Media release

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Formal public warning to Jin Yuan Finance Ltd

An Auckland-based financial institution has received the first public warning issued by the Department of Internal Affairs under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act). The AML/CFT Act requires New Zealand’s financial institutions to have processes in place to detect and deter money laundering and terrorism financing, and to protect their businesses from misuse.

The Department issued a formal warning to Jin Yuan Finance Limited (JYF), company number 4083558, under section 80 of AML/CFT Act on 7 July 2015. It has now issued a public summary of the warning.

“The investigations identified that Jin Yuan Finance had failed to establish, implement and maintain an adequate and effective AML/CFT programme,” the Department’s General Manager of Regulatory Services, Maarten Quivooy said. “In particular, JYF had failed to conduct customer due diligence as required, failed to adequately monitor accounts and transactions, failed to keep adequate records and failed to ensure that its branches comply with all relevant obligations.”

 The Department requires JYF to immediately rectify all areas where it is non-compliant with its obligations. JYF has advised the Department it is committed to doing so, and has provided information about steps it is already taking to do so.

“The Act has now been in force for over two years. It requires financial institutions to have adequate and effective procedures for managing and mitigating the risk of money laundering and terrorism financing through their business. This is an important piece of legislation, with which financial institutions are required to comply.”

 “The Department will continue to monitor JYF and consider further enforcement action if appropriate,” Mr Quivooy said. “Options for further enforcement include court imposed undertakings or financial penalties.”

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Questions & Answers for media

1. **Why has a formal warning been issued to Jin Yuan Finance Limited?**

The Department has reasonable grounds to believe Jin Yuan Finance Limited has:

* Failed to conduct customer due diligence as required by subpart 1 of Part 2 of the Act (section 78(a) of the Act).
* Failed to adequately monitor accounts and transactions (section 78(b) of the Act).
* Failed to keep records in accordance with the requirements of subpart 3 of Part 2 of the Act (section 78(e) of the Act).
* Failed to establish, implement, or maintain an AML/CFT programme (section 78(f) of the Act).
* Failed to ensure that its branches and subsidiaries comply with the relevant AML/CFT requirements (section 78(g) of the Act).
1. **Why has the Department published a summary of the formal warning to Jin Yuan Finance Limited?**

The issues addressed in the formal warning to Jin Yuan Finance Limited are serious and have been ongoing and extensive. It is therefore appropriate to publish a summary.

1. **Has JYF been warned before?**

No. JYF has not received any previous warning under the AML/CFT Act.

1. **How many formal warnings has the Department issued under section 80 of the Act?**

Since the Act came into force on 30 June 2013, the Department has issued 13 non-public formal warnings. These have been issued either for failure to meet particular risk assessment or AML/CFT programme obligations or for failing to submit an annual AML/CFT report.

The formal warning issued to Jin Yuan Finance Limited is the first for which the Department has publicly released a summary.

1. **Why hasn’t the Department issued public warnings in the past?**

The Department uses a range of measures to achieve compliance by reporting entities. It bases decisions on an assessment of how to best minimise harm and maximise benefit, while promoting sustained compliance. The decision to publish a formal warning was taken because of the seriousness of the compliance issues. It sends a message to the sector about how the Department responds to compliance issues.

1. **What is customer due diligence?**

Customer due diligence (CDD) is a cornerstone of an AML/CFT programme. CDD is the process through which a reporting entity develops an understanding about its customers and the risks they pose to the business. CDD involves gathering and verifying information about a customer’s identity, beneficial owners or representatives, as well as other information, depending on the nature of the business relationship and the level of risk involved.

1. **What is account monitoring?**

Account monitoring involves reviewing a customer’s account activity and transaction behaviour. This requires a risk based approach and consideration of the reporting entity’s knowledge about a customer, their business, transaction history and the type of CDD undertaken when the relationship was established. Account monitoring allows a reporting entity to identify grounds for reporting suspicious transactions to the Police Financial Intelligence Unit.

1. **What is a formal warning issued under section 80 of the Act?**

Formal warnings can be issued when a supervisory agency has reasonable grounds to believe a reporting entity has engaged in conduct that constitutes a ‘civil liability act’. These are specified in section 78 of the Act. They differ from criminal liability in that they relate to administrative and governance arrangements rather than criminal offences.

1. **What other action can be taken if a reporting entity does not comply with the requirements of the Act?**

Where reporting entities engage in conduct that does not comply with the requirements of the Act, supervisory agencies can take various enforcement actions. This includes civil or criminal action, which could result in (but is not limited to):

* Civil penalties of up to $200,000 in the case of an individual, and $2 million in the case of a body corporate; and
* Criminal penalties of imprisonment for up to two years or a fine of up to $300,000, in the case of an individual, and $5 million in the case of a body corporate.
1. **What is the objective of the Anti-Money Laundering and Countering Financing of Terrorism Act?**

The Act seeks to detect and deter potential money laundering and terrorism financing. Enforcement of the Act contributes to public confidence in New Zealand’s financial system, and puts New Zealand in line with international anti-money laundering and countering financing of terrorism (AML/CFT) standards. The Act places obligations on New Zealand’s financial service providers and casinos, known as reporting entities, to detect and deter money laundering and terrorism financing (ML/FT).

1. **What is a reporting entity required to do to comply with the Act?**

A reporting entity is first required to undertake an assessment of the risk of ML/FT that it may reasonably expect to face in the course of its business. A reporting entity is then required to establish, implement and maintain an AML/CFT programme which includes adequate and effective procedures, policies and controls for managing and mitigating the ML/FT risk. The requirements of an AML/CFT programme include staff training and vetting, customer due diligence, account monitoring and suspicious transaction reporting, as well as obligations relating to record keeping, review, audit and submission of an annual report.

1. **Who monitors reporting entities for compliance with their obligations under the Act?**

The Act has three supervisory agencies in New Zealand: the Reserve Bank, the Financial Markets Authority (FMA) and the Department of Internal Affairs.

* The [Reserve Bank](http://www.rbnz.govt.nz/regulation_and_supervision/anti-money_laundering/) supervises registered banks, life insurers and non-bank deposit takers.
* The [FMA](http://www.fma.govt.nz/about-us/what-we-do/anti-money-laundering-and-countering-financing-of-terrorism/) supervises issuers of securities, licensed supervisors, fund managers, brokers and custodians, financial advisers, derivatives issuers, DIMS providers and peer to peer lending and equity crowd funding service providers.
* The [Department](http://www.dia.govt.nz/Anti-money-laundering-and-countering-financing-of-terrorism) supervises casinos, non-deposit taking lenders, money changers, money remitters, payroll remitters, debt collectors, factors, financial leasors, safe deposit box vaults, non-bank credit card providers, stored value card providers and cash transporters, and any other reporting entities not supervised by the Reserve Bank or the FMA.