# Risk Assessment

## for the purposes of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

*This is a sample document only which has been produced for the New Zealand Law Society to assist lawyers with Anti- Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) compliance requirements. It is intended as a guide only and should be adapted to take into account a law firm’s particular circumstances including internal policies and procedures specific to the law firm. This sample document should not be relied on as definitive statement of AML/CFT legal requirements.  Law firms and lawyers must familiarise themselves with the relevant legal requirements and there is information available on the DIA’s website (*<https://www.dia.govt.nz/>*) and the Law Society’s website (*<https://www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft>*) about this. If legal advice is required, it should be sought on a formal, professional basis.*

1. Introduction
   1. This document is the Anti-Money Laundering (‘**AML**’) and Countering Financing of Terrorism (‘**CFT**’) risk assessment for [NAME OF LAW FIRM] (the ‘**Firm**’). [NAME OF LAW FIRM] has offices in [LOCATION].
   2. As a reporting entity under the AML and CFT Act 2009 (the ‘**Act**’), the Firm is required to undertake an assessment of the risks of money laundering (‘**ML**’) and terrorist financing (‘**TF**’) in the provision of services.
   3. This risk assessment has been established based on the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the ‘**Act**’).
   4. The Firm does not permit the use its services for ML and TF purposes and this risk assessment seeks to identify the level of ML/TF risk within the Firm.
   5. At the date of this document[[1]](#footnote-1):
      1. The Money Laundering Compliance Officer of the Firm is [●].
      2. The Money Laundering Reporting Officer of the Firm is [●].
2. Scope

The contents of this risk assessment apply to all partners and employees of the Firm and all activities carried out by the Firm in the ordinary course of its business.

1. Money laundering and terrorism financing
   1. ML is the process by which criminals attempt to conceal the true origin of the proceeds of their criminal activities. This is typically achieved by placing the proceeds of crime into the financial system, by creating complex layers of financial transactions to disguise the provenance of the funds, and then integrating the laundered funds into the legitimate economy.
   2. TF relates to activities that provide capital to fuel individual terrorists or terrorist groups. These activities may involve drug trafficking, human trafficking, theft, graft, robbery and fraud. They may even involve philanthropy or charitable giving.
   3. ML and TF involve similar processes and functionaries and are predicated on criminals moving funds across borders or within the financial sector to further their objectives.
2. Legal obligations under the Act
   1. The purposes of the Act are to:
      1. Detect and deter ML/TF; and
      2. Maintain and enhance New Zealand’s international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force (‘**FATF**’); and
      3. Contribute to public confidence in the financial system.
   2. Section 58 of the Act requires the Firm to consider the following matters when conducting its risk assessment:
      1. The nature, size and complexity of the Firm’s business;
      2. The services the Firm offers;
      3. The way the Firm delivers its services;
      4. The types of customers the Firm deals with;
      5. The countries that the Firm deals with; and
      6. The institutions that the Firm deals with.
3. Nature, size and complexity of the Firm’s business
   1. As a general proposition, a large law firm is less likely to know its clients personally, and could therefore offer a greater degree of anonymity for money launderers than a small law firm.
   2. Additionally, a law firm that conducts complex transactions across international jurisdictions may be able to offer greater opportunities to money launderers than a law firm operating regionally, or domestically.
4. The services the Firm offers
   1. Certain areas of the law and associated services provide opportunities to facilitate ML and TF. For example:
      1. Complicated commercial or property transactions.
      2. The establishment of trusts or corporate structures (which could have an ulterior motive such as obscuring the property identity of the owner/beneficiary of property).
      3. Payments that are made to, or received from, third parties who are not obviously connected with any transaction.
      4. Transactions involving cash payments.
      5. Transactions involving wire transfers.
      6. Transactions involving inter-company loans.
      7. Transactions involving the purchase of valuable assets (for example, real estate):

Through this technique, criminal proceeds are invested in high-value negotiable goods taking advantage of reduced reporting requirements and obscuring the source of proceeds of crime.

