious offences puts a specific burden on the prosecution. New Zealand case law has already stated that no proof is required of a "discrete predicate offence" (R v Allison), but the prosecution still needs to demonstrate that the underlying criminality falls in the "serious offence" category (*i.e.* punishable with at least five years imprisonment). Even in the Allison case, there were several elements indicative of drug manufacturing and trafficking as the source of the criminal proceeds. So, although the number of prosecutions and convictions are testimony to an appropriate focus on the money laundering aspect of proceeds generating serious criminality, the effective enforcement of autonomous ML offences needs to be tested further.

Additional elements

179. The Ministry of Justice keeps statistics on the type of criminal sanction applied when an offender is convicted of money laundering or terrorist financing. Statistics are not kept as to the amount of fines or the length of sentences.

180. At present, there are no special training or educational programmes provided for judges or the courts concerning ML/FT offences.

2.1.2 Recommendations and Comments

181. Although New Zealand has largely criminalised the activities targeted by the Vienna and Palermo Convention, there are still a few details that need to be addressed to fully comply with Recommendation 1. The legislation should be amended to:

- Ensure that proof of an additional purposive element (the intent to conceal) is not required in relation to concealment/disguise activity that is unrelated to conversion; and the sole acquisition, possession and use of indirect proceeds by third party money launderers.
- Cover the self-laundering use of proceeds.
- Provide a sufficient range of offences in the designated predicate offence category of illicit arms trafficking.

182. New Zealand should review its range of sanctions for legal persons keeping in mind that they need to be effective, proportionate and dissuasive.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R. 1	**LC**	• 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. • The self-laundering use of proceeds is not covered. • There is not a sufficient range of offences in the designated predicate offence category of illicit arms trafficking.
R. 2	**LC**	• 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.

2.2 Criminalisation of Terrorist Financing (SR. II)

2.2.1 Description and Analysis

Special Recommendation II

183. Terrorist financing is criminalised pursuant to sections 8 to 10 of the TSA, on the basis of the International Convention for the Suppression of the Financing of Terrorism (FT Convention) and in accordance with New Zealand's international obligations (including Security Council Resolutions 1267 and 1373).

Characteristics of the terrorist financing offences

Provision or collection of property for terrorist acts

184. Section 8(1) of the TSA makes it an offence for a person to provide or collect funds for terrorist acts. The essential elements of the offence are:

(a) ***Physical element:*** The defendant, directly or indirectly, provides or collects funds.

(b) ***Mental/moral element:*** The defendant is acting wilfully and without lawful justification or reasonable excuse.

(c) ***Purposive element:*** The defendant intends that the funds be used, or knows that they are to be used, in full or in part, to engage in terrorist acts.

185. The term "terrorist act" covers any act that constitutes an offence within the scope of a "specified terrorism convention" (TSA s. 5). Consistent with article 2(1)(a) of the FT Convention, the term "specified terrorism conventions" includes all of the terrorism conventions listed in the annex of the FT Convention (TSA Schedule 3). The scope of the offence goes even further in that offences covered by the Convention for the Suppression of Acts of Nuclear Terrorism (2005) are also included.

186. Consistent with article 2(1)(b) of the FT Convention, the term "terrorist act" also covers any act that is:

(e) Intended to cause certain outcomes (death or serious bodily injury to a person; serious risk to the health or safety of a population; destruction or serious damage to property; serious interference or disruption to an infrastructure facility; or introduction or release of a disease-bearing organism).

(f) Carried out for the purpose of advancing an ideological, political, or religious cause.

(g) Committed with the intention of either inducing terror in a civilian population, or compelling a government or international organisation to do or abstain from doing any act.

187. This aspect of the offence also goes further than the FT Convention in that certain acts committed in the context of an armed conflict are also covered. In particular, an act that occurs in a situation of armed conflict is considered to be a "terrorist act" if it is:

(h) Committed for the purpose of intimidating a population, or compelling a government or international organisation from doing or abstaining from doing any act.

(i) Intended to cause death or serious bodily injury to a civilian or other person not taking an active part in the hostilities in that situation.

(j) Not excluded by article 3 of the FT Convention (*i.e.* committed within a single State by a person who is a national of that State and present in its territory, and no other State has a basis to exercise jurisdiction).

Provision or collection of property for the benefit of a terrorist entity

188. Section 8(2A) of the TSA makes it an offence for a person to provide or collect funds for the benefit of a terrorist entity. The essential elements of the offence are:

(k) ***Physical element***: The defendant, directly or indirectly, provides or collects funds for an entity.

(l) ***Mental/moral element:*** The defendant is acting wilfully and without lawful justification or reasonable excuse, and knows that the entity carries out, or participates in the carrying out of, one or more terrorist acts.

(m) ***Purposive element:*** The defendant intends that the funds benefit, or knows that they will benefit, the entity.

189. The term "entity" is defined broadly to include a person, group, trust, partnership, fund, unincorporated association or organisation (TSA s. 4). The term "benefit" is undefined and unspecified, but in view of its generality it would presumably cover providing or collecting funds for a terrorist organisation or individual terrorist for any purpose (terrorist activity related or not) including personal expenses and family upkeep.

Prohibition on making property, or financial or related services, available to a designated terrorist entity

190. Section 10 of the TSA prohibits making property, or financial or related services available to a designated terrorist entity. The essential elements of the offence are:

(n) ***Physical element:*** The defendant, directly or indirectly, makes available (or causes to be made available) any property, or financial or related services available to (or for the benefit of) a designated terrorist entity.

(o) ***Mental/moral element:*** The defendant is acting without lawful justification or reasonable excuse and knows that the entity is a designated terrorist entity.

191. The term "designated terrorist entity" means an entity (natural or legal person or group) so designated by the Prime Minister (pursuant to sections 20 or 22 of the TSA) or by the United Nations (TSA s. 2).

Definition of "funds"

192. The definition of the term "funds" in section 4 of the TSA is a straight transposition from the FT Convention and covers assets of every kind, whether tangible or intangible, moveable or immoveable, however acquired, including legal documents or instruments in any form (*e.g.* electronic or digital) evidencing title to or an interest in, assets of any kind. Legal documents or instruments include bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit (TSA s. 4).

193. 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 (TSA s. 8(3) and s. 25(1) combined). It is also not necessary that the person facilitating a terrorist act (*e.g.* through financing it) knows that:

- a specific terrorist act is facilitated, nor that
- any specific terrorist act was foreseen or planned at the time it was facilitated, nor that
- any terrorist act was actually carried out (TSA s. 25(2)).

Ancillary offences

194. The same broad range of ancillary offences which is described in section 2.1 of this report applies equally to the terrorist financing offences.

195. Additionally, it is an offence to participate in a designated terrorist entity or any other group that carries out terrorist acts for the purpose of enhancing the group's ability to carry out, or participate in the carrying out, of one or more terrorist acts (TSA s. 13). The defendant must know or be reckless as to whether the group is a designated terrorist entity or carries out terrorist acts. The term "carries out" is broadly defined to include planning (or other preparations) or a credible threat to carry out the act (whether it is actually carried out or not) and attempting to carry out the act (TSA s. 25).

Predicate offences for money laundering and extraterritorial jurisdiction

196. The terrorist financing offences covered by sections 8(1), 8(2A) and 10(1) of the TSA are punished by imprisonment of up to 14 and seven years respectively, and consequently qualify as "serious" predicate offences for money laundering.

197. As long as the financing or facilitating act itself is situated in or carried out, in full or in part, on New Zealand territory, the New Zealand Courts have jurisdiction *ratione loci*. It is then totally irrelevant where the terrorist act is "carried out", or where the terrorist organisation or terrorist individual is located.

198. New Zealand may also take extraterritorial jurisdiction over terrorist financing offences that occur wholly outside of New Zealand, regardless of where the defendant is, provided that the terrorist financing offence: (a) was committed by a citizen or ordinary resident of New Zealand, or by any other person on board a New Zealand ship or aircraft (TSA s. 15); or (b) was directed towards or resulted in terrorist acts being committed within New Zealand, against a New Zealand citizen, against a State or government facility of New Zealand abroad or in an attempt to compel the New Zealand government from doing or abstaining from doing any act (TSA s. 17).

199. New Zealand may also take jurisdiction over terrorist financing offences, wherever they occur, provided that the defendant is found in New Zealand and has not been extradited, regardless of whether there is any other link to New Zealand (TSA s. 18).

Scope of liability and sanctions

200. The law permits the intentional element of the FT offence to be inferred from objective factual circumstances. See section 2.1 of this report for further details.

201. The FT offences apply to all "persons". As the TSA does not define 'person', the definition in section 29 of the Interpretation Act applies, including "a corporation sole, a body corporate, and an unincorporated body" (*i.e.* both natural and legal persons).

202. Terrorist financing is punishable by a term of imprisonment not exceeding 14 years (TSA s. 8(4)). In the case of section 10(1) of the TSA (financial services to designated terrorist entities) the imprisonment is up to seven years. In the case of legal persons, the court may rely on section 39(1) of the Sentencing Act to impose a fine. The quantum of the fine is not specified. The court must take into account the defendant's financial capacity and the circumstances of the offence when determining the amount of a fine (Sentencing Act ss. 40, and 7-10). Parallel civil and administrative proceedings may equally be imposed on legal persons (see comments cr. 2.4 above).

Recommendation 32 - Statistics and effectiveness

Additional elements

203. To date, New Zealand has had no FT prosecutions or convictions. There have however been some investigations relating to possible terrorist financing in New Zealand based on the suspicious property reports received by the FIU (TSA s. 43). All SPRs were analysed and/or investigated and none of these investigations uncovered terrorist financing taking place in New Zealand. The same conclusion is true of the 102 terrorist financing related STRs. New Zealand has never been a victim of terrorism. Moreover, it should be noted that New Zealand has never received any formal or informal requests for assistance from its foreign counterparts in relation to a terrorist financing investigation. Overall, in light of these factors, and New Zealand's particular geographic circumstances, small population, low levels of corruption and criminality, and the relatively small size of its financial and DNFBP sectors, New Zealand is at a low risk of terrorist financing. Moreover, New Zealand has implemented generally robust systems of law enforcement and prosecution. The terrorist financing offence appears to be clearly drafted, and the New Zealand prosecutorial authorities confirmed their view that prosecuting this offence will not raise any particular difficulties, should the need ever arise. Consequently, in New Zealand's particular context, the absence of prosecutions and convictions cannot be considered as a negative finding.

2.2.2 Recommendations and Comments

204. The legal basis for the criminalisation of terrorist financing, as laid down in the TSA (as amended), is robust and faithfully mirrors the FT Convention provisions. The relevant sections 4(1), 5 and 8(1) & (2A) even go beyond those standards where they include offences covered by the Convention for the Suppression of Acts of Nuclear Terrorism, as well as certain acts committed in the context of an armed conflict. In principle all acts of collecting or supplying funds of any kind for any benefit of terrorist organisations, terrorist individuals or terrorism related activity are appropriately covered. The offence is, however, still untested.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR. II	**C**	• . This Recommendation is fully observed.

2.3 Confiscation, freezing and seizing of proceeds of crime (R. 3)

2.3.1 Description and Analysis

Recommendation 3

205. 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, which would include ML and FT, but not all designated predicate offences. However, these measures do not apply to a sufficient range of offences in the designated category of illicit arms trafficking (see section 2.1 for further details). Equivalent value confiscation is also provided for by way of a pecuniary penalty order. According to section 8(1) of the POCA, when a person is convicted of a serious offence (punishable by five or more years imprisonment), the Solicitor-General may apply to the court for:

(p) a forfeiture order which may be obtained against "tainted property" (meaning proceeds or instrumentalities – s. 2(1)) in respect of the offence, and/or

(q) a pecuniary penalty order, which may be obtained against a person for the benefits derived from committing the offence (*i.e.* property of corresponding value). The amount of a pecuniary order is determined by calculating the value of the benefits derived from the crime, less the value of any forfeited property and/or pecuniary penalty already imposed and/or any further amount that the court considers appropriate to take into account (POCA s. 25).

206. In relation to a serious offence, "tainted property" means *i)* property used to commit, or to facilitate the commission of, the offence; or *ii)* proceeds of the offence (s. 2(1) POCA). The provision covers (intended) instrumentalities and criminal proceeds, but from the text itself it is not immediately clear if the concept would also cover the money laundered, being the object of a (stand-alone) money laundering transaction ("*Corpus delicti"*). However, there is case law confirming that the money laundered ("*the Corpus delicti")* can be the subject of a restraining order as "tainted property".

Property subject to confiscation

207. Both forfeiture orders and pecuniary penalty orders apply to a broad range of property and proceeds. "Property" means real or personal property of any description, whether situated in New Zealand or elsewhere, whether tangible or intangible, including an interest in any such real or personal property (POCA s. 2(1)). "Proceeds" is defined as any property that is derived or realised, directly or indirectly, by any person from the commission of the serious offence (POCA s. 2(1)). Again, the wording is general enough to cover all sorts of benefits, including substitute assets and investment yields.

208. Tainted property may be confiscated, regardless of whether it is held or owned by a criminal defendant or a third party, as the POCA makes no distinction in this regard. As a general rule, it is up to the third party to take action to safeguard its interests (see below).

Provisional measures

209. A first form of seizure can be effectuated during an investigation, where the police have the power to seize property items, including suspected proceeds of crime, as evidentiary material in the event of an arrest with or without a warrant (s. 315 Crimes Act) or pursuant to a warrant (*e.g.* s. 198 Summary Proceedings Act), or pursuant to a power to search for and seize evidence without warrant (*e.g.* s. 18 Misuse of Drugs Act; s. 202B Crimes Act). Furthermore and more particularly in relation of proceeds of crime, Part III of the POCA provides for the provisional seizure of tainted property (proceeds and

instrumentalities) under the authority of a search warrant issued by a District Court judge. The search warrant may be obtained by a commissioned police officer and must be based on reasonable grounds to believe that tainted property in respect of a serious offence may be found in the place to be searched (s. 30). The warrant may be obtained *ex parte*; however, notice of the seizure must be given to the owner/occupier of the place searched within seven days after the seizure (s. 34). Seized property must be returned within 14 days if no forfeiture order is made, unless a restraining order is in force (s. 36).

210. Unlike a seizure (which may only be effected in relation to tainted property), a restraining order may be obtained in relation to all of the defendant's property (including property acquired after the making of the restraint order) or specified property of a third party. Consequently, a restraining order can be applied to property of equivalent value that may ultimately become subject to confiscation.

211. Part IV of the POCA sets out the procedure for obtaining a restraining order. The Solicitor-General may apply to the High Court for a restraining order where a person has been or is about to be charged with a serious offence. The application must be based on reasonable grounds for believing that the property, which is the subject of the order, is tainted property or the defendant derived a benefit from the commission of the offence (s. 43). The court must also be shown that there are reasonable grounds to believe the defendant committed the offence.

212. A restraining order may be granted *ex-parte,* at the request of the Solicitor-General, if the court is satisfied that proceeding without notice is necessary to prevent the destruction, concealment or disposal of the property in question (s. 41(1)). An *ex parte* restraining order will expire after seven days, unless the Solicitor-General makes a further application for a restraining order that is to be heard on notice to the owner and any other person believed to have an interest in the property (s. 41(3)). In such cases, the initial (*ex parte*) restraining order remains in effect until the further (on notice) application is disposed of. Restraining orders made on notice generally expire after six months, but may be renewed on the basis of reasonable grounds for believing that a forfeiture or pecuniary penalty order will be made in respect of the property (s. 66(2)).

213. Restraining orders operate as freezing mechanisms (by directing that the property is not to be disposed of or dealt with except as provided in the order) or seizing mechanisms (by directing the Official Assignee to take custody and control of the property) (s. 42(1)). The Official Assignee has a specialist Proceeds of Crime Unit that is responsible for taking custody and control of restrained and confiscated property, on the order of the court. The general practice of the Crown Law Office is to instruct Crown solicitors to petition the court making the restraining order to place the Official Assignee in custody and control of assets in all cases. It should be noted that the POCA also contains extensive provisions concerning the management of seized and restrained assets (ss. 50-63).

Powers to trace property and protection of rights

214. Part V of the POCA provides the police with powers to specifically identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime, in the form of production orders and monitoring orders. However, use of these powers is restricted to a very limited number of circumstances. A production order may only be used where a person has been convicted of (or there are reasonable grounds for believing that the person has committed) a drug-dealing offence or a serious offence which is transnational in nature and involves an organised criminal group (s. 68). A monitoring order may only be used for a drug-dealing offence (s. 77).

215. A commissioned police officer may obtain a production order from a High Court judge, based on reasonable grounds to believe that a person has possession or control of one or more property-tracking documents in relation to an offence (s. 68(1)(b)). A production order requires a person to produce to the

police, or make available to the police for inspection, any specified document or class of documents that are in the person's possession or control (s. 69). On the authority of a production order, the police may inspect the documents (retaining it as long as is reasonably necessary), take extracts and/or make copies (s. 71). Subject to certain specified exceptions (*e.g.* legal professional privilege), a production order will apply notwithstanding any enactment or rule of law that obliges or entitles any person to maintain secrecy in relation to any matter (ss. 72-74). Within their specific area of competence, officers of the SFO have the power to issue production notices (that count as production orders) under their own authority.

216. A commissioned police officer may obtain a monitoring order from a High Court judge based on reasonable grounds to believe that a person has committed (or is about to commit) a drug-dealing offence or has benefitted from the commission of one. A monitoring order directs a financial institution to supply the Commissioner of Police with information obtained by the institution about transactions conducted through an account held by a particular person with the institution (s. 77). Disclosure of the existence or operation of a monitoring order, except to a small specified class of persons, is prohibited (s. 80).

217. Because of the restrictive conditions surrounding the issuing and use of production orders that relate to specific documents, the police tend to recur more to the use of search warrants. Although not specifically targeted, search warrants are widely used as an alternative to the same effect. In practice, banks accept to view search warrants as production orders, rather than having to endure a disruptive effective searching of the premises and accounts.

Third party rights

218. The rights of bona fide third parties are protected in a manner that is consistent with the standards provided in the Palermo Convention.

219. Where an application for a forfeiture order is made under the POCA, a person claiming an interest in any of the specified property may apply for relief before it is granted (s. 17). The court may refuse to grant such relief if satisfied that the applicant was in any way involved in committing the relevant offence, or did not acquire the interest in good faith and for value, without knowing or having reason to believe it was tainted property (s. 18). Likewise, where a pecuniary penalty order is made, a third party may appear claiming an interest in that property (s. 29(5)).

220. Similar protections are available to third parties during the exercise of provisional measures. A third party may claim an interest in and apply for the return of seized property (s. 38(1)) or for the exclusion of their interest from the operation of a restraining order (s. 48).

221. As a general principle of law, contracts for illegal purposes are voidable under New Zealand law. The courts can void contracts where the parties involved knew or should have known that, as a result of the contract, the authorities would be prejudiced in their ability to recover property subject to confiscation. This has not occurred yet in the AML/CFT context, as it is not considered necessary to recur to civil procedures or measures in what is essentially a criminal matter anyway. If the third party is in collusion with the criminal in safeguarding criminal proceeds or other tainted property, he/she commits an offence, such as (aiding and abetting) money laundering or accessory after the fact, making the property fully recoverable through the criminal procedure.

Additional elements

222. Participation in an organised criminal group is a serious offence under section 98A of the Crimes Act and, hence, any benefits gained from that offence are subject to confiscation under the POCA.

223. Confiscation without conviction (civil forfeiture) is not currently available in New Zealand, but is provided for in the Criminal Proceeds (Recovery) Act[19]. This Act will come into force on 1 December 2009.

224. In cases involving drug-dealing offences, all of the defendant's property is presumed, in the absence of proof to the contrary, to be property that came into the defendant's possession or control as a result of committing the offence (s. 28).

Recommendation 30 – Resources of authorities responsible for provisional measures/confiscation

The Official Assignee

225. The Insolvency and Trustee Service (Proceeds of Crime Unit) was established in 2002 to take on the ever-increasing workload of restraint and confiscation cases. Through the statutory office of the Official Assignee, the Unit is the only legislated body in New Zealand entitled to manage seized assets connected with proceeds of crime. The Unit works with Crown Law, the NZ Police, other agency enforcement personnel and Crown solicitors on cases involving restraint and confiscation of assets by providing expertise for efficient and effective asset management and disposal.

226. The Proceeds of Crime Unit is funded by the government in the amount of NZD 1 million per annum. The Unit charges for its services and asset management costs in certain circumstances (POCA s. 63) and operates on a recovery basis, in that costs recovered are repaid to the Crown account. Currently, there are four full-time staff. The Unit has the ability to call on approximately 15 other senior insolvency and trustee staff in five regional offices to assist with field-related proceeds of crime work, such as the location, securing and seizure of assets, and related investigations.

227. The Official Assignee's staff is required to maintain high professional standards, and comply with the Public Sector Code of Conduct and the MED Code of Conduct. Each staff member is required to sign a code of conduct declaration. Staff involved with proceeds of crime work also receive training specifically related to integrity, confidentiality and professionalism.

228. All designated Official Assignee staff undergo technical and risk awareness training before they operate in the asset recovery and disposal environment. Continuing training is provided. The staff involved with proceeds of crime work are further trained in their specialist roles. The Official Assignee uses a Proceeds of Crime Manual of Operations that documents the steps, risks and processes for the effective and safe management of assets and their disposal through all seizure phases. Annual workshops are hosted by the Official Assignee to which numerous agencies are invited. These include some international agencies with like interests in the area of criminal asset management and disposal. This opportunity for discussions with enforcement agencies and prosecutors is used to update members on legislative progress, operational matters and training gaps.

Recommendation 32 – Statistics and effectiveness

229. The Proceeds of Crime Unit operated by the Official Assignee maintains detailed statistics relating to the number of cases and amounts frozen, seized or confiscated under the POCA and the TSA (ss. 48–61) (see section 3.4 for more details about the freezing regime pursuant to the TSA). However,

[19] In April 2009, New Zealand enacted legislation, the Criminal Proceeds (Recovery) Act, to improve the effectiveness of the confiscation regime. The Act enhances the existing criminal forfeiture regime, which will continue to operate for criminal instruments confiscations, and introduces a civil forfeiture regime for confiscating criminal proceeds, which will be enforced by NZ Police.

these statistics do not specifically relate to money laundering; they relate to serious offences, including a money laundering aspect if further investigated.

Assets restrained and forfeited (2004-2008)

Restrained assets						
DESCRIPTION	**2004**	**2005**	**2006**	**2007**	**2008**	**TOTAL**
Total number of cases	34	28	32	31	26	151
Number of cases with a ML component	2	1	2	0	4	9
Total value of assets (NZD)	9.5 million	9.9 million	12.6 million	10.9 million	10.7 million	53.6 million
Total value of assets (cases with a ML component) (NZD)	395 000	218 000	206 000	0	4.3 million	5.1million
Assets subject to a forfeiture order or pecuniary property order						
DESCRIPTION	**2004**	**2005**	**2006**	**2007**	**2008**	**TOTAL**
Total number of cases	10	13	15	10	8	56
Number of cases with a ML component	3	0	3	1	1	8
Assets subject to a forfeiture order or pecuniary property order						
DESCRIPTION	**2004**	**2005**	**2006**	**2007**	**2008**	**TOTAL**
Total value of assets (NZD)	1.2 million	4.1 million	4.0 million	2.7 million	1.2 million	13.2 million
Total value of assets (cases with a ML component) (NZD)	96 000	0	1.1 million	252 000	525 000	2 million
Payment to Crown (NZD)	1.1 million	1.2 million	2.0 million	1.3 million	477 000	6.1 million
Payment to Crown (cases with a ML component) (NZD)	9 800	0	535 000	92 000	200 000	836 800

Note: The values in this table have been rounded.

230. 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. The management and disposal of the seized/confiscated property is efficiently organised. There is, however, still a (technical) deficiency to be noted:

- As a result of the "serious offence" condition in relation to tainted property, the seizure and confiscation regime does not apply to a sufficient range of offences in the designated predicate offences category of illicit, arms trafficking. Offences in this category (other than those related to trafficking of biological, chemical and nuclear weapons) are excluded because of the low penalties they carry.

2.3.2 Recommendations and Comments

231. New Zealand should amend its legislation to ensure that its seizure and confiscation regime applies to a sufficient range of offences in the designated predicate offence category of illicit arms trafficking.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R. 3	**LC**	• The seizure and confiscation regime does not apply to a sufficient range of offences in the designated predicate offence category of illicit arms trafficking (other than trafficking in biological, chemical and nuclear weapons).

2.4 Freezing of funds used for terrorist financing (SR. III)

2.4.1 Description and Analysis

Special Recommendation III

Laws and procedures to freeze pursuant to S/RES/1267(1999)

232. New Zealand implements S/RES/1267(1999) primarily through the provisions in the TSA which create a freezing regime that generally relies on the use of offence provisions rather than restraining orders.

233. Dealing with the property of a designated terrorist entity is prohibited in New Zealand (s. 9). The essential elements of the offence are:

(a) ***Physical element:*** The defendant deals with: property that is owned or controlled, directly or indirectly, by a designated terrorist entity; or property derived or generated from such property.

(b) ***Mental/moral element:*** The defendant is acting without lawful justification or reasonable excuse, and knows that: the property is owned or controlled, directly or indirectly, by a designated terrorist entity; or is property derived or generated from such property.

234. The TSA defines 'deal with' broadly to include:

- Using or dealing with the property, in any way and by any means (for example, to acquire possession of, or a legal or an equitable interest in, transfer, pay for, sell, assign, or dispose of (including by way of gift) the property).

- Allowing the property to be used or dealt with, or facilitating the use of or dealing with it (s. 4).

235. A "designated terrorist entity" is defined, *inter alia*, as any entity (person, group, trust, partnership, fund, unincorporated association or organisation) that is a "United Nations listed terrorist entity" (meaning Usama bin Laden, an Al-Qaida entity, the Taliban or a Taliban entity (s. 4)). As such, entities that are designated pursuant to S/RES/1267(1999) and its successor resolutions are automatically deemed to be "designated terrorist entities".

236. The effect of section 9 is to freeze the property of designated terrorists and their designated associates because, in practice, the property is *de facto* subject to freezing action from the moment it becomes known that the property relates to a designated terrorist entity. The prohibition on dealing set out in section 9 of the TSA is consistent with the FATF definition of "freeze" which means to prohibit the transfer, conversion, disposition or movement of funds or other assets. Sections 48 to 51 of the TSA permit the Prime Minister to direct the Official Assignee to take charge of property that is subject to section 9. Then, it is treated in a similar way to restrained property under the POCA.

237. 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 Commissioner (*i.e.* the FIU) where there are reasonable grounds to suspect that the property may be owned or controlled, directly or indirectly, by a UN designated terrorist entity, or is property derived or generated from such property (TSA s. 43(1)-(2)). The SPR reporting obligation does not require a lawyer to disclose any privileged communication (TSA s. 43(3)).

Laws and procedures to freeze pursuant to S/RES/1373(2001)

238. New Zealand implements S/RES/1373(2001) through the same *de facto* freezing mechanism in section 9 of the TSA (described above) and section 10 of the TSA which pertains not only to specific UN designations, but also applies to terrorist entities designated by the Prime Minister pursuant to sections 20 and 22 of the TSA. Similarly as with UN designations, any suspicion of property held or controlled by a domestically designated terrorist entity must be reported to the FIU (TSA ss. 43(1)-(2)).

239. The designation process involves preliminary examination by a team composed of representatives of the NZ Police, Ministry of Justice, MFAT and Crown Law Office. Its findings are submitted to the Interagency Working Group coordinated by the Department of Prime Minister and Cabinet. The designation committee advances "statements of case" to designate an entity to the Prime Minister. Under section 22 of the TSA, the Prime Minister may then, after consultation with the Attorney-General, designate the entity as a terrorist entity if the Prime Minister has reasonable grounds to believe that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. On or after designating an entity as a terrorist entity, the Prime Minister may designate one or more other entities as an associated entity of a designated terrorist entity. A section 22 designation lasts for up to three years, but can be indefinitely extended by the Prime Minister for further three-year periods as long as the grounds remain valid (s. 35(5)). There is also provision for interim designation on the basis of the lower threshold of "good cause to suspect" (s. 20). An interim designation lasts 30 days and is intended to allow quick action to be taken while additional information is sought to meet the threshold for a final designation. New Zealand has not, itself, made any designations pursuant to S/RES/1373(2001).

240. A specific procedure to be followed with foreign actions on terrorist designations is not formally provided for. However, such request for action would be considered formally under the domestic designation procedure, including assessing whether the foreign designations would also constitute good cause or reasonable ground to designate in New Zealand. New Zealand has received such requests that were considered by the Interagency Working Group; however, these requests did not lead to a designation pursuant to S/RES/1373(2001) because the conditions of the TSA were found not to be met.

Scope of "property" to be frozen

241. Section 9 of the TSA applies to a broad range of "property" which is defined as real or personal property of any description, whether situated in New Zealand or elsewhere, and whether tangible or intangible, including an interest in any real or personal property of that kind (s. 4).

242. No property may be knowingly dealt with if it is directly or indirectly owned or controlled by a designated entity. The prohibition also applies to property that is derived from or generated by terrorist owned or controlled assets (s. 9(1)). Although the provision does not expressly refer to "joint" property, the "interest in" clause of section 4 would adequately cover the situation where the assets are partially or jointly owned by the designated entity.

Communication and guidance

243. Any designation that the Prime Minister would make under sections 20 and 22 of the TSA is communicated through publication of a notice in the Gazette, as soon as practicable, and in any other way that the Prime Minister directs. The Prime Minister can also direct, under section 28(2) of the TSA, that notice of the making of a designation under sections 20 or 22 be given to any persons or bodies that the Prime Minister thinks fit (*e.g.* to any registered banks or other persons who may possess property to which section 9(1) relates or who may make property or services available to a designated terrorist entity contrary to section 10(1) of the TSA).

244. The UN 1267 list of terrorist entities is published in the Gazette and put on the NZ Police website, as well as notified by the police to the financial institutions and other relevant entities by way of e-mail, also when a new entity is added to the designation list. There are, however, some gaps in the communication network: whilst the banking and insurance institutions acknowledged to have been informed through the police mail, other reporting entities (such as the lawyers, casinos and trust companies) received no such communication and picked up the relevant information themselves from the NZ Police website. Also, the team was confronted with a low level of awareness within the sector of trust service providers, who generate an important volume of business in New Zealand.

245. Although the New Zealand authorities are of the view that, given the nature of New Zealand's freezing regime and the unequivocal TSA provisions, no specific guidance is required, in some circumstances and to a certain extent guidelines were issued. When the financial institutions started filing SPRs under section 43 TSA which all proved to be false name matches, the FIU elaborated best practice guidelines for the financial institutions on how to deal with suspected terrorist property. Through the NZ Police website, guidance is available on how and when to report, but the guidelines go no further. For instance, no advice is given on how to behave when confronted with a possible freezing decision or confronted with a possible terrorist presence. Moreover, the existing guidance is quite generic and, therefore, does not elaborate how to deal with transactions being effected outside of the traditional banking environment, and involving property other than funds. Although, due to the relationship the FIU has with reporting entities, guidance may be given verbally on a case-by-case basis, systemic clear and practical guidance as such, whether by the NZ Police or by the supervisory bodies, is definitely missing for the non-bank financial and other reporting sectors.

Procedures for delisting, unfreezing and obtaining access to frozen funds

246. Where a notice is sent to the designated entity, advising them of a designation under sections 20 or 22 of the TSA, it must include general information about how the designation may be reviewed and revoked (s. 26(d)). Information concerning how to apply for the removal of a designation is also provided on the public website of the NZ Police, and in the e-mail which is distributed to entities after a designation is made.

247. Designations can be revoked any time by the Prime Minister, either on his/her own initiative, or pursuant to an application for revocation (s. 34). Applications for revocation can be made by the entity who is the subject of the designation or by a third party with an interest in the designation that, in the Prime Minister's opinion, is an interest apart from any interest in common with the public. The application must be based on the grounds that the designation should not stand because the entity concerned does not partake in or facilitate terrorist acts, or that the entity concerned is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation.

248. The above procedures obviously do not apply to UN 1267 delisting requests. Any such request (if not made directly to the UN focal point for de-listing) is supposed to be channelled through the MFAT. Practical details are given on the NZ Police website.

249. Apart from the genuine revocation or reviewing requests that also can be made by third parties that have a specific "interest in the designation", section 52(1) of the TSA provides for the possibility for persons who claim an interest in property "frozen" under section 9 of the TSA to apply to the High Court, which may make an order declaring the nature, extent, and value of the applicant's interest in the property and order that the interest is no longer subject to the section 9 prohibition. The court should obviously first need to be satisfied that the claimant is indeed an "innocent" third party. As there have been no such instances yet, it is unclear if the procedure allows for a timely decision on the unfreezing.

250. There are specific provisions on the use of property frozen in relation to domestic and 1267 designations for certain fees, expenses and allowances (*e.g.* to satisfy the essential human needs of a designated individual or of his/her dependant (s. 9(2)). Where assets or cash are placed into the custody and control of the Official Assignee, the release of such property requires a court order to that effect (s. 42 POCA).

251. Anyone whose assets are frozen pursuant to a domestic designation made pursuant to sections 20 or 22 of the TSA has the right to challenge a designation by the Prime Minister by bringing a judicial review or other proceedings before a court arising out of, or relating to, the making of a designation under the TSA (s. 33). The court can then take into consideration the grounds for designation and issues of due process.

252. UN 1267 designations cannot be made subject to the section 33 TSA judicial review. Any request for review of such designations will normally be channelled through the MFAT to the appropriate UN committee.

Freezing, Seizing and Confiscation in other circumstances

253. Terrorist-related funds and other assets can also be restrained, seized and confiscated in circumstances unrelated to S/RES/1267(1999) and S/RES/1373(2001) by using the general powers of forfeiture, seizure and restraint set out in the POCA which apply to all serious offences, including terrorist financing (see section 2.3 of this report).

254. Additionally, sections 55 to 61 of the TSA provide for the forfeiture of property that is owned or controlled, directly or indirectly, by a designated terrorist entity or UN listed terrorist entity, or property derived or generated from such property. Forfeiture may only be ordered if the court considers that it is no longer appropriate for the property to remain subject to the section 9 prohibition on dealing (s. 55).

255. Assets of terrorist individuals and groups can be seized and forfeited on the basis of sections 98A of the Crimes Act (participation in criminal organisations) and 13 of the TSA (participating in terrorist groups) for groups and section 6A (terrorist acts) for individuals, in combination with section 2 of the POCA (tainted property), when they represent the benefits of the offence or otherwise fall under the definition of tainted property.

Rights of third parties

256. Under the TSA, a bona fide third party who claims an interest in specified property that is subject to a section 9 prohibition on dealing or a section 55 forfeiture application may apply to the High Court for relief (ss. 52-54) (see also comment cr. III.8).

257. Bona fide third parties whose property is restrained, seized and confiscated in circumstances unrelated to S/RES/1267(1999) and S/RES/1373(2001) (*i.e.* through the exercise of general powers in the POCA) may also apply to the court for relief as described above in section 2.3 of this report.

Monitoring

258. 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 of course mainly due to the deficiencies in the supervisory regime. The imposition of criminal sanctions for anyone dealing with property that is subject to section 9 of the TSA (carrying a penalty of up to seven years imprisonment or, in the case of a legal person, a fine) is the responsibility of the law enforcement authorities.

Additional elements

259. New Zealand has implemented the majority of the measures set out in the FATF Best Practice Paper for SR. III. For instance, legal authorities and procedures have been established by the TSA, underpinned by the necessary competent authorities (*i.e.* the Official Assignee, the Attorney-General and the Prime Minister and courts). There is effective follow-up investigation of related STR and SPR information, including coordination between law enforcement and security agencies.

260. There are procedures to authorise access to property for the payment of fees and expenses in relation to property frozen pursuant to S/RES/1373(2001), as described above.

Recommendation 32 – Statistics and effectiveness

261. All designations pursuant to S/RES/1267(1999) have been reproduced in notices by the Prime Minister pursuant to sections 48 to 51 of the TSA. To date, no terrorist property has been detected.

262. New Zealand has not formally designated entities that are otherwise outside the scope of S/RES/1267(1999).

263. As for effectiveness, information was received during the on-site visit which suggests that some DNFBP's are currently not even implementing the SRIII obligations because they are waiting for the New Zealand AML reforms to be completed.

2.4.2 Recommendations and Comments

264. New Zealand should introduce an effective supervisory system for both the financial and the DNFBP sectors to ensure monitoring of compliance by the private sector with the obligations to freeze terrorist property.

265. The New Zealand approach to the international rules on the freezing of terrorist property is an indirect one, in that the measure is not imposed as a straight obligation. The rules are implemented in the form of a strict prohibition to deal with such property in any way, which results in an immobilisation of the assets by operation of law.

266. New Zealand should effectively organise its system to notify all reporting entities, especially the non-financial sector, of terrorist designations and bring it in line with the one currently in force for the financial institutions and insurance sectors.

267. The guidance to the reporting entities focuses on the implementation of the reporting duty itself; however, New Zealand should complement the guidance document by elaborating on the freezing measures and other related issues to ensure that it constitutes a practical support for the entities involved.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR. III	**PC**	• 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. • The communication of designations, particularly to the DNFBP, money remitters and securities sectors is not satisfactorily organised. • Insufficient practical guidance is given, particularly to the DNFBP and financial institutions, other than banks, on how to effectively implement the freezing obligations. • Effectiveness issues: The absence of adequate monitoring throughout the system, the insufficiencies noted regarding guidance to the non-bank reporting entities and communication, 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.

Authorities

2.5 The Financial Intelligence Unit and its functions (R. 26)

2.5.1 Description and Analysis

Recommendation 26

268. The FTRA and the TSA designate the New Zealand Police Commissioner as the national authority responsible for receiving suspicious transaction reports (STRs) (FTRA ss. 15-16), border cash reports (BCRs) (FTRA s. 42) and suspicious property reports (SPRs) (TSA s. 44). The New Zealand Police Commissioner is authorised to delegate this responsibility to any specified police employee or to police employees of any level of position (FTRA s. 15(4); TSA ss. 44(3)). There are no specific provisions that deal with the analysis and dissemination of such reports. However, Police employees are authorised to disseminate STRs, BCRs and SPRs based on general provisions in the FTRA, the TSA and the Privacy Act dealing with the detection, investigation and prosecution of money laundering, financing of terrorism and serious offences, the enforcement of the POCA and the administration of the Mutual Assistance in Criminal Matters Act (MACMA) (FTRA s. 21(2); TSA s. 47(2); and Privacy Act s. 6 principle 11(e)(i)). In practice, the receipt, analysis and dissemination of STRs, BCRs and SPRs are delegated to the FIU. The FIU has a purely intelligence function and does not have any formal supervisory or enforcement function.

Functions, responsibilities and operational autonomy of the FIU

269. The NZ Police Financial Intelligence Unit (the FIU) is a police FIU which was established within the New Zealand Police (the NZ Police) in 1996 and comes under the authority of the Police Commissioner. The Police Commissioner has constabulary independence regarding the investigation of offences, and in this respect is not responsible to any Minister of the Crown (or person acting on a Minister's instruction) (Policing Act s. 16(2)(c)). Likewise, police employees are operationally independent of Ministers of the Crown or anyone else not authorised under the Policing Act to command a police employee (s. 30(4)). At the time of the on-site visit, the assessment team had concerns about the absence of similar provisions to safeguard the operational independence and functions of the FIU vis-à-vis

the Police. For instance, there are no administrative or legislative provisions establishing the FIU, defining its role or quarantining its resources. The FIU is part of the National Intelligence Centre (NIC) within the Police and within this structure the Head of the FIU reports to one of the senior managers in the NIC (the Targeting Manager). It is common in New Zealand that the establishment of a police structure (such as the FIU) is not set out explicitly in the law. However, on 18 June 2009 (within two months of the on-site visit), the Commissioner of Police signed a formal Acknowledgement and Delegation clarifying the legal basis of the FIU. This document formally delegates to the Head of FIU (or any member of the FIU who may relieve the Head of FIU during his absence) the power, function and duty of the Commissioner regarding the core activities of the FIU established under the FTRA and the TSA. It also formally acknowledges that, since its establishment, the FIU has been operating as an operational arm of the NZ Police to meet the Commissioner's obligations under the FTRA and the TSA. Finally, the Commissioner acknowledged that, when enacted, the new AML/CFT Bill will formalise this specific delegation.

270. Most reports are received by the FIU in a paper-based form and entered into the FIU's database manually. The format and the content of the reports are outlined in FTRA (s. 15(2) and the related schedule). However, the FIU has adopted a flexible approach in this regard. The paper based STRs are delivered to the FIU by regular mail, courier, facsimile or e-mail. In some circumstances, a suspicious transaction can be reported via telephone if there is an immediate concern and/or need for action. Oral disclosures are always followed up by a written report. The time between the detection of the suspicious transaction by the reporting entity and the disclosure made to the FIU is dependent on the financial institution concerned. In larger financial institutions, STRs are collated by an AML Compliance Officer and forwarded through the mail to the FIU in weekly batches. Urgent STRs, however, are prioritised to get immediate attention and are provided to the FIU without delay.

271. Upon receipt, the FIU prioritises STRs and BCRs. The urgent ones (*i.e.* those requiring swift action) are immediately entered into the FIU database, while the remainder are entered later. The FIU explained it as a risk prioritisation model. At the time of the on-site visit, the FIU was confronted with backlogs in the database entry of approximately 300 (low priority) STRs, and 800 to 1 000 BCRs. As of 19 June 2009, there were approximately 480 STRs (none of which was more than six weeks old) and 1 057 BCRs (the oldest of which was dated January 2008). There is no delay in entering SPRs in the FIU's database. Inevitably, some backlog is to be expected in a system where reports are received in paper form and then need to be manually entered into the FIU's system. However, even though it is in line with a risk prioritisation model, the delay in entering the BCRs, in particular, seems to be overly long.

272. At the start of 2008, the NZ Police provided an Internet-based secure web presence portal to allow financial institutions, who have registered with the FIU, to report STRs and SPRs electronically. This mechanism electronically receives each report and populates the data into the FIU database. This system does also allow for the receipt of the disclosures in the prescribed form. Once a web-based form is submitted from financial institutions, it is received in a 'quarantine zone' before it can be entered into the FIU database. While in the 'quarantine zone', the FIU checks the submitted financial intelligence for errors or missing information. As of March 2009, 12 financial institutions were registered and using the portal. During the period 1 January 2008 to 14 April 2009, 7% of all STRs processed by the FIU were submitted electronically. The secure web portal also has the ability to electronically receive BCRs from the New Zealand Customs Service, however, this feature is not currently being utilised.

273. All reports are entered into the FIU's database and checked by the collators/analysts to ensure that all relevant information (*e.g.* name, address, date of birth, reason for suspicion, etc) required by the FTRA and the TSA, has been provided. All reports are then analysed to determine if further intelligence evaluation and analysis is required.

274. When further intelligence analysis is required, this is generally the task of the FIU's tactical analysts. Often STRs are further analysed following a request from a law enforcement authority in the course of a serious crime investigation. Spontaneous analysis is also conducted based on the following factors:

- The STR's subject has a criminal history.
- The subject has associations with other criminals or organised crime groups.
- Other STRs related to the same subject are received.
- The nature of the transaction.
- Other intelligence held.

275. Analysis includes identifying patterns in transactions and determining the financial status of the subject through identification of assets, such as bank account balances, property ownership, company ownership and liabilities such as loans. During the period 2004 to 2008, on the average 15% of the STRs received were further analysed. All STRs that are further analysed are also disseminated.

276. A NZ Police employee is authorised to disseminate financial intelligence to both domestic and international law enforcement authorities (FTRA s. 21(2); FTRA s. 43; TSA s. 47(2)). As all staff of the FIU are police employees, the FIU can, in practice, disseminate STRs, BCRs and SPRs under the same provisions.

277. The financial intelligence disseminated includes, apart from the information contained in the STR, other information to add value to the FIU product, such as criminal histories, property ownership, directorship/share parcels and consumer credit records. The decision to disclose the information ultimately rests with the Head of the FIU. The decision as to which law enforcement agency (LEA) the financial intelligence is disclosed depends on the nature of the STR information and which is the appropriate LEA to investigate it.

278. The format in which STR information is disclosed is either Financial Intelligence Reports or Financial Information Reports. Financial Intelligence Reports include a full analysis relating to the STR and other information, whereas a Financial Information Report only outlines the details contained in the STR.

279. The reason for dissemination of either a Financial Intelligence Report or a Financial Information Report is contained within the body of the report itself. Apart from these products, the FIU also disseminates financial profiles, which refer to bank account information only, for example, banks and branches where accounts are held by persons of interest, as well as account numbers and balances. Financial profiles do not include STR or SPR intelligence, and are produced on request to assist police districts and other law enforcement agencies. The decision-making process in the FIU is completely independent in respect of the dissemination of operational intelligence from STRs.

280. The FIU also produces tactical and strategic analytical products, but this generally requires approval from the Manager Targeting of the NIC to which the Head of the FIU reports. This approval will generally be obtained as long as the product is in line with the Police Strategic Goals.

Access to information

281. As the FIU is based within the NZ Police, it has direct access to law enforcement information including criminal histories and criminal intelligence holdings. The FIU has only limited direct access to the New Zealand Customs intelligence databases (general query, intelligence summaries and travel movements), but can receive additional information from Customs, both on request and spontaneously, based on the memorandum of understanding (MOU) between the NZ Police and the Customs.

282. The FIU also has direct access to administrative information such as credit history checks, vehicle registers, telephone subscriber records, real estate registers, the World Check database and the Internet. It also has ready access to the New Zealand passports and citizenship databases through the DIA (Identity Services) representative based at Police National Headquarters, as well as Births, Deaths and Marriages records through the Police Vetting and Validation Section. The FIU is, however, not authorised to obtain tax information held by the Inland Revenue Department (IRD).

283. Any agency (public or private) is allowed to disclose information to the FIU for the purposes of preventing, detecting, investigating, prosecuting and punishing offences (Privacy Act, Principle 11(e)(i)).

