Ministry of Business, Innovation & Employment

12 July 2012

Minister of Commerce

Overview of organised crime and the misuse of corporate structures

Executive Summary

There is evidence to show that criminals are using New Zealand registered corporate structures to launder money, traffic arms and illegal substances and commit tax fraud by masking the source of funds used to buy property, concealing true ownership of property, maintaining control of criminal proceeds and assets and obscuring the link between illegal activity and assets.

There is a risk that heightened international perceptions of weaknesses in New Zealand's regulatory regime will increase the prospect that organised criminals, including terrorists, will exploit New Zealand's financial system for criminal ends. This has negative consequences for New Zealand's economy and society including:

- negative impacts on a country's international reputation;
- increased costs of borrowing overseas for both the government and private sector, if overseas lenders perceive New Zealand as a non-compliant country with anti money laundering international standards and therefore a greater financial risk;
- difficulties for New Zealand companies in doing business overseas (in the form of increased costs or lost business opportunities) if New Zealand is down-graded internationally. New Zealand's removal from the European Union "white list" is an example of this;
- difficulties in trade negotiations at a government-to-government level as foreign governments may be reluctant to extend trading privileges to non-compliant countries;
- impacts on relations with international organisations, such as the World Bank, the International Monetary Fund, and the United Nations; and
- the possible perception that New Zealand is seen as a "soft touch" for money launderers and terrorism financers.

1. Quantifying the extent of money laundering in New Zealand is complicated but it is estimated to be approximately NZ$1.5 billion per year, not including laundered funds relating to tax evasion. Authorities and regulators face difficulties obtaining information concerning the beneficial owners and ultimate controllers of companies and limited partnerships, as well as details of their activities.

2. Those who wish to conduct unlawful activities overseas are increasingly seeking to incorporate companies in New Zealand. They will do this:

    - in order to benefit from New Zealand's positive reputation as a well-regulated jurisdiction which will provide a veneer of legitimacy and credibility to facilitate their

unlawful conduct – however New Zealand's positive reputation is increasingly at risk due to the issues identified;

- because there is no need to have substantive links to New Zealand; and
- because it is easier and cheaper to register companies here than in other jurisdictions meaning that New Zealand companies are essentially disposable, being easily and cheaply replaceable if offending is detected or the company is struck off.

3. Action has been taken. New Zealand's anti-money laundering and countering the financing of terrorism regime (administered by the Ministry of Justice) will apply to trust and company service providers from mid-2013. A specialist Corporate Risk Profiling team has been formed within the Companies Office to monitor all new company formations, to identify those where there is a high risk that the company will be misused. The Companies and Limited Partnerships Amendment Bill is intended to bring in limited changes to the registration requirements of companies and limited partnerships and give the Registrar of Companies new powers.

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8. New Zealand has a reputation as a being one of the easiest places in the world to do businesses.

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Communications/Risks

9. There is sustained media interest in these issues, including the high profile exposés by Oxfam and Global Witness. The reporting identifies current registration processes in New Zealand that have been exploited for criminal purposes.

10. As the Companies and Limited Partnerships Bill goes through the legislative process, there is a risk that the media and submitters will say that the Bill in its current form does not address the deficiencies identified. This is true as the Bill was only intended to undertake some interim measures while further work continued. The Bill will provide additional tools for the Registrar and other enforcement agencies.

11. Withheld under s9(g)(i) of the Official Information Act 1982

Recommended Action

We recommend you:

a Withheld under s9(g)(i) of the Official Information Act 1982

b **Refer** this report for noting to the Minister of Finance, Minister of Justice, Minister of Foreign Affairs, Minister of Police, Minister of Trade and the Minister of Revenue.

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Competition, Trade & Investment

Hon Craig Foss
Minister of Commerce

Date: _____

Overview of organised crime and the misuse of corporate structures

Purpose of Report

To give you an overview of why the misuse of corporate structures is a problem in relation to organised crime, what has been done already about these issues

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The problem – the link between misuse of corporate structures and organised crime

Evidence of misuse of corporate structures in New Zealand

12. In August 2011, the Ministry of Justice published *Strengthening New Zealand's Resistance to Organised Crime: An all of Government Response*[1]. The report identifies six priority areas where legislative and operational efforts can be improved to combat organised crime. An outline of the sixteen projects being co-ordinated by the Ministry of Justice is in Annex 1. Reducing misuse of New Zealand corporate structures is one of the priority areas.

