

# AML / CFT

Anti-money laundering and countering financing of terrorism

# Countries Assessment Guideline



FINANCIAL MARKETS AUTHORITY

TE MANA TATAI HOKOHOKO - NEW ZEALAND



RESERVE  
BANK

O F N E W Z E A L A N D

INTERNAL AFFAIRS



Te Tari Taiwhenua

## What is this guideline for?

1. Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act), and regulations made under the AML/CFT Act, you may need to assess aspects of another country's regulatory environment. This may be necessary when you deal with a customer or institution resident or supervised in or from a foreign country.
2. This guideline is designed to help you decide when you need to undertake this assessment, and how you could go about it. It provides information only and cannot be relied on as evidence of complying with the requirements of the AML/CFT Act. It does not constitute legal advice from any of the AML/CFT supervisors and cannot be relied on as such.
3. After reading this guideline, if you still do not understand any of your obligations you should seek legal advice, or contact your AML/CFT supervisor.

## When country assessments are required

4. Circumstances when you may be required to conduct a country assessment include:
  - when you intend to form a designated business group and one of the members is resident overseas;
  - when you establish a business relationship or conduct an occasional transaction for a customer who is not a New Zealand resident;
  - when you have or propose to have a correspondent banking relationship with an overseas financial institution;
  - when you intend to rely on an overseas person to conduct customer due diligence on your behalf;
  - when you determine whether an overseas entity is a shell bank under the AML/CFT Act; and
  - when developing your risk assessment and AML/CFT programme.
5. The types of country assessment required in each circumstance is summarised in the table at Appendix 1 - *When country assessments are required*.

## Sources to assist an assessment

### Terms used in this guideline

6. This guideline uses the following terms which also appear in AML/CFT Act.

## Country

7. This is defined in section 5 of the AML/CFT Act. It includes any State, territory, province, or other part of a country. Jurisdiction has a similar meaning where it is used in the AML/CFT Act and regulations.

## AML/CFT systems and measures

8. There are references in the AML/CFT Act to:
  - AML/CFT systems; or
  - AML/CFT systems and measures.
9. In this document AML/CFT systems/measures is used to describe both terms.

## Supervised or regulated for AML/CFT purposes

10. There are references in the AML/CFT Act to:
  - supervised for AML/CFT purposes; or
  - supervised or regulated for AML/CFT purposes.
11. In this document supervised or regulated is used to describe both terms.

## **Information sources to assist you**

12. [The Financial Action Task Force<sup>1</sup> \(FATF\)](#) publishes reports on the AML/CFT regulatory environment of countries, and how compliant they are with FATF recommendations. FATF reports are a good starting point for your countries assessment but they are not always current, therefore it may be necessary to consider additional sources of information.
13. The reputation of the country is another important factor to consider. International organisations regularly publish reports on perceived crime and corruption levels in countries.
14. Resources you could use for your countries assessment are listed in Appendix 2.

## **Types of country assessments**

15. Depending on the circumstances, you may be required to assess whether:
  - a country has sufficient AML/CFT systems/measures;
  - a person is supervised or regulated for AML/CFT purposes;
  - a person is sufficiently supervised and monitored by a banking supervisor;

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<sup>1</sup> [http://www.fatf-gafi.org/document/18/0,3746,en\\_32250379\\_32236992\\_49694738\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/18/0,3746,en_32250379_32236992_49694738_1_1_1_1,00.html)

- a country has sufficient AML/CFT systems/measures and supervised or regulated for AML/CFT purposes; or
  - a country does not have, or has insufficient, AML/CFT systems/measures.
16. When you conduct your risk assessment you will need to assess the likelihood that your business could be used for money laundering or terrorist financing because of the countries you deal with.
17. The AML/CFT Act requires specific types of assessments before dealing with persons that are resident or supervised in another country. It does not prohibit business relationships or transactions with persons based in those countries.

#### **Sufficient AML/CFT systems/measures**

18. You must assess whether a country has sufficient AML/CFT systems/measures if you wish to conduct simplified due diligence on a government body located in that country. This is required under regulation 5 of the AML/CFT (Requirements and Compliance) Regulations 2011.
19. 'Sufficient' is not defined in the AML/CFT Act or the regulations and to some extent you have to use your own common sense and judgement to make this assessment.

#### Assessment

20. When you conduct this assessment factors to consider include:

- whether the country has laws that make it illegal to launder money or finance terrorism;
- whether the country's legislative framework puts obligations on financial institutions for customer due diligence, account monitoring, suspicious transaction reporting and record keeping similar to those set out in the AML/CFT Act; and
- whether the country has an established and effective AML/CFT supervisory regime.