284. Although the FIU may request additional information from reporting institutions, reporting institutions are not legally required to provide it. In practice, the major banks do provide further information to the FIU when requested to do so, on a voluntary basis and consistent with Principle 11(e)(i) of the Privacy Act. In circumstances where a financial institution has submitted an STR and information is missing or unclear, the FIU collator/analyst generally obtains this information orally during a telephone conversation with the reporting institution. Other additional information is usually requested through written correspondence via email. However, in urgent circumstances such additional information can also be obtained over the telephone, but needs to be followed by a written request. Although not frequently, financial institutions have refused in the past to supply additional information in which case the FIU needs to obtain a search warrant to access the information required for its analysis.

Protection of the information

285. The FIU itself is located within the Police National Headquarters Building in Wellington. Swipe cards and identification cards are required to gain access to the building. As mentioned above, the FIU is part of and located in the NIC. Including the FIU in the NIC was a deliberate choice, which has allowed the FIU to benefit from being part of the intelligence community. The floor where the FIU is located, together with other divisions of the NIC, is secured by swipe card access and is fully alarmed. Any visitors to the floor are signalled with an alarm which remains on until the visitors have left the floor. The FIU floor is only accessible to 64 people which have top secret clearance, including most of the FIU staff and other staff of the NIC.

286. The specific confidentiality provisions applicable to top secret clearance classified employees are contained in a government document which is, itself, classified. FIU staff who do not have top secret clearance are not allowed on the FIU/NIC floor until they obtain that security clearance. Although other police employees are seconded to the FIU when needed to assist on a temporary basis in line with the NZ Police resource prioritisation model, they do not have access to the FIU/NIC floor because they do not have sufficient clearance.

287. All data lines in/out of the FIU/NIC floor are secured and regularly tested for security. The FIU database is secured from the NIC and other police databases, and all queries are password protected and logged. Security is handled using protocols that are at the level of the intelligence community and are much more stringent than those generally applied to law enforcement. Physical files held by the FIU are

either stored within the lockable safes in a lockable file registry or within the file lockable registry, depending on the file security classification. All FIU and NIC staff are required to be aware of the security classification of documents and the appropriate measures required to ensure that sensitive information is not inadvertently disseminated.

288. Additionally, all FIU and NIC staff must adhere to a strict "clean desk" policy, which means that, when an employee leaves his/her desk on a break or goes home at night, all materials must be locked up. Computers automatically lock off when a key hasn't been pressed for a short time, and these also must be turned off at night. All FIU and NIC staff must also adhere to a strict "no socializing" policy, which means that casual conversation and chatting are not to occur on the FIU/NIC floor except in designated social areas (*e.g.* the lunch room). The "clean desk" and "no socializing" policy means that there is very negligible risk that anyone other than an FIU staff member (with top secret clearance) would see STR information. Even if that very unlikely event occurred, the NIC staff who share the floor also have top secret clearance and deal with matters of national intelligence/security that, in comparison, are often much more sensitive than the FIU does and, in any event, are subject to the same strict duties of confidentiality that are applicable to all top secret cleared staff. These policies are enforced and breaches of the duties of confidentiality would be grounds for disciplinary action.

289. The FIU's database is housed within the National Intelligence Application (NIA). Although all members of the Police who have access to the NIA will see a generic message that a particular person/entity is the subject of a report that has been disclosed to the FIU, the actual details contained within such reports can only be accessed by FIU staff and a select number of Police database administrators.

Guidance and periodic reports

290. Based on section 24 of the FTRA, the FIU issues guidelines setting out the characteristics of a transaction that may give rise to a suspicion that the transaction is, or may be, relevant to the investigation or prosecution of a money laundering offence or that the transaction is, or may be, relevant to the enforcement of the POCA, including terrorist financing. These guidelines were first issued in 1996 for mainstream banking, lending, deposit taking, insurance and retail investment, but were broadened in 1998 for casinos, and in 2005 for lawyers, real estate agents and share brokers. The guidelines went through an in-depth update in August 2008 and were slightly amended in December 2008 and May 2009 when more detailed information regarding locations of specific concern, was added following the FATF public statement issued in October 2008 and February 2009.

291. In view of updating its guidelines, the FIU consults the private sector, including through face-to-face meetings. A copy of the current guidelines can be located on the NZ Police public website.

292. Each financial year, the FIU holds a Money Laundering and Financial Crimes Seminar, lasting two to three days. This seminar is attended by over 100 stakeholders from law enforcement and financial institutions. Over the duration of the seminar, issues relating to policy development, ML/FT trends and typologies are examined and discussed at length.

293. 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. The newsletter is emailed out to relevant stakeholders once a year.

The Egmont Group

294. The FIU has been an active member of the Egmont Group since 1997 and was the Oceania representative on the management committee from November 2006 until May 2009. The FIU is also an active member of the Egmont Outreach Working Group. It has sponsored the Cook Islands and the Niue FIUs through the candidacy process and, as a result, these FIUs became Egmont Group members in 2004 and 2007 respectively. Furthermore, in 2008, the FIU reconfirmed its commitment to the group by signing the Egmont Charter.

295. The FIU has regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange. The mechanism for the information exchange between the FIU and its foreign counterparts is discussed in detail in section 6.5 of this report.

Recommendation 30 – Structure, funding, human and technical resources (FIU)

296. At the time of the on-site visit, the FIU had a staffing level of 11 full time equivalents, organised as follows: one Investigator/Analyst (a NZ Police Detective), three Tactical Intelligence Analysts (unsworn NZ police employees) and five Intelligence Collator Analysts (unsworn NZ police employees) all of whom report to one Senior Investigator/Analyst (a Detective Sergeant) who, in turn reports to the Head of the FIU (a Detective Senior Sergeant).

297. At times, the FIU has been confronted with backlogs in entering STRs and BCRs in its database. The backlog in relation to BCRs is particularly troubling and, as of 19 June 2009, was about one year and five months old. The negative impact of this backlog is somewhat mitigated because the authorities explain that priority reports are flagged and dealt with immediately, and so are not part of the backlog. However, in instances where heavy demands are made on FIU resources due to an increased workload, other NZ Police resources have been reprioritised and made available to assist the FIU in managing its core responsibilities. While this operation was is in line with the NZ Police resource prioritisation model, and provided for a reallocation of resources when needed to assist the FIU, it further indicates that, at times, there has not been enough staff allocated to the FIU. The FIU has taken action to address resource issues. In the 2008 budget round, the FIU requested additional staff. This proposal was accepted; the Commissioner and Executive allocated an additional three staff to the FIU (a 37% increase). Additionally, the FIU has requested another nine staff over the next two years to deal with the increased numbers of disclosures it is receiving. It should also be noted that, from time to time, the FIU, as part of the NIC, has been required to second members of its personnel to other units within the NIC, in line with the NZ Police resource prioritisation model, which further supports the concerns discussed above in relation to the operational independence of the FIU.

298. Until recently, the FIU was part of the National Bureau of Criminal Intelligence which had a personnel budget of NZD 2.9 million and an operating budget of NZD 533,000 during the 2007/2008 fiscal year. The operating budget of the FIU (which was part of the wider National Bureau of Criminal Intelligence budget) was approximately NZD 1.2 million per annum, including personnel expenses. Since March 2009, the FIU is part of the NIC and is now subject to an annual budget bidding process that applies to each group within the NZ Police organisation, including the NIC. The National Intelligence Manager, on behalf of the NIC, now makes the budget bid which is considered and approved by the Police Executive. The Head of the FIU is involved in this process through the FIU Business Plan drafted in consultation with the NIC management – his direct manager (the Manager Targeting) and the Manager Intelligence Operations, to whom the Manager Targeting reports.

299. As indicated above, the FIU database is based within the NIA. Access to the FIU database is heavily restricted and presently, only FIU staff and a select number of NZ Police database administrators

have access to the FIU database. This database stores all information relating to STRs, BCRs, SPRs and other financial inquiries conducted by the FIU staff. It also allows for the attachment of paper-based reports, photographs and analytical products. The FIU database issues a unique identifier number which allows for the status of the record to be tracked, its dissemination and management. There are a wide range of other IT tools used by FIU staff including the Microsoft Office suite, i2 Analyst Notebook, the Internet, criminal mapping system, online criminal library, best practice procedures and Lotus Notes for email communication.

Professional standards, skills and confidentiality of staff

300. All permanent staff within the FIU are vetted against NZ Police databases and must also be security cleared to Government Top Secret level to hold their positions (see above). To gain this clearance a high level of integrity is required. From time to time, the FIU employs temporary staff members who must be vetted against NZ Police databases before they are employed.

301. All FIU staff are bound (through their employment contracts) to comply with the Police Code of Conduct. The Code of Conduct sets standards relating to honesty, integrity, loyalty, good faith professionalism, fairness, impartiality, respect and confidentiality. These standards are enforced through a disciplinary process, which is aimed at ensuring that the FIU staff maintain a high level of professional standards. Depending on the seriousness of the violation of the Police Code of Conduct, the proved misconduct could result in a wide range of measures including warning or dismissal.

302. The FIU staff are appropriately skilled to deal with the collation, analysis and dissemination of financial intelligence. FIU staff can also draw upon the experience and expertise of a Chartered Accountant, a staff member with over 20 years in the banking industry, and staff with an extensive history of analysing financial intelligence involving financial products and services. They are also tertiary trained and/or have relevant experience in the areas of management, intelligence, investigations, accountancy, statistics, banking, criminology and communications.

Training

303. All FIU staff receive training in intelligence analysis at either a basic or operational level. The NZ Police Detective (Investigator/Analyst) and two of the tactical analysts have attended strategic analysis training at Charles Sturt University in Canberra, Australia.

304. All members of the FIU have received ML/FT intelligence training through a CD ROM training package produced by the European Union 'Phare Project' and the tactical analysis training package of the Egmont Group of FIUs.

305. Members of the FIU regularly attend the APG typologies workshops and, between 2003 and 2006, the New Zealand FIU was the chair of the APG typologies working group. As a result of this involvement, members of the FIU receive updates on ML/FT trends and typologies occurring within the Asia-Pacific Region. The FIU staff also regularly attend Egmont Group meetings and are exposed to the training opportunities provided by the Egmont Group.

306. As well, from time to time, members of the FIU participate, as either presenters or students in workshops relating to ML/FT (*e.g.* the Australian Anti-Money Laundering Assistance Team (AMLAT) regional workshops, the Interpol Global Congress on Financial Crimes, the UN workshop on Charities and Terrorist Financing, the Strategic Alliance workshop on Terrorist Financing and the IMF/Austrac workshop on Money Laundering and Casinos).

Recommendation 32 - Statistics and effectiveness

307. The New Zealand FIU maintains statistics on the number of STRs received, analysed and disseminated. The following chart sets out the number of STRs and SPRs received, processed and disseminated by the FIU from 2004 to December 2008.

Number of STRs and SPRs received and disseminated

Action	2004	2005	2006	2007	2008	Total
Suspicious transaction reports (STRs)						
Number of STRs received	Not available	Not available	4 066	3 935	4 229	25 219
Number of STRs processed	6 758	6 231	3 879	4 193	4 072	25 133
Number of STRs disseminated	773	596	686	678	743	3 416
Number of intelligence reports disseminated on the subjects of STRs (an individual may have more than one STR)	127	215	94	230	262	821
Number of financial profiles disseminated to assist investigations (financial profiles may contain multiple individuals and/or companies)	313	266	231	370	379	1 559
Suspicious property reports (SPRs)						
Number of SPRs received	20	15	15	1	3	54
Number of SPRs disseminated	0	0	4	0	1	5

Please note that prior to the implementation of the FIU Database in September 2006, STR information was recorded in an interim database. The "Received Date" field did not exist in the interim database.

308. The reason why the processed STRs for 2004 and 2005 are significantly higher than subsequent years is due to a backlog that was carried over from previous years. Prior to 2004, only three staff members were employed in the FIU. In 2004, FIU staff was increased from three to eight members and in addition, three temporary staff members were employed. The availability of extra staff allowed the FIU to process the significant backlog of STRs that was previously built up when there were only three staff available to process them.

309. Statistics in relation to BCRs are only available since 2007. All BCRs were analysed, but dissemination of BCRs took only place in cases where they complemented other dissemination reports. Between 1 January 2007 and 30 June 2008, a total of 29 BCRs were incorporated into the analysis of ten disseminated intelligence products.

310. As the FTRA does not require the reporting of international wire transfers to the FIU, there are no statistics of international wire transfers.

Additional elements

311. New Zealand also maintains comprehensive statistics summarising the types of prosecutions which have been assisted by the dissemination of STRs.

Types of investigations in which suspicious transaction reports have assisted in prosecution, 2004 – 2008

Offence	2004	2005	2006	2007	2008	Total
Total STRs disseminated per year	773	596	686	678	473	3476
STRs disseminated which assisted in a prosecution	45	37	82	117	61	342
Percentage of STRs disseminated which assisted in a prosecution	6%	6%	12%	17%	8%	10%
Types of prosecutions assisted by the dissemination of STRs						
Drug Offences	39	70	144	183	217	653
Fraud Offences	21	151	35	125	95	427
Money Laundering	5	2	8	9	14	38
Financial Transactions Reporting Act Offences	5	-	40	-	-	45
Theft / Burglary	1	8	2	13	4	28
Tax Evasion	-	18	-	-	-	18
Firearms	-	1	-	8	-	9
Fisheries	-	1	-	-	-	1
Murder	-	1	-	-	1	2
Total Charges	**71**	**252**	**229**	**338**	**331**	**1 221**

2.5.2 Recommendations and Comments

312. The FIU should be legally authorised to obtain from reporting parties additional information needed to properly undertake its functions. Currently, the FIU is only authorised to request additional information, but the reporting institutions are not legally required to provide it.

313. The authorities should ensure that the FIU has sufficient resources to address the backlog, particularly of BCRs, which is awaiting to be input into the FIU's systems. Going forward, the authorities should also ensure that the FIU continues to have sufficient staff allocated to it so as to ensure that it can effectively deal with the ever-increasing numbers of reports that it receives.

314. The assessment team initially had concerns about the possible lack of sufficient legal and operational independence and autonomy of the FIU, however, these are addressed in the Commissioner's acknowledgement and delegation, as discussed above. The authorities should ensure that upon enactment, the new AML/CFT Bill does contain the necessary delegation by the Commissioner to the FIU of his powers, functions and duties under that legislation.

315. The recently enacted Criminal Proceeds Recovery Act, which will come into force on 1 December 2009, will allow for the sharing of tax information between the IRD and the NZ Police for proceeds of crime investigations.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s. 2.5 underlying overall rating
R. 26	LC	• There is no legal provision that authorises the FIU to obtain additional information from reporting parties when needed to properly undertake its functions. • 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.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R. 27 & 28)

2.6.1 Description and Analysis

Recommendation 27 (Designated law enforcement authorities)

New Zealand Police

316. The NZ Police is a unified national police agency and the primary law enforcement agency with responsibility for all community safety, road policing and investigations. In 2007, the NZ Police investigated 420 000 crimes and prosecuted 140 000 offenders. The NZ Police is responsible for the investigation and prosecution of money laundering and for giving effect to the TSA, including the terrorist financing provisions. All criminal investigators have responsibility and capability to be involved in ML investigations. Although the NZ Police does not have specialised units in charge of investigating solely ML cases, the following units of the NZ Police are particularly relevant to AML/CFT:

- *Criminal Investigations Branch*: Nationally, the NZ Police has approximately 1 000 trained investigative staff within its Criminal Investigations Branch and these are primarily responsible for serious crime investigations, including ML/FT.

- *Special Intelligence Groups*: There are three Special Intelligence Groups operating in Christchurch, Wellington and Auckland and their role is to investigate matters of national security, including investigating persons suspected of involvement in terrorist activity or terrorist financing.

- *Proceeds of Crime Units*: The Proceeds of Crime Units have 16 dedicated staff members, spread over the four main Proceeds of Crime Units and the two provincial offices, who assist with the financial aspect of investigations (*e.g.* illicit drugs, property and vehicle crime) and assist other law enforcement investigations, including those related to fraud, tax evasion, environmental crime, paua poaching, intellectual property crime and certain immigration offences where there is potential for proceeds of crime recovery.

- *Organised and Financial Crime Agency:* The most important task of the Organised and Financial Crime Agency is to lead and enhance co-operation between law enforcement and other agencies in the planning and conducting of operations against organised crime. However, the Organised and Financial Crime Agency of New Zealand is still early in its development, and as such has yet to play a significant role in AML/CFT enforcement in New Zealand.

Serious Fraud Office

317. The Serious Fraud Office (SFO) is a government department established under the Serious Fraud Office Act (SFOA). It operates under the control of the Director of Serious Fraud, who reports to the Attorney-General. The SFO is responsible for the investigation and prosecution of serious or complex fraud, and related money laundering.

Postponement of Arrest and/or Seizure of Money

318. There is no provision in New Zealand law that would prevent the competent authorities that investigate ML cases from postponing or waiving the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. The authorities confirmed that there have been numerous police investigations where such an operational decision has been made to allow the investigation to continue in order to identify further offenders and facilitators.

Additional elements

Special investigative techniques

319. The NZ Police has a wide range of special investigative techniques and powers for the investigation of serious crimes, including ML/FT. The NZ Police can require telecommunication networks to provide interception capability across their networks and assist with giving effect to an interception warrant. They may also place electronic tracking devices pursuant to a tracking devices warrant (Misuse of Drugs Amendment Act ss. 14-29; and Summary Proceedings Act ss. 200A-200P). The NZ Police also have the power to intercept private communications under the authority of a High Court interception warrant (Crimes Act Part XI ss. 312A-Q; Misuse of Drugs Amendment Act ss. 16-29). Undercover agents may be used for investigations, including those involving ML/FT, without specific legislative authorisation, based on a formal approval, to use assumed identities being issued by the Commissioner of Police. In these circumstances, there are statutory protections that prevent disclosure of a police undercover agent's true identity in subsequent criminal proceedings (Evidence Act ss. 108-109). The NZ Police commonly uses controlled delivery operations, particularly for illicit drug investigations (Misuse of Drugs Amendment Act s. 12). However, these techniques have never been used in practice in ML/FT investigations.

320. There are dedicated Proceeds of Crime Units within the NZ Police which work in close liaison with the Crown Law Office (Office of Solicitor-General) and Criminal Investigations Branch staff within the police (see section 2.3 for further details)

321. New Zealand has a legal framework that enables law enforcement co-operation for international criminal investigations (see sections 6.3-6.5 for further details). There is also a Proceeds of Crime Strategy Group established to enhance operational cooperation at a national level (see section 6.1 for further details).

Recommendation 28 (investigative powers)

Powers of production, search and seizure

New Zealand Police

322. Police officers have general powers of search and seizure that can be used during the investigation of ML, FT or an underlying predicate offence. Generally, a search warrant may be obtained for the search of any place where evidence may be found of an offence punishable by imprisonment

(Summary Proceedings Act s. 198). Warrantless search and seizure of persons and property is permitted in certain situations involving drug offending (Misuse of Drugs Act s. 18). Warrantless entry onto private property is also permissible in situations of necessity (Crimes Act s. 317).

323. Police officers also have the powers to obtain a production order to compel the production of financial records. A commissioned police officer may obtain a production order from a High Court judge, based on reasonable grounds to believe that a person has possession or control of one or more property-tracking documents in relation to an offence (POCA s. 68(1)(b)). A production order requires a person to produce to the police, or make available to the police for inspection, any specified document or class of documents that are in the person's possession or control (POCA s. 69). On the authority of a production order, the police may inspect the documents (retaining them as long as is reasonably necessary), take extracts and/or make copies (POCA s. 71). Subject to certain specified exceptions, a production order will apply notwithstanding any enactment or rule of law that obliges or entitles any person to maintain secrecy in relation to any matter (POCA ss. 72-74). A production order applies in relation to any "property-tracking documents" (*i.e.* any documents relevant to identifying, locating or quantifying tainted property in relation to an offence).

324. As indicated in section 2.3 above, this power is limited to circumstances where a person has been convicted of (or there are reasonable grounds for believing that the person has committed) a drug-dealing offence or a serious offence that is transnational in nature (*i.e.* is committed in more than one country) and involves an organised criminal group (POCA s. 68). It would ordinarily be a significant gap that a production order cannot be obtained in circumstances where the offence occurs entirely within New Zealand or there is no involvement by an organised crime group. Moreover, a production order will not apply subject to certain specified exceptions, including confidentiality of bank information (POCA s. 73).

325. However, as indicated in section 2.3 above, the police get around this problem by recurring more to the use of search warrants because of the restrictive conditions surrounding the issue and use of production orders that relate to specific documents. Therefore, search warrants are widely used as an alternative to the same effect. Although production orders are generally a much more effective tool for obtaining financial records, in the New Zealand context, the authorities have been able to effectively use search warrants in the same way as production orders. To date, this practice has enabled the NZ Police to obtain the same information that would be available pursuant to a production order in a much broader range of contexts. This is confirmed by the New Zealand Law Commission Report 97 on "Search and Surveillance Powers" which states that "it has become a common practice in New Zealand where a search warrant is issued in respect of business documents or records for the holder of the documents to co-operate with the enforcement officer executing it, by handing the evidential material over to the officer without the officer conduct a search". However, the Commission Report did make several recommendations in favour of changing the current legislation and allowing for the easy use of production orders by enforcement authorities. These recommendations were taken into account when New Zealand drafted the Search and Surveillance Powers Bill, which is currently before Parliament. Given that the NZ Police are able to use search warrants to the same effect as production orders (and regularly do so in practice), the restrictive conditions surrounding the issuance and use of production orders does not affect the rating for this Recommendation.

Serious Fraud Office

326. The Serious Fraud Office (SFO) has additional powers which may be exercised in the course of an investigation where there is suspicion of serious or complex fraud (meaning a series of connected incidents of fraud which, if taken together, amount to serious or complex fraud) (SFOA s. 2). In such cases, the Director has the power to:

- Compel the production of any documents that the Director believes may be relevant to the investigation (ss. 5(a) and 9(1)(f)).

- Compel the supply of any information that the Director believes may be relevant to the investigation (s. 9(1)(e)).

- Apply for a search warrant from the Courts to search any place specified in the warrant (ss. 6 and 10).

- Assume from the NZ Police the responsibility for investigating certain cases of fraud (s. 11).

327. These powers may also be used prior to an investigation being authorised, when the Director is undertaking his/her statutory detection function, where the Director has reason to suspect that an investigation may disclose serious or complex fraud.

Powers to take witness statements

New Zealand Police

328. Rule One of the 1912 Judges Rules states that 'when a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.' This rule has underscored subsequent legislative changes impacting criminal investigations, for example, statutory provisions on the collection and admissibility of evidence.

329. The Evidence Act provides procedures that enable the use of witness statements as evidence. All evidence relevant to a proceeding is admissible unless it is inadmissible or excluded under the Evidence Act or any other Act (s. 7). A witness statement made by the NZ Police is generally admissible provided that it meets this fundamental principle. If the defence challenges that evidence, it is for the Judge to determine the relevance of the statement.

Serious Fraud Office

330. The Serious Fraud Office can and does take statements from witnesses and suspects where those statements are made voluntarily. Provided that proper process is adopted, there are ordinarily no issues with those statements being admissible in courts (SFOA s. 26). In addition, the Director can compel any person who he thinks may have information relevant to a case of serious or complex fraud to attend at the Office (or any other place) and answer questions that the Director thinks relevant (SFOA s. 9(1)(c)). The person is required to answer the questions, notwithstanding that the answer may be incriminating (s. 9(1)(d)). Other duties of confidentiality are overridden by the SFOA (s. 23) with the exception being legal professional privilege (s. 24). If a person who makes an incriminating statement under compulsion is later charged, then the statement cannot be tendered in evidence unless the person gives conflicting evidence under oath (s. 28).

Recommendation 32 – Statistics and effectiveness

331. An analysis of police case statistics provided to the assessment team shows that the NZ Police conducted 197 investigations with an ML aspect during 2004 and 2008. As indicated in section 2.1 above, these investigations resulted in 140 convictions and 669 charges for money laundering. There have been few stand-alone money laundering investigations so far and the effective enforcement of autonomous ML offences still presents a real challenge that needs to be tested further. There have been some investigations

relating to possible terrorist financing in New Zealand based on the suspicious property reports received by the FIU (TSA s. 43), as indicated in section 2.2 above; however, none of these investigations uncovered incidents of FT occurring in/through new Zealand.

Recommendation 30 – Structure, funding, human and technical resources (Law enforcement authorities)

New Zealand Police

332. The NZ Police has 11 000 staff located in 12 geographical policing districts, Police National Headquarters in Wellington, and the Royal New Zealand Police College at Porirua, Wellington. Each policing district is further divided by areas. The NZ Police is currently funded by government on an annual basis to the amount of NZD 1.3 billion. Over the past three years, the government has increased the number of NZ Police staff by 1 250. The Police believe that sufficient resources are provided for the effective and efficient enforcement of ML, FT and predicate offences.

333. The Commissioner is directly accountable to the government for NZ Police expenditure, but is otherwise operationally independent. The operational independence and autonomy of the Commissioner of Police from undue influence or interference is enshrined in the recently enacted Policing Act 2008 (s. 16).

334. The Commissioner must prescribe a code of conduct for all police employees stating the standards of behaviour expected of NZ Police employees (Policing Act s. 20). The Police Code of Conduct prescribes in detail the standard of behaviour expected of every police employee, including standards regarding confidentiality, integrity and professionalism. As indicated in section 2.5 above, depending on the seriousness of the violation of the Police Code of Conduct, the proved misconduct could result in a wide range of measures including warning or dismissal.

335. The Police currently have approximately 1 000 training and qualified detectives within the Criminal Investigations Branch. All trained detectives pass through two formally structured courses that are conducted through the Royal New Zealand Police College (the Detective Induction and Selection Course, and the Detective Qualifying Course). The FIU has developed and delivers specialist expert training on ML/FT to all NZ Police staff undertaking the Detective Induction and Selection Course. The NZ Police staff receives AML/CFT training on a yearly basis.

Serious Fraud Office (SFO)

336. The SFO has 34 staff and is currently funded by the Government on an annual basis in the amount of approximately NZD 5 million. The Director is directly accountable to government for Office expenditure, but is otherwise operationally independent under the provisions of the SFOA.

337. SFO investigators, forensic accountants and prosecutors are held to high professional standards, and are required to comply with the relevant legislative framework and the Public Sector Code of Conduct which sets out standards of integrity, professionalism and discretion. Forensic accountants are required to maintain the qualifications of the New Zealand Institute of Chartered Accountants and prosecutors are required to hold current practising certificates and meet standards prescribed by the New Zealand Law Society.

338. Investigators within the SFO are almost without exception from a police/detective background and so have generic training in criminal investigation. SFO prosecutors (who advise on investigations and also prosecute serious and complex fraud cases in the New Zealand courts) are experienced practitioners well-versed in the criminal legislation and criminal law practices and procedures. In addition, the SFO trains its investigators (including its forensic accountants) in the techniques required to effectively and efficiently investigate serious and complex financial crime. These techniques are relevant to ML/FT

training investigations. The SFO also attends domestic and international training opportunities provided by other agencies.

2.6.2 Recommendations and Comments

339. 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. Although, 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 (and is the reason why this issue does not affect the rating for R. 28), the context in which production orders may be used should be expanded. The draft Search and Surveillance Bill includes specific provisions that will facilitate the use of production orders for law enforcement purposes. New Zealand should ensure that the proposed legislation is passed as soon as possible and should take the necessary steps to bring the final Act into force, as it will address the issues raised with regard to the use of production orders.

340. Law enforcement authorities in New Zealand have an adequate legal basis for the use of 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.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s. 2.6 underlying overall rating
R. 27	**C**	• This Recommendation is fully observed.
R. 28	**C**	• This Recommendation is fully observed

2.7 Cross Border Declaration or Disclosure (SR. IX)

2.7.1 Description and Analysis

Special Recommendation IX

341. The FTRA (part V, s. 37) imposes an obligation on persons arriving in or leaving New Zealand to report the cross-border transportation of cash, and gives various powers to the New Zealand Customs Service (Customs) to deal with declared or undeclared cash. The Customs and Excise Act (CEA) provides the general basis for the operational functions of the Customs. The TSA (s. 47A(1)(a)) and the POCA (ss. 35-38) provide for the seizure and detention of property, including cash.

Declaration system for incoming and outgoing persons

342. New Zealand operates a declaration system 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 (FTRA s. 37). This is consistent with the EUR/USD 15 000 threshold prescribed by Special Recommendation IX.

343. The declaration must be made on a BCR which is part of the arrival and departure cards to be completed by all persons entering or leaving New Zealand, and to be handed over to the Customs officers. The law restricts this obligation to instances where the cash is being carried on a person or in their accompanied baggage; physical cross-border transportations of cash in unaccompanied baggage is not covered (s. 37(1)(b)). However, the negative impact of this deficiency is somewhat mitigated because the BCR form itself advises travellers to make a declaration when cash (exceeding the threshold) is being

carried "on their person or in their baggage"— a phrase which, in practice, could be reasonably interpreted by the person filling out the form as including unaccompanied baggage.

344. The declaration obligation applies only to "cash", meaning any coin or paper money that is designated as legal tender in the country of issue (FTRA s. 2(1)). Bearer negotiable instruments (BNI) are not covered; the definition specifically excludes bearer bonds, travellers' cheques, postal notes and money orders.

345. New Zealand has not implemented a declaration or disclosure system in relation to physical cross-border transportations of currency or BNI through the mail or containerised cargo. Overall, these gaps in scope are a serious deficiency in New Zealand's implementation of SR IX.

Powers to obtain further information

346. There is no legal basis for the Customs officers to request and obtain further information upon discovery of a false declaration or failure to declare. In practice, Customs officers would interview the person carrying the cash, but there is no legal obligation for the person to respond to the questions.

Power to stop and restrain goods, and apply provisional measures and confiscation

347. There are currently no provisions to restrain cash or BNI solely on the basis of a false disclosure or non-disclosure. However, Customs officers do have the ability to restrain any goods, including cash and BNI, where there is a suspicion that the goods are connected to ML/FT (CEA ss. 166A-F). For example, when persons enter or exit New Zealand, Customs officer run their passport through the CUSMOD database which automatically checks for matches against the 1267 list. A match would trigger a suspicion of FT, in which case a Customs officer would interview the individual to establish his/her identity.

348. Customs officers have the power to seize and detain goods that are being (or are intended to be) exported from or imported into New Zealand and are suspected of being "tainted property" (*i.e.* proceeds or instrumentalities of crime) (POCA s. 2(1)). The detention may last for up to 21 days (seven days initially, then a further 14 days on application to a High Court judge), so as to enable action to be taken under the POCA or the MACMA, as appropriate. Similar provisions exist in relation to goods (including cash and BNI) suspected of being owned or controlled, directly or indirectly, by a designated terrorist entity or an entity that is eligible for such a designation (TSA s. 47A). Goods can be detained for up to 21 days (seven days initially, then a further 14 days on application to a High Court judge) (TSA s. 47E).

349. Although the declaration obligation is restricted to physical cross-border transportations of cash, the power to seize and restrain goods extends to any tainted property or terrorist property, including cash and BNI. Likewise, although the declaration obligation only applies to transportations carried on a person or in their accompanying baggage, Customs officers can use their powers to seize and detain cash/BNI which is being transported in unaccompanied baggage, through the mail or in containerised cargo, if there is a suspicion that it is related to ML/FT (CEA s. 166C(2); TSA s. 47C(2)). However, it should be noted that, to date, these powers of seizure and restraint have not been used.

350. Detained goods must be returned to the person from whom they were seized at the expiry of the 21-day investigation period unless, in the interim, they are determined to be tainted property or terrorist property (CEA s. 166D; TSA s. 47D). In such cases, the provisional and confiscation measures of the POCA (in the case of tainted property) and TSA (in the case of terrorist property) may be applied. See sections 2.3 and 2.4 of this report for further details.

Information collected

351. The BCR form allows a variety of information to be collected, including: name, passport number, citizenship, occupation, address in New Zealand or overseas, flight and arrival details, where travel commenced, type of currency, amount, value in NZD, and the city and country where the cash originates or is destined. The completed BCRs are collected by Customs officers at airports and other ports of entry or departure and forwarded to the Police Commissioner (FTRA s. 42(1)). In practice, they are received by the FIU for collation and analysis. The Customs themselves do not retain a copy of the BCR forms. However, based on FTRA s. 42(4), the Chief Executive of the Customs needs to make sure that measures are in place that allow for a record to be kept of each occasion on which a cash report is made to a Customs officer, together with the details of the identity of the person making the report and the date on which the report is made. This record needs to be retained for a period of not less than one year after the date on which the cash report is made.

352. BCRs are placed in a pre-addressed envelope and forwarded to the FIU by way of the Customs internal mail system, which allows the forms to be physically handed over to the FIU. There is no set timeframe for such a dispatch, but it takes place approximately once a week.

353. The secure web portal held by the FIU also has the ability to electronically receive BCRs from the Customs, however as indicated in section 2.5 above, this feature is not currently being utilised. Electronic processing would require Customs to scan individual manually completed BCRs and then electronically transfer these to the FIU. The alternative to scanning would require Customs to electronically duplicate a BCR. Both of these processes would be resource intensive activities. Therefore, the Customs physically forward completed BCRs to the FIU via the Customs Service internal mail delivery system.

354. All interactions with persons involving BCRs are recorded in the Customs Intelligence system in the form of an Activity Report or Information Report. The level of detail recorded by the Customs officer would depend on the nature of the interaction. In situations where there is a false declaration or a suspicion of ML/FT, full details of that interaction would be recorded electronically on Customs Intelligence indices. The FIU and/or other Police units would be advised of the incident.

Sanctions

355. Criminal sanctions apply for breaching the declaration requirements. Failing to make a declaration as required (without reasonable excuse) is an offence punishable by a fine not exceeding NZD 2 000 (FTRA s. 40(1)(a)). Alternatively, where the person admits in writing that they have committed the offence, the Chief Executive of the Customs has the discretion to proceed summarily, in which case a fine not exceeding NZD 200 applies (FTRA s. 41). Making a false/misleading declaration (without reasonable excuse) is an offence punishable by a fine not exceeding NZD 2 000 (FTRA s. 40(b)). Wilfully obstructing a customs officer in the performance of their duties is also an offence punishable by a maximum of three months imprisonment or a fine not exceeding NZD 1 000 (s. 40(2)). These sanctions extend to legal persons and to company directors and senior management. However, the fines applicable for false or non-declaration, especially in relation to legal persons, are too low to be considered dissuasive.

356. To date, there have been two prosecutions by the NZ Police under sections 40(1)(b) and 40(2); and the other cases of non-compliance have been dealt with summarily pursuant to section 41, as indicated in the chart below. However, a detection rate of five or fewer cases per annum seems to be very low.

Number of cases under section 41 Financial Transactions Reporting Act 1996

2001	2002	2003	2004	2005	2006	2007	2008
3	4	1	1	2	5	3	2

357. Money laundering or terrorist financing through the physical cross-border transportation of cash is punishable pursuant to the Crimes Act, the Misuse of Drugs Act and the TSA (see sections 2.1 and 2.2 above for a detailed description of the applicable sanctions).

Domestic and international co-operation

358. At the domestic level, the Customs works closely with Immigration officials and other related authorities to protect New Zealand borders. Customs officials operate on the front line at New Zealand's international ports, performing both customs and immigration functions. Immigration officers from the Department of Labour are also available to make specialised decisions.

359. The Customs and the Ministry of Agriculture and Forestry (MAF) Biosecurity entered into an MOU for the exchange of information, which came into force on 20 November 2008. At New Zealand international airports Aviation Security staff undertake x-rays of all hand luggage for outgoing passengers while the MAF staff undertake x-rays of the luggage, including hand luggage, of arriving passengers for biosecurity purposes. These x-rays are meant to detect organic substances, including paper, thereby allowing for the detection of cash and BNI. Aviation Security and MAF officers are regularly briefed on Customs' interest in large sums of currency being transported across the border. In situations where cash is detected by Aviation Security officers, a Customs officer will intercept the person carrying the cash and assess if there is a need to make a declaration.

360. The National Targeting Centre (NTC) was established in 2006. The NTC incorporates staff from Customs, MAF, Maritime New Zealand and Immigration and has further enhanced operational collaboration amongst agencies at the border. It is the NTC's role to monitor advanced transaction information for cargo, craft, and passengers through the use of intelligence tools such as alerts and profiles for purposes of identifying high risk transactions and targeting with the appropriate operational response. The NTC is a 24-hour operation located in Auckland that provides risk targeting across goods, craft and persons using risk assessment methodologies and drawing on relevant information from across agencies to refine targeting. The relevant agencies represented in the NTC are aware of the Customs' interest in cash couriers arriving and departing New Zealand and for this reason they provide and exchange intelligence in this regard.

361. The Customs do not carry out the subsequent proceeds of crime or ML investigations connected to the substantive offences; that is the responsibility of the NZ Police. However, Customs officers from the Fraud and Drug Investigations and Intelligence Groups will support the NZ Police efforts in this field through any joint operations that may involve ML/FT, including ad-hoc assistance which may be provided on request in individual cases and AML/CFT operations. In 2002, the Customs set up a new intelligence team specifically dealing with counter-terrorist matters and this group liaises with its NZ Police and security counterparts. In addition, the Customs do allocate analysis staff to one-off AML/CFT projects or initiatives. During 2007/8, for example, one officer was involved in undertaking preliminary work on trade-based money laundering risk.

362. The Customs and the NZ Police entered into an MOU that came into force in June 2007. The NZ Police will, on request or spontaneously, provide to the Customs information and intelligence held by it on

all matters connected to the enforcement and maintenance of law for which the Customs has a statutory investigative or intelligence interest. Similarly, the Customs will, on request or spontaneously, provide to the NZ Police information and intelligence held by the Customs on all matters connected to the enforcement and maintenance of law for which the NZ Police has a statutory investigative or intelligence interest.

363. At the international level, the Customs uses a range of cooperative arrangements with other customs administrations, including bilateral MOUs with a number of key trade and regional partners (including Australia; Canada; Chile; Peoples' Republic of China; Fiji; Hong Kong, China; Japan; Korea; Thailand; United Kingdom; and the United States). These MOUs typically contain provisions relating to the exchange of information on matters of common interest. These arrangements facilitate enquiries and information exchange on a variety of subjects and commodities including, as appropriate, money laundering, terrorist financing and the cross border movement of cash and other liquid valuables. In addition, the Customs has liaison officers posted abroad and foreign liaison officers are based in New Zealand.

364. The Chief Executive of the Customs is authorised to disclose information to overseas enforcement agencies (CEA s. 281). Such disclosures can be made pursuant to a written agreement or, where no such agreement exists, subject to certain conditions. The information that may be disclosed, includes personal identification details and "known currency and other financial transactions of relevant interest, including involvement in money laundering" (CEA s. 282(g) and (j)).

365. These arrangements are routinely used for international cooperation on a variety of anti-smuggling matters. However, they are not commonly used in relation to money laundering. There was only one money laundering related enquiry to or from Customs in the 12 months up to 30 September 2008.

366. All unusual or suspicious shipments of declared or undeclared "liquid valuables" (which includes gold, precious metals and precious stones) are documented on the Customs Intelligence indices, dealt with by an intelligence analyst, and may be passed onto the NZ Police and the FIU for further action. The New Zealand authorities would also consider advising relevant overseas Customs administrations on a case-by-case basis. Additionally, the goods may be seized if they were being imported into New Zealand and a Customs entry declaration was not made, as required for commercial shipments or shipments by private importers (CEA s. 39; Customs and Excise Regulation 26(1)(b)).

Safeguards for protecting information

367. Exchange of data between agencies, both domestically and internationally, must comply with the provisions of New Zealand legislation such as the Privacy Act which provides the statutory framework to both protect and enable the sharing of data between agencies. The MOU which typically govern information exchanges with other government agencies generally contain provisions dealing with the security and confidentiality of information. Additionally, there are specific safeguards for information exchange with overseas agencies for enforcement purposes (CEA ss. 281-282). Such exchanges are subject to consultation with the Privacy Commissioner (CEA s. 281(8)(a)). Moreover, as indicated above, secure channels are in place to provide the BCRs received by the Customs to the FIU.

Additional elements

368. All completed BCRs submitted to the Customs at the border are forwarded to Police Commissioner. All BCRs are available to the FIU where they are entered and maintained on a computerised database.

Recommendation 32 – Statistics and effectiveness

369. The Customs and the FIU keep statistics on the number of BCR completed and received.

Number of border cash reports: 2001 – 2008

2001	2002	2003	2004	2005	2006	2007	2008
2 677	3 571	2 342	1 747	1 598	1 782	1 473	2 566

Note: figures provided by FIU.

370. The following chart shows the number of prosecutions for offences pursuant to the BCR reporting obligation. These offences were detected and investigated by the NZ Police solely and without involvement of the Customs. It raises concerns about the effectiveness of the system that there have been almost no detections of false/misleading BCRs (only one in the past five years).

Number of prosecutions for Offences pursuant to BCR obligation, 2004 – 2008

Offence	2004	2005	2006	2007	2008
Makes false/misleading cash report	0	0	1	0	0
Wilful obstruction of a Customs officer (under FTRA)	0	0	1	0	0
Total	**0**	**0**	**2**	**0**	**0**

Notes:

1) The table presents charge-based data *i.e.* the number of criminal charges laid in courts. It does not represent the number of individuals charged, as an individual can face more than one charge.

2) *Source*: Ministry of Justice.

Recommendation 30 – Structure, funding, staffing and resources (Customs authorities)

371. The Customs have approximately 1 270 staff in 16 onshore and 5 offshore locations. Around 640 of the staff are based in Auckland, which handles the largest trade and travel volumes. For the period 2008/2009, The Customs have an operating budget of NZD 125 million.

372. There is no particular division within the Customs that deals exclusively with or has responsibility for AML/CFT. However, the Customs have Fraud and Drugs Investigation and Intelligence Groups, which support NZ Police efforts in this field through joint operations that may involve ML/FT. Customs staff have been seconded from the Fraud and Drugs Investigation and Intelligence Groups to one-off AML/CFT projects. In 2002, the Customs set up a dedicated counter-terrorism intelligence unit.

373. There is an extensive range of measures in place to safeguard and promote integrity within the Customs many of which have been embedded as "business as usual" rather than as specific programmes. Some of the key initiatives around integrity include:

- The development a Customs Code of Conduct (soon to be updated) to complement the Public Service Code of Conduct.
- A "Conflict of Interest" declaration for all staff.
- A "Statement of Integrity Principles" document which provides guidance to staff on ethical issues and dilemmas and forms part of the package of integrity training material.

- A recruitment process which involves a check on a number of aspects for prospective staff as well as follow-up interviews with applicant referees.

- A government security clearance, involving checks by the NZ Police and the New Zealand Security Intelligence Service, which is required for a number of Customs staff.

- The Integrity Training Framework which contains a graduated level of ethics and values knowledge (Trainee, Senior Customs officer, Assistant Chief Customs officer and Chief Customs officer levels).

- Presentations and ongoing workshops on integrity issues for Customs staff.

374. The Customs provide training to Customs officers working at New Zealand's airports on the operation of the border cash reporting provisions of the FTRA. A training session on AML/CFT is included in the five-week trainee induction training and is also covered again for new staff just prior to their rotation to airports. Intelligence analysts employed by the Customs receive advanced training, which also covers basic financial analysis techniques. A small number of customs officers from the Fraud and Drugs Investigations and Intelligence Groups also attend the annual Money Laundering and Financial Crime seminar run by the NZ Police which covers more detailed aspects of AML techniques.

375. Customs has also prepared intelligence assessments on the risk posed by cross border movements of cash and the Customs role in money laundering. The most recent of these was completed in 2007. In addition, the Customs intelligence unit routinely circulates updates of cash concealment methods detected overseas. The FIU's 'Money Talks' newsletter is also circulated to appropriate Customs staff. The World Customs Organisation also provides guidance for its members and the subject is discussed at annual Enforcement Committee meetings.

376. In June 2007, a Customs officer from the investigations' group was seconded to the FIU for a short period. Although the focus was on trade-based money laundering, other goals of this secondment included enhancing interagency cooperation and strengthening the relationship between the NZ Police and the Customs in investigations.

2.7.2 Recommendations and Comments

377. New Zealand should extend the declaration obligation to include BNI, unaccompanied cash/BNI, and cash/BNI sent through mail or containerised cargo, and further develop its AML/CFT enforcement capability to be used for the detection of cross border movement of cash/BNI accordingly.

378. Customs officers should be legally authorised to request and obtain further information from the person carrying cash and BNI in absence of a declaration or upon discovery of a false declaration.

379. Customs officers should be authorised to restrain cash or BNI solely on the basis of a false disclosure or non-disclosure. New Zealand should amend its legislation in this regard in order to address this shortcoming.

380. Sanctions for non-compliance with the BCR reporting requirements should be effective, appropriate and dissuasive.

381. The detection of non-compliance with the BCR reporting obligation is very low, and the Customs has never used their powers of seizure and restraint in the ML/FT context. Therefore, Customs need to

review the functioning of its systems with a view to better capturing instances of non-compliance with the BCR reporting requirements.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s. 2.7 underlying overall rating
SR. IX	**PC**	• The declaration system does not apply to bearer negotiable instruments, unaccompanied cash/BNI, and cash/BNI sent via mail or in containerised cargo. • The Customs do not have the authority to request and obtain further information regarding cash and BNI upon discovery of a false declaration. • The Customs are not able to stop or restrain currency or BNI solely for non-disclosure or on the basis of a false declaration. • The fines applicable for false or non-declaration are too low to be considered dissuasive. • 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.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Preamble: Law, regulation and other enforceable means

382. New Zealand has implemented AML/CFT preventative measures through the application of the FTRA, the TSA and four related regulations: the Financial Transactions Reporting (Prescribed Amount) Regulations 1996 (Prescribed Amount Regulations); the Financial Transactions Reporting (Interpretation) Regulations 1997 (1997 Interpretation Regulations); the Financial Transactions Reporting (Interpretation) Regulations (No. 2) 1997 (1997 Interpretation Regulations No. 2), the Financial Transactions Reporting (Interpretation) Regulations 2008 (2008 Interpretation Regulations); and the Reserve Bank of New Zealand (Registration and Supervision of Banks) Regulations 2008 (2008 Reserve Bank Regulations).

Preamble: Other guidance considered to be non-binding and unenforceable

383. The AML/CFT requirements are further elaborated in the following non-binding guidance documents – none of which fall within the FATF definition of "other enforceable means" for the reasons set out below.