13. Criminals use corporate structures and multiple layers of corporate structures, often with the assistance of lawyers, accountants, financial service providers and trust and company service providers (TCSPs)[2] to create a confusing web which enable criminals to launder money, traffic arms and illegal substances and commit tax fraud. Corporate structures can be used by criminals to mask the source of funds used to buy property, conceal true ownership of property, maintain control of criminal proceeds and assets and obscure the link between illegal activity and assets. These layers make it exceptionally difficult for law enforcement to identify individuals and hold them to account.

14. The Financial Intelligence Unit (FIU) of the New Zealand Police identified in the *2010 National AML/CFT Risk Assessment*[3] the abuse of shell companies and the use of nominees, trusts and other third parties as having a major impact in facilitating money laundering. It was also estimated that there was a high likelihood of the increased use of third parties, thereby increasing the risk of criminal activity including corruption and tax evasion.

[1] http://www.justice.govt.nz/policy/criminal-justice/copy_of_organised-crime

[2] TCSPs act as formation agents for legal persons and legal arrangements, arrange for persons to act as nominee directors or trustee shareholders and/or provide registered offices or correspondence or administrative addresses for registered companies.

[3] http://www.justice.govt.nz/policy/criminal-justice/aml-cft/publications-and-consultation/20110308-NRA-2010-Primary-Document-FINAL.pdf

15. Quantifying the extent of money laundering in New Zealand is complicated. Every serious offence[4] committed, where proceeds of crime are generated, requires some form of money laundering in order to disguise the proceeds of crime, including tax evasion, and make those proceeds palatable for reinvestment. In the 2009 calendar year, 77,648 charges were laid for serious offences (not including tax evasion) that had the potential to be predicate offences for money laundering. It is estimated that the amount of money laundering per year would be approximately NZ$1.5 billion, not including laundered funds relating to tax evasion.

16. Withheld under s6(c) of the Official Information Act 1982

. The Reserve Bank has identified around 1,000 New Zealand corporate structures potentially involved in financial frauds in overseas jurisdictions.

17. Recent high profile cases have highlighted both the methods employed by these criminals and certain issues with New Zealand's company and limited partnership registration regime. In August 2010, Cabinet noted that there was a risk that New Zealand could become a jurisdiction of choice for criminal interests that wish to incorporate a company in a reputable jurisdiction, with the potential for harm to New Zealand's international reputation as a result. Currently, abuse is happening and the potential impact on New Zealand's communities, financial markets and reputation is becoming higher.

18. It appears that those who wish to conduct unlawful activities overseas are increasingly seeking to incorporate companies in New Zealand. They will do this:

- in order to benefit from New Zealand's positive reputation as a well-regulated jurisdiction which will provide a veneer of legitimacy and credibility to facilitate their unlawful conduct – however New Zealand's positive reputation is increasingly at risk due to the issues identified;
- because there is no need to have substantive links to New Zealand; and
- because it is easier and cheaper to register companies here than in other jurisdictions meaning that New Zealand companies are essentially disposable, being easily and cheaply replaceable if offending is detected or the company is struck off.

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Withheld under s6(c) of the Official Information Act 1982

[4] A serious offence is defined in the Crimes Act 1961 as an offence punishable by five years or more.

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Withheld under s6(c) of the Official Information Act 1982

21. . Authorities and regulators face difficulties obtaining information concerning the beneficial owners and ultimate controllers of companies and limited partnerships, as well as details of their activities.

International obligations

22. The Financial Action Task Force (FATF), Established by the G7 in 1989, exists to protect the international financial system from misuse and to mobilise action against criminals and their assets. New Zealand, together with other nations, including Australia, Canada, the United Kingdom and the United States, are members of the FATF[7]. The International Monetary Fund and the World Bank, in addition to many other non-governmental bodies, work co-operatively with the FATF.

23. FATF has Forty Recommendations on money laundering and terrorist financing as well as a number of Interpretative Notes and Guidelines that set out the standards of best practice. The standards are designed to assist individual States and other jurisdictions to identify and combat money laundering and terrorist financing through domestic implementation of those standards. The Recommendations specifically include standards relating to the regulation of legal persons[8].

