August 2005
IMF Country Report No. 05/284

New Zealand: Report on the Observance of Standards and Codes— FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for New Zealand was prepared jointly by the Financial Action Task Force (FATF) and the Asia Pacific Group on Money Laundering using the comprehensive methodology endorsed by the FATF in October 2002 and by the Executive Board of the IMF in November 2002. The views expressed in this document are those of the FATF team and do not necessarily reflect the views of the government of New Zealand or the Executive Board of the IMF. ROSCs do not rate countries' observance of standards and codes or make pass-fail judgments. Consequently, no overall assessment of the effectiveness of the anti-money laundering and combating the financing of terrorism regime is provided.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

To assist the IMF in evaluating the publication policy, reader comments are invited and may be sent by e-mail to publicationpolicy@imf.org.

Copies of this report are available to the public from

International Monetary Fund ● Publication Services
700 19th Street, N.W. ● Washington, D.C. 20431
Telephone: (202) 623 7430 ● Telefax: (202) 623 7201
E-mail: publications@imf.org ● Internet: http://www.imf.org

Price: $15.00 a copy

International Monetary Fund
Washington, D.C.

FATF • GAFI

Financial Action Task Force on Money Laundering
Groupe d'Action Financière sur le Blanchiment de Capitaux

APG

Asia/Pacific Group
on Money Laundering

New Zealand

Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism

Introduction

1. This Report on the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of New Zealand (NZ) was conducted jointly by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG). The report was prepared by a team of examiners that included FATF experts in law enforcement and financial regulatory issues, and the FATF Secretariat, as well as an APG expert in legal issues and the APG Secretariat. The report provides a summary of the level of compliance with the FATF 40 Recommendations, as adopted in 1996, and the FATF 8 Special Recommendations on Terrorist Financing, adopted in 2001, and provides recommendations to strengthen New Zealand's anti-money laundering and combating terrorist financing (AML/CFT) system.

Information and Methodology Used for the Evaluation

2. The experts reviewed the relevant AML/CFT laws and regulations and the supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among financial institutions. The experts also reviewed the regulatory systems in place for casinos as well as the capacity and implementation of all these systems. The evaluation team met with officials from the relevant NZ agencies from 20 – 24 October 2003. Meetings took place with representatives from the Ministry of Justice, the Reserve Bank, the Crown Law Office, the NZ Police Department including the FIU, the Casino Control Authority, the NZ Racing Board, the Inland Revenue Department, the Ministry of Economic Development, the Ministry of Foreign Affairs and Trade, the Securities Commission, and the Customs Department. The team also met with compliance officers and representatives from several NZ banks and insurance companies, representatives of the NZ Law Society, the NZ Bankers Association, external audit sector representatives, the Investment, Savings and Insurance Association, the Financial Services Federation, the NZ Stock Exchange and the share-broking industry.

Overview of the financial sector

3. New Zealand is not a major financial centre. The majority of the financial activities are domestic. The NZ financial system comprises 18 registered banks, 50 finance companies, 11 building societies, 61 credit unions, 199 friendly societies, 36 life insurance companies and 75 general insurance companies. The financial system also includes money remitters, bureaux de change, unit trusts and other

managed funds, and a range of financial management and advisory services (for example investment advisers, financial planners etc.) The registered banks are the dominant participants in the financial sector. The banking system is almost entirely foreign owned, with 16 of the 18 registered banks being subsidiaries or branches of foreign banks (95% of total banking assets), and the four biggest banks being controlled by Australian banking groups (85 % of total banking assets).

General Situation of Money Laundering and Financing of Terrorism

4. The main sources of illegal proceeds are considered to be the cultivation, manufacturing or dealing in illicit drugs, traditionally cannabis, but more recently methamphetamines. Fraud offences have also produced significant proceeds. Money laundering techniques range from unsophisticated cash payments for assets to complicated corporate transactions involving a number of transactions through companies and financial institutions both in NZ and overseas. Apart from misuse of the banking system and the purchase of real estate, significant actual and potential trends in money laundering methods have been seen in the area of casinos (both local and foreign patrons), the misuse of trust accounts belonging to professional intermediaries such as accountants and lawyers, and alternative remittance agents operating in different parts of the country. Alternative remittance agents (who use the formal sector to remit funds) are regarded as being a higher risk sector because of poor compliance with the customer due diligence and reporting requirements of the FTRA (which has led to some recent prosecutions). However, no money laundering through remittance agents has been detected. No evidence of an underground banking system, such as "Hawala", has been found. No evidence of terrorist financing activity has been uncovered.

