



**Te Tari Taiwhenua  
Internal Affairs**

New Zealand Government

**Guideline:**

# Real Estate Agents

**Complying with the Anti-Money Laundering and  
Countering Financing of Terrorism Act 2009**

**August 2018**



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# Overview: What do I need to do and when do I need to do it?

	What needs to be done?	When does it need to be done?	Comment
Step 1: Establish a compliance programme	Appoint a compliance officer - <i>can be a senior manager</i>	<ul style="list-style-type: none"> <li>By 1 January 2019</li> </ul>	A compliance officer must be an employee, report to a senior manager and can be shared in a designated business group (DBG)
	Conduct a risk assessment	<ul style="list-style-type: none"> <li>By 1 January 2019</li> </ul>	Can be done by reporting entity/ DBG or third party
	Develop an AML/CFT programme	<ul style="list-style-type: none"> <li>By 1 January 2019</li> </ul>	Can be done by reporting entity/ DBG (parts of) or third party
	Administer and maintain AML/CFT programme	<ul style="list-style-type: none"> <li>By 1 January 2019</li> </ul>	Responsibility of compliance officer
Step 2: Maintain your compliance programme	Training and vetting of staff	<ul style="list-style-type: none"> <li>Ongoing as required</li> </ul>	Can be done by reporting entity/ DBG or third party
	Conduct customer due diligence (CDD)	<ul style="list-style-type: none"> <li>When you establish a business relationship with your client</li> <li>When there is a material change in the business relationship</li> </ul>	Can be done by reporting entity/ DBG or third party but responsibility lies with reporting entity
	Keep records	<ul style="list-style-type: none"> <li>Ongoing</li> <li>Records must be kept at least five years</li> </ul>	Responsibility of reporting entity/ DBG
	Ongoing CDD and account monitoring	<ul style="list-style-type: none"> <li>Ongoing</li> </ul>	Responsibility of reporting entity/ DBG
	Monitoring and managing compliance with your programme	<ul style="list-style-type: none"> <li>Ongoing</li> </ul>	Responsibility of reporting entity
	Review your compliance programme	<ul style="list-style-type: none"> <li>At regular intervals specified in your programme</li> </ul>	Can be done by reporting entity/ DBG or third party
Step 3: Report and audit	Submit an annual report	<ul style="list-style-type: none"> <li>Annually by 31 August</li> </ul>	Responsibility of reporting entity/ DBG. Submit to DIA
	Audit your risk assessment and compliance programme	<ul style="list-style-type: none"> <li>Every two years or at the request of DIA</li> <li>Earlier if you wish</li> </ul>	Auditor must be independent and suitably qualified. Requested by DIA when necessary
	Suspicious activity reports (SARs)	<ul style="list-style-type: none"> <li>As soon as practicable, but not more than three working days after forming a suspicion</li> </ul>	Responsibility of reporting entity, DBG. Submit to FIU. Auditor can submit SAR
	Prescribed transaction reports (PTRs)	<ul style="list-style-type: none"> <li>Within 10 working days from the date the transaction took place</li> </ul>	Responsibility of reporting entity, DBG. Submit to FIU

# Executive summary

Money laundering is the method by which people disguise and conceal the proceeds of crime and protect and enjoy their assets. Some people in New Zealand may also be financing terrorism using similar techniques to money launderers to avoid detection by authorities and to protect the identity of those providing and receiving the funds. People with criminal intentions value anonymity and are looking for ways to distance themselves from their activities while still enjoying the proceeds of their crime.

The real estate, legal, conveyancing, accounting, and trust and company service provider sectors are known as gatekeepers. They provide services and products that can be used to facilitate the entry of illicit funds into the legitimate financial system, and can provide an impression of respectability and normality. Both domestic and international evidence suggests that using gatekeepers, such as real estate agents, is a way for criminals to create a false perception of legitimately acquired wealth. The recent changes to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT Act” or “the Act”) now include real estate agents in the AML/CFT system.<sup>1</sup>

The AML/CFT Act is activities-based and real estate agency work (within the meaning of section 4(1) of the Real Estate Agents Act 2008) is one of the covered activities. Managing client funds (other than sums paid as fees for professional services), accounts, securities or other assets is another of the covered activities. Real estate agents who undertake real estate agency work and/or manage client funds, accounts, securities or other assets will need to undertake an assessment of their money laundering and terrorist financing (ML/TF) risk. They will also need to develop a programme to ensure they comply with the requirements in the Act.

This guideline helps you to understand what you must do to ensure you comply with the Act. You must comply with the AML/CFT Act by ensuring you identify, understand and assess the risks of ML/TF to your business, and manage those risks in your day-to-day business via a dedicated AML/CFT programme. AML/CFT programmes will vary from business to business according to professional judgements about how to best manage identified risks.

You need to know your clients. Before conducting covered activities, you need to conduct customer due diligence (CDD) according to the level of risk posed by your clients. CDD is not optional. When you are not able to complete CDD, you must not undertake a covered activity or transaction for that client. To do so would be a breach of the AML/CFT Act.

The Department of Internal Affairs (DIA) is the AML/CFT supervisor charged with monitoring your compliance with the AML/CFT Act. We recognise that adjusting to the new AML/CFT system will take time and effort. This guideline, and other existing guidelines, can help you develop awareness of the risks posed by ML/TF, and provide information on how to develop programmes to manage these risks.

## New regulations

The AML/CFT (Definitions) Amendment Regulations 2018 will come into force on 1 January 2019. Amongst other things they provide the definition of a customer (client) and the timing of customer due diligence.

## Disclaimer

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. After reading this guideline, if you do not fully understand your obligations, you should seek suitable professional or legal advice or contact your AML/CFT supervisor. DIA can be contacted at [amlcft@dia.govt.nz](mailto:amlcft@dia.govt.nz).

# Glossary

AML/CFT Act (or Act)	Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
Client	This is the definition used in the Real Estate Agents Act 2008. Client means the person on whose behalf a real estate agent carries out real estate agency work.
Compliance officer	An individual (must be an employee) appointed to administer and maintain the AML/CFT compliance programme. The compliance officer can be shared in a DBG and must report to a senior manager.
Conveyancing	The legal transfer of ownership or interest in a property.
Covered activities	Activities that are specified under the definition of “designated non-financial business or profession” in the AML/CFT Act.
Customer due diligence (CDD)	The process of obtaining and verifying a client’s identity to make sure they are who they say they are.
Customer/Client	In this guideline the term “client” is used instead of “customer” as defined in the AML/CFT Act. This has been done to reduce potential confusion between the terms used in the Real Estate Agent Act 2008 and the AML/CFT Act.
Department of Internal Affairs (DIA)	The government department tasked with supervising some AML/CFT reporting entities, including real estate agents.
Designated business group (DBG)	A group of two or more entities who have elected, and been approved by their AML/CFT supervisor, to combine some of their AML/CFT obligations. Each member of the DBG should be a related reporting entity in New Zealand (or equivalent jurisdiction).
Designated non-financial business or profession (DNFBP)	Professions who carry out specific covered activities defined in Section 5(1) of the Act. <sup>2</sup> This includes real estate agents.
Financial Action Task Force (FATF)	An inter-governmental body that sets global standards and promotes effective implementation of measures for combating money laundering and terrorism financing.
Financing terrorism offence	As defined in section 8(1) of the Terrorism Suppression Act 2002.
Gatekeepers	Legal, conveyancing, accounting, trust and company service provider, and real estate agent professionals (also known as DNFBPs).
goAML	The FIU’s online reporting portal.
ML/TF	Money laundering/terrorism financing.
Money laundering offence	As defined in section 243 of the Crimes Act 1961.
National Coordination Committee (NCC)	The national body for AML/CFT agencies. Core members are the AML/CFT supervisors, FIU, Ministry of Justice and Customs.
New Zealand Financial Intelligence Unit (FIU)	The FIU collects, analyses and disseminates financial intelligence relating to suspicious activities and transactions, money laundering and the financing of terrorism.
Politically exposed person (PEP)	An individual who is or has been entrusted with a prominent overseas public function in the preceding 12 months, or a relative or close associate of that individual. Due to their position and influence, many PEPs are in positions that can potentially be abused for the purposes of money laundering/terrorism financing.
Prescribed transaction report (PTR)	A report made to the FIU on a prescribed transaction. A prescribed transaction is an international wire transfer of NZ\$1,000 or more conducted through a reporting entity or a domestic physical cash transaction of a value equal to or above NZ\$10,000.

Programme	An AML/CFT programme sets out procedures, policies and controls to manage and mitigate ML/TF risks identified and assessed via a risk assessment.
Real estate agent	Has the same meaning as as in the definition of agent in section 4(1) of the Real Estate Agents Act 2008 - means a real estate agent who holds a current licence as an agent
Reporting entities	Casinos; designated non-financial businesses or professions (including real estate agents); financial institutions; high-value dealers; and the New Zealand Racing Board.
Risk assessment	An ML/TF risk assessment involves identifying and assessing the inherent ML/TF risks for a reporting entity.
Source or wealth and source of funds (Sow/SoF)	The client's source of wealth and source of funds. Determining Sow/SoF is a key part of enhanced CDD.
Supervisors (AML/CFT supervisors)	AML/CFT supervisors have responsibility for monitoring compliance with the AML/CFT Act. DIA is the AML/CFT supervisor for a number of sectors including real estate agents. The Reserve Bank of New Zealand and the Financial Markets Authority supervise other sectors.
Suspicious activity report (SAR)	A report made to the FIU regarding a suspicious activity. This includes transactions as well as other activities.
Suspicious property report (SPR)	A report made under the Terrorism Suppression Act 2002 regarding property that you suspect is owned or controlled by a "designated terrorist entity".
Trust and company service provider (TCSP)	A person (other than a law firm, a conveyancing practitioner, an incorporated conveyancing firm, an accounting practice, or a real estate agent) who carries out any of the activities described in the definition of "designated non-financial business or profession" (see section 5(1) of the AML/CFT Act).



# Introduction

Money laundering (ML) is the process that criminals use to “clean” the money they make through their criminal activity, by turning it into seemingly legitimate funds. The New Zealand Financial Intelligence Unit (FIU) estimates that around \$1.35 billion of domestic criminal proceeds is laundered annually in New Zealand from drug and fraud offending.<sup>3</sup> This estimate does not include tax evasion or overseas offending. The actual transactional value of ML is likely to be several times the \$1.35 billion estimate of money generated for laundering, as launderers need to move funds through multiple transactions to place, layer and integrate proceeds of crime.

If these crimes go undetected, the integrity of national and international financial systems is reduced, the economy is distorted, and opportunities for legitimate economic activities are reduced.

Terrorism financing (TF) is the process by which terrorists and their sympathisers raise and move funds. The movement of funds for TF can stem from both legitimate and illicit sources and may be of low value. Methods used to monitor for ML activity can, in some cases, be used for TF.

The legal, conveyancing, accounting, trust and company service provider, and real estate sectors are known as gatekeepers. They provide services and products that can be used to facilitate the entry of illicit funds into the legitimate financial system, and can provide an impression of respectability and normality.

The anti-money laundering and countering financing of terrorism (AML/CFT) system in New Zealand requires businesses to assist authorities to deter and detect criminals and crime. Compliance also has a value for business risk management and maintaining professional reputation.

This guideline is for real estate agents, who are “reporting entities” for the purposes of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT Act” or “the Act”). The Department of Internal Affairs (DIA) is the AML/CFT supervisor for real estate agents.<sup>4</sup>

The AML/CFT Act applies to real estate agents from 1 January 2019 who come under the definition of “designated non-financial business or profession” (DNFBP). The Act applies to real estate agents only insofar as they carry out “covered activities”, including real estate agency work and/or managing client funds, accounts, securities or other assets, described in the definition of DNFBP.<sup>5</sup>

As your AML/CFT supervisor, DIA expects real estate agents to:

1. Know your ML/TF risks
2. Know what to expect from your AML/CFT supervisor
3. Know how to apply the AML/CFT Act to your business
4. Know your compliance requirements
5. Know your client
6. Know the ML/TF red flags
7. Know where to get support

This guideline will help you to meet each of the expectations identified above. The AML/CFT Act requires that you have regard to any guidance produced by the AML/CFT supervisor and the FIU when developing your ML/TF risk assessment (“risk assessment”) and AML/CFT programme (“programme”).<sup>6</sup>

This guideline does not provide a “how to” guide or additional prescription to complement the AML/CFT Act. A one-size-fits-all approach will not work well for most reporting entities. Instead, this guideline will help you increase your awareness of ML/TF risks, and provides information on how to manage your compliance.

Where the terms “must” or “required” are used, this refers to an obligation that is specified in legislation. Where we have used the term “should”, we are making a recommendation, which is your choice to accept or not.

While the term “customer” is used in the AML/CFT Act, the term “client” is used in the real estate profession. To avoid potential confusion, we use the term “client” instead of “customer” in this guideline. Where reference is made to specific AML/CFT terminology, the word “customer” has been retained (eg, customer due diligence).



This guideline also recognises that the term “customer” is often used by real estate agents to denote the other party to a real estate transaction. For instance, where a real estate agent has a business relationship with a vendor, the vendor is the client and the purchaser is the customer. In this situation, a real estate agent will not normally be required to comply with the customer-related requirements of the Act in relation to the purchaser.

This guideline may be updated periodically to make minor changes as new information and feedback is assessed. We recommend that instead of printing this guideline in hard copy, you should bookmark the web page and refer to it online to ensure you have the most up-to-date information to hand.

Over time, new case law may become available, new regulations may be made, or existing regulations may be amended and this guideline will be updated. The DIA website provides a reference page to find the relevant regulations.<sup>7</sup> We will inform reporting entities of any new regulations or updates to existing guidelines. The AML/CFT supervisors have already produced a wide range of guidelines, which are all available on the DIA website.<sup>8</sup> Other guidelines may be produced in the future as needed.

You can contact us at [amlcft@dia.govt.nz](mailto:amlcft@dia.govt.nz) if you have any questions.

# What you need to do to comply

## Step 1: Establish a compliance programme

**Appoint a Compliance Officer – Section 56** You must appoint a compliance officer who will have responsibility for administering and maintaining the AML/CFT Programme. An employee must be appointed to this role who reports to a senior manager. In the case of a sole practitioner, we would expect you to be the compliance officer. If that is not possible, an external person must be appointed as a compliance officer. Compliance officers can be shared within a designated business group.

