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TRUE TO ITS NAME NOT PURPOSE: NEW ZEALAND'S *ANTI* MONEY LAUNDERING REGIME

LLB(Hons) Research Paper

LAWS521 Organisational Law: Corporations, Trusts and Fiduciary Relationships

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Abstract

Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) laws add many requirements for a range of professions and businesses which change how they conduct day-to-day transactions. The ubiquity of these regimes appears to have created a presumption AML/CFT laws are effective at detecting and deterring money laundering. There is however a lack of evidence explaining why or how these regimes are effective in achieving their purpose. This paper aims to add to the literature suggesting there are no adequate measures to assess, understand and rank how effective a country's AML/CFT regime is. New Zealand's AML/CFT laws are the focus of this paper. The loopholes, enforcement techniques and informally weighted practical factors are considered in looking at the legitimacy and effectiveness of the regime. This paper concludes there is a need for an overhaul of AML/CFT laws in a manner that allows for results to be understood and assessed. Any new additions to AML/CFT law will be a stab in the dark as to the impact they will have in deterring or preventing money laundering until current effectiveness can be comprehended.

Key Words: "anti-money laundering" "misuse of corporate vehicles" "effective AML/CFT"

I. Introduction

Money Laundering (ML) is a global problem deficient of an adequately evidenced and measured prevention system. Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regimes are ubiquitous yet there is a lack of literature providing evidence as to *why* the regimes are effective in achieving their purposes. A regime is *effective* when it is "producing a decided, decisive, or desired effect".[1] The Financial Action Task Force (FATF), international AML/CFT watchdog, similarly regards an effective regime as one which meets its prescribed outcomes.[2] Costs and burdens imposed by the regime are not weighed in these definitions, however given the many costs and burdens imposed by AML/CFT laws on businesses this should be an important consideration. Preventing corporate vehicles from being misused for nefarious activities (like ML) is a global good.[3] Any benefit however is unlikely to be directly received by the organisational structures whom the burdens of the regime predominantly fall. This paper thus argues costs and burdens on businesses must be considered in evaluating the effects of AML/CFT laws if a regime can ever truly be *effective.* Governments are considering additional measures to prevent the misuse of corporate vehicles and ML, like increased transparency. Concurrently however, there are murmurings in the policy community about the lack of outcomes current regimes create.[4] It is important current outcomes are understood so costly yet fruitless changes are not made to AML/CFT regimes in the future. This paper strives to consider a range of legal and practical factors which impact on the legitimacy of New Zealand's AML/CFT legislation and in turn consider how effective the regime is at detecting and deterring ML. If the regime does not *deter* ML, it can only be described as effectively *anti*-ML. It should be noted terrorism financing (TF) considerations are outside the scope of this paper which is limited to ML.

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1 Merriam-Webster Dictionary "effective" (1 October 2021) <www.merriam-webster.com>.

2 Financial Action Task Force *Methodology for assessing technical compliance with the FATF Recommendations and effectiveness of AML/CFT systems* (2013) at [54].

3 Michael Levi, Peter Reuter and Terrence Halliday "Can the AML system be evaluated without better data?" (2017) 69 Crime Law and Social Change 307 at 309.

4 Jon Holland, Rob Moulton and Jonathan Ritson-Candler "HM Treasury Initiates Post-Brexit Review of the UK's AML and CTF Regime" Latham and Watkins (29 July 2021) <www.gobalfinregblog.com>; Deloitte *AML program effectiveness: A new focus on outcomes for law enforcement and national security* (2021) at 1; Ronald Pol "Uncomfortable truths? ML = BS and AML = BS^2" (2018) 25 Journal of Financial Crime 294 at 304.

This paper will use the following structure to answer its question. Part II briefly outlines how organisational structures are misused for nefarious purposes and why this is a problem. Part III explains New Zealand's response to preventing misuse through detailing NZ's AML/CFT regime and its impositions on reporting entities. The regime however is not without its flaws. The implications of legislative gaps and loopholes undermining the regime's legitimacy whilst enforcement against non-compliance attempts to uphold legitimacy is explained in part IV. The validity of the regime begins the story of its effectiveness, but more direct considerations to assess effectiveness are articulated in part V. In understanding the effectiveness the FATF's New Zealand (NZ) Mutual Evaluation Report (MER) is weighed alongside other practical considerations, like statistical outcomes. Part VI provides another perspective of what an effective AML/CFT regime could look like by evaluating a global AML leader, the United Kingdom (UK). The UK has additional beneficial ownership transparency requirements to NZ which provides a point of comparison when considering whether similar add-ons could improve the effectiveness of NZ's AML/CFT regime. Together these parts highlight that the current AML/CFT regime and its goals are not designed in a manner which allows for proper assessment of effectiveness. In missing this assessment, the AML/CFT can only be described as *anti* ML rather than *preventing* and *deterring* ML.

II. Nefarious uses of corporate vehicles

The globalised market economy is sustained by corporate vehicles such as limited liability companies (LLCs), limited partnerships and trusts.[5] These organisational structures, have been fundamental in facilitating business, ideas, and wealth.[6] Yet whilst prosperous these corporate vehicles, predominantly companies,[7] are misused to facilitate illegitimate activities such as money laundering, tax evasion, bribery, and terrorism financing.[8] The ability to conceal beneficial ownership makes these corporate vehicles attractive for pursuing illegitimate

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5 Organisation for Economic Co-operation and Development *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (2001) at 11.

6 At 13.

7 Emile van der Does de Wilebois and others *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (The World Bank, Washington, 2011) at 35.

8 Organisation for Economic Co-operation and Development, above n 5, at 34 – 37.

activities.[9] Corporate structures are rarely used on their own though. Misuse typically occurs in conjunction with techniques such as nominee directors, utilising professional intermediaries and creating complex legal networks. [10] The pervasiveness of these techniques was revealed with the unfolding of events such as the Panama Papers, Paradise Papers, Lux Leaks and Swiss Leaks.

The threat of TF is not as serious for NZ as it is for other jurisdictions.[11] ML poses a higher threat to NZ and is therefore the focus of this paper. ML is a three-stage process: placement, layering and integration.[12] Through these steps illegal profits are taken out of the legal financial system, separated, and distanced from their source, then reintroduced to the economy.[13] Corporate vehicles can assist in all these steps.[14]

As a global threat ML came to a head at the 15th G7 summit.[15] The FATF was established at this summit.[16] The FATF is an inter-governmental body known as the 'watchdog' for international ML/TF.[17] The FATF is the standard-setter for tackling such nefarious activities. Promoting corporate transparency is an element of this. The FATF's 40 Recommendations provide a "comprehensive action plan" to fight ML.[18] The Recommendations demand an international standard for the 200 plus FATF member countries to implement. Following these Recommendations AML, and later CFT, legislation/ regimes became ubiquitous. The FATF continues to update guidelines for these recommendations and encourage members to create an economy protected from ML/TF threats.

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9 Carl Pacini and Nate Wadlinger "How Shell Entities and lack of ownership transparency facilitate tax evasion and modern policy responses to these problems*"* (2018) 102 Marq L Rev 111 at 112.

10 FATF and Egmont Group of Financial Intelligence Units *Concealment of Beneficial Ownership* (2018) at [53].

11 New Zealand Police Financial Intelligence Unit *National Risk Assessment of Money Laundering and Terrorism Financing* (New Zealand Police, 2019) at 6.

12 Organisation for Economic Co-operation and Development*,* above n 5, at 34.

13 At 34.

14 At 34.

15 FATF "What we do" <www.fatf-gafi.org>.

16 FATF, above n 15.

17 FATF "Who we are" (2021) FATF < ww.fatf-gafi.org>.

18 FATF "History of the FATF" <www.fatf-gafi.org>.

A. New Zealand's Climate for Nefarious uses of Corporate Vehicles

New Zealand is not stereotyped as a tax haven like Panama or the Bahamas. In fact, NZ has a positive international reputation for conducting business.[19] New Zealand has low corruption rates and is not a hub for financial crime.[20] Nonetheless, NZ is not immune to ML threats. The globalisation of the economy has allowed jurisdiction shopping and the transferring of money through various corporate vehicles to occur with relative ease and haste.[21] NZ's positive business reputation means doing business through NZ adds an air of legitimacy to transactions,[22] something money launderers strive for. Consequently NZ is vulnerable to such nefarious activity.[23] This was evidenced through the Panama Papers exposing instances of ML and fraud involving NZ corporate vehicles.[24] These events occurred despite legislative efforts to ensure the creation of legitimate companies and transactions, such as the Companies Act 1993 and AML/CFT Act 2009. The Panama Papers unveiled this activity, but that has not removed the appetite for ML, nor its threat, in NZ. Some tightening of the AML/CFT and Companies Acts have occurred in recent years, however the framework still has cracks allowing ML activity to slip through. In 2019 the NZ Financial Intelligence Unit (FIU) identified NZ's AML/CFT systemic vulnerabilities. These are:[25]

- cash transactions;
- large flow of funds;
- reliance on customer due diligence by third party;
- anonymity (of beneficiaries, beneficial owners etc);
- attitude that customer due diligence is complete if customer holds an account;
- dealing with high risk jurisdictions;
- offending (i.e. fraud and corruption) within sector;
- trusts;

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19 The World Bank "Ease of Doing Business rankings" <www.doingbusiness.org>.

20 Ministry of Business, Innovation and Employment *Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships* (June 2018) at [1 – 3].

21 Sungyoung Kang "Rethinking the global anti-money laundering regulations to deter corruption" (2018) 67 International and Comparative Law Quarterly 695 at 698.