21. Some other factors to consider during this assessment are:

- membership of the Financial Action Task Force ([FATF](http://www.fatf-gafi.org)<sup>2</sup>), or a FATF regional body, for example, the Asia/Pacific Group on Money Laundering ([APG](http://www.apgml.org/)<sup>3</sup>). FATF and APG routinely assess the effectiveness of their member countries' AML/CFT systems and measures;
- the results of any recent independent assessment of the country's AML/CFT systems/measures, for example, a FATF mutual evaluation of the country. Such

<sup>2</sup> [http://www.fatf-gafi.org/pages/0,2987,en\\_32250379\\_32235720\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html)

<sup>3</sup> <http://www.apgml.org/>

assessments can be found on the websites of [FATF](#)<sup>4</sup> or associated regional bodies; and

- any public concerns raised about a country's AML/CFT systems/measures.
22. You may also consider any additional factors you think necessary for your assessment which are not included in the above list.

### **Supervised or regulated for AML/CFT purposes**

23. You will have to assess whether a financial institution you wish to establish, or continue, a correspondent banking relationship with is supervised or regulated for AML/CFT purposes. This is required under section 29 of the AML/CFT Act.
24. An AML/CFT supervisor may be a government agency with additional functions not related to AML/CFT. The best sources of information on supervision and regulation for particular countries are the mutual evaluations undertaken by FATF and FATF-style regional bodies such as the APG.

### **Assessment**

25. When you conduct this assessment factors to consider include:
- whether one or more independent supervisory bodies is in place for AML/CFT (where the entity is located or anywhere with jurisdiction to supervise that entity or its parent); and
  - whether, and to what extent, the person under consideration is supervised by that AML/CFT supervisor.

### **Supervised and monitored by a banking supervisor**

26. The AML/CFT Act prohibits business relationships with shell banks. You must not establish or continue a business relationship with a shell bank, or a financial institution that has a correspondent banking relationship with a shell bank. You must not allow an occasional transaction to be conducted through your business by them.
27. A shell bank is an entity that is formed and authorised to carry on banking business in a country but does not have a physical presence in that country. An affiliate of a corporation that is sufficiently supervised and monitored in carrying on its banking business is not a shell bank.
28. When you are required to determine whether a person is supervised and monitored in carrying on banking business, you will have to determine whether the person has to report to and be monitored by a banking supervisor. A banking supervisor may be a government agency with additional functions not related to banking supervision.

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<sup>4</sup> [http://www.fatf-gafi.org/pages/0,3417,en\\_32250379\\_32236963\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236963_1_1_1_1_1,00.html)

## Assessment

29. To assess whether a person in another country is sufficiently supervised for banking business factors to consider include the following:
- whether an independent body is in place for supervising banking business;
  - whether the person under consideration is supervised by that body in carrying on its banking business; and
  - whether the monitoring and supervision of banking business by that body is adequate when compared with relevant international standards.
30. The person being considered may be supervised for banking business by a body that is not located in the same country as the person.

### **Sufficient AML/CFT systems/measures and supervised or regulated for AML/CFT purposes**

31. You are required to establish both whether a country has sufficient AML/CFT systems/measures and whether the person is supervised or regulated for AML/CFT purposes in the following circumstances:
- if you intend to form a designated business group, and one of the proposed members is resident in another country;
  - when establishing whether an overseas body corporate is eligible for membership of a designated business group; and
  - if you decide to rely on a person resident in another country to conduct customer due diligence on your behalf.
32. This is required under sections 5, 29 and 33 of the AML/CFT Act and regulation 8 of the AML/CFT (Definitions) Regulations 2011.

## Assessment

33. When conducting this assessment, the minimum considerations are set out above under the headings '*Sufficient AML/CFT systems/measures*' and '*Supervised or regulated for AML/CFT purposes*'.

### **Insufficient or no AML/CFT systems/measures**

34. Where you establish a business relationship with a non-resident customer, or where a non-resident customer seeks to conduct an occasional transaction through your business, you must conduct enhanced due diligence if that customer is from a country that has insufficient AML/CFT systems/measures in place.
35. Under section 57(h) of the AML/CFT Act, your AML/CFT programme must incorporate monitoring, examining and keeping written findings relating to business relationships and transactions from countries, or in countries, that do not have or have insufficient AML/CFT systems/measures in place. Your AML/CFT

programme must also have policies, procedures and controls for dealing with or restricting dealings with such countries.

### Assessment

36. Paragraphs 20 to 22 of this guideline outline factors to consider when you assess whether a country has sufficient AML/CFT systems/measures. These same factors could be used to assess whether a country has insufficient AML/CFT systems/measures in place.

### **High risk countries**

37. When you undertake your risk assessment you must consider the money laundering and financing of terrorism risk with regard to the countries your customers are based in, and countries they conduct their business in or through, as well as any overseas institutions that you may deal with.

