



Chair/Commentary: Michael Robinson, Partner, Simpson Grierson, Auckland

AML/CFT - New Zealand's Law Reform Process

Slide 1

<p>Presenter Michael Robinson 10 August 2007</p>	<h2 style="text-align: center;">AML / CFT</h2> <p style="text-align: center;">New Zealand's Law Reform Process</p> <div style="text-align: right;"> Simpson Grierson</div>
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Slide 2

<h3>Legislative Background</h3> <ul style="list-style-type: none">• s243 Crimes Act 1961• s12B Misuse of Drugs Act 1975• Proceeds of Crime Act 1991 • Financial Transactions Reporting Act 1996• Terrorism Suppression Act 2002
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Slide 3

Financial Transactions Reporting Act ("FTRA")

- Verify identify of customers
 - New customer requests new facility
 - "Occasional transactions" in cash >\$9,999.99
 - Occasional transactions on behalf of others

- Obligations to report suspicious transactions to FIU

- Retain records of transactions and customer verifications


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Slide 4

Number of Prosecutions / Convictions involving money laundering offences

Year	Engages in money laundering transaction (s257A(2)/243 Crimes Act)	Obtain/possess property with intent to launder (s257A(3)/243 Crimes Act)	Money laundering with proceeds of drugs
1995	0 (0)	0 (0)	0 (0)
1996	3 (3)	1 (0)	0 (0)
1997	5 (5)	2 (0)	0 (0)
1998	22 (11)	2 (1)	0 (0)
1999	18 (11)	2 (1)	0 (0)
2000	23 (13)	13 (1)	0 (0)
2001	24 (11)	8 (0)	0 (0)
2002	39 (15)	3 (0)	0 (0)
2003	43 (13)	2 (0)	0 (0)
2004	25 (8)	2 (1)	2 (0)
2005	22 (10)	3 (2)	3 (1)

Notes: Many cases involved multiple money laundering charges. In 2005 the 28 cases shown in the table involved a total of 193 charges with 13 convictions in respect of 38 charges.
 Figures are provisional for 2005.
 Source: Research & Evaluation Unit, Ministry of Justice (7 June 2006).


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Slide 5


Breaches of FTRA

Year	Failure to verify Identity s.13 FTRA		False or misleading statement in report s.22 FTRA		Other FTRA breaches	
	Reported*	Resolved**	Reported*	Resolved**	Reported*	Resolved**
1997	1	1	0	0	2	1
1998	1	1	0	0	0	0
1999	3	2	0	0	1	0
2000	0	0	0	0	0	0
2001	0	0	0	0	0	0
2002	1	1	1	1	3	0
2003	0	0	1	1	0	0
2004	0	0	1	1	1	0
2005	0	0	1	1	2	2
2006	0	0	3	2	1	0
TOTAL	6	5	7	6	9	3

* Reported includes all matters that have come to the attention of the police
 ** Resolved means all prosecutions warnings, cautions and diversions that have resulted from police investigations
 Source: Statistics New Zealand




Slide 6

- ### Financial Action Task Force Review
- FATF's 40 recommendations
 - Revised in 1996 and 2003
 - 9 Special Recommendations Post 9/11
 - Assessment in October 2003
 - Benchmark – 1996 Recommendations
 - APG/IMF Report – August 2005
 - NZ's AML/CFT regime "generally sound"
 - "Foundations for an effective preventive system were in place"
 - No evidence of terrorist financing
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Slide 7

FATF – Compliance Gap


- CDD Requirements:
 - Identify / verify owners of companies and beneficiaries of trusts
 - "Occasional transactions" not just cash transactions
- Mandatory requirements for:
 - Internal AML procedures / employee training
 - Screening procedures when hiring
- Extend FIU's technology
- Most importantly: introduce an effective supervisory system

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Closing the Gap


- FATF Interagency Working Group
- Two years of consultation:
 - August 2005 – First Discussion Document
 - October 2006 – Third Discussion Document
 - 21 June 2007 – Working Group Response (+ 20 questions)
- Proposals not policy
 - Late 2007 – Draft Bill
 - End of 2008 – Implement Act

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Slide 9

<h2>Working Group Proposals - CDD</h2>
<ul style="list-style-type: none">• Much more onerous CDD<ul style="list-style-type: none">– Identify and verify all facility holders / beneficial owners– Extend CDD obligations to "non-cash" transactions– Verify power to act "on behalf of" companies and trusts– Investigate purpose / nature of business relationship– On-going due diligence– Retrospective application of CDD requirements



Slide 10

<h2>Industry Response</h2>
<ul style="list-style-type: none">• Why?• Who?• How? (risk based?)• How much?


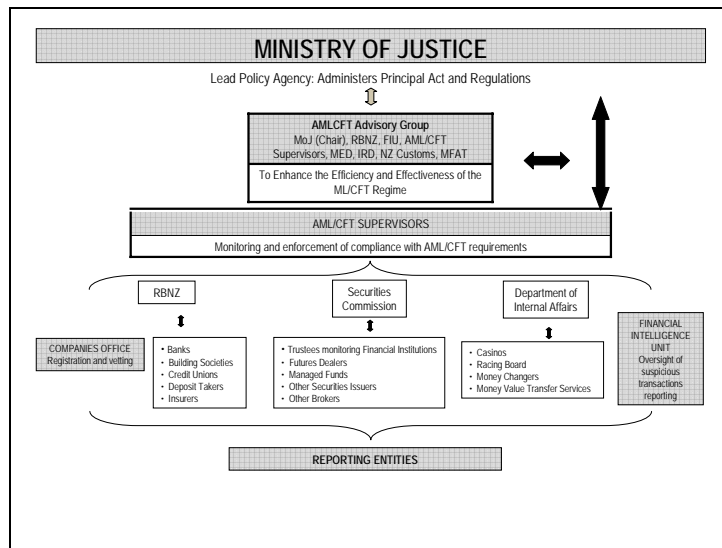
Slide 11

<h2>Legislative Model</h2>
<ul style="list-style-type: none">• Principles<ul style="list-style-type: none">– Proportionality– Partnership– Effective compliance• Options:<ol style="list-style-type: none">1. Act / Regulation2. Act / Regulations / Rules3. Act / Regulations / Mandatory industry guidance• Industry - Option 2 or 3• Working Group – Option 1


Slide 12

<h2>Supervisory Model</h2>
<ul style="list-style-type: none">• Multi-Supervisor<ul style="list-style-type: none">– Reserve Bank / Securities Commission / DIA• Single-Supervisor<ul style="list-style-type: none">– AUSTRAC model• Costs / Efficiency / Flexibility



Slide 13



Slide 14

Trans-Tasman Issues

- 85% banking assets
- Compliance costs incurred anyway?
- Harmonisation in law and practice
- Regulatory arbitrage?

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Conclusions

- Detail yet to come
- Potentially enormous costs
- Select committee process important
- Australian development important