

# NEW ZEALAND'S LEGISLATIVE PROVISIONS RELATING TO MONEY LAUNDERING

A number of key pieces of legislation are designed to prevent money laundering and terrorist financing.

## 1. CRIMINAL LAW

*Section 243 of the Crimes Act 1961 & Section 12 Misuse of Drugs Act 1975 (Money Laundering Offences)*

Money laundering is criminalised under both of these Acts. These offences apply to persons that engage in money laundering transactions knowing or believing that all or part of the property is the proceeds of a serious offence (an offence punishable by 5 years imprisonment or more) or a specified drug offence (controlled drugs, cultivation of prohibited plants or drug paraphernalia), or being reckless as to whether it is the proceeds of such an offence. A person engages in a money laundering transaction if that person deals with such property or assists another to do so for the purpose of concealing the property. It is also an offence to possess laundered property. A person may be convicted of a money laundering offence even though they have no connection to the criminal offence that generated the funds (referred to as the "predicate offence"). For instance, if someone generates money from an illegal drug transaction and provides those funds to a "professional money launderer", that launderer may be found guilty of money laundering.

### **Criminal Proceeds (Recovery) Act 2009**

This Act provides that persons convicted of serious offences may be deprived of the instruments and the proceeds of their offending by way of forfeiture orders and/or pecuniary penalties. It also establishes a non-conviction based forfeiture regime that allows the freezing and/or confiscation of the instruments of crime or the funds generated from it, in instances where a person is not convicted of a crime but they cannot demonstrate that their assets were acquired in a legitimate fashion. Many overseas jurisdictions, such as Australia, Canada and the United Kingdom also have non conviction based forfeiture systems like the one proposed in the Bill.

### **Mutual Assistance in Criminal Matters Act 1992**

This Act allows overseas jurisdictions to request assistance from New Zealand in a wide range of criminal matters, including the registration of foreign confiscation and restraining orders in this country. It also enables New Zealand to request similar assistance from overseas jurisdictions.

*The Extradition Act 1999* also forms part of a comprehensive framework of legislation aimed at combating money laundering.

## **OTHER KEY LEGISLATION**

The Financial Transactions Reporting Act 1996 (FTRA)

This Act is aimed at ensuring that when money laundering occurs, it can be brought to the attention of the New Zealand Police's Financial Intelligence Unit (FIU). The FIU has the responsibility for enforcing offences under the FTRA

The FTRA requires financial institutions to:

- verify the identity of customers when new facilities are opened, when certain transactions are conducted (including cash transactions which exceed NZD9,999.99), or where money laundering transactions are suspected.

- retain records of transactions and customer verification details
- report suspicious transactions to the FIU

It also requires all persons arriving in or leaving New Zealand to declare to Customs any cash in their possession if it is more than NZD9,999.99. The declarations are referred to the FIU. The FIU has issued guidelines to assist financial institutions in reporting suspicious transactions. These guidelines set out the features of a transaction that may give rise to suspicion that the transaction may indicate or be relevant to money laundering offences.

### **Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 (AML/CFT Act)**

The AML/CFT Act comes into full force on 30 June 2013. It forms part of the legislative package that will implement the first phase of reforms to New Zealand's AML/CFT regulatory regime.

The AML/CFT Act requires reporting entities to undertake a full risk assessment and have an internal AML/CFT compliance programme which includes appropriate customer due diligence measures, ongoing due diligence and account monitoring, record keeping requirements, and suspicious transaction reporting measures.

Customer due diligence under the AML/CFT Act will involve more than verifying the identity of customers as this obligation is extended to include verifying beneficial owners of customers and those acting on behalf of customers (as applicable). This will apply, on a risk based approach, to both new and existing customers. The new requirements also necessitate in certain circumstances identifying source of wealth and/or funds of a customer (and/or its beneficial owner), and determining whether a customer (and/or its beneficial owner) is a politically exposed person (PEP).

As well, the AML/CFT Act prohibits establishing or continuing business with a shell bank or any financial institution that has a correspondent banking relationship with any shell bank(s); and requires care is taken when dealing with jurisdictions identified as having insufficient AML/CFT systems or measures in place.

### **Terrorism Suppression Act 2002**

The Terrorism Suppression Act 2020 contains a number of key sections. For instance:

- it defines what a 'terrorist act' is
- it establishes a mechanism to designate persons or groups as terrorist entities
- it creates a number of offences such as financing terrorists or recruiting persons into terrorist groups.

The Act also requires financial institutions to report suspicious transactions involving designated terrorists to the FIU and it allows for the freezing and forfeiture of terrorist assets so that those assets cannot be laundered or used for terrorist purposes.

### **Regulations made under the United Nations Act 1946**

These regulations put into effect various United Nations sanctions. They require New Zealand persons and entities to ensure that they do not do business with or deal with parties that are subject to such sanctions.