384. ***All financial institutions:*** The Best Practice Guidelines for Financial Institutions (FI Guidelines) set out best practices, applicable to all financial institutions (FIs), for the purpose of: *i)* helping them to understand and comply with their obligations under the FTRA; and *ii)* explaining ML methods to assist with identifying suspicious transactions (p. 5). To that aim, the FI Guidelines provide specific examples of potentially suspicious transactions for financial institutions in the banking and investment sectors, casinos, lawyers and real estate agents. The FI Guidelines were issued by a competent authority (the FIU under the authority of the FTRA), but are not considered to be "other enforceable means" because they do not establish enforceable requirements with sanctions for non-compliance.

385. ***Banking sector:*** The Guidelines on Anti-Money Laundering and Countering Financing of Terrorism (BS5 Guidelines) were issued on February 2009 (replacing the BS5 Guidelines dated August 2003) and set out general guidelines relating to banks' implementation of Recommendations 5, 15 and 23. The BS5 Guidelines were issued by a competent authority, the Reserve Bank of New Zealand, but are not considered to be "other enforceable means" because they do not establish directly enforceable requirements with sanctions for non-compliance. The BS5 Guidelines indicate that: "The Reserve Bank expects each bank to be familiar with the standards and mechanisms outlined in each of the papers noted above, and to implement these." During its meetings with the private sector, the assessment team also obtained confirmation that the private sector considers the BS5 Guidelines to be unenforceable guidance only.

386. The Procedures and Guidance Notes for Banks (Banks Procedures/Guidance) were issued by the New Zealand Bankers' Association which is not a "competent authority" as that term is defined by the FATF. The Banks Procedures/Guidance applies to registered banks and describes: *i)* the general standards of banking industry practice agreed by member banks to help them to deter ML and comply with AML legislation; and *ii)* suspicious transaction guidelines agreed by member banks which should assist them in meeting the suspicious transaction reporting requirements under the FTRA (section A(1)). The Banks Procedures/Guidance has been issued in 1996 and never been updated since that date. The Banks Procedures/Guidance is not considered to be "other enforceable means" because it was not issued by a competent authority and does not establish enforceable requirements with sanctions for non-compliance.

387. ***Securities sector:*** The New Zealand Exchange (NZX) Participant Rules (Participant Rules) set out some CDD requirements for participants in the securities markets of the NZX. The Participant Rules

constitute part of the "conduct rules" which govern the listing of securities and conduct of business on the securities market (Securities Markets Act (SMA) 1988 ss. 36G-36H). The law clarifies that conduct rules are not regulations (SMA s. 36R). For the following reasons, the assessment team is also not satisfied that the Participant Rules constitute "other enforceable means" as that term is defined by the FATF. To constitute "other enforceable means", measures must: *i)* be issued by a competent authority; *ii)* set out or underpin requirements addressing issues in the FATF Recommendations (*i.e.* using mandatory language); and *iii)* there must be effective, proportionate and dissuasive sanctions for non-compliance (FATF Methodology, Note to assessors following paragraph 28).

388. First, the NZX does not fall within the FATF definition of a "competent authority" (*i.e.* "all administrative and law enforcement authorities concerned with combating ML/FT, including the FIU and supervisors"). The NZX is not a supervisory authority. It is a body corporate that has registered with the Ministry of Commerce pursuant to section 36F of the SMA for the purpose of operating a securities market (SMA ss. 2 and 36G). Any body corporate may apply to become a registered exchange (although the NZX is currently the only registered exchange operating in New Zealand), and such application must be accepted if the body corporate submits a fully completed application registration form, a copy of proposed conduct rules which are ultimately approved by the Governor General by Order in Council and on recommendation of the Minister of Commerce (SMA s. 36O), and any required fees and evidence of payment to the Securities Commission (SMA s. 36F). The law does not delegate any specific supervisory powers or AML/CFT functions to the NZX, other than the very general requirement that a registered exchange must operate its securities markets "in accordance with conduct rules for that market" (SMA s. 36G).

389. The Securities Commission has a statutory function to review practices on securities markets, and in the performance of this, conducts an annual oversight review, the terms of reference of which are published. This review assesses whether the NZX is operating its markets in accordance with its conduct rules. Any failure by the NZX to do so would be a criminal offence (s. 36G(2), SMA). Also, The Commission's ability to supervise NZX's enforcement of the conduct rules is enhanced by section 36ZD. The NZX is also able to inform the Commission of any other matter relevant to the Commission's functions (s. 36ZL). In practice, this means that the NZX informs the Commission of almost all breaches that result in disciplinary action well ahead of that action being taken. However, the Securities Commission has no power to compel the NZX to change its conduct rules or impose particular requirements on market participants. Its power is limited to ensuring that the NZX enforces the existing conduct rules. Consequently, the NZX cannot be characterised as either a competent authority in its own right or a body using powers delegated to it by a competent authority or provided directly by law.

390. Second, although the conduct rules themselves do provide the NZX with broad powers to supervise and enforce their compliance (Participant Rules 16.8-16.11), the obligation on market participants to comply with the conduct rules, and the powers of the NZX to enforce their compliance are characterized as a "contract between market participants and the NZX" (Participant Rule 3.15). This means that the conduct rules are only enforceable as contract obligations; the specific requirements contained therein are not underpinned by any corresponding requirements in law or regulation. Additionally, it should be noted that the Participants Rules specifically state that the CDD requirements contained therein "do not replace or diminish…statutory obligations", including those in the FTRA (Participant Rule 9.2(d)).

391. Guidance Note GNPPP1/04 – Know Your Client: Section 9 (NZX Guidance) was issued by the NZX for the purpose of providing guidance to securities market participants in the interpretation of those NZX Participant Rules that relate to obtaining client information (in particular Participant Rule 9). The NZX Guidance does not fall within the FATF definition of "other enforceable means" because it was not issued by a competent authority, there are no checks for compliance with it, and no sanctions associated with non-compliance.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

392. New Zealand applies a uniform set of AML/CFT measures to the entire financial sector. The authorities have not completed risk assessments to decide whether particular sectors should not be included in the scope of the AML/CFT regime. However, in the context of developing regulations in relation to the AML/CFT reforms, the authorities are in the process of considering risk-based exemptions for particular entities, products and services from coverage by all or some AML/CFT requirements. The national risk assessment, once it is complete, will further inform decisions on the coverage of the new AML/CFT legislation.[20] Decisions regarding the applicability of certain AML/CFT requirements to particular financial sector entities will be made once a full risk assessment has taken place.

Preamble: Scope of application

393. The FTRA imposes AML/CFT preventive measures on the following persons and entities doing business in the financial sector and which are defined as "financial institutions" subject to the Act:

- A bank, being -
  - a registered bank within the meaning of the Reserve Bank of New Zealand Act (RBA); or
  - the Reserve Bank of New Zealand; or
  - any other person, partnership, corporation, or company carrying on in New Zealand the business of banking;
- A life insurance company, being a company as defined in section 2 of the Life Insurance Act.
- A building society as defined in section 2 of the Building Societies Act.
- A friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act.
- A share broker within the meaning of section 2 of the Share brokers Act.
- A trustee or administration manager or investment manager of a superannuation scheme;
- A trustee or manager of a unit trust within the meaning of the Unit Trusts Act.
- Any person whose business or a principal part of whose business consists of any of the following:
  - borrowing or lending or investing money;
  - administering or managing funds on behalf of other persons;
  - acting as a trustee in respect of funds of other persons;
  - dealing in life insurance policies; or
  - providing financial services that involve the transfer or exchange of funds, including (without limitation) payment services, foreign exchange services, or risk management

[20] New Zealand is currently reviewing its AML/CFT legal framework. Legislation will be required in order to implement the necessary changes. A draft version of the AML/CFT Bill, which will ultimately supersede the FTRA, was released for public consultation. A revised Bill was approved by Cabinet and introduced in Parliament for its first reading on 25 June 2009. The AML/CFT Bill was enacted by Parliament on 15 October 2009.

services (such as the provision of forward foreign exchange contracts); but not including the provision of financial services that consist solely of the provision of financial advice; (collectively referred to as financial institutions).

394. Additionally, the FTRA imposes preventative measures on certain designated non-financial businesses and professions, which also fall within the definition of "financial institutions" subject to the Act (see section 4 of this report for further details)

3.2 Customer due diligence, including enhanced or reduced measures (R. 5 to 8)

3.2.1 Description and Analysis

395. Part 2 of the FTRA sets out the CDD requirements, which apply to all financial institutions.

Recommendation 5

Anonymous accounts

396. The FTRA operates to prohibit financial institutions from keeping anonymous accounts or accounts in fictitious names by requiring financial institutions to perform some CDD measures for the opening of a facility (FTRA Part 2) or a remittance card facility[21] (2008 Interpretation Regulations s. 5). A "facility" is broadly defined as any account or arrangements through which the customer (facility holder) may conduct two or more transactions, including *inter alia* a life insurance policy, membership in a superannuation scheme, and safe custody facilities (*e.g.* a safety deposit box) (FTRA s. 2).

397. One problem is that the CDD requirements of the FTRA do not apply to accounts opened before the FTRA entered into force in 1996. This means that, prior to 1996, it would have been possible to open accounts anonymously or in fictitious names. As the FTRA does not require CDD measures to be performed retrospectively, except in cases where a new facility holder is added (FTRA s. 6(1)) or where there is a suspicion of ML (FTRA s. 11), such accounts (although it is not know how many) may still exist.

398. The NZ authorities state that numbered accounts do not exist in New Zealand.

When CDD is required

399. **When establishing business relations:** Financial institutions are required to perform CDD when a customer requests to establish a new facility or become a facility holder in relation to an existing facility (FTRA s. 6(1)). As noted above, the terms "facility" and "facility holder" are defined in s. 2 of the FTRA. One problem is that, where there are three or more facility holders, the financial institution is only required to perform CDD on the principal facility holders (*i.e.* those whom the financial institution reasonably regards, for the time being, as principally responsible for the administration of the facility) (s. 6(3)). However, all facility holders can conduct transactions via the facility held at the financial institution. The term "principal facility holder" is also defined in section 2 of the FTRA.

[21] A remittance card facility is a facility that is accessed by a card that can operate on an international automatic teller machine and electronic funds transfer at a point of sale and which is for the principal purpose of withdrawing cash from automatic teller machines outside of New Zealand, or transferring value/withdrawing cash at a point of sale outside of New Zealand (2008 Interpretation Regulations s. 3).

400. **When carrying out occasional transactions:** Financial institutions must perform CDD on any person who is conducting an occasional transaction[22] in "cash" (meaning currency, bearer bonds, travellers cheques, postal notes and money orders) exceeding NZD 9 999.99 (EUR 4 048)[23], which is well below the USD/EUR 15 000 threshold prescribed by the FATF Recommendations (FTRA s. 7(1)(a); Prescribed Amount Regulations s. 2). This obligation also applies where, based on the circumstances, the financial institution has reasonable grounds to believe that transactions have been or are being structured to avoid application of the FTRA and the cumulative total amount of those transactions exceeds the prescribed amount (NZD 9 999.99) (FTRA s. 7(1)(b)). In determining whether transactions are structured to avoid prescribed limits, the financial institution must consider the time frame within which the transactions are conducted and whether or not the parties to the transactions are the same person, or are associated in any way (FTRA s. 7(3)).

401. **When carrying out occasional transactions that are wire transfers:** The above requirements relating to occasional transactions apply equally to occasional transactions that are wire transfers exceeding NZD 9 999.99 (EUR 4 048) in value. However, this threshold does not comply with the FATF Recommendations which require CDD to be undertaken in relation to wire transfers exceeding EUR/USD 1 000.

402. **When there is a suspicion of money laundering or terrorist financing:** Financial institutions are required to perform CDD when they have reasonable grounds to suspect that: the transaction is or may be relevant to the investigation or prosecution of any person for a ML offence; or the transaction is or may be relevant to the enforcement of the POCA, which would include FT transactions (s. 11). However, the requirement to perform CDD when a financial institution has a suspicion that the transaction may be related to a terrorist financing offence is not straightforward and, therefore, is not very well understood by the private sector (see section 3.7 of this report for further details).

403. **When there are doubts about the veracity or adequacy of previously obtained customer identification data:** There is no requirement to perform CDD when a financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures

404. Financial institutions are required to verify the identity of both permanent and occasional customers, regardless of whether they are natural persons, legal persons or legal arrangements (FTRA ss. 6-7). The FTRA does not define the term "person" and, therefore, section 29 of the Interpretation Act applies. This section defines "person" as including a corporation sole and a body corporate (legal persons), and an unincorporated body (legal arrangements).

405. Obligations with respect to the identification and verification of customers are identical for both legal and natural persons. Verification of a customer's identity must be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person (FTRA s. 12(1)). The law gives no further specification concerning what kind of documents financial institutions could rely on to verify the identity. This is not consistent with Recommendation 5 which requires the applicable laws or regulations to specify that the identification and verification should be done on the basis

22 Term deposit accounts are expressly excluded from the definition of *facility* in the FTRA and, consequently, the CDD requirements in relation to occasional transactions apply. A term deposit account is provided by a financial institution and under which a fixed sum is or may be placed on deposit for a fixed term, whether or not all or part of the fixed sum is able to be withdrawn before the fixed term expires, in circumstances where the customer has no prior relationship with the financial institution (FTRA Interpretation Regulations 1997).

23 At the time of the mutual evaluation, the exchange rate was approximately NZD 1 = EUR 0.40.

of reliable documents from an independent source. Further clarification is provided in the FI Guidelines which indicate that, as a general rule, New Zealand government issued identification or a reference from a reputable and identifiable party would meet the FTRA requirements, and "recommend" accepting only original or certified photocopies, as appropriate forms of identification (pages 20-21). However, the FI Guidelines are unenforceable and, as explained above; do not meet the FATF definition of law, regulation or other enforceable means.

406. The FI Guidelines provide some specific examples of documents that could be used to verify identity: a passport, driver's licence or an ATM/credit card from another financial institution (provided that the signature is verified). However, this raises concerns about the overall effectiveness of CDD measures where the customer's identity is being verified without reference to a photo ID (an ATM or credit card would not usually have a photograph that could be compared with the person presenting it). During the on-site visit, some financial institutions reported that they rely on a driver's licence or a passport to verify the identity, and on a utilities' bill or bank statement to verify the address; however, it is not known whether this practice is widespread throughout the financial sector.

407. There are no explicit requirements to verify the legal status of customers that are legal persons or arrangements, (*e.g.* by obtaining proof of their incorporation, legal form, directors, etcetera) or the provisions regulating the power to bind the legal person/arrangement. There is also no indication (either in the laws, regulations or guidance) as to what sorts of documents should be used to verify the identity of a customer which is a legal person or arrangement. Discussions during the on-site visit with representatives from the private sector suggest that, in practice, registered banks refer to the Company Register (which is publically available on-line) to obtain information on companies; however, it is not known whether this practice is widespread among other types of financial institutions.

408. Financial institutions are not required to verify the identity of a person who is conducting a transaction in their capacity as:

(r) An employee, director, principal or partner of another person (the customer) where the Financial institution has already verified the identity of the customer (FTRA s. 9(7)); or

(s) A beneficiary under a trust provided that the person performing the transaction does not have a vested interest under the trust (*e.g.* where the person conducting the transaction is a trustee of a discretionary trust where the beneficiaries are yet to be established) (FTRA s. 10).

409. However, these provisions are inconsistent with Recommendation 5 which requires financial institutions to identify and verify the identity of any person purporting to act on behalf of a customer (legal person or arrangement), and to verify their authorisation to act on behalf of the customer.

410. **Beneficial ownership:** There is no requirement to identify the "beneficial owners" of customers that are legal persons or arrangements as that term is defined in the Glossary of the FATF Recommendations (*i.e.* the natural person(s) who ultimately own(s) or control(s) the customer). The term "beneficial owner" has not been defined in New Zealand law or regulation. There are, however, some provisions relating to the identification of customers who are acting on behalf of another person.

411. Where any person conducts an occasional transaction, a financial institution is required to ask the person who is conducting or, as the case may be, conducted the transaction whether or not the transaction is being conducted on behalf of another person (FTRA s. 7(5)) if:

- The amount of "cash" involved in the transaction exceeds the prescribed amount (currently NZD 9 999.99) (FTRA s. 7(1)). Or

- There are a number of occasional transactions, the combined value of which exceeds the prescribed amount, and which may have been structured to avoid the requirement to identify the person on whose behalf they are being conducted (FTRA s. 7(2)).

412. A financial institution is required to verify the identity of the person on whose behalf the transaction is being conducted where there are reasonable grounds to believe that a person is conducting, on behalf of another person:

- An occasional transaction exceeding the prescribed amount (currently NZD 9 999.99) (FTRA s. 8(1)).

- A number of occasional transactions, the combined value of which exceeds the prescribed amount, and which may have been structured to avoid the requirement to identify the person on whose behalf they are being conducted (FTRA s. 8(2)).

- A facility holder is conducting, on behalf of another person, a transaction exceeding the prescribed amount (FTRA s. 9(1)).

- A facility holder is conducting, on behalf of another person, one or more transactions, the combined value of which exceeds the prescribed amount, and it appears that the transactions are being structured to avoid the verification requirements (FTRA, s. 9(2)).

413. The provisions concerning the identification of persons on whose behalf a person is acting appear to have a limited scope. A financial institution is not required to identify the person on whose behalf a facility is established unless that person is a facility holder for that account and then such identification is only required when there are reasonable grounds to believe that a transaction exceeding the prescribed amount is conducted on such a person's behalf.

414. There are no requirements for financial institutions to take reasonable measures to understand the ownership and control structure of the customer, determine who are the natural persons that ultimately own or control the customer, or obtain information on the purpose and intended nature of the business relationship.

Ongoing due diligence

415. Financial institutions are not specifically required to conduct ongoing due diligence 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. In practice, some banks use electronic monitoring systems. However, most financial institutions do not rely on electronic monitoring system in order to detect such inconsistencies.

Customer risk

416. Financial institutions are generally required to apply the full range of CDD measures (FTRA ss. 6-12) to all of their customers rather than classifying customer types by risk. This means that financial institutions are not required to perform enhanced due diligence for higher risk categories of customer, business relationship or transactions, as is required by the FATF Recommendations.

417. Even though bearer shares are not permitted under New Zealand law (see section 5.1), the Banks Procedures/Guidance advises to exercise special care in initiating business transactions with companies that have bearer shares since they are incorporated in a jurisdiction which permits bearer shares to be issued. It is, however, not clear what is meant by special care and such situations may constitute higher risk situations.

418. The assessment team was advised that in practice, some financial institutions adopt a general approach that all customers from non-FATF countries are high risk customers and they prefer not accepting business with these customers.

419. Simplified CDD is allowed when the facility provided is a remittance card facility. In such cases, there is no requirement to verify the identity of the second card holder (2008 Interpretation Regulations). These types of remittance card facilities are only offered by one bank in New Zealand. The authorities advise that the remittance card regulation exemption was designed to mitigate the AML/CFT risks that could attach to remittance products, and places a number of conditions and constraints on the eligibility for exemption. These conditions and constraints include: *i)* a maximum total annual remittance, and maximum balance on the card of NZD 9 999.99; *ii)* eligible cards can only be used on international bank Automated Teller Machine (ATM) and *Electronic Funds Transfer at Point of Sale* (EFTPOS) networks; *iii)* full FTRA verification and record keeping requirements apply to the primary card holder (account opener); *iv)* identification and record keeping requirements apply to the one other permitted card holder (who cannot be resident in New Zealand); and **v)** the issuing institution is required to carry out ongoing due diligence and transaction monitoring on the facilities. The authorities concluded that the above limitations mitigate the AML risk to an acceptable degree for the product to be offered in New Zealand on the basis that full CDD is applied to the primary card holder and simplified CDD is applied to the second card holder. This conclusion was based on a review co-ordinated by the Reserve Bank and involving officials including the Ministry of Justice, the Ministry of Pacific Island Affairs and the FIU. The review considered material from the NZ Police, APG and FATF, including typologies and evidence of misuse of stored value card and travel card-type products. Discussions were also held with several banks about product options and AML/CFT risk management options, and sample data was collected about remittance volumes and average size. A Public Discussion document and subsequent Cabinet paper were produced justifying the limitations in the regulation to mitigate the AML/CFT risk to reasonable levels consistent with the expected form and approach of the new AML/CFT Bill and New Zealand's longer term compliance with the FATF Recommendations.

Timing of verification

420. Financial institutions are required to identify and verify customers before the business relationship or transaction takes place, or, in some circumstances, as soon as practicable thereafter (FTRA ss. 6-9). In particular, the identification can take place as soon as practicable after the customer becomes a facility holder (*i.e.* after the business relationship is established and without any limitation on the customer to perform any transactions) or after the transaction is conducted if:

- The person belongs to a class of persons with whom the institution does not normally have face-to-face dealings.

- It is impracticable to undertake the verification before the person becomes a facility holder.

421. However, this is inconsistent with Recommendation 5 which only permits verification of the customer's identity following establishment of the business relationship provided that the ML risks are effectively managed and it is essential not to interrupt the normal course of business.

422. The term "as soon as practicable" is not defined in the FTRA, Based on the discussions with the private sector representatives, " as soon as practicable" is generally interpreted as meaning within a 30-day timeframe. Moreover, the term "class of persons" is not clear either and it is interpreted by the financial institutions on a case-by-case basis.

423. It should also be noted that the FI Guidelines (which are non-binding) recommend that, where there has been a significant time lapse between dealings with a particular customer, it may be sensible to renew the verification to ensure that the financial institution is dealing with the same person (p. 21).

Failure to satisfactorily complete CDD

424. There are no explicit requirements with respect to actions that financial institutions must take if the verification of identity cannot be completed satisfactorily. However, the FI Guidelines do suggest that this may provide grounds for considering making a suspicious transaction report (page 31). As mentioned before the FI Guidelines are not enforceable and, based on the discussions with the private sector, most financial institutions believe that they are not required to make an STR in such circumstances. However, it is an offence for a financial institution to permit a person to establish a business relationship or conduct a transaction in circumstances where the customer's identity cannot be verified in advance or as soon as practicable thereafter (FTRA s. 13).

Existing customers

425. Financial institutions are not legally required to carry out customer due diligence on existing customers on the basis of materiality and risk; they are only required to re-identify their customers when the facility holder arrangements change (FTRA ss. 6(1)-(2)).

Implementation and effectiveness

426. The authorities obtained some information about the implementation of CDD measures in the financial sector through self-assessment questionnaires conducted by the Reserve Bank and surveys conducted by the DIA in 2008. Responses to the Reserve Bank questionnaire were received from all registered banks. New regulations (as of October 2008) make AML a matter that the Reserve Bank can take into account in its prudential supervision. As a consequence the Bank is able to require registered banks to periodically complete questionnaires on their AML/CFT policies and practices. The DIA surveys (which were carried out in preparation for New Zealand's AML/CFT reforms) were voluntary, as were the Reserve Bank's surveys of non bank deposit takers and life insurers. Responses were received by only a few of the institutions that operate as non-bank deposit takers, money or value transfer service (MVTS) operators and foreign exchange dealers which means that this information does not necessarily reflect how CDD requirements are being implemented across these sectors as a whole. Moreover, all of the above information is somewhat limited in that none of it is verified independently (*e.g.* through on-site inspections) due to the general lack of AML supervision in the financial sector (see section 3.10 of this report). The assessment team also discussed implementation issues with private sector representatives from all sectors during the on-site visit.

427. The registered banks appear to be familiar with the CDD requirements of the FTRA and confirmed during the on-site visit that, while they endeavour to comply with these requirements, they generally do not go further than the law requires. The insurance sector appears to focus on CDD and understanding the client's profile from a business perspective rather than from an AML/CFT perspective. CDD policies and practices appear to vary widely among non-bank deposit takers, and within the securities, life insurance, MVTS and foreign exchange sectors. The degree to which CDD measures are implemented often depends on the size and structure of the financial institution, and whether it is a member of an international financial group (in which case more extensive measures, consistent with those of the parent organisation, are usually in place).

Recommendation 6 (Politically Exposed Persons)

428. Presently, there is no requirement in New Zealand law to apply enhanced CDD measures or ongoing monitoring in relation to politically exposed persons (although some of the larger registered banks report having implemented such procedures in practice). The FI Guidelines do refer to dealings with PEPs; however, as mentioned before, this document is not enforceable.

Additional elements

429. New Zealand has signed the UN Convention Against Corruption in December 2003, but has not yet ratified it since several legislative changes need to take place beforehand, such as the enactments of the AML/CFT Bill, the Crimes (Anti-Corruption) Amendment Bill and the Criminal Proceeds (Recovery Bill).

Recommendation 7 (Correspondent banking)

430. In New Zealand, banks are the only institutions with correspondent relationships. There are currently no specific legal provisions that require financial institutions, when entering into a correspondent banking arrangement, to assess the adequacy and effectiveness of the AML/CFT controls of the respondent bank (although some of the larger registered banks report having implemented such procedures in practice). The CDD requirements outlined above apply to a correspondent banking relationship as they do to any other relationship. However the Reserve Bank's BS5 Guidelines expect banks to be familiar with and implement the Basel Committee paper *"Customer Due Diligence for Banks"* which covers correspondent banking relationships.

Recommendation 8 (Technological developments and non-face-to-face transactions)

431. There are no specific legal or regulatory requirements for financial institutions to have policies in place to address the potential abuse of new technological developments for ML/FT.

432. Section 6 of the FTRA requires financial institutions to apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview. The completion of customer identification for non-face-to-face customers should be as soon as practicable after that person becomes a facility holder in any case where it is impracticable to undertake the verification before the person becomes a facility holder. However, the legislation does not contain any specific non-face-to-face provisions.

433. The assessment team was advised that the number of instances where someone becomes a facility holder through non face-to-face applications is very limited. In the MVTS and foreign exchange sectors, for instance, it is impossible in practice to open a facility or execute a transaction until CDD has been completed.

3.2.2 Recommendations and Comments

Recommendation 5

434. Overall, New Zealand's compliance with the FATF standards relating to CDD shows a number of essential gaps. As indicated above, important elements are not addressed in either law, regulation, or other enforceable means and New Zealand is urged to take the necessary actions to remedy the situation as soon as possible.

435. New Zealand should require financial institutions to have measures in place to identify the beneficial owner and to understand the ownership and control structure of the customer. Moreover, financial institutions should be required to obtain information on the purpose and intended nature of the business relationship with a view to determining who are the natural persons that ultimately own or control the customer. New Zealand should also extend the situations in which the identification of person(s) acting on behalf of another person is required and not limit them to cash transactions, as it is currently the case.

436. New Zealand should require financial institutions to identify and to verify that natural persons acting on behalf of legal persons and purporting to act on behalf of the customer is authorised to do so, in addition to normal identification procedures. Moreover, financial institutions should also be required to verify the status of a legal person or arrangement, including the provisions regarding the power to bind the legal person or arrangement.

437. New Zealand should require financial institutions to conduct ongoing due diligence on the business relationship, including existing customers, 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.

438. New Zealand should amend its current legislation to ensure that financial institutions are required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions.

439. New Zealand should require financial institutions to identify all facility holders (not just the principal facility holder) when there are three or more facility holders. New Zealand should also require financial institutions to conduct CDD in the following circumstances: a) when carrying out occasional transactions that are wire transfers below the NZD 9 999.99 threshold; and b) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. The AML/CFT Bill that has recently been introduced in Parliament will address deficiencies relating to Recommendation 5. New Zealand authorities should ensure that this legislation will be passed and enacted in due course. Additionally, the authorities should clarify the obligation to conduct CDD when the financial institution has a suspicion that the transaction may be related to an FT offence.

440. In order to ensure that anonymous accounts or accounts in fictitious names do not still exist in New Zealand, financial institutions should be legally required to apply CDD measures on existing customers on the basis of materiality and risk and, in particular, for customer relationships established prior to 1996.

441. New Zealand should amend its legislation (law/regulation) to clarify the verification requirements to ensure that the documents or information being used are reliable and from an independent source.

442. New Zealand should ensure that its legislation reflects only those circumstances for the verification of the customer's identity following the establishment of the business relationship that are consistent with

the FATF Recommendations, which require that the ML risks are effectively managed and that it is essential not to interrupt the normal course of business.

443. In cases where the verification of the identity cannot be completed satisfactorily, financial institutions should be required not to open accounts, commence business relationships or perform transactions; and to consider making a suspicious transaction report.

444. New Zealand to take measures to ensure that all financial institutions in the financial sector are implementing the CDD requirements effectively. As well, New Zealand should ensure that the implementation of Recommendation 5 is not undermined by allowing financial institutions to verify the identity of customers without reference to photo ID.

Recommendation 6

445. New Zealand should require its 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.

Recommendation 7

446. New Zealand should establish specific enforceable requirements for financial institutions to perform enhanced CDD measures in relation to cross-border correspondent banking and other similar relationship, as outlined in Recommendation 7.

Recommendation 8

447. New Zealand should amend its legislation to implement Recommendation 8, particularly requiring policies to prevent misuse of technology for ML or TF and to address any specific risk associated with non-face-to-face business relationships or transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R. 5	**NC**	• There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements. • There is no requirement to obtain information on the purpose and intended nature of the business relationship. • There is no requirement to identify natural persons acting on behalf of legal persons and verify their authority to act. • There is no requirement to understand the ownership and control structure of legal persons or arrangements. • There is no requirement to conduct ongoing due diligence on the business relationship. • Financial institutions are not required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • There is no requirement to verify the legal status of customers who are legal persons and arrangements. • 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.

	Rating	Summary of factors underlying rating
		• The CDD threshold (NZD 9 999.99) for wire transfers is too high. • 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. • 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. • The authorities were not able to confirm definitely that there are no anonymous accounts that were created before the FTRA and related CDD obligations came into force (1996). • There is no requirement that CDD should be done on the basis of reliable documents from an independent source. • 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. • Financial institutions are not legally required to carry out customer due diligence on existing customers on the basis of materiality and risk. • There is no explicit requirement with respect to the actions financial institutions must take if identification cannot be completed satisfactorily. • 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.
R. 6	**NC**	• New Zealand has not implemented any AML/CFT legislative measures regarding the establishment and maintenance of customer relationships with PEPs.
R. 7	**NC**	• New Zealand has not implemented any AML/CFT legislative measures concerning the establishment of cross-border correspondent banking relationships.
R. 8	**NC**	• 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.

3.3 Third parties and introduced business (R. 9)

3.3.1 Description and Analysis

Recommendation 9

448. In certain circumstances, financial institutions are permitted to rely on intermediaries to perform some elements of the CDD process, provided that the financial institution and intermediary both fall within the definition of a "financial institution" for the purposes of the FTRA. This implies that only domestic institutions could be considered as equivalent third parties under the current legislation.

449. In particular, a financial institution (the first financial institution) will be deemed to have complied with its obligation to verify a customer's identity pursuant to the FTRA where:

(t) The customer is conducting a transaction through his/her facility at the first financial institution by means of his/her existing facility at the second financial institution. Or

(u) The customer is conducting an occasional transaction through the first financial institution by means of his/her existing facility at the second financial institution.

Provided that, in each case, the first financial institution takes all such steps as are reasonably necessary to confirm the existence of the customer's existing facility at the second financial institution (FTRA s. 12(3)-(4)).

450. Second, where a customer has become (or is seeking to become) a member of a superannuation scheme which is established principally for the purpose of providing retirement benefits to employees, the trustee, administration manager or investment manager of the superannuation scheme is entitled to rely on the customer's employer to verify the customer's identity (FTRA s. 12(5)).

451. Third, a financial institution (the first FI) is entitled to rely on the CDD measures performed by a second FI on its own customer (*i.e.* the customer on whose behalf it is acting) where (in relation to an obligation to verify a person in a transaction that exceeds the prescribed amount (NZD 9 999.99)):

(v) The customer (a facility holder) is a second financial institution which is acting on behalf of its own customer (FTRA s. 9(6)). Or

(w) The customer (an occasional customer) is a second financial institution which is acting on behalf of its own customer (FTRA s. 8(6)).

452. Fourth, the first FI is a financial institution entitled to rely on the CDD measures performed by a second FI if the first FI: (a) is unable to readily determine whether or not the transaction involves cash because the funds involved in the transaction are deposited by the person who conducts the occasional transaction into a facility (being a facility in relation to which the first FI is a facility holder) provided by the second FI; and (b) if those funds consisted of or included cash, that second FI would be required, under this Part of this Act, to verify the identity of the person who conducts the occasional transaction. (FTRA s. 7(2)).

453. Fifth, financial institutions are permitted to rely on the CDD performed by the New Zealand Director General of Social Welfare in relation to the identity of an overseas pensioner in whose name the Director General establishes, administers and operates a special account to accept pension payments from the governments of any of the following jurisdictions: Australia, Guernsey, Ireland, Jersey, Netherlands or the United Kingdom. Such accounts (which are administered and operated by Director General under the Social Security (Alternative Arrangement for Overseas Pensions) Regulations 1996) are used to offset overseas pensions against New Zealand social security benefits where an overseas pensioner has entered into an alternative arrangement with the Director General. In these cases, the authorities consider it onerous to apply the verification requirements on the New Zealand bank because it does not have face-to-face dealings with the pensioner under an alternative arrangement, the account can be operated only in very limited circumstances and the New Zealand Director General of Social Welfare will have already verified the overseas pensioner's identity.

454. None of these provisions meet the specific requirements of Recommendation 9. In particular, financial institutions relying upon a third party are not required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process, or take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. It is also not specified that the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

455. Although it is implied in the above circumstances that the financial institution will need to satisfy itself that the third party being relied on falls within the definition of a "financial institution" pursuant to the FTRA or, in the case of a superannuation scheme, is the customer's employer, the Financial institution is not also required to satisfy itself that the third party is regulated and supervised in accordance with FATF Recommendations and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. Given the very limited amount of AML/CFT supervision in New Zealand, this is a significant issue (see section 3.10 for further details).

456. During the on-site visit, it was confirmed that, in practice, New Zealand financial institutions do sometimes rely on third parties to carry out CDD. For instance, the results of the Reserve Bank survey indicate that registered banks may rely on third parties when dealing with introduced business. In the New Zealand context, such customers may be introduced by: an authorised bank, agent or other party with whom the financial institution has a written agreement in place; a practising lawyer or accountant in an FATF member country; or an overseas bank employee, overseas embassy or High Commission. However, in general, registered banks report a general reluctance to rely on third parties to perform CDD and some of the smaller banks indicate that they carry out all their own CDD processes in house. Insurance companies fully rely on the CDD undertaken by their independent advisers, consider this information to be accurate, and do not undertake any further verification. Third parties may also be relied upon by institutions in the non-bank deposit takers, securities, MVTS and foreign exchange sectors. However, overall, the level of implementation and effectiveness of the above requirements in any of these sectors could not be established for the same reasons as described above in relation to R.5 (implementation and effectiveness).

3.3.2 Recommendations and comments

457. The FTRA allows for the use of third parties or introduced businesses in some specific circumstances. Financial institutions should be obliged to obtain actual customer due diligence information and verification documents from other financial institutions they are relying on.

458. Furthermore, it should be ensured that financial institutions 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 legislation should have a specific provision that stipulates that the ultimate responsibility for customer identification and verification will remain with the financial institution relying on the third party.

459. The FTRA contains a broad definition of 'financial institution'. Due to the diversity of the professions included in this definition and their different degrees of awareness of the risk of money laundering, New Zealand should review the situations where a financial institution can rely on another financial institution for identification purposes and ensure that common standards with regard to customer identification are applied amongst all sectors concerned. Moreover, financial institutions should be required 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 Recommendations 5 and 10.

460. The competent authorities should take into account information available on whether countries in which third parties can be based adequately apply the FATF Recommendations.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R. 9	**NC**	• There is no requirement to obtain relevant customer identification data from the third party. • 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. • 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. • 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. • 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.

3.4 Financial institution secrecy or confidentiality (R. 4)

3.4.1 Description and Analysis

Recommendation 4

461. There is no general financial secrecy provision in the New Zealand legislation. While the Privacy Act 1993 generally prevents the use of private information gathered for one purpose from being used for another purpose, (FTRA s. 55) states that the provisions of the Act shall have effect notwithstanding anything to the contrary in any contract or agreement. Further, no person will be excused from compliance with the Act merely on the grounds that compliance would constitute breach of any contract or agreement.

462. Additionally, the Court of Appeal has ruled that, while banks owe a general obligation of confidentiality to their customers, this obligation is subject to limits and that there is no confidence preventing the disclosure of iniquity. Where bank accounts are used as a vehicle for offending there would be a power and perhaps even a duty to consider and respond to police questions about that: R v Harris 1/8/00, CA15/00; CA16/00; CA19/00; CA120-122/00, par 15.

463. The Reserve Bank is authorised, by written notice to a registered bank, to obtain any information, data, or forecasts about: (a) the corporate, financial and prudential matters; and (b) any other matters relating to the business, operation, or management of the registered bank (s. 93). The Reserve Bank can obtain customer-specific information pursuant to this section and in practise the Reserve Bank used this power to get customer specific information for prudential purposes.

464. There is no financial secrecy law that inhibits the implementation of Recommendations 7, 9 or SR. VII, or impedes any NZ Police investigation, in the sharing of information between competent authorities either domestically or internationally.

3.4.2 Recommendations and Comments

465. This Recommendation is fully observed.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R. 4	**C**	• This Recommendation is fully observed.

3.5 Record keeping and wire transfer rules (R. 10 & SR. VII)

3.5.1 Description and Analysis

Recommendation 10 (record keeping)

Transaction records

466. In relation to every transaction that is conducted, financial institutions must keep such records as are reasonably necessary to enable that transaction to be readily reconstructed at any time by the Commissioner of Police (FTRA s. 29(1)). This is an overarching requirement, although the law provides some further specificity by requiring that, at a minimum, such records must contain the following information:

- The date, nature and amount of the transaction, and the currency in which it was denominated.
- The parties to the transaction.
- Where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the financial institution) directly involved in the transaction.
- The name of the officer, employee, or agent of the financial institution who handled the transaction, if that officer, employee, or agent: has face-to-face dealings in respect of the transaction with any of the parties to the transaction; and has formed a suspicion about the transaction (FTRA s. 29(2)).

467. Transaction records must be retained for not less than five years after the completion of the transaction (FTRA ss. 29(3)).

Identification data, account files, and business correspondence

468. Financial institutions are also required to maintain such customer identity verification records as are reasonably necessary to enable the nature of the evidence used for the purpose of verifying the customer's identity to be readily identified. This may include a copy of the evidence used in the verification process or, where that is not practicable, such information as is reasonably necessary to enable that evidence to be obtained (FTRA ss. 30(1)-(2)).

469. A financial institution offering a remittance card facility must, in accordance with section 6 of the FTRA, verify the identity of the principal facility holder of the remittance card facility and keep records relating to the verification in accordance with section 30 of the FTRA. Additionally, a financial institution

must in accordance with section 30 of the FTRA, hold such records as are reasonably necessary to identify (albeit not verify) the second card holder and establish that the second card holder is not resident in New Zealand at the time the facility is established (*e.g.* the written acknowledgment by the principal facility holder) (Interpretation Regulations 2008 s. 5(h)).

470. 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 (FTRA s. 30(4)). Financial institutions are required to ensure that transaction and customer identity verification records are destroyed as soon as practicable after the retention period expires. Nevertheless, financial institutions may retain such records for longer periods for the purposes of the detection, investigation, or prosecution of any offence (FTRA s. 34).

471. The FTRA does not specifically require retention of business correspondence relating to business relationships other than verification and transaction records (as outlined above).

472. It is an offence to fail to keep records as required by sections 29 and 30, punishable by a fine of up to NZD 20 000 (in the case of an individual) or NZD 100 000 (in the case of a body corporate) (FTRA s. 36).

Ensuring records are available to competent authorities on a timely basis

473. Under the FTRA (s. 29(1)) financial institutions are required to keep transaction records that are reasonably necessary to enable transactions to be readily reconstructed at any time by the Police. Section 30(1) requires financial institutions to keep records as are reasonably necessary to enable the nature of the verification evidence to be readily identified at any time by the NZ Police. The FTRA specifically requires financial institutions to keep such records in a manner that makes them "readily accessible" and "readily convertible in English language" (s. 32). Taken together, these provisions require financial institutions to keep ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.

474. The NZ Police do not have an automatic power to access records held by financial institutions. However, there are no obstacles in the law to financial institutions freely co-operating with police requests for information. Where a financial institution is not prepared to release records at the request of the NZ Police or other competent authority, the NZ Police use their general powers to obtain a search warrant or production order by court order if they have sufficient evidence of offending. In very limited circumstances, the police may also obtain a production order (see section 2.6 of this report for further details).

Implementation and effectiveness

475. The assessment team was advised that, generally, in the banking sector, registered banks keep records of account opening information, transactional information, significant interactions with the customer, and employee due diligence records. However, they do not retain all correspondence arising from business relationships. The New Zealand authorities report that both banks and non-bank deposit takers keep their records in either paper or electronic form or both. In practice, the length of time such information is kept varies, but generally customer identity verification records are retained for not less than seven years after the relationship has terminated. The New Zealand authorities report they generally do not experience any problems obtaining verification and transactions records from financial institutions in a timely manner.

476. The NZ Police has, during the exercise of its search warrant powers, seen first-hand how financial institutions are keeping their records. It is their experience that financial institutions generally keep their records in a manner consistent with Recommendation 10. In a few cases where there have been problems, they have criminally charged the financial institutions in question with breaching the FTRA. This is some indication of effectiveness in those financial institutions that have been searched by the police. However, although this mitigates the effectiveness concern somewhat, there is no indication that implementation is effective overall since there is no systematic monitoring of compliance through the supervisory system.

Special Recommendation VII (Wire transfers)

477. Most banks carry out cross-border wire transfers using SWIFT. Some banks conduct wire transfers through agents accessing the SWIFT network and a few also operate group proprietary systems (*e.g.* for Internet-based transfers). Banks and other members of Austraclear New Zealand can make domestic (NZD) cash payments among themselves using the Austraclear system which is operated by the Reserve Bank of New Zealand. Some members are based outside New Zealand and access the system by Internet to carry out transactions in New Zealand.

478. Certain non-bank financial service providers including American Express, Travelex and Western Union offer wire transfer facilities to customers through proprietary or Internet-based systems for transmitting payment instructions to recipients in foreign jurisdictions. Travelex also uses SWIFT for cross-border wire transfers.

479. Non-bank deposit takers and life insurers do not generally engage directly in cross-border wire transfers. Those non-bank deposit takers that do originate cross-border wire transfers use systems provided by other financial institutions. In the securities sector, market participants generally use the banking sector to undertake wire transfers.

Obligations on ordering financial institutions to collect and maintain information

480. As indicated in section 3.2 above, financial institutions are only required to obtain and maintain full originator information in the case of occasional wire transfers exceeding NZD 9 999.99 in value. This is inconsistent with the FATF Recommendations that set the acceptable threshold at EUR/USD 1 000.

Information that must accompany the wire transfer

481. There is no legal requirement to include full originator information in the message or payment form accompanying cross-border or domestic wire transfers.

482. The New Zealand authorities report that, in practice, banks using the SWIFT messaging system voluntarily comply with Special Recommendation VII by including full originator information in the SWIFT MT103 message format for cross-border messages – although it should be noted that this information has not been independently verified through a supervisory process. The authorities are unable to provide information about the policies and practices of other financial institutions.

483. Domestic wire transfers, including telephone and Internet banking transactions, are all processed by the Interchange and Settlement Limited (ISL) Switch. Transactions through the ISL Switch do not carry the full originator information; the originator's account number is not mandatory, and there is no unique identifier. The New Zealand authorities are of the view that the whole ISL Switch payment transaction record can be considered to be a unique identifier in terms of the BACHO and QC transaction formats, and report that details can be provided to the authorities within three business days The ISL Switch for processing domestic payments transfer messages is mainly available to banks, and to a limited extent also

to non-bank deposit takers and other financial institutions on the condition that they have an agreement with a member bank.

484. Intermediary and beneficiary financial institutions in the payment chain are not required to ensure that all originator information that accompanies a wire transfer is transmitted with it.

485. Beneficiary financial institutions are not required to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information, or to consider restricting or terminating the business relationship with financial institutions that fail to meet SR VII standards.

486. As New Zealand has not yet implemented specific legal requirements to implement SR VII, there are no corresponding measures in place to monitor for compliance and impose sanctions for non-compliance.

Additional elements

487. New Zealand does not require that all incoming and outgoing cross-border wire transfers (including those below the EUR/USD 1 000 threshold) contain full and accurate originator information.

3.5.2 Recommendations and Comments

Recommendation 10

488. New Zealand should require financial institutions to retain all business correspondence relating to an account and ensure that all requirements regarding Recommendation 10 are implemented effectively.

Special Recommendation VII

489. Financial institutions should be required to include full originator information in the message or payment form accompanying the wire transfer. Intermediary and beneficiary financial institutions in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with it. Beneficiary financial institutions should be required to adopt risk-based procedures, consistent with SR VII, for identifying and handling wire transfers that are not accompanied by complete originator information. Corresponding measures to monitor for compliance with these requirements and impose sanctions in cases of non-compliance should be established. Financial institutions should be legally required to obtain and maintain full originator information in relation to occasional wire transfers that exceed the EUR/USD 1 000 threshold.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R. 10	**LC**	• There is no explicit requirement for institutions to retain business correspondence other than those required for the purpose of enabling reconstructions of transactions. • Effective implementation of the existing requirements could not be fully established due to the shortcomings in the supervisory structure.
SR. VII	**NC**	• There is no general legal requirement for all wire transfers to be accompanied by full originator information. • There are no obligations on intermediary FIs in the payment chain to maintain all of the required originator information with the accompanying wire transfer.

	Rating	Summary of factors underlying rating
		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. • The threshold for obtaining and maintaining full originator information in the case of occasional wire transfers is too high.

3.6 Monitoring of transactions and relationships (R. 11 & 21)

3.6.1 Description and Analysis

Recommendation 11 (Unusual transactions)

490. The FTRA does not contain any 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.

491. Although the FI Guidance and Banks Procedures/Guidance do emphasise these characteristics for the identification of suspicious transactions and give numerous examples in that regard, neither guidance document is enforceable. Moreover, systems in place to implement the suspicious transaction reporting obligation will not necessarily capture complex, unusual large transactions or unusual patterns of transactions since the reporting obligation is not drafted in such a way as to refer to these characteristics.