**Conduct a Risk Assessment – Section 58** You are required to undertake an assessment of the risks posed to your business by money laundering and financing of terrorism. The risk assessment should be in writing and be informed by AML/CFT supervisory guidelines, which are available on the DIA website.

**Develop an AML/CFT Programme – Section 57** Your AML/CFT programme must be based on your risk assessment and be in writing. It should include policies, procedures and controls for ensuring all compliance obligations are adequately and effectively met.

## Step 2: Maintain your compliance programme

**Conduct Customer Due Diligence (CDD) – Part 2, Subpart 1** You must conduct CDD when conducting an occasional transaction or when establishing a business relationship with a client. You must also conduct CDD on an existing customer under certain circumstances. There are three levels of CDD depending on context and according to the level of risk involved; simplified, standard and enhanced. **CDD only needs to be conducted on your client and must occur before you enter into an agency agreement with the client.**

**Keep records – Sections 49 – 55** You must keep records of transactions, suspicious activities, the documents verifying the identities of clients and other parties or beneficiaries, and any other related records are required by the supervisor. Records must be kept at least five years.

**Ongoing Customer Due Diligence and ongoing account monitoring - Section 31** You are required to undertake ongoing CDD and account monitoring. This is to ensure that you have continued confidence that the business relationship and the transactions within the relationship are consistent with the client's business and risk profile. It also assists in spotting suspicious activity.

**Review your risk assessment and compliance programme - Section 59** Your AML/CFT supervisor expects you to conduct a regular review of your risk assessment and compliance programme. This is to ensure that any business changes or new risks in the operating environment are covered and your AML/CFT documents remains fit for purpose.

## Step 3: Report and audit

**Submit an annual report - Section 60** You must submit an annual report. This report must be in the prescribed form and be submitted to your AML/CFT supervisor at the time set by the supervisor. The report must take into account the results and implications of the audit (see below) and any information prescribed in the regulations.

**Audit your risk assessment and compliance programme every two years – Section 59A** At least every two years you must review your risk assessment and compliance programme and have it audited by an independent person who is suitably qualified to conduct the audit. Your AML/CFT supervisor may also require an audit of your risk assessment and compliance programme to be undertaken on request.

## Report to the FIU

**Report to the Financial Intelligence Unit – Subparts 2 and 2A** When you identify suspicious activity, you must report it to the FIU. Suspicion is objective not subjective. You must also submit prescribed transaction reports to the FIU as necessary.

# 1. Do you know your ML/TF risks?

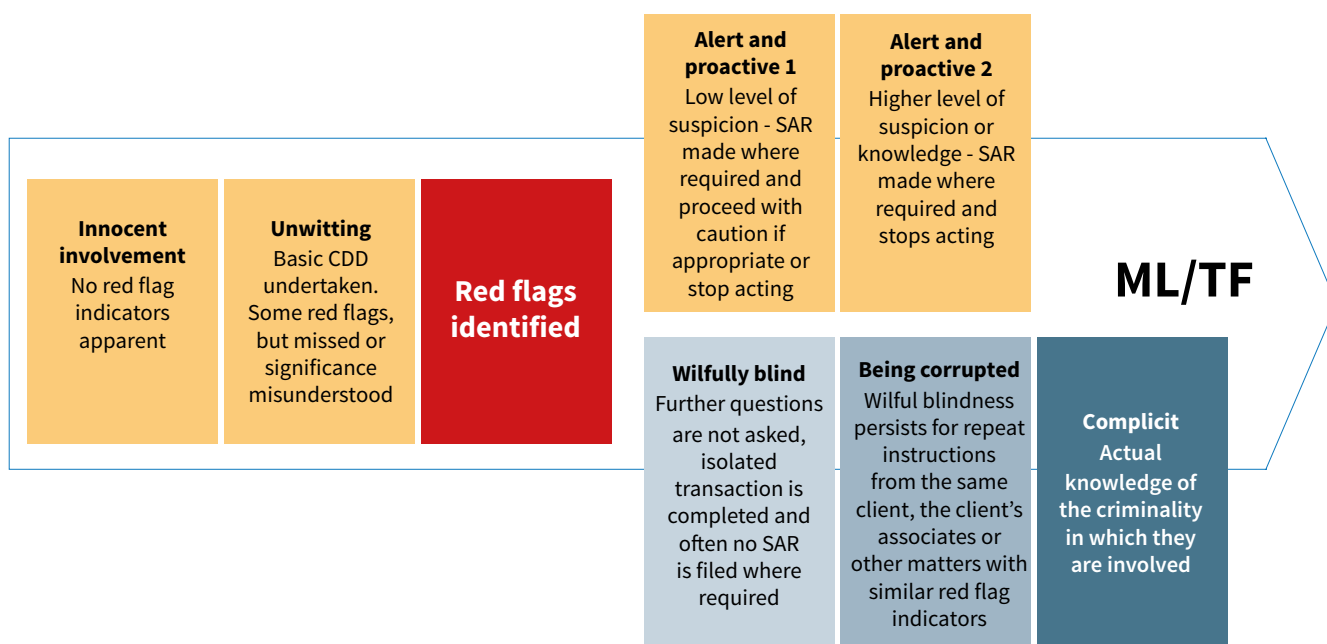
The use of real estate for ML/TF purposes is well documented. Real estate is a high-value asset and it is a reliable and profitable investment for money launderers. Purchase of real estate is vulnerable to ML because:

- Using real estate agents for a property transaction can give the impression of respectability, legitimacy, or normality
- Purchase of real estate can be a way of moving large amounts of money without raising suspicion
- Beneficial ownership can be hidden using legal structures like trusts, nominees or companies
- Real estate is a speculative market where values can be difficult to assess, making it easy to under- or over-value to enable ML
- Real estate transactions provide access to various financial vehicles (such as loans) that can be used to launder funds
- Property can provide legitimate income to mix with illicit proceeds
- If the client has criminal intentions, there would be a protective layer of other people between the client and the transaction they are instructing
- Using real estate, money launderers can move large amounts of funds in a single transaction
- The large number of real estate professionals also means that offenders can seek out a suitable person to target

Real estate agents are often more client-facing than other sectors and may have better oversight of their clients and transactions, which can help identify suspicious activity. For example, real estate agents will have some insight into whether a client is suspiciously under- or over-valuing a property, which may indicate the movement of illicit funds. They can also see how short a time period the client is holding onto a property, which may indicate the property is being “flipped” to disguise the origin of the funds used to purchase it.

We encourage real estate agents and other professionals to develop an understanding of the ML/TF risks in the wider sectors and industries that they have business dealings with as well. The more people are attuned to the indicators (or red flags) of these crime types, the harder it will be for criminals to engage in and benefit financially from their activities. By expanding the AML/CFT system to include the gatekeeper professions, the Government intends that New Zealand will be better able to protect itself from criminals who launder money and finance terrorism.

When gatekeeper professionals, such as real estate agents, lack ML/TF awareness, they are more at risk of inadvertently helping criminals. The Financial Action Task Force (FATF), the inter-governmental body that sets global AML/CFT standards, has provided the following diagram to describe the two potential trajectories of real estate professionals’ involvement in ML/TF. These two trajectories can be applied to any of the gatekeeper professions, including real estate agents.



## 2. Do you know what to expect from your AML/CFT supervisor?

This section explains the regulatory approach you can expect from DIA.

### The role of AML/CFT supervisors and our regulatory approach

DIA is the AML/CFT supervisor for real estate agents, the other DNFBPs, and a range of financial institutions, such as money remitters, that are reporting entities under the AML/CFT Act. The Reserve Bank of New Zealand and the Financial Markets Authority both act as AML/CFT supervisors for other reporting entities. Our role includes monitoring reporting entities for compliance with the Act, providing guidance to reporting entities, and investigating and enforcing compliance. This is to ensure that the AML/CFT system operates in a robust manner and that criminals seeking to launder money and finance terrorism are detected and deterred.

We take a risk-based and responsive regulatory approach that promotes compliance through a range of strategies, initiatives and tools. This means we aim to make it easy for reporting entities who want to comply, help reporting entities who are trying to comply, and use the full force of the law on reporting entities that refuse to comply.

We focus our efforts carefully and deliberately. We use our insight, knowledge and understanding to identify risks and determine interventions to most effectively ensure compliance. While we are fully prepared to escalate our response with enforcement action, we are equally prepared to work with you in a responsive and educative manner. We are a member of the AML/CFT National Co-ordination Committee, and we work with the other AML/CFT supervisors and the FIU, as well as with other government agencies. We also work with industry bodies and reporting entities to apply a consistent approach to the AML/CFT system.

### Monitoring and enforcement

We use a variety of regulatory tools to monitor reporting entities' compliance with AML/CFT obligations. These include:

- Desk-based reviews of your documents to test technical compliance
- On-site inspections to test the effectiveness of your compliance programme
- Analysis of annual reports
- Independent audits

When we identify reporting entities that are not meeting their obligations under the AML/CFT Act, we consider a number of options. One of these options is a remediation plan with the reporting entity. A remediation plan includes a set of expected outcomes that the reporting entity must complete within a set timeframe. In most cases the reporting entity meets the timeframe and progresses towards meeting the obligations.

In response to more serious or deliberate non-compliance, we may decide to issue a formal warning or to accept an enforceable undertaking. Alternatively, we may decide to seek an interim, performance or restraining injunction, or a pecuniary penalty, from the High Court.

In the most serious of cases, civil liability acts that are engaged in knowingly or recklessly are criminal offences. There are a number of further criminal offences; for example, failing to report or keep records relating to suspicious activities, structuring transactions to avoid AML/CFT requirements, and obstructing or misleading an AML/CFT supervisor. Where necessary, DIA will prosecute reporting entities for criminal offences under the Act.

## **Investigations of ML/TF**

In New Zealand it is a criminal offence to knowingly and intentionally engage in, or facilitate any other person to engage in, money laundering<sup>9</sup> or the financing of terrorism<sup>10</sup>. The Police are responsible for investigating and prosecuting ML/TF offences, as well as forfeiture proceedings relating to the proceeds of crime. A robust AML/CFT system, in which reporting entities are conducting CDD, keeping client and transaction records, and reporting suspicious activities, is an important tool in the collective fight against financial and organised crime.

## **Territorial scope of the AML/CFT Act**

The AML/CFT supervisors have issued guidance outlining their interpretation of the territorial scope of the AML/CFT Act.<sup>11</sup> Even though the AML/CFT Act only has jurisdiction in New Zealand, we strongly encourage reporting entities to report on suspicious activities and transactions that they are party to that occur offshore. For more information about reporting suspicious activity, please see “Suspicious activity reports (SARs)” in section 4.

### 3. Do you know how to apply the AML/CFT Act to your business?

This section provides more detail on why real estate agents are included in the Act, and what you need to do to comply.

#### Conducting an activity in the “ordinary course of business”

Activities must be conducted in the ordinary course of business to be covered by the Act. Real estate agents carrying out covered activities (in the ordinary course of their business) must comply with the Act. The AML/CFT supervisors have issued guidance on how to interpret “ordinary course of business”.<sup>12</sup>

#### What covered activities do real estate agents carry out?

Real estate agents are most likely to carry out two covered activities: real estate agency work and managing client funds.

#### Real estate agency work to effect a transaction

A real estate agent who, in the ordinary course of business, provides real estate agency work (within the meaning of section 4(1) of the Real Estate Agents Act 2008) to effect a transaction (within the meaning of section 4(1) of the Real Estates Agents Act) is a DNFBP and covered under the Act.

As defined in the Real Estate Agent Act 2008, “real estate agency work”:<sup>13</sup>

- a. means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and
- b. includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but
- c. does not include—
  - i. the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
  - ii. the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or

- iii. the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or
- iv. the lending of money on mortgage or otherwise; or
- v. the provision of investment advice; or
- vi. the provision of conveyancing services within the meaning of the Lawyers and Conveyances Act 2006.

A “transaction” (in relation to real estate agency work) means any one or more of the following:<sup>14</sup>

- a. the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land;
- b. the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies);
- c. the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952;
- d. the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003;
- e. the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).

#### Managing client funds, accounts, securities, or other assets

Managing client funds, including managing payments to or from your clients’ accounts, is a covered activity, including any instances where you receive or hold client funds and control the payment of those funds.

**If you hold any funds in a trust account for a client/customer in order to make a payment to a vendor/purchaser or a solicitor on their behalf, this is a covered activity.** Receiving payment of fees for your professional work is not covered.

#### Property managers and property management services

Property managers and property management activities are not currently covered by the AML/CFT Act even though it involves “managing client funds”. **This exclusion applies to property management services carried out by real estate agents, as well as property management professionals who are not licensed real estate agents.** For more details see Regulation 6 AML/CFT (Definitions) Amendment Regulations 2018.



## Commercial leasing

Commercial leasing and other commercial real estate agency work are recognised as an area of AML/CFT risk. Persons engaged in “the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land” are subject to the full range of AML/CFT obligations as a reporting entity under the AML/CFT Act.

### **Residential leasing and other property management activity is not “real estate agency work” and therefore are not subject to AML/CFT requirements.**

However, any activities that do fall within the scope of “real estate agency work” are subject to requirements under the AML/CFT Act.

## Engaging in or giving instructions on behalf of a client to another person

A real estate agent that does any of the activities listed in the following box is covered by the AML/CFT Act as a reporting entity. The activities specified in the box apply to situations where you either engage in the activities yourself, or give instructions on behalf of a client to another person for those activities.