Main findings

5. Since its last evaluation in 1998, NZ has made few changes to its AML regime, but has introduced new legislation and associated institutional measures to combat terrorist financing. The criminal justice legislative measures for combating money laundering and terrorist financing are generally sound, and in several areas the effectiveness of those measures has improved over time. Some minor legislative changes, combined with additional resources and organisational changes could further enhance the system.

6. The foundations of an effective preventive system are in place. The requirements for record keeping and reporting of suspicious transactions are sound, but customer due diligence measures need to be amended to introduce appropriate requirements to properly identify third parties for whom a customer is acting, and to remove a number of other limitations or exemptions. Guidelines for reporting entities need to be updated. Appropriate mandatory requirements also need to be introduced concerning financial institutions and their internal controls and measures to prevent their control or acquisition by criminals. Most importantly, an effective system needs to be introduced to supervise and/or monitor the compliance by relevant financial and other institutions with their AML/CFT obligations.

Criminal justice measures and international co-operation

(a) Criminalisation of ML and FT

7. Money laundering is criminalised under section 257A of the Crimes Act 1961 and section 12B of the Misuse of Drugs Act 1975. 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 or a specified drug 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.

8. The offences extend to all types of property, and a person may be liable if he "converts" the property, which includes expenditure or consumption of tainted money. "Serious offence" means an offence punishable by imprisonment for a term of five years or more; and includes any act, wherever committed, which if committed in NZ would constitute an offence punishable by imprisonment for a term of five years or more. This includes drug trafficking and terrorist financing. It is not necessary that a

person be convicted of a predicate offence to convict any person of laundering the proceeds, and a person can be convicted of money laundering even where he has committed both the laundering and the predicate offence. While the elements of the ML offence are generally adequate, NZ should consider broadening the scope of its predicate offences.

9. The knowledge element of the money laundering offences may be inferred from objective factual circumstances, and the concept of knowledge includes willful blindness. The Crimes Amendment Act 2003 extended the knowledge element of the s.257A offence to include "being reckless as to whether the property is the proceeds of a serious offence". The money laundering and terrorist financing offences apply both to natural persons and to corporate legal entities.

10. The sanction for money laundering under s.257A(2) of the Crimes Act 1961 is up to seven years imprisonment. The related offences of possessing property with intent to engage in a money laundering transaction under section 257A(3) of the Crimes Act 1961 and section 12B(3) of the Misuse of Drugs Act 1975 are punishable by up to five years imprisonment.

11. The increasing number of prosecutions for an offence under s.257A(2) is very encouraging (39 prosecutions in 2002, as compared to 18 in 1999) and would seem to indicate a positive approach to money laundering by the investigative authorities. However, the statistics indicate a much lower number of convictions for money laundering (15 convictions in 2002), relative to the number of prosecutions, and NZ needs to ensure that money laundering is adequately pursued as an offence and that there are no legal or practical difficulties that prevent a higher conviction rate.

12. Financing of terrorism has been criminalised on the basis of the Convention for the Suppression of the Financing of Terrorism. It is an offence under s.8, Terrorism Suppression Act 2002 (TSA) to provide or collect funds intending or knowing they are to be used to carry out one or more acts that, if they were carried out, would be terrorist acts. It is not necessary to prove that the funds were actually used to carry out a terrorist act, and the offence applies regardless of where the terrorist act is carried out. The offence is punishable by up to 14 years imprisonment. Though this covers most of the elements required under Special Recommendation II, the offence is restricted to funding terrorist acts. It does not extend to funding of terrorist organisations or terrorists per se e.g. it does not appear to cover contributions made for the purpose of meeting the normal expenses of a terrorist organisation. As it may not always be possible to know that funding is being provided to known or suspected terrorists or terrorist organisations for the purpose of particular terrorist acts, NZ should extend the offence to also cover funding of terrorists and terrorist organisations generally.

13. New Zealand has signed and ratified the relevant United Nations Conventions as follows: the 1988 Vienna Convention in 1998, the 2000 Palermo Convention in July 2002, and the 1999 Terrorist Financing Convention in November 2002. NZ has also implemented the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, including UNSCR 1373, but has not yet designated any entities under that resolution.

(b) Confiscation of Proceeds of Crime or Property used to Finance Terrorism

14. The Proceeds of Crime Act provides for the confiscation of the proceeds and instrumentalities of serious offences, including any income or profit derived, and property of corresponding value. Upon conviction there can be an application for a forfeiture order of specific tainted property and/or a pecuniary penalty order for benefits derived from the offence. The Solicitor-General may apply to freeze/seize property that is, or may become, subject to confiscation, where a person has been convicted of a serious offence or is about to be charged with such an offence. This applies to any property that the Court is satisfied is subject to the defendant's effective control, whether held or owned directly or indirectly.

