# Compliance Programme

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

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

1. Preliminary
   1. Definitions:
      1. ‘**Act**’ means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
      2. ‘**AML**’ means anti-money laundering.
      3. ‘**CDD**’ means customer due diligence.
      4. ‘**CFT**’ means countering financing of terrorism.
      5. ‘**DIA**’ means Department of Internal Affairs.
      6. ‘**Firm**’ means [•].
      7. ‘**FATF**’ means Financial Action Task Force.
      8. ‘**FIU**’ means New Zealand Police Financial Intelligence Agency.
      9. ‘**ML**’ means money laundering.
      10. ‘**MLCO**’ means Money Laundering Compliance Officer.
      11. ‘**MLRO**’ means Money Laundering Reporting Officer.
      12. ‘**PEP**’ means politically exposed person.
      13. ‘**PTR**’ means prescribed transaction report.
      14. ‘**SAR**’ means suspicious activity report.
      15. ‘**SPR**’ means suspicious property report.
      16. ‘**TF**’ means terrorism financing.
   2. Interpretation:
      1. ‘**client**’ has the same meaning as ‘customer’ under the Act.
      2. words importing the singular shall include the plural and vice versa.
   3. At the date of this document[[1]](#footnote-1):
      1. The MLCO of the Firm is [●].
      2. The MLRO of the Firm is [●].
2. Scope of the Act
   1. The Act applies only to lawyers undertaking certain types of work such that they fall into the definition of ‘designated non-financial business or profession’ in the Act. In this document such types of work are referred to as ‘**Captured Activities**’.
   2. Refer to [section 2](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Long-Diagram-4) of the Lawyers and Conveyancers Guideline (‘**LCG**’) [[2]](#footnote-2): Know if the AML/CFT Act applies to your business which provides:
      1. a flow chart to determine what legal services will be Captured Activities; and
      2. examples of legal services which will be Captured Activities in practice.
   3. Additionally, Captured Activities must be done in the **ordinary course of business** to be within the scope of the Act. Refer to:
      1. [section 2](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[3]](#footnote-3): Interpreting ‘ordinary course of business’ for a list of relevant factor to take into consideration when determining whether the legal services are being provided in the ordinary course of business; and
      2. the 'ordinary course of business' [guideline](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) published by the DIA.
   4. It follows that providing legal advice will not always be a Captured Activity. However, in general, the Firm proposes to take a cautious view when considering whether a particular matter falls within the definition of Captured Activities.
   5. If any particular matter is not a Captured Activity, the Firm’s **Exemption Form** should be completed before work commences. [**Drafting note: the use of an Exemption Form is not necessary under the Act. However, it may be useful for audit purposes to show that the Firm has procedures in place for determining whether or not a certain matter will be a Captured Activity**]. Where a matter or business relationship has been classified as exempt, care should be taken to identify as early as possible any change that as a result, will require CDD to be subsequently conducted in relation to the matter or relationship.

## When to apply CDD measures

* 1. The Firm must always apply CDD measures to a client whenever it:
     1. Establishes a **business relationship** with the client;
     2. Carries out an **occasional transaction** for the client; or
     3. Carries out an **occasional activity** for the client.
  2. There are also further instances where the Firm must apply CDD measures. See [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[4]](#footnote-4): standard CDD, simplified CDD and enhanced CDD for further details about when the Firm must conduct a specified level of CDD (for example, the Act provides that enhanced CDD must be conducted where the Firm determines that a client is a PEP).
  3. A **business relationship** in the case of the Firm means a business, professional, or commercial relationship with a client that has an element of duration or which is expected by the Firm, at the time when contact is established, to have an element of duration. See [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[5]](#footnote-5): when a business relationship starts for further information. Such a relationship is to be contrasted with an **occasional transaction** which means a cash transaction that occurs outside of a business relationship and is equal to, or above, NZD 10,000. An **occasional activity** is a Captured Activity which does not involve a business relationship between the Firm and the client.
  4. It follows that **business relationships**, **occasional activities** and **occasional transactions** are mutually exclusive. Since a **business relationship** only requires an ‘element of duration’ the Firm is, in practice, unlikely to be involved on a regular basis in **occasional activities** or **occasional transactions**.
  5. It is important to note that the Act requires both identification and verification procedures to be applied ***before*** the establishment of a business relationship or ***before*** carrying out an occasional activity or occasional transaction.
  6. There is an exception to this requirement. The exception only applies where there is a business relationship (and not where there is an occasional activity or transaction) and it permits the Firm to complete the identification **verification** process **as soon as reasonably practicable after** the establishment of a business relationship if two conditions are satisfied:
     1. It is essential not to interrupt the normal business practice; and
     2. ML and TF risks are effectively managed through procedures of transaction limitations and account monitoring.

Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[6]](#footnote-6): when to conduct CDD for more information about this exception.

* 1. **[Drafting note: the use of a Delayed CDD Form is not necessary under the Act. However, it may be useful for audit purposes]** Where the partner responsible for a matter wishes to rely on the exception in paragraph 2.11, the **Delayed CDD Form** must be completed. Advice should not be given before the Firm’s CDD verification processes have been completed unless the Delayed CDD Form has been completed, signed by the responsible partner and countersigned by the MLCO. Advising the client, including providing draft documents or draft advice, before the Firm’s CDD verification processes have been completed or before the Delayed CDD Form has been signed by the MLCO puts the partner or employee advising the client, and the Firm, at risk of sanction by the DIA.
  2. Where paragraph 2.11 is relied upon, the Act requires policies and procedures to be in place to assess the risk of ML or TF and ensure that there is periodic reporting to senior management (to allow management to assess that appropriate arrangements are in place to address risk and to ensure that identification measures are completed as soon as reasonably practicable). The MLCO will keep a record of all matters where the Delayed CDD Form was used and will provide senior management with information on a twice yearly basis to enable senior management to make these assessments.
  3. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[7]](#footnote-7): what to do if you cannot complete CDD for more information about what the Firm should do in instances it is unable to complete CDD for a client.

1. Different levels of CDD
   1. The Act imposes three levels of due diligence obligations depending, in general, on the nature of the client and the proposed professional relationship:
      1. Simplified CDD;
      2. Standard (or normal) CDD; and
      3. Enhanced (or high) CDD.
   2. In the majority of cases standard CDD will be appropriate. However, you should always check whether enhanced CDD is required.
2. Stage 1: Collecting relevant CDD information
   1. The Firm applies a risk based approach to determine the extent and nature of the measures to be taken during Stage 1. This means that on the Firm must assess the risk from ML and TF and then apply suitable procedures, policies and controls to effectively manage the risks identified. Compliance resources should be targeted primarily at high-risk areas, which should reduce the overall compliance burden for the Firm. Refer to [section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[8]](#footnote-8): risk-based compliance for further information about the risk-based approach. The risk based approach is fundamental to the application of the Act to the Firm and it is essential that the concepts are well understood.
   2. The Firm must conduct CDD on:
      1. Clients;
      2. Any beneficial owner or controller of the client; and
      3. Any third party who is acting on behalf of the client.
   3. See [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[9]](#footnote-9): who to conduct customer due diligence on, for details about:
      1. Who is the client;
      2. Who are beneficial owners or controllers of the client; and
      3. Who are persons acting on behalf of the client.
   4. The Firm must also collect information on the nature and purpose of the proposed business relationship between the client and the Firm.
   5. The extent of the CDD information procured must be tailored to the particular client and circumstances. The Firm requires standard information from all clients and additional information depending on whether the client is an individual, a trust or a company. The [DIA website](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) provides a range of guidelines which aid in determining the appropriate level of CDD on different kinds of clients, including:
      1. Clubs and societies;
      2. Companies;
      3. Co-operatives;
      4. Sole traders and partnerships; and
      5. Trusts.
   6. The [DIA website](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) has also provided specific a specific guidelines on:
      1. Acting on behalf of others; and
      2. Beneficial ownership.
   7. If you are uncertain how to classify a prospective client please consult the MLCO. Also consult the MLCO if a client or a third party is a legal entity not expressly covered in this programme (for example, a unit trust or a foundation).

## Simplified CDD

* 1. There are certain situations where the full CDD process (i.e. standard CDD or enhanced CDD) is not required. [Section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[10]](#footnote-10) details:
     1. When the Firm can conduct simplified CDD; and
     2. Identity requirements of simplified CDD.

## Standard CDD

* 1. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[11]](#footnote-11) which details:
     1. When the Firm must conduct standard CDD; and
     2. Identity requirements of standard CDD.