24. While not legally binding on member countries, there is widespread acceptance of the FATF Recommendations as a robust standard of AML/CFT measures and there is a strong impetus for compliance with the Recommendations. The UN Security Council has strongly urged UN member states to comply with FATF standards (Security Council Resolution No. 1617, 29 July 2005). Implementing the FATF recommendations also enables New Zealand to demonstrate its compliance with the UN Convention Against Trans-national Organized Crime (ratified in 2002) and the International Convention for the Suppression of the Financing of Terrorism (to which New Zealand is a State Party).

25. The FATF assesses member nations for compliance against the FATF Recommendations. New Zealand was last assessed in 2009 and is currently non-compliant with several FATF recommendations. Many of these will be addressed when the AML/CFT legislation comes fully into force in July 2013. The other compliance gap is in the transparency of legal persons, in particular Recommendations 24 and 25 (see Annex 3). The next follow up assessment will be in October 2013.

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6 Withheld under s6(c) of the Official Information Act 1982

[7] Membership includes 34 jurisdictions and the European Commission and the Gulf Cooperation Council. Observers include the OECD, the Basel Committee on Banking Supervision, the United Nations (UN) Office on Drugs and Crime (UNODC), International Monetary Fund and World Bank.

[8] Note the FATF terminology refers to companies, limited partnerships and other corporate structures as "legal persons".

Effect on New Zealand's reputation

26. There has been sustained domestic media interest since the SP Trading case[9]. The main source of international media interest is the high profile exposés from NGOs. New Zealand has been specifically mentioned in an October 2010 report by Oxfam[10] and the June 2012 report by Global Witness[11]. These reports identify current registration processes in New Zealand that have been exploited for criminal purposes.

27. Major publications such as the New York Times and Wall Street Journal also covered the SP Trading case. Media interest is picked up by World Check[12], a private intelligence company that identifies risks for financial institutions and picked up by other programmes such as the Organized Crime and Corruption Reporting Project[13]. This is a full-time investigative reporting organization that specializes in organized crime and corruption. Both have articles about New Zealand company registration systems on their websites.

28. As the Companies and Limited Partnerships Bill (the Bill) goes through the legislative process, there is a risk that the media and submitters will say that the Bill in its current form does not address all the deficiencies identified either by the FATF or by the NGOs. This is true as the Bill was only intended to undertake some interim measures while further work continued.

29. Conversely, other commentators believe that more regulation is not the answer and there should instead be more resources devoted to enforcement. The Bill will in fact provide some additional tools for the Registrar and other enforcement agencies.

30. There is a risk that heightened international perceptions of weaknesses in New Zealand's regulatory regime will increase the prospect that organised criminals, including terrorists, will exploit New Zealand's financial system for criminal ends. This has negative consequences for New Zealand's economy and society including:

- negative impacts on a country's international reputation;
- increased costs of borrowing overseas for both the government and private sector, if overseas lenders perceive New Zealand as a non-compliant country with anti money laundering international standards and therefore a greater financial risk;
- difficulties for New Zealand companies in doing business overseas (in the form of increased costs or lost business opportunities) if New Zealand is down-graded internationally. New Zealand's removal from the European Union "white list" is an example of this;
- difficulties in trade negotiations at a government-to-government level as foreign governments may be reluctant to extend trading privileges to non-compliant countries;

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[9] On 11 December 2009 a 35 ton cache of conventional weapons left North Korea in a chartered plane bound for Iran. The following day the arms were intercepted and seized by authorities in Thailand. It was discovered that the plane was leased by a New Zealand registered shell company – SP Trading Ltd. UN Security Council sanctions prohibit trading in arms with North Korea. The sole director, Lu Zhang, was a New Zealand based nominee director who had signed a power of attorney handing over authority to two Ukrainian individuals. She pleaded guilty on 4 November 2010 to 74 charges of making false statements and was convicted and discharged. These charges were technical and not related to the arms dealing.

[10] Brokers without Borders http://www.oxfam.org/en/policy/brokers-without-borders

[11] Grave Secrecy http://www.globalwitness.org/library/grave-secrecy

[12] http://www.world-check.com/insights/search/zealand

[13] http://www.reportingproject.net/occrp/index.php

- impacts on relations with international organisations, such as the World Bank, the International Monetary Fund, and the United Nations; and
- the possible perception that New Zealand is seen as a "soft touch" for money launderers and terrorism financers.