* + 1. Cross-border transactions (including transactions which require involvement by offshore banks/businesses, including trust company service providers):

This a technique used to obscure the identity of persons controlling funds and to move monies away from interdiction by domestic authorities.

* + 1. Transactions involving the use of shell companies /corporations:

This is a technique used to obscure the identity of persons controlling funds.

* + 1. New or developing technologies, or products, that might favour anonymity.
  1. The Firm should be cautious about accepting instructions in niche areas in which the Firm has no experience. Taking on work which is outside the Firm’s area of expertise can present risk because ML and TF might use the Firm to avoid answering too many questions.
  2. In transactional matters, a full understanding of the nature of the transaction, the reason for it and how it is to be funded will need to be carefully considered.
  3. Simply because a client or matter falls within a certain risk category does not mean that ML or TF is occurring. However, that does not mean that care does not still need to be taken.

1. The way the Firm delivers its services
   1. ML/TF risk increases with the Firm’s non-face-to-face customers (via post, telephone and internet).
   2. ML/TF risk also increases where the Firm has an indirect relationship with clients (for example, via intermediaries).
2. The types of customers the Firm deals with
   1. Another relevant factor is the make-up of the Firms client base. The more we know about our clients and the purpose(s) that they intend to fulfil in instructing our Firm, the better placed the Firm will be to assess ML and TF risks and identify suspicious activity. The risk assessment process that has been designed by the Firm and which will be carried out at the outset of a relationship will have an impact on how a client is treated both (1) from the start of the relationship with the Firm; and (2) if it is considered during the course of an engagement with a client that there is an element of conduct which calls for an adjustment of that clients risk assessment.
   2. Without limitation, the following factors should be considered in relation to a particular client:
      1. The level of risk that is associated with the clients particular type of business.
      2. Location risks associated with a client, introducer or intermediary.
      3. The speed with which our engagement requirements (including AML/CFT requirements) are satisfied.
      4. The ease with which the Firm can determine whether CDD documentation and information in relation to the client is reliable and adequately identify the client.
      5. The ease with which a control and ownership structure may be understood.
      6. Whether there is anything unusual about the nature of the matter and how the Firm came to be instructed. For example, has the Firm been approached to act in relation to a matter that is outside its usual scope of practice.
   3. Regard must be had to the Business Risk Type Assessment in the Schedule to this document.
   4. Generally, long term clients present less risk. This is because a consequence of developing long term client means more will be known about the individuals, and their business(es). Additionally, customers who are employed and receive a regular source of income from a known source (e.g. salaried persons or pensioners) may indicate a lower risk.

## General warning signs

* 1. Greater (and in some cases, much greater) care will need to be taken where:
     1. A client is secretive or the Firm is asked to act for a client without meeting them:

While face to face contact with clients is not always necessary, an excessively obstructive or secretive client may be a cause for concern.

* + 1. The Firm is introduced to a client by a ‘gatekeeper’ such as an accountant, lawyer, or other professional.
    2. The Firm is asked to act for legal entities that have complex ownership or business structures that offer no apparent financial benefits.
    3. Where customer due diligence (‘**CDD**’) information (including in relation to those beneficially interested in the legal entity) is only provided reluctantly.
    4. A client seems unlikely to engage the Firm more than once.
    5. A client is engaged in cash-intensive businesses.
    6. The client is engaged in activities outside of New Zealand.
    7. The client is a not-for-profit/charitable organisations.
    8. Unusual instructions are received by the Firm:

Instructions that are unusual in themselves, or that are unusual for the Firm or the client, may be a cause for concern. These could include:

