

# AML / CFT

Anti-money laundering and countering financing of terrorism

## Territorial scope of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Updated November 2019



**Te Tari Taiwhenua**  
**Internal Affairs**

## What is this guideline for?

1. This guideline is designed to assist businesses to determine whether they have obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT Act”).
2. If you do have obligations under the AML/CFT Act, further information about your obligations is provided in separate guidelines and is available from your AML/CFT supervisor.
3. This guideline is provided for 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 and cannot be relied on as such.
4. 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.

## Territorial scope of the AML/CFT Act

5. The AML/CFT Act contains a set of compliance obligations for reporting entities.
6. Reporting entities include financial institutions, casinos, high-value dealers, the Racing Industry Transition Agency, other specified persons, and designated non-financial businesses or professions (DNFBPs) such as law firms, conveyancers, trust and company service providers (TCSPs), accounting practices, and real estate agents. This guideline focuses on reporting entities that are financial institutions or DNFBPs. [1]
7. Financial institutions are defined in section 5(1) of the AML/CFT Act by reference to a list of financial activities carried on in the ordinary course of business (*financial activities*). DNFBPs are also defined in section 5(1) of the AML/CFT, by reference to a separate list of activities, one or more of which also must be carried out in the ordinary course of business (*DNFBP activities*). In this guideline, we refer to financial activities and DNFBP activities together as the *activities* or individually as an *activity*.
8. One or more of the activities must be carried on in New Zealand in the ordinary course of business. This implies a place of business in New Zealand from where the activity is directed. This is likely to include New Zealand staff and / or infrastructure that provide the means to carry on the activity. An activity may also be carried on in New Zealand by an overseas entity where the entity is actively and directly advertising or soliciting business from persons in New Zealand to such an extent that the entity is carrying on business in New Zealand. [2]

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[1] Virtual asset service providers are advised to contact their supervisor if they have any questions about territorial scope.

[2] Overseas entities may need to be registered under the Companies Act 1993 as carrying on business in New Zealand. There may be a further requirement to register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

9. Therefore, the following applies when determining whether a person is a reporting entity for the purposes of the AML/CFT Act:
- A legal person incorporated or formed in New Zealand, which, in the ordinary course of business, carries on one or more activities in New Zealand will be a “reporting entity” under the AML/CFT Act. This also applies to a natural person, such as a solicitor or accountant practising on their own account in sole practice, who in the ordinary course of business, carries on one or more activities in New Zealand.
  - A legal person incorporated or formed in New Zealand (or a natural person, such as a solicitor or accountant practising on their own account in sole practice) which, in the ordinary course of business, carries on activities wholly outside New Zealand will not be a “reporting entity” under the AML/CFT Act. [3] However, an activity is not provided wholly outside New Zealand solely because the relevant service to which the activity relates is only provided to overseas persons. For example, a law firm, accounting practice or TCSP in New Zealand that acts as a formation agent or arranges nominees or trustees, in respect of New Zealand companies or New Zealand-based legal arrangements is providing that activity in New Zealand, even if the service is only provided to overseas persons.
  - An overseas person carrying on business in New Zealand and engaged in one or more of the activities listed in the AML/CFT Act in New Zealand will be a “reporting entity” under the AML/CFT Act. [4]
  - An overseas person that is not carrying on business in New Zealand is unlikely to be a “reporting entity” under the AML/CFT Act. [5]

## Version History

December 2012	Original version.
November 2019	Full revised version. The additions to the document reflect the expansion of the AML/CFT legislation to include new sectors. The remaining changes are not substantial and have been made for reasons of clarity.

<sup>[3]</sup> A person in this category will be subject to AML / CFT requirements in the country where its activities are conducted.

<sup>[4]</sup> A person in this category will be subject to AML / CFT requirements in its home country and New Zealand AML / CFT requirements in respect of its New Zealand activities.

<sup>[5]</sup> A person in this category will only be subject to home country AML / CFT requirements.