31. The risks identified will be compounded as the perception that New Zealand is a soft touch leads to more criminal activity occurring through New Zealand registered corporates. The increased activity crystalizes the risks identified and could lead to New Zealand losing its status as a reputational place to do business and potentially being removed from other international "lists" of reputable/compliant countries.

32. These reputational effects need to be balanced against the potentially negative effects on New Zealand's reputation as one of the easiest places in the world to do businesses. This will be a risk if registration requirements are made more difficult or costly for New Zealand companies, including those with foreign ownership, which are legitimately carrying on business.

What has been done – responses and responsibilities

AML/CFT and organised crime (Justice Portfolio)

33. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 seeks to detect and deter money laundering and terrorism financing, to contribute to public confidence in New Zealand's financial system, and to bring New Zealand into line with the international standards for AML/CFT frameworks, as set out by the recommendations of the Financial Action Task Force. The key provisions of this Act, the institutional arrangements and costs are set out in Annex 4.

34. The Act provides:

- a set of requirements for financial institutions and casinos ("reporting entities") including customer due diligence, account monitoring and suspicious transaction reporting;
- a risk-based framework to detect and deter money laundering and terrorist financing;
- a regime for supervision, monitoring and enforcement of AML/CFT obligations involving three supervisors; and
- an enforcement regime, including new civil and criminal offences.

35. Parts of the law that establish definitions, provide for the supervisory regime and govern the cross border transportation of cash are already in force. Remaining provisions will come into force on 30 June 2013.

36. Under the AML/CFT legislation New Zealand TCSPs will be regulated from mid-2013. They will be required to conduct due diligence on their clients including "shell companies" by verifying the identity of those individuals that ultimately control their customers, and establishing the source of their clients' funds if they open a bank account for them in New Zealand and operate that bank account on their clients behalf.

Enforcement (Police and Commerce Portfolios)

37. Withheld under s6(c) of the Official Information Act 1982 . TCSPs will register multiple companies and limited partnerships where the sole director and sole shareholder are overseas[14], are usually nominees and are usually associated with multiple other companies. These "shell companies" do not actually do any business in New Zealand or have any assets.

38. The formation of a specialist Corporate Risk Profiling team within the Companies Office monitors all new registrations to identify those where there is a high risk of misuse. The Corporate Risk profiling team identifies risk companies and limited partnerships and requires them to verify the identity of the directors, shareholders and/or partners of the company and prove the residential addresses of the individuals.

39. So far, the team has successfully removed approximately 2,600 companies associated with GT Group and the address, 69 Ridge Rd (where another TCSP, Company Net, operates). This includes the companies identified in the Global Witness report that we briefed you on at the end of June.

The Companies and Limited Partnerships Bill (Commerce Portfolio)

40. In 2010 Cabinet agreed to a limited number of changes to the Companies Act 1993 and the Limited Partnerships Act 2008 aimed at strengthening the New Zealand company registration regime [CAB Min (10) 27/7 refers].

41. The Bill arose in response to the SP Trading Ltd case which has drawn concern from the UN Security Council and received widespread international media coverage that outlined perceptions of New Zealand's weak company registration governance, and poor compliance with FATF Recommendations.

42. New Zealand's company registration regime is low-cost and straightforward by comparison to other jurisdictions. The incorporation process is highly electronic, can be entirely completed online, and does not require directors to be present in, or resident of, New Zealand. The registration requirements of the Companies Act 1993 and the Limited Partnerships Act 2008 impose no additional entry criteria for corporate structures which register in New Zealand but which are controlled by offshore interests, including those who do not carry on business in New Zealand.

43. In addition, the application fee for incorporation is low by international standards, and New Zealand is unique in not imposing an on-going annual licensing fee (although this will change from 1 August 2012 when an annual fee is re-introduced). New Zealand is currently first on the World Bank "Starting a Business" ranking and has been for some years[15].

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[14] Note though that SP Trading did have a resident director.
[15] Australia is 2nd, Canada 3rd, Singapore 4th.

44. The simplicity of the regime is a contributor to New Zealand's enviable reputation for ease of doing business. New Zealand is currently ranked third out of 183 economies[16] by the World Bank. Coupled with its reputation as a well-regulated jurisdiction, 'ease of doing business' provides an advantage that helps underpin New Zealand's ability to attract and retain internationally-mobile business investment.