This means that if you are instructing a third party to undertake activities on behalf of your client, you are covered by the AML/CFT Act. The third party you instruct will also be covered by the Act if they fall within the definition of either “designated non-financial business or profession” or “financial institution”.<sup>15</sup>

### Engaging in or giving instructions on behalf of a client to another person for—

- a. any conveyancing (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006<sup>16</sup>) to effect a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008<sup>17</sup>), namely,—
  - the sale, the purchase, or any other disposal or acquisition of a freehold estate or interest in land;
  - the grant, sale, or purchase or any other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies<sup>18</sup>);
  - the grant, sale, or purchase or any other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952;<sup>19</sup>
  - the grant, sale, or purchase or any other disposal or acquisition of an occupation right agreement within the meaning of section 5 of the Retirement Villages Act 2003;<sup>20</sup>
- b. a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008); or
- c. the transfer of a beneficial interest in land or other real property; or
- d. a transaction on behalf of any person in relation to the buying, transferring, or selling of a business or legal person (for example, a company) and any other legal arrangement; or
- e. a transaction on behalf of a customer in relation to creating, operating, and managing a legal person (for example, a company) and any other legal arrangement

You should read both (d) and (e) to mean undertaking any one of the activities mentioned, not a combination of all activities at once. “Transaction” for (D) and (E) is defined in section 5 of the AML/CFT Act and means any deposit, withdrawal, exchange or transfer of funds whether (i) in cash; (ii) by cheque, payment order or other instrument; or (iii) by electronic or other non-physical means. There are some inclusions and exclusions specified in the definition.

## Auctions and auctioneers

The auction of real estate falls within the definition of 'real estate agency work'. Accordingly, real estate agents who undertake auctions will be covered by the AML/CFT Act in relation to the provision of those auctions.

Registered auctioneers (who may also auction real estate) are currently excluded from the AML/CFT Act. However, this exclusion is amended effective 1 January 2019 so that registered auctioneers will be reporting entities under the AML/CFT Act. This will ensure consistency between registered auctioneers (who auction real estate) and real estate agents.

## Other covered activities

The other covered activities are less likely to be relevant to real estate agents, so are not explained in detail here. If you do conduct any of the following activities in the ordinary course of business, then please refer to the other guidelines available for gatekeeper professions for more information.

- Acting as a formation agent for legal persons or legal arrangements
- Acting as, or arranging someone to act as, a nominee director, nominee shareholder or trustee
- Providing an office or address for a company or legal arrangement

## Exclusions to and exemptions from the AML/CFT Act

There are a number of ways in which entities, transactions or activities can be exempt from the Act's requirements. For instance, the AML/CFT (Definitions) Regulations 2011<sup>21</sup> provide a number of specific exclusions to the definition of "reporting entity", and the AML/CFT (Exemptions) Regulations 2011<sup>22</sup> provide a range of exemptions for specific classes of transactions and services. There are also Ministerial exemptions, which can exempt (from any or all of the provisions of the Act) either specific reporting entities, or classes of reporting entities, as well as transactions or classes of transactions.<sup>23</sup> The AML/CFT (Class Exemptions) Notice 2014<sup>24</sup> provides further detail about class exemptions.

The Ministry of Justice handles Ministerial exemption applications and provides advice to the appropriate Minister (or their delegate) who makes the final decisions. Exemptions may be granted by the Minister subject to sections 157 to 159 of the AML/CFT Act.<sup>25</sup> Please review these sections if you are considering making an application.

## How to determine whether advice provided to your client is covered

There will be circumstances where you give advice in relation to a covered activity (without necessarily then carrying out the activity). Generally, advice alone, in the absence of any actual covered activity on the real estate agent's part, will not be a covered activity. For example, you may provide advice or an appraisal to a potential client about selling their property. If you do not go on to sign an agency agreement with them to facilitate the transaction yourself, you are not covered by the AML/CFT Act.

However, you also need to be aware of your obligations to report suspicious activities, which can include requests or enquiries about particular services you offer from potential or current clients (regardless of whether you ultimately provide those services).

## 4. Do you know your compliance obligations?

Real estate agents are a reporting entity under the Act and have to comply with the Act. You will not be excused from compliance on the basis that to comply would breach any contract or agreement.<sup>26</sup>

### Compliance requirements

This section provides guidance on:

- The risk-based approach that you need to take when developing your programme
- The range of policies, procedures and controls you must include in your programme to comply with the AML/CFT Act
- Things to consider if you wish to establish a designated business group to share some aspects of your programme and its implementation

### Risk-based compliance

The AML/CFT regulatory system in New Zealand is “risk-based”. This means your business must assess the risk it is exposed to from money launderers and terrorist financiers. You must then apply suitable procedures, policies and controls to effectively manage the risks you identified for your business. Compliance resources can then be targeted primarily at high-risk areas, which should reduce the overall compliance cost for your business.

You are the best judge of the risks your business is exposed to and how you can most effectively manage and mitigate those risks in line with the requirements of the Act. As your AML/CFT supervisor, we expect you to genuinely and accurately assess the ML/TF risks to your business and then apply a suitable and proportionate programme.

### AML/CFT programme – policies, procedures and controls

AML/CFT compliance cannot be achieved with a “set and forget” approach. Your AML/CFT programme needs to be fully implemented within your business. It should be a living and adaptable programme.

### Appointing a compliance officer

You must appoint an AML/CFT compliance officer to administer and maintain your compliance programme.<sup>27</sup> When you have appointed your compliance officer, or if your compliance officer or other contact information changes, it is important that you advise us at [amlcft@dia.govt.nz](mailto:amlcft@dia.govt.nz). This enables us to communicate effectively with you and provide you with important information and updates.

### Who can be a compliance officer?

The compliance officer must be an employee of your business (unless you are a sole practitioner) and they must report to a senior manager. Compliance officers can be senior managers. If working on your own, you will be expected to act as the compliance officer yourself and take responsibility for compliance requirements unless there is a reason why you cannot. In that case you must appoint a third party to take on this duty.

This will only be possible where the business has no employees. If the person who is acting as a compliance officer is not part of the business, there should be a justifiable reason. You should be able to demonstrate to your AML/CFT supervisor that the person selected has an appropriate level of access to business information and systems to perform their duties and the authority to advise the senior management of the business about AML/CFT matters.

Note: Within a designated business group (DBG) you can share a compliance officer.

### Conducting a risk assessment

All reporting entities must conduct a risk assessment, and it must be in writing. The specific requirements for a risk assessment are set out in section 58 of the AML/CFT Act.<sup>28</sup> The AML/CFT supervisors have provided guidance on how to conduct a risk assessment<sup>29</sup> and the Act requires that you have regard to this guidance when developing your risk assessment.<sup>30</sup>

DIA has published its own assessment of the ML/TF risks in the sectors it is responsible for supervising. These are in the Phase 1 and Phase 2 Sector Risk Assessments.<sup>31</sup> We have also developed a “Prompts and Notes” guideline (*AML/CFT Risk Assessment and Programme: Prompts and Notes for DIA Reporting Entities*), which outlines the factors to be considered in a risk assessment. It also offers some prompts for things to think about when developing your AML/CFT programme.<sup>32</sup> It provides information to help businesses undertake their risk assessment in a way that reflects both the size of their business and their level of risk. In addition, the Financial Markets Authority has published a guide for small businesses to help them comply with the obligations of the Act.<sup>33</sup> These resources, along with the other AML/CFT supervisory guidance material, will help you conduct an assessment of your ML/TF risks and develop and maintain a proportionate AML/CFT programme.

You should review and update your risk assessment when there is any material change to your business, service offerings, or client base, or when deficiencies in the effectiveness of the risk assessment are identified. As methods and techniques (known as “typologies”) of ML/TF adapt and change, the nature of the risks posed to a business may change also. It is important for real estate agents, particularly compliance officers in real estate agencies, to keep up-to-date with relevant changes in typologies. Guidance published by the FIU is an excellent source of typology information, including their historical Quarterly Typology Reports.<sup>34</sup>

Good times to think about updating your business’s risk assessment and programme are when:

- The FIU publishes a National Risk Assessment or disseminates new information about ML/TF issues that highlight potential vulnerabilities in your business activities
- DIA updates its Sector Risk Assessment or relevant guidance material
- You become aware of an increased ML/TF risk to your business due to a change in the nature of your services or an unexplained change in the demand of certain products
- International ML/TF-related events trigger you to reconsider your risk assessment
- There has been a change in legislation or regulation

### **Setting up your AML/CFT programme**

Once you have conducted a risk assessment, you must develop an AML/CFT programme that includes internal procedures, policies and controls to detect and manage the risk of ML/TF.<sup>35</sup> The compliance officer must administer and maintain the programme and should make sure that relevant staff members are familiar with it and the procedures, policies and controls it contains.

You will need to describe to your AML/CFT supervisor how your programme addresses the risks that you identified in your risk assessment. This is an essential part of compliance with the Act.

The AML/CFT Act requires that you have regard to guidance produced by the AML/CFT supervisors when developing your AML/CFT programme.<sup>36</sup> Guidance on developing an AML/CFT programme is available on the DIA website.<sup>37</sup>

The AML/CFT supervisors’ guidance does not provide prescriptive instructions on how businesses can ensure they are compliant with the AML/CFT Act. This is because each business has unique circumstances that determine their exposure to ML/TF risks, which they need to understand and factor into their unique AML/CFT programme. You will need to apply your own judgement, and where there are questions about compliance, you can either ask your AML/CFT supervisor for general information, or seek suitable professional or legal independent advice.

### **Customer due diligence (CDD)**

Section 5 in this guideline is dedicated to explaining your CDD obligations.<sup>38</sup>

### **Record keeping**

You must keep adequate records as outlined in sections 49 to 55 of the AML/CFT Act. This will help you to operate your AML/CFT programme effectively and enable it to be audited by an independent auditor and reviewed by your AML/CFT supervisor. Records must either be kept in written form in English or be readily accessible and readily convertible into written form in English.

You must keep your records for at least five years. Your AML/CFT supervisor or the FIU may ask you to keep records for longer in some circumstances. As soon as practicable after this period, the records must be destroyed unless there is a lawful reason why they should be retained, such as the need to comply with another enactment or to enable you to carry on your business.

You must keep the following records.

Record type	Retention period
Transaction (as defined in the AML/CFT Act) records sufficient to enable the transactions to be fully reconstructed at any time <sup>39</sup>	5 years from the completion of the transaction
Any reports of suspicious activities <sup>40</sup>	5 years after the report is made
Identity and verification evidence (as reasonably necessary to enable the nature of the evidence to be readily identified at any time) <sup>41</sup>	5 years from the end of the business relationship or the completion of the occasional transaction or activity
Risk assessments, AML/CFT programmes and audits	5 years after the date on which they cease to be used on a regular basis
Information relevant to the establishment of a business relationship and any other records that explain the nature and purpose of a business relationship and the activities relating to that business relationship <sup>42</sup>	5 years from the end of the business relationship

We also strongly advise you to keep any detailed records of your assessment of whether a suspicious activity report (SAR) is required or not.

### Ongoing customer due diligence and account monitoring

When you have established a business relationship, you must conduct ongoing CDD and undertake account monitoring.<sup>43</sup> For more information about what this means in practice, please see “Account monitoring” in section 5.

### Reviewing your AML/CFT programme

You must regularly review your risk assessment and AML/CFT programme to ensure it remains up-to-date and to identify and remedy any deficiencies.<sup>44</sup> Your records should show evidence of updates that address any identified deficiencies in its effectiveness. Ways to do this would be to keep a record of version history or retain evidence demonstrating reviews and updates.

### Annual reporting to your AML/CFT supervisor

All reporting entities must submit an annual report each year covering the period July to June.<sup>45</sup> The date for submission is advised by your AML/CFT supervisor each year, and you will usually have two months to submit. For real estate agents this means your first annual report will be due at the end of August 2019. Given the Act applies to real estate agents from 1 January 2019, your first annual report will be for the six-month period 1 January 2019 to 30 June 2019. A new set of annual report questions has been designed for lawyers, conveyancers, accountants, trust and company service providers, and real estate agents and is provided for by regulations. A user guide for the new annual report for DNFPBs has been published by DIA.<sup>46</sup> All reporting entities are also expected to respond to any requests for subsequent information from their AML/CFT supervisor in a timely manner.



## Independent audits of your risk assessment and AML/CFT programme

Every two years, you are required to have an independent audit of your risk assessment and AML/CFT programme.<sup>47</sup> For guidance, please see the *Guideline for Audits of Risk Assessments and AML/CFT Programmes*.<sup>48</sup>

You must complete your first audit within two years of when real estate agents become subject to the AML/CFT Act (on 1 January 2019). You can complete your first audit prior to this if you prefer. Another independent audit is then required every two years after that. Your AML/CFT supervisor can request you undertake an independent audit at any other time and you must provide a copy of your audit to them on request.

The AML/CFT Act requires you to appoint someone who is independent and suitably qualified to conduct the audit. It is up to you to decide if someone is suitably qualified to conduct an audit of your AML/CFT programme. You should be able to explain to your AML/CFT supervisor your rationale for this decision on request.

The audit cannot be undertaken by someone from within the business unless a sufficient degree of independence can be demonstrated. For instance, a large firm with a dedicated audit function would likely be able to demonstrate a sufficient degree of independence. Someone who has been involved in the establishment of the compliance programme (such as completing the risk assessment and/or writing the AML/CFT programme) cannot conduct the audit. The auditor does not need to be a chartered accountant or qualified to undertake financial audits.<sup>49</sup> To be suitably qualified, we expect that your auditor would have a good knowledge of the AML/CFT Act and its complexities.

We regularly request copies of the audits as part of the usual AML/CFT supervisory engagement with you. Further, during our desk-based reviews or on-site inspections, we will often focus on the steps that you have taken to address any adverse findings from your audit. This is an important part of our supervisory strategy that is likely to continue. Your annual report must take into account the results and implications of your independent audit.

## Reporting to the FIU

A key part of your AML/CFT obligations is reporting certain information to the FIU. Each type of reporting entity will have visibility over different parts of an activity or transaction and will be able to report on different aspects of client activity and behaviour. The reports provided for by the Act cover suspicious activity, prescribed transactions and terrorism-related topics. Each type of report provides the FIU with information that can be used to detect and deter ML/TF and assist in combatting crime. Your report may be the crucial piece of information that enables the FIU to take action against a criminal.

### Suspicious activity reports (SARs)

SARs are one of the main sources of information available to the FIU. An SAR can indicate that suspected criminal activity is occurring through a transaction, a service, or a series of transactions and/or services.

Section 39A of the AML/CFT Act defines a “suspicious activity”, and section 40 of the Act requires you to report suspicious activity to the FIU. You must report a suspicious activity when you become aware of information that would objectively justify a suspicion (or by reasonable diligence would have become aware of them).<sup>50</sup> **It is not a defence that you did not actually consider an activity to be suspicious in circumstances where you objectively should have.**

The requirement to report SARs applies to transactions, proposed transactions, services or proposed services, and inquiries. Note: There are no monetary thresholds for SARs.

