

FATF



Anti-money laundering and  
counter-terrorist financing  
measures

# New Zealand

Follow-up Report &  
Technical Compliance Re-Rating

May 2022

Follow-up report





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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**The FATF Plenary adopted this report by written process in May 2022.**

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## *New Zealand's 1st Enhanced Follow-up Report*

### 1. Introduction

The FATF Plenary adopted the mutual evaluation report (MER) of New Zealand in February 2021.<sup>1</sup> This FUR analyses New Zealand's progress in addressing the technical compliance deficiencies identified in its MER, relating to Recommendation 25. Re-ratings are given where sufficient progress has been made.

Overall, the expectation is that countries will have addressed most, if not all, technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress New Zealand has made to improve its effectiveness.

### 2. Findings of the MER

The MER rated New Zealand's technical compliance as follows:

**Table 1. Technical compliance ratings, February 2021**

<b>R 1</b>	<b>R 2</b>	<b>R 3</b>	<b>R 4</b>	<b>R 5</b>	<b>R 6</b>	<b>R 7</b>	<b>R 8</b>	<b>R 9</b>	<b>R 10</b>
LC	C	C	C	LC	LC	PC	LC	C	LC
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	<b>R 14</b>	<b>R 15</b>	<b>R 16</b>	<b>R 17</b>	<b>R 18</b>	<b>R 19</b>	<b>R 20</b>
LC	PC	LC	PC	LC	PC	LC	PC	PC	C
<b>R 21</b>	<b>R 22</b>	<b>R 23</b>	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	<b>R 27</b>	<b>R 28</b>	<b>R 29</b>	<b>R 30</b>
C	PC	PC	PC	PC	PC	LC	PC	C	C
<b>R 31</b>	<b>R 32</b>	<b>R 33</b>	<b>R 34</b>	<b>R 35</b>	<b>R 36</b>	<b>R 37</b>	<b>R 38</b>	<b>R 39</b>	<b>R 40</b>
LC	LC	LC	LC	LC	LC	LC	LC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: New Zealand Mutual Evaluation Report, February 2021 [www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html)

Mrs. Maryam Salman, AML/CFT Expert, Ministry of Finance, Central Bank of Bahrain conducted the analysis of the re-rating.

Section 3 of this report summarises New Zealand progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

<sup>1</sup> . [www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html)

### 3. Overview of progress to improve technical compliance

This section summarises New Zealand's progress to improve its technical compliance by addressing some of the technical compliance deficiencies identified in the MER.

#### Progress to address technical compliance deficiencies identified in the MER

New Zealand has made progress to address the technical compliance deficiencies identified in the MER in relation to R.25. Because of this progress, New Zealand has been re-rated on this Recommendation.

#### ***Recommendation 25 (originally rated PC)***

In its 4<sup>th</sup> round MER, New Zealand was rated PC with R.25, due to the absence of sufficient requirements for all trustees to obtain and hold adequate, accurate and current information on the identity of the settlor, the trustees, the protector and the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control, and to keep this information up-to-date. In addition, there were no specific provisions for trustees to hold basic information on other regulated agents and service providers including investment advisors, accountants and tax advisors. Besides there were no explicit requirements for trustees to disclose their status to reporting entities when forming a business relationship or carrying out an occasional transaction. Sanctions and liability on trustees were found to be insufficient.

In the aftermath of the on-site visit, the Trust Act 2019, which places extensive requirements on trustees to hold documents and maintain information on trusts, came into force (January 2021). In addition, certain provisions of the Tax Administration Act 1994 placing requirements on trusts which generate an income were introduced and came into effect in March 2021.

The Trust Act 2019 sets requirements for trustees to know the terms of the trust (section 23), to act for the benefit of beneficiaries in accordance with terms of the trust (section 26), and to keep, so far as is reasonable, certain trust information such as the trust deed document, any variations to it or to the trust documents of appointment, removal, and discharge of trustees, memorandum of wishes from the settlor, financial statements etc. (section 45), and to notify basic information to the beneficiaries (section 51).

Despite the absence of explicit requirements to keep adequate, accurate and current information on the identities of the parties to a trust, the above mentioned provisions of the Act imply that the trustee will be keeping information on the parties to a trust i.e. settlor, trustees, beneficiaries (or classes of beneficiaries), and such information will be accurate and current to reflect any changes to the trust.