### Assessment

38. There is no universally agreed definition of a high risk country, but when undertaking this assessment you should consider:

- countries subject to [sanctions](#)<sup>5</sup>, embargoes or similar measures;
- countries identified by credible sources, such as [FATF](#)<sup>6</sup>, as lacking adequate AML/CFT systems/measures or controls;
- countries identified by credible sources as having supporters of terrorism or the financing of terrorism;
- countries identified by credible sources as having significant levels of corruption, for example, Transparency International's [corruption perception index](#)<sup>7</sup>;
- countries identified by credible sources as being [tax havens](#)<sup>8</sup>; and
- countries that are materially associated with production and/or transnational-shipment of illicit drugs.

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<sup>5</sup> <http://www.mfat.govt.nz/Treaties-and-International-Law/09-United-Nations-Security-Council-Sanctions/index.php>

<sup>6</sup> <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>

<sup>7</sup> <http://cpi.transparency.org/cpi2011/results/>

<sup>8</sup> [http://www.oecd.org/document/57/0,3746,en\\_2649\\_201185\\_30578809\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/57/0,3746,en_2649_201185_30578809_1_1_1_1,00.html)

**Appendix 1**  
**When country assessments are required**

AML/CFT Act	Subject	Sufficient AML/CFT systems/measures	Insufficient AML/CFT systems	Supervised or regulated for AML/CFT purposes	Supervised and monitored for banking business	High risk countries
s 5	designated business group	✓		✓		
s 22 (1)(a) (ii)	enhanced customer due diligence		✓			
s 22 (1)(b) (ii)	enhanced customer due diligence		✓			
s 29 (2) (b)	correspondent banking relationships			✓		
s 33 (2) (a) (ii)	reliance on third parties	✓		✓		
s 39 (2) (d) (iii)	shell bank				✓	
s57 (h)	AML/CFT programme		✓			
s58 (2) (e)	risk assessment					✓

AML/CFT Regulations	Subject	Sufficient AML/CFT systems/measures	Insufficient AML/CFT systems	Supervised or regulated for AML/CFT purposes	Supervised and monitored for banking business	High risk countries
Requirements and Compliance Reg 5 (1) (e) (ii)	simplified customer due diligence	✓				
Definitions Reg 8 (c) (ii)	overseas body corporate in a designated business group	✓		✓		



## Appendix 2 Additional resources

Information available at the sites listed below may assist your business in conducting a country assessment:

- Financial Action Task Force - [www.fatf-gafi.org](http://www.fatf-gafi.org)
  - [Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations](#)
- Asia/Pacific Group on Money Laundering - [www.apgml.org](http://www.apgml.org)
- The World Bank - [www.worldbank.org](http://www.worldbank.org)
- International Monetary Fund - [www.imf.org](http://www.imf.org), IMF Financial Sector Assessment Programme [www.imf.org/external/np/fsap/fssa.aspx](http://www.imf.org/external/np/fsap/fssa.aspx)
- Organisation for Economic Co-operation and Development - [www.oecd.org](http://www.oecd.org)
- The Egmont Group - [www.egmontgroup.org](http://www.egmontgroup.org)
- The Wolfsberg Group - [www.wolfsberg-principles.com](http://www.wolfsberg-principles.com)
- Transparency International - [www.transparency.org](http://www.transparency.org)
- NZ Police - New Zealand's designated terrorist individuals and organisations <http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>
- The Ministry of Foreign Affairs and Trade - [www.mfat.govt.nz](http://www.mfat.govt.nz)
- AUSTRAC Australian Transaction Reports and Analysis Centre - [www.austrac.gov.au](http://www.austrac.gov.au)
- Australian Department of Foreign Affairs and Trade - [www.dfat.gov.au](http://www.dfat.gov.au)
- Joint Money Laundering Steering Group (JMLSG) - [www.jmlsg.org.uk](http://www.jmlsg.org.uk)
- British Bankers Association - [www.bba.org.uk](http://www.bba.org.uk)
- Financial Services Authority - [www.fsa.gov.uk](http://www.fsa.gov.uk)
- Office of the Comptroller of the Currency - [www.occ.treas.gov](http://www.occ.treas.gov)
- Financial Crimes Enforcement Network (FinCen) - [www.fincen.gov](http://www.fincen.gov)
- Financial Transactions and Reports Analysis Centre - [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)

Media searches and the use of search engines may provide current information on the countries of interest to you.

Some other website resources include:

- [www.baselgovernance.org](http://www.baselgovernance.org)
- [www.world-check.com](http://www.world-check.com)
- [www.janes.com](http://www.janes.com)
- [www.country-check.com](http://www.country-check.com)
- [www.ACAMSmoneylaundering.com](http://www.ACAMSmoneylaundering.com)
- [www.knowyourcountry.com](http://www.knowyourcountry.com)
- [www.factiva.com](http://www.factiva.com)

These and other websites may include charges to access the information. Their listing does not constitute AML/CFT supervisor endorsement.