You are not expected to know which type of offence underlies ML/TF, especially if you suspect that any underlying offending is offshore. Rather, the grounds for suspicion should attach to the ML/TF red flags (see section 6). However, providing a description of the reasons for suspicion may help the FIU to analyse the possible types of offending. If the FIU forms reasonable grounds to suspect offending, there may be a formal request for further information about the matter.

Once reasonable grounds for suspicion exist, you must submit an SAR to the FIU as soon as practicable, but no later than three working days. In limited circumstances, you can submit SARs orally, manually or via email. In practice, the FIU expects that you will need to conduct enquiries to gather information to establish reasonable ground for suspicion once an unusual event or red flag occurs. It is unlikely that a single piece of information on its own would meet the threshold of reasonable grounds for suspicion.



In most situations the FIU expects that you file an SAR within three days from the time you gathered sufficient information to crystallise suspicion, rather than three days from an initial event.

You should submit SARs in circumstances related to security matters – including suspected terrorism, terrorism financing, weapons proliferation, and sanctions avoidance – as soon as you can.

You must not disclose SAR information, or the existence of any SARs, to clients. This is to protect the identity and ensure the safety of staff and reporting entities. It also avoids alerting the client, who may be part of a criminal investigation and should not be advised of this.

There are serious offences and penalties – both civil and criminal – for failure to submit SARs. However, there are also protections and immunities for reporting entities for SARs. Refer to the FIU web page on SARs for comprehensive guidance and FAQs in relation to SARs.<sup>51</sup>

### **Prescribed transaction reports (PTRs)**

A prescribed transaction is an international wire transfer of NZ\$1,000 or more conducted through a reporting entity, or a domestic physical cash transaction of a value equal to or above NZ\$10,000.<sup>52</sup> PTRs add further transparency to the financial system by making ML/TF more difficult to hide, and improve the detection and disruption of organised crime.

Only an “ordering institution” and a “beneficiary institution” are required to file a PTR in respect of an international wire transfer. An ordering institution is any person who has been instructed by a payer to electronically transfer funds controlled by the payer to a payee via a beneficiary institution. The ordering institution, which could be a real estate agent, will be the first reporting entity to transfer the funds that are the subject of the international wire transfer to another jurisdiction.

A beneficiary institution is any person who receives those funds and then makes those funds available to a person (the payee) by crediting it to an account held by the payee or paying it to the payee. The beneficiary institution, which could be a real estate agent, will be the last reporting entity in the chain that receives the funds before making them available to its client (the beneficiary of the transaction).

A reporting entity that simply passes on an instruction to transfer funds without actually transacting does not need to file a PTR.

For example, you should submit a PTR if your client receives payment (over \$1,000) for their property

from overseas where the funds have been paid into your trust account prior to being paid into your client’s bank account. We acknowledge that in some circumstances (where funds transfer through banks and non-bank reporting entities), determining the role that you have in an international wire transfer may not be straightforward. Just because a bank is involved with a transaction does not mean you do not have PTR obligations. Ultimately, it is for you to make this determination based on your role and visibility of any particular transfer and then apply the relevant wire transfer and PTR provisions.

PTR information complements other types of reports held by the FIU. The FIU also analyses patterns of suspicious behaviour using PTRs. The fact that a PTR has been submitted does not negate the need to also submit an SAR if there are reasonable grounds for suspicion. Refer to the guidance on PTRs provided by the FIU for more information on this topic.<sup>53</sup>

### **Suspicious property reports**

You also need to be aware of your obligations to submit “suspicious property reports” (SPRs) under the Terrorism Suppression Act 2002. If you are in control of property that you suspect (on reasonable grounds) is owned or controlled, directly or indirectly, by a “designated terrorist entity” (or property derived or generated from that type of property), you must report that suspicion in accordance with sections 43 and 44 of the Terrorism Suppression Act. You must submit the SPR as soon as practicable after forming your suspicion. Designated terrorist entities are identified on a publicly available list that is updated by the New Zealand Police.<sup>54</sup> If you find a match on a list other than New Zealand’s terrorist designation list, you must submit an SAR (as opposed to an SPR) to the FIU.

### **How to report**

The FIU has issued guidance on how to submit reports using their goAML web-based reporting tool.<sup>55</sup> You must use the specific reporting format provided by the FIU. If you have reported on your client, you must not disclose this information to your client or to any person who is not entitled to receive this information.<sup>56</sup> If, after making a report, you are unsure if you need to end your existing relationship with your client, you may wish to consider your professional obligations and any code of ethics that you have signed up to, consult your professional body, or seek independent advice. For further discussion on ending or declining business relationships, please see “What to do if you cannot complete CDD” in section 5.

## Establishing a designated business group

The term “designated business group” (DBG) is defined in full in the AML/CFT Act and regulations.<sup>57</sup>

In summary, it means a group of two or more persons who have elected (in writing) to form a group that has been approved by the AML/CFT supervisor to share some obligations under the AML/CFT Act. Any decision to apply to become a DBG should include a thorough consideration of the risks and implications for all members.

### Who can form a DBG?

Real estate agents may be able to form a DBG with other entities. Each member of the group must:

- Have elected in writing to be a member of the group
- Be related to each other member of the group as defined in section 2(3) of the Companies Act 1993<sup>58</sup>
- Be a related real estate agent/agency or a subsidiary of a real estate agent/agency; and
- Be a reporting entity resident in New Zealand, or resident in a country that has sufficient AML/CFT systems and is supervised or regulated for AML/CFT purposes
- Not be a member of another DBG

A group of related real estate agents or subsidiaries of a real estate agent may form a DBG. An example of this might be members of the same franchise in a town or city forming a DBG, or branches from the same company. The term “related” is deliberately undefined to allow flexibility in forming DBGs to better fit your circumstances.

### What can DBGs do?

A member of a DBG can rely on another member to carry out certain obligations on their behalf, including CDD (in certain situations<sup>59</sup>). Members can also rely on specified parts of another member’s AML/CFT programme, and another member’s risk assessment (if relevant), as well as reporting to the FIU. Members may share information and rely on each other, but they still retain responsibility for their own compliance.

Members can also share compliance officers in line with a Ministerial exemption to the Act.

## How do you form a DBG?

Your AML/CFT supervisor will consider all applications to form a DBG. You need to ensure that you meet the criteria defined in section 5(1) of the Act and submit an application form.

There are two guidelines available to help reporting entities to create DBGs, one on the scope of a DBG and one on the formation.<sup>60</sup> We recommend you familiarise yourself with these guidelines before submitting an application. The application form is included in the Formation Guideline.

## 5. Do you know your client?

This section provides information about:

- What a business relationship means
- Who to conduct CDD on
- What the different levels of CDD are
- How to use the Amended Identity Verification Code of Practice 2013
- When you can rely on others for CDD
- When to conduct CDD
- What to think about when working with other professionals
- What to think about when participating in international transactions
- What to do if you cannot complete CDD

The requirements described in this section are contained in Part 2, subpart 1 of the AML/CFT Act.<sup>61</sup>

### When a business relationship starts

A “business relationship” is defined in section 5(1) of the Act as “a business, professional, or commercial relationship between a reporting entity and a client that has an element of duration or that is expected by the reporting entity at the time when contact is established, to have an element of duration”.<sup>62</sup>

This includes circumstances where a real estate agent is engaged by a client to act in relation to a single real estate transaction (eg. for the sale of a single home). This is because the relationship with the client through the subsequent sales process will involve an element of duration. For real estate agency work, the business relationship starts when the vendor or purchaser signs an agency agreement with you.

### Who to conduct CDD on

You must conduct CDD on:

- Your client
- Any beneficial owner of your client
- Any person acting on behalf of your client

### Your client

For real estate agents, the client is the person entering into an agency agreement with the real estate agent. Usually the client will be the seller of a property, although sometimes a real estate agent might be engaged by a buyer to source a property (in which case, the buyer would be the client).

**You do not need to conduct CDD on a party to a real estate transaction that is not your client, other than in circumstances outlined in the ‘Occasional clients’ section below.**

### Existing clients

The term “existing customer” (ie. existing client) is defined in the Act as a person who was in a business relationship with a reporting entity immediately before the Act began applying to the reporting entity.<sup>63</sup> You must conduct CDD on existing clients if there has been a material change in the nature or purpose of the business relationship with that client, and you have insufficient information about that client.<sup>64</sup>

A material change is an event, activity or situation that you identify that could change the level of ML/TF risk you may encounter. This change in risk may require gathering more information. When considering what information would be sufficient, you will need to assess the level of risk involved, and whether you hold the necessary identity information, verified to the appropriate level. You should not conduct any covered activity until these requirements are met (also see “Account monitoring and ongoing CDD” further on in this section).

### Occasional clients

“Occasional activity” and “occasional transaction” are both defined in the Act.<sup>65</sup> The term “occasional” does not necessarily mean “single”; it also includes circumstances in which multiple transactions are so intermittent or infrequent that no business relationship is established.

When a person conducts an occasional activity or occasional transaction through your real estate business, that person becomes your client and they are covered by the Act. You then have to comply with the requirements of the Act (including submitting SARs) in relation to that person (these are additional to your CDD obligations relating to the client that you have a business relationship with).

Occasional transaction thresholds vary for different situations. These situations and the thresholds are listed in the regulations. Note that one situation in which an occasional transaction occurs is if you receive funds from a party to a real estate transaction that is not your client of NZ\$10,000 or more in cash. Cash means ‘physical currency’ and ‘bearer-negotiable instruments’ (which includes a cheque, bill of exchange, promissory note, bearer bond, traveller’s cheque, money order, postal order or similar).

**Example: When selling a house for a client (who signs an agency agreement with you), you must comply with the requirements of the Act in relation to that client. In addition, if the purchaser of the house pays you funds (whether as a deposit or a settlement payment) of NZ\$10,000 or more in physical cash or by cheque, you must also comply with the Act in relation to the purchaser (who is conducting an occasional transaction with you).**

## Other people you must conduct CDD on

You must also complete CDD on:	For example:
Any beneficial owner <sup>66</sup> of a client	Someone who owns more than 25 percent of a company that is your client <sup>67</sup> Someone who has effective control of a company that is your client
Any person acting on behalf of a client	A person exercising a power of attorney for your client A legal guardian acting on behalf of a minor who is your client An employee who has the authority to act on behalf of a company that is your client

The DIA website provides a range of fact sheets to help.<sup>68</sup> They cover the following topics:

- Acting on behalf of others
- Clubs and societies
- Companies
- Co-operatives
- Sole traders and partnerships
- Trusts

The AML/CFT supervisors have also provided specific guidance on beneficial ownership.<sup>69</sup> Clients that are individuals may be treated as the beneficial owner so long as you believe on reasonable grounds that the person is not acting on behalf of anyone else.<sup>70</sup>

The AML/CFT Act treats trusts as capable of being clients in their own right, despite a trust not ordinarily having a legal personality. The AML/CFT supervisors have provided an explanatory note to help reporting entities who engage with trusts as clients.<sup>71</sup>

### Different levels of CDD requirements

There are three levels of CDD. You will need to be sure you use the right level, which will depend on the unique factors of each business relationship, the characteristics of the client(s), the nature of the activities and transactions you are facilitating, and the potential for ML/TF risk. The three levels are:

- **Standard CDD** – for most situations
- **Simplified CDD** – for use with specific clients or client types that are considered to be low risk for ML/TF. These entities are specified in section 18(2) of the AML/CFT Act<sup>72</sup>
- **Enhanced CDD** – for use when there are factors creating a higher level of ML/TF risk or are otherwise specified in the AML/CFT Act

You must use your own risk assessment and AML/CFT programme to establish the level of ML/TF risk. This will help you determine which kind of CDD to conduct before establishing the business relationship or conducting an occasional transaction or activity.

### Other CDD requirements

Regardless of the level of CDD you are conducting on your client, you must seek information about the nature and purpose of the proposed business relationship or occasional transaction or activity.<sup>73</sup> This means you need to have a good understanding of your client's circumstances and intentions and who else has an interest in their activities; that is, who else benefits. If you are conducting standard CDD you also must obtain sufficient information to allow you to determine whether you should conduct enhanced CDD.<sup>74</sup>

Enhanced CDD generally requires you to ascertain the sources of your client's wealth and/or funds (for more information, see "Enhanced CDD" further on in this section). With this information you can make a more informed assessment about whether your client's activity is legitimate or suspicious.

### CDD and auctions

You only need to conduct CDD on your client. This will in most occasions be the vendor. If you are acting for a purchaser then you will have to conduct CDD on that client.

### Auctioneers

Currently, licensed and registered auctioneers are excluded from the AML/CFT Act. However, to ensure consistency between licensed and registered auctioneers and real estate agents, the exclusion will end on 1 January 2019. This means that from 1 January 2019, auctioneers of real estate will be captured as reporting entities and will be required to comply with the requirements of the AML/CFT Act. **Further guidance for Auctioneers will be produced as an Addendum to this guidance.**

## Standard CDD

Real estate agents must conduct standard CDD<sup>75</sup> if:

- They establish a business relationship with a new client
- A client seeks to conduct an occasional transaction or activity through the real estate agency, or
- In relation to an existing client, and according to the level of risk involved, there has been a material change in the business relationship and there is insufficient information held about the client. (For example, they are a client that you have dealt with prior to the Act taking effect who is now seeking assistance with selling a property and you are informed there are new investors (beneficial owners) that you do not have any CDD information about).

### Identity requirements

When standard CDD applies, the following identity information must be gathered about a client, the beneficial owner(s), and a person acting on behalf of a client:<sup>76</sup>

- Full name
- Date of birth
- If the person is not the client, the person's relationship to the client
- Address or registered office
- Company identifier or registration number

You must also obtain information about the nature and purpose of the proposed business relationship with the client, and sufficient information to determine whether enhanced CDD needs to be conducted on the client.<sup>77</sup>

### Verification requirements

You must take reasonable steps to ensure that the information you gather is correct.<sup>78</sup> According to the level of risk involved, you need to take reasonable steps to verify the identity of any beneficial owners, and to verify the identity and authority of any person who is seeking to act on behalf of your client. The AML/CFT supervisors have published the *Beneficial Ownership Guideline* to help you.<sup>79</sup> Verification must be done before the business relationship is established or before the occasional transaction or activity is conducted. There is an exception to this,<sup>80</sup> which is described in "When to conduct CDD" later in this section.