Regarding the protector of a trust, the ability for a party to appoint or remove trustees must be provided for in the terms of the trust, with which trustees must acquaint themselves (section 92).

In addition, the leading UK case of *Armitage v Nurse* [1997] EWCA Civ 1279 was applied by the New Zealand Supreme Court in the context of the case *Clayton v Clayton* [2016] NZSC 29. *Armitage* identified an "irreducible core of obligations" imposed on trustees that cannot be overridden by trust deeds or other directions given to trustees, and the same applies in New Zealand.

As acknowledged in the 2020 MER, professional trustees, which are DNFBPs, have obligations under the AML/CFT Act to conduct CDD and maintain records for five years after the end of the relationship. Trusts are subject to EDD (AML/CFT Act sections 23 and 24) which require identification of beneficiaries and source of funds. In addition, professional trustees should ensure that the business relationship and the transactions are consistent with their knowledge about the customer and the customer's business and risk profile (AML/CFT Act section 31).

The AML/CFT Act requirements noted above ensure that professional trustees obtain and hold accurate beneficial ownership information on trusts. As indicated in the 2021 MER, the AML/CFT supervisors have issued Guidelines on CDD for trusts, which state that the beneficial owners for a trust include the trustee and any other individual who has effective control over the trust, specific trust property, or with the power to amend the trust's deeds, or remove or appoint trustees. However, for trustees that are not reporting entities, there are no equivalent requirements to obtain information on ultimate beneficial ownership and control of a trust other than those named in the trust deed i.e. where a party to the trust is a legal person. In turn, this gap, also affects: (a) trustees' legal liability for failure to perform the duties relevant to meeting their obligations; (b) powers of competent authorities to obtain timely access to information held by trustees and other parties; and (c) sanctions against persons failing to grant the competent authorities timely access to trust related information, provided that this information is available in the first place.

For trusts that derive taxable income or make taxable distributions, there are provisions in the Tax administration Act 1994 that require the trustee to file an annual tax return and provide certain information regarding the settlor, beneficiaries, and any person who has the power to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed. The information required is the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number (Tax Administration Act 1994 sections 59BA 2 (c) (d) (e)).

Deficiencies identified in the MER pertaining to the absence of: (a) explicit requirements for trustees to disclose their status to reporting entities when forming a business relationship, or carrying out an occasional transaction above the threshold; and (b) information-sharing agreement between IR and the other supervisors (RBNZ and FMA), remain unaddressed.

New Zealand, has largely addressed most of the deficiencies identified in its MER, and minor deficiencies remain. **On this basis, R.25 is re-rated largely compliant.**

## Conclusion

Overall, New Zealand has made progress in addressing most of the technical compliance deficiencies identified in its MER and has been upgraded on R.25.

Considering progress made by New Zealand since the adoption of its MER, its technical compliance with the FATF Recommendations has been re-evaluated in the following manner:

**Table 2. Technical compliance ratings**

<b>R 1</b>	<b>R 2</b>	<b>R 3</b>	<b>R 4</b>	<b>R 5</b>	<b>R 6</b>	<b>R 7</b>	<b>R 8</b>	<b>R 9</b>	<b>R 10</b>
LC	C	C	C	LC	LC	PC	LC	C	LC
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	<b>R 14</b>	<b>R 15</b>	<b>R 16</b>	<b>R 17</b>	<b>R 18</b>	<b>R 19</b>	<b>R 20</b>
LC	PC	LC	PC	LC	PC	LC	PC	PC	C
<b>R 21</b>	<b>R 22</b>	<b>R 23</b>	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	<b>R 27</b>	<b>R 28</b>	<b>R 29</b>	<b>R 30</b>
C	PC	PC	PC	<b>LC</b>	PC	LC	PC	C	C
<b>R 31</b>	<b>R 32</b>	<b>R 33</b>	<b>R 34</b>	<b>R 35</b>	<b>R 36</b>	<b>R 37</b>	<b>R 38</b>	<b>R 39</b>	<b>R 40</b>
LC	LC	LC	LC	LC	LC	LC	LC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

New Zealand will remain in enhanced follow up and will continue to inform the FATF of progress achieved on improving the implementation of its AML/CFT measures.



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## Anti-money laundering and counter-terrorist financing measures in New Zealand

### Follow-up Report & Technical Compliance Re-Rating

As a result of New Zealand's progress in strengthening its measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on Recommendation 25.

Follow-up report