492. Financial institutions are not required to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing.

493. Financial institutions are not required to keep findings of the background and purpose of unusual transactions. Such records will only exist if the transaction is ultimately reported as a suspicious transaction, in which case, the necessary records must be kept for at least five years (FTRA, part 4).

494. In practice, some registered banks report having implemented some form of manual or automated transaction monitoring system. A few operate a system of ongoing monitoring generated by "event driven" circumstances (*e.g.* large or unusual transactions, accounts with turnover inconsistent with regular account activity, a change in a customer's portfolio of products, suspected fraud on the account). Some banks have introduced (or are moving toward) automated monitoring software where exceptions to normal account activity are automatically reported and reviewed.

Recommendation 21 (Jurisdictions insufficiently implementing the FATF Recommendations)

495. Financial institutions are not required to give special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing.

496. The FIU advises financial institutions of the FATF public statements regarding "locations of specific concern". The New Zealand authorities report that the FIU also advises financial institutions promptly of any changes to the FATF statements. All FATF statements, as well as other notifications such as information concerning locations of specific concern, are placed on the FIU's website. The registered banks and other important disclosing parties are also advised via email when the website has been updated with this kind of information. However, if not specifically referred by the FIU, other financial institutions

do not spontaneously consult the changes in the FI Guidelines based on the advisories issued as a result of the FATF statements.

497. Following the FATF public statements of 28 February and 16 October 2008, and 25 February 2009, the Ministry of Justice sent an Advisory to the New Zealand Bankers Association and the Financial Services Federation (FSF) stating that, for the purpose of conducting due diligence, financial institutions are advised to note the risks arising from the deficiencies identified in the AML/CFT regimes of Iran and Uzbekistan. Financial institutions were also urged to pay close attention to correspondent relationships that they may have with Iranian financial institutions. Both the Advisory and FATF Statement were circulated to banks operating in New Zealand, and were published under the section "Locations of Specific Concern" within the FI Guidance and on the NZ Police website on the page dedicated to the FIU. Additionally, the FSF was asked to disseminate the Advisory to other financial institutions as appropriate.

498. The Banks Procedures/Guidance also contains a list of countries considered as presenting particular ML risks. However, this list has not been updated since the Banks Procedures/Guidance was issued 1996.

499. Financial institutions are not legally required to examine the background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries that do not or insufficiently apply the FATF Recommendations.

500. FATF statements are publicly available on the FIU's website. The FIU advises some financial institutions of the FATF public statements and any changes in these statements, but some other financial institutions are not aware of the existence of these advisories. Some private sector representatives even believe that the advisories the assessment team referred to were issued as a consequence of the FATF's Non-Cooperative Countries and Territories (NCCT) process. This finding indicates that New Zealand authorities should undertake a more integrated approach regarding its advising procedures and determine a more solid mechanism for this purpose.

501. Where a country continues not to apply or insufficiently applies the FATF Recommendations, New Zealand is able to issue advisories, as described above in relation to the FATF public statements. Beyond that, New Zealand is not able to apply counter-measures (*e.g.* enhanced or systematic reporting mechanisms, limiting business relationships or financial transactions with identified countries or persons, etcetera).

3.6.2 Recommendations and Comments

Recommendation 11

502. New Zealand should 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. Financial institutions should be required to examine as far as possible the background and purpose of such transactions and set forth their findings in writing. Such findings should be kept for at least five years in such a way that they are easily accessible by the competent authorities.

Recommendation 21

503. New Zealand should legally require 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. Financial institutions should also be required to examine as far as possible the background and purpose of business relationships and transactions with persons from or in those countries, to set forth the findings of such examinations in writing and to keep these findings available for competent

authorities and auditors for at least five years. New Zealand should also broaden its legal framework to be able to apply appropriate counter-measures.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R. 11	**NC**	• 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. • There is no requirement for financial institutions to examine as far as possible the background and purpose of all unusual transactions. • 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.
R. 21	**NC**	• 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. • 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. • New Zealand has no legal basis to apply counter-measures.

3.7 Suspicious transaction reports and other reporting (R. 13-14, 19, 25 & SR. IV)

3.7.1 Description and Analysis

Recommendation 13 and Special Recommendation IV (Suspicious transaction reporting)

504. The FTRA imposes a direct mandatory reporting obligation on financial institutions where any person conducts or seeks to conduct any transaction through the institution (whether or not the transaction or proposed transaction involves cash) and the institution has reasonable grounds to suspect:

- That the transaction or proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence. Or

- That the transaction or proposed transaction is or may be relevant to the enforcement of the POCA which sets out restraint, seizure and confiscation measures that are applicable to "serious offences" (meaning any offence punishable by imprisonment for a term of five years or more). The definition of serious offences includes both ML and FT offences (s. 15(1)).

505. This formulation largely meets the requirements of Recommendation 13, with some exceptions. There is not a sufficient range of offences in the designated predicate offence category of illicit arms trafficking (see section 2.1 for further details). This is a deficiency because Recommendation 13 requires the reporting obligation to apply, at a minimum, to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1.

506. A further concern is that, although there is a direct requirement to report suspicious transactions relating to FT (see FTRA s. 15(1)), the formulation is not very straightforward which may create confusion. The legislation sets out the requirement in an indirect manner, namely through amendments to

the POCA (TSA s. 81(c)) which include terrorist financing transactions in the category of transactions which have to be reported under the FTRA because of their relevance to the enforcement of the confiscation and forfeiture provisions of the POCA. The assessment team is of the view that financial institutions do not have a clear view on which situations could lead to filing an STR suspicion on terrorist financing, outside of the context of designated/listed entities. They base their reporting and are focused on designations pursuant to the TSA (in which case an SPR is filed, as described below) or on lists issued by other countries, international organisations or private entities operating internationally (in which case an STR is filed). This is not surprising, since the guidance issued by the New Zealand authorities on how to implement the terrorist financing reporting obligations also focuses on designated/listed entities (see discussion of Recommendation 25 below for further details). Most of the private sector representatives met with by the assessment team believe that without any name matches on the national or other relevant lists, they do not need to file an STR related to FT. This confusion could be addressed by clarifying the requirement more explicitly in the law.

507. Financial institutions are required to report STRs to the Commissioner of Police (in practice, the FIU) as soon as practicable after forming their suspicion. Although the Privacy Act generally prevents the disclosure of private information gathered for one purpose, from being used for another purpose, specific provisions in the FTRA override this principle as permitted by the Privacy Act itself (Privacy Act s. 6 Principle 11). The reporting obligation also applies despite anything to the contrary in any contract or agreement (FTRA s. 55). The STR reporting obligation applies notwithstanding any other enactment or rule of law, other than the rule of law protecting legal professional privilege (FTRA s. 19), or unless the financial institution has already filed a suspicious property report (SPR) under the TSA (s. 43).

508. 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. Any financial institution or other person in possession or immediate control of property is required to file an SPR 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 (TSA s. 43(1)-(2)). The SPR reporting obligation does not require a lawyer to disclose any privileged communication (TSA s. 43(3)). This provision does not apply to other situations that may be related to terrorism or FT (*e.g.* involving the property of terrorists/terrorist organisations that have not been designated under the TSA; involving property that may be used to finance terrorist activities where it is unknown to a financial institution who owns/controls the property). In such cases, the STR reporting obligation would apply because if someone is not designated and there is a terrorist financing suspicion, a financial institution is required to file an STR since, as noted above, FT falls within the definition of a "serious crime" pursuant to the POCA. In addition, the SPR reporting obligation is limited to the funds allocated for the purpose of committing a terrorist financing offence under section 8 of the TSA. It is therefore focussed on property used to commit, or to facilitate the funding of one or more terrorist acts as defined in the TSA. Consequently, the assessment team takes the view that, in addition to covering those narrow aspects of the reporting obligation that relate to FT in the context of designated persons/entities, the SPR reporting obligation is also to be seen as a particular part of the mechanisms being used by New Zealand to implement its obligations pursuant to SR III. In the range of circumstances in which it applies, the SPR reporting obligation meets the requirements of Recommendation 13 and Special Recommendation IV.

509. Both STRs and SPRs must contain, *inter alia*, identification details of the person conducting the transaction, details of the transaction itself (nature, amount involved, type of currency, date), and a statement of the grounds on which the suspicion is based (FTRA s. 15(2); TSA s. 44). STRs and SPRs being reported by a financial institution need to be signed by a person authorised to sign reports on behalf of the institution (FTRA s. 15(2)(ca); TSA s. 44(1)(b)). However, in practice, it seems that the FIU takes a much more flexible approach with regard to the information to be included in the STR. By exception, where the urgency of the situation requires it, an STR may be made orally to the FIU, but the financial

institution shall, as soon as practicable, provide a written report in order to comply with the FTRA (FTRA s. 15(3) – see also section 2.5).

510. A financial institution which fails to report an STR as required commits an offence that is punishable by a fine not exceeding NZD 20 000 (in the case of an individual) or NZD 100 000 in the case of a body corporate (FTRA s. 22).

511. A financial institution that fails to report an SPR as required commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding one year (TSA s. 43(4)). With respect to legal persons, the court can impose a fine since the offence itself only provides for a penalty of imprisonment (Sentencing Act s. 39(1)).

Attempted transactions and transactions related to tax matters

512. The STR reporting requirement applies to persons who "seek to conduct" a transaction--meaning that attempted transactions are covered by the reporting obligation. Although the SPR reporting obligation does not cover attempted transactions, this is not a deficiency since the obligation to report SPRs only applies to instances where the reporting entity is already in possession of the property in question (*i.e.* situations where there is no transaction or attempted transaction taking place).

513. Since the STR and SPR reporting requirements do not contain any minimum monetary value, the reporting obligation applies regardless of the amount of the (attempted) transaction. There is no provision that would prevent the reporting of suspicious transactions involving tax matters.

Additional elements

514. Financial institutions are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of crime. The scope of the criminal conduct, whether in New Zealand or elsewhere, is defined in section 243(1) of the Crimes Act.

Recommendation 14 (safe harbour and tipping off)

515. Any person filing an STR or SPR, or supplying information in connection with such reports, is protected by immunity from civil, criminal and disciplinary proceedings, unless he/she acts in bad faith or, in the case of SPRs, acts without reasonable care having been taken in determining that the property is or may be property to which the section applies (FTRA s. 17; TSA s. 46).

516. In addition, section 18 of the FTRA provides immunity from liability for disclosure of information relating to a money laundering transaction. This section applies to any person (not just a financial institution or employee) who is confronted with a transaction that he/she knows or believes to be a ML transaction. Persons who proceed with transactions in circumstances that make the defence under subsection (6)(a) of section 244 of the Crimes Act available (proceeding with a ML transaction for the purpose of the enforcement of certain Acts including the FTRA), and then report the transaction to the FIU in good faith, are entitled to similar protections as if they had filed an STR under section 15 of the FTRA. The TSA contains similar protections in section 46.

517. Tipping off is prohibited in relation to STRs. A financial institution that has made, or is contemplating making, an STR shall not disclose the existence of that report to any person other than:

- The Commissioner or a NZ Police employee who is authorised by the Commissioner to receive the information.

- An officer, employee or agent of the financial institution, for any purpose connected with the performance of that person's duties.

- A barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter. Or

- The Reserve Bank of New Zealand, for the purpose of assisting it to carry out its supervisory functions pursuant to Part 5 of the RBA (FTRA s. 20).

518. "Tipping off' is an offence punishable by up to two years imprisonment (FTRA s. 22).

519. There is no specific tipping off provision with respect to SPRs. The New Zealand authorities justify this approach on the basis that the designation of a terrorist entity (from which the obligation to report derives) is public knowledge and financial institutions are legally prohibited to deal with the property. However, the tipping off provision is intended to prevent both the assets and the perpetrator from disappearing. While the arguments of the New Zealand authorities seem to meet the first element; the absence of a formal tipping off provision does not meet the second element.

Additional elements

520. The NZ Police may not disclose any information that will identify, or is reasonably likely to identify, any person who, in their capacity as an officer/employee/agent of a financial institution, has handled a transaction in respect of which an STR or SPR was made, prepared an STR or SPR or made an STR or SPR (FTRA s. 21(1); TSA s. 47). The only exception is where the information is disclosed for the purposes of detecting, investigating and prosecuting ML or serious offences, enforcing the POCA or providing mutual legal assistance pursuant to the MACMA (FTRA s. 21(2)).

521. Additionally, no person may disclose, in any judicial proceeding any of the personal information noted above, unless the judge or, as the case requires, the person presiding at the proceeding is satisfied that the disclosure is necessary in the interests of justice (FTRA s. 21(3).

522. Every person who knowingly contravenes section 21(3) of the FTRA or section 47 of the TSA commits an offence, and is liable to a fine not exceeding NZD 10 000 (FTRA s. 22(8); TSA s. 47(5)).

Recommendation 25 (feedback and guidance related to STRs)

523. The Commissioner of Police is required to issue guidelines, from time to time, relating to the reporting of suspicious transactions. Such guidelines are to be prepared in consultation with the Privacy Commissioner and representatives of financial institutions and industry organisations. The Commissioner is also required to periodically review the guidelines, using the same consultation process (FTRA s. 24-27). On this basis, the FIU has issued the FI Guidelines in co-operation and co-ordination with competent regulators and private sector representatives.

524. The FI Guidelines apply to both financial institutions and DNFBP. In particular, they include specific examples of suspicious transactions in licensed casinos, via practising lawyers and real estate agents. These guidelines were updated in August 2008 and again in December 2008 when more detailed information regarding Locations of Specific Concern, following the FATF public statements was added.

525. The FI Guidelines cover the following general topics: the law on money laundering; customer verification; suspicious transaction guidelines (including examples of suspicious transactions); reporting of suspicious transactions; and general information on alternative remittance systems, cash couriers, locations

of specific concern, politically exposed persons and terrorist financing. However, given the low levels of reporting by the non-bank financial sectors, there is some concern as to whether this guidance is effective in assisting reporting institutions to implement their STR reporting obligations. As well, the existing guidance is deficient in that it does not adequately elaborate the obligation to report transactions suspected of being related to terrorist financing. The FI Guidelines on when to report an STR in relation to FT only refers to circumstances in which matches are found on a list other than New Zealand's terrorist designation list, and indicate several steps that need to be followed when determining whether or not an appropriate match has been identified (p.67-68). The guidance on when to report a suspicion in relation to TF, outside of the context of a listing/designation, is less elaborated.

526. The FIU also provides reporting entities (both financial institutions and DNFBP) with feedback on the quantity and quality of reports received. This is done on a bilateral basis through face-to-face meetings and letters to the institution/DNFBP. It also conducts outreach, on a multilateral basis with the major banks, through a half-yearly outreach meeting between the FIU and compliance officers of the banks. Additionally, the FIU holds an annual Money Laundering and Financial Crimes Seminar lasting for two and a half days, which is intended to provide guidance and feedback to financial institutions and other reporting entities, including DNFBP, and concrete cases and typologies are shared with the participants. The majority of the private sector entities met with by the assessment team reported to be satisfied with the feedback received from the FIU.

Recommendation 19 (Other reporting)

527. New Zealand has currently no system in place where financial institutions report all transactions in currency above a fixed threshold.

528. New Zealand's Ministry of Justice, in cooperation with the FIU and the IRD, is currently in the process of developing advice to the Minister of Justice on the feasibility and benefits of implementing a transaction database that would record all transactions above a fixed threshold. This consideration is being undertaken in the context of the broader AML/CFT reforms that are currently underway.

Additional elements

529. As New Zealand does not currently have a large transaction reporting system, the additional elements for this Recommendation are not applicable.

Recommendation 32 – Statistics and effectiveness

530. The FIU maintains annual statistics on the number of STRs, SPRs and BCRs, received and disseminated. Statistics are not maintained on the number of international wire transfers, as there is currently no specific reporting requirement in this regard.

531. The following table shows a breakdown of the number of suspicious transaction reports received by the FIU from financial institutions:

Number of suspicious transaction reports received from financial institutions

Sector	2004	2005	2006	2007	2008
Building society	17	12	26	25	27
Bureau-de-Change	63	63	31	63	69
Cooperative	6	1	4	4	6

Sector	2004	2005	2006	2007	2008
Credit Card	0	14	40	77	33
Credit Union	28	22	21	36	40
Finance company	1	3	0	1	8
Insurance	0	0	1	0	2
Merchant bank	2	0	0	0	0
Money remitter	14	35	237	620	807
Other – Partnership	0	0	0	1	0
Registered bank	6527	5979	3606	2965	2802
Share broker	0	0	1	2	5
Superannuation	1	0	0	0	0
TOTAL	**6758**	**6231**	**4066**	**3935**	**4229**

532. The New Zealand authorities advise that the total for the 2006 suspicious transaction reports in the above table is different from statistics previously published. It is believed this discrepancy is due to an error in converting data from the old FIU database to the current FIU database. A breakdown of the STRs disseminated is listed in section 2.5 of this report.

533. A total of 102 of these STRs were made in relation to terrorism related suspicions. In all cases, the suspicion was based on name matches with lists published by international organisations (other than the UN designation lists) and those provided by private sector entities operating internationally. None of the FT-related STRs filed were in other circumstances (*i.e.* unrelated to name matches on lists), which is not surprising given that many of the private sector representatives met with did not appreciate that the FT-related reporting obligation actually does go further (see above), and that the FI Guidelines focus on name matches with other lists than New Zealand's list of terrorist designations when indicating the instances in which an STR related to TF needs to be filed.

534. It is common worldwide that the banking sector provides the majority of STRs and this is also true of New Zealand. On the face of it, the number of reports provided by the non-bank financial institutions in New Zealand appears disproportionately very low, especially having regard to the number of the non-bank deposit taking institutions (many of whom actually engage in banking activities), and the size of the insurance and securities sectors. However, it is consistent with the character of New Zealand's financial sector – 95% of which is dominated by banks, in terms of volume of activity. Likewise, although 60% of all STRs filed by the registered banks are disclosed by one registered bank (which, on its face suggests that the reporting obligation is not being implemented consistently across the sector), this is not wholly inconsistent with the characteristics of New Zealand's banking sector (one bank holds 40% of the market share, and the next three largest banks hold a 15-16% market share). The following table shows a breakdown of the number of suspicious property reports received by the FIU.

Number of suspicious property reports

Suspicious Property Reports – Terrorism Suppression Act 2002		
Year	**Received**	**Disseminated**
2004	20	0
2005	15	0
2006	15	4
2007	1	0
2008	3	1

535. The New Zealand authorities advise that, in relation to the above-noted SPRs received by the FIU, all were either only name matches or partial name matches against the New Zealand designated terrorist list. No other identification details matched. All SPRs have been received from retail banks. All SPRs were analysed. Upon analysis or investigation none of the reported subjects were matched to the New Zealand designated terrorist list. The FIU confirmed that there was no overlap in reporting between SPRs and STRs, which suggests that the private sector correctly understands the distinction between these two types of reports.

3.7.2 Recommendations and Comments

Recommendation 13 and Special Recommendation IV

536. The reporting obligation should be extended to cover transactions that are suspected of relating to a broader range of offences in the designated predicate offence category of illicit arms trafficking.

537. New Zealand should take steps to improve the effectiveness of its reporting system by clarifying the legal requirement to report STRs related to terrorist financing. Such measures could include further elaborating relevant guidance and/or reformulating the wording of the obligations in the legislation to make them clearer. New Zealand should also conduct outreach as needed, with a view to improving implementation of the reporting obligation across all sectors.

Recommendation 14

538. The tipping off provision should be extended to also cover the SPR reporting.

Recommendation 19

539. There are no recommendations in relation to Recommendation 19.

Recommendation 25

540. Further guidance should be issued containing some concrete examples of the kind of financial transactions financial institutions should consider to be related to FT, outside of the context of designated/listed entities. Such examples are, for instance, published by the FATF, the Egmont Group, and some other FIUs. Further guidance should also be issued with a view to improving the rates of reporting in the non-bank financial sectors.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R. 13	**LC**	• The STR obligation does not apply to a sufficiently broad range of offences in the designated predicate offence category of illicit arms trafficking. • Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial Institutions.
R. 14	**LC**	• 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).
R. 19	**C**	• This Recommendation is fully observed.
R. 25	**LC**	• 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.
SR. IV	**LC**	• Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial institutions.

3.8 Internal controls, compliance, audit and foreign branches (R. 15 & 22)

3.8.1 Description and analysis

Recommendation 15 (Internal controls)

541. Financial institutions are not explicitly required to establish and maintain internal procedures, policies and controls to prevent ML/FT, to communicate these to their employees, or to maintain an adequately resourced and independent audit function to test compliance with internal procedures, policies and controls. Banks are expected to implement appropriate internal AML/CFT procedures, policies and controls as outlined in the relevant Basel Committee standards including "Customer due diligence for banks – October 2001" in accordance with BS5, but this is not an enforceable requirement.

542. Financial institutions are not explicitly required to develop appropriate compliance management arrangements or designate an AML/CFT compliance officer who has timely access to relevant information.

543. Financial institutions are not required to establish ongoing employee training to ensure that employees are kept informed of new AML/CFT developments.

544. Financial institutions are not required to put in place screening procedures to ensure high standards when hiring employees.

545. There are no requirements relating to any aspect of Recommendation 15. However, sections 14 and 23 of the FTRA provide that a defence to a charge of failing to comply with the customer verification and suspicious transaction reporting obligations (pursuant to sections 12 and 15 respectively) may be available where the defendant has taken all reasonable steps to comply with the requirement. In making such a determination, the court may have regard to the existence and adequacy of procedures established by the financial institution to ensure compliance with these requirements, including staff training, and audits to test the effectiveness of any such procedures. These defences are further elaborated in the FI Guidelines which are unenforceable (p.60). The New Zealand authorities consider that the availability of a

defence to certain charges under the FTRA provides a strong incentive for financial institutions to have internal policies, procedures and controls in place to prevent ML/FT.

546. Although, in practice, registered banks, and some other financial institutions have implemented internal AML/CFT controls, the practices observed by the assessment team vary widely. In the absence of a clear legal obligation, even registered banks (let alone other types of financial institutions) may not all maintain internal policies, procedures and controls in a manner that is consistent with the FATF Recommendations.

Additional element

547. According to the New Zealand authorities, informal discussions with reporting entities indicate that most financial institutions that have AML/CFT compliance officers would require them to act independently and report to senior management.

Recommendation 22 (Foreign branches and subsidiaries)

548. The definition of financial institution under section 3 of the FTRA applies to persons incorporated in New Zealand and includes all branches and subsidiaries of foreign financial institutions operating in New Zealand. However, there are no corresponding requirements applicable to the foreign branches or subsidiaries of registered banks or other financial institutions incorporated in New Zealand. This is because, with the exception of special purpose vehicles raising funds from international capital markets, financial institutions incorporated in New Zealand usually have no foreign branches or subsidiaries. The special purpose funding vehicles that do exist all operate in the countries where the major financial capital markets are located, for instance in the United Kingdom, Singapore and Hong Kong.

549. Indeed, in the New Zealand context, the situation is much more likely to be the reverse (*i.e.* a foreign branch/subsidiary doing business in New Zealand as the host country). For instance, at October 2008, 15 out of the 18 registered banks in New Zealand were branches or subsidiaries of foreign banking groups. However, given that many areas of the financial sector are currently not supervised, it is not known how many foreign branches and subsidiaries of New Zealand financial institutions exist.

550. Registered banks require the approval of the Reserve Bank to establish foreign branches or subsidiaries. No legal provisions would prevent New Zealand non-bank financial institutions from establishing branches and subsidiaries abroad. There is no data available as to how many foreign branches and subsidiaries of non-bank financial institutions may exist. In addition to the few special purpose vehicles referred to above, the assessment team also became aware of the previous existence of two insurance companies that have now closed down their foreign operations (one in the United States and one in Japan). Similarly, there is evidence of New Zealand registered securities companies offering shares in other countries. The Securities Commission already initiated action against a couple of them for making misleading and deceptive disclosures. It is unclear whether these entities were separately registered companies or branches/subsidiaries of New Zealand financial institutions; however, the action taken by the Securities Commission highlights the vulnerability of overseas operations to abuse. The authorities were unable to provide information about the AML/CFT framework of these overseas entities, branches and subsidiaries, primarily because New Zealand has not yet implemented any aspect of Recommendation 22.

Additional elements

551. New Zealand financial institutions that are subject to the Core Principles are not specifically required to apply consistent CDD measures at the group level, taking into account the activity of the

customer with the various branches and majority owned subsidiaries worldwide. However, as noted above, it appears that very few New Zealand financial institutions have operations abroad.

3.8.2 Recommendations and Comments

Recommendation 15

552. Financial institutions should be required to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. This requirement should extend to developing compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level who has timely access to all records and information.

553. Financial institutions also should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. Moreover, financial institutions should be required to establish ongoing employee training to ensure that employees are well equipped to take AML/CFT measures. In addition, a clear requirement should be created for employees' screening procedures to ensure high standards.

Recommendation 22

554. The New Zealand authorities should create legal provisions that require financial institutions to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local laws and regulations permit. Financial institutions should be required to ensure that they pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. Where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that the host country's laws and regulations permit. Finally, financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to prohibition under host country's laws, regulations or other measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R. 15	**NC**	• Financial institutions are not required to establish and maintain internal AML/CFT policies, procedures and controls, and to communicate these to their employees. • Financial institutions are not required to designate a Compliance Officer at the management level who has timely access to records. • There is no requirement to maintain an adequately resourced and independent internal audit function to test compliance. • There is no requirement to conduct ongoing employee training in relation to AML/CFT. • Financial institutions are not required to put screening procedures in place to ensure high standards when hiring employees.
R. 22	**NC**	• There are no requirements to ensure that foreign branches and subsidiaries observe appropriate AML/CFT Standards. • 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. • There are no requirements to apply higher standards where requirements between the host and home country differ. • There is no provision that requires financial institutions to inform their home country

	Rating	Summary of factors underlying rating
		supervisor when they are unable to observe appropriate AML/ CFT measures.

3.9 Shell banks (R. 18)

Recommendation 18

3.9.1 Description and Analysis

555. There are no shell banks that are registered as banks in New Zealand or legally authorised to operate there as registered banks. It has been the Reserve Bank's policy, based on its Statement of Principles (BS1), not to register any entity that would be a shell bank, consistent with the Basel Core Principles. However, by avoiding the use of the word 'bank' in its name, an entity is not subject to the registration requirements of the Reserve Bank or its supervisory framework. Otherwise, nothing prevents it from carrying out banking business. 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.

556. Company registration in New Zealand is a straightforward task, provided that all required information is provided (see also section 5.1). The main requirements for registration are to provide a list of directors and an address of the place of business. Information relating to involvement in previous failed companies is accessible on the Companies Register. The Registrar and the Court have powers to prohibit persons who have been involved in previous failed companies from acting as a director, or being involved in the management or promotion, of a company (sections 382 – 385.Companies Act).

557. Though shell banks may not be deliberately approved or permitted to continue their operation in New Zealand, the existing procedures allow the establishment and operation of shell financial institutions that conduct banking activity. It is noteworthy that the glossary of the FATF Recommendations links the definition of financial institution to different kinds of financial activities. Deposit-taking is a core banking activity worldwide (with or without using the word 'bank'). It is observed that out of 18 banks registered with the Reserve Bank, two are not using the word 'bank' in their names. By permitting deposit-taking activity to take place without registration or proper supervisory controls, shell financial institutions are being unwittingly permitted to carry on banking business. The company registration mechanism is based on fragile processes hence, the opportunity for criminals and money launderers to exploit shell banks occur.

558. Indeed, the New Zealand authorities acknowledge that some such entities are incorporated in New Zealand, but have no physical presence in terms of activities and management in the country. Instead, they conduct their deposit taking activity through the internet and are focused on customers living outside of New Zealand. The Reserve Bank is aware of this happening and is in the process of undertaking action. In addition, the Reserve Bank has placed warnings on its website to protect depositors from the activities of such entities.

559. There are currently no legal or supervisory requirements in place that prohibit financial institutions from dealing with shell banks in other countries, or require them to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. The draft AML/CFT bill purports to address this issue.[24]

[24] The AML/CFT Bill was enacted by Parliament on 15 October 2009.

3.9.2 Recommendations and Comments

560. Registration/licensing requirements should be introduced for non bank deposit takers, so that shell financial institutions cannot be established or continue operations in New Zealand.[25]

561. Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks.

562. New Zealand authorities should require financial institutions to satisfy themselves that their respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R. 18	**NC**	• 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. • There is no prohibition on financial institutions for entering into, or continuing, correspondent relationships with shell banks. • 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.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 & 25)

3.10.1 Description and Analysis

Authorities/SROs roles and duties & Structure and resources – R. 23, 30

Designated supervisory authorities and application of AML/CFT measures (R. 23)

Scope issue

563. 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 (including non-bank deposit takers, non-bank non-deposit taking lenders, life insurers, financial advisers, the unregistered trading facility, money changers, MVTS providers and custody services) 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.

The Reserve Bank of New Zealand

564. The RBA 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

[25] New provisions requiring non bank deposit takers to be licensed are currently under development by the Reserve Bank.

significant damage to the financial system that could result from the failure of a registered bank (RBA s. 68). 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, including existing (or proposed) policies, systems, and procedures to detect and deter ML/FT (Reserve Bank of New Zealand (Registration and Supervision of Banks) Regulations 2008 (RBA Regulation 2008) s. 3). RBA Regulation 2008 gives some legislative backing to the Reserve Bank's general expectations that applicants for registration as a bank and existing registered banks effectively mitigate the risks to their business posed by ML/FT, and the Reserve Bank has since updated its Banking Supervision Handbook accordingly. However, the Reserve Bank's role as an AML/CFT supervisor remains very limited.

565. 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. There is no regular inspection program or evidence to show that inspections have been carried out to evaluate compliance with AML/CFT requirements. The Reserve Bank has currently no AML/CFT supervisory powers with regard to non-bank deposit takers and insurers.

Securities Commission

566. The Securities Commission does not currently have any specific AML/CFT supervisory powers. It is responsible for the enforcement, monitoring and oversight of conduct on the securities markets in New Zealand, and has a direct supervisory role over New Zealand's only registered exchange, the New Zealand Exchange Limited, pursuant to the Securities Markets Act. The Securities Commission is a market conduct regulator. It is not focused on prudential supervision of the securities sector; its focus is primarily on the enforcement of disclosure and market conduct rules. The Securities Commission also assumes supervisory responsibility for financial advisers under the Financial Advisers Act.

567. During the on-site visit the assessment team learned about the existence of a trading facility also operating in New Zealand under the name "Unlisted". NZ authorities have subsequently informed the team that only 20 companies were quoted on "Unlisted" and trading in Unlisted stocks was thin and has to be conducted through 8 brokers that are subject to the FTRA. The Securities Commission does not supervise Unlisted in the way it supervises a registered exchange.

Ministry of Economic Development

568. The MED is responsible for the regulation and supervision of superannuation schemes and life insurers for compliance with the Superannuation Schemes Act and Life Insurance Act, respectively. It does not currently have any specific AML/CFT supervisory powers.

Department of Internal Affairs

569. Money or value transfer service (MVTS) providers and foreign exchange dealers (other than registered banks) are not currently subject to supervision or monitoring for compliance with AML/CFT requirements or otherwise. The New Zealand authorities have prepared a draft AML/CFT bill that would designate the DIA responsible for supervising these entities (as well as non-bank non-deposit taking lenders and any other entity not otherwise supervised by the Reserve Bank or Securities Commission) for AML/CFT purposes.[26]

[26] The AML/CFT Bill was enacted by Parliament on 15 October 2009.

570. Overall, it can be stated that the absence of effective regulation and supervision is an important shortcoming in New Zealand's AML/CFT regime. Under the existing supervisory approach, the financial sector is vulnerable to serious risks of money laundering and terrorist financing.

Structure and resources of supervisory authorities (R. 30)

The Reserve Bank of New Zealand

571. The Reserve Bank has approximately two persons (full time equivalent) involved in AML/CFT matters within the Prudential Supervision Department. That resource is primarily committed to having input into national policy initiatives, reviewing implications for the New Zealand financial sector of international policy initiatives, liaising with other New Zealand agencies and registered banks on policy and operational matters, and reviewing/providing advice to Pacific Island countries on AML/CFT initiatives from time to time. In addition analysts with responsibility for prudential supervision are responsible for ensuring that registered banks are carrying on business in a prudent manner, in consideration of the RBA Regulations 2008. This level of staffing will certainly not be sufficient once the Reserve Bank is given more extended responsibilities in the AML/CFT area. The Reserve Bank has committed to increasing resources over the next two years in order to meet the demands of its role as an AML CFT Supervisor following enactment of the AML/CFT Bill.

572. The Reserve Bank has operational independence and autonomy in carrying out its supervisory role. Some crisis management powers such as the power to deregister a bank or place a bank in statutory management can only be exercised with the consent of the Minister of Finance. The New Zealand authorities consider these powers could be invoked in response to very serious breaches of AML/CFT requirements. The Reserve Bank has a funding agreement with the Minister of Finance. Each funding agreement covers a period of five consecutive financial years, but may be varied by agreement during its term.

573. Supervisory staff employed by the Reserve Bank have tertiary qualifications in an appropriate discipline. The Reserve Bank has a policy of only appointing persons to supervisory roles who have several years of relevant work experience (financial sector policy work and/or supervision). The Reserve Bank ensures that its supervisory staff have the skills and knowledge necessary for their work, and requires such staff to undergo appropriate training to maintain their knowledge and skills.

574. Supervisory staff are expected to work to high professional standards and levels of integrity. Reserve Bank staff are required to keep confidential any information obtained in the course of their duties. Specifically, it is an offence for officers or employees of the Reserve Bank to disclose or publish any information data and forecasts supplied or disclosed to or obtained by the Reserve Bank for supervisory purposes other than in the circumstances specified in the Act (RBA s. 105). All Reserve Bank staff are also required to comply with a code of conduct covering matters such as confidentiality, integrity and conflicts of interest. Failure to comply with the code of conduct could result in disciplinary action, including dismissal. When employing staff, the Reserve Bank makes reference checks and checks with the Police to ensure that potential employees are of high integrity.

575. The staff involved in AML/CFT work have received AML training. In the last five years, Reserve Bank staff members have attended AML/CFT Training workshops run by the Financial Stability Institute and the APG. A few staff have worked in foreign supervisory authorities with AML/CFT supervision responsibilities. One staff member has attended APG annual meetings and received training in, and participated in, APG mutual evaluations.

Securities Commission

576. The Securities Commission has no resources allocated to supervision for compliance with AML/CFT requirements, as it currently has no AML/CFT supervisory function. Nevertheless, it does have 0.5 persons (full time equivalent) in charge of AML/CFT matters. That resource is primarily committed to having input into national policy initiatives, reviewing implications for the New Zealand financial sector of international policy initiatives, and liaising with other New Zealand agencies and the industry on policy and operational matters.

577. The Securities Commission is operationally independent and accountable in the exercise of its functions and powers. Parliament has delegated certain powers in legislation to the Commission, which it is able to exercise without day-to-day supervision or political interference. The Commission is an independent Crown Entity, which means that it must regularly report to Parliament (as with all Crown entities) over how it performs its statutory functions. Funding for the Commission is appropriated in accordance with the Public Finance Act. The Commission has flexibility in allocating its resources to its various objectives, particularly in respect of research activities and improving public understanding of the law and practice of takeovers and securities. This discretion is not unlimited in that the Commission is required to meet the needs of the market for exemptions, approvals and enforcement action.

578. Employees of the Commission are required to adhere to the State Services Commission's Public Sector Code of Conduct. The Commission has also adopted a Code of Ethics that builds on the principles of the Code of Conduct. Commission members and staff are required to comply with the Code of Ethics, which sets out standards to ensure the integrity of its approach, quality of the work and maintenance of confidentiality.

579. Although the Commission does not currently have an AML/CFT supervisory function, staff have attended AML/CFT-related training conferences and sessions in New Zealand and overseas, including those involving FATF Assessor Training. These steps were taken in anticipation of the Commission's intended function under the new AML/CFT Bill (*i.e.* to supervise the securities sector for compliance with AML/CFT requirements).

Ministry of Economic Development

580. The MED has no resources allocated to supervision for compliance with AML/CFT requirements, as it currently has no AML/CFT supervisory function. MED staff do not currently receive AML/CFT training.

Department of Internal Affairs

581. The DIA has no resources allocated to supervision for compliance with AML/CFT requirements by non-bank non-deposit-taking lenders, MVTS providers and foreign exchange dealers and entities not otherwise supervised by the Reserve Bank or Securities Commission, as it has not yet an AML/CFT supervisory function for these entities. Nevertheless, it does have approximately 1.5 persons (full time equivalent) in charge of AML/CFT matters. That resource is primarily committed to having input into national policy initiatives, liaising with other New Zealand agencies and the industry on policy and operational matters, and preparation for the supervisory role. The DIA does, however, have resources allocated for the purpose of supervising casinos (see section 4.3 of this report for further details).

Authorities Powers and Sanctions – R. 29, 17

Supervisory powers (R. 29)

The Reserve Bank of New Zealand

582. The Reserve Bank does not currently have the power to conduct on-site inspections of banks for the purposes of either prudential or AML/CFT supervision although it can appoint a person to carry out an investigation if certain criteria are met. It can also require a bank to commission an independent review conducted by a person approved by the Reserve Bank (s. 95 RBA).

583. The Reserve Bank monitors the banking sector primarily through examination of quarterly disclosure statements and other information submitted by the banks themselves in response to section 93 requests for information. The Reserve Bank can appoint a "suitably qualified person" to inspect a bank in question and remove or take copies of documents, as necessary (RBA ss. 99(1)-(2) where there is reasonable cause to believe that false or misleading information has been published or provided, or information was not published or supplied as required, or where the Bank is satisfied that it is necessary or desirable for the purposes of determining whether or not to exercise its powers to give directions or recommend the appointment of a statutory manager. However, such an inspection can only take place if the bank consents or the appointed person obtains a search warrant from a High Court Judge (RBA ss. 100 and 106). There is no possibility to extend such an inspection to include sample testing.

584. Since the end of October 2008, when the Reserve Bank 2008 Regulations came into force (adding AML/CFT to matters covered by the prudential powers of the Reserve Bank), the Reserve Bank has issued the BS5guidelines. In addition, following passage of the regulations, registered banks are required to periodically complete a questionnaire on AML/CFT policies and practices. Where necessary, the Reserve Bank follows up with the bank concerned on any deficiencies which were identified through this paper-based exercise, in consultation meetings with bank management.

585. The Reserve Bank has the power to require a registered bank or any company associated with a registered bank to supply information relating to: corporate matters; financial matters; prudential matters; and any other matters relating to the business, operation or management of the bank (RBA s. 93). This power can be exercised without having to obtain a court order. If a bank fails to comply with this requirement, or provides false or misleading information, the Reserve Bank may appoint someone to enter and search the bank's premises to obtain that information; however, in such instances, a court order is needed (RBA, ss. 99, 100 and 101). The Reserve Bank may require a registered bank to supply a report or series of reports prepared by a person approved by the Reserve Bank on, inter alia, matters relating to the business, operation or management of the registered bank (RBA s. 95). All of these requirements may be used by the Reserve Bank to obtain information or documents pertaining to AML/CFT matters.

586. The Reserve Bank has the authority to obtain information or documents pertaining to AML/CFT matters, including information of a general nature, such as the bank's internal controls, policies and procedures and data or information relating to the affairs of a particular customer or client (RBA s. 93(1)). Although the Reserve Bank has exercised these powers in relation to its functions of prudential supervision, it has not yet done so for the purposes of supervising compliance with AML/CFT requirements. Additionally, there is no proof of any inspection carried out by the Reserve Bank to check AML compliance of policies and procedures, books and records, not even via sample testing. Overall, the Reserve Bank does not adequately monitor and ensure compliance by registered banks with AML/CFT requirements.

Securities Commission

587. The Securities Commission has no powers or authority to monitor, supervise or inspect financial institutions in the securities sector for compliance with AML/CFT requirements. However, the Securities Commission does have powers of inspection for the purposes of ensuring compliance with the Securities Markets Act and certain other pieces of legislation relevant to the securities sector (albeit not the FTRA), or co-operating/complying with a request from an overseas regulator (Securities Act ss. 67, 67A, 68). Such inspections may be undertaken by the Commission itself, through the Registrar of Companies or through any other person authorised by the Commission. An inspector is authorised to require the production of documents, take possession of documents for the purpose of making a record of them, or remove a document, article or thing from the premises where it is kept for a reasonable period of time. Failure to comply with a request from an inspector who is acting in accordance with his/her authority is an offence (Securities Act s. 59A(1)(a)). Additionally, the Securities Commission has broad powers to compel the provision of information for the purposes of its work, though not explicitly related to AML/CFT provisions (Securities Act, Part 3).

588. The Securities Commission does not directly supervise members of the NZX for compliance with the conduct rules (*i.e.* business rules) of the exchange; that role is filled by the NZX pursuant to section 36G of the SMA. Rule 16.9 of the NZX Participants Rules provides the NZX with the necessary powers of inspection, access to information and production of books and records in relation to members of the exchange. It is a condition of obtaining the status of an NZX market participant or NZX advisor/associate advisor to agree, contractually, to at all times comply and be bound by the Participant Rules. The NZX has audit arrangements with its participants and if a violation of Rules is significant, a tribunal (set up for these purposes by the NZX) is approached to remedy the situation and impose fines. However, as the NZX is not a designated competent authority for AML/CFT purposes, its audits are not intended to check compliance with the AML/CFT requirements of the FTRA.

589. Regulatory co-ordination exists between the Securities Commission and the NZX in the form of quarterly operations group meetings; quarterly board to board strategic group meetings and annual oversight reviews of NZX carried out by the Securities Commission. This annual report is a publicly available document. The NZX is required to notify the Commission if it takes disciplinary action for a contravention of its conduct rules, or if it suspects that a person has committed, is committing or is likely to commit, a significant contravention of the exchange's conduct rules (including the Participants Rules), the Securities Act, the Securities Markets Act or the Takeovers Act (SMA ss. 36ZD to 36ZF). Furthermore, there is a general provision that the NZX must give the Commission any information, assistance or access to the exchange's facilities if the Commission reasonably requires it to carry out its functions which are focused on ensuring compliance with listing and disclosure requirements rather than on prudential matters (SMA s. 36ZK).

590. The Securities Commission does not at present have powers to ensure compliance with AML/CFT requirements. The NZX Participant Team has a risk based on site inspection programme. High risk Participants are inspected at least annually. Included in this inspection is an assessment of the Participants compliance with the KYC and AML/CFT requirements under the Participant Rules.

Ministry of Economic Development

591. The MED has no powers or authority to monitor, supervise or inspect life insurers or superannuation schemes for compliance with AML/CFT requirements. The general supervisory powers of the MED are primarily focused on reviewing the disclosure statements and annual financial returns that financial institutions are required to submit. The MED has the power to obtain additional information from these entities, but has no general supervisory powers of inspection.

Department of Internal Affairs

592. The DIA has not yet been designated as the AML/CFT supervisor for money remitters and foreign exchange dealers. It currently has no general supervisory powers in relation to these types of financial institutions.

Powers of enforcement and sanctions (R. 29 and 17)

593. The FTRA does not provide any of the financial sector supervisory authorities with specific powers of supervision or enforcement against financial institutions, and their directors or senior management for failure to comply with or properly implement AML/CFT requirements.

Criminal Sanctions

594. 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) (FTRA ss. 13 and 36). A breach of the suspicious transaction 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).

595. Where a legal person is convicted of an offence against the FTRA, every director and officer concerned in the management of the legal person shall also be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent (FTRA s. 54).

596. The TSA provides for criminal sanctions in relation to breaches of the suspicious property reporting requirements. Breaching these requirements is an indictable offence punishable by a term of imprisonment not exceeding one year (for natural persons) (TSA s. 43(4)). With respect to legal persons, section 39(1) of the Sentencing Act provides that the court can impose a fine where an offence only provides for a penalty of imprisonment. However, the quantum of such fines is not specified.

597. 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. These sanctions were initiated by NZ Police through the process of criminal prosecution. A total number of 65 convictions were obtained between 2004 and 2008. All but one sanction were imposed either in 2004 or 2007. The NZ Police uncovered these violations based on linkages with other STR(s) reported to FIU or in the course of an investigation into another offence.

Civil and administrative sanctions

598. No civil or administrative sanctions are available for breaches of AML/CFT requirements, except in relation to registered banks, as described below. 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 of registered banks. Overall, the range of sanctions available is not sufficiently broad and proportionate to the severity of the situation.

Reserve Bank of New Zealand

599. The Reserve Bank has some general powers of enforcement and administrative sanctions which may be directly applied for AML/CFT purposes. In particular, the Reserve Bank has general powers to give directions to a registered bank, subject to approval from the Minister of Finance, in any case where

there are reasonable grounds to believe that the business of the bank concerned has not been, or is not being conducted in a prudent manner (RBA ss. 113-113B). A breakdown in, or absence of, effective internal AML/CFT controls or customer due diligence procedures might, in extreme circumstances, be reasonable grounds to believe that the bank was behaving imprudently. The power to give directions includes the ability to require that a registered bank ceases to carry on its business or any part of its business, or ensure that any officer or employee ceases to take part in the management of the bank, or to remove or replace a director of the bank.

600. Failure to comply with a direction under section 113 is grounds on which a bank may be declared to be subject to statutory management by the Governor–General, on the advice of the Minister of Finance given in accordance with a recommendation from the Reserve Bank (RBA ss. 117-118). Additionally, the Reserve Bank, with the consent of the Minister of Finance, has the power to remove, replace or appoint the directors of a bank (RBA s. 113B). The Reserve Bank may also recommend cancellation of the registration of a bank to the Minister of Finance (RBA s. 77). Cancellation can only be recommended on defined grounds that include the bank not carrying on its business in a prudent manner.

601. However, the Reserve Bank's authority to apply these administrative sanctions in relation to AML/CFT is only very recent (when the Reserve Bank 2008 Regulations came into force at the end of October 2008). Consequently, none of these sanctions have yet been applied in practice.

602. There is a limited range of existing administrative sanctions which could be applied depending on the severity of a situation. Currently, there is no provision for administrative fines. However, warning letters could be used and, if necessary, legally binding requirements could be applied through imposing conditions of registration (RBA s. 74). New conditions of registration may be applied, or existing ones amended, at any time during the bank's existence. The Reserve Bank provided the assessment team with a concrete example of how this power has been used in the prudential context to sanction banks by making them subject to more restrictive conditions of registration. Failure to comply with a condition of registration is an offence under the RBA. If found guilty of such an offence, a registered bank could face a fine up to NZD 1 million. In more serious cases a direction could be given. Once a direction has been given to a bank, the next step which may be taken to address non-compliance is removing directors, placing the bank under statutory management or recommending the cancellation of its licence. Failure to comply with a condition of registration or a direction may also constitute grounds for cancellation of a bank's licence (RBA s. 77(2)(d)).