### Scenarios where standard CDD might apply

Standard CDD will apply to most residential and commercial property transactions in New Zealand.

Note that the following scenarios are only to illustrate where standard CDD might apply to a real estate transaction. Your own professional assessment of risk must be applied to determine the appropriate levels of CDD. In all the scenarios an element of duration has been assumed and a business relationship has been established. Risk will be contextual and any changes in the risk factors can lead to different types and degree of CDD. You should assume for the purposes of these scenarios that all other relevant legal obligations have been met.

In the following scenarios a number of combinations of identity documents can be used as well as those used in the example.

## Simple residential sale – individual as client

Client	Residential property – vendor as client
Covered activity	Selling family home
Level of CDD required	Standard CDD
Steps to complete	How this applies to the example
1. Identify which criteria your client meets to decide the level of CDD you must do.	According to your AML/CFT programme, this client meets the criteria for standard CDD.
2. Obtain information about the nature and purpose of the proposed business relationship.	Your client is a natural person and a New Zealand resident selling their family home. Your client explains that they are selling their property to finance the purchase of a new larger house.
3. Identify all relevant persons who need to be identified.	The client is the owner of the house. There is no reason to believe the client is acting on behalf of any other person. Therefore, you treat the client as also being the sole beneficial owner.
4. Make a determination of the level of ML/TF risk involved.	You determine the client presents low ML/TF risk. This is based on the following: they are not a politically exposed person (PEP), no cash is involved, they are a New Zealand resident, they have a low-risk occupation, and their behaviour is entirely normal for the activity being undertaken.
5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.	You obtain and verify the identity of your client by sighting their current New Zealand passport. You obtain the client's address from a recent bank statement. You take clear copies of all relevant documents and date and sign them. There is no need to determine source of wealth or source of funds.
6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.	Having met the criteria of the Act, you proceed with the sale of the residential property.



## Commercial property sale – company as client

Client	Local company – not listed on stock exchange
Covered activity	Selling their business and premises
Level of CDD required	Standard CDD
Steps to complete	How this applies to the example
1. Identify which criteria your client meets to decide the level of CDD you must do.	The client is a local company with numerous owners. All are resident in New Zealand and no high-risk factors appear to be present. You deal directly with the CEO, who is in New Zealand. You decide to conduct standard CDD.
2. Obtain information about the nature and purpose of the proposed business relationship.	The local company wants to sell its existing commercial property and buy a bigger property to extend its ability to carry out its business. The company is relatively new and is expanding its product range.
3. Identify all relevant persons who need to be identified.	For this client, it is apparent that ownership is spread over a number of individuals, none of whom own more than 25 percent. In this case, because no individual owns more than 25 percent, there is no beneficial owner on the basis of shareholding. However, you will still need to consider whether there are beneficial owners based on having effective control. Understanding the management and governance structure of your client helps you establish that the CEO is the person with effective control of the client. This means that they are a beneficial owner. The CEO is also the person acting on behalf of the company.
4. Make a determination of the level of ML/TF risk involved.	Neither the company nor the CEO is associated with any high-risk factors identified in your risk assessment. You determine that the company presents a low risk and requires standard CDD.
5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.	With standard CDD for companies, the information you require from your client is as follows: <ul style="list-style-type: none"> <li>• Full legal name and trading name (if different)</li> <li>• Principal business address or registered office address</li> <li>• Company identifier or registration number</li> </ul> Company structure and arrangements should be verified using documents, data or information issued by reliable and independent sources – for instance, company certificates, annual reports, internet searches on reputable directories, or a list of directors. For the CEO, you obtain and verify their name and date of birth by sighting their firearms licence (a primary form of photo identification). They also provide a utility bill to verify their address. You take clear copies of all relevant documents and date and sign them. There is no need to determine source of wealth or source of funds.
6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.	You proceed with the sale of the commercial property.

## Simplified CDD

You may complete simplified CDD if your client is one of those listed in the AML/CFT Act. The list includes a range of organisations such as:

- Government departments
- Local authorities
- New Zealand Police
- State-owned enterprises
- Crown entities
- Registered banks
- Licensed insurers
- Publicly listed companies
- For the full list, please see section 18(2) of the AML/CFT Act.<sup>81</sup>

## Identity requirements

When simplified CDD applies, you need to record the full name of the entity in question and a brief explanation of how it falls within section 18(2) of the AML/CFT Act.

The following information needs to be gathered about the identity of a person acting on behalf of one of the entities listed in section 18(2) (for instance, an employee of one of those organisations):

- Full name
- Date of birth
- The person's relationship to the client

You also need to obtain information about the nature and purpose of the proposed business relationship between you and the client.<sup>82</sup>

## Verification requirements

You must take reasonable steps to verify, to your satisfaction and according to the level of risk involved, the identity of a person acting on behalf of a client **and** their authority to act. You must do this before you establish the business relationship (or conduct the occasional transaction or activity), or before the person acts on behalf of the client.

## Scenarios where simplified CDD might apply

Simplified CDD might apply if:

- A local council engages you to sell one of their properties
- You are engaged to sell a property for a state-owned enterprise
- You are engaged by a publicly listed company

Note that the following scenarios are only to illustrate where simplified CDD might apply to a real estate transaction. Your own professional assessment of risk must be applied to determine the appropriate levels of CDD.

## Simplified CDD – New Zealand stock exchange listed company

Client	New Zealand listed company
Covered activity	Selling commercial property
Level of CDD required	Simplified
Steps to complete	How this applies to the example
1. Identify which criteria your client meets to decide the level of CDD you must do.	According to your AML/CFT programme, this new client meets the criteria for simplified CDD as it is a company listed on the New Zealand stock exchange.
2. Obtain information about the nature and purpose of the proposed business relationship.	Your client is selling commercial property that is surplus to their needs as they down-size. Even though you are conducting simplified CDD you must still obtain information on the nature and purpose of the business relationship.
3. Identify all relevant persons who need to be identified.	The client is a New Zealand-listed company. You do not need to identify or verify the identity of any beneficial owners of the company. You will need to identify the employee of the client that you are dealing with and their relationship to the client.
4. Make a determination of the level of ML/TF risk involved.	You determine that the client is low risk given they are a reputable listed company on the New Zealand stock exchange. In addition, they are not involved in any high-risk activities or jurisdictions, and have not been subject to criminal or civil sanctions relating to ML/TF.
5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.	You do not need to identify or verify the identity of beneficial owners of the client as part of simplified CDD. You will still need the company's full legal name and should record how the company qualifies for simplified CDD. You are dealing with an employee of the company who is acting on behalf of the client. You need to obtain and verify their identity information and authority to act. You obtain the person's full name and date of birth by sighting their passport. You take clear copies and date all relevant documents. The employee provides a formal letter of authorisation on headed paper. You are satisfied that they have authority to act on behalf of the company. You take a clear copy of the formal letter and date and sign it. There is no need to determine source of wealth or source of funds.
6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.	Having met the criteria of the Act, you proceed with the sale of the property.

## Enhanced CDD

You must conduct enhanced CDD in specific circumstances:

- If you are establishing a business relationship with, or looking to conduct an occasional transaction or activity for, a client that is:
  - i. A trust or another vehicle for holding personal assets; or
  - ii. A non-New Zealand resident who is from a country that has insufficient AML/CFT systems and measures in place<sup>83</sup>; or
  - iii. A company with nominee shareholders or shares in bearer form
- If a client seeks your assistance to conduct a complex or unusually large transaction, or an unusual pattern of transactions that have no apparent or visible economic or lawful purpose<sup>84</sup>
- When you consider that the level of ML/TF risk involved means that enhanced CDD would be required
- When you have had cause to submit an SAR to the FIU

When conducting enhanced CDD in the above circumstances, you must obtain information about your client's source of wealth or source of funds.<sup>85</sup> You must record this information and take reasonable steps, according to the level of risk involved, to verify this information using other reliable and independent sources.<sup>86</sup> Where you identify that the origin of your client's funds or wealth has come from their beneficial owner(s), it may be necessary, according to the level of risk involved, for you to extend your level of verification to include the source of wealth or source of funds of these persons. You will not need to obtain and verify source of wealth or source of funds for every beneficial owner if they have nothing to do with your client's source of wealth or source of funds.

You must also conduct enhanced CDD in the following circumstances, which have specific identity and verification requirements:

- When you determine that your client is a politically exposed person (PEP)<sup>87</sup>; or
- If you are an ordering institution, an intermediary institution, or a beneficiary institution in relation to a wire transfer<sup>88</sup>; or
- If you are undertaking an activity that involves the use of new and developing technologies that may favour anonymity<sup>89</sup>

Note: The enhanced customer due diligence requirements relating to wire transfers in sections 27 and 28 of the Act relate to the information required to accompany the wire transfer rather than obtaining source of wealth or source of funds information. These requirements are in addition to any customer due diligence requirements that would apply to customers and other persons under section 11 of the Act. The obligation to conduct customer due diligence to the standard required by sections 15 and 16 of the Act, if appropriate, still applies.

The AML/CFT supervisors have published guidance for all reporting entities on enhanced CDD.<sup>90</sup> The following examples have been tailored to suit real estate agents.

### Scenarios where enhanced CDD might apply

Enhanced CDD might apply if:

- You are selling property for an overseas vendor who is resident in a high-risk country with insufficient AML/CFT practices
- The vendor is a PEP
- Your client is a trust

For a discretionary trust or a trust with more than 10 beneficiaries you only need to describe the class or type of beneficiary. For a charitable trust you only need to describe the object of the trust.

Note that these scenarios are only to illustrate where enhanced CDD might apply to real estate transactions. Your own professional assessment of risk must be applied to determine the appropriate levels of CDD.

## Residential sale – family trust as client

Client	Residential vendor – family trust as client
Covered activity	Selling investment property
Level of CDD required	Enhanced CDD
Steps to complete	How this applies to the example
1. Identify which criteria your client meets to decide the level of CDD you must do.	According to your AML/CFT programme, this client meets the criteria for enhanced CDD as it is a trust.
2. Obtain information about the nature and purpose of the proposed business relationship.	Your client is a family trust selling an investment property. The trustee of the trust is the mother of the family. She is now retired and explains that the property is being sold to free up the equity it has accrued over the last ten years. This is to assist her children, who are the beneficiaries and all now married with their own children.
3. Identify all relevant persons who need to be identified.	CDD will be required on the trust. You identify via the trust deed that there are five equal beneficiaries of the trust. You identify that the person you are dealing with is the only trustee. You determine that she has effective control over the trust and is therefore a beneficial owner. As this is a trust you are also required to identify the beneficiaries and you also need to examine its source of wealth or source of funds.
4. Make a determination of the level of ML/TF risk involved.	You determine the trust presents a low to medium level of ML/TF risk. This is based on the following: they are a trust, the beneficiaries are all New Zealand residents, the property has been in the trust for ten years, and the only other asset held by the trust is the family home. There are no PEPs involved, and there is only one family member with effective control over the client. Despite your low to medium risk rating, enhanced CDD is required by the Act. You conduct enhanced CDD according to the level of risk presented by the client.
5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.	<p>The information required to identify the trust is:</p> <ul style="list-style-type: none"> <li>• Full name of the trust</li> <li>• Address of the trust</li> <li>• Name and date of birth of each beneficiary of the trust</li> <li>• Name, date of birth and address of the trustee</li> <li>• Source of wealth or source of funds of the trust</li> </ul> <p>You gather the information on the trust by sighting the original trust deed (of which you take a good quality copy and date and sign it). In relation to the trustee and the beneficiaries, you sight their current New Zealand driver licences and credit cards in their name to verify their names and birth dates. You also obtain and verify the address of the trustee via a provided bank statement. You take clear copies of all relevant documents and date and sign them. To verify the source of wealth or source of funds of the trust, you obtain other documents, including bank records and accounts audited by an accountant for the last three years. This shows that the investment property has been rented out to tenants, and that the trust has been paying tax on the income received.</p>
6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.	Having met the criteria of the Act, you proceed with the sale of investment property.

## Identifying if a client is a politically exposed person

As soon as possible after establishing a business relationship or conducting an occasional transaction or activity, real estate agents are required to take reasonable steps to identify whether their client (or any beneficial owner) is a PEP.<sup>91</sup> A PEP is defined in section 5(1) of the Act.<sup>92</sup> The Act requires reporting entities to conduct enhanced CDD if they establish a business relationship with a client or beneficial owner who is a PEP, or if a PEP seeks to conduct an occasional transaction or activity through the reporting entity.<sup>93</sup>

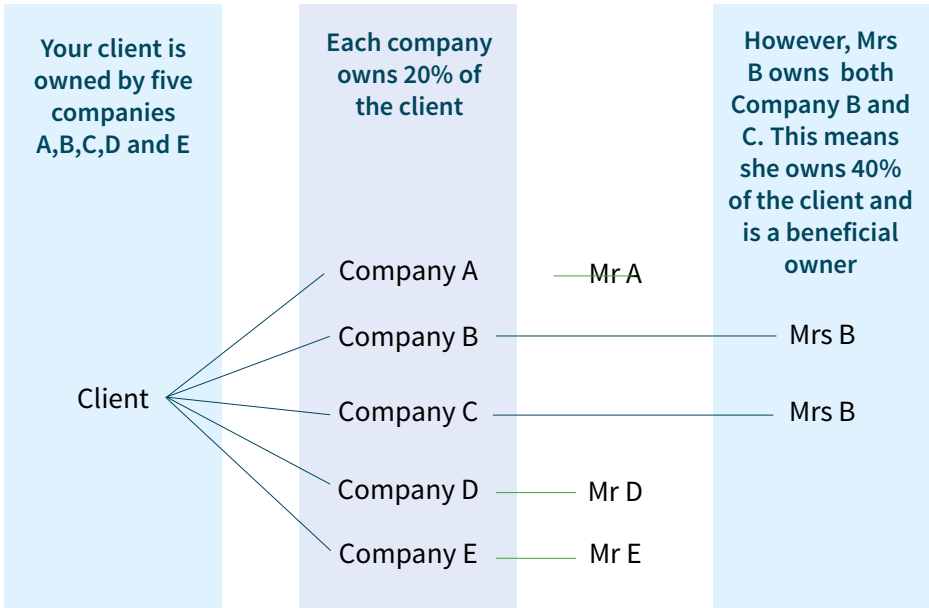
A PEP is a person, or an immediate family member or someone who has close business ties to that person, who holds or has held (in the preceding 12 months) a prominent public function in an **overseas** country. This may be because they are or were a head of state, senior politician, or an official with a public profile, such as a Supreme Court Judge, or a highly ranked military official. It could also be because they had authority and influence in a state enterprise in any country. PEPs can be exposed to bribery or corruption or their respected status may be misused (knowingly, or unknowingly) to legitimise otherwise suspect transactions.