22 Ministry of Business, Innovation and Employment, above n 20 at [1 – 3].

23 New Zealand Police Financial Intelligence Unit, above n 11, at 6.

24 Michael Littlewood "Foreign Trusts, the Panama Papers and the Shewan Report" [2017] NZ L Rev 59 at 81 – 83.

25 New Zealand Police Financial Intelligence Unit, above n 11, at 25 – 26.

- lack of price transparency;
- rogue or complicit employees;
- industry's perception as low risk;
- correspondent banking;
- use of intermediaries; and
- easily transferable value.

The above vulnerabilities are only a portion of the risks NZ faces because of its current framework for corporate vehicle creation and transactions. It is estimated approximately $1.35 billion is laundered through NZ businesses yearly, mostly from drugs and fraud.[26] This estimate is purely for domestic ML. Transnational activity would likely significantly increase this number.[27] The NZ FIU predicts the reality of the transactional money laundering value is also "several times the NZD 1.35 billion estimate".[28] This is due to the various steps in the ML process which involve multiple movements of funds.[29] NZ's AML/CFT regime, discussed below, and its expansions over time have worked to mitigate the ML risks possessed by organisational structures.[30] This risk is most prevalent for limited liability and shell companies.[31] The vulnerabilities of these corporate vehicles in relation to NZ's ML response are discussed more in part III.

III. New Zealand's Response to Nefarious Uses of Organisational Structures

NZ's reputation may diminish if it does not make active attempts to combat the global issue of ML/TF. Further, as the above identifies, NZ has its own ML risks to be tackled. Various Acts outside the AML/CFT Act work towards mitigating ML, such as the Criminal Proceeds

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26 Ministry of Justice "Tackling money laundering and terrorist financing" (28 April 2021) <www.justice.govt.nz>; New Zealand Financial Intelligence Unit *The Suspicious Activity Report* (New Zealand Police, June 2021) at 3.

27 New Zealand Police Financial Intelligence Unit, above n 11, at 6.

28 At 6.

29 At 6.

30 At 52.

31 At 52.

(Recovery) Act 2009 and the Companies Act 1993.[32] Additionally many organisations are tasked with detecting and mitigating ML/TF threats including the Police various government ministries.[33]

The main piece of legislation capturing NZ's current efforts to respond to and mitigate ML/TF is the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Prior to this NZ had the Financial Transaction Reports Act 1996. Simon Powers introduced the AML/CFT Bill in 2009 through noting NZ's international obligation to mitigate ML/TF.[34] The remainder of this section will elaborate on how the AML/CFT impacts NZ businesses through different requirements and regulations aimed at detecting and deterring ML. Some reference to the FATF's Recommendations and the FATF's assessment of NZ's AML/CFT regime will be mentioned in brief also.

A. Purpose of AML/CFT

The purpose of the AML/CFT Act 2009 is to:[35]

(a) To detect and deter money laundering and the financing of terrorism; and
(b) To maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force; and
(c) To contribute to public confidence in the financial system.

Broadly, the AML/CFT requires businesses and professions to comply with administrative and due diligence requirements in their day-to-day transactions and dealings. Whilst the Act outlines many offences for non-compliance, where ML is detected the powers to asset seizure come from the Criminal (Proceeds) Recovery Act 2009. The AML/CFT Act and its Regulations are frequently changing. Consequently, the AML/CFT supervisory bodies (Reserve Bank of New Zealand, Department of Internal Affairs and the Financial Markets Authority) play an important role in keeping businesses informed. The consistent updating of

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32 Financial Action Task Force *Anti-money laundering and counter-terrorist financing measures – New Zealand fourth round mutual evaluation report* (2021) at 21.

33 At 21.

34 (30 June 2009) 655 NZPD 4768.

35 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 3(1).

the regime could imply a system effective in reviewing its outcomes and making changes accordingly. However, it could also suggest a poorly designed regime which does not see outcomes achieve its deterring of ML purpose, resulting in constant change.

B. Who Does the Act Affect?

To understand the application of the AML/CFT Act it must be read in conjunction with various regulations.[36] The AML/CFT Act applies to all "reporting entities"[37] as specified in s 5. A reporting entity is a: casino; designated non-financial business or profession; financial institution; high-value dealer; TAB NZ; and any other specified person declared to be a reporting entity through regulations or statue.[38] The term "designated non-financial business or profession" includes: law firms; conveyancing practitioners; real estate agents; accounting practices; and trust and company service providers.[39] The Regulations exempt and include precise situations for different financial advice providers, lawyers, and other professionals.[40] Many of these professions were added in the 2017/18 Act scope widening. Their inclusion is important when considering the misuse of corporate vehicles often occurs with the help of these professions.[41] This two-phased approach allowed time for companies to prepare to comply with AML/CFT requirements and for the impact that would have on their businesses. Some argue this extension was inevitable since it was required for NZ to comply with its international obligations.[42] Professions therefore should have been well prepared. Needing time prepare for and implement AML/CFT requirements hints at what a large task it is. One would thus hope

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36 The Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011; The Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011; The Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011; The Anti-Money Laundering and Countering Financing of Terrorism (Ministerial Exemption Form) Regulations 2011.

37 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 6(1).

38 Section 5(1).

39 Section 5(1).

40 Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011.

41 Carl Pacini and others "An Analysis of Money Laundering, Shell Entities and No Ownership Transparency That Washed off and on Many Shores: A building Tidal Wave of Policy Responses" (2020) 30 Kansas J of L & Public Policy 1 at 30; FATF and Egmont Group of Financial Intelligence, above n 10, at 142.

42 Nicholas Gilmour "The disparities of AML/CFT compliance obligations in NZ" Scoop Business (1 March 2019) <www.scoop.co.nz>.

results of those efforts could be tracked and measured to assess whether the efforts achieve the Act's purpose.

C. Requirements on Reporting Entities

Part 2 of the Act deals with the requirements and compliance reporting entities must conduct. This is broken into 7 subparts: due diligence; reporting suspicious activities; reporting certain transactions; record keeping; reporting entities' internal AML/CFT procedures and risk assessment programmes; preparation, approval, and effect of AML/CFT codes of practice; and reporting certain international cash movements.[43] This paper will briefly deal with these subparts in three sections.

1. Risk assessment and internal procedures

The first task of any reporting entity is to undertake an assessment of the ML/TF risks they may face in the course of their business.[44] This risk assessment must be reviewed and audited to ensure it is up-to-date and effective.[45] Reporting entities must create their own internal procedures, policies, and controls to detect ML/TF, as well as managing and mitigating those risks.[46] Reporting entities must have a 'compliance officer' responsible for the entity's AML/CFT programme.[47] An annual report, provided to AML/CFT supervisors, on the risk assessment and AML/CFT programme must also be conducted by the reporting entity.[48]

These requirements align with the FATF recommendation for countries to identify and understand their ML/TF risks then subsequently apply a risk-based approach to their activities to mitigate the risks.[49] NZ is largely compliant with this recommendation.[50] Sector supervisors

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43 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 4(3).

44 Section 58(1).

45 Section 59.

46 Section 56(1).

47 Sections 56(2) – (4).

48 Section 60.

49 FATF *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (2020) at 10.

50 Financial Action Task Force, above n 32, at 168.

ensure reporting entities implement their risk assessment obligations.[51] However AML/CFT programmes are not checked against a standard. Lack of superior supervision within organisational structures could result in inadequate internal programmes and policies operating until external audits. With audits occurring every 4 years many missed or mismanaged ML/TF risks may result. In fact, it has been argued implementing compliance programs of any kind without validation creates hope for compliance and protection which is unlikely to be fulfilled.[52] This brings into question the effectiveness of the regime. Is it providing a false hope of successful ML/TF deterrence and prevention?

2. Customer due diligence

The customer due diligence (CDD) requirements on reporting entities are relatively cumbersome. These requirements have intensified since NZ's third round MER, in which NZ was rated non-compliant for CDD.[53] The AML/CFT imposes different CDD procedures (standard, simplified, enhanced) depending on the customer and circumstances. In most circumstances CDD must be conducted by reporting entities on:[54]

(a) A customer;
(b) Any beneficial owner of a customer;
(c) Any person acting on behalf of a customer.

Simplified CDD only applies to selected state or regulated bodies.[55] CDD requirements do not stop after onboarding a new customer, they are "ongoing".[56] The reporting entity must keep track of the nature of their transactions with customers and review obtained CDD information.[57] Some sectors however are confused about what this entails. Within the banking sector it is still a question whether legacy customers need ongoing updating and to what

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51 At 168.

52 Brandon Garrett and Gregory Mitchel "Testing Compliance" 83 Law and Contemporary Problems 47 (2020) at 49.

53 Financial Action Task Force, above n 32, at 185.

54 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 11(1).

55 Section 18.

56 Section 31.

57 Section 31.

standard.[58] Seeing sectors as pivotal as the banking sector struggle to understand or implement AML regulations is troubling. Difficulty with compliance by this critical sector could indicate the regime is over-complicated and/or not taken seriously. It is hard to perceive the regime as effective with such occurrences.

Standard CDD for s 11(1) persons requires reporting entities to obtain the customer's full name, date of birth, address/ registered office, company identifier/ registration number, and relation to customer if they are not the customer.[59] Further CDD steps involve identity verification.[60] There is a separate code of practice explaining the best manner to conduct identity verification.[61] Additionally reporting entities need to collect information on the nature of the business relationship/transaction with the reporting entity to the extent where it is possible to identify a need for enhanced CDD or not.[62]

Situations requiring enhanced CDD are those where ML/TF risks are at their highest – where beneficial ownership is most likely to be concealed.[63] Enhanced CDD is consequently more involved. When viewed through the lens of the Act's purpose the additional requirements are understandable. Enhanced CDD is required either where the reporting entity is establishing a business relationship with or is conducting a transaction for a customer who is:[64]

(i) A trust or another vehicle for holding personal assets;
(ii) A non-resident customer from a country that has insufficient anti-money laundering and countering financing of terrorism systems or measures in place;
(iii) A company with nominee shareholders or shares in bearer form.