603. Administrative sanctions are only available in relation to registered banks and, as these powers are quite recent, they have not yet been exercised in the AML/CFT context. In relation to all other types of financial institutions, only the criminal sanctions of the FTRA are available. The effectiveness of the system cannot be ensured through criminal sanctions only. The criminal process is rarely used and invoked only when a serious irregularity comes to the attention of NZ Police through an indirect way (*e.g.* as a result of linkages with another STR or in the course of an investigation). Otherwise, there is no mechanism that allows for constant oversight and, consequently, irregularities have the potential to continue until a particular point is flagged in this manner.

Market Entry (R. 23)

604. An overall issue is that significant parts of the financial sector are functioning in an unregulated environment. Without any supervisory checks on fitness and propriety, the sector is particularly vulnerable to criminals taking management positions in financial institutions.

Banking sector

605. There are no licensing requirements in relation to conducting banking business. Any entity may conduct banking business and deposit-taking without being licensed in any way, or being registered as a bank. Only if the entity wishes to use the word "bank" in its name, is it subject to registration by the Reserve Bank.

606. Before registering a bank, the Reserve Bank must, in considering the applicant's incorporation and ownership structure, have regard to the applicant's ability to carry on its business in a prudent manner, and the standing of the applicant and its owner in the financial markets. In case of a change of ownership, the prior consent of the Reserve Bank is needed when a person acquires a 'significant influence' or increases its 'significant influence' over a registered bank (RBA s. 77A). Significant influence is defined as the ability to directly or indirectly appoint 25% or more of the board of directors or a direct or indirect qualifying interest in 10% or more of the voting securities (RBA s. 2).

607. The Reserve Bank applies fit and proper tests at the time of a bank's application for registration and on an on-going basis. Among the criteria to be taken into account for registration and supervision of banks, is the suitability of the bank's directors and senior management (RBA s. 73(2)). The Reserve Bank has powers to veto the appointment of directors and senior managers. It also has the power to check the suitability, and fit and properness of directors and senior management of all banks, and to remove bank directors, officers or employees for a range of reasons. Such reasons may include if the Reserve Bank has reasonable grounds to believe that: (a) the circumstances or conduct of affairs of the registered bank or associated person are such as to be prejudicial to the soundness of the financial system; (b) the business of the registered bank has not been, or is not being, conducted in a prudent manner; (c) the bank or its senior management has failed to comply with any requirement imposed by or committed an offence under the RBA or its regulations; or d) the registered bank has failed to comply with a condition of its registration. Additionally, the Reserve Bank may make a recommendation to the Minister of Finance to cancel a registration if there is a change in any of the matters mentioned under section 73, provided that the Reserve Bank considers this change to be materially adverse to the registered bank's standing or financial position (RBA s. 77).

608. The Reserve Bank's evaluation of owners and senior managers applies at the time of registration of the banks and on an ongoing basis. In addition all locally incorporated banks are subject to a condition of registration (which is an ongoing supervisory requirement) that no appointment of any director, chief executive officer, or executive who reports or is accountable directly to the chief executive office shall be made unless the Reserve Bank has advised it has no objection to the appointment. A statement of non objection is made only after the Bank has carried out fit and proper checks including a review of the prospective appointee's curriculum vitae and criminal record and sought information from other relevant regulators.

609. Non-bank deposit takers (building societies, credit unions, finance companies, and a person or class of persons that is declared by Regulations to be a deposit taker for the purposes of Part 5D of the RBA (157C (1) (b)) are, currently, not subject to any prudentially-based registration or licensing regime, even though they engage in similar activities to those undertaken by banks. However, they make up only a relatively small part of the financial sector. Moreover, their directors and senior management are not evaluated on the basis of "fit and proper" criteria including those relating to expertise and integrity. In September 2008, Parliament amended the Reserve Bank Act, by adding Part 5D, giving the Reserve Bank responsibility for prudential regulation of the non-bank deposit takers sector, while maintaining trustees as institutional supervisors. Key aspects of the new regulatory regime include mandatory credit ratings, requirements for capital, liquidity and restrictions on related-party exposures, as well as new rules for governance and risk management. These obligations will be introduced progressively in 2009 and 2010. A

new piece of legislation making provision for licensing, fit and proper and ownership change requirements for non bank deposit takers is currently under development and is expected to come into effect in 2010.

Securities sector

610. There are no licensing requirements for public issuers of securities or fund managers. Any entity may be in the business of issuing securities to the public, provided that it complies with the Securities Act requirements which mainly relate to investment disclosure rules.

611. The NZX Participant Rules do require applicants for designation as market participants to provide evidence to the NZX of their appropriateness to be a market participant. These rules require the applicant to make statutory declaration that he is a fit and proper person without any record of dishonest or fraudulent activities. The NZX representatives informed the assessment team that fitness and propriety are also verified by utilising independent sources of information.

Life insurance sector

612. 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.

Money/value transfer service providers, foreign exchange dealers and financial service providers

613. Information about the exact numbers of MVTS providers and foreign exchange dealers is unknown. The size and business strategies of such entities varies considerably in that they operate in different forms from small street-level money brokers to registered companies offering services competing with those offered by banks.

614. There are currently no legal provisions in force that require MVTS providers or foreign exchange dealers to be licensed or registered. This issue will be addressed when the FSP/RDR Act, which was passed in September 2008, comes into force. This Act will prohibit any person from being in the business of providing financial services or holding out that they are in the business of providing financial services unless they are registered under the Act. 'Financial services' is broadly defined and includes:

- Providing a financial adviser service.
- Acting as a deposit taker.
- Being a registered bank.
- Managing money, securities, or investment portfolios on behalf of other persons.
- Providing credit under a credit contract.
- Operating a money or value transfer service.
- Issuing and managing means of payment;
- Giving financial guarantees.

- Participating in the offer of a security to the public as an issuer, contributory mortgage broker, trustee, statutory supervisor, promoter, or manager.

- Changing foreign currency.

- Entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts on behalf of another person.

- Providing forward foreign exchange contracts.

- Underwriting and placing insurance.

- Providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations or other similar international obligations that are consistent with the purpose of the Act.

615. The Registrar of Financial Service Providers will be responsible for maintaining the register of financial service providers. At this stage, it is expected that the new law will come into force in 2010, with all financial service providers to be registered (and to have passed the criminal record check) by 2012.

Ongoing supervision and monitoring – R. 23

616. Registered banks are subject to prudential regulation and supervision by the Reserve Bank. Those measures that apply for prudential purposes and which are also relevant to combat ML/FT apply in the same manner for AML/CFT purposes. In determining whether a bank is carrying on its business in a prudent manner, the Reserve Bank can have regard to a number of factors, including existing (or proposed) policies, systems, and procedures to detect and deter ML/FT. This factor was only added in 2008 as one of the considerations that the Reserve Bank could take into account when determining if a registered bank were carrying on business in a prudent manner (RBA s. 78(1)(g)). Registered banks are therefore required to periodically complete a questionnaire on AML/CFT policies and practices. Where necessary any deficiencies identified are followed up with the bank concerned in consultations or other meetings with bank management. Other types of financial institutions that are subject to the Core Principles (*i.e.* securities, life insurance, non-bank deposit takers) are not currently subject to prudential regulation in New Zealand.

617. The supervisory and monitoring approach in New Zealand is thus based on three pillars – self-discipline, market discipline and regulatory discipline. Authorities tend to place less emphasis on regulatory discipline than is the case in many other countries and have therefore tended to impose regulatory demands only where they are considered to be absolutely necessary. Authorities have been satisfied with this existing approach based on the country's history of compliance culture and low incidence of corruption. The Reserve Bank mainly uses off-site surveillance tools and places reliance on disclosure requirements supplemented with private reporting to the Reserve Bank and with intermittent interventions. On-site inspections are an exception and not a regular feature. Areas of concern are identified by collecting information from banks and addressing issues identified through consultations with the senior management and board. It rarely happens that the Reserve Bank considers it necessary to conduct on-site inspections, in which cases a court order needs to be obtained, and only proceeds in that way when there are reasons to believe that bank's cooperation is lacking or facts are being camouflaged. The Reserve Bank does when necessary require registered banks to obtain an independent review carried out by a person approved by the Reserve Bank (section 95).

618. Areas of concern can also be addressed by imposing additional conditions of registration or issuing directions to execute (or not) certain acts. The Reserve Bank's AML/CFT measures are relatively new and, therefore, evidence showing that the supervisory measures it uses for prudential purposes are also being used effectively for AML/CFT purposes is not available.

619. Securities market participants, insurance companies, MVTS providers, foreign exchange dealers and other types of financial institutions are not currently subject to any monitoring for compliance with national AML/CFT requirements. Compliance with such requirements is the result of entities' own judgment and motivation. Due to the easy availability of remittance and exchange services, these entities are particularly vulnerable to abuse by money launderers because their transactions are not subject to any regulatory overview.

Guidance for financial institutions (other than on STRs) – R. 25

620. ***BS5 Guidelines:*** The Reserve Bank has issued a policy statement (BS5), for the purpose of interpreting section 78 of the RBA, on what factors the Reserve Bank shall consider when determining whether a registered bank is carrying on its business in a prudent manner. The BS5 Guidelines expect banks to operate in a manner that is consistent with international best practice and identifies those standards with which banks are expected (but not required) to comply, including the Basel CDD paper 2001; the Basel Statement of Principles on Prevention of Criminal Use of the Banking System 1988; the Basel Consolidated Know Your Customer (KYC) Risk Management paper 2004; the FI Guidelines and the Banks Procedures/Guidance. Banks are to implement these standards on the basis of a risk-based approach, in a manner appropriate to the size, complexity and nature of their business activities. The BS5 Guidelines address the importance of implementing CDD measures, internal AML/CFT controls and appropriate training for front-line staff. The BS5 Guidelines are very general but do cross reference to specific guidance concerning how such measures should be implemented in practice.

621. ***FI Guidelines:*** The NZ Police has issued Best Practice Guidelines for Financial Institutions (FI Guidelines) which apply to all financial institutions to assist them in complying with the FTRA requirements. These guidelines cover: the FTRA; customer verification; STR reporting; general information on alternative remittance systems, cash couriers, locations of specific concern, politically exposed persons; and FT. Although much more specific and comprehensive than the BS5 Guidelines, the FI Guidelines do not provide sufficient guidance on certain key issues. For example, no specific guidance is provided concerning how, in practice, to conduct the identification and verification of customers who are legal persons/arrangements, PEPs or beneficial owners – areas with which some financial institutions reported having difficulty. This suggests that further specific guidance is needed in these areas.

Recommendation 32 - Statistics and effectiveness

622. The authorities do not keep statistics on the number of on-site examinations relating to or including AML/CFT, as the financial sector supervisors have no authority to conduct such inspections.

623. The FIU does, however, keep statistics of the number of sanctions that have been imposed for breaches of AML/CFT requirements. The following charts show the number of criminal convictions and charges imposed for offences pursuant to the FTRA.

Total Convictions for offences pursuant to the FTRA, 2004 – 2008

Offence Description	2004	2005	2006	2007	2008	TOTAL
Failure to report suspicious transaction	0	0	0	22	0	**22**
Failure to keep records	0	0	1	18	0	**19**
Other FTRA offences	24	0	0	0	0	**24**
Total	**24**	**0**	**1**	**40**	**0**	**65**

Number of Charges Laid for Breaches of the FTRA, 2004 – 2008

Money Laundering: Total Charges Prosecuted by Offence Description						
Offence Description	**Year**					**Total**
	2004	**2005**	**2006**	**2007**	**2008**	
Failure to report suspicious transaction	0	0	12	44	0	56
Failure to keep records	0	10	13	36	0	59
Other FTRA offences	27	0	0	0	0	27
Total	**27**	**10**	**25**	**80**	**0**	**142**

Notes:

1) The table presents charge-based data i.e. the number of criminal charges laid in courts. It does not represent the number of individuals charged, as an individual can face more than one charge;

2) *Source*: Ministry of Justice.

624. The following chart sets out additional statistics on the type of criminal sanctions imposed for breaches of the AML/CFT requirements contained in the FTRA.

Sentences for offences pursuant to the FTRA, 2004 – 2008

Offence Description	Sentence	2004	2005	2006	2007	Total
Failure to keep records	Conviction & discharge	0	0	0	8	8
	Monetary	0	0	1	10	11
Failure to report suspicious transactions	Monetary	0	0	0	22	22
Other FTRA offences	Conviction & Discharge	9	0	0	0	9
	Monetary	15	0	0	0	15
Total		**24**	**0**	**1**	**40**	**65**

Notes:

1) For cases where more than one sentence was imposed, only the most severe sentence imposed is shown.

2) Source: Ministry of Justice.

3.10.2 Recommendations and Comments

Recommendation 23 and 30

625. All financial institutions should be regulated and supervised for AML/CFT purposes to ensure compliance with FATF Recommendations. For the following types of financial institutions (which are currently unregulated for AML/CFT purposes), New Zealand has designated competent authorities who will, once new AML legislation comes into effect, have responsibility for ensuring that 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, MVTS providers and foreign exchange dealers.

626. Licensing requirements should be introduced in the insurance and securities sector. Comprehensive 'fit and proper' criteria should be introduced in the insurance sector and in relation to securities sector participants who are not members of the NZX. Measures to prevent criminals from holding positions in FIs should be strengthened by way of legislative and administrative controls.

627. In the insurance and securities sectors, AML/CFT measures should be integrated into prudential supervision and be applied in the same manner as for prudential purposes with regard to FIs subject to core principles. In the New Zealand context, this would first require extending prudential supervision to these sectors. Work on a prudential supervision framework for the insurance sector is currently underway.

628. Natural and legal persons who are MVTS providers or foreign exchange dealers should be licensed or registered and closely monitored for AML/CFT compliance.

629. For those sectors which are currently unregulated, the competent authorities which are ultimately designated to ensure compliance with AML/CFT requirements (*e.g.* the Securities Commission, DIA, MED) should be provided with adequate funding, staff and technical resources, and AML/CFT training, for this purpose. The Reserve Bank should enhance the staff strength and capabilities of its Prudential Supervision Department to ensure more effective AML supervision of banks and (when it assumes these roles) non-bank deposit takers and insurance companies to ensure compliance with AML/CFT requirements.

Recommendation 25

630. Financial institutions should be provided additional specific guidance on all relevant matters in which difficulties are being experienced. The scope of the guidelines should be enlarged to cover more broadly the identification of legal persons/arrangements, beneficial owners and PEPs. Sector-specific guidelines should be provided preferably through regulatory/supervisory bodies on regular basis.

Recommendation 29

631. New Zealand should ensure that all supervisory bodies have the necessary powers to monitor and ensure the compliance of financial institutions with AML/CFT requirements. This includes the power to conduct inspections. Supervisory bodies should also be given the power to compel production of or obtain access to all records, documents or information relevant to monitoring compliance. Such powers should not be predicated on the need to first obtain a court order.

632. Supervisory bodies should be given adequate powers to enforce and impose sanctions against financial institutions and their management for failure to comply with AML/CFT requirements, consistent with the FATF Recommendations. The Reserve Bank should focus on exercising its powers of supervision in the AML/CFT context, including through the use of on-site inspections and sample testing.

Recommendation 17

633. New Zealand should introduce effective, proportionate and dissuasive civil or administrative sanctions for financial institutions for failure to comply with AML/CFT requirements. New Zealand should designate one or more authorities to apply these sanctions depending on the nature of the requirement. A broad range of sanctions, including disciplinary and financial sanctions, should be provided for financial institutions as well as their directors and senior management to allow for sanctions that are appropriate for the severity of the situation. The Reserve Bank should ensure that it applies administrative sanctions, in appropriate cases, to deal with breaches of AML/CFT requirements. Finally, New Zealand should demonstrate effective implementation of sanctions across all financial institutions.

Recommendation 32

634. The regulators/supervisors should maintain statistics of on-site examinations of all institutions being regulated by them and of all sanctions imposed on them.

3.10.3 Compliance with Recommendations 23, 30, 29, 17& 25

Rec.	Rating	Summary of factors relevant to s. 3.10 underlying overall rating
R. 17	**PC**	• New Zealand has no effective, proportionate and dissuasive civil or administrative sanctions for financial institutions that breach AML/CFT requirements. • Other than for registered banks, there is no designated authority to impose civil and administrative sanctions for breaches of AML/CFT requirements. • 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.
R. 23	**NC**	• Other than registered banks, no category of FI is subject to any regulation and supervision for compliance with AML/CFT requirements. • There is no designated competent authority to ensure the compliance of FIs (other than registered banks) with AML/CFT requirements. • 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. • 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). • There are no measures in place to license or register natural and legal persons providing MVTS or foreign exchange services. • Financial institutions (other than registered banks) are not subject to registration or licensing. • 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.
R. 25	**LC**	• Guidance has not been provided for all financial institutions concerning how, in practice, to identify legal persons/arrangements, beneficial owners and PEPs.
R. 29	**NC**	• Other than for registered banks, there is no supervisor with any powers to monitor and ensure compliance with AML/CFT requirements, and the Reserve Bank's role in relation to registered banks' compliance is very limited. • Other than the Reserve Bank's powers in relation to registered banks, 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

Rec.	Rating	Summary of factors relevant to s. 3.10 underlying overall rating
		authority, which requires a court order. • Other than the Reserve Bank's powers in relation to registered banks, there are no supervisors with any powers to compel the production of records or to gain access to financial institution records for the purpose of supervising compliance with AML/CFT requirements, and the Reserve Bank has never used its powers to do so. • 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.

3.11 Money or value transfer services (SR. VI)

3.11.1 Description and Analysis

635. There is no designated competent authority responsible for registering or licensing money or value transfer service (MVTS) providers, as there is currently no requirement for them to be licensed or registered. This issue will be addressed once the FSP/RDR Act comes into force (expected sometime in 2009/10). The FSP/RDR will designate the Registrar of Financial Service Providers as the competent authority to register all financial service providers, including MVTS providers.

636. There is no requirement for MVTS providers to maintain a current list of their agents and make that list available to the designated competent authority. This is important given the widespread use of agents and franchisees – for example, Western Union, the major provider of MVTS in New Zealand, bases its franchises and outlets in local businesses such as dairies and post shops. This issue will be addressed in the new AML/CFT legislation, under which supervisors will be able to require MVTS providers to provide information on the identity and location of their branches, subsidiaries and agents.

637. MVTS providers are subject to the AML/CFT requirements of the FTRA. The deficiencies identified above in relation to Recommendations 5-11, 13-15 and 21-23 with respect to MVTS providers also affect compliance with Special Recommendation VI (see sections 3.2, 3.3, 3.5, 3.6, 3.7, 3.8 and 3.10 for more details). In the absence of a designated competent authority to register and monitor the MVTS sector, the level of compliance with the FTRA requirements is unknown.

638. The exact number of MVTS providers doing business in New Zealand is unknown –although discussions during the on-site visit suggest that the sector is quite diverse. The absence of a supervisory framework in this sector makes it relatively easy for informal channels of remittance services to operate. It should also be noted that there is evidence that an unknown number of informal providers, at least some probably operating a hawala-style remittance system, operate in New Zealand. The FIU has identified about 14 alternative remittance agents through suspicious transaction reporting. When such agents have been identified, the FIU and the investigators from the Proceeds of Crime Units within the NZ Police have visited and spoken to them. During these outreach meetings the NZ Police have advised the agents of their obligations under the FTRA, such as the CDD, record keeping and STR reporting requirements. Moreover, the FIU has attempted to raise the awareness of alternative remittance agents to both law enforcement authorities and members of the financial community. This has been accomplished through the FIU's newsletter, guidelines and presentations given by the FIU to both the financial sector and the law enforcement authorities. However, as the MVTS sector is currently not subject to supervision, it cannot be said that the New Zealand authorities have taken sufficient action to make MVTS providers, including operators of informal remittance channels, subject to AML/CFT requirements.

639. Like other financial institutions (with the exception of registered banks), MVTS providers are subject to criminal sanctions only for breaches of AML/CFT requirements (see section 3.10 for more detail).

Additional elements

640. New Zealand has not implemented the measures set out in the Best Practices Paper for SR VI.

3.11.2 Recommendations and Comments

641. New Zealand should designate a competent authority or authorities to register and license MVTS providers (both natural and legal persons), monitor compliance with the registration and licensing requirements, maintain a list of current MVTS providers and ensure compliance with the FATF Recommendations.

642. New Zealand should provide for effective, proportionate and dissuasive civil or administrative sanctions that apply to MVTS providers (both natural and legal persons) who fail to comply with AML/CFT requirements.

643. MVTS providers should be required to maintain a current list of their agents and this list should be made available to competent authorities.

644. The authorities should take action to identify informal remittance channels and make these operators subject to AML/CFT requirements.

645. New Zealand should take action to address the deficiencies identified in relation to implementation of the FATF Recommendations, as identified in sections 3.1 to 3.10 of this report, in relation to MVTS providers.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR. VI	NC	• There is no designated authority to register or license MVTS providers or maintain a current list of them. • There is no system in place to monitor MVTS providers and ensure their compliance with the FATF Recommendations. • 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. • MVTS providers are not required to maintain a list of their agents and make that list available to the competent authorities. • The authorities have not taken sufficient action to make the operators of informal remittance channels subject to AML/CFT requirements. • 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).

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Scope of application

646. The following designated non-financial businesses and professions (DNFBP) are designated as "financial institutions" pursuant to the FTRA:

- The holder of a casino operator's licence under the Gambling Act.
- A real estate agent, but only to the extent that the real estate agent receives funds in the course of that person's business for the purpose of settling real estate transactions.
- A lawyer or an incorporated law firm, but only to the extent that the lawyer or incorporated law firm receives funds in the course of business for the purposes of deposit or investment, or settling real estate transactions.
- A conveyancing practitioner or incorporated conveyancing firm, but only to the extent that the conveyancing practitioner or incorporated conveyancing firm receives funds in the course of business for the purposes of deposit or investment, or settling real estate transactions.
- An accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment (collectively referred to as Accountable DNFBP).

647. The FTRA, the TSA, the Prescribed Amount Regulations; the 1997 Interpretation Regulations; the 1997 Interpretation Regulations No.2; and the 2008 Interpretation Regulations, and the non-binding FI Guidelines apply to all "financial institutions" under the FTRA in the same way, regardless of whether they are DNFBP or financial sector participants. This means that Accountable DNFBP are subject to CDD, record keeping and the STR reporting requirements pursuant to the FTRA. However, for DNFBP, this common legal framework suffers from the same deficiencies as for financial institutions (see section 3 of this report for more details). This section of the report will focus only on those aspects of the legal framework and implementation which are unique to the DNFBP.

648. Internet and ship-based casinos are not authorised to do business in New Zealand. Under New Zealand law, casinos must be located at physical premises and cannot conduct online gambling in New Zealand. The NZ Lotteries Commission and the NZ Racing Board are the only entities authorised to conduct online gambling in New Zealand

649. Notaries are not subject to the FTRA requirements. In New Zealand's context, notaries are not involved in the types of activities which must be covered by the FATF Recommendations (*e.g.* being involved in transactions or receiving money). In practise, notaries provide the same document-related services as lawyers, but rather for documents that need to be used for overseas purposes. Such services include certifying client's signatures and copies of documents; executing documents; administering oaths, taking declarations or swearing affidavits; and protesting or noting bills of exchange).

650. The definition of Accountable DNFBP raises three immediate scope issues that affect the ratings for Recommendations 12, 16 and 24.

651. First, dealers in precious metals and stones in New Zealand are not subject to AML/CFT requirements.

652. Second, trust service providers are subject to the FTRA (albeit not regulated for AML/CFT purposes) only to the extent that they fall within the definition of a "financial institution" in administering or managing, or acting as trustee in respect of, the funds of other persons as defined in section 3 of the FTRA (see section 3 of this report for further details). Other types of trust service providers (*e.g.* lawyers and accountants establishing trusts on behalf of their clients, but not acting as trustees) would not be covered. Likewise, company service providers, such as persons in the business of acting as an agent in the formation and administration of companies, are not Accountable DNFBP and, therefore, are not currently subject to AML requirements. However, these activities exist in New Zealand and are especially promoted as one of the most effective tax planning tools available in New Zealand.

653. Third, real estate agents are only subject to the AML/CFT requirements of the FTRA when receiving funds in the course of their business for the purpose of settling real estate transactions. This does not fully meet the requirements of Recommendations 12 and 16 which also require real estate agents to be covered more broadly when they are involved in any transactions (not just receiving) for a client concerning the buying and selling of real estate.

Law, regulation and other enforceable means

654. ***Casinos:*** The DIA issues, under the Gambling Act (GA), detailed operating procedures named 'Minimum Operating Standards' (MOS), some of which relate to AML and capture some parts of the FTRA, without however, specifically focusing on AML/CFT in general. These MOS are specific to individual venues as they are directly related to the casino licence. The MOS are often referred to as internal control procedures, as they were named in the past. However, they are identical for all New Zealand SKYCITY casinos (based in Auckland, Hamilton, and Queenstown) and are essentially similar, with minor points of difference, for the Christchurch, Dunedin, and Wharf casinos. The MOS are designed for the day to day operation of casinos. All casinos in New Zealand are subject to MOS that set out some CDD, record keeping and STR reporting requirements for the casino concerned and repeat the relevant provisions in the FTRA. The MOS constitute "other enforceable means", as that term is defined by the FATF, for the following reasons. First, the MOS set out or underpin requirements addressing the issues in the FATF Recommendations in mandatory language. Second, the MOS are issued by the DIA which is a designated competent authority for supervising the sector's compliance with the GA. Although the DIA is not a competent authority specifically designated for ensuring compliance with the FTRA, it relies on its general authority under the GA to "limit opportunities for crime or dishonesty associated with gambling", including ML/FT (s.3(f)). Third, sanctions are being applied for breaches of the MOS in a manner that is effective, proportionate and dissuasive sanctions, in the New Zealand context. The DIA can exercise its statutory function as a supervisor to issue warning letters. The DIA may also review or revoke the approval of any *associated person* involved in the casino's operation (e.g. owners, controllers, managers, persons with significant influence in the casino's operations) (s.155, GA). A right of appeal against such a decision may be taken to the Gambling Commission. As well, the DIA may apply to the Gambling Commission for an order that the casino's licence be suspended or cancelled. The penalty of suspension may be applied proportionately as there is no minimum length of time for a licence suspension. For example, the Gambling Commission may order the casino licence to be suspended for a day or an even shorter period. The maximum licence suspension period is six months. Within those limits is a wide range of suspension periods that can be tailored to be proportionate to the offence. As the ultimate sanction, the Commission has the power to cancel a licence and thereby deprive the casino of the ability to do business.

655. In practice, for minor breaches, the DIA usually deals with the casino in the first instance by way of educative action which can escalate to a warning letter and ultimately to a sanction application if the

casino fails to take corrective action. In the New Zealand context, the authorities report that casinos generally respond very quickly to educative action and warning letters. Consequently, there is rarely a need to apply more severe sanctions. However, in more serious cases (e.g. major breaches of the MOS or repeated/negligent/systemic failures in relation to MOS), the DIA will apply to the Gambling Commission for a suspension/revocation of the casino's licence. Such action has been taken once for an issue unrelated to AML/CFT. In that case, a casino license was suspended for two days. The authorities noted that this suspension was effective (the casino took immediate steps to correct the deficiency), proportionate (the period of suspension was tailored to the severity of the breach) and dissuasive (other casinos reviewed their own practices in order not to face the possibility of such a sanction and the associated negative publicity).

4.1 Customer due diligence and record-keeping (R. 12)

(Applying R. 5, 6, and 8 to 11)

4.1.1 Description and Analysis

Scope issue

656. In addition to the general scope issues identified above, the following scope issues are specific to Recommendation 12 and also affect the rating in relation to the application of Recommendations 5, 6 and 8 to 11 to Accountable DNFBP. 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. This does not fully meet the requirements of Recommendation 12 which also requires lawyers and accountants to be covered when preparing for or carrying out any transaction (not just receiving) for a client concerning: the buying/selling of real estate; managing client money, securities or other assets; the management of bank, savings or securities accounts; the organisation of contributions for the creation, operation or management of companies; the creation, operation or management of legal persons or arrangements; and buying/selling of business entities.

Applying Recommendation 5 (CDD)

Casinos (applying R. 5)

657. Casinos are subject to the FTRA requirements which require verification of a customer's identity to be performed generally in a broader range of circumstances than those required by Recommendation 12 (*e.g.* when a deposit account is being established with a casino operator, an FTRA requirement that is also reiterated in MOS A3.1). However, in relation to occasional customers, the FTRA (and MOS A3 which reiterates the FTRA requirements) only requires CDD to be performed for customers engaging in financial transactions exceeding the NZD 9 999.99 threshold[27]. This is problematic in the context of casinos because Recommendation 12 requires casinos to perform CDD in relation to any financial transactions equal or exceeding USD/EUR 3 000. It is a deficiency that, in relation to occasional transactions for casinos, the FATF threshold is greatly exceeded.

658. The DIA requires group commission (junket) organisers/representatives and agreements to be vetted and approved by the Secretary for Internal Affairs (GA s. 181(b); MOS A6.1 and A6.4). This process requires the junket organiser to verify his/her identity using two forms of identification including a copy of a passport or birth certificate. The applicant must also supply two photographs and police certificates (or equivalent) from the country of origin. Casinos are required to verify the identity of the

[27] At the time of the mutual evaluation this amount is equal to approximately EUR 4 048.

participants or beneficial owners on whose behalf a junket organiser is conducting specific transactions (FTRA s. 8).

659. Although casinos require identification before they open an account, in practice the identification process is rather limited in scope since casinos do not collect additional (background) information with regard to permanent customers, such as address, income, etc. Moreover, in practice, the verification of the identity itself can take place after the account has been opened.

660. The MOS also specifically direct customer identification to be produced upon:

- making an on-site withdrawal of customer deposits (MOS A1.4);
- establishing cheque cashing facilities with a casino operator (MOS A1.6);
- accepting bank cheques (MOS A1.8);
- issuing casino cheques (MOS A1.12);
- accepting wire transfers (MOS A 1.16 and A4.4);
- issuing chip purchase vouchers (CPVs) if the patron does not have an account (MOS A2.1);
- dealing with possible suspicious transactions (MOS A3.2); and
- issuing a reimbursement, as approved in the event of a customer dispute.

Real estate agents (applying R. 5)

661. In practice real estate agents are never required to verify the identity of the buyer in the course of a real estate transaction, as their client is the seller. Discussions with the private sector indicate that the real estate agents generally rely on the fact that lawyers and conveyancers are obliged to perform CDD when settling the real estate transaction. Real estate agents see their role as bringing together the parties to the transaction – a role which is completed once the sale and purchase agreement has been signed and any conditions attached to the sale and purchase have been fulfilled.

Lawyers (applying R. 5)

662. The assessment team observed that lawyers generally rely on banks to have conducted CDD, when they accept bank instruments. This is of particular concern in New Zealand's context because there is very limited supervision of the banking sector for compliance with AML/CFT requirements, and lawyers are regularly involved in high value transactions, real estate transactions, and company and trust formation services – all of which are vulnerable to ML/FT (see section 3.10 for more details).

Applying R. 6 (PEPs)

663. Presently, there is no requirement in New Zealand law for Accountable DNFBP to undertake enhanced customer due diligence for politically exposed persons.

Applying R. 8 (Payment technologies and introduced business)

664. The application of Recommendation 8 to Accountable DNFBP suffers from the same deficiencies as identified in section 3.2 of this report in relation to financial institutions.

Applying R. 9 (Third parties and introduced business)

665. The application of Recommendation 9 to Accountable DNFBP suffers from the same deficiencies as identified in section 3.3 of this report in relation to financial institutions. Additionally, in relation to the casino sector, it should be noted that casinos may not rely on junket organisers to perform customer due diligence (FTRA s. 8)

Applying R. 10 (Record keeping)

666. The application of Recommendation 10 to Accountable DNFBP suffers from the same deficiencies as identified in section 3.5 of this report in relation to financial institutions. Additionally, the following sector-specific legal requirements and implementation issues should be noted.

667. *Casinos:* The MOS, which are applicable to casinos, specify the following relevant procedures for record keeping:

- Upon the establishment of facilities (cheque cashing facility/deposit account), the casino must create a manual file for each customer concerned and an electronic record of the transaction including a record of the identification provided. Deposits 'On' and 'Off' the account are to be recorded both manually and electronically (MOS A1.4).

- When recording significant transactions (over NZD 9 999.99) the log should contain the following information: date of transaction; nature of transaction (*e.g*. cash, chips, cheque); amount and currency; name and identification type and details (where identification not already established); and cashier licence number and signature (MOS A3.1).

- For all casino cheques issued for reasons other than casino winnings, a record of the transaction and reason for issuing the cheque must be kept (MOS A1.12).

668. *Lawyers and conveyancers:* Lawyers and conveyancers are required to pay all money received from another person and which is held on trust, into a trust account (Lawyers and Conveyancers Act s. 112; Lawyers and Conveyancers Act (Trust Account) Regulations). They must also keep trust account records that record: the position of the trust accounts; describe the property received or held; and show the date the property was received and disposed of. Such records must be kept in a form that enables them to be audited.

Applying R. 11 (Unusual transactions)

669. There is no explicit requirement for Accountable DNFBP 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.

Implementation and effectiveness

670. With the exception of the limited role of the DIA in supervising casinos' compliance with those MOS that are related to AML, Accountable DNFBP are not currently supervised for compliance with the

AML/CFT requirements. DIA have observed few breaches by casinos of AML related MOS and these have been rectified after being drawn to the attention of the casino concerned. Apart from this, it is not known how effectively AML/CFT measures have been implemented in practice in DNFBP.

4.1.2 Recommendations and Comments

671. The recommendations made in relation to Recommendations 5, 6 and 8 to 11, as detailed in section 3 above, are equally important to remedy the deficiencies identified in relation to Accountable DNFBPs. New Zealand should also ensure that these requirements are being implemented effectively in the DNFBP sectors.

Applying Recommendation 5

672. Casinos should be required to perform CDD for occasional customers engaging in financial transactions exceeding the USD/EUR 3 000 threshold in Recommendation 12.

Scope issues

673. The circumstances in which lawyers and accountants are subject to the FTRA requirements should be broadened to also cover situations when they are preparing for or carrying out any transaction (not just receiving) for a client concerning: the buying and selling of real estate; managing client money, securities or other assets; the management of bank, savings or securities accounts; the organisation of contributions for the creation, operation or management of companies; the creation, operation or management of legal persons or arrangements; and buying and selling of business entities.

674. The FTRA requirements should also broadened for real estate agents to cover the situations in which they are involved in transactions for a client for the buying and selling of real estate. Moreover, real estate agents should identify all parties to the real estate transaction, including the buyer in cases they operate on behalf of the owner.

675. New Zealand law should extend AML/CFT obligations to all DNFBPs. In particular, dealers in precious metals and stones, company service providers and all trust service providers should be brought within the scope of the FTRA.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s. 4.1 underlying overall rating
R. 12	**NC**	• The deficiencies identified in section 3 of this report with regard to Recommendations 5, 6 and 8 to 11 apply equally to DNFBPs. • 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. • 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. • Effectiveness issue: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 12 effectively.

4.2 Suspicious transaction reporting (R. 16)

(Applying R. 13 to 15 & 21)

4.2.1 Description and Analysis

Scope issue

676. In addition to the general scope issues identified above, the following scope issues are specific to Recommendation 16 and also affect the rating in relation to the application of Recommendations 13 to 15, and Special Recommendation IV to Accountable DNFBP. 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. This does not fully meet the requirements of Recommendation 16 which also require lawyers and accountants to be covered when they engage in any transaction (not just receiving) for a client concerning: the buying and selling of real estate; managing client money, securities or other assets; the management of bank, savings or securities accounts; the organisation of contributions for the creation, operation or management of companies; the creation, operation or management of legal persons or arrangements; and buying and selling of business entities.

Applying R. 13 and SR. IV (STR Reporting)

677. The application of Recommendation 13 and Special Recommendation IV to Accountable DNFBP suffers from the same deficiencies as identified in section 3.7 of this report in relation to financial institutions.

678. The following chart shows a breakdown of STR reporting in the DNFBP sector.

Source of suspicious transaction reports filed by covered DNFBP

Sector	2004	2005	2006	2007	2008
Casino	37	51	55	100	395
Lawyer	15	18	9	14	13
Real estate	2	6	6	9	8
Accountant	1	0	0	0	0

679. Additionally, the following sector-specific legal requirements and implementation issues should be noted in relation to the reporting obligations.

Casinos (applying R. 13 and SR. IV)

680. The ability of casinos to detect suspicious activity is facilitated by the requirement in the MOS that casinos must record occasional transactions or series of transactions that exceed the prescribed threshold of NZD 9 999.99, or any transaction deemed suspicious. In the MOS, occasional transactions are referred to as 'significant transactions' and are not reported unless deemed to be suspicious by the casino operator. These records are kept manually and, recently, on computer spreadsheets. Casino gaming and cashiering departments maintain daily records of significant transactions, which are reviewed to detect possible suspicious transactions.

681. Casinos are required to complete an STR in instances where a suspicious transaction is identified (FTRA s. 15, MOS A3.2). The information that should be contained on the report, per the MOS, includes:

- The name, address, occupation, date of birth and account number of the person involved in the transaction; the method of identification used; and, where possible/applicable, the same information on any beneficial owner.

- Transaction details including the date, amount, transaction type (*e.g.* cash), and nature of transaction (*e.g.* small or large notes).

- Information on why the transaction was deemed suspicious.

- Details of identification supplied by the customer and, where possible, surveillance footage (Surveillance MOS 5.11 'Large suspicious transactions' includes procedures for obtaining a photo of the individual involved in a suspicious transaction).

682. Suspicious transaction records are assessed prior to being submitted to the FIU and the casino maintains a database of all STRs. The assessment of these records is facilitated by concrete examples of suspicious casino transactions in both the MOS and the FI Guidelines that were issued by the FIU.

683. Representatives from the private sector note that some casinos have recently changed their approach to STR reporting based on feedback received from the FIU regarding the low number of STRs made by the sector. As a result, a substantial increase in the number of STRs filed by the casino sector has been observed and the sector expects that the number of the STRs will even further increase during the coming years. For example, casinos currently record all inputs of NZD 5 000 and more on jackpots, analyse these records and identify who is regularly winning the jackpots. The frequent winners' transactions are disclosed to the FIU and the authorities report that these reports allowed initiating several investigations. This specific behavior is just one of the reasons why the number of STRs submitted by casino has substantially increased.

Lawyers and accountants (applying R. 13 and SR. IV)

684. All STRs must be reported directly to the FIU. There are no provisions in the FTRA that would allow lawyers or accountants to report STRs via their SROs. It should also be noted that lawyers and accountants are not required by their SROs to extend to them a copy of any STRs which have been filed with the FIU.

685. Lawyers are not required to disclose any privileged communication. A privileged communication is defined as a confidential communication whether written or oral, that passes between two lawyers (in their professional capacity), or between a lawyer (in his or her professional capacity) and his/her client and:

- It is made for the purpose of obtaining legal advice.

- It is not made for the purpose of furthering some illegal or wrongful act (FTRA s. 19(2)(a)).

686. Lawyers and conveyancers are required to disclose information when it relates to the anticipated or proposed commission of a crime punishable by imprisonment of three years or more, or where they reasonably believe that disclosure is necessary to prevent a serious risk to the health and safety of another person (Rule 8.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008). However, this disclosure obligation does not specifically refer to the reporting obligation under the FTRA.

687. The assessment team noted the low number of STRs filed by lawyers. The sector is of the view that most of their transactions also involve banks and they believe that banks are better placed to identify STRs. When dealing with bank transactions, lawyers consider them as lower risk since they were already run through the banks' compliance systems and, consequently, lawyers do not tend to submit an STR since it would already have been done by the financial sector if the transaction is really suspicious. This raises particular concern in the New Zealand context, given the limited amount of AML/CFT supervision of banks (see section 3.10 for further details).

Applying R. 14 (Tipping off)

688. The legal protections and tipping off provisions of the FTRA relating to STR reporting are largely compliant with Recommendation 14. However, there is no tipping off provision in place in relation to the SPR reporting obligation of the TSA (see section 3.7 of this report for details).

Applying R. 15 (Internal controls)

689. There is no requirement for Accountable DNFBP to establish and maintain internal AML/CFT procedures, policies and controls, and to communicate these to their employees. See section 3.8 of this report for further details. Additionally, the following sector-specific legal requirements and implementation issues should be noted.

Casinos (applying R. 15)

690. None of the casinos in New Zealand have specific and dedicated AML programmes but instead all consider the various requirements detailed in MOS as the basis for their AML efforts. It should be noted that, although the DIA inspectors audit casino processes and procedures to ensure they comply with regulatory standards contained within the MOS, the DIA has no information on the nature and content of casinos' internal audit processes in connection with AML compliance. Representatives from the casino sector who were met with by the assessment team had designated compliance managers in place and provide their staff with basic AML/CFT training.

691. The DIA has screening procedures in place in relation to certain types of casino employees. A Certificate of Approval is required from the DIA for any casino staff in New Zealand if they hold any position that involves: conducting approved games; counting money or chips derived from or used in gambling; moving money or chips derived from or used in gambling; buying or redeeming chips; operating, maintaining, constructing, or repairing gambling equipment; and/or supervising or managing any of the activities described above (GA s. 158).

692. In assessing an application for a Certificate of Approval the DIA considers: the applicant's character, reputation, financial position, any relevant convictions and any relevant matters raised in the police report on the application (GA s. 161). The DIA will also investigate and inquire into matters of a similar nature that occurred outside New Zealand.

Lawyers and Conveyancers (applying R. 15)

693. As part of the membership of their professional societies, lawyers and conveyancers are required to have the utmost integrity and good character. The New Zealand Law Society has disciplinary mechanisms under the Lawyers and Conveyancers Act when any lawyer breaches their professional obligations or any New Zealand law.

Accountants (applying R. 15)

694. The New Zealand Institute of Chartered Accountants regulates the accounting profession to ensure that members meet required professional standards and integrity. Where any member breaches their professional obligations or New Zealand law, the Institute can undertake disciplinary action.

Real Estate Agents (applying R. 15)

695. Real Estate Agents are currently regulated by the Real Estate Institute of New Zealand Incorporated (REINZ) to ensure that they meet the required professional standards. The REINZ handles and investigates any complaints about real estate agents for any breaches of its code of ethics or the Real Estate Agents Act 1976. The REINZ refers more serious complaints to the Real Estate Agents Licensing Board.[28]

Applying R. 21 (Countries that insufficiently apply the FATF Recommendations)

696. Accountable DNFBP are not required to give special attention to business relations and transactions with persons in jurisdictions that do not or insufficiently apply the FATF Recommendations. See section 3.6 of this report for more details.

Additional elements

697. Auditors are not subject to the FTRA and, consequently, are not required to report suspicious transactions. However, if an auditor has reasonable grounds to suspect criminal behaviour, he/she is free to report that transaction to any NZ Police employee (FTRA s. 16).

698. DNFBP are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of crime. The scope of the criminal conduct, whether in New Zealand or elsewhere, is defined in section 243(1) of the Crimes Act (see section 2.1 of this report for further details).

4.2.2 Recommendations and comments

699. The recommendations made in relation to Recommendations 13 to 15 and 21, and Special Recommendation IV, as detailed in section 3 above, are equally important to remedy the deficiencies identified in relation to DNFBPs. New Zealand should also ensure that these requirements are being implemented effectively in the DNFBP sectors.

Applying Recommendation 15

700. Accountable DNFBP should be required to establish and maintain AML/CFT procedures, policies and controls and should communicate these to their employees. Screening procedures to ensure high standards when hiring employees should be introduced in the non-casino DNFBP sectors.

[28] The Real Estate Agents Act 2008 creates a new regulatory regime for the real estate industry which commences on 17 November 2009. The new Act removes regulatory functions from the REINZ and abolishes the Real Estate Agents Licensing Board. The new Act establishes the Real Estate Agents Authority as a Crown Entity, to provide independent occupational oversight of the real estate industry and the Real Estate Agents Act Disciplinary Tribunal which will deal with more serious complaints of misconduct as defined by the 2008 Act.

Applying Recommendation 13

701. 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. Lawyers should be encouraged to take a pro-active approach with regard to the reporting of suspicious transactions instead of taking the current position of reliance on the banking sector for the detection of suspicious transactions.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s. 4.2 underlying overall rating
R. 16	**NC**	• The deficiencies identified with regard to Recommendations 13 to 15, and 21; and Special Recommendation IV apply equally to DNFBPs. • DNFBPs are not obliged to have AML/CFT procedures, policies and controls in place. • DNFBPs are not required to communicate these policies and procedures to their employees. • 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. • Effectiveness issues: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 16 effectively. Also, overall, a very low number of STRs has been submitted by DNFBPs, which puts into question the effective implementation of the reporting requirement for DNFBPs.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and Analysis

Recommendation 24

702. Presently, there are no designated competent authorities with responsibility for supervising Accountable DNFBP for compliance with their AML/CFT obligations pursuant to the FTRA. Breaches of the FTRA requirements are punishable only by criminal sanctions, which are applied by the courts following successful prosecution by the NZ Police. See section 3.10 of this report for more details.

703. Nevertheless, in some instances, the government departments and/or SROs in charge of specific DNFBP can enforce a limited number of FTRA obligations through application of their own governing legislation or, in some instances, membership rules. These general supervisory powers are described below.

Casinos

704. Casinos are licensed by the Gambling Commission. The requirements for the licensing of a casino are contained in sections 128 to 137 of the GA. The licensing/renewal process requires the Gambling Commission to consider:

- The suitability of the applicant and persons with a significant influence.

- The expertise of the applicant that is relevant to the obligations of the holder of a casino licence.
- Whether the applicant has the business management experience to operate a casino successfully.
- Among other matters, the applicant's past compliance with gambling legislation.