15. There is a limited and rebuttable "reverse onus" provision, pursuant to which the Court may assume that the value of the proceeds of crime is not less than the amount by which the value of the defendant's property after the offence exceeded the value of property before the offence. For drug trafficking offences, all the defendant's property at the time of the application as well as any property held

within the two preceding years, 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.

16. A restraining order may be issued if there are reasonable grounds for believing that the property is tainted property or the defendant derived a benefit from the commission of the offence. Notice of application must be given to the owner and any other person believed to have an interest in the property, although an order may be granted ex parte for a period of seven days. The powers to freeze and seize may also apply in relation to foreign serious offences. The Crown Law Office has responsibility for dealing with applications under the POCA. The Official Assignee is responsible for administering property subject to a restraining order and for realising forfeited property.

17. While there is a generally well developed legislative framework for the confiscation of the proceeds of crime, the procedures in place for seeking restraint orders are somewhat cumbersome, meaning that applications for restraint orders commonly occur after charge or even after conviction. More efficient procedures should be introduced. Equally, the resources of the Crown Law Office as well as the NZ Police to deal with proceeds of crime matters should be increased, and consideration given to establishing a multidisciplinary body that could perform this work.

18. New Zealand does not have provision for a civil forfeiture order, and the "reverse onus" provision only compares the value of a defendant's property immediately before and after the commission of the relevant offence and cannot have regard to property which a defendant had acquired before that date. In addition, the provisions do not require a defendant to show that the excess in question was derived from a legal source, only that it was not derived from the specific offence or offences of which he had been convicted, which makes these provisions easy to rebut. Measures that could help to ensure that organised and long term criminals are deprived of their proceeds include: (a) introducing civil forfeiture provisions, (b) allowing confiscation with respect to the criminal activity in which the defendant has been involved in the past for all types of serious crimes, and (c) requiring the defendant to show a truly legitimate source for all his assets and any income or benefits received. Another amendment that could substantially improve the effectiveness of confiscation system would be to allow tax information to be obtained for such cases. This is normally an essential piece of information required for any proceeds of crime investigation, and an inability to put such information before the courts severely limits the case that the authorities can put forward.

19. The results obtained to date show an upward trend in both the number of cases and the value of the property frozen and confiscated, which indicates that the confiscation system is becoming more effective, and more than NZD 3.5 million was frozen in 2002. However the amount confiscated is less than half the amount frozen, and most of the cases were drug-related. Consideration could be given as to how confiscation laws could be made more effective in removing illicit proceeds from other types of offenders and in ensuring that property is confiscated.

20. The provisions under the TSA appear quite extensive and allow for property of terrorists to be frozen, for the Official Assignee to take control of property and the property to be confiscated if certain conditions are met. The freezing regime in the TSA involves the use of offence provisions rather than restraining orders, and makes it a serious offence to deal with any property knowing that the property is property owned or controlled, directly or indirectly, by an entity designated under the TSA. This is punishable by a term of imprisonment not exceeding seven years. Entities (this covers both legal and natural persons) from the UNSCR 1267 list have been designated, though no relevant property has been identified. Consideration should also be given to whether there are terrorist organisations other than those designated by the United Nations which should also be designated.

21. The Prime Minister may designate an entity if there are reasonable grounds to believe that the entity has knowingly carried out or participated in terrorist acts. A designation may last for up to 3 years, but can be extended by the High Court under s.35. Interim designation, lasting up to 30 days, can be made on the basis of the lower threshold of "good cause to suspect". Property owned or controlled, directly or indirectly, by a designated terrorist entity or a designated associated entity that is subject to a final designation under section 22, may be forfeited by the High Court provided that it has extended designation beyond three years under section 35. This requires the terrorist nature of the entity to be established on the

civil standard of the balance of probabilities. The rights of bona fide third parties are protected under the POCA and the TSA.

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

22. The New Zealand FIU is established within the NZ Police and has been a member of the Egmont Group since 1997. It receives, analyses, and disseminates suspicious transaction reports (STR) and other relevant information, as well as, intelligence concerning suspected ML and FT activities. STR are required to be sent in the prescribed format, usually by post or fax. The FIU is able to obtain from reporting parties the additional documentation it needs to assist in its analysis of financial transactions. It relies on Principle 11 of the Privacy Act to authorise this – this states that any agency should not disclose personal information unless this is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences. NZ should consider reducing reliance on this provision and providing the FIU with more direct authority. It also has access to a wide range of other financial, administrative and law enforcement information, including law enforcement and customs databases, credit histories, real estate registers etc.