* + - * 1. Disputes which are settled more easily than anticipated. This may indicate bogus litigation.
        2. Loss-making transactions where the loss is avoidable, or where loans are written-off.
        3. Dealing with money/property where there is a suspicion that the money/property is being transferred to avoid the attention of a liquidator/trustee, the IRD or a law enforcement agency.
        4. Settlements paid in cash.
        5. Settlements paid directly between parties (i.e. seller and buyer) without an adequate explanation. This may indicate tax evasion.
        6. Complex or unusually large transactions.
        7. Unusual patterns of transactions for which there is no apparent economic purpose.
    1. A client changes its instructions unexpectedly and for no logical reason, including by:
       1. A client who deposits funds into the Firm’s trust account but then ends the transaction for no apparent reason.
       2. A client who tells the Firm that funds are coming from one source, and at the last minute the source changes.
       3. A client who unexpectedly requests that the Firm sends money held in the trust account back to its source (whether that be the client, or a third party).
       4. Where the proposed transaction changes, or is cancelled (for example, a client deposits funds into the trust account for a future commitment, the commitment is then cancelled, and the client’s funds are refunded).
       5. Changes in a corporate client’s business or organisational/ownership structure (for example, a change of directors, location or line of business or a significant change of shareholders).
       6. Changes in a client’s relationship with the Firm (for example, the client enters into more substantial transaction than originally anticipated).
       7. Changes in the background to the client relationship (for example, the client’s becomes located in a high risk jurisdiction, or new guidance is published that requires greater CDD compared to what was required at the outset of the relationship.)
    2. The Firm is asked to act for a politically exposed person (‘**PEP**’)[[2]](#footnote-2). Where the Firm is asked to act for a PEP, careful consideration will need to be taken in regards to whether such person should become a client of the Firm.
    3. Clients who are non-profit/charitable organisations.
    4. An intermediary practises in a location with high levels of acquisitive crime or for clients who do not have established businesses or clearly identifiable and established sources of wealth.
    5. The Firm is asked to act for clients affiliated to countries with high levels of corruption or where terrorist organisations operate.
  1. Furthermore, having regard to the risks posed by a specific client or matter is necessary to ensure internal controls are applied in an appropriate manner. Examples of such internal controls include: enhanced customer due diligence, more frequent reviews of identification verification material, and second partner sign-off in high-risk matters.

1. The countries that the Firm deals with
   1. When services are being provided to a client located in a jurisdiction outside of New Zealand, consideration should be given to whether that jurisdiction:
      1. is subject to United Nations sanctions, embargoes or similar measures;
      2. has been identified by credible sources (such as the FATF) as lacking adequate ML controls;
      3. has been identified by credible sources as supporting TF;
      4. has been identified by credible sources as having significant levels of corruption;
      5. is a tax haven;
      6. is associated with drug production and/or shipment.
   2. In such a situation, the following points should also be considered:
      1. Whether extra precautions should be taken when dealing with funds or clients from that particular jurisdiction.
      2. Whether we should conduct enhanced due diligence and ongoing account monitoring with respect to (1) the client; and (2) the country involved.
   3. A list of sanctioned countries, and countries that present ML/TF risk can be found [here](http://www.fatf-gafi.org/countries/#high-risk).
2. The institutions that the Firm deals with

There is an increased risk where the Firm is dealing with financial institutions which are:

* + 1. Unregulated;
    2. Shell companies; or
    3. Shell banks.

1. Additional red flags

Reference should also be made to [section 6](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) and [appendix B](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the Lawyers and Conveyancers Guidelines[[3]](#footnote-3) which identifies further red flags that should be considered.

1. Use of Firm’s trust account
   1. Only use the Firm’s trust account to hold funds for our clients’ legitimate transactions, or for other proper legal purposes. Dirty money which flows through the Firm’s trust account could clean it (whether the money is sent back to the client, sent to a third party, or invested).
   2. Introducing cash into a banking system can become part of the placement stage of ML/TF. Therefore, the use of cash by clients should be a warning sign.
   3. Our Firm should not provide a banking service to our clients. It can be difficult to draw a distinction between holding client money for a legitimate transaction and acting more like a bank. For example, when the proceeds of a sale of property are left with the Firm to distribute, payment may be made to mainstream loan companies, but there could also be payments made to more obscure recipients, including private individuals, whose identity is difficult or impossible to verify.
   4. When releasing client bank account details, the Firm should make it clear that the details are to be used only for pre-agreed purposes.