## Enhanced CDD

* 1. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[12]](#footnote-12) which details:
     1. When the Firm must conduct enhanced CDD;
     2. The steps to take to complete enhanced CDD; and
     3. Examples in practice of where enhanced CDD applies.

## PEPs

* 1. The Act requires the Firm to carry out enhanced CDD where the Firm determines that its client is a PEP. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[13]](#footnote-13): identifying if a customer is a politically exposed person.
  2. PEPs are persons who hold, or have held, positions of public power at all levels.
  3. Corruption by PEPs may involve serous crime, such as theft or fraud, and is of global concern. The proceeds of such corruption are often transferred to other jurisdictions and concealed through private companies, trusts or foundations, frequently under the names of relatives or close associates.
  4. Indications that an applicant or client may be connected with corruption include excessive revenue from ‘commissions’ or ‘consultancy fees’ or involvement in contracts at inflated prices where unexplained ‘commissions’ or other charges are paid to third parties.
  5. There is no ‘one-size fits all’ approach to applying enhanced CDD measures for PEPs. The measures to be applied by the Firm to a PEP who is the Minister of Finance in a country that is prone to corruption may be very different to the measures to be applied to a senior politician with a limited portfolio in a country or territory that is not prone to corruption.
  6. Very careful consideration will be given in each case to the question whether the Firm should act for a PEP. Where the Firm is considering whether or not to have a business relationship or to carry out an occasional activity or transaction with a PEP it is necessary to:
     1. Obtain the approval of the MLCO and a partner (who is not involved in the matter) to the establishment of the business relationship or the occasional activity or transaction. **[Drafting note: the requirement for approval by a partner independent of the matter is more than what is required under the Act. The Act only requires approval from a ‘senior manager’. It is up to each firm to determine whether they require this additional requirement. In practice, imposing such a requirement might be determined by the level of risk involved.]**
     2. Take adequate measures to establish the source of wealth or funds which are involved in the proposed business relationship or one-off transaction.
     3. Obtain and verify such further CDD information as the MLCO considers appropriate in each particular case.
     4. Where a business relationship is entered into, conduct enhanced ongoing monitoring of the relationship (see paragraph 4.10 above).

## Wire transfers

* 1. The Act requires the Firm to carry out enhanced CDD where the Firm is an ordering institution, an intermediary institution, or a beneficiary institution in relation to a wire transfer. For further information, refer to:
     1. [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[14]](#footnote-14): wire transfers ; and
     2. the [DIA guideline](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) on wire transfers.

## New and developing technologies that may favour anonymity

* 1. The Act requires the Firm to carry out enhanced CDD where the Firm is undertaking an activity that involves the use of new and developing technologies that may favour anonymity. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[15]](#footnote-15): new or developing technologies, or products that might favour anonymity for further information.

## Other high risk situations

* 1. Enhanced CDD will also be required where the Firm is asked to act in a matter which by its nature can present a higher risk of ML or TF. Examples of such situations are where:
     1. An introducer or intermediary practises in a location with high levels of acquisitive crime or for clients who do not have established businesses or clearly identifiable and established sources of wealth.
     2. The Firm is asked to act for clients affiliated to countries with high levels of corruption or where organisations which finance terrorism operate.
     3. The Firm is asked to act for legal entities that are asset holding entities or have complex ownership structures.
     4. Where CDD information (Including in relation to those beneficially interested in legal entities) is only provided reluctantly.
  2. The Matter Risk Assessment Form is to be completed by the partner responsible for a new matter and sets out many of the circumstances that should be considered in order to determine the overall risk posed by a particular occasional activity or transaction or business relationship. Where a matter is assessed as being high risk, enhanced CDD measures must be taken that are commensurate to the risk. These might include, for an asset holding entity for example, determining and recording the purpose for using such a vehicle, and being satisfied that the use of such an investment vehicle has a genuine and legitimate purpose.

1. Stage 2: Assessing client risk
   1. Stage 2 involves the Firm assessing the risk that a business relationship or occasional activity or transaction will involve ML or TF. Factors to consider include:
      1. Client risk;
      2. Country risk;
      3. Service risk; and
      4. Delivery risk.
   2. Each of these factors set out separately below. They are also reflected in the Firm’s Matter Risk Assessment Form, which is to be completed by the matter partner as part of the AML process for each new matter.