705. The Gambling Act specifies that no new casinos can be granted licences (s. 11). However, the Gambling Commission may consider applications for renewals of casino venue licences when they expire (GA ss. 134-138). Initial licences expire 25 years after the date the casino commenced operating; renewed licences are granted for 15 years. In addition, the Gambling Commission regularly reviews licence conditions for existing casino licences and considers requests for amendments of licence conditions (GA ss. 139-140). There is moratorium on new casino licences.

706. Persons (natural and legal) intending to hold a "significant influence" over a casino, whether as a manager or a shareholder, must apply to the DIA to do so and be approved by the Secretary for Internal Affairs as "associated persons" and are subject to the suitability requirements in section 124 of the GA (GA s. 149). Significant influence is defined to include someone who: is, or will be, a director, chief executive or senior manager of a casino; or owns, or will own shares directly or indirectly, in the holder of a casino licence where those shares confer 20% or more of the voting rights of shareholders in any class (GA s. 7). This approval process includes consideration of whether the applicant: is qualified; has sufficient financial resources, business management experience and experience in casino operations; has a criminal background or is unsuitable in other respects, including in relation to any matters raised in a police report (*e.g.* by virtue of ever having been: disciplined by a professional body for ethical misconduct; disciplined during previous involvement with a casino; adjudged bankrupt; or involved in the management of a company that went into liquidation/receivership). The Secretary of Internal Affairs can make investigations to facilitate the determination of these issues. The Secretary for Internal Affairs also takes the management structure of the applicant in relation to compliance with the GA into account. These practices show that the DIA is aware of the risks related to the entry of criminals as an operator or a holder of positions in casinos.

707. The DIA has responsibility for supervising casinos under the GA, but is not yet a designated authority for AML/CFT supervision. Its supervisory responsibility extends to monitoring compliance with the MOS which are issued under section 141 of the GA and contain some aspects relevant to AML/CFT.

708. There are 34 DIA inspectors (including managers) who are physically located in every place with one or more casinos. The functions of gambling inspectors include inspecting, monitoring, and auditing gambling conduct (both casino and non-casino gambling) (GA s. 332). Their specific powers in that regard, including being able to compel the production of information, and search a place or thing and seize property (in case of a search warrant) (GA ss. 333-336, 340 and 345). The Secretary for Internal Affairs can apply to the Gambling Commission for a suspension or cancellation of a casino licence for breach of the MOS (GA s. 144).

709. The DIA inspectors audit casino processes and procedures to ensure they comply with regulatory standards contained within the MOS. The DIA is focused on overseeing overall gambling conduct and is not set up for the purposes of supervising for compliance with AML/CFT requirements. For instance, the inspectors do not have routine access to STRs while performing such an audit review and, consequently, cannot identify AML/CFT shortcomings. Auditing is a tool used by the DIA to test and improve compliance by casinos. Audit results form part of regular meetings with the casino operator to discuss compliance issues and may lead to enforcement action if the failures are ongoing or significant. Most audits are conducted on a monthly basis, with some being audits conducted quarterly or six-monthly. Each audit involves a series of questions, with three possible results – passed, failed, or unable to audit. A failure

is determined if the casino operator did not meet the required standard for that audit. The casino audit programme is risk based and is designed to provide reasonable assurance as to the integrity of gaming and gaming related operations. It has been professionally reviewed and endorsed by Audit New Zealand. Nevertheless, it is observed that the MOS do create some added value for AML/CFT purposes through the regular oversight by DIA.

710. In particular, there are two audits specific to CDD and significant/occasional transactions: the Financial Transactions Reporting audit and the Gaming Operations (Cash Desk or Cashiering) audit. The Financial Transactions Reporting audit is undertaken monthly. This audit reviews significant transactions records and observations of transactions to ensure compliance with the MOS. To date, no breaches have been found in relation to the Financial Transactions Reporting audit and, therefore, no precedent of enforcement action is available. It should be noted, however, that the audit is somewhat limited in the absence of routine access to STRs by casino inspectors. Inspectors have access to STRs only when carrying out a relevant investigation, not for the purposes of a regular audit. However, the inspectors do have access to the significant transaction records and on the basis of these records the DIA inspectors have identified a handful of instances where transactions were potentially suspicious but not disclosed by the casino to the FIU. In these cases, the casino has always been able to satisfy the DIA that in these circumstances it would not have been appropriate to file an STR.

711. In the event of violation of the MOS, the DIA can apply to the Gambling Commission for suspension or cancellation of a licence. However, given that to date such breaches have been minor, it has been the DIA's practice to respond in a proportionate manner by initiating a consultative process to remedy the situation. An application for licence suspension or cancellation is regarded as appropriate only in extreme cases."There is evidence of one enforcement action taken by DIA when it applied to the Gambling Commission for suspension of a license and where the licence was suspended for two days; however, this happened outside the context of either the FTRA or the MOS. Casinos have not been subject yet of a prosecution under the FTRA, but they are aware that it could happen. The penalties as such are not considered important by the sector; instead they fear the damage of the brand through the publication of a conviction since casinos are publicly listed companies.

712. Since the DIA is currently not a designated AML/CFT supervisor, a comprehensive regulatory and supervisory regime is not available to ensure that casinos are effectively implementing AML/CFT measures as required by the FATF Recommendations. However, the DIA seems to be confident and capable to take up AML/CFT supervisory responsibilities under the new legislation. Currently, the authorities are of the view that the DIA is sufficiently funded; however, when the DIA's role is expanded to include AML/CFT, the authorities should ensure that the DIA it is adequately resourced to take on these new responsibilities.

Accountants

713. Accountants are regulated by the New Zealand Institute of Chartered Accountants (NZICA) as provided for under the Institute of Chartered Accountants Act and the NZICA Rules. One of the functions of the NZICA is the promotion, control, and regulation of the profession of accountancy by its members in New Zealand (Institute of Chartered Accountants Act s. 5). However, it is not a supervisory authority for AML/CFT purposes and the provisions contained in the Institute of Chartered Accountants Act and the NZICA Rules do not refer directly or indirectly to the compliance with AML/CFT requirements.

Lawyers and conveyancers

714. The Law Society of New Zealand is responsible for controlling the profession of law, promoting law reforms and regulating lawyers for compliance with the Lawyers and Conveyancers Act, and any

applicable regulations and rules made under it (Lawyers and Conveyancers Act, s. 65). The Law Society is not a designated competent authority for AML/CFT purposes.

715. Lawyers are also required to comply with the Lawyers & Conveyancers Act (Lawyers: Conduct and Client Care) Rules. These rules do not directly relate to compliance with the FTRA. Instead, they are general conduct rules that, for instance, prohibit a lawyer from knowingly acting to conceal a fraud/crime or assist someone else to commit a fraudulent/criminal activity (Rule 2.4 and 11.4). Breach of the Rules could form the basis of a complaint of unsatisfactory conduct or misconduct under the Lawyers and Conveyancers Act. Penalties for breaching the Rules can include fines; payments of compensation; and suspension or striking off (when the matter is referred to the Lawyers and Conveyancers Disciplinary Tribunal) (s. 156).

716. The Law Society monitors the application of the general code of conduct by the sector to prevent fraud or violation of any law. As one of the applicable laws in the sector, violations of the FTRA could be the grounds for the Law Society to take disciplinary action. Law firms are subject to inspection twice within a six year cycle. One of the inspections is initiated by an inspector of the Society's Inspectorate and the other one by an independent contracted audit firm to evaluate accounting procedures and practices, or general compliance with legislation. Violations give rise to sanctions such as a warning, a fine, and a suspension of the right to exercise the profession, disbarment, in addition to any criminal charges under the relevant legislation. These sanctions will only be applied after a complaint has been received or a violation is noticed through inspection.

717. Conveyancers are subject to essentially the same regime as lawyers under the Lawyers and Conveyancers Act which provides for the establishment of the New Zealand Society of Conveyancers, with functions similar to these of the New Zealand Law Society.

718. The Law Society and the Conveyancers Society are funded by fees payable by their members. According to NZ authorities, both Societies have sufficient technical and other expertise required to carry out their functions.

Real estate sector

719. The real estate industry is currently regulated by the Real Estate Institute of New Zealand (REINZ), under the Real Estate Agents Act 1976. Membership of the REINZ is compulsory under the 1976 Act for all licensed real estate agents. The REINZ has no specific AML/CFT supervisory function or means but handles and investigates any complaints about real estate agents for any breaches of its code of ethics or the Real Estate Agents Act 1976. A complaint can be made where a real estate agent has breached the code. For serious breaches of the code the Licensing Board may suspend or cancel a real estate agents licence (Real Estate Agents Act 1976, s94) or, alternatively, fines may be imposed (Real Estate Agents Act 1976, s96). According to the authorities, the REINZ has sufficient technical and other resources to perform its functions, but plays a limited role in actively supervising the real estate industry.

720. The REINZ does not have an audit function set up to ensure compliance with New Zealand legislation The SRO can impose pecuniary penalty up to NZD 750 (300 EUR), however, the matters that have entailed such penalty until now did not relate to AML/CFT violations. Keeping in mind the ML risks in the real estate sector, an effective system for monitoring compliance with AML/CFT requirements is clearly lacking.[29]

[29] The Real Estate Agents Act 2008 creates a new regulatory regime for the real estate industry which commences on 17 November 2009. The new Act removes regulatory functions from the REINZ and abolishes the Real Estate Agents Licensing Board. The new Act establishes the Real Estate Agents Authority as a Crown

Recommendation 25 (Guidance for DNFBP other than guidance on STRs)

721. The FI Guidance issued by the FIU applies to Accountable DNFBP, and suffers from the same deficiencies as identified in section 3.7 and 3.10 of this report. Additionally, the following sector-specific guidance should be noted.

722. *Casinos:* Although the DIA has not issued any specific AML/CFT guidelines, the authorities consider the MOS issued by it under the GA to be the closest equivalent to AML/CFT guidelines for casinos.

723. *Lawyers and conveyancers:* The New Zealand Law Society has issued Trust Account Guidelines that include a section on money laundering and the obligations under the FTRA (par. 8.6 to 8.9).

4.3.2 Recommendations and Comments

Recommendation 24

724. A regulatory and supervisory regime should be created for casinos and other DNFBPs to ensure their compliance with the AML/CFT requirements. New Zealand should also designate competent authorities for all DNFBPS which should be responsible for introducing and maintaining a sound AML/CFT regulatory and supervisory regime. These designated authorities should also be provided with adequate powers and resources to perform their functions, including powers to monitor and sanction in relation to the AML/CFT requirements. New Zealand should provide for effective, proportionate and dissuasive administrative and civil sanctions for both natural and legal persons to ensure compliance of DNFBPs with AML/CFT requirements.

Recommendation 25

725. Additional guidance should be provided to DNFBPs in relation to requirements for which compliance has been found to be poor. In that regard, the scope of the current FI Guidance should be enlarged in relation to beneficial ownership, verification of PEPs, transaction monitoring and reporting of suspicious transactions.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s. 4.3 underlying overall rating
R. 24	**NC**	• 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. • DNFBPs are not subject to adequate monitoring to ensure compliance with AML/CFT requirements. • 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.
R. 25	**LC**	• Guidance has not been provided to DNFBPS concerning how, in practice to identify

Entity, to provide independent occupational oversight of the real estate industry. The Authority will be responsible for licensing and regulating the real estate industry in New Zealand. The Authority has no direct AML/CFT function, but has powers of intervention in relation to improper conduct of an agent in relation to the money of any other person (Real Estate Agents Act 2008, s25), and the function of investigating and initiating proceedings in relation to offences under the 2008 Act or any other enactment.

	Rating	Summary of factors relevant to s. 4.3 underlying overall rating
		legal persons/arrangements, beneficial owners and PEPs • 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.

4.4 Other non-financial businesses and professions & modern secure transaction techniques (R. 20)

4.4.1 Description and Analysis

Application of FATF Recommendations to other non-financial businesses and professions

726. 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, the Government assessed race and sports betting conducted by the New Zealand Racing Board (NZRB) to be sufficiently high risk to justify inclusion in the FTRA. The NZRB is a statutory body established under the Racing Act and governed by a board consisting of seven members appointed by the New Zealand Government. The functions of the Board include (among others), conducting racing betting and sports betting, and making rules relating to betting (Racing Act s. 9(c)). This includes conducting totalisator betting at racecourses, dedicated TAB venues, and 'pub-tabs' in taverns and clubs. It also includes Internet TAB betting.

727. The NZRB is subject to all of the FTRA requirements, including those related to CDD, record keeping, STR reporting and internal controls. However, it is not supervised for compliance with the AML/CFT requirements in the FTRA. The table below gives an overview of the number of STRs that have been filed by the NZRB from 2004 until June 2008.

Number of suspicious transaction reports filed by the NZRB, 2004 – 2008

Sector	2004	2005	2006	2007	2008
TAB (Totalisator Agency Board)	44	27	28	17	13

728. The responsibility for approving and overseeing NZRB in the area of AML/CFT sits with the Head of Risk, Legal & Audit within the NZRB. Staff in this department have received AML/CFT training.

Measures to encourage modern secure techniques for conducting financial transactions

729. In New Zealand, cash remains a significant means of settling small value transactions. However, in comparison with many countries, cash is relatively less important as a means of making small payments than other methods. Currency held by the public represents only about 1.5% of the M3 monetary aggregate (M3 consists of notes and coin held by the public plus financial institutions' New Zealand dollar funding net of funding from other financial institutions and central government deposits) and the ratio of currency in circulation to GDP is only 2%. The largest denomination bank note remains the NZD 100 note.

730. The use of non-cash payment methods continues to grow relative to cash, and the use of electronic payment methods has grown more rapidly than other non-cash payment methods. The table

below shows the percentage of various non-cash payment methods used from 1993 to 2007 (*Source*: New Zealand Bankers' Association).

Non-cash payment method used 1993-2007

Payment type	1993	1998	2002	2007
EFTPOS	8%	31%	35%	49%
ATM	10%	14%	12%	10%
Credit cards	5%	8%	17%	12%
Electronic debits/credits	23%	24%	23%	22%
Cheques and MICR-based payments	54%	23%	13%	8%

Note: Includes transactions processed by New Zealand retail payment systems:

EFTPOS – debit and credit card transactions through EFTPOS terminals.

ATM – debit card transactions on current accounts conducted at ATMs.

Credit cards – credit card transactions at New Zealand merchants.

Electronic debits and credits – debits and credits initiated electronically including automatic payments.

Cheques and MICR-based payments- paper based instruments making use of Magnetic Ink Character Recognition.

731. **Debit cards:** The use of debit cards is estimated to account for over 70% of retail sales. Many New Zealanders use debit cards for small value transactions. Transactions as small as NZD 1 are not uncommon. This behaviour reflects both the fee structure on transaction accounts (many accounts have a fixed monthly fee so the marginal cost of an EFTPOS transaction is zero) and the pervasiveness of electronic payment systems. In the five years from 2002 to 2007, the number of point-of-sale terminals for credit and debit card transactions increased by almost 40%. Over the same period, the number of debit cards on issue increased by 8% and as of the end of 2007 there were more than five million cards on issue.

732. **Stored value cards:** The widespread use and acceptance of debit cards largely explains the limited development to date of stored value cards in New Zealand. Stored value cards are found in several forms in New Zealand:

- Reloadable cards are issued in a 'closed system' as an adjunct to the primary activities of businesses such as educational institutions and passenger transport operators. Single transactions are for low values and the cards do not provide for withdrawals in cash.

- Cards primarily issued as gift vouchers are usable for retail purchases using merchants' or providers' proprietary systems that do not allow for withdrawals in cash. Some may be reloadable.

- Cards providing the ability to purchase goods and services globally through merchants' EFTPOS terminals using the VISA network may be loaded with a limited amount only. Cash withdrawals are not permitted from merchants or ATMs. (*e.g.* New Zealand Post Prezzy Card).

- Reloadable cards permit cash withdrawals globally through the VISA network at ATMs and may also permit purchases on EFTPOS terminals. Travelex Cash Passport can only be used at ATMs, New Zealand Post Loaded card can be used at ATMs and EFTPOS terminals. The facilities are 'issues to the public' under the Securities Act and prospectus and trust deed requirements apply. FTRA CDD, record-keeping and suspicious transaction reporting requirements also apply.

733. **Mobile phone payments:** Mobile phone operators co-operate with some banks to allow text-based authorisation for transfers between accounts at the same bank and to perform Internet banking transactions. In these instances the mobile phone is simply a form of remote access to perform banking transactions that can be conducted through Internet banking. Funds can also be transferred from bank accounts to top-up mobile phone accounts. Mobile phone operators have also provided the ability to perform small value transactions such as direct payment for parking meters and to purchase entertainment event tickets. At least one registered bank provides a system for payment transfers by Internet or mobile phone to other mobile phones (ASB Bank's Pago product). The bank maintains account details and FTRA CDD record-keeping and suspicious transaction reporting requirements also apply.

4.4.2 Recommendations and Comments

734. New Zealand has applied AML/CFT requirements to race and sports betting conducted via the NZRB (FTRA, s. 3). New Zealand should also consider designating a competent authority to ensure that the NZRB complies with these requirements.

735. New Zealand should continue its ongoing work to move more financial transactions towards secure payment systems.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R. 20	C	• This Recommendation is fully observed.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R. 33)

5.1.1 Description and Analysis

Recommendation 34

736. 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.

Central registration system

Companies Register

737. 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 that the Registrar is responsible for maintaining.

738. In order to be registered, every domestic company must provide the Companies Office with the following information: the full name and address of each director, shareholder, and applicant; the number and class of shares to be issued to each shareholder; the company's name; the address of the company registered office; the address for service; and supporting documents. Directors and other persons directly or indirectly involved in the management of the company must be natural persons (Companies Act s. 126). However, the use of nominee directors is permissible (Companies Act s. 298) and may obscure the identity of the person who ultimately controls the company. Shareholders may be natural or legal persons, and nominee shareholders are allowed (Companies Act s. 8). The Registry contains no information on the beneficial ownership of shareholders who are legal persons.

739. Similar information is required of overseas companies upon registration, with one key exception – overseas companies are not required to disclose the number of shares or identity of shareholders. Consequently, the Register contains no information about the ownership (legal or beneficial) of overseas legal persons.

740. 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.

741. Registration is automatic upon presentation, receipt of, and recording of the required information, at which point the Companies Office will issue a certificate of registration (Companies Act s. 13). Registry information is not verified to confirm its accuracy concerning the ownership and control of a company, although some checks are performed to ensure that proposed directors are not disqualified on the basis of having been bankrupt or convicted of dishonesty offences. Consequently, the information contained in the Registry is not necessarily adequate, accurate and current – even in relation to legal ownership and control.

742. Companies (domestic and overseas) are required to update the Companies Register, within prescribed time frames, of any change in the details filed therein (*e.g.* changes to the company's name, constitution, directors, addresses, etc.) Specifically, the requirements involve filing and updating the annual return requirement (ss. 214 and 340), notice of change of name (ss. 23 and 334), notice of change of directors (s. 159), change of registered office (s. 187), change of address for service (ss. 193 and 339A), and alteration of the company constitution (ss. 32 and 339).

743. For the year to 30 September 2008, 99.9% of company registrations were electronic. Over 99% of annual return forms, change of address notices, notices of changes to directors and changes of company name were also filed electronically.

Other registers

744. The Companies Office also maintains separate registers in relation to a wide range of other types of legal persons, including: overseas companies, building societies, incorporated societies, limited partnerships, industrial and provident societies, credit unions and friendly societies. All of these registers are similar to the Companies Register in that they hold similar types of information. In addition, the Charities Commission maintains a voluntary register of charitable entities wishing to be eligible for tax benefits on charitable purpose grounds, which is also accessible through the Companies Office's "societies online" (www.societies.govt.nz) website (see section 5.3 below).

745. As at 11 November 2008, the following types and numbers of legal entities were registered in New Zealand:

- New Zealand limited liability companies (including co-operative companies) – 551 072.
- Overseas companies – 1 473.
- Limited partnerships – 63.
- Charitable trusts – 18 335.
- Incorporated societies – 22 525.
- Building societies – 18.
- Industrial and provident societies – 289.

Access to information by competent authorities

746. All of the registers maintained by the Companies Office are fully searchable through free on-line searching facilities that are available to the competent authorities and the public on a timely basis. Certain basic elements regarding every company may be obtained through these search facilities, including the company name and address, the name and contact details of at least one director and, in the case of domestic companies, the number of shares, and name and contact details of at least one shareholder.

Corporate record keeping and financial reporting requirements

747. A domestic company may (but does not have to) have a constitution setting out the rights, powers, duties and obligations of the company's board, directors and shareholders (Companies Act ss. 16 and 26-27). If a company has no constitution, these matters are determined by the general provisions of the

Companies Act (s. 28). Domestic companies are required to keep and maintain certain records at the company's nominated registered office, including company records (*e.g.* the Certificate of Incorporation, minutes of meetings, resolutions, and documents creating enforceable obligations on the company), a share register, and accounting records (Companies Act, ss. 87, 189 and 194). A company (or its agent) must maintain a share register that records the shares issued by the company. The principal share register must be kept in New Zealand. Although companies are not specifically required to verify or ensure the accuracy of information before entering it into the share register, it is an offence (punishable by up to five years imprisonment or a fine of up to NZD 200 000) to falsify records. There is, however, no mechanism for monitoring compliance with this or other corporate record keeping requirements. Consequently, breaches of the Companies Act are generally only pursued when detected in the course of a larger investigation (*e.g.* relating to corporate fraud, breaches of disclosure requirements, etc). Domestic companies are also required to file an annual financial return with the Companies Office.

748. Overseas companies are required to file financial statements with the Companies Office on an annual basis concerning their overseas company accounts, New Zealand branch accounts and (if the company has subsidiaries) group accounts. The Companies Act does not impose any other record keeping requirements on overseas companies, and they are not required to keep a copy of the share register in New Zealand.

Access to information by competent authorities

749. Each company's registered office must make available to anyone the company records, share register and accounting records. The Companies Act does not contain any restrictions on the public's access to the company records; any person may, on payment of any fees that are prescribed, inspect the records of a company, or require the Registrar to give or certify a document that constitutes part of the New Zealand or overseas register (ss. 363(1)-(2)). Failure to comply with the requirements of the Companies Act is an offence (see ss. 372-374 for the applicable penalties).

750. The Registrar of Companies has a range of statutory powers of investigation in relation to corporate activities. These investigatory powers primarily focus on the management of a company rather than ownership. The Registrar of Companies (or a person authorised by the Registrar) may require the production of, inspect and take copies of, take possession of or retain for a reasonable time, relevant company documents (including financial statements), if the Registrar considers that such action is in the public interest, for the purposes of ascertaining compliance with the Companies Act or the Financial Reporting Act (Companies Act s. 365). It is an offence to obstruct or hinder the Registrar or authorised person in the exercise of the powers under this section. The Limited Partnerships Act (ss. 78 – 81), the Building Societies Act (ss. 122A to 122D), the Incorporated Societies Act (ss. 34A to 34B), and the Industrial and Provident Societies Act (ss. 13A and 13BA) contain equivalent powers of inspection to those set out in the Companies Act.

751. Before exercising any of its powers in relation to a registered bank, the Registrar must consult with the Reserve Bank. Additionally, the Securities Commission may request or approve the Registrar (or any person authorised by him) to require documents to be produced for inspection and to make records of such documents (Securities Act). A memorandum of understanding has been agreed between the MED (including the Registrar of Companies, the Official Assignee, the Government Actuary, and all other statutory offices within the Companies Office), the Reserve Bank, and the Securities Commission to facilitate co-operation and sharing of information (subject to statutory restrictions) between themselves.

752. The Registrar also has certain powers of inspection under the Corporations (Investigation and Management) Act (CIMA) to request information and investigate the affairs of corporations that may be operating fraudulently or recklessly. Where the Registrar considers that it may be necessary to do so for the

purpose of the exercise of other powers under the CIMA (such as declaring a corporation at risk or placing a corporation in statutory management), the Registrar may appoint inspectors to investigate the affairs of a corporation, including the power to obtain any necessary documentation (s. 19). It is an offence for any person to hinder such an investigation (s. 20) and the Registrar may apply to court for a warrant of search and seizure to obtain documentation from private property, if necessary (s. 24).

753. The Registrar may disclose information obtained in the course of an inspection to any person whom the Registrar is satisfied has a proper interest in receiving it. That would include the NZ Police and SFO where the information disclosed indicates that criminal offending may have taken place.

754. In addition, the NZ Police (including the FIU), the Serious Fraud Office, and Inland Revenue Department have broad investigative powers, including powers to compel the production of financial records, trace property ownership, search premises for evidential material, and summons a person to give evidence under oath (see section 2.6 of this report for further details).

755. Although there is a range of investigatory powers available to the competent authorities which allows access to corporate records, this system is only as good as the information available to be acquired. Company registered offices are not required to maintain information about the beneficial ownership and control of legal persons, which is the focus of Recommendation 33. Instead, the information maintained by company registered offices is focused on their legal ownership and control. 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 to authorities to obtain this information, other than through a potentially lengthy mutual legal assistance process. Overall, the corporate record keeping and financial reporting requirements are such that adequate, accurate and current information on beneficial ownership is not necessarily available to the competent authorities in a timely fashion.

Company service providers

756. New Zealand law does not require company service providers to obtain, verify, or retain records of the beneficial ownership and control of legal persons. This means that such information is not available to the competent authorities from this source either.

Bearer shares

757. Bearer shares are not permitted in New Zealand. This prohibition is found in sections relating to shares and their issue in the Companies Act, especially sections 35 to 40 and 84 to 94 which relate to the issue and transfer of shares and the requirement that companies must maintain a share register containing the names of shareholders. This aspect of the system does meet the requirements of Recommendation 33.

Additional elements

758. There are no measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.1.2 Recommendations and Comments

759. New Zealand should broaden its requirements to ensure that information on the beneficial ownership and control of legal persons is readily available to the competent authorities in a timely manner. Such measures could include a combination of, for example, restricting the use of nominee directors and

shareholders, requiring overseas companies to maintain a share register in New Zealand, requiring legal persons to maintain full information on their beneficial ownership and control, requiring such information to be filed in the Companies Registry, or requiring company service providers to obtain and maintain beneficial ownership information. Such information would then be available to the law enforcement and regulatory/supervisory agencies upon the proper exercise of their existing powers.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R. 33	**PC**	• 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: - The Companies Register does not contain such information. - Companies are not required to maintain such information. - Company service providers are not required to collect such information.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R. 34)

5.2.1 Description and Analysis

Recommendation 34

760. New Zealand is a common law jurisdiction that has a system of trust law. Express trusts may be created in New Zealand and foreign trusts are recognised. Express trusts are not separate legal entities. It is not known how many express trusts exist in New Zealand, but they are extremely common.

761. There are three main types of parties to an express trust – the settlor who creates the trust; the trustee who is responsible for holding and managing trust property for the benefit of the beneficiaries, and meeting obligations incurred in the name of the trust; and the beneficiary who benefits from the trust. Trust agreements are usually constituted by a trust deed which sets out the rights and obligations of the trustees and the beneficiaries.

762. There are no general provisions that govern the establishment of express trusts generally or set limitations on who may be the settlor, trustee or beneficiary. The settlor, trustee or beneficiary may be a natural or legal person, and the same person may act in all three capacities in relation to a particular trust. In practice, this is not uncommon as trusts in New Zealand are regularly used as a family estate planning vehicles. When establishing a trust for which the same person will be the settlor, trustee and beneficiary, lawyers generally recommend (although it is not required) adding a further third party independent trustee so as to avoid an inference that the trust is a sham.

763. In preventing the use of trusts for illicit purposes, New Zealand relies primarily on a centralised voluntary system of trust registration for trusts that are charitable, record keeping and financial reporting requirements, and the investigative powers of competent authorities.

Central registration system

764. There is no general obligation to register a trust. Nevertheless, New Zealand law provides for two ways in which the trustees of trusts constituted for charitable purposes can be registered. In the first case, if the trustees of a trust that is exclusively or principally for charitable purposes wish to incorporate as a

board under the Charitable Trusts Act, they may apply to the registrar of Incorporated Societies. The trust board, once registered, is included in the register of charitable trusts maintained by the Companies Office registered.

765. Likewise, if the trustees wish to incorporate as a board under the Charitable Trusts Act and register the trust as a charitable entity, the trust deed must be supplied to the Charities Commission. The deed is then fully analysed, along with any further information that is sought by the Commission, in order to determine whether the trust qualifies as a charitable entity. Full information as to who benefits from the trust is also sought. Once registered, the trust deed and the annual returns of the trust (including financial statements) are included in the Charities Register. The Charities Register is a fully searchable on-line register that is available without charge to the public and the competent authorities on a timely basis.

766. For the purposes of Recommendation 34, the Charities Register suffers from the same deficiencies as the Companies Register (see section 5.1 of this report). Although the Register contains useful information about the legal ownership and control of trusts, it contains no information about beneficial ownership and control (*e.g.* of the legal persons who may be parties to a trust). Moreover, Registry information is not verified to confirm its accuracy concerning the ownership and control of a trust, although a review is performed to ensure that the trust does, indeed, have a legitimate charitable purpose. Moreover, the Registry only contains information on a limited type of express trusts (*i.e.* charitable trusts). There is no centralised registration system for other types of express trust.

Record keeping and financial reporting requirements

767. The settlor, trustee, and beneficiaries of express trusts are recorded in the trust deed. However, all three parties may be legal persons and there are no requirements to obtain, verify, or retain information on the beneficial ownership and control of trusts. There is also no legal requirement as to where the trust deed must be kept.

768. If a trust receives income, it may have an obligation to lodge a tax return with the Inland Revenue Department. However, tax returns do not collect information on the beneficial ownership and control of trusts.

Access to information by competent authorities

769. Although the authorities generally have sound investigative powers (see section 2.6 of this report), information on beneficial ownership and control is generally not available to the competent authorities since there is no obligation to obtain and retain it. Even trust deeds are generally unavailable since there is also no legal requirement as to where trust deeds must be kept. Consequently, the trust deed is not generally accessible by the competent authorities, unless the trust happens to have been voluntarily registered in the Charities Registry.

Trust service providers

770. New Zealand law does not require trust service providers to obtain, verify, or retain records of the beneficial ownership and control of trusts, or to retain a copy of the executed trust deed (although some may do so in practice for business purposes). Consequently, such information is not available to the competent authorities from this source.

Additional elements

771. There are no measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.2.2 Recommendations and Comments

772. New Zealand should develop requirements to ensure that information on the beneficial ownership and control of trusts is readily available to the competent authorities in a timely manner. Such measures could include, for example, requiring trustees to maintain full information on the trust's beneficial ownership and control, requiring the location of such information to be disclosed, or requiring trust service providers to obtain and maintain beneficial ownership information. Such information would then be available to the law enforcement and regulatory/supervisory agencies upon the proper exercise of their existing powers.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R. 34	**NC**	– There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of trusts.

5.3 Non-profit organisations (SR. VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

Characteristics of the Non-profit organisations (NPO) sector

***773. NPO Sector Profile*:** There are 97 000 NPOs in Zealand, according to a survey based on 2005 data published by Statistics New Zealand in 2007. According to the Charities Commission, 22 755 NPOs have registered with the Commission to date. The Charities Commission advised that many NPOs do not generate taxable incomes (above NZD 1 000) and therefore do not register with the Commission or they are not eligible for registration as they generate incomes for non-charitable purposes. There are still some applications being processed by the Commission.

774. The term NPOs refers to all NPOs regardless of their legal status, while the term registered charitable entity applies only to entities with exclusively charitable purposes that are registered with the Charities Commission.

775. The four main categories of NPOs are:

(x) *Charitable Trusts and Societies*: Such entities exist principally or exclusively for charitable purposes, such as the relief of poverty, the advancement of education or religion or other purposes beneficial to the community. There is no required form for such entities. To be a valid trust for charitable purposes, the trust must be exclusively charitable. The trustees of a trust for charitable purpose may choose to incorporate as a board under the Charitable Trusts Act 1957, to

gain legal entity status. In addition, if the society or trust wishes to be tax exempt on charitable purpose grounds, it must be registered with the Charities Commission

(y) *Incorporated Societies (Incorporated Societies Act)***:** An incorporated society is a group or organisation of 15 or more persons associated for any lawful purpose and incorporated under the Incorporated Societies Act. These societies are not permitted to carry out activities for pecuniary gain. A wide range of groups and organisations make use of this statutory entity, including sports clubs, social clubs, cultural groups and other special interest groups.

(z) *Industrial and Provident Societies (Industrial and Provident Societies Act)***:** Such societies are comprised of a minimum of seven members who typically carry on a business or trade or participate in an industry and, whilst operating independently, receive mutual benefits from the society. The primary purpose of the industrial and provident society must not be for the profit of its members.

(aa) *Friendly Societies, Benevolent Societies, and Working Men's Clubs (Friendly Societies and Credit Unions Act)*: These societies (known collectively as friendly societies) are unincorporated bodies formed to provide for, by voluntary subscription of members or the aid of donations, the relief of maintenance of members and their families during sickness, old age, or in widowhood. Many of these societies are non-profit organisations, although there is no prohibition on friendly societies from operating for pecuniary profit.

776. ***Registration with Charities Commission and Taxation Exemption*****:** There are a number of taxation exemptions available to NPOs. These include exemptions for NPOs with an income of less than NZD 1 000 per annum and exemptions for NPOs that exist primarily to promote amateur sport and other community-focussed purposes. If an NPO is established for exclusively charitable purposes and it wishes to be tax exempt on charitable-purpose grounds, it must be registered with the Charities Commission. Registration with the Charities Commission is not compulsory, although there is a very strong incentive to register for taxation exemption purposes. Once registered, charitable entities are subject to the Charities Commission's broader governance requirements, including reporting, transparency, monitoring and sanctions.

777. ***Lottery Grants and Non-Casino Gambling Charitable Fund Raising*****:** NPOs in New Zealand can receive funding from the Lottery Grants Board under the Gambling Act. When applying for lottery grants, NPOs need to meet certain requirements of the Lottery Grants Board. Lottery grants account for a significant proportion of funding for the non-profit sector. Furthermore, NPOs intending to operate gaming machines (class 4 gambling), or gambling for charitable purposes with a total prize value greater than NZD 5 000 (class 3 gambling) are required to be licensed by the DIA. There are about 20 000 gaming machines outside casinos that are operated by non-profit corporate societies (including 354 clubs and 51 other NPOs, largely charitable trusts.

Reviews of the domestic non-profit sector

778. New Zealand undertook a review of the tax system as it related to the non-profit sector. The scope of the review included a consideration of the requirements of Special Recommendation VIII and the broader governance requirements of the NPO sector. The Charities Act, which established the Charities Commission and the Charities Register, originated from this review. However, the New Zealand government has not 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. There has also been no periodic reassessment on the sector's potential vulnerabilities to terrorist activities. The Department of Internal Affairs and the Charities Commission advised that it would undertake a review of the extensive information contained in its Register of Charities in the near future.

Outreach to the NPO sector concerning terrorist financing issues

779. The functions of the Charities Commission are detailed in section 10 of the Charities Act and include: registering and monitoring charities, providing education and assistance to the charitable sector; encouraging best practice in governance and use of resources; and providing advice on matters relating to charities.

780. The Charities Commission is relatively newly established and to date has focused most of its efforts on establishing the register of charities. Consequently, outreach with a specific focus on countering terrorist financing has not yet been undertaken. No other New Zealand competent authorities have undertaken FT outreach to the NPO sector.

Supervision and monitoring

781. Supervision and monitoring of the NPO sector is primarily undertaken by the Charities Commission (in relation to charitable entities administered under the Charities Act), the DIA (in relation to non-casino gambling and lottery grants administered under the Gambling Act), the Attorney-General (in relation to charities), the Registrar of Incorporated Societies and the Registrar of Charitable Trusts. There is only a limited requirement for monitoring by the Companies Office post completion of the registration process. At present, there is no enhanced focus on NPOs which account for: *i)* a significant portion of the financial resources under control of the sector; and *ii)* a substantial share of the sector's international activities, as is required by Special Recommendation VIII.

Licensing and registration

782. There is no compulsory licensing or registration system for NPOs. NPOs wishing to have legal status can choose to register as a company or an incorporated society. The trustees of a charitable trust may choose to incorporate as a trust board under the Charitable Trusts Act. Registration is also required with the Charities Commission in order to be eligible for taxation exemption benefits. NPOs wishing to be registered must be established and maintained for exclusively charitable purposes and not undertake activities for the private pecuniary profit of any individual.

783. To apply for registration with the Charities Commission, charitable organisations need to complete an application in the prescribed form and an officer certification form for each officer either electronically online or hard copy. A copy of the organisation's rules or governing document must accompany the application to show that the organisation is carrying out charitable purposes (Charities Act s. 17). A name check is made of all applicants to ensure no prohibited terrorist organisation is registered. Article 13 (5) of Charities Act prohibits persons/entities designated as terrorist organisations from being registered.

784. Depending on the legal form of the charity, information will also be maintained in other registers with the Companies Office.

Obligation to maintain information

785. NPOs are not generally required to maintain information on: *i)* the purpose and objectives of their stated activities; and *ii)* 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 to the Charities Commission.

786. *NPOs Registered with Charities Commission (Charitable entities)*: Section 17 of the Charities Act requires NPOs to submit to the Charities Commission the names of the officers of the charitable entity and of all persons who have been officers since first registered as a charitable entity. The information provided is accepted at face value and there is no requirement to ascertain whether there are any non officers who might exercise control of the charitable entity. Section 13 of the Charities Act outlines the registration requirements, which include information on the charitable purpose, activities, beneficiaries (in general terms only), sources of funds, areas of operation and expected overseas expenditure. The Charities (Fees, form and other matters) Regulations 2006 sets out the application form for registration. The information collected by the Charities Commission during the registration process and subsequently from annual returns submitted is maintained in the Register of Charitable Entities. Section 27 of the Charities Act allows the public to undertake searches of the register based on the following criteria: the name and registration number of the charitable entity; the name of one of its officers; and any other prescribed criteria. The register is maintained electronically and can be easily accessed through the search facility available at the Charities Commission's website.

787. *Charitable trusts:* Under the Charitable Trusts Act, the trustees of a charitable trust may choose to incorporate as a board. Registered charitable trust boards are required to submit to the Registrar of Incorporated Societies in the Companies Office a copy of the trust documents which must contain objects which are primarily charitable (s. 11). The trust documents will also contain information regarding the identities of trustees, and the Charitable Trusts Act requires charitable trusts to maintain evidence of the appointment of new trustees (s. 4). There are no provisions in this Act that require a charitable trust to keep records of its purpose and objectives, or the identification of its controlling persons. However, all charitable trusts by their very nature will be established by way of a trust deed which will contain the purposes and objectives of the trust.

788. *Incorporated societies:* Under the Incorporated Societies Act, an incorporated society is required to have rules which must include the objects for which the society is established (s. 6). The rules must also provide for the appointment of officers of the incorporated society. These rules are required to be submitted with the incorporated society's application for incorporation (s. 7), and are available on the register for public search (s. 34). However, this Act does not require that information be provided on the identity of persons who own, control or direct the society's activities (*e.g.* officers, board members or trustees). There are also no provisions that oblige incorporated societies to maintain records that identify their members or controlling persons.

789. *Industrial and Provident Societies*: Under the Industrial and Provident Societies Act, in order to be registered, an industrial and provident society must submit its rules to the Registrar (s. 5). However, this Act does not require that information be provided on the details of officers, board members or trustees. Schedule 2 in the Industrial and Provident Societies Act provides that the details to be included in the rules of an industrial and provident society must include, amongst other things, the object, name and place of the society as well as the terms of admission of the members. There are, however, no provisions that require the society to maintain records on the identification of the persons that own or control it.

790. *Friendly Societies and Credit Unions:* Under the Friendly Societies and Credit Unions Act, in order to be registered, a friendly society is required to provide rules which must contain the objects of the society. These rules must be submitted with the friendly society's application for registration (s. 12) and are available on the register for public search (s. 5). The application for registration of a friendly society must contain a list of the names, addresses, and designation of the committee of management, the secretary, treasurer, and other principal officers, and the trustees of the friendly society (s. 12). There are

no provisions requiring the society to keep records on the identification of its controlling persons. Schedule 3 of the same Act defines the matters that need to be included in the rules of a credit union. There are no provisions that require credit unions to maintain records which identify the persons that own or control the credit union.

Record keeping requirements

791. 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 whether it receives funding assistance from government agencies.

792. *NPOs Registered with the Charities Commission:* The Charities Act does not specifically require record keeping of financial transactions by registered charities. However, they are required to submit annual returns, including financial information and statements. This information is then included in the publicly available Register of Charitable Entities. However, all charitable entities registered with the Charities Commission and therefore eligible for taxation exemption are required to maintain financial transaction records for seven years under the Tax Administration Act. The small number of NPOs not registered with the Charities Commission and which have taxable income are also subject to this seven year record keeping requirement.

793. *Charitable trusts:* There is no requirement for charitable trusts to file financial statements with the Registrar of Incorporated Societies.

794. *Incorporated Societies:* Incorporated Societies are required to submit annual accounts to the Registrar, which are kept on the register for an indefinite period exceeding five years (Incorporated Societies Act s. 23).

795. *Industrial and Provident Society:* If an industrial and provident society is not subject to the financial reporting requirements of the Financial Reporting Act, it is required to have its accounts audited annually, and to file its financial statements with the Registrar who keeps these on the register for an indefinite period exceeding five years (s. 8).

796. *Friendly societies:* Friendly societies are obliged to file financial statements within three months of their balance date. These are kept by the Registrar on the register for an indefinite period, exceeding five years (Friendly Societies and Credit Unions Act s. 73).

797. *Non-casino gambling for charitable fund raising:* Operators of class 3 gambling (*e.g.* lotteries) are required by game rules to retain records pertaining to each game or session for six to 12 months only. Class 4 (non-casino gaming machine) licence holders must retain financial records for at least seven years (Gambling (Class 4 Net Proceeds) Regulations 2004, s. 5).

798. *New Zealand Aid (NZAID)/Donor Funding:* It is estimated that half of the 300 plus NPOs with offshore operations receive funding from either NZAID or Australian Agency for International Development (AusAID). The standard funding contract between NPOs and either NZAID or AusAID includes requirements to maintain separate accounts and records for seven years from the date of funding. Furthermore, the funding agency has the power to compel production of these records within 10 days of being given notice.

Monitoring and sanctions

799. It should be noted that none of the monitoring and sanctions mechanisms described below are focused on the risk of the NPO sector being abused for the purposes of terrorist financing, or are being specifically leveraged for that purpose.

800. The Charities Act establishes a regime for the monitoring of registered charities. The monitoring is not ML/FT specific but would allow for the investigation of possible ML/FT activity. The Charities Commission has the power to examine and inquire into any charitable entity or person who may have engaged in serious wrongdoing (Charities Act s. 50). 'Serious wrongdoing' is defined as including:

- An unlawful or corrupt use of the funds or resources of an entity.
- An act, omission, or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity.
- An act, omission, or course of conduct that constitutes an offence.
- An act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement (Charities Act s. 4).

801. The Charities Commission also has powers to sanction registered charities. The Charities Commission may issue a warning notice to a charity if it considers that the charity, or a person connected with it, has been engaging in a breach of the Charities Act or serious wrongdoing (s. 54). If the charity or person involved fails to remedy the matters covered by the warning notice, the Charities Commission may publish details of the possible breach or wrongdoing (s. 55). In the case of a criminal or other relevant breach of the Charities Act or 'serious wrongdoing', the Charities Commission has the power to make an order preventing the entity being re-registered as a charity within a specified period, and/or disqualifying an officer of the entity from being an officer of a charity for a specified period, or it may deregister a charity entirely (s. 31). The application of such sanctions should not preclude parallel civil, administrative, or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate, although this is nowhere specified.

802. As indicated above, the Charities Commission became recently operational and has especially focussed on establishing the Register of Charities and processing applications for registration. It is currently developing a monitoring framework which would incorporate risk assessment, off-site and on-site monitoring, investigation of complaints, and inquiries into the conduct of charities. In the interim period, it has undertaken a compliance review of the first annual returns from charities in September 2007, including financial accounts, of approximately 1 000 registered charitable entities.

803. There have been 54 warning notices issued under section 54 of the Charities Act to date and they all relate to failure to file annual returns. These notices are published on the Register of Charitable Entities of the Charities Commission's website. The Commission has issued one warning notice to an entity that was falsely claiming to be registered under the Charities Act. There have been a number of instances where the Commission has issued notices of proposed deregistration on one of the following grounds:

- The entity is not or is no longer qualified for registration.
- There has been a significant or persistent failure by the entity or an officer of the entity or a collector on behalf of the entity to meet obligations under the Act.
- The entity has engaged in serious wrongdoing or a person has engaged in serious wrongdoing in connection with the entity.

804. There are also sanctions available under the respective registration legislations for specific entity types (Charitable Trusts Act; Incorporated Societies Act; Industrial and Provident Societies Act; Friendly Societies and Credit Unions Act). However, these sanctions do not relate to violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. Moreover, the sanctions are very low – around NZD 50 (EUR 23).

Monitoring of non-casino gambling for charitable purposes

805. The DIA has extensive powers to investigate and audit the conduct of gambling and the suitability of 'key persons' including non-casino gambling for charitable purposes (*i.e.* Class 1-4 gambling). The monitoring is not ML/FT specific but would provide for the investigation of possible ML/FT activity in this part of the non-profit sector. 'Key persons' is defined in section 4 of the Act as those with a specific role in a society, venue, or licensed promoter's operation or otherwise exercising a 'significant influence'. A range of sanctions of varying degrees of severity apply to breaches of the Gambling Act, including for some breaches imprisonment of up to one year and fines up to a maximum of NZD 20 000 for and individual or NZD 50 000 for a body corporate. The DIA also has the legal power to suspend (for up to six months) or cancel, a class 4 operator's licence for a number of reasons, including: failing to comply with the Gambling Act, licensing conditions, game rules, and minimum standard; or supplying materially false or misleading information in an application for a new (or renewed or amended) class 4 operator's licence (Gambling Act, s. 58).