## Source of funds

* 1. Staff involved with the Firm’s trust account will monitor whether funds received from clients are from credible sources. For example, it is reasonable for funds to be received from a company if the client contact person is a director of that company and has authority to use company funds for the matter. However, if funding is from a source other than the client, further inquiries are necessary. This is especially so when the client has not told us what they intend to with the funds before depositing them into the account. If the Firm decides to accept funds from a third party (perhaps because the matter is urgent), we should ask how and why the third party is helping with the funding.
  2. We do not have to make enquiries into every source of funding from third parties. However, we must always be alert to warning signs and in some cases we will need to get more information.
  3. In some circumstances, cleared funds will be essential for transactions and clients may want to provide cash to meet a completion deadline. In such a case, assess the risk and ask questions if necessary.

1. Policy on handling cash

Our Firm’s policy is that we do not accept cash. Cash may be accepted in very limited circumstances, with the prior written approval of [•].

1. Disclosing client account details

Firm and client account details should only be disclosed to clients when necessary. Circulation of account details should be kept to a minimum.

1. Review and audit of risk assessment
   1. This document needs to be subject to regular reviews to:
      1. Ensure that the risk assessment is up to date; and
      2. Identify any deficiencies in the effectiveness of the risk assessment; and
      3. Make any changes to the risk assessment identified as being necessary.
   2. [Description of how risk assessment is going to be kept up to date by the Firm].
   3. The outcome of such reviews will dictate whether the review of related policies and procedures are also required.
   4. The Firm must have this risk assessment audited every 2 years by an independent, and appropriately qualified person.
2. Annual report
   1. The Firm must prepare an annual report on this risk assessment.
   2. The annual report must:
      1. Be in the prescribed form;
      2. Take into account the results and implications of the audit required by the Act; and
      3. Contain any information prescribed by regulations.
   3. The Department of Internal Affairs may request a copy of such annual report at any time.
3. Conclusion
   1. The following points about the Firm’s approach to AML/CFT are noted:
      1. The Firm’s approach to AML/CFT is well documented.
      2. The Firm recognises the importance of the application of its AML/CFT procedures.
      3. The Firm recognises the importance of keeping its clients and its approach to ML/TF under review.
   2. This document will be used to develop the Firm’s AML/CFT programme as required by section 56 of the Act.
4. Business Risk Type Assessment

Risk Rating

‘U’ – Very unlikely: there is very little chance of ML/TF occurring in this area of the Firm.

‘P’ – Possible: there is a small change of ML/TF occurring in this area of the Firm (perhaps 1% of such transactions).

‘L’ – Likely: there is a moderate chance of ML/TF occurring in this area of the Firm (perhaps 10% of such transactions).

‘V’ – Very likely: there is a high chance of ML/TF occurring in this area of the Firm (perhaps 20% of such transactions).

| Practice Area: Banking and Finance | Risk Rating |
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| Practice Area: Company and Commercial | Risk Rating |
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| Practice Area: Public/Administrative | Risk Rating |
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1. The MLCO does not need to be a Partner of the firm (it can be any suitable employee). However, it may be desirable that the MLRO is a Senior Partner (or Senior Lawyer) given the MLRO’s primary role concerns reporting to the FIU. The MLRO will therefore need an in-depth knowledge of AML/CFT, legal professional privilege and related issues. However, in some firms (particularly smaller firms), it may be that the MLCO and MLRO can be the same person. Such person will be responsible for administering and maintaining the AML/CFT compliance programme as well as reporting to the FIU. [↑](#footnote-ref-1)
2. A politically exposed person broadly includes politicians, judges, diplomats, high ranking members of the armed forces and state owned enterprises and their immediate family. [↑](#footnote-ref-2)
3. December 2017 version. [↑](#footnote-ref-3)