23. The FIU is also responsible for issuing AML/CFT guidance to reporting institutions. In 1996 guidelines were issued for banking, lending, deposit taking, insurance and retail investment activities, and in 1998 a second set of guidelines were issued for casinos. NZ needs to review these guidelines as a matter of priority and, in consultation with reporting parties, ensure that they are current and meet the needs of all reporting parties, in particular to allow them to identify complex and unusual transactions or patterns and suspicious patterns of behaviour.

24. The FIU can share information with domestic authorities for defined purposes relating to money laundering and terrorist financing. It is also authorised to share financial information and intelligence with foreign counterpart FIUs, both spontaneously and upon request, either through the Egmont Group or otherwise. Since 1997, the NZ FIU has had an established staff of three, however, due to the substantial increase in the volume of reports received by the FIU it was agreed that five extra staff should be appointed. This should help it to adequately perform its core FIU functions i.e. receipt, analysis and dissemination of STR, as well as give input into other issues such as revised guidelines.

25. The number of STRs received by the FIU has trebled over the past five years, with nearly 3000 STR being received in 2002. However more than 90% of these reports come from the banking sector, and very few reports have been filed from the securities or insurance sectors or by money remittance businesses. Money remittance businesses were thought to be a higher risk sector. The NZ authorities believe that the upcoming prosecutions of money changers/remitters for breaches of the FTRA, and the associated publicity, will increase reporting in this sector. While the banking sector results are encouraging, further efforts need to be made to improve the results for non-bank financial institutions, as well as other types of businesses or professions subject to reporting obligations. While relevant data is recorded on a database and analysed by the FIU, the functionality of the database is very limited and the retrieval of these statistics is difficult. There is a project to improve the FIU database, and it is important that the whole information technology infrastructure for the FIU is urgently extended and remodelled, so that the FIU can properly perform its functions, including electronic receipt of STR.

(d) Law enforcement and prosecution authorities, powers, and duties

26. New Zealand Police is a unified police service and the principal law enforcement agency in NZ. There are 12 policing districts, and in each district there are criminal investigation branch staff who investigate serious crime, including ML/FT. In most districts there are Proceeds of Crime Units, and they are responsible for the investigation of ML/FT, taking action concerning suspicious transaction reports, and identifying and taking action on cases for restraint and forfeiture of proceeds of serious crime. Despite this, police priorities are currently focussed on drug trafficking and certain volume and victim offences, and ML and proceeds of crime issues could be centralised and given increased resources, training and focus.

27. The police generally have adequate legal means to obtain bank records and other information and evidence in relation to alleged offences, including legal tools for a wide range of investigative techniques, including controlled delivery, undercover operations, and wiretaps. One area where some improvements could be made concerns the powers to obtain production and monitoring orders. These could be simplified and made easier to obtain. Similarly, appropriate access to tax information in such cases, would lead to a more effective system. Overall, having regard to the data on ML prosecutions and confiscation action, the police appear to have been reasonably effective in acting against proceeds of crime, but further improvements could be made to make the system more effective and efficient.

(e) International co-operation

28. New Zealand has broad powers to provide a wide range of mutual legal assistance (MLA) related to money laundering and proceeds of crime matters, such as production or seizure of information, documents, or evidence from any entity or person; search powers; freezing, seizure, or confiscation of proceeds of crime; taking of witnesses' statements; and the obtaining and seizure of evidence. It can provide MLA on the basis of a treaty, or reciprocity, though in the latter case, there is a discretion to refuse a request where there is no dual criminality. It has also entered into many bilateral treaties and agreements, either for MLA or at a law enforcement level. The Extradition Act, combined with various extradition agreements, provides broad extradition authority for offences with a penalty of 12 months or more imprisonment, including for NZ nationals, provided there is dual criminality.

29. Law enforcement authorities can exchange information regarding the subjects of investigations with their international counterparts, either through bilateral agreements, or more often through INTERPOL. As noted above, the FIU can also share financial information and intelligence with foreign counterpart FIUs through the Egmont Group.