## Client risk

* 1. Factors of particular importance to the Firm’s assessment of client risk are likely to be:
     1. The type of client (whether an individual, company, trust, etc);
     2. Nature and scope of the business activities;
     3. Transparency of client;
     4. Length of relationship (whether the client is new to the Firm or an existing client);
     5. Behaviour of the applicant or client (whether destructive or secretive; whether there is a commercial rationale for the services being sought; and whether an ‘audit trail’ may have been deliberately broken or unnecessarily layered);
     6. Type and complexity of relationship (example, unexplained use of corporate structures and nominees);
     7. Transaction level (whether small, medium or large compared with the average for the Firm and for the type of client in questions);
     8. Transaction frequency (whether normal, frequent or infrequent compared with the average for the Firm and for the type of client in question); and
     9. Value and frequency of cash or other ‘bearer’ transactions.
  2. These factors are reflected in the Matter Risk Assessment Form.

## Country risk

* 1. Factors of particular importance to the Firm’s assessment of country risk are likely to be a connection to a country that presents a higher risk of:
     1. ML and TF;
     2. Drug production and transit;
     3. Terrorist activities;
     4. Bribery and corruption;
     5. Instability and lack of rule of law;
     6. Sanctions; and
     7. Lack of transparency.
  2. FATF provides [details](http://www.fatf-gafi.org/countries/#high-risk) of the high risk and non-cooperative jurisdictions. You should refer to this to determine country risk. Also refer to:
     1. [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[16]](#footnote-16): compliance obligations when conducting international transactions; and
     2. the [DIA website](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) which has published the Countries Assessment Guideline.

## Service risk

* 1. Some services and areas of legal practice may provide opportunities to facilitate ML and/or TF. As a general point, it is recommended you ensure that you implement the Firm’s approach to the handling of payments which is set out in its Money Laundering Policies document. The Risk Assessment of the Firm draws attention to the following factors:
     1. Complicated commercial or property transactions.
     2. The establishment of trusts or corporate structures (which could have an ulterior motive such as obscuring the property identity of the owner/beneficiary of property).
     3. Payments that are made to, or received from, third parties who are not obviously connected with any transaction.
     4. Transactions involving cash payments.
     5. Transactions involving wire transfers.
     6. Transactions involving inter-company loans.
     7. Transactions involving the purchase of valuable assets (for example, real estate).
     8. Cross-border transactions (including transactions which require involvement by offshore banks/businesses, including trust company service providers).
     9. Transactions involving the use of shell companies /corporations.
     10. New or developing technologies, or products, that might favour anonymity.
  2. In assessing service risk you should take into account the factors listed in the Matter Risk Assessment Form.

## Delivery Risk

* 1. ‘Delivery risk’ may arise if the Firm does not have a direct relationship with the client. That will be the position if the client uses intermediaries or other third parties. Delivery risk may also arise if the Firm does not meet or deal with the client directly but delivers its services exclusively by email, post, telephone etc.

**Risk identified by FATF**

* 1. You should also consider the FATF report that identifies seven common ML/TF methods that require the assistance of a legal professional, and the red flags to look out for in relation to each method. See [section 6](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[17]](#footnote-17): know the red flags provide further detail about these methods and the associated red flags. See also [appendix B](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[18]](#footnote-18): red flags which identifies 42 red flags concerning:
     1. The client;
     2. The source of funds;
     3. The choice of lawyer; and
     4. The nature of the retainer.

## Matter Risk Assessment Form

* 1. The Firm’s Matter Risk Assessment Form is to be completed by the partner responsible for a new matter and sets out many of the circumstances that may be considered in order to determine the overall risk posed by a particular occasional activity or transaction or business relationship. The Matter Risk Assessment Form takes into account the factors considered in the Firm’s Business Risk Assessment. Where a matter is assessed as being high risk, enhanced CDD measures must be taken that are commensurate to the risk.
  2. Stage 2 will be completed when you have obtained all the CDD information which you consider necessary and completed the Matter Risk Assessment Form. If it has not proved possible to obtain all the CDD information which you consider necessary, you should immediately consult the MLCO. If the MLCO agrees that necessary information has not been obtained the Firm will not establish a business relationship or carry out an occasional activity or transaction for the client and will terminate any existing business relationship. As part of ongoing monitoring, the MLCO will record the fact that the client was not taken on or any business relationship was terminated because of a failure to provide sufficient CDD information.