Enhanced CDD also applies where the customer wants to conduct a complex, large, or unusual transaction with little visible legal or economic purpose.[65] Any other situation a reporting entity

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58 Financial Action Task Force, above n 32, at [354].

59 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 15.

60 Section 16.

61 Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT Explanatory Note: Electronic Identity Verification Guide* (July 2021) at 12.

62 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 7.

63 FATF *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris, October 2020) at 70.

64 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, ss 22(1)(a) and (b).

65 Section 22(1).

considers worthy of enhanced CDD can also engage its application.[66] When conducting enhanced CDD the nature and purpose of the ensuing business relationship needs to be established.[67] Additional identity verification requirements, on top of the standard CDD s 15, are mandated by enhanced CDD. For instance, the reporting entity must gather information on the source of the funds or the customer's wealth.[68] Where the customer is a trust, the name and date of birth of the beneficiary is required too.[69] Alternatively, if the trust is discretionary or charitable then the class of the beneficiaries and object of the trust must be ascertained.[70] Other individualised enhanced CDD requirements exist where the reporting entity is dealing with an ordering, intermediary, or beneficiary institution for a wire transfer.[71] Specific enhanced CDD requirements also apply to customers who are Politically Exposed Persons.[72] Whilst lengthy, NZ's CDD requirements are not explicit enough according to the FATF.[73] Lengthy and onerous yet vague requirements prima facie appear to be an inefficient response to nefarious uses of corporate vehicles/ preventing ML. Part IV addresses this point in relation to vague guidance.

3. Record keeping and reporting

Reporting entities are obliged to keep detailed records of all transactions, communications, and AML/CFT programmes and assessments between the reporting entity and customer.[74] The reporting entity must report any detected suspicious activity with a transaction, service, or customer to the Commissioner.[75] NZ is largely compliant with FATF's record keeping recommendation.[76] Improvements could be made by requiring a 5-year retention period for

66 Section 22(1).

67 Section 25.

68 Section 23(1)(a).

69 Section 23(2)(a).

70 Section 23(2)(b).

71 Section 22(3).

72 Section 22(2).

73 Financial Action Task Force, above n 32, at 186 - 190.

74 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, ss 49 and 51.

75 Section 40.

76 Financial Action Task Force, above n 32, at 191.

each reporting entity to keep records of account files and correspondence, in line with the CDD record keeping.[77]

Reporting entities must conduct Suspicious Activity Reports (SARs) where they have reasonable grounds to suspect a transaction, service, inquiry or request may be related to ML or the enforcement of various offences.[78] This is an objective test.[79] Prescribed Transaction Reports (PTRs) are conducted for international wire transfers and domestic cash transactions which meet specified thresholds.[80] Additionally, cross-border transportations of cash above a certain threshold require reporting to a customs officer and the Commissioner.[81] 24,139 SARs were made between 1 July 2020 and 30 June 2021.[82] This is an increase from the 2019 – 2020 period. [83] Whilst the remittance sector experienced a 165% increase in SARs, the phase II reporting entities and finance companies experienced drops in SARs reporting.[84] There is minimal evidence to suggest SARs prevent ML.[85] The meaning of the changes is SAR reporting levels in relation to the effectiveness of NZ's AML/CFT regimes is thus unclear.

D. Prohibitions in the AML/CFT

The Act prohibits reporting entities from partaking in interactions where ML/TF risks are high and cannot be adequately mitigated. If a reporting entity is unable to conduct CDD in the manner necessitated by the relevant customer then the reporting entity: cannot establish a business relationship; must terminate any existing relationship; cannot carry out further transactions or activities for the customer and; must consider or disclose suspicious activity.[86]

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77 At 190.

78 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 39A.

79 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao* [2017] NZHC 2363 at [64].

80 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 48A.

81 Sections 68 – 71.

82 New Zealand Financial Intelligence Unit, above n 26, at 16.

83 At 6.

84 At 6.

85 Rafael Pontes and others "Anti-money laundering in the United Kingdom: new directions for a more effective regime" (2021) 24 Journal of Money Laundering Control, at 2 – this article version has no page numbers so the PDF number is referred to.

86 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 37.

Reporting entities are prohibited from knowingly or recklessly setting up a facility for a customer using anonymity or a false name without lawful excuse.[87] Establishing or continuing a business relationship with shell banks or financial institutions that have a correspondent banking relationship with a shell bank is also prohibited.[88] These prohibitions strive to operate as a means of deterring ML/TF activities per the Act's purpose. The results of such desired deterrence is discussed in relation to the regime's effectiveness in part V. Ineffective deterrence may suggest the regime operates per its name, rather than purpose, being *anti* ML as opposed to *preventing* and *deterring* ML.

E. AML/CFT Act Summary

Ascertaining information about customers and transactions is designed to deter ML/TF. [89] The Act's purpose is hence embodied by the requirements imposed on reporting entities. Sections which refer to situations that "might favour anonymity", prohibitions on interactions with shell banks, and threshold amounts on international cash movements are all tactics to detect and deter ML. In turn this should protect NZ's economy.[90] Policy theories suggest more requirements equal more compliance.[91] No evidence of such compliance and results however leaves one questioning the rationale behind imposition of such requirements. Perhaps it is just NZ's international reputation benefitting from AML/CFT requirements. A positive international reputation is important. The validity and effectiveness of the regime could however be in doubt without compliance producing results of detecting and deterring ML per the Act's purpose.

IV. Legitimacy of New Zealand's AML/CFT regime

The myriad requirements, outlined in part III, prima facie show NZ to have a thorough AML regime. Gaps and loopholes in the legislation however undermine the validity of the regime as one capable of detecting and deterring ML. These loopholes include trusts, arbitrary thresholds,

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87 Section 38.

88 Section 38.

89 Ministry of Justice, above n 26.

90 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, ss 68 - 70.

91 J C Sharman *The Money Laundry: Regulating Criminal Finance in the Global Economy* (Cornell University Press, New York, 2011) at 44.

nominees, and vague guidance. Notwithstanding these gaps there needs to be adequate enforcement of the regime to signal its legitimacy to the public.

A. Loopholes and Discrepancies

1. Trusts

The separation of legal and beneficial ownership provided by trusts makes them a targeted legal instrument for misuse.[92] The use of domestic trusts in New Zealand is significant (between 300,000 and 500,000)[93] yet measures to identify ML in trusts are lacking.[94] Trusts are not listed reporting entities. Trusts can be captured under the AML regime through enhanced CDD if a reporting entity conducts business or an occasional transaction with a customer that is a trust.[95] Enhanced CDD being required for trusts reflects how trusts are a corporate vehicle ripe for misuse.[96] Despite this risk guidance on what information should be accessed about trusts, by reporting entities, is deficient. There is no clear requirement on reporting entities to identify the trust settlor, trustees, or protectors.[97] Consequently the beneficial owner could easily be hidden even if suspicious activity is identified. There has been a recent trust law reform in NZ which may help improve this deficiency. Previously people could be named beneficiaries without being informed,[98] in conjunction with nominee strategies this could easily be misused by money launderers. The removal of this loophole may provide a small hurdle, however many of the private express trusts in NZ are discretionary trusts.[99] The Act only requires the class of beneficiaries in a discretionary trust to be obtained, not individuals.[100] Subsequently the limited information around trusts for AML/CFT purposes remains, as does the risk of trusts.

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92 Organisation for Economic Co-operation and Development, above n 5, at 25.

93 Ministry of Justice "Trust law reform" (7 December 2020) <www.justice.govt.nz>.

94 Financial Action Task Force, above n 32, at [3].

95 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 22(1).

96 Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT: Customer Due Diligence – Trusts* (July 2019) at 2.

97 Financial Action Task Force, above n 32, at 188.

98 Ministry of Justice, above n 96.

99 Law Commission *Review of the Law of Trusts: Preferred Approach* (NZLC IP31) at [1.30].

100 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 23(2)(b).

NZ introduced a Foreign Trust Register after the Panama Papers sparked the John Shewan inquiry. There is still no register for domestic trusts in NZ though. Authorities have few mechanisms to obtain information on trusts.[101] Improving the ability to access accurate and up-to-date beneficial ownership of domestic trusts in NZ was a priority action in the 2021 MER.[102] In 2018 the Ministry of Business, Innovation and Employment (MBIE) was not prepared to consider a domestic trust register.[103] The limited regulation imposed on trusts given the concealment of beneficial ownership they possess is a discrepancy in NZ's AML regime if it is truly looking to deter ML.

2. Arbitrary thresholds

The AML/CFT has various monetary thresholds necessitating further protocols if a transaction meets or is above that threshold.[104] PTRs are an instance where thresholds apply.[105] If a transaction is a wire transfer the threshold is at $1,000 or above.[106] The threshold for domestic cash transaction is at $10,000 or above.[107] If either of these thresholds are met when a reporting entity conducts business for a customer the transaction must be reported to the Commissioner.[108] The issue with these thresholds is the arbitrary line of $1,000 or $10,000 without buffer room below the threshold. Interestingly, by incorporating the words "at or above" this removed confusion over previous thresholds just reading "above".[109] Whilst this clarification may have resulted in more explicit guidelines it still leaves the open a loophole for those conducting illegitimate activities. This loophole is mere cents below the threshold at

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101 Financial Action Task Force, above n 32, at [3], [33] and [51].

102 At 11.

103 Ministry of Business, Innovation and Employment, above n 20, at [13].

104 Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016.

105 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 48A.

106 Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016, reg 6(a).

107 Regulation 6(b).

108 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, ss 48A(1) and 48B.

109 New Zealand Financial Intelligence Unit *Prescribed Transactions Reporting (PTR): Reporting Obligation Guidance* (New Zealand Police, April 2018) at 7.