If you determine that your client or a beneficial owner is a PEP, you will require senior management approval to continue the business relationship.<sup>94</sup> Also, you must obtain information about the source of wealth or source of funds and verify that information.<sup>95</sup> If you have undertaken an occasional transaction or activity for someone who you didn't realise is a PEP, as soon as you can after the transaction/activity you also need to obtain and verify information about their source of wealth or source of funds.

The *Enhanced Customer Due Diligence Guideline* has more information about how to manage compliance where clients are identified as PEPs.<sup>96</sup>



## Residential sale – PEP as client

Client	Overseas company
Covered activity	Selling investment property in New Zealand
Level of CDD required	Enhanced CDD
Steps to complete	How this applies to the example
1. Identify which criteria your client meets to decide the level of CDD you must do.	Your client is an overseas company from a higher-risk jurisdiction that is not listed on a stock exchange. They wish to sell their New Zealand based property. According to your AML/CFT programme, this client meets the criteria for enhanced CDD. Companies that are geographically or financially linked to higher-risk countries, or include PEPs, may have increased ML/TF risks.
2. Obtain information about the nature and purpose of the proposed business relationship.	Your client is selling the New Zealand investment property to another company from the same high-risk jurisdiction. The client is owned by a number of other companies based in the same jurisdiction. Note: The information that you have gathered on the nature and purpose of the business relationship you will have with your client may also help determine the ML/TF risk that they may pose.
3. Identify all relevant persons who need to be identified.	<p>Understanding the management and governance structure of your client will help you to establish the beneficial owners of your client. The company structure and arrangements should be verified using documents, data or information issued by reliable and independent sources – for instance, company certificates, annual reports, internet searches on reputable directories, or a list of directors. You determine that your client has the following beneficial ownership structure:</p>  <p>The diagram illustrates the ownership structure of the client. On the left, a box labeled 'Client' is connected by lines to five boxes representing 'Company A', 'Company B', 'Company C', 'Company D', and 'Company E'. Each company box is further connected to a box representing its owner: 'Company A' to 'Mr A', 'Company B' to 'Mrs B', 'Company C' to 'Mrs B', 'Company D' to 'Mr D', and 'Company E' to 'Mr E'. Three text boxes provide additional context: 'Your client is owned by five companies A,B,C,D and E', 'Each company owns 20% of the client', and 'However, Mrs B owns both Company B and C. This means she owns 40% of the client and is a beneficial owner'.</p> <p>You must identify and verify the identity of all beneficial owners. The company has five direct owners, each owning an equal amount of the client. The beneficial owner threshold under the Act is someone who owns more than 25% of the client. Two of the five direct owners (Companies B and C) are wholly owned by Mrs B. As such, Mrs B is a beneficial owner of the client. As part of CDD you undertake a check on Mrs B to see if she is a PEP. This comes back positive as you identify that Mrs B was until recently a high-ranking politician in the overseas jurisdiction. You deal directly with the New Zealand managing director of the company, Mr F. As well as acting on behalf of the company, you determine that Mr F also has effective control of the company. This means that you also need to conduct CDD on Mr F. <b>You do not have to conduct CDD on the company from the high-risk jurisdiction purchasing the property, as they are not your client.</b></p>

<p>4. Make a determination of the level of ML/TF risk involved.</p>	<p>You determine the company presents a high level of ML/TF risk. This is based on the following: the beneficial owner is a PEP, the client has a complicated organisational structure, and the client is based in a high-risk jurisdiction. You are therefore required to conduct enhanced CDD.</p>
<p>5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.</p>	<p>The information required for identification of the client is:</p> <ul style="list-style-type: none"> <li>• Full legal name</li> <li>• Trading name (if different)</li> <li>• Principal business address or registered office address</li> <li>• Jurisdiction of incorporation (optional)</li> <li>• Company identifier or registration number</li> </ul> <p>You must also examine the source of wealth or source of funds of the client. Their website and open source information indicate a long-running and reputable company. You request that the company provides you with the purchase agreement for the investment property and evidence of where the funds came from to make the purchase. You are provided with a certified copy of the purchase agreement, which shows it was bought three years ago. You are also provided with bank statements and accounts audited by an accountant that satisfy you that the investment property was purchased from legitimate sources. You also note that the contributions are proportional to their respective shareholdings.</p> <p>The information required for identification of the beneficial owner and person with authority to act are:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Date of birth</li> <li>• Relationship to the client</li> <li>• Address</li> </ul> <p>The information you gather on Mrs B is in line with your enhanced CDD measures as detailed in your AML/CFT programme, including source of wealth or source of funds. A significant percentage of the client's funds appear to come from Mrs B. In this case the available information indicates that Mrs B was only in politics for a period of three years. Prior to that, she was a business person and also a person with family wealth who had accumulated business earnings and used it to buy and sell property. You are provided with certified copies of documents in accordance with the Amended Identity Verification Code of Practice 2013 confirming Mrs B's identity, as well as her address. In relation to Mrs B's source of wealth, you are provided with certified copies of her tax returns for the last five years. These records match your understanding of Mrs B's wealth and reflect a legitimate source of income. For Mr F you need to obtain and verify his identity and also his authority to act for the client. You obtain and verify his full name and date of birth by sighting his driver licence and credit card. You also sight his business card and carry out an internet search, which shows directories that list him as a contact for the company. You also obtain a formal letter of authorisation on headed paper provided by the client. You take clear copies of all relevant documents and date and sign them.</p>
<p>6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.</p>	<p>You are satisfied with the findings of your enhanced CDD. However, in line with the requirements of the Act, you have to escalate the decision to establish a business relationship with a PEP to your senior management. Your senior management team decide to establish the business relationship with the client but with instructions for regular ongoing CDD and activity monitoring in the event of more sales.</p>

## Wire transfers

The AML/CFT supervisors have published guidance on compliance matters when participating in wire transfers.<sup>97</sup> A “wire transfer” is a transaction carried out on behalf of a person through a reporting entity by electronic means with a view to making an amount of money available to a beneficiary at another reporting entity. The person on whose behalf the transaction is conducted and the beneficiary can be the same person.

An “international wire transfer” is a wire transfer where at least one of the ordering, intermediary or beneficiary institutions is in New Zealand, and at least one is outside New Zealand.

Section 27 of the Act places specific obligations on “ordering institutions” and “beneficiary institutions” when the wire transfer is equal to or above NZ\$1,000. It is possible that a real estate agent could be either an ordering or a beneficiary institution, in which case they must complete identity and verification requirements in line with the AML/CFT Act.<sup>98</sup>

For domestic wire transfers an Ordering Institutions may use the Originator’s account number or any other information that enables the wire transfer to be identified and traced to the Originator (e.g. a transaction reference number). The Ordering Institution must be able to provide further required identity information within three working days of a request being made by the Beneficiary Institution.

## New or developing technologies, or products, that might favour anonymity

Criminals value anonymity and will continually look for new ways to preserve it while conducting their activities. Before you establish a business relationship or undertake an occasional activity or transaction with a client that involves new or developing technologies or products that may favour anonymity, section 30 of the AML/CFT Act requires you to:

- Complete standard CDD identity and verification requirements; and
- Take any additional measures needed to mitigate the risk of the new or developing technology, or product, being used to commit ML/TF. Depending on the technology, or the product, and the ways in which it might favour anonymity, you will need to determine what additional measures are required.<sup>100</sup> This includes conducting EDD.

Both steps must be done before you enter a business relationship or conduct an occasional transaction or activity for your client.

## How to use the Amended Identity Verification Code of Practice 2013

Identity verification needs to be done by collecting and sighting documents, data, or information provided from a reliable and independent source. You are required to keep records of this information. The Amended Identity Verification Code of Practice 2013 provides suggested best practice for anyone conducting name and date of birth identity verification on clients (that are natural persons) who have been assessed to be low to medium risk.<sup>101</sup> The Amended Identity Verification Code of Practice 2013 should be read in tandem with the Explanatory Note.<sup>102</sup>

## When you can rely on others for CDD

In some specific circumstances, and with consent, reporting entities can rely on others to conduct CDD if the other party is either:

- A member of the same DBG<sup>103</sup>
- Another reporting entity (such as a bank or lawyer or accountant) in New Zealand or a person in another country that has sufficient AML/CFT systems and measures in place and who is regulated for AML/CFT purposes<sup>104</sup>
- An agent<sup>105</sup>

## Relying on a member of your designated business group

A member of a DBG (Member A) can rely on another member of that same DBG (Member B) to conduct CDD on their client if the identity information is given before Member A has established a business relationship or conducts an occasional transaction or activity for the client. Any verification information must be able to be given to Member A by Member B as soon as practicable but within five working days of the request.

The reporting entity requesting the CDD remains responsible for ensuring the CDD is conducted in accordance with the AML/CFT Act. So in this scenario, Member A (not Member B) is responsible for ensuring that it is complying with the AML/CFT requirements.

In a real estate context, this could mean that if you regularly have a property development company as a client you can supply verification information about this company to other members of your DBG if they also conduct business with this company.

## Relying on another reporting entity or a suitably regulated person overseas

You can rely on another person for conducting CDD on your client so long as the person:

- Is either a reporting entity in New Zealand or is a person resident in a country that is regulated for AML/CFT purposes; and
- Has a business relationship with the client concerned; and
- Has conducted CDD to at least the standard required by the AML/CFT Act and:
  - i. Has provided you with the relevant identity information before you have established a business relationship or conducted an occasional transaction or activity; and
  - ii. Can provide relevant verification information on your request as soon as practicable but within five working days; and
- Consents to conducting the CDD and providing all relevant CDD information to the reporting entity

Please note that at time of publication real estate agents, law firms, conveyancing practices, and accounting practices in Australia are not specifically regulated for AML/CFT purposes.

In a real estate context, this could mean that you can rely on another real estate agent or lawyer (outside of your DBG) if all the above criteria are met. For instance, you wish to start a business relationship with a company (“Company X”). You know that Company X is a client of another real estate agent (“Real Estate Agent A”), and you are satisfied that the appropriate level of CDD has been conducted. With the consent of Real Estate Agent A, you may rely on their CDD verification of Company X. However, as you are the reporting entity requesting the CDD, you remain responsible for ensuring the CDD is conducted in accordance with the AML/CFT Act.

## Relying on an agent

You may authorise a person to be your agent and rely on that agent to conduct CDD and obtain any information required for CDD records. This does not mean “real estate agent” but instead means someone acting on your behalf. “Agent” is not defined in the Act; instead, the ordinary principles of agency law will apply.

## Relying on an approved entity

Section 33 of the Act enables a business to rely on an “approved entity”. Relying on an approved entity means, in the right circumstances, you are not responsible for ensuring CDD is compliant. There are not as yet any prescribed approved entities.

## When to conduct CDD

You must conduct CDD (ie, obtain the required identity information and verify that information) on your client *before* you enter into a business relationship with the client or conduct an occasional transaction or activity.

**For a real estate agent, that means you must conduct CDD before you enter into an agency agreement with the client.** Verification of identity can be completed after you have established the business relationship only where all the following criteria apply:

- It is essential not to interrupt normal business practice; and
- You effectively manage ML/TF risks through appropriate risk management procedures; and
- You complete identity verification as soon as practicable once you have established the business relationship<sup>106</sup>

Fast-paced scenarios may be common for some real estate agents; however, instances of delaying the verification of client identity information should be rare. The reasons for delaying verification should be fact-based, justifiable and recorded.

## Account monitoring and ongoing CDD

Under section 31 of the AML/CFT Act, when you are in a business relationship with a client, you are required to conduct ongoing CDD and account monitoring. This means that you are required to regularly review any information you hold about your client’s account activity and transactions to make sure it remains current. This ensures that the nature and purpose of the business relationship, and any activities or transactions relating to that business relationship, are consistent with your knowledge of the client and the client’s risk profile. This regular review will also help you to identify any grounds for reporting suspicious activity.

Reporting entities are required to develop a process for ongoing CDD and account monitoring for their clients according to the level of risk each client presents. You should think about the level of CDD that was previously conducted and consider the level of risk involved with that client or their activities and transactions. This means higher-risk clients need to have more frequent and thorough account monitoring than clients deemed to be low or medium risk. The account monitoring conducted should help you to identify any activity or transaction behaviour that is not consistent with the expected activity of the client, their risk profile, and the CDD you have previously conducted.

We believe that a best-practice approach for reporting entities is to have a system to periodically review files of existing clients so that, over time, appropriate identity verification can be carried out in a way that is not unduly onerous on your time and resources. The logistics of such an exercise will vary greatly between reporting entities based on the nature of the services you provide and the number and nature of existing clients on your books. In any case, you should be guided by the level of risk involved.

## Compliance obligations when working with other professionals

Your AML/CFT programme should detail how you ensure compliance when you are engaged by other professionals on behalf of their clients. This could be when you are conducting or participating in international transactions with multiple parties, or when you are otherwise engaging with parties in other countries.

Real estate agents may be engaged by other professionals, such as lawyers, to conduct real estate agency work that is required by *the other professional's* client. In these instances it may be difficult to figure out who is *your* client – the lawyer or their client? Your answer to this question will be based on the particular circumstances of the activity.

Often, the lawyer's client will be your client, with the lawyer being a person acting on their behalf in their engagement with you. Alternatively, the lawyer's client could be a party to an activity or transaction that is being conducted by you for your client who will be the lawyer. In practice, this means that you will often need to conduct CDD on both the lawyer and their client, unless you already hold sufficient CDD information on them **and** there has been no material change in your business relationship with them. You will then need to consider the level of CDD required depending on the particular circumstances.