1. Stage 3: Verification
   1. Stage 3 involves verifying the information and documentation gathered at Stage 1.
   2. The [Amended Identity Verification Code of Practice](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) provides suggested best practice for conducting name and date of birth identity verification on clients (who are natural persons) that have been assessed as low to medium risk. [**Drafting note: the process of identity verification detailed in the Amended Identity Verification Code of Practice is not prescribed by the Act. In the case of a higher risk relationship or transaction, additional identity verification steps may be taken. In the case of a lower risk relationship or transaction, the Firm may determine that the onerous identity verification steps identified in the Amended Identity Verification Code of Practice are not commensurate to the level of risk. The Act requires the Firm to take ‘reasonable steps’ to verify the CDD information that is obtained. What is ‘reasonable’ is likely to correlate with the risk-assessment the Firm has carried out on the particular client and will vary on a case by case basis.**] [**Optional]** The Firm adopts this Code of Practice into its own verification procedures.

# Simplified CDD

* 1. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[19]](#footnote-19): simplified CDD for further information on:
     1. the verification requirements;
     2. steps taken to verify identity; and
     3. an example in practice.

# Standard CDD

* 1. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[20]](#footnote-20): standard CDD for further information on:
     1. the verification requirements;
     2. steps taken to verify identity; and
     3. an example in practice.

# Enhanced CDD

* 1. Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[21]](#footnote-21): enhanced CDD for further information on:
     1. the verification requirements (which, depending on the level of risk involved, may include verifying the source of wealth or source of funds of the client);
     2. steps taken to verify identity; and
     3. examples in practice.

1. Relying on third parties to complete CDD

Refer to [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[22]](#footnote-22): when you can rely on others for CDD for information which provides details as to when the Firm may be able to rely on others to conduct CDD.

1. Ongoing CDD and account monitoring
   1. The Firm monitors its professional relationships on an on-going basis to:
      1. ensure that the transactions being conducted by a client are consistent with the Firm’s knowledge of the client;
      2. reassess risks; and
      3. update the Firm’s CDD information and risk assessment where appropriate.
   2. The Firm recognises that a client may begin with one type of transaction and introduce higher-risk transactions later. A full understanding of the risks presented by a client relationship may only become apparent at a later stage, after the relationship has been established.
   3. See [section 5](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[23]](#footnote-23): ongoing CDD and account monitoring for an overview of this obligation.

## Ongoing monitoring and warning signs

* 1. Those staff members who are responsible for a particular client share responsibility for on-going monitoring of that particular client. This must be carried out as a matter of course during all client relationships. That requires, in particular, scrutinising transactions and the source of funds. You should also consider the FATF report that identifies seven common ML/TF methods that require the assistance of a legal professional, and the red flags to look out for in relation to each method. See [section 6](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[24]](#footnote-24): know the red flags provides further detail about these methods and the associated red flags. See also [appendix B](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[25]](#footnote-25): red flags which identifies 42 red flags concerning:
     1. The client;
     2. The source of funds;
     3. The choice of lawyer; and
     4. The nature of the retainer.
  2. Staff are encouraged to discuss any questions or concerns arising from ongoing monitoring (or any other aspect of the CDD process) at any time with the MLRO.

1. Reporting

## Internal reporting

* 1. Where you have reasonable grounds to suspect that a transaction (or proposed transaction), a service (or proposed service) or inquiry made to the client in relation to a service (or proposed service), is or may be relevant to:
     1. The investigation or prosecution of any person for a money laundering offence; or
     2. The enforcement of the Misuse of Drugs Act 1975; or
     3. The enforcement of the Terrorism Suppression Act 2002; or
     4. The enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or
     5. The investigation or prosecution of an offence (within the meaning of [section 243(1)](http://www.legislation.govt.nz/act/public/1961/0043/125.0/DLM330289.html) of the Crimes Act 1961)

such grounds should be reported to the MLRO by completing and emailing an internal SAR in the Firm’s standard form. If the MLRO is not in the office you should telephone him or her and tell him or her than an internal SAR has been sent by email.

* 1. You must include in the internal SAR as much of the information which gave rise to your knowledge or suspicion of suspicious activity as is possible, and full details of the client. You must also pass the client file to the MLRO.
  2. Where a matter is discussed by the MLRO, after the internal SAR has been sent to the MLRO, you should make an Attendance Note of the discussions and present it to the MLRO within 48 hours for his or her comments. The Attendance Note is to be finalised as soon as possible thereafter and countersigned by you and the MLRO. Any other communication will be in writing.