45. This reflects an underlying principle of the Companies Act 1993 to reaffirm the value of the company as a means of achieving economic and social benefits through the aggregation of capital for productive purposes, the spreading of economic risk, and the taking of business risks. Similarly, the Limited Partnerships Act 2008 emphasises the option of a flexible and internationally recognised business structure. Both Acts provide basic and adaptable requirements for the incorporation, organisation, and operation of those corporate structures.

46. However, companies and limited partnerships registered and either not active in New Zealand or used wholly offshore could undermine these values. The Bill goes some way towards addressing the vulnerabilities of the New Zealand registration system by putting in place additional registration and maintenance requirements.

47. These measures, in particular the option of a resident agent, were recognised at the time as being limited in nature. Police's and other agencies strong preference was, and still is, to require a resident director in line with other countries (including Australia, Singapore and Canada). This would ensure that there is a person to hold criminally liable for the company's actions. The difficulty is finding a balance between substantive barriers for the criminal but retaining ease of doing business for the vast majority of companies who are not fronts for organised crime.

48. The Bill will put in place the following measures:

- each registered company and limited partnership must have a New Zealand-resident director or a resident agent to respond to requests from regulatory, investigatory and law enforcement agencies;
- the Registrar can publish notes of warning on the companies register if it has concerns about the bona fides of a company;
- a company may be removed from the register if it fails to assist the Registrar, or there is substantial or persistent failure to comply with the Companies Act 1993 or the Financial Reporting Act 1993 (with similar provisions applying to limited partnerships); and
- the Registrar can prohibit persons from acting as company directors or resident agents where companies for which they are responsible have been removed from the register through the exercise of the new removal powers.

49. These amendments will impose no costs on New Zealand based companies and limited partnerships which will already have resident directors or partners as a matter of course. A small number of overseas companies will face a new barrier to operating in New Zealand by virtue of the requirement to appoint a New Zealand resident director or local agent.

[16] Australia is 15th, Canada 13th, Singapore 1st.

50. The Bill proposes exempting companies and limited partnerships that have at least one director resident in an approved overseas jurisdiction which has entered into information sharing arrangements with New Zealand from the requirement to appoint a New Zealand resident director or local agent. This would include Australia in the first instance and most probably Singapore and Canada added next[17]. This means the requirement will fall on approximately two per cent of companies currently registered in New Zealand that do not already have either a resident director in New Zealand or in an enforcement country[18].

51. The costs for these companies will be in recruitment and remuneration of the agent or director. The simplest option is for these companies to appoint an agent. The qualification requirements are less (due to the lower liability) and the remuneration should also be quite low. This was estimated at between $500 and $2,000 per annum in 2010. The costs of a resident director are set out in the table below.

What more could be done?

52. The Bill does not purport to give the Registrar and other authorities' access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons (FATF Recommendation 24).

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Tier One- Current provisions in the Bill	Source	Potential costs to business
Each registered company and limited partnership must have a New Zealand-resident director or a resident agent to respond to requests from regulatory, investigatory and law enforcement agencies;	In Bill	Costs for international businesses from a non-exempted jurisdiction to pay fees to a resident agent. Costs estimated to be between $500 and $2000 p.a.
The Registrar can publish notes of warning on the companies register if it has concerns about the bona fides of a company.	In Bill	Cost of lost business opportunities and legal advice to address concerns raised.
A company may be removed from the register if it fails to assist the Registrar, or	In Bill	Cost of lost business opportunities and legal

[17] All of these jurisdictions currently have more registration requirements in place designed to facilitate transparency than found in New Zealand.

[18] This is based on Companies Office data where 88,183 companies have been registered since 26 June 2010. 3,516 of these companies do not have at least one director with a physical address in New Zealand but 1672 of those have at least one director with an Australian, Singaporean or Canadian physical address. This means the requirements would apply to 1844 of those companies or two per cent of the total companies registered since 26 June 2010. Extrapolating this across the 550,000 companies currently registered means 5,000 companies will need to appoint a resident director or agent.

there is substantial or persistent failure to comply with the Companies Act 1993 or the Financial Reporting Act 1993 (with similar provisions applying to limited partnerships).		advice to address concerns raised.
The Registrar can prohibit persons from acting as company directors or resident agents where companies for which they are responsible have been removed from the register through the exercise of the new removal powers.	In Bill	Cost to individuals of lost business opportunities.

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59.

Consultation

60. We have been able to undertake limited consultation with the Ministry of Justice, the New Zealand Police, the Ministry of Foreign Affairs and Trade and the FIU in the drafting of this report. Further consultation on these issues will need to include the Treasury, Reserve Bank of New Zealand, the Inland Revenue Department and the Serious Fraud Office.