$999 for a wire transfer or $9,999 for a domestic cash transaction. Even if a customer partakes in two wire transfers in one day through the reporting which together exceed a threshold, but individually are below it, the reporting entity does not need to conduct a report.[110] This is a blatant gap in legislation, regulations, and guidance. The advised risk-based approach advocated for by the FATF,[111] should not be expected to act as a saving grace in these failures.

The risk-based approach, advised by FATF 2016 guidance, suggests all money or value transfer service transactions should have some form of CDD. [112] If a pattern of suspicious-looking transactions appears despite being below the threshold they should be highlighted.[113] FATF interpretive notes on wire transfers also specify that cross-border wire transfers below any threshold must have the originator and beneficiary names included and their account numbers.[114] Whilst this guidance assists in encouraging reporting entities to pay attention to all transactions and properly record them the instructions are scattered and vague. No guidance below threshold amounts leaves it up to the discretion of the reporting entities. This places a lot of trust in reporting entities to be proficient in detecting ML suspicions and risks. If transactions are suspicious and below the threshold the SARs requirements may kick in anyhow.[115] For PTRs though it appears Parliament, supervisory and enforcement bodies are happy for the thresholds to remain at distinct yet arbitrary numbers. The legitimacy of these thresholds is mitigated if individuals can simply make multiple transactions under the threshold to avoid capture. Although SARs may apply this gap resulting from arbitrary thresholds is hard to reconcile with the Act's purposes.

3. Nominee directors and shareholders

Nominee directors and shareholders are permitted in NZ.[116] This fact seems contrary to AML/CFT purposes. Nominees are essentially another legal mechanism to conceal true

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110 At 8.

111 FATF *Guidance for a Risk-Based Approach for Money or Value Transfer Services* (2016) at [1].

112 At [49 – 50].

113 At [49 – 50].

114 FATF, above n 66, at 72.

115 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, subpart 2.

116 Financial Action Task Force, above n 32, at [462].

beneficial ownership.[117] Nominees hold legal title for another and can legally partake in the activities a director or shareholder are typically responsible for.[118] There are legitimate reasons for appointing a nominee. For example, a shareholder may not be able to attend meetings and want to appoint someone to represent their interests.[119] There are however also many ways nominees assist in illegitimate activity. Examples include setting up a bank account in another country, providing a legitimate look to a company, or hiding identity for problematic real estate purchases or business acquisitions.[120] Nominee arrangements can be used to circumvent legislative requirements aimed at preventing ML, such as resident director requirements.[121] Additionally nominees are typically used in conjunction with shell companies, which are also not illegitimate in themselves but are a prominently used corporate vehicle for nefarious activities.[122] The issue with nominee directors and shareholders is recognised globally and is beginning to see public discussion as an impediment to true prevention of ML.

In its 2021 public consultation to revise recommendation 24 the FATF tabled additional measures to prevent nominees and bearer shares from being used to conceal beneficial ownership.[123] Some jurisdictions, like the UK, have already prohibited the use of nominees and bearer shares.[124] A recent measure in NZ has been to implement CDD requirements for nominee directors and nominee general partners.[125] Companies should now look to implement enhanced CDD where the reporting entity's customer contains nominee directors, nominee shareholders, or nominee general partners.[126] This reflects the level of ML risk possessed by

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117 FATF and Egmont Group of Financial Intelligence Units, above n 10, at [5]; Carl Pacini and Nate Wadlinger, above n 9, at 121.

118 FATF and Egmont Group of Financial Intelligence Units, above n 10, at [84].

119 Sarah Samara Sekouti "A Comprehensive Analysis of the Legal Issues Relating to Nominee Directors" (LLM Thesis, University of Montreal, 2009) at 7.

120 Fabian Maximilian Johannes Teichmann "Twelve methods of money laundering" (2017) 20 Journal of Money Laundering Control 130 at 134 – 135.

121 Financial Action Task Force, above n 32, at [113].

122 Ministry of Business, Innovation & Employment, above n 20, at 14.

123 FATF *Revision of Recommendation 24 – White Paper for Public Consultation* (2021) at 3.

124 Financial Action Task Force, above n 32, at [440].

125 Reserve Bank of New Zealand, Department of Internal Affairs and Financial Markets Authority *New regulation for nominee directors and nominee general partners* (13 July 2021).

126 Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011, reg 12.

nominees. Reasonable steps must be taken to verify the existence and name of these nominees. Outside reasonable steps though, the reporting entity does not need to verify this information through "documents, data, or information issued by a reliable and independent source".[127] Without verification of the information through reliable sources this new measure does little to remove the secrecy nominees create. Whilst it is beneficial for AML/CFT laws to be moving in this enhanced CDD direction, not needing to verify identity detracts from this. Lack of verification increases the potential for inaccurate information to slip through. Legislating this omission puts people on notice of the legal loopholes in the Act's requirements. It is unclear whether regulation 11 was an effort to appease some businesses worried about increasing compliance costs. Regardless, imposing more obligations which only half address the issues does not seem worthwhile. Realistically regulation 11 will make minimal impact on enhancing the validity of the regime.

4. Vague guidance

Section 37 prohibits interactions where the appropriate level of CDD cannot be conducted.[128] Sometimes this CDD can involve identifying beneficial ownership. Section 16(1)(b) requires reporting entity to take reasonable steps to verify the identity of a beneficial owner. "Reasonable steps" however is an undefined term. As acknowledged above money launderers typically use a range of techniques to conceal beneficial ownership (web structures, nominees, shell companies). How far is "reasonable" for a reporting entity to go to work out who a beneficial owner is in these situations is unclear. Where a company's focus is profit (as it largely is) its definition of "reasonable" may be a loose in order to achieve more business. Consequently, this opacity is likely to impact whether the Act makes a material change in the fight against ML. For legislation with many prescriptions the unexplained wording of "reasonable steps" or "any additional measure that may be needed" is troubling; it puts entities in danger of being non-compliant. Some of the Act's uncertainties are clarified by guidelines issued by the supervisory institutes. For example, there is an Identity Verification Code of Practice which provides "suggested best practice", but it is not exhaustive.[129] Supervisory

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127 Regulation 11(2).

128 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 37.

129 Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *Amended Identity Verification Code of Practice 2013: Explanatory Note,* at 2.

bodies also offer updates on the regime's frequently changing rules which reporting entities could otherwise easily miss. Frequent changes to the regime's requirements might tire reporting entities and again cause them to take lenient approaches where guidance is vague.

The AML/CFT's lack of specificity in language was criticised in NZ's 2021 MER.[130] Vague wording without explicit prohibitions can create loopholes undermining the regime. For instance, simplified CDD is allowed for customers specified in s 18(2) because these bodies impose minimal ML/TF risks. However, there is no explicit restriction on performing simplified CDD on these customers even where there is ML/TF suspicion.[131] Additionally, if a transaction outside a business relationship is below a certain threshold there is no explicit requirement to conduct any CDD.[132] Ambiguous instruction is also prevalent in relation to verifying customer information. It is only where there is a "reasonable doubt" of the veracity or adequacy of the information that the information needs to be verified.[133]

Vague guidance alongside loopholes/ gaps, arbitrary thresholds, and exclusions of trusts start to show cracks in the Act undermining its viability. For a regime which has proven burdensome in cost and time for businesses, due to its many requirements, these factors undermine the regime's ability to achieve its purpose. If the Act cannot achieve its purpose of deterring ML one may hesitate in labelling the regime "effective". Effectiveness is discussed further in part V. Below articulates how enforcing the AML/CFT can influence the Act's validity too.

B. Enforcement by Supervisors – Warnings and Fines

Compliance with the AML/CFT is a cost to businesses. It would be naïve to expect businesses to fully comply without incentives. Hence for the Act to hold force there must be sufficient monitoring and enforcement of compliance. Compliance with regulations should assist in detection and deterrence of ML. Encouragement of compliance has been done through warnings and civil or criminal penalties so far. Sufficient enforcement is arguably necessary

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130 Financial Action Task Force, above n 32, at 37, 164, 166 and 186.

131 Financial Action Task Force, above n 32, at 166.

132 At 186.

133 Anti-Money Laundering and Countering Terrorism Financing Act 2009, s11(4); Financial Action Task Force, above n 32, at 186.

for the Act to be influential on business conduct, but it is *compliance* being enforced, not ML deterrence.

The supervisory bodies play a role in investigation and enforcement of AML/CFT matters.[134] Civil liability consequences of non-compliance vary from formal warnings and enforceable undertakings to injunctions and pecuniary penalties. Offences range from recklessly or deliberately failing to report a SAR, to structuring transactions in a manner that avoids AML/CFT requirements. [135] These can attract large financial penalties or prison time.[136] Consistent non-compliance with the regime, such as not partaking in CDD, is also worthy of enforcement. Approximately 10 – 20 formal enforcement actions occur each year.[137] These formal enforcements are predominantly formal warning which entities must remedy.[138] The purpose of the AML/CFT aligns with the imposition of civil liability penalties for serious non-compliance.[139] Pecuniary penalties should denounce the non-compliance,[140] this is reflected by the large penalties stipulated in the Act.[141] Enforcement actions, by each supervisory body, attempting to validate the regime are discussed below.

1. Financial markets authority

Recently the NZ investment platform, Sharesies, was issued a formal warning from AML supervisory body Financial Markets Authority (FMA).[142] The FMA found identity verification for up to 7,815 Sharesies customers was not conducted in accordance with the Code of Practice

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134 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 131.

135 Sections 92 – 112.

136 Sections 92 – 112.

137 Bell Gully *The Big Picture: Anti-Money Laundering – Is regulatory change on the horizon?* (December 2020) at 6.

138 At 6.

139 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao*, above n 82, at [27].

140 At [93].

141 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 90.