Monitoring of NPOs through administration of the Lottery Grants scheme

806. Many NPOs in New Zealand are eligible to receive funding from the Lottery Grants Board. Administration of this scheme provides some measure of supervision and monitoring due to the requirements related to applying for and receiving a lottery grant. Applicants for New Zealand Lottery Grants Board funding may be subjected to audit or investigation at any time by a dedicated business unit within the DIA. NPOs receiving lottery grants are required to submit financial accounts annually to the New Zealand Lottery Grants Board. Board policy is that such annual accounts must show the grant and expenditure of lottery grant funds as separate entries or in a note to their accounts. Where practical, if supplying audited accounts, a note should also be included explaining how the grant money has been spent, and detailing the amount and source of any other funds used for the project. Under section 275 of the Gambling Act the Lottery Grants Board has, in addition to the powers specifically provided in the Act, all the powers that are necessary or expedient to enable it to perform its functions.

Monitoring of NPOs under NZAID/AusAID Funding

807. NPOs receiving funding from NZAID and AusAID are required to enter in a formal written agreement that includes both audit and counter-terrorism clauses. The former requires NPOs receiving funds to provide annual audited reports or regular project reports. The counter-terrorism clause requires NPOs to undertake "best endeavours" to prevent funds from being misdirected or abuse for terrorist purposes, and if it discovers any link whatsoever with any organisation or individual associated with terrorism it must inform local Police immediately.

Information gathering and investigation

808. Both the NZ Police and the various Registrars have powers that allow access to some information on the administration and management of an NPO during the course of an investigation. However, as noted above, since NPOs are generally not required to maintain records on the identity of the persons owning, controlling or directing their activities, this information will not necessarily be available to the authorities.

809. Generally, investigations concerning terrorist financing are undertaken by the NZ Police. Information relating to the activities of entities registered in the Companies Office and entities registered with the Charities Commission can be made readily available to the NZ Police or other investigating agencies when required.

810. A search of the Charities Register may be carried out by any person for a number of reasons, including for the purpose of assisting the person in the exercise of the person's powers or performance of the person's functions under the Act or any other enactment (Charities Act s. 28). This provision provides the NZ Police or other investigators with the ability to search and retrieve information. In addition, the NZ Police (including the FIU), the SFO, and the Inland Revenue Department have broad investigative powers, including powers to compel the production of financial records, trace property ownership, search premises for evidential material, and summons a person to give evidence under oath.

811. The Registrar of Companies also has wide powers to conduct inspections (see section 5.1 of this report for further details). The National Enforcement Unit (NEU), which is a unit in the New Zealand Companies Office, investigates and, where appropriate, prosecutes offences under various legislations. In this capacity, the NEU is the agency that usually conducts inspections and subsequent prosecution action of NPOs. The Registrar may disclose information obtained in the course of an inspection to any person whom the Registrar is satisfied has a proper interest in receiving it. That would include the NZ Police and SFO where information disclosed indicated that criminal offending may have taken place. The NEU also participates in various information-sharing networks with other domestic law enforcement agencies on a monthly basis or more often as required. Several staff members of the NEU have received international anti-terrorism training, including training on the financial aspects of terrorism.

812. The Charities Commission has powers to examine and inquire into any charitable entity or person who may have engaged in serious wrongdoing. The Charities Commission has in place memoranda of understanding with a number of agencies, including the Inland Revenue Department and the MED with regard to information sharing in relation to taxation and enforcement issues. The Commission is in the final stages of finalising an MOU with the NZ Police with regard to cooperation in investigation of charitable entities, including information sharing. The FIU can already disseminate to the Charities Commission in relation to matters of serious crime, money laundering, terrorist financing or proceeds of crime action. However, no STR dissemination has occurred to date.

813. The Attorney-General also has powers under section 58 of the Charitable Trusts Act, and in accordance with the Commissions of Inquiry Act, to examine and enquire into the affairs of New Zealand charities, whether they are incorporated as a board, registered or not. These powers include examining and inquiring into: the nature, objects, administration and management of the charity; the value, condition, management and application of the charity's property; and the charity's income.

Responding to international requests for information about an NPO of concern

814. The NZ Police is the operational agency responsible for responding to any international requests for information on any New Zealand based entity that is suspected of terrorist financing or other forms of terrorist support. For non-law-enforcement specific enquiries on registered charitable entities, the Charities Commission is the relevant agency in co-operation with other authorities as required. It has established relationships with other charitable commission overseas including in the United Kingdom, Canada and Singapore.

5.3.2 Recommendations and Comments

815. 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 which are registered charities. The Commission is establishing its credentials as the primary regulatory and supervisory authority for the charitable sector. Its Register of Charities contains significant information on the sector. In moving forward, New Zealand should implement the following recommendations:

- Undertake a review of the information contained in the Charities Register to identify features and types of charities that are at risk of being misused for terrorist financing, including identifying charities which account for a significant portion of the financial resources of the NPO sector and a substantial share of the sector's international activities.

- Undertake outreach to NPOs to raise awareness in the sector of the risks of terrorist abuse and vulnerabilities.

- Amend the Charities Commission's registration form to include a clear requirement for an applicant for registration to obtain information of the identity of person(s) who own, control or direct the activities, irrespective whether the person(s) are officers or not of the entity.

- Finalise the monitoring framework as soon as possible and commence a risk based monitoring program, consistent with SR VIII.

- Implement more comprehensive record keeping obligations with regard to NPOs.

- Continue its international engagement with foreign charity regulators.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**PC**	• No review of the NPO sector to identify FT risk and vulnerabilities. • No outreach on FT vulnerabilities. • Limited information on controlling minds behind NPOs. • Limited monitoring by the Companies Office or Charities Commission. • Record keeping obligations are not comprehensive.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R. 31)

6.1.1 Description and Analysis

Recommendation 31 (Domestic co-operation)

Policy co-operation

816. The Ministry of Justice is the lead agency on co-ordination and implementation of the current AML/CFT review which is being undertaken by the New Zealand Government. This process involves and impacts on a range of government departments and agencies. Oversight and participation throughout comes from a group of key departments while other agencies will have a peripheral and/or occasional involvement. In recognition of this, two interdepartmental groups have been established to provide governance and oversight of project work.

Interagency Working Group (IWG)

817. The IWG comprises senior official representation from the following agencies: Ministry of Justice (Chair); MED; DIA; Treasury; MFAT; Reserve Bank; Securities Commission; NZ Police; and the Customs Service. The IWG is responsible for moving forward the work outlined in the review according to project plans and making decisions on matters for legislative reform, for referral to the Oversight Group and Ministers (see section 1.5 of the report for further details).

Oversight Group

818. The Oversight Group comprises Deputy Secretary-level representation from the same agencies listed above and also the Department of Prime Minister and Cabinet. The Oversight Group is responsible for:

- Supporting and monitoring agencies' progressing of work contributing to generally agreed outcomes to ensure progress occurs as planned and in agreed directions.
- Raising issues for consideration and dealing with any emerging issues that require senior official intervention raised by the Interagency Working Group.
- Approving recommendations to Ministers.

Operational co-operation

819. The domestic expertise with respect to AML/CFT analysis, investigations and prosecutions rests primarily with the NZ Police and the SFO, though the newly developed OFCANZ of New Zealand will also play a role once fully established. These domestic competent authorities are cooperating on both a formal and informal basis to combat financial crime and money laundering.

Proceeds of Crime Strategy Group

820. The Proceeds of Crime Strategy Group facilitated by the Official Assignee meets quarterly to discuss current case studies, proceeds of crime typologies, and matters of interest relating to AML, legislation and the effect on operations. Minutes of these meetings are sent to all agencies that regularly attend the meetings. Those agencies include: Ministry of Justice, NZ Police (FIU and Proceeds of Crime), the Customs Service, Crown Law, Serious Fraud Office, Official Assignee, Inland Revenue Department, Ministry of Social Development, and prosecutors from the Crown solicitors network.

Combined Law Agency Group (CLAG)

821. At an operational level, almost all of the New Zealand government agencies with law enforcement functions are members of the CLAG. The CLAG is, in essence, a network of regular inter-agency meetings of operational staff and analysts held throughout New Zealand. The concept is endorsed by chief executives and overseen by a group of senior managers. There have been CLAG guidelines, outline procedures, and principles for information sharing, target development, and a range of joint agency operations. The CLAG also provides a framework for the establishment of inter-agency teams to target major syndicates or areas of offending. Its primary focus is organised crime.

Border Sector Governance Group (BSGG)

822. The BSGG was established in 2007 at the direction of the Cabinet. It comprises of the Chief Executive Officers from the Customs Service, the Department of Labour, the Ministry of Agriculture and Forestry and the Ministry of Transport. The purpose of the BSGG is to oversee a programme of work focusing on operational processes, aligning information systems developments and developing a strategic framework for the sector. This group operates at the governance/strategic level. Current BSGG work streams include intelligence, risk and alert systems and passenger facilitation.

Financial Regulators' Coordination Group (FRCG)

823. The FRCG provides another mechanism for inter-agency consultation. The Group includes representatives from the Reserve Bank, the Securities Commission, the MED, the Government Actuary, the Registrar of Companies, the Official Assignee, the SFO, the Takeovers Panel, and the Commerce Commission. The Group provides a forum for sharing information and views concerning: regulatory issues, financial system developments, and other matters of mutual interest; policy issues of common interest; areas of overlapping responsibility; and members' relationships with Australian authorities. This group, which works on the basis of Terms of Reference, also discusses issues relating to money laundering and financial crime.

Operational co-operation between the DIA and the Police, FIU and other law enforcement agencies

824. The DIA operates cooperatively and collaboratively with NZ Police, FIU, and other law enforcement agencies. Regular support is provided to investigations, particularly in the areas of ML and other financial crimes, fraud offences, organised crime, and identity-related crime. The DIA is an active member of the CLAG, which allows a task force approach to law enforcement to be taken by New Zealand agencies. This facilitates the use of combined investigative, intelligence, and operational resources on particular cases and promotes a whole of government approach to combating crime. There are memoranda of understanding between the DIA and the law enforcement agencies to assist and facilitate the sharing of information. In addition, the DIA gambling inspectors regularly assist with specific information requests from NZ Police and other government agencies, particularly in relation to persons of interest active at casinos.

Co-operation between the Securities Commission, various domestic regulatory agencies and SROs

825. The Securities Commission co-operates with various domestic regulatory agencies and SROs, including the Registrar of Companies, the NZX, the Commerce Commission, the Reserve Bank, the Takeovers Panel, the NZ Police, and the Serious Fraud Office. Regular meetings are held between these agencies to keep abreast of each other's work and to raise issues of concern. The responsible authorities cooperate and communicate directly in accordance with established procedures.

Memoranda of Understanding (MOUs) to facilitate inter-agency co-operation

826. Operational co-ordination is facilitated by a network of MOUs among domestic agencies. For instance, the NZ Police have an MOU with the New Zealand Customs Service, which was entered into in August 2006. This MOU covers areas of common interest and shared responsibility, including controlled drugs investigations. The MOU is complemented by specific annexes dealing with subjects such as information exchange and data access. Operationally, the NZ Police and the Customs Service have a close working relationship on matters of mutual interest. Co-operation between NZ Police and the Customs Service has resulted in a number of people being prosecuted for drugs offences in relation to importation and distribution of methamphetamine and associated ML offences.

827. The Reserve Bank has an MOU with the Securities Commission and the MED. The Reserve Bank also cooperates with the FIU, the Serious Fraud Office and other domestic agencies on money laundering and financial crime matters of mutual interest. In addition, section 105 of the RBA makes provision for the Reserve Bank to disclose information, obtained in the course of its supervision of registered banks, to any person whom the Reserve Bank is satisfied has a proper interest in receiving such information (s. 105(2)(g)). No information, data, or forecasts can be published or disclosed unless the Reserve Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information (RBA s. 105(3)).

828. The SFO and OFCANZ of New Zealand are in the process of negotiating an MOU.

Additional elements

829. The Ministry of Justice is primarily responsible for liaising and consulting with the private sector on policy issues that will be implemented in legislation. This consultation is both required through the regular legislative process, and also takes place at an informal level through discussion documents and regular meetings. For example, in consulting for the AML/CFT Bill, the Ministry has released three discussion documents, and a consultation draft of the Bill. The Ministry has met with all affected industry bodies and there will also be an opportunity for industry to make submissions through the legislative process before a Select Committee.[30]

830. The Reserve Bank also consults with affected parties before using its powers under the RBA to publish guidelines or impose conditions of registration. Where requirements are imposed through conditions of registration the Reserve Bank must give the registered bank not less than seven days notice in writing of its intention to do so. In addition, the Reserve Bank must include a statement of the Reserve Bank's reasons, give the registered bank a reasonable opportunity to make submissions to the Reserve Bank, and the Reserve Bank must have regard to those submissions (RBA s. 74(3)).

[30] The AML/CFT Bill was enacted by Parliament on 15 October 2009.

Recommendation 30 – Resources of policy makers

831. The lead policy agency with respect to AML/CFT is the Ministry of Justice. Additionally, policy support is provided from all other relevant agencies including the Reserve Bank, the MED, the DIA, the Securities Commission, the Customs Service, and the MFAT. Within the Ministry of Justice, the International Criminal Law team is responsible for AML/CFT related policy. The International Criminal Law team is comprised of four advisors, two senior advisors and a principal advisor, all of whom report to the policy manager. According to New Zealand authorities, this allocation of staff is sufficient given the support received from specialist agencies in the area of policy.

832. Staff in the Ministry of Justice are required to comply with both the Code of Conduct for State Servants and the Ministry of Justice Code of Conduct (see section 2.1 of this report for further details).

833. The training opportunities provided to policy makers involved in AML/CFT at the Ministry of Justice are targeted at both the domestic and international level. For instance, several training opportunities were created in view of the FATF/APG mutual evaluation of New Zealand. In March 2008, the APG was invited by the Ministry of Justice to give a two-day presentation on ML and TF, with a particular focus on the mutual evaluation process, to policy and operational agencies. This training was attended by all members of the International Criminal Law team of the Ministry of Justice and by representatives of many other agencies. In March 2008, two members of the International Criminal Law team attended a joint IMF/APG workshop in Singapore that discussed ME procedures and processes. New Zealand officials have been actively involved in both APG and FATF mutual evaluations of other jurisdictions.

Recommendation 32 (Reviewing the effectiveness of AML/CFT regimes)

834. The Ministry of Justice has been leading a full review of the AML/CFT regime since 2004. This has involved all law enforcement, prosecution, policy and prospective AML supervision agencies.

6.1.2 Recommendations and Comments

835. The New Zealand authorities have adequate and effective mechanisms in place for domestic co-ordination and co-operation, both at the policy and operational levels. This Recommendation is fully met.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R. 31	**C**	• This Recommendation is fully observed.

6.2 The Conventions and UN Special Resolutions (R. 35 & SR. I)

6.2.1 Description and Analysis

Recommendation 35 and Special Recommendation I

United Nations Conventions

836. New Zealand ratified the Vienna Convention on 16 December 1998, the Palermo Convention on 12 July 2002, and the FT Convention on 4 November 2002.

837. The vast majority of the Conventions' provisions have been implemented. However, as noted in section 2.1 of this report, section 243 of the Crimes Act is more restrictive with regard to the only mental element required by the Conventions (Vienna 3(1)(b)(ii); Palermo 6(1)(a)(ii)) because the prosecution is always required to prove an additional mental (purposive) element.

838. Also, Article 18(1) of the FT Convention requires countries to implement sufficient measures to identify customers in whose interest accounts are opened; however, as noted in section 3.2 of this report, New Zealand's implementation of CDD requirements to identify beneficial owners is not sufficient.

Implementation of United Nations Resolutions relating to terrorist financing

839. New Zealand has measures in place to implement the basic components of S/RES/1267(1999) and its successor resolutions, and S/RES/1373(2001).

Additional elements

840. As an Asia-Pacific country, New Zealand has no automatic right to accede to the 1990 Council of Europe Convention and the 2002 Inter-American Convention. These are Conventions applicable to a different geographical region and thus irrelevant for New Zealand.

6.2.2 Recommendations and Comments

841. New Zealand has ratified and substantially implemented the relevant sections of the Vienna, Palermo and FT Conventions. However, New Zealand should review its money laundering offences to ensure that all conduct specified by the Vienna and Palermo Conventions is covered. Furthermore, the purposive elements should be removed to be fully in line with the Vienna and Palermo Conventions. New Zealand should also implement requirements to identify beneficial owners.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R. 35	LC	• *Vienna and Palermo Convention*: 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. • *FT Convention*: 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).
SR. I	LC	• *FT Convention*: 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).

6.3 Mutual Legal Assistance (R. 36-38, SR. V)

6.3.1 Description and Analysis

Recommendation 36 and Special Recommendation V (Mutual legal assistance)

842. The Mutual Assistance in Criminal Matters Act (MACMA) provides an extensive structured framework for international assistance in criminal matters by allowing requests from and to New Zealand

with any country. It is one of the two principal pieces of legislation that enable New Zealand to provide mutual legal assistance in the ML/TF context – the other being the POCA.[31]

843. New Zealand does not require a convention, treaty, or any form of pre-existing agreement before complying with a request for mutual legal assistance (MLA) or extradition. New Zealand is party to a number of conventions (including the Vienna and Palermo Conventions, and 12 of the 16 terrorism related conventions) and treaties (both bilateral and multilateral) that include mutual legal assistance obligations. State parties may chose to apply for mutual legal assistance under an applicable convention or treaty, or under the rules set out under the MACMA. Alternatively, New Zealand may consider ad hoc requests for MLA (*i.e.* requests that are not based on any prior convention, treaty or agreement).

Range of mutual legal assistance available

Mutual legal assistance based on the MACMA

844. The specific object of the MACMA is to facilitate the provision and obtaining by New Zealand, of international assistance in criminal matters (s. 4), including:

- The identification and location of persons.
- The obtaining of evidence, documents, or other articles.
- The production of documents and other articles.
- The making of arrangements for persons to give evidence or assist investigations.
- The service of documents.
- The execution of requests for search and seizure.
- The forfeiture or confiscation of tainted property.
- The recovery of pecuniary penalties in respect of offences.
- The restraining of dealings in property or freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences.
- The location of property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences.

845. On this basis, New Zealand law provides for a range of mechanisms that enable it to provide mutual legal assistance, including the production or seizure of information, documents, or evidence (including financial records) from financial institutions, other entities, or natural persons; searches of financial institutions, other entities, and domiciles; identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered; the taking of witnesses' statements; the search of persons and

[31] In April 2009, New Zealand enacted legislation, the Criminal Proceeds (Recovery) Act, to improve the effectiveness of the confiscation regime. The Act comes into force on 1 December 2009 and enhances the existing criminal forfeiture regime, which will continue to operate for criminal instruments confiscations, and introduces a civil forfeiture regime for confiscating criminal proceeds, which will be enforced by NZ Police. The Act addresses many of the threshold issues raised in this section.

premises; and the obtaining and seizure of evidence for use in ML/FT investigations and prosecutions, including where these take place in foreign jurisdictions. However, the cross-border co-operation capacity is affected by the threshold conditions restricting the application of some important detection and seizure measures, as noted below.

846. ***Production orders:*** Under section 61 of the MACMA, a foreign country can request the Attorney-General to obtain on its behalf a production order for property tracking documents pursuant to section 76A of the POCA, if the underlying facts concern foreign drug-related criminal matters (punishable by five years or more) or – provided the country is party to the Palermo Convention – relate to foreign serious offences of a transnational and organised nature and punishable by at least four years imprisonment [32].

847. ***Taking evidence:*** Upon receiving a request from a foreign country for assistance in arranging the taking of evidence in New Zealand, or the production of documents or other articles in New Zealand, the Attorney-General may authorise judicial assistance (MACMA s. 31). Where judicial assistance is authorised, the laws of New Zealand apply, so far as they are capable of application and with all necessary modifications. This judicial assistance may require persons to attend before a judge, give evidence, answer questions, and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of New Zealand. The privileges that are available in both the foreign country and New Zealand regarding the withholding or non-production of evidence apply.

848. ***Service of process:*** A foreign country may request the Attorney-General to assist in arranging the service of judicial process on a person in New Zealand (MACMA s. 51).

849. ***Providing information or testimony:*** A foreign country may request the Attorney-General to assist in arranging the attendance, in that country, of a person in New Zealand for the purposes of giving or providing evidence or assistance in relation to a criminal matter (MACMA ss. 37-42).

850. ***Identification, seizure and confiscation of assets:*** A foreign country may request assistance in obtaining an article or thing by search and seizure (s. 43). This provision is mostly used for the purpose of gathering evidence. The foreign country may also request the Attorney-General to issue a search warrant in respect of tainted property (*i.e.* instrumentalities and proceeds) believed to be located in New Zealand (MACMA s. 59). Assistance for a foreign country may also be sought with the enforcement of a foreign forfeiture, a foreign pecuniary order, or a foreign restraining order made in respect of a foreign serious offence (MACMA, ss. 54-55). See below for further details.

[32] It should be noted that the conditions of section 61 MACMA differ from those applicable to domestic production orders pursuant to section 68 POCA, namely in that a domestic production order may only be used where a person has been convicted of (or there are reasonable grounds for believing that the person has committed) a drug-dealing offence or a serious offence which is transnational in nature and involves an organised criminal group; the offence is punishable by imprisonment for a term of four years or more; and there are reasonable grounds to suspect that the offence is transnational in nature and involves an organised criminal group.

Ad hoc requests for mutual legal assistance

851. New Zealand is also able to respond to ad hoc requests for mutual legal assistance that are not made on the basis of a pre-existing convention, treaty or agreement. In such cases, the Attorney-General is required to consider:

- Any assurances given by that country that it will entertain a similar request by New Zealand for assistance in criminal matters.
- The seriousness of the offence to which the request relates.
- The object of the Act as specified in section 4.
- Any other matters that the Attorney-General considers relevant (MACMA s. 25A).

852. The New Zealand authorities maintain that MACMA has enabled them to provide MLA in a timely, constructive and effective manner. The Crown Law Office has the overall responsibility for mutual legal assistance processes requests for MLA. There is one counsel in the Crown Law Office who is responsible for assigning MLA requests to other counsel. The Crown counsel assigned to an MLA matter has responsibility for liaising with the requesting country and authorities in New Zealand, including the Interpol division within the NZ Police, and providing assistance in fulfilling the request to ensure it is carried out in a timely manner.

853. In practice, upon receipt of an MLA request, the Crown Law Office asks for the time frame within which the requesting country requires a response (if one is not given in the initial request). The New Zealand authorities state that the Crown Law Office has always completed requests within the required timeframe. Although the available statistics do not show such detail, there appear to be no structural elements that are such to be likely to cause undue delays.

Prohibitions and conditions

854. Mutual legal assistance is generally governed by the criteria set out in the MACMA, which basically include the following (relevant) mandatory grounds of refusal (s. 27(1)):

- The request is politically or prejudicially motivated by considerations of colour, race, ethnic origin, sex, religion, nationality or political opinion.
- Double jeopardy.
- Military offences.
- Prejudice to New Zealand's sovereignty, security or national interests.

855. Relevant discretionary grounds for refusal by the Attorney-General include (s. 27(2)):

- Absence of dual criminality.
- No prosecution can be brought in New Zealand (lapse of time or any other reason).
- The offence may carry the death penalty in the requesting country.

- Possible prejudice to a criminal investigation or criminal proceedings in New Zealand.
- Excessive burden on the New Zealand resources.

856. Although dual criminality is one of the discretionary grounds of refusal, generally, an MLA request involving non-coercive measures has never been refused on that basis. There is no indication that any of these grounds of refusal (mandatory or discretionary) is being interpreted or applied in an unreasonably restrictive way.

857. It should also be noted that the commencement of judicial proceedings or a conviction is not a pre-condition for taking investigative steps such as obtaining a search warrant, in response to an MLA request. However, it is a pre-condition for the registration of foreign confiscation orders and such matters with a direct connection to judicial proceedings, such as the taking of evidence in New Zealand.

858. The fact that an offence also involves fiscal matters is not a ground for refusal under section 27 of the MACMA.

859. Secrecy or confidentiality requirements are not grounds for refusing an MLA request, but may mean that a search warrant is necessary and the requirements of sections 43 (Assistance in obtaining article or thing by search and seizure) and 44 (Search warrants) of the MACMA apply. In such cases, the MLA request should state the wishes of the foreign country concerning the confidentiality and the reasons for those wishes (MACMA s. 26(c)(iv)). If this is not possible, there would be consultation as a result of which the request could be withdrawn or granted subject to the conditions set out in section 29 of the MACMA.

860. The MACMA generally allows New Zealand to adopt a broad and flexible approach to all MLA requests, including those related to ML and TF. The mandatory and discretionary grounds for refusal are reasonable and justified, and are not being interpreted or applied in an unreasonably restrictive way.

861. 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: certain actions can only be brought if based on a "serious foreign offence" which the MACMA defines as "an offence under the law of a foreign country punishable by imprisonment for a term of five years or more". The following thresholds apply for mutual legal assistance involving coercive measures: [33]

- Search warrants relating to evidentiary material ("article or thing") require the foreign offence to carry a minimum penalty of two years imprisonment under the law of the foreign country (s. 43 MACMA).

[33] However, the recently enacted Criminal Proceeds Recovery Act makes changes to the definition of foreign serious offence to cover "significant foreign criminal activity" which includes a much lower threshold. It now includes offending:
"(A) that consists of, or includes, one or more offences punishable by a maximum term of imprisonment of five years or more; or
"(B) from which property, proceeds, or benefits of a value of $30,000 or more have, directly or indirectly, been acquired or derived.
This low threshold comes into force on 1 December 2009 and essentially removes the concerns expressed in this section of the report.

- Requests for search warrants in respect of instrumentalities and proceeds ("tainted property") can only be complied with if the Attorney-General is satisfied that it relates to a criminal investigation or proceedings in respect of foreign serious offences, *i.e.* punishable by imprisonment of at least five years under the foreign penal legislation (s. 2 and 59 MACMA).

- Restraining orders can only be issued on condition that criminal proceedings have been initiated in the requesting country in respect of a foreign serious offence (punishable by five years imprisonment) (s. 60 MACMA).

- Production orders require that the request relates to a criminal matter in respect of a foreign drug-dealing offence (which would include drug related money laundering, punishable by at least five years imprisonment) or, in the Palermo Convention context, relates to a foreign serious offence of a transnational and organised nature and punishable by at least four years imprisonment (s. 61 MACMA).

- Monitoring orders require the existence of a drug-related criminal matter in the foreign country (s. 62)

- Enforcement of foreign confiscation (forfeiture or pecuniary penalty orders) and restraining orders can only be granted if related to foreign serious offences (s. 54 & 55 MACMA).

862. The legal consequence of these threshold conditions is that, translated into the ML/TF context, New Zealand's ability to provide mutual legal assistance is limited, as MLA requests in relation to criminal assets investigations and proceedings from countries who do not meet that five year threshold (*e.g.* Peoples' Republic of China, Finland, Iceland, Norway, Russia, Sweden) cannot complied with if they involve coercive measures (*e.g.* search warrants in respect of instrumentalities and proceeds ("tainted property"); restraining orders; production orders; monitoring orders in respect of foreign drug related money laundering, and enforcement of foreign confiscation (forfeiture or pecuniary penalty orders) and restraining orders. In practice, New Zealand responds to the MLAT requests requiring such coercive action by means of search warrants to that effect, where the penalty threshold is only 2 years imprisonment, and there are no refusals on record (yet) based on the threshold condition.

Powers of competent authorities when executing mutual legal assistance requests

863. The powers of competent authorities which are available in relation to domestic matters (described above in section 2.6 of this report) are equally available for use in response to requests for mutual legal assistance. Normally, a search warrant is required to obtain documents and information. In that regard, sections 43 and 44 of the MACMA allow for search warrants to be obtained in fulfilment of a mutual assistance request and section 59 allows for search warrants to be obtained in respect of tainted property. The same threshold conditions apply as noted above, however.

Conflicts of jurisdiction

864. The Crown Law Office has a practice of consulting with the requesting country in order to establish which venue is the most appropriate when a situation regarding a conflict of jurisdiction arises. Although there are currently no formal mechanisms in place, the authorities do not see the need to establish any, as indeed the existing structures and consultation mechanisms work (and have been used) adequately in practice.

Additional elements

865. Generally, where there is legislation that specifically provides for information sharing between agencies in New Zealand and their international counterparts, that legislation would be used above the MACMA. However, where there is no formal mutual assistance request, the powers of competent authorities can only be used insofar as no search warrant is necessary. If a search warrant is required, then a formal mutual assistance request is needed.

Recommendation 37 and Special Recommendation V (Dual criminality relating to MLA)

866. The dual criminality principle is inherent to mutual legal assistance being provided to a "convention" country, *i.e.* to requests made to New Zealand under a Convention to which New Zealand is party (see Schedule to MACMA) or under a bilateral treaty. The "criminal matter" that the request relates to must correspond to an offence listed in the Schedule to the MACMA "if committed within the jurisdiction of New Zealand" (s. 24A MACMA).

867. In principle, ad hoc requests from other countries are considered by the Attorney-General on a discretionary basis. On deciding a request, he/she must take into account the reciprocity aspect, the seriousness of the offence, the relevance as to the purpose of the MACMA and other matters he/she considers relevant (s. 25A(2) MACMA). Dual criminality is a possible ground for refusal, but this is at the discretion of the Attorney-General (s. 27(2) MACMA).

868. 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. In providing mutual legal assistance where dual criminality is required, the New Zealand policy is that it is not necessary that all the technical elements of the offence be identical to a corresponding offence from the requesting state.

869. As stated above, the Attorney-General is permitted to refuse general requests (*i.e.* requests made pursuant to the MACMA) for mutual legal assistance if, in his/her opinion, the request relates to conduct that would not have constituted an offence in New Zealand (MACMA s. 27(2)). However the practice is that, as long as the requesting country certifies that the request relates to a criminal offence being investigated or prosecuted, New Zealand would not require that the elements of the offence be identical to a corresponding domestic offence.

870. In relation to requests from Convention Countries, the 'corresponding offences' in New Zealand law are set out in sections 24A and 24B of the MACMA. Here, dual criminality and reciprocity follow from the fact that both New Zealand and the requesting country are parties to a convention that contains mutual assistance obligations. The qualification of the offences must not necessarily be the same, but it should be among the offences listed in the Schedule.

Recommendation 38 and Special Recommendation V (MLA – Freezing, seizing and confiscation)

871. The MACMA allows for foreign confiscation or restraining orders to be registered in New Zealand initially on the basis of only a facsimile copy of the foreign order (s. 56(5)). This reduces delays in waiting for the original of the order arriving by post. Once the Attorney-General's consent has been obtained, the Crown Law Office can apply for the registration of a foreign order on an *ex parte* basis, if necessary, which also removes the time that would be spent in giving notice to affected parties before the hearing. The Crown Law Office takes note of the relevant time frame for the requesting country when a request is received. Priority is given where the requesting country has indicated that the request is urgent and the assets may be dissipated. These 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.

872. A foreign country may also request assistance in obtaining one of the domestic orders available under the POCA, such as a search warrant in respect of tainted property to be located in New Zealand (MACMA s. 59). A warrant to search and seize property connected with a serious foreign offence may be issued on essentially the same terms as a warrant to search and seize property connected with a serious offence under New Zealand law (POCA s. 38A).

873. A foreign country may request the Attorney-General to obtain the issue of a restraining order for property under section 66A of the POCA (MACMA s. 60). If the Attorney-General is satisfied that criminal proceedings have been commenced in the foreign country in respect of a foreign serious offence, and there are reasonable grounds for believing that property that is, or may be made, the subject of a foreign restraining order is located in New Zealand, then the Attorney-General may authorise the application.

874. Another mechanism that facilitates the identification and tracing of proceeds is a monitoring order under section 81A of the POCA which a foreign country may request of the Attorney-General pursuant to section 62 of the MACMA. A monitoring order relates to information obtained by a financial institution about transactions conducted through an account held by a particular person with the institution. Monitoring orders are available for foreign drug dealing offences. Such an order will be issued on essentially the same terms as a production order issued in relation to a New Zealand offence and suffers from the same deficiencies as described above[34].

875. Sections 54 and 55 MACMA provide for equivalent value seizure and confiscation of assets located in New Zealand either by way of enforcement of foreign pecuniary penalty orders or of a domestic restraining order on request, the condition being that the request should relate to a foreign serious offence (see above).

876. The Crown Law Office does not have formal arrangements in place for co-ordinating seizure and confiscation actions with other countries; however, there is nothing in New Zealand's legislative framework that prevents such co-ordination. In practice, New Zealand has co-ordinated seizure and confiscations actions with other countries on an ad hoc basis, simply liaising informally with the requesting state. The CLO is adequately organised to deal with such situations.

877. The FATF Interagency Working Group (see section 6.1. above) considered the establishment of an asset forfeiture fund in 2004 as part of the broader AML/CFT review. The Group came to the view that, at this stage, establishing an asset forfeiture fund is not suitable for New Zealand because of the relatively small amounts of confiscated proceeds which would be involved in a jurisdiction of New Zealand's size and the comparatively high costs of administration.

878. Asset sharing is possible in New Zealand and is governed by the provisions of any applicable treaty and the New Zealand Guidelines on Asset Sharing. The Guidelines have a presumption of returning 50% of the confiscated assets to the requesting country. The Guidelines allow the Attorney-General to exercise his/her discretion to return assets in a suitable case and set out the factors taken into account when doing so. Additionally, New Zealand's mutual assistance treaties with the following countries specifically

[34] The recently enacted Criminal Proceeds (Recovery) Act will replace the POCA on 1 December 2009. This expands the scope of the MACMA to include civil forfeiture, and deals with several technical impediments that had arisen regarding foreign forfeiture orders under the current proceeds of crime regime. It should expedite the enforcement of foreign forfeiture orders in New Zealand.

provide for the possibility of sharing assets by agreement: Korea; Hong Kong, China; and Peoples' Republic of China. The New Zealand Guidelines on Asset Sharing provide guidance as to quantum in these contexts. Where there is no treaty, the assets may be disposed of or shared at the discretion of the Attorney-General (POCA s. 23A).

879. As well, in relation to ordinary forfeiture orders a foreign country may apply to have its interests as a third party recognised by the court (POCA s. 17).

Additional elements

880. Currently,[35] foreign non-criminal confiscation orders are not recognised and can, therefore, not be registered and enforced in New Zealand.

Recommendation 30 - Resources (Central authority for MLA)

881. The central authority for sending/receiving mutual legal assistance is the Attorney-General, and as such, responsibility lies with the Crown Law Office. Extradition requests are usually received by the MFAT through diplomatic channels, but may also be made directly to the Minister of Justice. These three authorities have dedicated resource to these functions as follows.

882. ***Crown Law Office:*** Currently, one Deputy Solicitor-General, three Crown counsel, three associate Crown counsel and four assistant Crown counsel do mutual assistance and extradition work. The office is headed by the Solicitor-General, who is largely autonomous in operational mutual assistance and extradition matters. The Attorney-General has a prescribed role in directing the office in some MACMA matters. Staff at the Crown Law Office are held to high professional standards. Counsel all hold current practising certificates as barristers and solicitors and are required to adhere to the Public Sector Code of Conduct, which has a confidentiality requirement. The Deputy Solicitor-General holds a security clearance to "Top Secret" level. Counsels at the Crown Law Office commencing mutual assistance and extradition work receive in-house training from counsel with considerable experience in mutual assistance.

883. ***Ministry of Foreign Affairs and Trade (MFAT):*** In the Legal Division of the MFAT, there is one deputy director and one legal adviser responsible for mutual assistance and extradition issues. The Legal Division provides advice on mutual assistance and extradition issues, particularly those relating to treaties and relationships with other countries. It also facilitates the transmission of both incoming and outgoing requests, and responses through diplomatic channels. All MFAT staff working on MLA and extradition issues must have law degrees, and are required to maintain a government security clearance. All Ministry staff adhere to a strict Code of Conduct maintaining high professional standards. The MFAT staff receive in-house training from legal advisers with experience in mutual assistance and extradition issues.

884. ***Ministry of Justice:*** Within the Ministry of Justice, the International Criminal Law team is responsible for extradition and mutual assistance related issues. It is considered that this allocation of staff is sufficient given the support received from specialist agencies in the area of extraditions. The resources of the International Criminal Law team within the Ministry of Justice are discussed in Section 6.1 above.

35 Under sections 2A and 2B of the MACMA certain civil investigations are deemed to be criminal investigations for the purposes of providing proceeds assistance. Essentially this is possible where the property is tainted property, property of a person who has unlawfully benefited from significant criminal activity, an instrument of crime or property that will satisfy all or part of a pecuniary penalty order. These provisions come into force on 1 December 2009.

Recommendation 32 – Statistics and effectiveness

885. The Crown Law Office maintains a detailed and comprehensive database that records all mutual legal assistance or extradition requests made or received by New Zealand. Every time a request is received or made, a summary of the nature of the request (who it comes from, type of assistance required, nature of the offending being prosecuted or investigated including any money laundering, proceeds of crime or terrorism element) is entered into the database. The register can be searched for all requests involving a particular type of offence, such as money laundering. The register records when a file was opened and when it was closed. That gives some indication of the timeliness in processing the request, although files are often kept open for some time after the initial assistance is provided in case the requesting country requires further assistance in the matter.

886. From 1 January 2005 to 31 October 2008, the Crown Law Office processed 211 mutual assistance requests (both sent and received). Of those, 26 had a money laundering aspect – 18 of which were incoming requests. Of the 18 incoming requests, six requests have been fulfilled; one was withdrawn, and the others are ongoing matters. In no case has the request been declined. Of the 18 incoming requests with a money laundering aspect, four were requests for the restraint of funds and nine were requests for search warrants. The others were requests for interviews and evidence. Of the six fulfilled requests, the median time taken to fulfil the request was approximately six months.

887. As indicated in section 2.3, the Proceeds of Crime Unit operated by the Official Assignee maintains statistics relating to property frozen, seized or confiscated under the POCA and the TSA (ss. 48–61). However, these statistics do not specifically relate to money laundering; they relate to serious offences, including a money laundering aspect if further investigated.

888. The table below gives an overview of overseas requests for seizure and confiscation of property for the period 2004 to 2008.

International Assistance matters-Asset Restraint and Seizure 2004-2008

OA reference	Date of order	Country requesting assistance	Authority requesting order in NZ	Status	Asset Type	Asset Description	Approx value
10178	17-11-04	Switzerland	DA, Liestal, Switzerland	Restraint	Cash (bank account)	Funds	$25,512.00
824307	01-05-08	Australia	AFP/ NSWCM	Restraint	Bank accounts	International funds managed accounts	$29,000,000.00
824223	21-05-08	United Kingdom	NZ Police	Restraint	Cash , boat and motor vehicle	Contents of bank accounts, Mercedes and yacht	$151,355.29
825927	12-08-08	Brazil	NZ Police	Restraint	Bank accounts	International funds managed accounts	$2,521,133.04
826519	1-09-08	Poland	Public Prosecutor, Poland	Restraint	Residential property	5 Arahura Pl,	$400,000.00
						TOTAL	**$32,098,000.33**

Note: The New Zealand Police.

889. The Interpol division within the NZ Police also maintains records of incoming and outgoing requests for mutual legal assistance. This record includes the number, source, and purpose of the request, and the response to the request. However, NZ Police does not have a record of investigative outcomes resulting from international requests to New Zealand for assistance.

890. Statistics on formal requests for MLA made or received by law enforcement authorities are also kept.

YEAR	REQUEST RECEIVED BY NZ	ML/TF aspect	REQUEST MADE BY NZ	ML/TF aspect
2004	29	5	0	0
2005	13	2	26	3
2006	10	0	38	3
2007	17	1	32	2
2008	20	1	25	9
TOTAL	**89**	**9**	**121**	**17**

6.3.2 Recommendations and Comments

891. New Zealand should take corrective (legislative) action to remedy its international cooperation regime in respect of the detection and recovery of criminal assets and allow for full assistance irrespective of the threshold of the foreign penalty for the underlying offence. Such an action will positively impact on the overall effectiveness of New Zealand's international cooperation regime. It should also be noted that because of the great flexibility of New Zealand's system for providing MLA, the insufficient range of predicate offences in the designated category of illicit arms trafficking (see section 2.1 for further details) does not impede New Zealand'

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s. 6.3 underlying overall rating
R. 36	**LC**	• 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.
R. 37	**C**	• This Recommendation is fully observed.
R. 38	**LC**	• 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.
SR. V	**LC**	• 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 terrorist financing from countries who do not meet the high threshold penalty for the underlying offence.

6.4 Extradition (R. 37, 39, SR. V)

6.4.1 Description and Analysis

Recommendation 39 and Special Recommendation V (Extradition)

892. The legal framework for extradition is set out in the Extradition Act 1999, which allows New Zealand to respond to extradition requests from treaty and Commonwealth countries (Part 3), from Australia and "designated" countries (presently the United Kingdom and Pitcairn) (Part 4), and ultimately from any (other) country on an ad hoc basis when no extradition treaty is in force, or there is a treaty in force but the offence concerned is not an extradition offence under the treaty (Extradition Act s. 60(1)(a)).

893. Extradition requests may be made directly to the Minister of Justice in the case of requests under Part 3 (extradition from New Zealand to certain treaty countries and certain Commonwealth and other countries) or 5 (individual requests) of the Extradition Act. However, in practice most of these requests come through diplomatic channels to the MFAT. Requests under Part 4 (extradition from New Zealand to Australia and other designated countries) of the Extradition Act may also come through diplomatic channels but are generally made directly to the NZ Police. Extradition requests from New Zealand are made by the Minister of Justice, except in the case of Part 4 requests for which the Commissioner of Police (or delegate) has responsibility (s. 61).

894. Money laundering and terrorist financing are extraditable offences. Under the Extradition Act, extradition is available for any offence that is punishable under the law of the extradition country by a maximum penalty of imprisonment for not less than 12 months, as long as the relevant conduct (ML, FT or related offences), had it occurred in New Zealand at that time, and would have constituted an offence punishable under New Zealand law by imprisonment for at least 12 months or a more severe penalty (Extradition Act s. 4). The low level of the penalty (12 months) for the foreign offences ensures that no ML and TF related requests fall short of the threshold condition.

895. New Zealand is able to extradite its own nationals pursuant to extradition requests. Whilst New Zealand does retain the discretion not to extradite its nationals to most countries, the New Zealand practice is not to refuse extradition simply on the basis of nationality. Hence, there is generally no need for New Zealand to take jurisdiction to prosecute its own nationals.

896. For a number of offences, where extradition may not occur for some other reason, New Zealand can take jurisdiction where the individual concerned is not extradited. The grounds for refusal, mandatory and discretionary (ss. 7 and 8), are similar to those applicable for mutual legal assistance. In fact, since 2004 only one incoming extradition request (unrelated to ML or TF) was refused on "unjust and oppressive" grounds (s. 8). Offences for which New Zealand has extraterritorial jurisdiction and could prosecute domestically include terrorist bombing and terrorist financing (TSA s. 18) and money laundering (Crimes Act s. 7A(1)(a)(iii)).

897. Dual criminality applies in cases of extradition. As discussed below in relation to Recommendation 37, the dual criminality condition is not interpreted in an overly restrictive manner. However, it creates one legal obstacle as far as money laundering is concerned. Whilst it is true that the conduct is taken into account in assessing the dual criminality requirement and not the formal qualification, the fact is that ML under New Zealand law only becomes an offence if related to serious predicate offences (punishable by at least five years). As shown above (see section 2.1), section 243 Crimes Act does not cover laundering conduct predicated by a sufficient range of offences in the designated predicate offence category of illicit arms trafficking (only trafficking in biological, chemical and nuclear weapons is

covered). The legal consequence is that foreign extradition requests based on such predicated ML activity may fail to meet the dual criminality condition, as the corresponding laundering conduct is not an offence in New Zealand.

898. The following approach is taken in relation to offences of: terrorist financing; terrorist bombing; dealing with the property of terrorist entities; making property, or financial or related services, available to terrorist entities; recruiting members of terrorist groups; and participation in terrorist groups. In such cases, New Zealand also takes jurisdiction, under the TSA:

- If the acts alleged to constitute the offence occurred wholly outside New Zealand, but the offender was connected in various ways with New Zealand.
- In cases of terrorist bombing if the acts were directed against a New Zealand citizen or the New Zealand Government.
- In cases of terrorist financing if the offence was directed towards, or resulted in, one or more terrorist acts occurring in New Zealand, or against a New Zealand citizen, or the New Zealand Government.

899. The Extradition Act applies to individuals found in New Zealand who are charged with terrorism offences. If an individual is not extradited in accordance with either the Bombings Convention or the FT Convention, then proceedings may be brought in a New Zealand court in relation to those conventions, or any other terrorism convention to which New Zealand is a party.

900. In cases where New Zealand would not extradite its own nationals, its mutual legal assistance regime allows the competent authorities to co-operate with other countries to ensure the efficiency of the prosecution (see section 6.3 above).

901. Extradition requests received by the Crown Law Office are logged on to a central database that allows their progress to be monitored by the counsel with overall responsibility for mutual assistance. They are reviewed for timeliness. The extradition procedures in place do not contain prescribed timelines for processing extradition requests that apply to all proceedings (Extradition Act s. 18), yet the statistical figures do not show any unreasonable or unjustified delays. The great majority of the requests are resolved during the same or next calendar year, which is a normal timeframe for extradition proceedings.

Additional elements

902. There are expedited extradition arrangements between New Zealand and Australia, and New Zealand and the United Kingdom under Part 4 of the Extradition Act. These arrangements may also take place for other designated countries. Persons from Australia and certain designated countries can be detained based on a warrant for arrest alone to be sent to the Interpol division within the NZ Police.

Recommendation 37 and Special Recommendation V (Dual criminality relating to extradition)

903. Dual criminality is a requirement for extradition (s. 4(1)(a) and (2)). However, in assessing whether there is dual criminality, the totality of the conduct is to be taken into account and it does not matter whether under the law of the extradition country and New Zealand the acts or omissions are categorised or named differently; or the constituent elements of the offence differ (Extradition Act s. 5(2)). The New Zealand courts have held, and the Extradition Act provides, that the focus in extradition should be on the offending itself and in particular its nature and quality, not the nomenclature of the offences or the constituent elements of the offences (Cullinane v Government of the United States of America, HC

Hamilton, A116-00, 10 September 2001, Priestley J, essentially adopted in United States of America v Cullinane [2003] 2 NZLR 1).

Recommendation 32 – Statistics and effectiveness

904. The Crown Law Office keeps detailed statistics on in- and outgoing extradition requests. Between 1/1/2004 and 1/4/2009 55 requests were received and 43 sent. None of them related to money laundering or terrorism (financing). Thirty-two cases resulted in effective extradition by New Zealand, four in voluntary returns, three were deported, two requests were withdrawn and one case was closed with subject fleeing. Only one incoming request was refused. Twelve incoming requests are still pending. The statistical information also includes the timeframes.