ANNEX 1

An outline of the sixteen projects being co-ordinated by the Ministry of Justice

	Project description	Lead Agency
1	More certain, efficient and extensive domestic and international information sharing	Ministry of Justice
2	More efficient and cost effective arrangements for financial crime investigations	Police
3	Increased access by other agencies to Police FIU financial transaction report data	Police
4	More efficient and broader mutual legal assistance	Ministry of Justice
5	Reduce misuse of New Zealand legal arrangements/ legal person transparency	Ministry of Business, Innovation and Employment
6	Enhance investigative and enforcement capability against cybercrime	Ministry of Justice
7	Enhance anti-corruption and anti-bribery measures	Ministry of Justice
8	Collection and monitoring of international funds transfers data	Ministry of Justice
9	Enhance protections against identity crime	Ministry of Justice
10	Enhance anti-money laundering offence	Ministry of Justice
11	Improve cross-agency organised crime threat and risk assessments	Police
12	Develop a fraud landscape to identify the quantum of losses and enablers of financial crime	Serious Fraud Office
13	Improve interchange with overseas law enforcement agencies	Customs and Police
14	Develop a 'Financial Targeting Model' to take the profit out of crime	Police
15	Anti-money laundering reform: phase II	Ministry of Justice
16	Anti-corruption national policy	Ministry of Justice

ANNEX 2:

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ANNEX 3

Financial Action Task Force: Transparency and beneficial ownership of legal persons and arrangements

Recommendation 24: Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and Designated Non-Financial Businesses and Professions undertaking the requirements set out in Recommendations 10 and 22[19].

Recommendation 25: Transparency and beneficial ownership of legal arrangements[20]

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and Designated Non-Financial Businesses and Professions undertaking the requirements set out in Recommendations 10 and 22.

The misuse of legal persons is an emergent issue and is used by organised criminals and terrorists for example, to maintain anonymity provide false credibility in the market place and raise doubt as to how liability and culpability attaches to a natural person.

Member, as well as non-member, countries' compliance with the FATF Recommendations is routinely evaluated. Based on these assessments, in cases of systemic non-compliance, the FATF will issue a public statement highlighting the risks with the jurisdiction and call on member states to consider these risks in their dealings with the jurisdiction (in serious cases the FATF calls on member states to implement counter measures).

Public statements can result in less propensity to deal with a jurisdiction and heightened transaction costs. The assessments are also considered within the framework of the joint IMF/World Bank Financial Sector Assessment Program (FSAP), specifically designed to assess the strengths and weaknesses of financial sectors. These considerations can in turn influence credit rating agencies' assessments of sovereign risk, which flows onto jurisdictions' borrowing costs. The FATF is recognised as playing an important and effective role in improving the integrity of the global financial system, both in terms of the objectives of crime control and financial stability.

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[19] Recommendation 10 relates to record keeping. New Zealand was "largely compliant" in 2009. Recommendation 22 relates to treatment of foreign branches and subsidiaries. New Zealand was "non-compliant" in 2009.

[20] Recommendation 25 deals with the transparency of trusts. The Law Commission is currently undertaking a review of the law of trusts. Any amendments to current trust law will be made in conjunction with the wider review.

ANNEX 4

An outline of the domestic response to AML/CFT issues and a brief overview of the regime (Justice Portfolio)

Year	Action
1989	New Zealand becomes a member of FATF at its inception.
1990	FATF released its first set of recommendations.
1996	Financial Transactions Reporting Act (FTRA) in force, FATF Recommendations revised.
2001	Countering the financing of terrorism special recommendations added after the bombing of the World Trade Centre in New York.
2003	New Zealand assessment. Non or partially compliant with several recommendations. AML/CFT regime in force via Crimes Act 1961, the Extradition Act 1999, the FTRA, the Misuse of Drugs Act 1975, the Mutual Assistance in Criminal Matters Act 1992, the Privacy Act 1993, the Proceeds of Crime Act 1961, the Reserve Bank of New Zealand Act 1989, the Terrorism Suppression Act 2002.
2004	FATF Recommendations revised. FTRA amended.
2005	Amendments to the Terrorism Suppression Act 2002.
2008	Amendments to the Terrorism Suppression Act 2002, OFCANZ established. Additions to the regime (Commerce Portfolio): Financial Service Providers (Registration and Dispute Resolution) Act 2008, Financial Advisers Act 2008.
2009	New Zealand assessment. Non or partially compliant with several recommendations. Additions to the regime: Criminal Proceeds (Recovery) Act 2009, Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
2010	Addition to the regime: Insurance (Prudential Supervision) Act 2010.
2011	*Strengthening New Zealand's Resistance to Organised Crime: An all of Government Response* published and work begins.
2012	Addition to the regime: Search and Surveillance Act 2012.
2013	Remainder of Anti-Money Laundering and Countering Financing of Terrorism Act 2009 comes into force.