142 Letter from James Greig (Director of Supervision Financial Markets Authority) to Sharesies Limited and Sharesies Nominee Liminted regarding Formal warning for purposes of section 80 of Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (13 August 2021).

per s 16 of the Act.[143] Additionally s 17 was not complied with in regard to obtaining enough information to establish the purpose of customers' proposed business and whether customers possibly operating on behalf of trusts needed enhanced CDD.[144] The FMA warned Sharesies in a formal letter of the various actions they must undertake to ensure compliance. A 9-month timeline has been given for Sharesies to get their affairs in order, otherwise they risk significant civil or criminal penalties with the potential of imprisonment.[145] The FMA Director of Supervision noted this non-compliance appears to be "symptomatic of a business that has grown quickly without ensuring fully effective processes and controls were in place for AML and CFT".[146] The warning was hence public to signal the necessity of compliance to other businesses. Whether a warning was sufficient enforcement will be a space to watch.

The result of the FMA's first court action against AML/CFT breaches was just released.[147] CLSA Premium admitted to non-compliance with the Act by failing to conduct CDD, report SARs, keep records, and "terminate existing business relationships when CDD could not be completed".[148] This non-compliance occurred even with CLSA having "an AML/CFT assessment and compliance programme, AML/CFT policies, dedicated compliance officers and staff and a subcommittee overseeing compliance with the Act".[149] The company had received previous warnings for non-compliance.[150] Since then two compliance-officers resigned and a director commented on the need for a "bendier" compliance officer.[151] These events suggest a lack of respect for the regime and culture of non-compliance. The imposition of a $770,000 pecuniary penalty by the High Court[152] strives to drive home the importance of compliance. Edwards J claimed due diligence to be "the cornerstone of the AML/CFT regime", safeguarding NZ's financial reputation.[153] Even if this is the case, incidents such as CLSA and

143 At 1.

144 At 1.

145 At 2.

146 Ireland Hendry-Tennent "Sharesies issued formal warning for breaching Anti-Money Laundering and Countering Financing of Terrorism Act" *Newshub* (online ed, New Zealand, 23 August 2021).

147 *Financial Markets Authority v CLSA New Zealand Premium Limited* [2021] NZHC 2325.

148 At [4].

149 At [47].

150 At [47].

151 At [47].

152 At [92].

153 At [51].

cases discussed below suggest this may not be the view of reporting entities. Enforcement efforts are clearly attempting to validate the regime, but current reporting entity activity seems to suggest it is up to the business community whether the regime falls into disrepute or not.

2. Department of internal affairs

Department of Internal Affairs (DIA) deals with the largest amount of reporting entities. Instances of the DIA conducting more extreme levels of enforcement was seen in *Ping An Finance* and *Jiaxin Finance*.[154] *Ping An Finance* was the first case brought under the AML/CFT Act to reach determination.[155] Ping An Finance was a NZ company involved in money remittance and foreign currency services.[156] The DIA brought charges against Ping An for transactions conducted over the course of a year (2014 – 2015).[157] In a 2017 judgment Toogood J found Ping An to have failed to carry out numerous requirements imposed on them as a reporting entity under the AML/CFT, namely:[158]

> (a) failed to carry out customer identity and verification of identity checks as part of customer due diligence;
>
> (b) failed to adequately monitor accounts and transactions;
>
> (c) entered into or continued business relationships with persons who did not produce or provide satisfactory evidence of their identity;
>
> (d) failed to keep transaction, customer due diligence, and other records; and
>
> (e) failed to report suspicious transactions in breach of relevant AML/CFT requirements in Part 2 of the Act.

Toogood J found these to be "systemic deficiencies in complying with a multiplicity of obligations under the Act", the contraventions were "not isolated or infrequent".[159] The

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154 Bell Gully, above n 140, at 7; *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao*, above n 82; *R v Jiaxin Finance Limited* [2020] NZHC 366, [2020] NZCCLR 18.

155 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao* [2017] NZHC 2363 at [15].

156 At [4].

157 At [11].

158 At [5].

159 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan* Xiao, above n 82, at [6].

occasions in which the above requirements were not complied with ranged from the hundreds to the thousands, suggesting a wilful disregard for AML/CFT requirements.[160] This conduct was at the higher end of non-compliance.[161] It is the kind of conduct which could damage NZ's AML/CFT system integrity.[162] To reflect this the overall penalty for non-compliance totalled $5,290,000.[163] This is the highest penalty given for AML non-compliance to date.[164] Additionally, the High Court granted an injunction restraining Ping An from partaking in financial activities which would deem them a financial institution per s 5 of the Act.[165]

The 2020 High Court decision of *R v Jiaxin Finance Limited* is another instance of AML/CFT enforcement highlighting the importance of compliance.[166] *Jiaxin Finance Limited* was the first criminal punishment under the Act.[167] The sentences were also not given because ML occurred; the sentence was given in respect to non-compliance with one customer.[168] The offences in *Jiaxin Finance Limited* are for deliberate, planned avoidance of the AML/CFT regime not mistakes. The case, as criminal punishment, is to serve as a reminder of the severity of the regime. Justice Walker commented on the importance of robust compliance with the regime given the serious threat of ML to NZ and the difficulty of detecting it.[169] The fines given ranged from $180,000 to $2.55 million. Since these offences occurred in the AML/CFT's infancy (2015/16) commentators predict stricter approaches may be taken in the future.[170] A worry with this case is that it involved transactions which were structured to avoid the thresholds referred to above as lacking guidance. There were "14 separate cash deposits totalling $710,772… over

160 At [6].

161 At [104].

162 At [108].

163 At [127].

164 Bell Gully, above n 140, at 7.

165 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao,* above n 82, at [138].

166 *R v Jiaxin Finance Limited,* above n 157.

167 Fiona Tregonning and Emma Peart "AML Offending Doesn't Pay: First Criminal Sentencing under the AML/CFT Act" MinterEllison (5 March 2020) <www.minterellison.co.nz>.

168 *R v Jiaxin Finance Limited,* above n 171, at [12].

169 At [19].

170 Fiona Tregonning and Emma Peart, above n 170.

a period of four days".[171] Though this suspicious activity was caught and penalised in court, it emphasises that the Act's loopholes are being taken advantage of. Justice Walker's above comment implies compliance detects and deters ML. Whether this statement has evidential basis is discussed further in part V.

3. Reserve bank

The Reserve Bank of New Zealand, the third supervisory body, has also recently been involved in AML/CFT enforcement. Westpac reported to the Reserve Bank its own contraventions of not having a system which detected and consequently reported all wire transactions over the requisite threshold. This resulted in Westpac not submitting PTRs for almost 8,000 relevant wire transfers.[172] The Reserve Bank thus issued Westpac with a warning obliging them to remedy this non-compliance or risk civil or criminal penalties.[173]

TSB Bank was the subject of the Reserve Bank's first High Court case for AML/CFT breaches.[174] TSB's admitted breaches included: not having adequate and effective AML/CFT policies and controls; failing to "review and maintain its AML/CFT programme"; failing to "conduct an adequate risk assessment in respect of its realty operations"; and failing to "have regard to certain countries it deals with in conducting its risk assessment".[175] TSB has been a reporting entity since the Act came into effect.[176] Some of its breaches have thus been occurring since the imposition of the Act with inadequate and misunderstood remedying after audits.[177] TSB received a pecuniary penalty of $3,625,000 for all four of its breaches.[178] Aggravating factors discussed in relation to reaching this amount included there being knowledge amongst

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171 New Zealand Law Society "NZ money remitter convicted of AML/CFT offences" (4 March 2020) <www.lawsociety.org.nz>.

172 New Zealand Law Society, above n 174.

173 Reserve Bank of New Zealand "Enforcement action under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Westpac Banking Corporation" (warning, 11 August 2021).

174 Reserve Bank of New Zealand "Reserve Bank welcomes High Court decision penalising TSB Bank for AML/CFT Act breaches" (press release, 31 August 2021).

175 *Reserve Bank of New Zealand v TSB Bank Limited* [2021] NZHC 2241, at [14].

176 At [13].

177 At [22 – 37].

178 At [109].

TSB workers of non-compliance.[179] Continued non-compliance from a bank puts NZ's economy at risk[180] and ultimately raises concern about the attitude towards compliance with the regime across all organisations.

4. Sanction use and legitimacy

606 remedial actions and sanctions were imposed by all AML/CFT supervisors between July 2015 to December 2019.[181] Majority of these were remedial actions. 43 private warnings were issued and 15 formal public warnings.[182] Until recently[183] the DIA was the only supervisory body to issue injunctions and pecuniary penalties.[184] In order to impose pecuniary penalties a resource-intensive court process is required.[185] Accordingly if supervisors are over-stretched they may not pursue court action, albeit pecuniary penalties are more likely uphold the Act's purpose. Penalties send a strong signal to other entities of the Act's validity and hence the unacceptability of non-compliance. Warnings may dampen an entity's reputation but are not as threatening nor deterring as a pecuniary penalty. If supervisory bodies are known for only imposing warning it is unlikely reporting entities will be particularly fearful on non-compliance, thus causing the seriousness of the Act to be lost. After *R v Jiaxin Finance Limited* commentators predicted stricter enforcement approaches may be taken in the future.[186] Both the FMA and Reserve Bank issuing their first pecuniary penalty orders this year may evidence this.

Enforcement by supervisors is related to the FATF's immediate outcome 3: "supervisors appropriately supervise, monitor and regulate institutions, DNFBPs and VASPs for compliance with AML/CFT requirements commensurate with their risks".[187] The three supervisors have a

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179 At [76].

180 At [94].

181 Financial Action Task Force, above n 32, at 129 (table 6.17).

182 At 129 (table 6.17).

183 *Reserve Bank of New Zealand v TSB Bank Limited*, above n 179; *Financial Markets Authority v CLSA New Zealand Premium Limited,* above n 150.