30. New Zealand generally has a legislative framework which allows it to respond effectively to the requests of foreign jurisdictions. In the last 3 years, the Attorney-General has received four mutual legal assistance requests which relate to money laundering or proceeds of crime, and has taken action in all four cases, though it is not known how quickly responses were provided. No requests have been received in relation to 'terrorist' activity. Data is kept on all mutual legal assistance and other requests made or received, though consideration is being given to improved recording methods so as to allow better retrieval and analysis capability.

Preventive measures for financial and other institutions

31. Most of the AML requirements in NZ, such as customer identification, reporting suspicious transactions, record-keeping etc, are contained in the Financial Transactions Reporting Act 1996 (FTRA). The FTRA applies to a wide range of entities (defined as "financial institutions"): registered banks and any persons carrying on banking business, the Reserve Bank, life insurance companies, building and friendly societies, sharebrokers, fund management and other investment business, casinos, the Racing Board, and real estate agents, lawyers and accountants when they receive funds for specific purposes.

32. Regarding supervision of banks, New Zealand's approach to AML/CFT supervision differs significantly from that of most other countries, although it does have some of the conventional features of banking supervision arrangements in other developed economies. The New Zealand framework is generally built on three pillars: regulatory discipline, self discipline through effective internal governance and market discipline, but places much greater emphasis on the latter two pillars than is the norm elsewhere. As regards AML/CFT supervision in particular, the RBNZ is not responsible for supervising all the main AML/CFT requirements that are laid out in the FTRA. This responsibility falls to the FIU. Neither the RBNZ nor the FIU conduct on-site examinations of banks and the RBNZ makes less use of prudential requirements than is the case in some countries. However, the FIU can only make an on-site inspection if a search warrant has been obtained i.e. if a crime is suspected, and does not have a "hands on" monitoring role with powers of inspection. Oversight of non-bank financial institutions by public authorities is limited, with emphasis being placed on public disclosure and monitoring under private sector trust deed requirements for non-bank deposit taking institutions.

33. Supervision by competent authorities thus plays a limited role in the New Zealand framework, and this creates an obstacle to ensuring the effective application of the AML/CFT requirements by financial institutions. The FIU is not in position to fully carry out its supervisory role to ensure compliance, due to its limited resources and the absence of legal authority. In these conditions, there is no possibility to identify deficiencies in the application of the AML requirements before an investigation is started by the police. New Zealand authorities should develop an effective supervisory framework in order to have the adequate organisation to ensure the compliance with AML/CFT requirements of their financial sector.

34. Financial institutions are required to identify their customers and verify their identity, when they establish a "facility" i.e. an account or arrangement that is provided by a financial institution; and through which a facility holder may conduct two or more transactions. For occasional transactions, the financial institution has to verify the identity of the person conducting a cash transaction of NZ$10,000 or more, including multiple linked transactions. Identification is also required if a transaction is believed to involve proceeds of crime or be linked to money laundering. Where a financial institution has reasonable grounds to believe that a person, whether a permanent facility holder or an occasional customer, is conducting a cash transaction of NZ$10,000 or more on behalf of any other person or persons, they have an obligation to identify that other person.

35. However, there are no explicit requirements to identify the owners or controllers of legal persons such as companies. There are also a number of limitations and exceptions contained within the FTRA. such as: (a) if there are three or more facility holders, it is only necessary to verify the identity of the principal facility holder (term defined in the FTRA), (b) term deposit accounts are treated as occasional transactions and so deposits under $10,000 are exempted from the identification requirements of the FTRA unless there is a reasonable suspicion of money laundering, and (c) no requirement to identify the identity of a person when a transaction is conducted on that person's behalf in his capacity as beneficiary under a trust and if this person does not have a vested interest under the trust. Also, the FTRA only requires the financial institution to verify the identity of the real beneficiary of the transaction when the transaction involves an amount of cash exceeding NZ$9,999.99.

36. The net effect is that while the FTRA provisions go some way towards implementing the necessary measures, there are a number of areas of weakness that need to be addressed. Identification requirements for occasional customers should cover all transactions, not just cash transactions, and equally, the various limitations and exceptions, such as those outlined above, should be reconsidered. Guidance should be provided to financial institutions on the types of documentation that could be regarded as acceptable to verify identity. A significant weakness that needs to be addressed is the lack of adequate requirements to identify beneficial owners. The owners and controllers of legal persons such as companies should be required to be identified and verified, as should trustees and beneficiaries of trusts. Equally, if a permanent or occasional customer is suspected to be acting on behalf of another person, then there should be an obligation to identify that other person. This requirement should not be restricted to large cash transactions. Finally, NZ should swiftly implement the measures it needs to take to come into full compliance with SR VII, such as giving enhanced scrutiny to wire transfers that do not have the necessary originator information on them.