In some cases, a lawyer or other professional instructing you on behalf of their client will themselves be a reporting entity (or equivalent in an overseas jurisdiction).

For example, a law firm in New Zealand instructing you on behalf of their client is covered as a reporting entity under the Act. This means that they must do their own CDD on their client at the time their business relationship started. When you are subsequently engaged by this law firm to conduct covered activities for their client, you can choose to rely on the CDD that they have conducted on their client so long as the criteria set out in section 33(2) are met (including obtaining permission and relevant identity and verification information from the law firm).

**If you rely on a third party to conduct CDD, you remain responsible for ensuring that the required CDD is conducted in accordance with the AML/CFT Act.** You can do this in a number of ways. You may want to request a copy of the third party's procedures, policies and controls. You may want to establish a service level agreement or visit the third party to gain comfort that they are meeting the AML/CFT obligations. The business decision will be yours to make.

## Conducting international transactions

The buoyant housing market in New Zealand has likely increased the opportunities for the exploitation of the real estate sector by transnational criminals. This has been observed in comparable countries such as the UK, USA, Canada and Australia. For instance, in the USA, geographic targeting orders were introduced in some localities in response to real estate scandals, and in Canada, real estate has been identified as a prime target for laundering funds from the sale of illicit drugs. In the UK, London real estate has long been highlighted as a method to launder money, and the UK's National Crime Agency has recently used unexplained wealth orders to force overseas owners of properties to prove they were bought with legitimate funds.

Given the continued abuse of real estate by international money launderers, you will need to be aware of your AML/CFT obligations and the ML/TF red flags when conducting international transactions (see section 6).

## Conducting CDD in a multi-party international transaction

The above requirements apply whether you are being engaged by another professional in New Zealand or from another country. We recognise that this may be challenging when dealing with professionals who operate in countries where a high standard of AML/CFT regulation is not the norm. Also, there may be instances where there are multiple beneficiaries in multiple countries on whom you require CDD information to allow you to proceed.

You should consider if it would be possible to obtain and verify identity information from the other professionals involved, remembering you remain accountable for the CDD. Alternatively you can conclude your business without conducting activities covered by the AML/CFT Act. For more information see "What to do if you cannot complete CDD" below.



## Dealing with other countries

The AML/CFT supervisors have published the *Countries Assessment Guideline* to help you determine whether a country you are dealing with has effective AML/CFT systems and measures.<sup>107</sup>

There is no definitive list of countries that are deemed not to have sufficient AML/CFT systems and measures, so you should consider a range of factors when determining the level of risk associated with a country.

For example, is the country:

- Subject to international sanctions, embargos or other measures?
- Identified by the FATF as lacking adequate AML/CFT systems and measures?<sup>108</sup>
- Recognised as having supporters of terrorism, or financing terrorism?
- Considered to have problems with corruption (eg, does it have a low ranking on the Transparency International Corruption Perceptions Index)?<sup>109</sup>
- Known as a tax haven?<sup>110</sup>
- Associated with production and/or transnational shipment of illicit drugs?

You must develop an understanding of the ML/TF risks associated with any countries that you deal with.<sup>111</sup> You should also have regard to other legislative requirements, such as Overseas Investment Rules.<sup>112</sup>

## What to do if you cannot complete CDD

If you are not able to complete CDD on your client, you must neither carry out an occasional transaction or activity for them nor establish a business relationship with them.<sup>113</sup> If you already have a business relationship with the client, and that business relationship relates solely to covered activities, this must be terminated (you are free to continue providing non-covered services to the client). This applies to all circumstances where a client fails or refuses to provide information, data or documents that you have requested, including in relation to enhanced CDD. This also applies if the information, data or documents that the client provides are inadequate.

If you are declining to enter into a business relationship or refusing an occasional transaction or activity, you must consider whether you need to file an SAR with the FIU.

It is important to note that paragraph 4 of the Amended Identity Verification Code of Practice 2013 states you must have an exemptions procedures for when a client cannot meet CDD requirements.



## Client from high-risk jurisdiction

<b>Client</b>	<b>Individual client from high-risk jurisdiction</b>
<b>Covered activity</b>	<b>Selling investment rental property</b>
<b>Level of CDD required</b>	<b>Enhanced CDD</b>
<b>Steps to complete</b>	<b>How this applies to the example</b>
1. Identify which criteria your client meets to decide the level of CDD you must do.	In this instance your client is an individual from a high-risk jurisdiction and is selling an investment rental property very soon after they have purchased it. You decide, based on your risk assessment and AML/CFT programme, to conduct enhanced CDD.
2. Obtain information about the nature and purpose of the proposed business relationship.	Your client is selling their investment property shortly after purchasing it. However, they have never rented out the property and now they are willing to sell at a loss to get a quick sale. They tell you they need to free up cash due to liquidity issues. The client does not provide you with information in relation to their source of wealth or source of funds.
3. Identify all relevant persons who need to be identified.	The client is the owner of the house. There is no reason to believe the client is acting on behalf of any other person. Therefore, you treat the client as being the sole beneficial owner.
4. Make a determination of the level of ML/TF risk involved.	Given the following risk factors and red flags, you assess your client presents a high ML/TF risk: high-risk jurisdiction, recognised ML technique, willingness to take a loss, a lack of engagement, and unwilling to provide source of wealth or source of funds information.
5. Gather identity information and, according to the level of risk, verify the identity of relevant persons, including natural persons using the Amended Identity Verification Code of Practice 2013. Also verify the client's source of wealth or source of funds if required.	The Amended Identity Verification Code of Practice 2013 is intended for low- to medium-risk individuals, but it is also a very useful starting point to verify the identity of higher-risk individuals. In this instance your client provides copies of an overseas driver licence and an overseas identity card apparently certified by a person authorised to do so by law in that jurisdiction. Given the level of risk involved, you request further documents, including a copy of their passport, which the client promises will arrive shortly. When pressed on information regarding their source of wealth or source of funds, the client provides a vague description involving property development but no reliable documentation. You check the client against a list of PEPs but there are no matches to the list of names. An open source internet search discovers some negative media about your client in relation to bribery and corruption.
6. If the identity information and verification requirements are satisfied, then you can proceed with the client's instructions.	You are not satisfied with the information from your client. You escalate the issue to your senior management team, who decide to terminate the business relationship. In addition, you submit an SAR to the FIU.

## 6. Do you know the ML/TF red flags?

This section draws on available domestic and international information about the vulnerabilities of the real estate profession to misuse for ML/TF purposes by their clients. This information should increase your general AML/CFT awareness and help you consider the risks your business may face from ML/TF activity.

### Red flags identified by the Financial Action Task Force (FATF)

The FATF provides a range of information and advice for the industries and professions that are affected by ML/TF. The FATF published *Money Laundering and Terrorist Financing through the Real Estate Sector*<sup>114</sup> in 2007 and *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorism Financing: High Level Principles and Procedures for Real Estate Agents*<sup>115</sup> in 2008. These documents support the development of a common understanding of what a risk-based approach involves and outline the high level principles in applying this approach. They also suggest some best practice in designing and implementing a risk-based approach.

#### ► Some key real estate typologies identified by the FATF include:

- Use of complex loans or credit finance
- Use of non-financial professionals
- Use of corporate vehicles
- Manipulation of the appraisal or valuation of a property
- Use of monetary instruments
- Use of mortgage schemes
- Use of investment schemes and financial institutions
- Use of properties to conceal money generated by illegal activities

#### ► Red flags for New Zealand real estate agents

Criminals will seek to stay ahead of authorities and the professionals whose services and products they wish to misuse. Over time, new methods of ML/TF will develop and emerge. The FIU and DIA actively maintain a watch for these new methods and communicate them via FIU guidance material (including historical Quarterly Typology Reports<sup>116</sup>) and DIA newsletters.<sup>117</sup>

This section provides a **summary** of the key red flags that real estate agents should look out for and consider in their risk assessment and programme. For more detailed information about the risks, refer to the above FATF publications, the *Phase 2 AML/CFT Sector Risk Assessment*<sup>118</sup> and the updated AML/CFT supervisors' *Risk Assessment Guideline*<sup>119</sup> and *AML/CFT Programme Guideline*<sup>120</sup>. You may also find DIA's "Prompts and Notes" guideline useful.<sup>121</sup> In addition to these documents, we strongly recommend that you read the FIU's *Suspicious Activity Reporting Guideline 2018*, which contains further red flags.<sup>122</sup>

We encourage reporting entities (their compliance officers in particular) to use the above resources as well as media reports from trusted and reliable sources to keep up-to-date with developments in ML/TF methods.

#### ► Client red flags

When determining the ML/TF risk presented by your clients, you will need to consider a variety of factors. Risk increases when these factors are in combination – for instance, a client from a high-risk jurisdiction who works in a high-risk industry. Here are some red flags to watch out for:

- There is significant and unexplained geographic distance between the real estate agent and the location of the client
- The client/customer invests in real estate at higher or lower prices than expected by the market
- The client is a business or a trust whose organisational structure is unusual or excessively complex
- The client makes it difficult to identify the true beneficial owner or individual with effective control
- A nominee is used by the client, and the beneficial owner is added to the sale and purchase agreement at the last minute
- The client is a shell company or company with bearer-shares
- The client is a cash-intensive business

- The client uses intermediaries who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised
- The client is linked to organised crime groups
- The client is reluctant to provide all relevant CDD information, or you have a reasonable doubt that the information provided is correct or sufficient
- The client is a PEP
- Buyers and sellers colluding to create a legitimate transaction to hide the proceeds of crime
- The client works in an industry or occupation that has a high risk of ML/TF
- The client is a high net worth individual or a head of an international organisation who poses a higher risk due to the large amounts they have available to invest and the ease of fund movement through New Zealand real estate
- The client is from a high-risk jurisdiction (see “Country/Geographic red flags” below)
- The client instructions or access to funds does not match their business or personal profile
- The client conducts individual or classes of transactions that do not match their profile
- There are unexpected activities compared to what you know about your client
- The legal structure of the client is frequently altered, including name changes and transfers of ownership

### ▶ **Product, service or delivery method red flags**

Particular products or services or transaction delivery methods can be vulnerable to misuse by those wishing to launder money or finance terrorism. When considering the risks associated with a product or service or transaction delivery method, have regard to whether:

- The real estate agency work prevents face-to-face business relationships or transactions without certain safeguards, such as electronic signatures
- Payments will be received from unknown or un-associated third parties
- New products and new business practices are involved, including new delivery mechanisms and the use of new or developing technologies
- The real estate agency work involves the use of nominees
- The service is open to misuse of pooled client (or trust) accounts or provides safe custody of client/customer money or assets
- The real estate agency work involves private banking
- The real estate agency work involves, or favours, anonymity

### ▶ **Country/Geographic red flags**

Moving money from country to country is a way of obscuring the criminal origins of funds and/or the true intended destination for funds. Real estate activities by non-residents can be a factor that increases the risk of ML/TF. There are particular countries that represent higher ML/TF risks and these will change over time. Real estate agents may have little experience of dealing with a certain country, including knowledge of local laws and regulations, as well as the structure and extent of regulatory oversight. Having a comprehensive and well-considered risk assessment and programme will help manage and mitigate these vulnerabilities. Some of the main country or geographic risk areas are:

- Countries with poor or insufficient AML/CFT measures
- Countries that have a high level of bribery and corruption
- Countries associated with tax evasion
- Countries associated with organised crime or terrorism financing
- Conflict zones and their bordering countries
- Countries associated with the production and/or transnational shipment of illicit drugs or people trafficking
- Countries that are subject to sanctions and embargoes

### ▶ **Other red flags**

- A property is bought and sold in quick succession
- The client is selling for less than the purchase or market price and/or is disinterested in obtaining a better price
- The client shows interest in purchasing property without normal levels of interest in price, characteristics of the property, or other details
- The client offers an unusually high price for property and is not interested in obtaining a better price for the real estate agency work
- There is an unusual involvement of third parties
- There is involvement of financial institutions or other DNFBPs
- The client/customer requires unexplained urgency of real estate agency work
- The client/customer has a poor reputation in the local community
- A private company’s structure is not transparent and not well known in the public domain
- There is sudden activity from a previously dormant client
- The client/customer offers to pay extraordinary fees for services that would not ordinarily warrant such a premium

- Payments are received from un-associated or unknown third parties, and payments for fees are in cash where this would not be a typical method of payment
- Gatekeepers (eg, lawyers, accountants) appear to have full control of activity
- Real estate agency work is started in one name and completed in another without a logical explanation

### **How to keep up-to-date with changing methods of ML/TF**

There are a wide variety of credible AML/CFT sources and it is up to your judgement what information you access and how you perceive the credibility of that information. Generally, sources with expertise in AML/CFT are deemed to be credible, such as the FATF, the Asia/Pacific Group on Money Laundering (the FATF-style regional body New Zealand is a member of), and other international organisations such as the United Nations, International Monetary Fund, and the Financial Intelligence Units of countries with strong AML/CFT systems in place (for example, the Australian Transaction Reports and Analysis Centre (AUSTRAC)).

## 7. Do you know where to get support?

You can access compliance support from a range of sources:

- Your compliance officer and your AML/CFT programme
- DIA as your AML/CFT supervisor
- The Real Estate Authority
- Professional bodies
- Independent legal advice
- Open source information from relevant international bodies concerned with AML/CFT

### Your AML/CFT programme and compliance officer

Where employees in your business have compliance questions, their first port of call should be your AML/CFT programme. The programme documentation should be able to provide answers to basic questions that will be asked in the ordinary course of business. As questions arise, it is likely that you will need to update your AML/CFT programme to include provisions for resolving unanticipated issues and frequently asked questions.

Specific questions should be answered by your compliance officer. Where this approach does not resolve the question at hand you should seek support from your professional body, from your AML/CFT supervisor, or from a lawyer or other suitable professional.

### Support from your AML/CFT supervisor

We recognise that this is a new compliance system so we aim to provide proactive support to reporting entities. We provide general information and awareness promotion and more specific support where a reporting entity is experiencing difficulty and has a genuine intention to comply. The DIA website provides a wide range of information about how you can comply with the AML/CFT Act.<sup>123</sup> We will advise you when new guidelines are made available.