The AML/CFT Act

A reporting entity must establish, implement, and maintain a compliance programme that includes internal procedures, policies, and controls to—

(a) detect money laundering and the financing of terrorism; and

(b) manage and mitigate the risk of money laundering and financing of terrorism.

A reporting entity must have an AML/CFT compliance officer to administer and maintain its AML/CFT programme.

Before conducting customer due diligence or establishing an AML/CFT programme, a reporting entity must first undertake an assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business.

In accordance with the AML/CFT programme and risk assessment, a reporting entity must conduct the appropriate level of customer due diligence (CDD) on customers, any beneficial owner of a customer or any person acting on behalf of a customer.

CDD is on-going and reporting entities must undertake account monitoring by regularly reviewing the customer's account activity and transaction behaviour; and any customer information to ensure that the business relationship and the transactions relating to that business relationship are consistent with the reporting entity's knowledge about the customer and the customer's business and risk profile; and identify any grounds for reporting a suspicious transaction. The reporting entity must report 'suspicious transactions' to the Police.

Reporting entities report annually to their supervisor.

Institutional arrangements

The three supervisors of the AML/CFT regime are:

- The Reserve Bank who will supervise banks, life insurers and non-bank deposit takers;
- The Financial Markets Authority will be the supervisor for issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers; and
- The Department of Internal Affairs will supervise casinos, non-deposit taking lenders, money changers and other reporting entities that are not covered by the Reserve Bank or Financial Markets Authority.

In addition the Ministry of Justice is responsible for policy development and the administration of the legislation. The Ministry will also handle all matters related to exemptions from the Act.

The Financial Intelligence Unit of the New Zealand Police receives suspicious transaction reports and issues guidance on money laundering and terrorism typologies and how to meet suspicious transaction reporting obligations under the Act.

The New Zealand Customs service receives cross border cash reports made under the AML/CFT Act and enforces the cross border cash reporting regime which is contained in the AML/CFT Act.

The AML/CFT National Coordination Committee is chaired by the Ministry of Justice and is comprised of a representative of each AML/CFT supervisor, the Financial Intelligence Unit of the New Zealand Police, and the New Zealand Customs Service. Other agencies are invited from time to time where they have an interest in AML/CFT matters.

The role of the National Co-ordination Committee is to ensure that the necessary connections between the AML/CFT supervisors, the Commissioner (of Police), and other agencies are made in order to ensure the consistent, effective, and efficient operation of the AML/CFT regulatory system.

Costs of Regime

According to the April 2009 Cabinet paper and Regulatory Impact Analysis, the costs of implementation were not insignificant, although, ultimately the benefits were also seen as equally substantial.

Independent advice on the implementation costs of the regime was estimated to involve a one-off $97 million in start-up costs and $21 million a year in ongoing costs to industry. Costs include:

- Establishment and maintenance of AML/CFT risk identification and management programmes;
- Transaction monitoring and reporting requirements; and
- Implementing customer due diligence requirements.

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Mitigation of costs.

The costs would vary amongst sectors with most cost falling on the banks because of the transaction volumes. However, some of this cost is offset by Australian regulation requiring that Australian subsidiaries are subject to comparative standards to those imposed in Australia. In the absence of New Zealand regulation, subsidiaries of Australian financial institutions would have had to have implemented equivalent measures.

The regime has been developed to be as consistent as practicable with AML/CFT regimes in other jurisdictions especially Australia and to allow a risk based approach as far as the regime allowed.

A risk based approach would allow reporting entities a degree of flexibility to allocate resources in proportion to their assessment of the particular risks they face. Supervisors were given the ability to support the risk based approach by developing codes of best practice which would be a legal defense against prosecution if the reporting entity chose to follow it.