## External reporting

* 1. Following receipt of the internal SAR, the MLRO will investigate the matter and either decide that no action needs to be taken or report the matter to the FIU. The Firm has 3 working days after forming its suspicion, to report the suspicious activity to the FIU.
  2. Any report to the FIU will be made using an external SAR using the FIU’s online submission service ([goAML](http://www.police.govt.nz/advice/businesses-and-organisations/fiu/goaml)). The MLRO will in any event make a formal response in writing to the individual who made the internal SAR setting out the action taken by him and the reasons for it. Copies of the internal SAR, any external SAR, any Attendance Notes and other written communications will be kept by the MLRO in a confidential file maintained by the MLRO.
  3. In addition to any knowledge or unresolved suspicions of suspicious activity which has come to the attention of the MLRO, the MLRO will consider whether or not it is appropriate to make an external SAR where an applicant or existing client fails to supply adequate CDD information or adequate documentation verifying identity (including the identity of any beneficial owners and controllers).
  4. The MLRO will follow up any SAR with the FIU which is not acknowledged by the FIU within 7 days.

**[Drafting note: this section anticipates that after forming a suspicion, the relevant staff member will prepare an internal SAR which will be sent to the MLRO. The MLRO will then further consider the matter and either decide (1) that no action needs to be taken or (2) that a SAR needs to be submitted to the FIU. The Act does not anticipate the use of an ‘internal SAR’. However, (particularly in a large law firm) it may be beneficial for this added step to exist. This will mean that the MLRO will turn his or her mind to every SAR that is ultimately submitted to the FIU. This will also mean that junior employees (who are often the ones actively working on a matter, and who could form a suspicion), do not have the responsibility of deciding whether a SAR needs to be submitted to the FIU. By filing an internal SAR, all SAR’s which are reported to the FIU are first reviewed by a senior staff member (being the MLRO).**

**Please note that the firm will have 3 working days from the time there are objectively reasonable grounds to suspect suspicious activities.**

**If the firm does not want the added step of filing internal SAR’s, reference to this should be removed from the compliance programme.]**

## Confidentiality and legal professional privilege

* 1. The Act does not require the Firm to disclose any information (which includes by filing a SAR) that it believes on reasonable grounds is a privileged communication. Please refer to [section 3](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[26]](#footnote-26) which provides further information on knowing how legal professional privilege applies.
  2. Once a SAR has been filed with the FIU, the Firm may continue to conduct business with the client. However, the Firm must comply with all relevant provisions of the AML/CFT Act, including the requirement to submit additional SARs where appropriate. [**Drafting note: the following is optional**] The decision to continue to conduct business with the client must be made by the MLRO.

1. Employees

## Vetting

* 1. The Firm will use the following procedures when engaging future employees [**Drafting note: this is not prescribed by the Act and the Firm may alter the below process as necessary**]:
     1. Obtaining and confirming written references;
     2. Obtaining and confirming employment history and qualifications disclosed;
     3. Checking whether or not any regulatory action has been taken against the individual and, if so, obtaining details; and
     4. Checking whether or not the individual has any criminal convictions and, if so, obtaining details (either directly from the individual or through a Ministry of Justice check <https://www.justice.govt.nz/criminal-records/>).

## Awareness raising and training

* 1. The MLCO has developed and discussed with existing staff the Firm’s identification, record keeping and internal reporting procedures and the Firm’s anti-money laundering policies. All staff have access to both hard and electronic copies of the Firm’s AML Compliance Programme and Risk Assessment.
  2. The Firm ensures that staff are aware of their obligations under New Zealand AML/CFT legislation and of the [guidance](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) published by the DIA **[Drafting note: it is not necessary for ‘all staff’ to undertake training and have responsibilities under the AML/CFT Act. All staff need to have a *basic understanding of the AML/CFT Act* but it is not necessary for all staff to be subject to a training programme. Pursuant to the Act, only those staff who are:**
     1. **senior managers;**
     2. **the AML/CFT compliance officer;**
     3. **engaged in AML/CFT related duties**

**must undertake training. However, some firms may decide it is appropriate that all staff members be subjected to a training programme based on the level of AML/CFT risk the firm assesses as being present.]**.