37. The FTRA does not contain any explicit requirement for financial institutions to pay special attention to either: (a) complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose; or (b) 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. While some non-mandatory guidance is offered by the FIU, the NZ Banking Association and the Reserve Bank, this should be updated and more comprehensive, and the requirements mentioned above should be made mandatory with sanctions for non-compliance. The requirements to keep the necessary identification and transaction records are satisfactory, and the authorities have adequate powers to access those records, though some enhancements could also be considered.

38. Where a financial institution has reasonable grounds to suspect that a transaction or a proposed transaction is or may be relevant to the investigation of any person for a money laundering offence or to

the enforcement of the POCA, it shall, as soon as practicable after forming that suspicion, report that transaction to the Commissioner of Police. Failing to make a STR as required is an offence punishable by a fine - $20,000 (individuals) and $100,000 (companies). The FIU guidance notes contain general indicators and examples to assist financial institutions to identify suspicious transactions. The FTRA also provides immunity from criminal and civil liability for making an STR, and there is a tipping off offence. The FTRA provisions are generally satisfactory, while the guidelines issued by the FIU need to be updated. Consideration also needs to be given as to how to further enhance the effectiveness of the system, particularly with respect to reporting by institutions other than banks. This should be complemented by increased feedback from the FIU.

39. The principal STR provision concerning terrorist financing is s.43 TSA, which requires financial institutions or other persons to make a suspicious property report if they are in possession or control of property that they suspect on reasonable grounds to be property owned or controlled by a designated entity i.e. currently this means an entity on the UNSCR 1267 list. This is supplemented to a certain extent by s.81 TSA, which may indirectly bring some terrorist financing transactions under the STR requirements of the FTRA. However, the two provisions do not entirely meet the requirements of Special Recommendation IV, and the TSA provisions should be expanded and clarified to cover all transactions suspected of being related to terrorist financing.

40. There are no legal requirements for institutions to put in place internal procedures to prevent money laundering or terrorist financing, to organise on-going employee training, to have compliance officers or to have screening procedures when hiring employees. These measures are referred to in various guidance notes, and for registered banks, the Reserve Bank Policy Statement BS 5 ask them to have procedures to comply with the 1988 Statement of Principles on money laundering and the 2001 paper on customer due diligence by the Basel Committee. Some institutions would appear to have such measures in practice. There is no explicit provision in NZ law or regulation to require financial institutions to ensure that their foreign subsidiaries observe appropriate AML/CFT measures consistent with NZ requirements, though this may not be a significant issue in practice, since there are few foreign subsidiaries of NZ institutions. All these measures should be adequately addressed by appropriate mandatory requirements.

41. There are reasonably comprehensive measures to prevent criminals taking control or acquiring a significant participation in a registered bank, and there are also some requirements, though less comprehensive, for sharebrokers. However, there are no requirements for other types of financial institutions, and this deficiency should be rectified.

42. As noted above, in order to ensure compliance with the AML/CFT measures, NZ relies on framework based on industry discipline. There is no programme of supervision or monitoring. The FTRA contains sanctions for failing to comply with the different provisions of the Act, and the NZ Police can conduct an investigation for such offences in the same way as for other offences. Both the Reserve Bank and the Securities Commission have the ability to conduct on-site inspections in banks and sharebrokers respectively, but AML/CFT requirements do not fall within the scope of the supervision. Otherwise there are effectively no oversight or monitoring mechanisms.

43. The FIU can only inspect the books and records of an institution in the context of a criminal investigation, and it needs to obtain a search warrant to do so. In this context, there is no effective supervision or monitoring of the relevant financial and other institutions for AML/CFT purposes. There is a need to put in place a supervisory framework to ensure this compliance, and in order to ensure that this mechanism is effective and efficient, it would be highly preferable that this supervision is made by one or more financial oversight authorities rather than the FIU, which has neither the resources nor the expertise to perform this function. Equally, the current organisation of the NZ system raises questions about the relevant authorities ability to provide international cooperation regarding AML/CFT for supervisory purposes, though the limited size of the financial sector and its domestic-orientation, may mean that there have not been problems in practice.

Other measures

44. New Zealand does not have a cash transactions reporting system and they currently have no plans to introduce one. The FTRA requires persons arriving in or leaving NZ to make a written declaration to Customs officers if they are carrying cash in excess of $10,000. In 3.5 years, about 8,000 such reports were filed, involving an average amount of cash of NZD 30,000. In about 10 cases, these reports led on to ML investigations. Some enhancements could be made to further enhance the effectiveness of this system, such as expanding reporting requirements to cover monetary instruments.