184 Financial Action Task Force, above n 32, at 129 (table 6.17).

185 At [432].

186 Fiona Tregonning and Emma Peart, above n 170.

187 Financial Action Task Force, above n 2, at [44]; Financial Action Task Force, above n 32, at [397].

good understanding of the ML/TF risks for their respective areas.[188] Supervisors conduct on-site audits and other supervision tasks for their reporting entities. Where non-compliance matters are found the supervisory bodies are authorised to impose various civil, or in serious circumstances criminal, sanctions.[189] The FATF's 2021 MER found a proportionate number of sanctions being imposed by each supervisor.[190] The MER reported mechanisms of supervisors following up remediation positively impacted the reporting entities subject to sanctions and improved overall compliance.[191] Despite this positive feedback the FATF only rated NZ as moderately effective for immediate outcome 3.[192] This is likely due to the level of sanctions imposed being inadequate as mainly warnings are utilised. The FATF fears there are not enough sanctions available to supervisors to reflect the seriousness of breaches occurring.[193] However, a conservative attitude on behalf of the supervisors could be to blame too. Alternatively, sanctions may not be the compliance incentive they present as.

An AML/CFT model structured with high sanctions to motivate reporting entities to undertake efforts to become compliant with the regime is prima facie logical.[194] Arlen and Kraakman however identified that increased investment in compliance mechanisms, whilst useful to help compliance, will uncover failures.[195] Arlen and Kraakman argue rational companies will not invest in compliance for fear for finding failures and being penalised.[196] A "composite" regime has therefore been suggested.[197] A regime which "clearly rewards compliance and self-reporting with reduced sanctions".[198] Some of the non-compliance incidents, discussed above, were highlighted by the company responsible. This gives merit to the theory of further

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188 Financial Action Task Force, above n 32, at [410].

189 At [431].

190 At [431].

191 At [434].

192 At [442].

193 At [432].

194 Jennifer Arlen and Reiner Kraakman "Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes" (1997) 72 NYU L Rev 687 at 706 – 711, as cited in Brandon Garrett and Gregory Mitchell "Testing Compliance" (2020) 83 Law and Contemporary Problems 47 at 72, n 36, 135 – 136.

195 Jennifer Arlen and Reiner Kraakman, above n 198.

196 Jennifer Arlen and Reiner Kraakman, above n 198.

197 Jennifer Arlen and Reiner Kraakman, above n 198.

198 Brandon Garrett and Gregory Mitchell "Testing Compliance" (2020) 83 Law and Contemporary Problems 47 at 72.

investment into compliance uncovering failures. The self-reporting of these failures had to be done, and perhaps that is why Westpac received a formal warning as opposed to a pecuniary penalty. If NZ is operating under a default "composite" regime like Arlen and Kraakman suggest it could be beneficial for reporting entities to know this as it may influence their actions.

97% of the organisational structures contributing to NZ's economy are small and micro businesses.[199] This is a different economy make-up to many of NZ's international counterparts. Whether imposing increased sanction amounts and options (per FATF's recommendation) is justified in this environment requires consideration and further research beyond the scope of this paper. NZ defines as small business as those with less than 20 employees. [200] Other jurisdictions consider a small business one with less than 50 employees.[201] It is arguable with NZ's unique economy companies here feel compliance costs and burdens to a greater degree than large enterprises forming the economy of AML leaders, like the UK. Businesses such as Sharesies, Westpac, TSB Bank and Regus New Zealand Management Limited[202] receiving formal warnings could evidence the complexity of the regime and difficulty companies are having complying. In 2020 the FMA found numerous firms to still be behind in their 'efforts' to comply with the regime.[203] If the regime is too complex to comply with it cannot be effective in detecting nor deterring ML. Additionally the complexity, costs and burdens of the regime has seen innovative attempts from entities to cut costs whilst avoiding non-compliance. Banks, for example, created 'blanket de-risking policies' where they would not interact with money remitters.[204] This put some money remitters out of business. Despite such outcomes blanket de-risking policies were ruled legal in 2016.[205] However the Reserve Bank has since stated

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199 Ministry of Business, Employment and Innovation "Small Business" (28 September 2020) <www.mbie.govt.nz>.

200 Ministry of Business, Employment and Innovation, above n 203.

201 Ministry of Business, Employment and Innovation, above n 203.

202 Department of Internal Affairs "Leading NZ workplace provider issued with DIA formal warning" (16 July 2019) <www.dia.govt.nz>.

203 "FMA tells finance firms to up their game" *Radio New Zealand* (online ed, New Zealand, 25 September 2020).

204 Riki Fuji-Rajani "Money Remitters Left Out in the Cold: Blanket De-Risking Policies, Counterterrorism and Government Intervention in New Zealand" (2017) 23 Auckland ULR 204 at 205.

205 *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] NZHC 1031, [2016] 3 NZLR 241.

these blanket bans are contrary to the purpose of the AML/CFT.[206] The purpose of the Act is to mitigate risk, not completely avoid risk through delegitimising certain sectors.[207] In fact de-risking policies are likely to drive the transactions of those entity's underground and heighten the risk of ML occurring.[208] There is clearly a balance to strike between preventing ML and allowing the economy to successfully function. The Reserve Bank's comment provides some indication as to where the balance may lie. Whilst deterrence of ML/TF is the Act's goal so is trust in the financial system, which suggests a fully functioning economy.

Implied in having a valid and upheld AML/CFT regime is the business community working to ensure they follow the regime. The above cases denote a concerning landscape of the NZ business community being apathetic to the regime. *Ping An Finance* showcases this potential as non-compliance was described as a "cultural norm".[209] If stronger enforcement methods are utilised this perception could change, but Arlen and Kraakman identified increased sanctions can also be problematic for compliance. Regardless, new court cases suggest NZ may be heading toward this stronger enforcement approach to drive home the seriousness of the regime. This could be helpful for businesses to view the time and money expended on compliance as worthwhile. Whether enforcement of the regime helps secure its legitimacy in the eyes of reporting entities despite all the loopholes and vagueness in the regime is dubious. Something that would help validate and prove legitimacy in the regime is seeing effective outcomes,[210] this is discussed below.

V. Effectiveness of New Zealand's AML/CFT regime

There is minimal consensus among academics and practitioners about whether AML/CFT regimes are producing effective outcomes and additionally what 'effective' means. Much of

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206 Reserve Bank of New Zealand "Managing Not Avoiding Risk – Improving Financial Inclusion" (news release, 15 March 2021).

207 Reserve Bank of New Zealand, above n 210.

208 International Finance Corporation *Anti-Money-Laundering (AML) & Countering Financing of Terrorism (CFT) Risk Management in Emerging Market Banks: Good Practice Note* (2019) at 69.

209 Bell Gully, above n 140, at 7; *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao,* above n 82, at [6].

210 Doron Goldbarsht and Hannah Harris "Transnational regulatory networks: a study in compliance and legitimacy in counter-terrorist financing" (2020) 27 Journal of Financial Crime 855 at 858.

the literature around 'effective' AML/CFT laws discusses what can be done to implement effective procedures in a company or carry out effective supervision. Little research points to effective AML/CFT regimes through their outcomes, other than with estimated amounts. Judicial minds have recently commented on the essentialness of compliance with the regime to protect NZ against ML.[211] Due diligence was labelled the cornerstone of the regime and how NZ will retain a positive international reputation.[212] Such comments suggest a belief in the AML/CFT Act as 'effective'. Enhancing NZ's international reputation by adopting FATF Recommendations[213] is an achieved outcome.[214] There has however been no statistical proof of any drops in the occurrences of ML in NZ. For an Act in which a key purpose is to deter ML, one would presume a reduction in ML is an essential result for calling the Act *effective*. Ronald Pol (an outcomes scientist focused on AML/CFT) suggests the ubiquitous nature of AML laws could explain why there has been little testing of their policy assumptions and outcomes.[215]

Jason Sharman claims there are two models which the policy community equate with an effective regime.[216] The first model is that more regulation reduces crime.[217] Second, the price model suggests increased enforcement will drive up prices, reducing demand and thus crime.[218] Sharman highlights an issue in applying this model to AML/CFT is that the ML market has no price signals.[219] This is due to the wide use of ML. The model can be used for drugs (which can have a price point), but AML/CFT regulations also try to catch professional money launderers with service fees.[220] Sharman's first regulation model is prima facie logical, but as seen through the issues with formal warnings and fines it is not necessarily the reality. There is nothing at present to prove adding regulations to NZ's AML/CFT regime has resulted in

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211 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan* Xiao, above n 82, at [59].

212 *Financial Markets Authority v CLSA New Zealand Premium Limited,* above n 150, at [51].

213 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 3(1)(b).

214 Financial Action Task Force, above n 32, at [3] [47], and [530].

215 Ronald Pol "Anti-money laundering: The world's least effective policy experiment? Together, we can fix it" [2020] Policy Design and Practice 1 at 5.

216 J C Sharman, above n 94, at 44.

217 At 44.

218 At 44.

219 At 44.

220 At 44.

increased compliance thus far. Perhaps the regulation reduces the ML occurrences but it does not guarantee it, especially if companies do not take compliance seriously. This apathy from the business community can be seen in non-compliance becoming a "cultural norm", so is certainly a threat. Even if these models could adequately be applied to ML Sharman claims AML bodies are frankly "uninterested" in understanding whether the regimes achieve their goals.[221] Critiques of the FATF's mechanism for assessing AML regimes follow a similar vein. It is argued there is a lack of credible evidence within the FATF assessments and the mechanism itself is unable to accurately assess any evidence.[222] Minimal evidence of effective or substantive outcomes is central to the critiques of AML/CFT policy, rather than the policies themselves.[223] The author of this paper sees significant merit in these critiques.