6.4.2 Recommendations and Comments

905. The Extradition Act provides for a solid legal framework that allows for an effective extradition policy. Section 60(a) 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 indeed confirm. The grounds for refusal are universally accepted. Even taking into account the flexible interpretation of the dual criminality principle, however, this condition may affect the legal ability for New Zealand to comply with an extradition request based on money laundering charges or convictions predicated by offences that have no "serious offence" counterpart in New Zealand. This obstacle should disappear with the corrective legislative action on the money laundering offence.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s. 6.4 underlying overall rating
R. 39	**LC**	• 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).
R. 37	**C**	• This Recommendation is fully observed.
SR. V	**LC**	• 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).

6.5 Other Forms of International Co-operation (R. 40 & SR. V)

6.5.1 Description and Analysis

Recommendation 40 and Special Recommendation V

General overview

906. Exchange of information between agencies, both domestically and internationally, must comply with the provisions of New Zealand legislation such as the Privacy Act which provides the statutory framework to both protect and enable the sharing of information between agencies. Any agency (public or private) is allowed to disclose information to foreign counterparts upon request and spontaneously consistent with Principle 11 of the Privacy Act.

907. Especially, the NZ Police, the FIU, the Serious Fraud Office, the Customs Services, the Ministry of Justice, the Crown Law Office, the Official Assignee and the supervisory authorities each have mechanisms in place to provide a range of international co-operation to foreign counterparts. The provisions and practices for the exchange of information described below apply to all criminal conduct, including money laundering and terrorist financing.

908. The New Zealand authorities report that all domestic authorities are generally able to provide co-operation to their foreign counterparts in a rapid, constructive, and effective manner.

909. New Zealand does not refuse co-operation on the ground that a request also involves fiscal matters. Any restrictions placed on the release of information are based on the sensitivity of the information, an assessment of whether the information being requested was collected appropriately, and if the agency is legally allowed to share or disclose the information being requested. All of these considerations are conducted in light of the requirements of the various pieces of New Zealand legislation under which the agency operates.

New Zealand Police

910. The NZ Police is a member of the Interpol network, and as such it receives and extends cooperation to its foreign counterparts via the information sharing arrangements of Interpol. When a case is not of coercive nature, information can be exchanged via the Interpol channel. The NZ Police Interpol office facilitates a number of money laundering related enquiries from both the NZ Police and overseas law enforcement agencies. These can range from a basic criminal history check on persons of interest through to facilitating formal MLA requests to and from New Zealand.

911. The NZ Police takes advantage of the participation in international training courses for police services to allow its staff to build and further develop informal networks and relationship. Information exchange via informal networks is easier and quicker than via the Interpol channel, though information obtained in such a way cannot be used in formal procedures.

912. The NZ Police maintains statistics on requests from foreign counterparts, although they are not coded specifically to money laundering. These statistics are collated under general headings, including: mutual assistance requests, general enquiries and criminal history checks.

FIU to FIU exchange of information

913. New Zealand has implemented clear and effective gateways to facilitate information exchange with other FIUs. Although the New Zealand FIU does not require an MOU to exchange information, its international counterparts may require an arrangement in order to exchange information. Consequently, the New Zealand FIU has MOUs in place with the following Egmont members: Australia, Cook Islands, Indonesia, Korea and Niue. The NZ FIU is currently negotiating an MOU with the FIUs of Canada, Chile, Malaysia, Singapore, Ukraine and Venezuela.

914. Communication between the New Zealand FIU and other Egmont FIUs takes place directly via the Egmont Secure Web (ESW) on the basis of reciprocity and confidentiality, following the rules established in the Egmont Principles of Information Exchange. Such exchanges are not made subject to disproportionate or unduly restrictive conditions. Typical conditions on the exchange of information are that: the confidentiality of the information will be protected; it will be used for purposes of analysis at FIU level and/or for the purposes set out in the FTRA or the TSA respectively (see section 2.5 of this report); the information will not be further disseminated or used for any other purpose without prior consent of the providing FIU; and/or intelligence disseminated may only be used for intelligence purposes.

915. The New Zealand FIU can exchange information upon request or spontaneously, and in relation to ML/FT, and predicate offences.

916. The New Zealand FIU is authorised to conduct inquiries on behalf of its foreign counterparts, in particular by searching its own databases and the other databases to which it has access for its own analysis (see also section 2.5 of this report). Moreover, the FIU may request additional information from reporting institutions on behalf of a foreign counterpart; however, as explained in section 2.5 reporting institutions are not legally required to provide it. Although financial institutions generally provide the requested information to the FIU, in cases where the information is not provided by the financial institutions, the FIU is not in a position to assist the foreign counterpart with this specific request.

917. International requests for information are given priority and generally the FIU provides a response within a few days of the request depending on the circumstances and the information requested.

918. The New Zealand FIU maintains statistics on the number of international requests for assistance made/or received by it. The statistics kept give an indication of the average time required to respond to requests from foreign FIUs. It does not, however, keep statistics on whether such requests were granted or refused, or how many spontaneous referrals the New Zealand FIU made to foreign authorities.

919. The following chart sets out the number of international requests for information made and received by the New Zealand FIU from 2004 to 2008, all of which were responded to.

YEAR	REQUESTS RECEIVED BY NZ FIU	REQUESTS MADE BY NZ FIU	TOTAL NUMBER OF REQUESTS PROCESSED
2004	19	3	**22**
2005	12	2	**14**
2006	14	10	**24**
2007	21	3	**24**
2008	46	6	**52**
TOTAL	**112**	**24**	**136**

Serious Fraud Office

920. Under section 51 of the SFOA, the Director of the SFO may enter into any agreement with any person in any other country whose functions are or include the detection and investigation of cases of fraud or the prosecution of proceedings which relate to fraud, if: (a) the agreement relates to a particular case or cases of fraud; and (b) that the Director is satisfied that the agreement will not substantially prejudice the functions of the SFO. The Director has to recommend the agreement to the Attorney-General and the Attorney-General has to accept that recommendation. The agreement may provide for the supply or receipt of information by the SFO.

921. The SFO does not keep statistics on international cooperation.

New Zealand Customs Services

922. At the international level, the NZ Customs uses a range of cooperative arrangements with other customs administrations (see section 2.7 of this report).

923. The following chart sets out the number of international requests for information made and received by the NZ Customs from 2004 to 2008. Although the Customs do not maintain an official track of the response, the assessment team was informed that all of requests were processed and that an official reply was sent.

YEAR	REQUESTS RECEIVED BY NZ CUSTOMS	REQUESTS MADE BY NZ CUSTOMS	TOTAL NUMBER OF REQUESTS PROCESSED
2004	417	438	855
2005	409	508	917
2006	391	436	827
2007	418	804	1 222
2008	625	1 106	1 731
TOTAL	2 260	3 292	5 552

Supervisor to supervisor exchange of information

The Reserve Bank of New Zealand

924. The Reserve Bank is able to exchange information with its foreign counterparts with or without an MOU. The Reserve Bank has signed MOUs with the United Kingdom Financial Services Authority and the Australian Prudential Regulation Authority. The Reserve Bank will consider establishing MOU with additional foreign counterpart organisations such as the Australian Transactions Reports and Analysis Centre (AUSTRAC) and taking other steps to strengthen its relationship with such bodies as part of its role as an AML/CFT supervisor.

925. Moreover, the Reserve Bank has established information conduits in the form of regular meetings with foreign organisations. Since most of the banking sector has its origin in Australia, the Reserve Bank has a mechanism in place for both the exchange of information and the other more general cooperation with its Australian counterparts. For this purpose the Reserve Bank has supporting provisions in the RBA that allows it to cooperate and exchange information with Australia as well as with other foreign counterparts. The information exchange is, however, subject to limitations contained in the RBA, as described below.

926. The Reserve Bank has maintained regular contacts with Australian regulators in the context of prudential matters. In that regard, the Reserve Bank and the Australian Prudential Regulation Authority meet regularly (generally once a quarter) to discuss policy and operational issues relating to prudential supervision. In addition, the Trans-Tasman Council on Banking Supervision, which consists of representatives of the Australian and New Zealand Treasuries, the Reserve Banks of Australia and New Zealand, and the Australian Prudential Regulation Authority, has terms of reference which require it to, amongst other matters, guide the development of policy advice to both governments. Advice is underpinned by the principles of policy harmonisation, mutual recognition, trans-Tasman co-ordination, and the enhancement of supervisory co-operation with regard to trans-Tasman banks and information sharing. The Council has had a number of discussions about AML policy and has been overseeing developments to ensure New Zealand's approach harmonises with the approach adopted in Australia to the extent possible, while still ensuring that New Zealand's national interests are protected.

927. The Reserve Bank can indeed provide information relating to registered banks to foreign counterpart organisations if it already holds that information or considers it necessary to obtain that

information for the statutory purposes set out in section 68 and/or 68A of the RBA. These statutory purposes include: *i)* promoting the maintenance of a sound and efficient financial system; *ii)* avoiding significant damage to the financial system that could result from the failure of a registered bank; *iii)* supporting prescribed Australian financial authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in Australia; and *iv)* to the extent reasonably practicable, avoiding any action that is likely to have detrimental effect on financial system stability in Australia.

928. Where the Bank has reasonable cause to believe that an action it proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia, the Bank must, to the extent it considers reasonably practicable in the circumstances having regard to urgency or other similar constraint, consult with and consider the advice of every prescribed Australian financial authority it considers to be relevant in the circumstances before taking the proposed action (RBA s. 68A).

929. In any other case, where a foreign prudential supervisor is seeking information that the Reserve Bank does not itself already hold, it may authorise the foreign authority to make an on-site visit or to obtain the required information directly from a bank (RBA s. 98A). The Reserve Bank can obtain any information about prudential matters. With the Registration and Supervision of Banks Regulation 2008, which were recently enacted, the Reserve Bank's supervisory role has been extended to include AML/CFT. While the New Zealand authorities advise that the Reserve Bank can obtain information about a particular customer for the statutory purposes set out in section 68 and/or 68A of the RBA, including customer specific information for AML/CFT purposes, this power has never been used for this purpose in practise (see also sections 3.4 and 3.10). Moreover, an on-site investigation can only occur after obtaining a Court Order. The Reserve Bank's limitations in carrying out on-site inspections and not using its powers to access individual customer's information for AML/CFT purposes have eclipsed its ability to effectively cooperate in AML/CFT matters. An effective mechanism of information exchange and co-operation can only take place when banks are being closely monitored and necessary supervisory tools are available, which is clearly not the case in New Zealand (see section 3.10 for further details). Under the existing circumstances, the Reserve Bank's AML/CFT supervision is not of a level that would allow the Reserve Bank to spontaneously disseminate information to its counterparts.

930. The Reserve Bank can co-operate with foreign home country supervisors in their supervision of financial institutions located in New Zealand as the host country. A person must comply with a notice issued under section 98A by permitting the home country supervisor to conduct an inspection or by supplying the home country supervisor with the required information, data, or forecasts within the time and at the place specified in the notice (RBA s. 98B). The information, data, or forecasts that a home country supervisor may be authorised to obtain can include information about the affairs of a particular customer or client of a person to whom the section applies. The Reserve Bank of New Zealand may grant an authorisation only if it is satisfied that sufficient provisions exists to protect the confidentiality of the information, data, or forecasts obtained or required by the home country supervisor.

931. Section 105 of the RBA protects the confidentiality of information, data, and forecasts supplied or disclosed to, or obtained by the Reserve Bank in the course of its prudential supervision of registered banks, including supervision for AML/CFT purposes. These confidentiality provisions also cover information provided to the Reserve Bank of New Zealand by foreign counterpart organisations. No such information may be published or disclosed unless certain criteria are met and where appropriate the Reserve Bank is satisfied that satisfactory provisions exist to protect its confidentiality.

932. There is no evidence that shows that the Reserve Bank has ever provided, spontaneously or on request basis, any information to foreign counterparts in the AML/CFT context. The limitations of the

Reserve Bank with regard to AML/CFT supervision, as described in the preceding paragraphs, raise an issue of effectiveness in relation to its ability to effectively co-operate with its foreign counterparts.

Securities Commission

933. It is a statutory function of the Securities Commission "to co-operate with any overseas regulator and for that purpose, but without limiting this function, to communicate, or make arrangements for communicating, information obtained by the Commission in the performance of its functions and powers, confidential or not, to that overseas regulator which the Commission considers may assist that overseas regulator in the performance of its functions" (Securities Act s. 10). This provides the Securities Commission with a statutory basis for sharing public and non-public information with other securities regulators.

934. The New Zealand Securities Commission is a signatory to the following instruments which create a framework for international co-operation among securities supervisors: the International Organisation of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU); the International Organisation of Securities Commissions' 1986 Rio Declaration, which gives reciprocal assistance in gathering information on market oversight and protection of investors against fraudulent securities transactions; and the International Organisation of Securities Commissions-sponsored Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations. The Securities Commission is also a party to bilateral memoranda of understanding with counterparts in: Australia; United States (CFTC). Hong Kong, China; Chinese Taipei; Papua New Guinea; Sri Lanka; Malaysia; Indonesia; Peoples' Republic of China; Israel; Japan; Dubai International Financial Centre; United Arab Emirates; and Jordan. Additionally, the New Zealand Securities Commission has an exchange of letters with the United States Securities and Exchange Commission.

935. The assessment team was informed that the Securities Commission has exchanged information with foreign countries, especially in relation to securities law enforcement. Although the Securities Commission has no supervisory powers with regard to AML/CFT, its power to provide assistance to an overseas regulator is based on their functions. This means that, provided the overseas securities regulator was a designated competent authority for AML/CFT purposes, the Securities Commission would be able to co-operate with them, although this has never arisen in practice.

Department of Internal Affairs

936. The DIA undertakes frequent international co-operation activities, largely based within the Pacific and Asian regions. International requests for information are considered on a case-by-case basis. The DIA provides assistance where it is lawfully allowed to do so or assists in establishing a relationship with the appropriate agency where it is unable to help. The DIA is able to provide a broad range of international assistance in relation to individual investigations or projects associated with the gambling environment. For instance, the DIA provided information to police in Australia, which will assist in the upcoming prosecution of an individual in relation to fraud through a casino.

937. The DIA has received a very limited number of enquiries from its foreign counterparts (other than Australia), and these were limited to information requests connected to gambling only. Since the DIA is currently not mandated to supervise casinos for AML/CFT compliance, there was no specific AML/CFT information exchanged. Therefore, the effectiveness of the mechanism in the AML/CFT context has not been tested.

Additional elements

938. The NZ FIU can exchange information on STRs, BCRs and SPRs with foreign law enforcement authorities under FTRA (s. 21(2)), FTRA (s. 43), and TSA (s. 47(2)). There is no information on whether specific mechanisms are in place to permit an exchange of information with non-counterparts. Any agency (public or private) is allowed to disclose information to the FIU for the purposes of preventing, detecting, investigating, prosecuting and punishing offences (Privacy Act, Principle 11(e)(i)). This provision allows the FIU to obtain from other competent authorities or other persons relevant information requested by a foreign FIU on a voluntary basis.

6.5.2 Recommendations and Comments

939. 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.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s. 6.5 underlying overall rating
R. 40	**LC**	• Effectiveness issue: The ability of the Reserve Bank to exchange information for AML/CFT purposes is not yet tested
SR. V	**LC**	• R. 40: Effectiveness issue: The ability of the Reserve bank to exchange information for AML/CFT purposes is not yet tested.

7. OTHER ISSUES

7.1 Resources and statistics

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R. 30	**PC**	• The FIU is in need of further resources to address the backlog, particularly of BCRs, waiting to be input into the FIU's system. • Even though the Reserve Bank's supervisory role with regard to AML/CFT is currently limited, the 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, 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. • 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.
R. 32	**LC**	• 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. • The SFO does not keep statistics on international co-operation.

7.2 Other Relevant AML/CFT Measures or Issues

940. There are no further issues to be discussed in this section.

7.3 General framework for AML/CFT system (see also section 1.1)

941. There are no further issues to be discussed in this section.

TABLES

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[36]
Legal system		
1. ML offence	LC	• 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. • The self-laundering use of proceeds is not covered. • There is not a sufficient range of offences in the designated predicate offence category of illicit arms trafficking.
2. ML offence – mental element and corporate liability	LC	• 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.
3. Confiscation and provisional measures	LC	• 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).
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	• This Recommendation if fully observed.
5. Customer due diligence	NC	• There is no requirement to undertake reasonable steps to obtain information about the ultimate beneficiaries of transactions operated by legal persons or arrangements. • There is no requirement to obtain information on the purpose and intended nature of the business relationship. • There is no requirement to identify natural persons acting on behalf of legal persons and verify their authority to act. • There is no requirement to understand the ownership and control structure of legal persons or arrangements. • There is no requirement to conduct ongoing due diligence on the business relationship. • Financial institutions are not required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • There is no requirement to verify the legal status of customers who are legal persons and arrangements. • 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.

[36] These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating[36]
		• The CDD threshold (NZD 9 999.99) for wire transfers is too high. • 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. • 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. • The authorities were not able to confirm definitely that there are no anonymous accounts that were created before the FTRA and related CDD obligations came into force (1996). • There is no requirement that CDD should be done on the basis of reliable documents from an independent source. • 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. • Financial institutions are not legally required to carry out customer due diligence on existing customers on the basis of materiality and risk. • There is no explicit requirement with respect to the actions financial institutions must take if identification cannot be completed satisfactorily. • 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.
6. Politically exposed persons	NC	• New Zealand has not implemented any AML/CFT legislative measures regarding the establishment and maintenance of customer relationships with PEPs.
7. Correspondent banking	NC	• New Zealand has not implemented any AML/CFT legislative measures concerning the establishment of cross-border correspondent banking relationships.
8. New technologies & non face-to-face business	NC	• 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.
9. Third parties and introducers	NC	• There is no requirement to obtain relevant customer identification data from the third party. • 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. • 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. • 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

Forty Recommendations	Rating	Summary of factors underlying rating[36]
		R. 10. • 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.
10. Record keeping	LC	• There is no explicit requirement for institutions to retain business correspondence other than those required for the purpose of enabling reconstructions of transactions. • Effective implementation of the existing requirements could not be fully established due to the shortcomings in the supervisory structure.
11. Unusual transactions	NC	• 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. • There is no requirement for financial institutions to examine as far as possible the background and purpose of all unusual transactions. • 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.
12. DNFBP – R. 5, 6, 8-11	NC	• The deficiencies identified in section 3 of this report with regard to Recommendations 5, 6 and 8 to 11 apply equally to DNFBPs. • 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. • 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. • Effectiveness issue: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 12 effectively.
13. Suspicious transaction reporting	LC	• The STR obligation does not apply to a sufficiently broad range of offences in the designated predicate offence category of illicit arms trafficking. • Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial Institutions.
14. Protection & no tipping-off	LC	• 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).
15. Internal controls, compliance & audit	NC	• Financial institutions are not required to establish and maintain internal AML/CFT policies, procedures and controls, and to communicate these to their employees. • Financial institutions are not required to designate a Compliance Officer at the management level who has timely access to records. • There is no requirement to maintain an adequately resourced and independent internal audit function to test compliance. • There is no requirement to conduct ongoing employee training in

Forty Recommendations	Rating	Summary of factors underlying rating[36]
		relation to AML/CFT. • Financial institutions are not required to put screening procedures in place to ensure high standards when hiring employees.
16. DNFBP – R. 13-15 & 21	NC	• The deficiencies identified with regard to Recommendations 13 to 15, and 21; and Special Recommendation IV apply equally to DNFBPs. • DNFBPs are not obliged to have AML/CFT procedures, policies and controls in place. • DNFBPs are not required to communicate these policies and procedures to their employees. • 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. • Effectiveness issues: It has not been established that Accountable DNFBP are implementing the AML/CFT requirements relating to R. 16 effectively. Also, overall, a very low number of STRs has been submitted by DNFBPs, which puts into question the effective implementation of the reporting requirement for DNFBPs.
17. Sanctions	PC	• New Zealand has no effective, proportionate and dissuasive civil or administrative sanctions for financial institutions that breach AML/CFT requirements. • Other than for registered banks, there is no designated authority to impose civil and administrative sanctions for breaches of AML/CFT requirements. • 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.
18. Shell banks	NC	• 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. • There is no prohibition on financial institutions for entering into, or continuing, correspondent relationships with shell banks. • 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.
19. Other forms of reporting	C	• This Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	• This Recommendation is fully observed.
21. Special attention for higher risk countries	NC	• 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. • 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. • New Zealand has no legal basis to apply counter-measures.
22. Foreign branches & subsidiaries	NC	• There are no requirements to ensure that foreign branches and subsidiaries observe appropriate AML/CFT Standards.

Forty Recommendations	Rating	Summary of factors underlying rating[36]
		• 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. • There are no requirements to apply higher standards where requirements between the host and home country differ. • There is no provision that requires financial institutions to inform their home country supervisor when they are unable to observe appropriate AML/ CFT measures.
23. Regulation, supervision and monitoring	NC	• Other than registered banks, no category of FI is subject to any regulation and supervision for compliance with AML/CFT requirements. • There is no designated competent authority to ensure the compliance of FIs (other than registered banks) with AML/CFT requirements. • 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. • 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). • There are no measures in place to license or register natural and legal persons providing MVTS or foreign exchange services. • Financial institutions (other than registered banks) are not subject to registration or licensing. • 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.
24. DNFBP - regulation, supervision and monitoring	NC	• 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. • DNFBPs are not subject to adequate monitoring to ensure compliance with AML/CFT requirements. • 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.
25. Guidelines & Feedback	LC	• Guidance has not been provided for all financial institutions concerning how, in practice to identify legal persons/arrangements, beneficial owners and PEPs. • Guidance has not been provided to DNFBPS concerning how, in practice to identify legal persons/arrangements, beneficial owners and PEPs • 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.
Institutional and other measures		
26. The FIU	LC	• There is no legal provision that authorises the FIU to obtain additional information from reporting parties when needed to properly undertake its functions. • 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.
27. Law enforcement authorities	C	• This Recommendation is fully observed.

Forty Recommendations	Rating	Summary of factors underlying rating[36]
28. Powers of competent authorities	C	• This Recommendation is fully observed.
29. Supervisors	NC	• 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. • 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. • Other than the Reserve Bank, there are no supervisors with any powers to compel the production of records or to gain access to financial institution records for the purpose of supervising compliance with AML/CFT requirements, and the Reserve Bank's powers to do so (in relation to registered banks) are very limited and is predicated on first obtaining a court order. • 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.
30. Resources, integrity and training	PC	• The FIU is in need of further resources to address the backlog, particularly of BCRs, waiting to be input into the FIU's system. • 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. • 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. • 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.
31. National co-operation	C	• This Recommendation is fully observed.
32. Statistics	LC	• 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. • The SFO does not keep statistics on international co-operation.
33. Legal persons – beneficial owners	PC	• 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: - the Companies Register does not contain such information; - companies are not required to maintain such information; and - company service providers are not required to collect such information.
34. Legal arrangements – beneficial owners	NC	• There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of trusts.
International Co-operation		
35. Conventions	LC	• *Vienna and Palermo Convention*: 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. • *FT Convention*: 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).

Forty Recommendations	Rating	Summary of factors underlying rating[36]
36. Mutual legal assistance (MLA)	LC	• 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.
37. Dual criminality	C	• This Recommendation is fully observed
38. MLA on confiscation and freezing	LC	• 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.
39. Extradition	LC	• 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).
40. Other forms of co-operation	LC	• Effectiveness issue: the ability of the Reserve Bank to exchange information for AML/CFT purposes is not yet tested

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR. I - Implement UN instruments	LC	• *FT Convention*: 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).
SR. II - Criminalise terrorist financing	C	• This Recommendation if fully observed.
SR. III - Freeze and confiscate terrorist assets	PC	• 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. • The communication of designations, particularly to the DNFBP, money remitters and securities sectors, is not satisfactorily organised. • Insufficient practical guidance is given, particularly to DNFBPs and financial institutions, other than banks, on how to effectively implement the freezing obligations. • 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.
SR. IV - Suspicious transaction reporting	LC	• Effectiveness issue: The circumstances in which to report FT-related STRs are not fully understood by financial institutions.
SR. V - International co-operation	LC	• 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 terrorist financing from countries who do not meet the high threshold penalty for the underlying offence. • 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). • R. 40: Effectiveness issue: The ability of the Reserve bank to exchange information for AML/CFT purposes is not yet tested.
SR. VI - AML requirements for money/value transfer services	NC	• There is no designated authority to register or license MVTS providers or maintain a current list of them. • There is no system in place to monitor MVTS providers and ensure their compliance with the FATF Recommendations. • 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

Nine Special Recommendations	Rating	Summary of factors underlying rating
		requirements. • MVTS providers are not required to maintain a list of their agents and make that list available to the competent authorities. • The authorities have not taken sufficient action to identify informal remittance channels and make these operators subject to AML/CFT requirements. • 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).
SR. VII - Wire transfer rules	NC	• There is no general legal requirement for all wire transfers to be accompanied by full originator information. • There are no obligations on intermediary FIs in the payment chain to maintain all of the required originator information with the accompanying wire transfer. • 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. • The threshold for obtaining and maintaining full originator information in the case of occasional wire transfers is too high.
SR. VIII - Non-profit organisations	PC	• No review of the NPO sector to identify FT risk and vulnerabilities. • No outreach on FT vulnerabilities. • Limited information on controlling minds behind NPOs. • Limited monitoring by the Companies Office or Charities Commission. • Record keeping obligations are not comprehensive.
SR. IX - Cross Border Declaration & Disclosure	PC	• The declaration system does not apply to bearer negotiable instruments, unaccompanied cash/BNI, and cash/BNI sent via mail or in containerised cargo. • The Customs do not have the authority to request and obtain further information regarding cash and BNI upon discovery of a false declaration. • The Customs are not able to stop or restrain currency or BNI solely for non-disclosure or on the basis of a false declaration. • The fines applicable for false or non-declaration are too low to be considered dissuasive. • 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.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT system	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional	
2.1 Criminalisation of Money laundering Measures (R. 1 & R. 2)	• The legislation should be amended to ensure that proof of an additional purposive element (the intent to conceal) is not required in relation to concealment/disguise activity that is unrelated to conversion; and the sole acquisition, possession and use of indirect proceeds by third party money launderers. • The legislation should be amended to cover the self-laundering of proceeds. • The legislation should be amended to provide a sufficient range of offences in the designated predicate offence category of illicit arms trafficking • New Zealand should review its range of sanctions for legal persons keeping in mind that they need to be effective, proportionate and dissuasive.
2.2 Criminalisation of Terrorist Financing (SR. II)	• There are no recommendations for this Section.
2.3 Confiscation, freezing and seizing of proceeds of crime (R. 3)	• New Zealand should amend its legislation to ensure that its seizure and confiscation regime applies to a sufficient range of offences in the designated predicate offences–category of illicit arms trafficking.
2.4 Freezing of funds used for terrorist financing (SR. III)	• New Zealand should introduce an effective supervisory system for both the financial and the DNFBP sectors to ensure monitoring of compliance by the private sector with the obligations to freeze terrorist property. • New Zealand should effectively organise its system to notify all reporting entities, especially the non-financial sector, of terrorist designations and bring it in line with the one currently in force for the financial institutions and insurance sectors. • New Zealand should complement the guidance document for the reporting entities by elaborating on the freezing measures and other related issues to ensure that it constitutes a practical support for the entities involved.
2.5 The Financial Intelligence unit and its functions (R. 26)	• The FIU should be legally authorised to obtain from reporting parties additional information needed to properly undertake its functions. Currently, the FIU is only authorised to request additional information, but the reporting institutions are not legally required to provide it. • The authorities should ensure that the FIU has sufficient resources to address the backlog, particularly of BCRs, which is awaiting to be input into the FIU's systems. Going forward, the authorities should also ensure that the FIU continues to have sufficient staff allocated to it so as to ensure that it can effectively deal with the ever-increasing numbers of reports that it receives.
2.6 Law enforcement, prosecution and other competent authorities (R. 27 & 28)	• There are no recommendations for this Section.
2.7 Cross Border Declaration & Disclosure	• New Zealand should extend the declaration obligation to include BNI, unaccompanied cash/BNI, and cash/BNI sent through mail or containerised cargo, and further develop its AML/CFT enforcement capability to be used for the detection of cross border movement of cash/BNI accordingly. • Customs officers should be legally authorised to request and obtain further information from the person carrying cash and BNI in absence of a declaration or upon discovery of a false declaration. • Customs officers should be authorised to restrain cash or BNI solely on the basis of a false disclosure or non-disclosure. New Zealand should amend its legislation in this regard in order to address this shortcoming. • Sanctions for non-compliance with the BCR reporting requirements should be effective, appropriate and dissuasive. • The detection of non-compliance with the BCR reporting obligation is very

AML/CFT system	Recommended Action (listed in order of priority)
	low, and the Customs has never used their powers of seizure and restraint in the ML/FT context. Therefore, Customs need to review the functioning of its systems with a view to better capturing instances of non-compliance with the BCR reporting requirements.
3. Preventive measures – Financial institutions	
3.1 Risk of money laundering or terrorist financing	• There are no recommendations for this Section.
3.2 Customer due diligence, including enhanced or reduced measures (R. 5 to 8)	• New Zealand should require financial institutions to have measures in place to identify the beneficial owner and to understand the ownership and control structure of the customer. Moreover, financial institutions should be required to obtain information on the purpose and intended nature of the business relationship with a view to determining who are the natural persons that ultimately own or control the customer. New Zealand should also extend the situations in which the identification of person(s) acting on behalf of another person is required and not limit them to cash transactions, as it is currently the case. • New Zealand should require financial institutions to identify and to verify that natural persons acting on behalf of legal persons and purporting to act on behalf of the customer is authorised to do so, in addition to normal identification procedures. Moreover, financial institutions should also be required to verify the status of a legal person or arrangement, including the provisions regarding the power to bind the legal person or arrangement. • New Zealand should require financial institutions to conduct ongoing due diligence on the business relationship, including existing customers, 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. • New Zealand should amend its current legislation to ensure that financial institutions are required to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • New Zealand should require financial institutions to identify all facility holders (not just the principal facility holder) when there are three or more facility holders. New Zealand should also require financial institutions to conduct CDD in the following circumstances: a) when carrying out occasional transactions that are wire transfers below the NZD 9 999.99 threshold; and b) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. • In order to ensure that anonymous accounts or accounts in fictitious names do not still exist in New Zealand, financial institutions should be legally required to apply CDD measures on existing customers on the basis of materiality and risk and, in particular, for customer relationships established prior to 1996. • New Zealand should amend its legislation (law/regulation) to clarify the verification requirements to ensure that the documents or information being used are reliable and from an independent source. • New Zealand should ensure that its legislation reflects only those circumstances for the verification of the customer's identity following the establishment of the business relationship that are consistent with the FATF Recommendations, which require that the ML risks are effectively managed and that it is essential not to interrupt the normal course of business. • In cases where the verification of the identity cannot be completed satisfactorily, financial institutions should be required not to open accounts, commence business relationships or perform transactions; and to consider making a suspicious transaction report. • New Zealand should take measures to ensure that all financial institutions in the financial sector are implementing the CDD requirements effectively. As well, New Zealand should ensure that the implementation of Recommendation 5 is not undermined by allowing financial institutions to

AML/CFT system	Recommended Action (listed in order of priority)
	verify the identity of customers without reference to photo ID. New Zealand should require its 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. • New Zealand should establish specific enforceable requirements for financial institutions to perform enhanced CDD measures in relation to cross-border correspondent banking and other similar relationship, as outlined in Recommendation 7. • New Zealand should amend its legislation to implement Recommendation 8, particularly requiring policies to prevent misuse of technology for ML or TF and to address any specific risk associated with non-face-to-face business relationships or transactions.
3.3 Third parties and introduced business (R. 9)	• The FTRA allows for the use of third parties or introduced businesses in some specific circumstances. Financial institutions should be obliged to obtain actual customer due diligence information and verification documents from other financial institutions they are relying on. • New Zealand should ensure that financial institutions 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. • The legislation should have a specific provision that stipulates that the ultimate responsibility for customer identification and verification will remain with the financial institution relying on the third party. • New Zealand should review the situations where a financial institution can rely on another financial institution for identification purposes and ensure that common standards with regard to customer identification are applied amongst all sectors concerned. Moreover, financial institutions should be required 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 Recommendations 5 and 10. • The competent authorities should take into account information available on whether countries in which third parties can be based adequately apply the FATF Recommendations.
3.4 Financial institution secrecy or confidentiality (R. 4)	• There are no recommendations for this Section.
3.5 Record keeping and wire transfer rules (R. 10 & SR. VII)	• New Zealand should require financial institutions to retain all business correspondence relating to an account and ensure that all requirements regarding R. 10 are implemented effectively. • Financial institutions should be required to include full originator information in the message or payment form accompanying the wire transfer. Intermediary and beneficiary financial institutions in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with it. Beneficiary financial institutions should be required to adopt risk-based procedures, consistent with SR VII, for identifying and handling wire transfers that are not accompanied by complete originator information. Corresponding measures to monitor for compliance with these requirements and impose sanctions in cases of non-compliance should be established. Financial institutions should be legally required to obtain and maintain full originator information in relation to occasional wire transfers that exceed the EUR/USD 1 000 threshold.
3.6 Monitoring of transactions and relationship (R. 11 & 21)	• New Zealand should 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. Financial institutions should be required to examine as far as possible the background and purpose of such transactions and set forth their findings in writing. Such findings should be kept for at least five years in such a way that they are easily accessible by the competent authorities.

AML/CFT system	Recommended Action (listed in order of priority)
	• New Zealand should legally require 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. Financial institutions should also be required to examine as far as possible the background and purpose of business relationships and transactions with persons from or in those countries, to set forth the findings of such examinations in writing and to keep these findings available for competent authorities and auditors for at least five years. New Zealand should also broaden its legal framework to be able to apply appropriate counter-measures.
3.7 Suspicious transaction reports and other reporting (R. 13-14, 19, 25 & SR. IV)	• The reporting obligation should be extended to cover transactions that are suspected of relating to a broader range of offences in the designated predicate offence category of illicit arms trafficking. • New Zealand should take steps to improve the effectiveness of its reporting system by clarifying the legal requirement to report STRs related to terrorist financing. Such measures could include further elaborating relevant guidance and/or reformulating the wording of the obligations in the legislation to make them clearer. New Zealand should also conduct outreach as needed, with a view to improving implementation of the reporting obligation across all sectors. • Further guidance should be issued containing some concrete examples of the kind of financial transactions financial institutions should consider to be related to FT, outside of the context of designated/listed entities. Such examples are, for instance, published by the FATF, the Egmont Group, and some other FIUs. Further guidance should also be issued with a view to improving the rates of reporting in the non-bank financial sectors.
3.8 Internal controls, compliance, audit and foreign branches (R. 15 & 22)	• Financial institutions should be required to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. This requirement should extend to developing compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level who has timely access to all records and information. • Financial institutions also should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. Moreover, financial institutions should be required to establish ongoing employee training to ensure that employees are well equipped to take AML/CFT measures. In addition, a clear requirement should be created for employees' screening procedures to ensure high standards. • The New Zealand authorities should create legal provisions that require financial institutions to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local laws and regulations permit. Financial institutions should be required to ensure that they pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. Where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that the host country's laws and regulations permit. Finally, financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to prohibition under host country's laws, regulations or other measures.
3.9 Shell banks (R. 18)	• Registration/licensing requirements should be introduced for non bank deposit takers, so that shell financial institutions cannot be established or continue operations in New Zealand. • Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks. • New Zealand authorities should require financial institutions to satisfy themselves that their respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

AML/CFT system	Recommended Action (listed in order of priority)
3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 & 25)	• New Zealand should introduce effective, proportionate and dissuasive civil or administrative sanctions for financial institutions for failure to comply with AML/CFT requirements. New Zealand should designate one or more authorities to apply these sanctions depending on the nature of the requirement. A broad range of sanctions, including disciplinary and financial sanctions, should be provided for financial institutions as well as their directors and senior management to allow for sanctions that are appropriate for the severity of the situation. The Reserve Bank should ensure that it applies administrative sanctions, in appropriate cases, to deal with breaches of AML/CFT requirements. Finally, New Zealand should demonstrate effective implementation of sanctions across all financial institutions. • All financial institutions should be regulated and supervised for AML/CFT purposes to ensure compliance with FATF Recommendations. For the following types of financial institutions (which are currently unregulated for AML/CFT purposes), New Zealand has designated competent authorities who will, once new AML legislation comes into effect, have responsibility for ensuring that 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, MVTS providers and foreign exchange dealers. • Licensing requirements should be introduced in the insurance and securities sector. Comprehensive 'fit and proper' criteria should be introduced in the insurance sector and in relation to securities sector participants who are not members of the NZX. Measures to prevent criminals from holding positions in FIs should be strengthened by way of legislative and administrative controls. • In the insurance and securities sectors, AML/CFT measures should be integrated into prudential supervision and be applied in the same manner as for prudential purposes with regard to FIs subject to core principles. In the New Zealand context, this would first require extending prudential supervision to these sectors. Work on a prudential supervision framework for the insurance sector is currently underway. • Natural and legal persons who are MVTS providers or foreign exchange dealers should be licensed or registered and closely monitored for AML/CFT compliance. • Financial institutions should be provided additional specific guidance on all relevant matters in which difficulties are being experienced. The scope of the guidelines should be enlarged to cover more broadly the identification of legal persons/arrangements, beneficial owners and PEPs. Sector-specific guidelines should be provided preferably through regulatory/supervisory bodies on regular basis. • New Zealand should ensure that all supervisory bodies have the necessary powers to monitor and ensure the compliance of financial institutions with AML/CFT requirements. This includes the power to conduct inspections. Supervisory bodies should also be given the power to compel production of or obtain access to all records, documents or information relevant to monitoring compliance. Such powers should not be predicated on the need to first obtain a court order. • Supervisory bodies should be given adequate powers to enforce and impose sanctions against financial institutions and their management for failure to comply with AML/CFT requirements, consistent with the FATF Recommendations. The Reserve Bank should focus on exercising its powers of supervision in the AML/CFT context, including through the use of on-site inspections and sample testing.
3.11 Money value transfer services (SR. VI)	• New Zealand should designate a competent authority or authorities to register and license MVTS providers (both natural and legal persons), monitor compliance with the registration and licensing requirements, maintain a list of current MVTS providers and ensure compliance with the FATF Recommendations. • New Zealand should provide for effective, proportionate and dissuasive

AML/CFT system	Recommended Action (listed in order of priority)
	civil or administrative sanctions that apply to MVTS providers (both natural and legal persons) who fail to comply with AML/CFT requirements. • MVTS providers should be required to maintain a current list of their agents and this list should be made available to competent authorities. • The authorities should take action to identify informal remittance channels and make these operators subject to AML/CFT requirements. • New Zealand should take action to address the deficiencies identified in relation to implementation of the FATF Recommendations, as identified in sections 3.1 to 3.10 of this report, in relation to MVTS providers.
4. Preventive measures – Non-Financial Business and Professions	
4.1 Customer due diligence and record-keeping (R. 12)	• The circumstances in which lawyers and accountants are subject to the FTRA requirements should be broadened to also cover situations when they are preparing for or carrying out any transaction (not just receiving) for a client concerning: the buying and selling of real estate; managing client money, securities or other assets; the management of bank, savings or securities accounts; the organisation of contributions for the creation, operation or management of companies; the creation, operation or management of legal persons or arrangements; and buying and selling of business entities. • The FTRA requirements should also broadened for real estate agents to cover the situations in which they are involved in transactions for a client for the buying and selling of real estate. Moreover, real estate agents should identify all parties to the real estate transaction, including the buyer in cases they operate on behalf of the owner. • New Zealand law should extend AML/CFT obligations to all DNFBPs. In particular, dealers in precious metals and stones, company service providers and all trust service providers should be brought within the scope of the FTRA.
4.2 Suspicious transaction reporting (R. 16)	• The recommendations made in relation to Recommendations 13 to 15 and 21, and Special Recommendation IV, as detailed in section 3 above, are equally important to remedy the deficiencies identified in relation to DNFBPs. New Zealand should also ensure that these requirements are being implemented effectively in the DNFBP sectors. • Accountable DNFBP should be required to establish and maintain AML/CFT procedures, policies and controls and should communicate these to their employees. Screening procedures to ensure high standards when hiring employees should be introduced in the non-casino DNFBP sectors. • 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. Lawyers should be encouraged to take a pro-active approach with regard to the reporting of suspicious transactions instead of taking the current position of reliance on the banking sector for the detection of suspicious transactions.
4.3 Regulation, supervision and monitoring (R. 24-25)	• A regulatory and supervisory regime should be created for casinos and other DNFBPs to ensure their compliance with the AML/CFT requirements. New Zealand should also designate competent authorities for all DNFBPS which should be responsible for introducing and maintaining a sound AML/CFT regulatory and supervisory regime. These designated authorities should also be provided with adequate powers and resources to perform their functions, including powers to monitor and sanction in relation to the AML/CFT requirements. New Zealand should provide for effective, proportionate and dissuasive administrative and civil sanctions for both natural and legal persons to ensure compliance of DNFBPs with AML/CFT requirements. • Additional guidance should be provided to DNFBPs in relation to requirements for which compliance has been found to be poor. In that

AML/CFT system	Recommended Action (listed in order of priority)
	regard, the scope of the current FI Guidance should be enlarged in relation to beneficial ownership, verification of PEPs, transaction monitoring and reporting of suspicious transactions.
4.4 Other non-financial businesses and professions (R. 20)	• New Zealand has applied AML/CFT requirements to race and sports betting conducted via the NZRB (FTRA, s. 3). New Zealand should also consider designating a competent authority to ensure that the NZRB complies with these requirements. • New Zealand should continue its ongoing work to move more financial transactions towards secure payment systems.
5. Legal Persons and Arrangements & Non-profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R. 33)	• New Zealand should broaden its requirements to ensure that information on the beneficial ownership and control of legal persons is readily available to the competent authorities in a timely manner. Such measures could include a combination of, for example, restricting the use of nominee directors and shareholders, requiring overseas companies to maintain a share register in New Zealand, requiring legal persons to maintain full information on their beneficial ownership and control, requiring such information to be filed in the Companies Registry, or requiring company service providers to obtain and maintain beneficial ownership information. Such information would then be available to the law enforcement and regulatory/supervisory agencies upon the proper exercise of their existing powers.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R. 34)	• New Zealand should develop requirements to ensure that information on the beneficial ownership and control of trusts is readily available to the competent authorities in a timely manner. Such measures could include, for example, requiring trustees to maintain full information on the trust's beneficial ownership and control, requiring the location of such information to be disclosed, or requiring trust service providers to obtain and maintain beneficial ownership information. Such information would then be available to the law enforcement and regulatory/supervisory agencies upon the proper exercise of their existing powers.
5.3 Non-profit organisations (SR. VIII)	In moving forward, New Zealand should implement the following recommendations: • Undertake a review of the information contained in the Charities Register to identify features and types of charities that are at risk of being misused for terrorist financing, including identifying charities which account for a significant portion of the financial resources of the NPO sector and a substantial share of the sector's international activities. • Undertake outreach to NPOs to raise awareness in the sector of the risks of terrorist abuse and vulnerabilities. • Amend the Charities Commission's registration form to include a clear requirement for an applicant for registration to obtain information of the identity of person(s) who own, control or direct the activities, irrespective whether the person(s) are officers or not of the entity. • Finalise the monitoring framework as soon as possible and commence a risk based monitoring program, consistent with SR VIII. • Implement more comprehensive record keeping obligations with regard to NPOs. • Continue its international engagement with foreign charity regulators.
6. National and International Co-operation	
6.1 National co-operation and coordination (R. 31)	• There are no recommendations for this Section.
6.2 The Conventions and UN special Resolutions (R. 35 & SR. I)	• New Zealand has ratified and substantially implemented the relevant sections of the Vienna, Palermo and FT Conventions. However, New Zealand should review its money laundering offences to ensure that all conduct specified by the Vienna and Palermo Conventions is covered. Furthermore, the purposive elements should be removed to be fully in line

AML/CFT system	Recommended Action (listed in order of priority)
	with the Vienna and Palermo Conventions. New Zealand should also implement requirements to identify beneficial owners.
6.3 Mutual Legal Assistance (R. 36-38 & SR. V)	• New Zealand should take corrective (legislative) action to remedy its international cooperation regime in respect of the detection and recovery of criminal assets and allow for full assistance irrespective of the threshold of the foreign penalty for the underlying offence. Such an action will positively impact on the overall effectiveness of New Zealand's international cooperation regime.
6.4 Extradition (R. 39, 37 & SR. V)	• The fact that New Zealand has not criminalised a sufficient range of offences in the designated category of illicit arms trafficking may impede extradition in this area. This obstacle should disappear with the corrective legislative action on the money laundering offence.
6.5 Other forms of co-operation (R. 40 & SR. V)	• 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.
Other issues	
7.1 Resources and statistics (R. 30 & 32)	• The authorities should ensure that the FIU has sufficient resources to address the backlog, particularly of BCRs, which is awaiting to be input into the FIU's systems. Going forward, the authorities should also ensure that the FIU continues to have sufficient staff allocated to it so as to ensure that it can effectively deal with the ever-increasing numbers of reports that it receives. • For those sectors which are currently unregulated, the competent authorities which are ultimately designated to ensure compliance with AML/CFT requirements (*e.g.* the Securities Commission, DIA, MED) should be provided with adequate funding, staff and technical resources, and AML/CFT training, for this purpose. The Reserve Bank should enhance the staff strength and capabilities of its Prudential Supervision Department to ensure more effective AML supervision of banks and (when it assumes these roles) non-bank deposit takers and insurance companies to ensure compliance with AML/CFT requirements. • New Zealand should ensure that competent authorities in the supervisory area receive sufficient AML/CFT training on the specific aspects of conducting comprehensive AML/CFT supervision, including inspections. • The NZ FIU should keep statistics on whether international requests for assistance made/or received are granted or refused, and how many spontaneous referrals the NZ FIU makes to foreign authorities. • The SFO should keep statistics on international co-operation.
7.2 Other relevant AML/CFT measures or issues	• There are no recommendations for this Section.
7.3 General framework – structural issues	• There are no recommendations for this Section.