* 1. The Firm recognises that it is under a continuing obligation to assess constructively its business and structure in order to assess risks associated with the business and its client base. To that end the material in the AML/CFT Compliance Programme and Risk Assessment will be maintained and kept under review. There will be annual AML review meetings which will be attended by all members of the Firm’s staff **[Drafting note: see para 11.2. It is not necessary that ‘all staff’ be subject to a training programme and attend annual AML review meetings. Whether this is necessary should be decided against the level of ML/TF risk present in the firm.]**. One of the aims of these meetings is to provide a forum for feedback on the effectiveness of the Firm’s AML policies and procedures and an opportunity for constructive and critical comment – although such comments can be made at any time.

1. Compliance requirements

## Review

* 1. The Firm will regularly review the AML/CFT Compliance Programme and Risk Assessment to:
     1. ensure it remains up-to-date;
     2. identifies any deficiencies in the effectiveness of the AML/CFT Compliance Programme; and
     3. update the AML/CFT Compliance Programme as necessary.
  2. See [section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[27]](#footnote-27): review of your AML/CFT Compliance Programme.

## Annual reporting to DIA

* 1. The Firm is required to submit an annual report to the DIA each year covering the period July to June.
  2. See [section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[28]](#footnote-28): annual reporting to your supervisor for further information.

## Record keeping

* 1. [Section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[29]](#footnote-29): record keeping outlines what records must be kept under the Act.

## Audit

* 1. The Firm will carry out an independent audit of its AML/CFT Compliance Programme and Risk Assessment every two years. [Section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[30]](#footnote-30): independent audit of risk assessment and AML/CFT compliance programme provides information about who may be appointed auditor. Also refer to the [DIA guideline](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines?OpenDocument) for audits of risk assessments and AML/CFT programmes.

## Reporting

* 1. The Firm may be required to submit a SAR, PTR or SPR in certain situations. See [section 4](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers) of the LCG[[31]](#footnote-31): reporting to the FIU for further information on submitting SAR’s, PTR’s and SPR’s to the FIU.

1. Additional support

[Section 8](https://www.dia.govt.nz/AML-CFT-GuidelineLawyers-and-Conveyancers#Different-levels) of the LCG[[32]](#footnote-32): know where to get support outlines where the Firm can access compliance support.

1. The MLCO does not need to be a Partner of the firm (it can be any suitable employee). However, it may be desirable that the MLRO is a Senior Partner (or Senior Lawyer) given the MLRO’s primary role concerns reporting to the FIU. The MLRO will therefore need an in-depth knowledge of AML/CFT, legal professional privilege and related issues. However, in some firms (particularly smaller firms), it may be that the MLCO and MLRO can be the same person. Such person will be responsible for administering and maintaining the AML/CFT compliance programme as well as reporting to the FIU. [↑](#footnote-ref-1)
2. December 2017 version. [↑](#footnote-ref-2)
3. December 2017 version. [↑](#footnote-ref-3)
4. December 2017 version. [↑](#footnote-ref-4)
5. December 2017 version. [↑](#footnote-ref-5)
6. December 2017 version. [↑](#footnote-ref-6)
7. December 2017 version. [↑](#footnote-ref-7)
8. December 2017 version [↑](#footnote-ref-8)
9. December 2017 version. [↑](#footnote-ref-9)
10. December 2017 version. [↑](#footnote-ref-10)
11. December 2017 version. [↑](#footnote-ref-11)
12. December 2017 version. [↑](#footnote-ref-12)
13. December 2017 version. [↑](#footnote-ref-13)
14. December 2017 version. [↑](#footnote-ref-14)
15. December 2017 version. [↑](#footnote-ref-15)
16. December 2017 version. [↑](#footnote-ref-16)
17. December 2017 version. [↑](#footnote-ref-17)
18. December 2017 version. [↑](#footnote-ref-18)
19. December 2017 version. [↑](#footnote-ref-19)
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25. December 2017 version. [↑](#footnote-ref-25)
26. December 2017 version. [↑](#footnote-ref-26)
27. December 2017 version. [↑](#footnote-ref-27)
28. December 2017 version. [↑](#footnote-ref-28)
29. December 2017 version. [↑](#footnote-ref-29)
30. December 2017 version. [↑](#footnote-ref-30)
31. December 2017 version. [↑](#footnote-ref-31)
32. December 2017 version. [↑](#footnote-ref-32)