The FATF views an effective AML/CFT regime as one which achieves its prescribed hierarchy of outcomes within the country's circumstances.[224] There is no simple statistical assessment to indicate effectiveness. A critical analysis of quantitative and qualitative data which accounts for the country's political and social environment is required.[225] FATF's main method of assessing AML/CFT effectiveness is the MER. On a practical level other considerations outside the MER are necessary to truly understand regime effectiveness. For instance, the MER takes no account of the costs of running the regime incurred by businesses. Evaluating whether implementation and ongoing costs of the regime are outweighed by any outcomes/results should be a factor in assessing effectiveness. The DIA recently lessened the burden of audits on businesses by requiring them every 3 – 4 years rather than biennially.[226] This suggests biennial audits did not create effective enough ML/TF mitigation to outweigh the burdens and costs they imposed. Such a change highlights the necessity of practical considerations when evaluating the regime. In 2003 an American scholar argued those caught by AML policy would be caught through traditional law enforcement anyhow.[227] This raises the question of futility

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221 At 38.

222 Ronald Pol "Response to money laundering scandal: evidence-informed or perception driven?" (2020) 23(1) Journal of Money Laundering Control 103 at 104.

223 J C Sharman, above n 220, at 41.

224 Financial Action Task Force, above n 2, at [54].

225 At [54].

226 Financial Markets Authority "AML/CFT regulations update 2021" (9 July 2021) <www.fma.govt.nz>.

227 J C Sharman, above n 220, at 41.

of AML/CFT law. To assess this the FATF's 2021 MER as well as practical considerations/ statistics are discussed.

A. FATF 2021 Mutual Evaluation Report

MERs are peer reports conducted on FATF members to assess the compliance and effectiveness of AML/CFT regimes.[228] In 2013 the FATF released a new assessment method. The method has two key elements, technical compliance and effectiveness of compliance.[229] These assessments are to be conducted with regard to the ML/TF risks possessed by the relevant country.[230] Together, the two parts of the assessment should give a holistic picture of how well a country's AML/CFT system is operating.

A technical compliance assessment judges the country's legal and institutional AML/CFT regime and powers, against the FATF Recommendations. Each of the Recommendations have requirements which are viewed as criteria for this assessment.[231] The criteria hold different weightings, meaning the assessment is not purely a numbers game. Ratings given for technical compliance are compliant, largely compliant, partially compliant, non-compliant, and not applicable.[232] NZ was not found to be non-compliant with any recommendations in its 2021 MER, an improvement from previous MERs. NZ has areas to improve upon as shown through 10 'partially compliant' ratings. FATF recommendations 24 and 25, relating to beneficial ownership transparency, were two of the partially compliant ratings. Incorporating a beneficial ownership register into NZ law is currently being considered by MBIE. The value in implementing this is articulated in sub-part C below.

The second part of the assessment looks at the *effectiveness* of technical compliance. "Effectiveness" under this methodology means "the extent to which the defined outcomes are achieved".[233] Expected results of the legal and institutional framework are analysed against the

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228 FATF "Mutual Evaluations" <www.fatf-gafi.org>.

229 Financial Action Task Force, above n 2, at [2].

230 At [5 – 6].

231 At [33].

232 At [34].

233 At [39].

outcomes the country produces.[234] This measurement is designed to focus the country on achieving the objectives of FATF standards and fix any identified weaknesses.[235] The FATF has recognised a hierarchy of outcomes which are supposed to eventuate where a country's AML/CFT system is highly effective.[236] The high-level objective, similar to NZ's AML/CFT Act purposes, is:[237]

> "financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security".

The issue with the objective is no clear measure for what that looks like is provided. FATF's three intermediate outcomes are the themes recognised across eleven immediate outcomes (IOs). Outcomes reflect policy and cooperation, prevention, detection and reporting of ML/TF, and the detection and disruption of ML/TF threats.[238] The eleven IOs and the level to which they are achieved or could be improved is the basis of the FATF's effectiveness assessment.[239] Each IO has 'core issues' which assist assessment. The issues hold varying weightings thus are not designed to operate as a criteria checklist.[240] Whilst important to tailor assessments to a county's circumstance this variance in weight highlights the difficulty of determining effectiveness in a measurable and comparable manner. Comparisons of effectiveness between countries therefore may not be as simple as looking at who has more 'highly effective' ratings. In fact highly effective ratings are given to countries where there are numerous ML scandals.[241] What encompasses ML also differs from country to country,[242] further widening the possibility of directly comparable MER results. This causes confusion as to what FATF ratings truly represent and the authority they should be given.

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234 At [2].

235 At [39].

236 At [43].

237 At [43].

238 At [43 - 44].

239 At [48].

240 At [61].

241 Ron Pol "Ron Pol reflects on effectiveness issues revealed by the UK's leaked AML/CFT evaluation & shares new visualisations of the ratings methodology that will be used to assess NZ's regime" (24 October 2018) Interest <www.interest.co.nz>.

242 Michael Levi, Peter Reuter and Terrence Halliday, above n 3, at 313.

Effectiveness ratings can be high, substantial, moderate or low levels of effectiveness. New Zealand's effectiveness ratings were a mix of highly, substantial, and moderate effectiveness levels.[243] NZ is highly effective at immediate outcome two which concerns international cooperation with financial intelligence.[244] NZ is hence maintaining its positive international reputation. NZ is also highly effective at immediate outcome eight: "proceeds and instrumentalities of crime are confiscated".[245] These are positive outcomes for NZ, but whilst they are important elements in detecting ML this paper is more concerned with how effectively ML is prevented. Money retrieved or stopped by Asset Recovery Teams means NZ is stopping some ML funds. Is the regime stopping corporate vehicles from being misused for ML though? Not necessarily. Ronald Pol argues increasing amounts of asset seizures does not equal good policy operation. [246] Technically good AML/CFT law would reduce ML and consequently the available amounts for seizure.[247] If a highly effective rating in seizing crime proceeds does not effectively deter ML that poses a large question mark over AML/CFT law and how it is assessed.

Moderate effectiveness ratings were given for IOs 3, 4, 5, 10 and 11.[248] These are hence priority outcomes to improve upon. IOs 3, 4 and 5 relate to supervisors monitoring and regulating compliance, identification, and mitigation of risks for reporting entities and legal arrangements.[249] These are all aspects identified in part IV as gaps and loopholes in the regime. Consequently the enforcement and loophole issues address in part IV undermine the legitimacy of the regime, and lead to mere 'moderately effective' outcomes per FATF standards.

Changes in FATF Recommendations and Special Recommendations mean the 2004 MERs are not directly comparable to later MERs.[250] This is an issue when trying to understand whether changes made to AML regimes are creating better outcomes or not. The FATF views its two

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243 Financial Action Task Force, above n 32, at 12.

244 Financial Action Task Force, above n 32, at [530]; Financial Action Task Force, above n 2, at [44].

245 Financial Action Task Force, above n 32, at [261]; Financial Action Task Force, above n 2, at [44].

246 Ronald Pol, above n 4, at 298.

247 At 298.

248 Financial Action Task Force, above n 32, at 12 (table 1).

249 Financial Action Task Force, above n 2, at [44].

250 At [38].

methods of assessment as fundamentally different.[251] Technical compliance can be considered a 'tick-box' matter, but effectiveness is more in depth. With this perception the 2013 MER methodology changes would ideally have dispelled earlier criticisms; namely critiques that FATF assessments checked for the existence of processes without evaluating practical outcomes.[252] Amongst those challenging AML regimes, this is still the pervading view. Pol asserts the MER methodology is "inherently unable to assess effectiveness". [253] Others have noted the methodology appears to be an objective data-driven assessment but is actually "fully qualitative and subjective".[254] When the FATF initially created its Recommendations there was no method to work out their effectiveness constructed alongside them.[255] If the idea of fighting against these illegitimate uses of corporate vehicles for ML/TF was enough of a good in itself there appeared to be no need to consider efficiency, effectiveness or the costs accompanying it.[256] Subsequently the expediently created outcomes are constructed in a form which is difficult to assess or measure. For example, how can one measure prevention?[257] This is referred to in IO's 4 and 5, but if we cannot even succeed measuring actual ML how would understanding what is prevented ever be achieved? Outcome scientist Ronald Pol sees a key issue in the FATF's mechanism has been the mislabelling of outcomes and results.[258] A lack of effective metrics[259] for measuring AML/CFT results means assessing the effectiveness of these regimes is near impossible. Given the minimal research explaining why the regime is effective it seems many trust the regime; perhaps due to its ubiquitous nature or the international power of the FATF. These critiques of effectiveness are hence influential without proper evidence, other than the FATF's method, explaining why the regime is effective to suggest otherwise. Practical considerations are discussed below to further attempt to paint a picture of limited effectiveness of NZ's AML/CFT regime.

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251 At [60].

252 J C Sharman, above n 220, at 42 – 43.

253 Ronald Pol, above n 226, at 104.

254 Brigitte Slot and Linette de Swart "Assessing the outcomes of anti-money laundering policies. Ambitions and reality" in Petrus van Duyne and others (eds) *Constructing and organising crime in Europe* (Eleven International Publishing, Ukraine, 2019) 399 at 409.

255 Michael Levi, Peter Reuter and Terrence Halliday, above n 3, at 309; Ronald Pol, above n 219, at 8.

256 Michael Levi, Peter Reuter and Terrence Halliday, above n 3, at 309.

257 Brigitte Slot and Linette de Swart, above n 258, at 411.

258 Ronald Pol, above n 219, at 8.

259 At 8.

B. Practical Considerations of Effectiveness

Administrative burdens or cost of AML/CFT compliance is not a consideration in the FATF's MERs. To properly evaluate the effectiveness of the regime one cannot ignore the practical reality of why certain IOs may not come to fruition. Statistics on costings of compliance, ML occurrence, and perceptions in the community are noted below as factors which should be accounted for in assessing effectiveness.