45. The six casinos in NZ are required to comply with most of the provisions of the FTRA regarding customer identification, record keeping and suspicious transaction reporting. The industry is tightly regulated and subject to supervision by the Casino Control Authority and Dept. of Internal Affairs, and these bodies work closely with the FIU and the police. In the same way, the relevant AML measures and oversight of them, applies to the horse racing and betting industry.

Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Criminal Justice Measures and International Co-operation	Recommended Action
I—Criminalization of ML and FT	1. Give greater emphasis to money laundering prosecutions. 2. Extend the TF offence to cover the funding of terrorists and terrorist organisations.
II—Confiscation of proceeds of crime or property used to finance terrorism	1. Consider how to increase the efficiency and speed of the procedures for seeking restraint orders. 2. Increase the resources of the Crown Law Office and the NZ Police to deal with proceeds of crime matters 3. Consider establishing a multidisciplinary body that could perform restraint and confiscation work in an effective and efficient manner. 4. Introduce measures that will help to ensure that organised and long term criminals (for all types of serious offences) are deprived of their proceeds including: (a) allowing confiscation with respect to the criminal activity in which the defendant has been involved in the past for all types of serious crimes, and (b) requiring the defendant to show a truly legitimate source for all his assets and any income or benefits received. 5. Consider introducing civil forfeiture provisions. 6. Allow tax information to be provided for money laundering, and confiscation and restraint cases. 7. Consider whether terrorist organisations other than those designated by the United Nations should also be designated. 8. Consider introducing a mechanism for listing assets or classes of assets that are owned or controlled by terrorist organisations.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	1. The FIU should become more proactive in providing further training to reporting parties, publishing periodic reports on typologies and trends, and overall increased interaction with reporting parties. 2. The FIU should review its guidelines and ensure they are current and meet the needs of all reporting parties. 3. The FIU's IT capabilities should be increased as a matter of priority. 4. MOUs with counterpart FIUs should be actively pursued. 5. The FIU should implement an electronic process for receiving STRs, and should provide enhanced feedback to reporting institutions.

IV—Law enforcement and prosecution authorities, powers and duties	1. Investigative and prosecutorial authorities need to focus more on investigating and prosecuting ML and not just predicate offences. ML investigations need to be centralized and given national priority. 2. The IT capabilities of the investigative and prosecutorial authorities need to be expanded. 3. The development of special training and/or certification of financial investigators for investigations of ML and FT are encouraged. 4. The powers to obtain production and monitoring orders should be simplified and made easier to obtain. 5. The current review of the operational effectiveness of the POCA should examine the lack of authority under s.30 POCA to act without a warrant in order to preserve tainted property from dissipation; the lack of authority to allow tax information to be given to law enforcement under a court order or otherwise; and the lack of ML investigations relating to serious or complex fraud investigations.
V—International co-operation	1. Improve record retention methods so as to permit more sophisticated searching.
Legal and Institutional Framework for Financial Institutions	
I—General framework	1. NZ authorities should develop an effective supervisory framework to ensure compliance with AML/CFT requirements.
II—Customer identification	1. Introduce a requirement to identify and verify the beneficial owner of customers that are legal persons or arrangements 2. Introduce a requirement to verify that natural persons who purport to act on behalf of legal persons are so authorised and identify such persons. 3. The verification of identity when a person acts on behalf of another person or when the person is an occasional customer should be extended to all transactions and not be limited to cash transactions. 4. Introduce a requirement to identify all parties involved in a trust, including the settlor, trustee and named beneficiaries. 5. Consider requiring the identification of all persons on whose behalf a facility is established, even if there are three or more facility holders. NZ authorities should also consider removing, or at least reducing, the prescribed amount in relation to the identification of persons on whose behalf a facility holder conducts transactions. 6. The procedures to verify identity should be reviewed, and more guidance should be given to institutions on the types of documents they can rely on. 7. The exemption from identification for deposit accounts should be reconsidered. 8. Consider additional policies and guidance for correspondent accounts, PEPs and private banking.