The Act allows AML/CFT supervisors to create codes of practice. A code of practice is a statement of practice that helps reporting entities to comply with the AML/CFT Act. So far, one code of practice has been developed: the Identity Verification Code of Practice.<sup>124</sup> This was developed in 2011 and amended in 2013. It should be read in tandem with the Explanatory Note.<sup>125</sup> There are no current plans to develop more codes of practice, but the AML/CFT supervisors are open to feedback from reporting entities on whether more would be helpful.

### Support from your regulator and professional body

Real estate agents are encouraged to keep abreast of the information and education on offer from the Real Estate Authority (REA)<sup>126</sup> and the Real Estate Institute of New Zealand (REINZ)<sup>127</sup>.

### When to seek independent advice

There will be occasions where you need to seek independent advice to ensure you remain compliant with the AML/CFT Act. AML/CFT supervisors or the REA cannot provide legal advice to reporting entities. When you have specific compliance questions about unique circumstances that your AML/CFT supervisor, REA or your professional body cannot reasonably answer, you may need to seek independent legal advice or advice from an otherwise suitable professional.

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# Endnotes

1. The recent changes were made by the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017 (the AML/CFT Amendment Act). <http://www.legislation.govt.nz/act/public/2017/0035/37.0/DLM7161207.html>
2. See the definition of “designated non-financial business or profession” in Section 5(1) of the AML/CFT Act: <https://bit.ly/2xHGfmy>
3. *National Money Laundering and Terrorism Financing Risk Assessment 2018*: <https://bit.ly/2pMwrWm>
4. Section 130(1)(c), AML/CFT Act (<http://bit.ly/2A2AKj7>). There are two other AML/CFT supervisors for other reporting entities: the Reserve Bank of New Zealand and the Financial Markets Authority. In this document, the term “AML/CFT supervisors” refers to all three agencies collectively.
5. Section 5(1) of the AML/CFT Act: <https://bit.ly/2xHGfmy>
6. Sections 58(2)(g) (<http://bit.ly/2ly11Dz>) and 57(2) (<http://bit.ly/2h2nN59>) of the AML/CFT Act.
7. AML/CFT Act and Regulations: <http://bit.ly/2hpGU5V>
8. Codes of Practice and Guidelines: <http://bit.ly/2gQ3lev>
9. Section 243, Crimes Act 1961: <http://bit.ly/2zYeqXU>
10. Section 8(1) and (2A), Terrorism Suppression Act 2002: <http://bit.ly/2lZbZlE>
11. *Territorial Scope of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009*: <http://bit.ly/2nf664p>
12. *In the Ordinary Course of Business Guideline*: <https://bit.ly/2po86Fw>
13. Section 4(1) of the Real Estate Agents Act 2008: <https://bit.ly/2k3UU68>
14. Section 4(1) of the Real Estate Agents Act 2008: <https://bit.ly/2k3UU68>
15. Both of these terms are defined in section 5(1), AML/CFT Act: <http://bit.ly/2xHGfmy>
16. Section 6, Lawyers and Conveyancers Act 2006: <http://bit.ly/2ztlqyK>
17. Section 4(1), Real Estate Agents Act 2008: <http://bit.ly/2h79rQS>
18. Residential Tenancies Act 1986: <http://bit.ly/2iYKoQl>
19. Land Transfer Act 1952: <http://bit.ly/2iq9a8c>
20. Section 5, Retirement Villages Act 2003: <http://bit.ly/2lJhJQv>
21. AML/CFT (Definitions) Regulations 2011: <http://bit.ly/2hrFYy3>
22. AML/CFT (Exemptions) Regulations 2011: <http://bit.ly/2lAlmH6>
23. AML/CFT Ministerial exemptions: <http://bit.ly/2xCmQU6>
24. AML/CFT (Class Exemptions) Notice 2014: <http://bit.ly/2zly18h>
25. Sections 157–159, AML/CFT Act: <http://bit.ly/2aFZRjN>
26. Section 9, AML/CFT Act: <http://bit.ly/2iR0JH3>
27. Section 56, AML/CFT Act: <http://bit.ly/2znn4Dd>
28. Section 58, AML/CFT Act: <http://bit.ly/2ly11Dz>
29. *Risk Assessment Guideline*: <https://bit.ly/2iL7Spp>
30. Section 58(2)(g), AML/CFT Act: <http://bit.ly/2ly11Dz>
31. Sector and National Risk Assessments: <http://bit.ly/2ik1tAu>
32. *AML/CFT Risk Assessment and Programme: Prompts and Notes for DIA Reporting Entities*: <http://bit.ly/2EBUMXy>
33. *Guide for Small Financial Adviser Businesses*: <http://bit.ly/2z18hNI>
34. FIU reports: <https://bit.ly/2rRsvUr>
35. Sections 56 and 57, AML/CFT Act: <http://bit.ly/2znn4Dd> and <http://bit.ly/2h2nN59>
36. Section 57(2), AML/CFT Act: <http://bit.ly/2h2nN59>
37. *AML/CFT Programme Guideline*: <https://bit.ly/2poP4i2>
38. The CDD requirements are noted in Part 2, subpart 1, AML/CFT Act: <http://bit.ly/2A5PJtA>
39. Section 49, AML/CFT Act: <http://bit.ly/2zEQkFA>
40. Section 49A, AML/CFT Act: <http://bit.ly/2iFJ1lM>
41. Section 50, AML/CFT Act: <http://bit.ly/2zdxog9>
42. Section 51, AML/CFT Act: <http://bit.ly/2znMDn8>
43. Section 31, AML/CFT Act: <http://bit.ly/2z1eCIX>
44. Section 59, AML/CFT Act: <http://bit.ly/2xJWm2P>
45. Section 60, AML/CFT Act: <http://bit.ly/2gQqiUa>
46. *User Guide: Annual AML/CFT Report by Designated Non-Financial Businesses and Professions*: <https://bit.ly/2rMTlxa>



47. Sections 59–59A, AML/CFT Act: <http://bit.ly/2xJWm2P>
48. *Guideline for Audits of Risk Assessments and AML/CFT Programmes*: <http://bit.ly/2AfTf7m>
49. Section 59B, AML/CFT Act: <http://bit.ly/2muArvE>
50. *DIA v Ping An Finance (Group) New Zealand Limited* (2017) NZHC 2363, at paragraphs 64–67.
51. Suspicious Activities and Transactions Reports: <https://bit.ly/2LKGgwy>
52. Section 5(1), AML/CFT Act (<http://bit.ly/2xHGfmy>); Regulation 5A, AML/CFT (Definitions) Regulations (<http://bit.ly/2hbl5p6>). Also see the FIU’s Prescribed Transactions Reporting web page: <http://bit.ly/2zkB9RJ>
53. Prescribed Transactions Reporting: <https://bit.ly/2zkB9RJ>
54. Designated terrorist entities: <http://bit.ly/258MtKq>
55. goAML – Financial Intelligence Unit reporting tool: <http://bit.ly/2ygOri3>
56. Section 46, AML/CFT Act: <http://bit.ly/2xCrpxz>
57. Section 5(1) of the AML/CFT Act: <http://bit.ly/2xHGfmy>
58. Section 2(3) of the Companies Act: <https://bit.ly/2GyqITk>
59. Section 32, AML/CFT Act: <http://bit.ly/2hjDuF3>
60. Designated Business Group Guidelines: <http://bit.ly/2y4KpFa>
61. Part 2, subpart 1, AML/CFT Act: <http://bit.ly/2A5PJtA>
62. *DIA v Ping An*, paragraph 44.
63. Section 5(1), AML/CFT Act: <http://bit.ly/2xHGfmy>. For real estate agents, “existing client” refers to any person who was in a business relationship with you immediately before 1 January 2019.
64. The term “material change” is defined in the *Enhanced Customer Due Diligence Guideline* (<https://bit.ly/2GrKaHV>) as “an event, activity or situation that you identify during interactions with your client (or via ongoing customer due diligence and account monitoring) that could change their level of ML/TF risk”.
65. Section 5(1), AML/CFT Act: <http://bit.ly/2xHGfmy>
66. The term “beneficial owner” is defined in section 5(1), AML/CFT Act: <http://bit.ly/2xHGfmy>
67. More than 25% is the prescribed threshold for the definition of a beneficial owner. Regulation 5, AML/CFT (Definitions) Regulations: <http://bit.ly/2yDVy49>
68. Customer Due Diligence Fact Sheets: <http://bit.ly/2Bxp2Pc>
69. *Beneficial Ownership Guideline*: <http://bit.ly/2Bxp2Pc>
70. Section 11(2), AML/CFT Act: <http://bit.ly/2gRumUg>
71. *Clarification of the position the AML/CFT supervisors are taking with respect of the AML/CFT Act interpretation of a trust as a customer*: <http://bit.ly/2Bxp2Pc>
72. Section 18(2), AML/CFT Act: <http://bit.ly/2gS5b3V>
73. Sections 17, 21 and 25, AML/CFT Act: <https://bit.ly/2aFZRjN>
74. Section 17, AML/CFT Act: <http://bit.ly/2m1YSjC>
75. Section 14, AML/CFT Act: <http://bit.ly/2z2zU99>
76. Section 15, AML/CFT Act: <http://bit.ly/2zDSNQt>
77. Section 17, AML/CFT Act: <http://bit.ly/2m1YSjC>
78. Section 16, AML/CFT Act: <http://bit.ly/2HAmByd>
79. *Beneficial Ownership Guideline*: <http://bit.ly/2Bxp2Pc>
80. Section 16(3), AML/CFT Act: <http://bit.ly/2HAmByd>
81. Section 18(2), AML/CFT Act: <http://bit.ly/2gS5b3V>
82. Section 21, AML/CFT Act: <http://bit.ly/2zDTeu5>
83. See “Conducting international transactions” in section 5 for more discussion of how to assess whether a country is considered high risk.
84. Toogood J confirmed in paragraph 34 of *DIA v Ping An* that a transaction that is either complex or unusually large will trigger the enhanced CDD requirements.
85. Section 23(1)(a) of the AML/CFT Act: <http://bit.ly/2iFkDBE>
86. Section 24(1)(b) of the AML/CFT Act: <http://bit.ly/2zXSvDA>
87. Section 26 of the AML/CFT Act: <http://bit.ly/2BKjPWO>
88. Sections 27–28 of the AML/CFT Act: <http://bit.ly/2onXXbh>
89. Section 30 of the AML/CFT Act: <http://bit.ly/2CcOpcE>
90. *Enhanced Customer Due Diligence Guideline*: <http://bit.ly/2GrKaHV>
91. Section 26(1), AML/CFT Act: <http://bit.ly/2BKjPWO>
92. See definition of “politically exposed person” in section 5(1), AML/CFT Act: <http://bit.ly/2xHGfmy>
93. Section 22(2), AML/CFT Act: <http://bit.ly/2zYaTbY>
94. Section 26(2)(a), AML/CFT Act: <http://bit.ly/2A8liTh>

95. Section 26(2)(b), AML/CFT Act: <http://bit.ly/2A8liTh>
96. *Enhanced Customer Due Diligence Guideline*: <http://bit.ly/2GrKaHV>
97. *Wire Transfers*: <http://bit.ly/2ERdQBp>
98. Sections 27–28, AML/CFT Act: <http://bit.ly/2hRYKyV>
99. Section 30, AML/CFT Act: <http://bit.ly/2gWmRLD>
100. Section 22(5), AML/CFT Act: <http://bit.ly/2zYaTbY>
101. *Amended Identity Verification Code of Practice 2013*: <http://bit.ly/2k13AxJ>
102. *Identity Verification Code of Practice – Explanatory Note*: <http://bit.ly/2k13AxJ>
103. Section 32(1), AML/CFT Act: <http://bit.ly/2hjDuF3>
104. Section 33(1), AML/CFT Act (<http://bit.ly/2nQNm8F>), and see the AML/CFT supervisors’ *Countries Assessment Guideline* (<http://bit.ly/2Fc2upe>) or the Basel Index (<https://index.baselgovernance.org/ranking>), which ranks countries by AML/CFT risk.
105. Section 34, AML/CFT Act: <http://bit.ly/2HDbWTl>
106. Section 16(3), AML/CFT Act: <http://bit.ly/2iTi1Da>
107. *Countries Assessment Guideline*: <http://bit.ly/2Fc2upe>
108. High-risk and other monitored jurisdictions: <http://bit.ly/1TBG24>
109. The Transparency International Corruption Perceptions Index for 2016 is available at: <http://bit.ly/2j3Y63K> The Basel Index, which ranks countries by AML/CFT risk, may also be useful: <http://bit.ly/2djRNDR>
110. The Council of the European Union has developed a list of non-cooperative jurisdictions for tax purposes: <http://bit.ly/2Flrv4A>
111. Section 58, AML/CFT Act: <http://bit.ly/2ly11Dz>
112. Overseas Investment, Land Information New Zealand: <https://bit.ly/2J0LhRe>
113. Section 37, AML/CFT Act: <http://bit.ly/2hydAdM>
114. Money Laundering and Terrorist Financing through the Real Estate Sector: <https://bit.ly/1OpGQZO>
115. Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorism Financing: High Level Principles and Procedures for Real Estate Agents: <https://bit.ly/2uh4QRI>
116. FIU reports: <https://bit.ly/2rRsvUr>
117. AML/CFT news: <http://bit.ly/2z7lAd4>
118. *Phase 2 AML/CFT Sector Risk Assessment*: <https://bit.ly/2o155u8>
119. *Risk Assessment Guideline*: <https://bit.ly/2iL7Spp>
120. *AML/CFT Programme Guideline*: <https://bit.ly/2poP4i2>
121. *AML/CFT Risk Assessment and Programme: Prompts and Notes for DIA Reporting Entities*: <http://bit.ly/2EBUMXy>
122. *Suspicious Activity Reporting Guideline 2018*: <https://bit.ly/2HIC120>
123. Anti-money laundering and countering financing of terrorism: <http://bit.ly/2zbaCoS>
124. *Amended Identity Verification Code of Practice 2013*: <http://bit.ly/2k13AxJ>
125. *Identity Verification Code of Practice – Explanatory Note*: <http://bit.ly/2k13AxJ>
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127. REINZ: [www.reinz.co.nz](http://www.reinz.co.nz)
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