III—Ongoing monitoring of accounts and transactions	1. Introduce explicit requirements 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, and to give enhanced scrutiny to transactions involving countries that have weaker AML systems. 2. Complete the mechanisms required to ensure full compliance with SR VII.
IV—Record keeping	1. Consider requiring institutions to retain business correspondence relating to an account.
V—Suspicious transactions reporting	1. Take steps to increase the awareness of non bank financial institutions to the risks of money laundering and terrorist financing. 2. Consider how to further enhance the effectiveness of the system, particularly with respect to reporting by institutions other than banks. 3. Provide increased feedback to reporting institutions. 4. Expand and clarify the provisions concerning the reporting of suspicions relating to terrorist financing, by covering transactions involving all suspected terrorist financing transactions, and not just those that involve entities designated under the TSA.
VI—Internal controls, compliance and audit	1. Introduce requirements for institutions to have internal procedures to combat money laundering and terrorist financing, to designate an AML/CFT compliance officer at management level, to have on-going employee training, and to put in place screening procedures when hiring employees. 2. Introduce requirements for institutions to ensure that foreign subsidiaries observe appropriate AML/CFT measures consistent with the home jurisdiction requirements.
VII—Integrity standards	1. Introduce a requirement to prevent criminals taking control or acquiring a significant participation in non-bank financial institutions.
VIII—Enforcement powers and sanctions	1. Put in place an effective system to supervise and/or monitor the compliance by relevant financial and other institutions for AML/CFT purposes. In ensuring that this mechanism is effective and efficient, it would be highly preferable that this supervision is made by one or more financial oversight authorities rather than the FIU, which has neither the resources nor the expertise to perform this function.
IX—Co-operation between supervisors and other competent authorities	1. Review the capacity of the relevant authorities to provide international cooperation regarding AML/CFT for supervisory purposes.

Authorities' Response to the Recommended Action Plan to improve compliance with the FATF Recommendations

New Zealand wishes to thank the assessment team for its work in producing the Assessment Report and for the constructive nature of the discussions related to it, which resolved almost all points of disagreement over the manner in which the methodology was applied and the consequent ratings.

New Zealand takes the Recommended Action Plan in the Assessment Report very seriously and has already commenced a number of initiatives designed to rectify the deficiencies in its AML/CFT framework that have been identified. The major initiatives are outlined below.

A factor that impacted on a number of recommendations was New Zealand's lack of an effective supervisory framework to ensure compliance with AML/CFT requirements. The New Zealand Government has determined that financial institutions should be subject to monitoring for AML and CFT compliance. Legislation will be developed after consultation with the financial sector, which will be undertaken in the first half of 2005. The decision to create an AML/CFT monitoring framework will ensure that the relevant authorities have the capacity to provide international cooperation regarding AML/CFT for supervisory purposes.

The Police Guidelines on money laundering and terrorist financing were criticised for being out-of-date. The Police Guidelines have been updated as a matter of urgency, and it is expected that the new Guidelines will be available by June 2005.

Anther concern expressed in the Assessment Report was the fact that several of the FATF requirements, although dealt with in the Reserve Bank policy statements and the Police Guidelines, were not enforceable obligations. The New Zealand Government has determined to make the FATF requirements for CDD, record keeping, STR, and procedures for internal control enforceable. The basic requirements will be placed in statute, while the more detailed obligations will be set out in an enforceable code. Work on developing the legislation/code should be completed in 2005.

Several recommendations were made relating to confiscation of the proceeds of crime and terrorist funds. Legislation is being developed that will replace the current Proceeds of Crime Act 1992 with a new regime that will permit forfeiture on both a criminal and civil basis. It is intended that a Bill will be introduced into Parliament by June 2005. The matters raised in relation to "confiscation of proceeds of crime or property used to finance terrorism" will be dealt with in the context of that legislation.

A further concern was the lack of strong, explicit "fit and proper" requirements for managers, directors and significant shareholders of non-bank financial institutions. The Ministry of Economic Development is commencing a review of insurance, non-bank deposit taking institutions and the Securities Act in mid 2005. How to prevent criminals taking control of, or acquiring a significant participation in, non-bank financial institutions will be considered in the context of that review.

The New Zealand Government has also determined to take a number of steps to rectify non-compliance with the Special Recommendations. The Terrorism Suppression Amendment Bill, introduced into Parliament in February 2005, will make it an offence to fund terrorist organisations or terrorists whether they are designated or not. Such funds will be "tainted" and financial institutions will be required to report transactions suspected to involve such funds. It is

expected that the Bill will be enacted this year. The FTRA is to be amended to require financial institutions to comply with the requirements of Special Recommendation VII. A registration system will be introduced for persons who provide a money transfer service or a money/currency changing service, to ensure compliance with Special Recommendation VI. It is expected that legislation implementing these last two actions will be ready for introduction by the end of 2005.