1. Statistics

Statistics on the seizure or catching of ML could be a tool to assess the effectiveness of AML/CFT regimes. When phase II of the AML/CFT regime was introduced many costings were constructed to establish what the burden on the new reporting entities would be.[260] Across all new sectors (lawyers and conveyancers, accountants, real estate, motor vehicle dealers, jewellery), the establishment cost of AML processes was estimated to be between $71.9 million and $313 million.[261] Ongoing costs were estimated to be between $63.7 million and $223.2 million.[262] These 2016 estimates have been reduced over time. The Ministry of Justice has used a 10-year modelling timeframe to estimate that compliance costs will be $0.8 - $1.1 billion over 10 years.[263] This averages out to approximately $80 - $110 million a year. In weighing these costs against the benefits the regime might bring the Minister claimed the phase II reform would "disrupt about $1.7 billion of illegal drugs and fraud crime over a 10 year period".[264] $1.7 billion in benefits outweighs the costs of compliance for businesses. However, this is the big picture and only looks at phase II costings, not the continued costs for phase I businesses. For small businesses the benefit may not be viewed in the same manner as they may not personally feel any benefits. Balancing costs against benefits is difficult because many benefits

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260 Deloitte *Phase II Anti-money laundering reforms: Business Compliance Impacts* (Ministry of Justice, September 2016); Ministry of Justice "AML/CFT Phase 2 costs and benefits reports" (17 December 2020) <www.justice.govt.nz>.

261 Deloitte, above n 264, at 6.

262 At 6.

263 Ministry of Justice, above n 264.

264 Ministry of Justice, above n 264.

from an effective AML/CFT regime are unquantifiable.[265] These include NZ's international reputation[266] and having a safe economy. Perhaps that is an element of why the FATF MERs omit quantitative weightings in assessment.

Other statistics which could help create a full picture of the AML regime's impacts are statistics on seizures. As at June 2021 NZ's Financial Crime Group achieved its "four-year target of restraining $500 million in cash and assets from organised crimes and gangs".[267] This is from ML and other tax and drug crimes. Between 2019 - 2020 the Police identified $153.23 million of the $230.75 million they restrained as directly from ML crimes.[268] Over that same period 307 ML charges were laid.[269] This was an increase from 2018 - 2019 where 92 ML charges resulted in prosecution.[270] One of the several ML busts in 2020 reported by the Police was of the Canton Business Corporation. The owner of a NZ company, Canton Business Corporation, was overseas and holding funds in this NZ company.[271] The owner had previously been arrested for ML charges overseas and he also used to run a crypto-currency company with no AML controls or policies.[272] The NZ police were able to restrain $140 million sitting in the NZ company.[273] This is just one example of NZ corporate vehicles being misused to facilitate money laundering. The past crypto-currency company also suggests a lack of proper implementation of AML laws could signal situations where ML is occurring. This suggests AML laws are effective in deterring ML, as they are absent in these incidents of ML. Police catching and seizing funds, like Canton Business Corporation, indicates ML is being detected and stopped. However, it is unclear from the Police Report examples that any of the seizures of laundered money were because of AML/CFT measures. There is no clear evidence these results occurred because reporting entities conducted SARs or that CDD information was utilised. This gives some credit to the critique that money captured by AML policy would have

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265 Ministry of Justice *Regulatory Impact Statement: Second phase of reforms to the Anti-Money Laundering and Countering Financing of Terrorism regime* (March 2017) at [9].

266 Ministry of Justice, above n 264.

267 New Zealand Financial Intelligence Unit, above n 26, at 2.

268 New Zealand Police *Annual Report 2019/20* (December 2020) at 44.

269 At 44.

270 At 56.

271 At 54.

272 At 54.

273 At 54.

been captured anyhow.[274] Pol supports this, acknowledging "criminal asset forfeitures often occur independently of anti-money laundering obligations".[275] Additionally, as discussed above, even if the seizures were from AML/CFT measures it is dubious whether high amounts of seizures equate to effective law and policy anyhow.[276]

The overall estimate of yearly ML in NZ is $1.35 billion. This estimate has remained static over many years. Lack of change may initially suggest minimal deterrence and detection of ML has occurred. In reality the number remains static because it is near impossible to obtain more precise numbers on ML due to the swiftness of transactions and secret nature of ML. Subsequently, a statistical comparison to find a reduction in ML over the years is implausible. Only estimates which suggest the scope of ML are achievable.[277] Uncovering ML statistics appears to have been put in the "too hard" basket leaving legislatures worldwide complacent in accepting compliance without quantitative evidence supporting it. This is a limitation in ever truly understanding the financial impact AML/CFT regimes have. If one cannot understand the outputs, how will they know the effects of their inputs? A lack of data is likely influential on the attitudes of reporting entities obliged to comply.

2. Business community buy-in

Without reporting entities putting in the time and effort to comply with the AML/CFT regime it is inevitable little impact will result. Reports of non-compliance as a "cultural norm" indicate the regime is not being taken seriously by some entities.[278] It is difficult for small enterprises to meet their profitability and output targets and then have additional time and money to spend on compliance.[279] Despite the necessity of a compliance culture it appears compliance is taking a back seat over profitability for many.[280] Discussions in part IV about factors undermining the

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274 J C Sharman, above n 220, at 41.

275 Ronald Pol, above n 219, at 16.

276 Ronald Pol, above n 4, at 298.

277 New Zealand Police Financial Intelligence, above n 11, at 10.

278 Bell Gully, above n 140, at 7; *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao,* above n 82, at [6].

279 Christina Wang *Balancing AML Compliance with Business Objective as a SME* (ACAMS, June 2019) at 7.

280 At 9.

validity of the regime may contribute to this perception of compliance being unimportant. Steven Dukenson, a New Zealand lawyer, views the prevalent "confusion or lack of clarity" as unacceptable.[281] Dukenson in fact views some of the Act's obligations as inappropriate.[282] If a regime is perceived as illegitimate then buy-in and consequently outputs will be limited.[283] Nonetheless, AML/CFT regimes do not appear to be going anywhere. A shift in perception towards compliance creating success for a company will consequently be required if meaningful outcomes are ever to result.[284]

This section has shown difficulty in reaching a conclusion about the effectiveness of NZ's AML/CFT regime. NZ's MER ratings put NZ in the top 19 FATF member countries.[285] The various critiques regarding the lack of meaningful measurement in the MERs however makes the validity of the rating uncertain. With statistics also providing little intel and pessimism from businesses about compliance the regime is left looking both inefficient and ineffective. With anonymity being a key factor in corporate vehicle misuse and much ML sliding under the radar, secrecy is a theme. There is discourse that increasing transparency of beneficial owners and corporate vehicles could improve things.[286]

C. Increasing Transparency to Improve Effectiveness?

As addressed organisational structures which allow for anonymity of beneficial ownership are attractive vehicles for nefarious use.[287] The Panama Papers uncovered that many of those utilising corporate vehicles for anonymity were Politically Exposed Persons who conducted business with entities with weak AML controls.[288] Consequently enhanced CDD is now

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281 Steven Dukenson "The AML/CFT regime – some further queries and comments" (21 July 2020) New Zealand Law Society <www.lawsociety.org.nz>.

282 Steven Dukenson, above n 285.

283 Doron Goldbarsht and Hannah Harris, above n 214, at 858.

284 Christina Wang, above n 283, at 19.

285 FATF *Consolidated Table of Assessment Ratings: 4th Round Ratings* (11 August 2021).

286 Lill Marie Martinez Cruz "After the Panama Papers… A More Transparent Corporate Business Model?" (2020) 33(3) Asian Journal of Latin American Studies 135 at 148.

287 Carl Pacini and Nate Wadlinger, above n 9, at 112.

288 Andrew Emerson Clarke "Is there a commendable regime for combatting money laundering in international businesses transactions?" (2021) 24 Journal of Money Laundering Control 163 at 168.

required for Politically Exposed Persons. This suggest minimal AML programmes being a drawcard and attracting ML companies to go to for transactions. This lends credit to AML policies deterring ML. The Panama Papers however proved NZ's 2016 AML/CFT regime as ineffective at preventing ML and nefarious uses of corporate vehicles.[289] Improvements have been made to corporate transparency since. The Foreign Trusts Register and the investigatory powers of the Companies Registrar are some improvements.[290] The current tools to access beneficial ownership information in NZ are: identification of beneficial owners from CDD requirements; the Companies Office and Limited Partnership Registers; the Registrar of Companies' power to require companies or limited partnerships to provide beneficial ownership information; Police formal investigation powers and; the IRD's investigation powers.[291] A beneficial ownership register, like the Persons with Significant Control Register (PSCR) in the UK, does not exist in NZ.

Increasing beneficial ownership transparency is repeatedly raised as a solution, and is part of the FATF recommendations, to prevent ML/TF.[292] In 2018 MBIE released (an unresolved) discussion document about increasing existing powers and access to beneficial ownership information. MBIE considered the current status insufficient, identifying three main shortcomings: [293]

(a) Beneficial ownership information is often difficult or impossible to access;
(b) Where information is available, it cannot always be relied upon to be accurate;
(c) Some existing tools can tip off criminals.

These shortcomings are all aspects of improvement highlighted by the FATF in NZ's MER. MBIE's discussion document proposed three options for increasing beneficial ownership transparency. In brief the options are:[294]

(1) Corporate entities would have an explicit obligation to hold up-to-date and accurate records of their beneficial owners.

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289 Financial Action Task Force, above n 32, at 18.

290 Ministry of Business, Innovation and Employment, above n 20, at [7].

291 At [46 – 53].

292 Financial Action Task Force, above n 32, at 18.

293 Ministry of Business, Innovation and Employment, above n 20, at [54].

294 At [68], [72] and [74].

(2) Beneficial ownership information would be included on the companies and limited partnership registers but it would not be publicly available. The Registrar would be able to share this information with law enforcement agencies.
(3) Beneficial ownership information would be publicly available on the companies and limited partnership registers.

MBIE recognises all options worsen compliance costs for businesses.[295] MBIE prefers option 3, believing it to deter criminals, support AML systems, and meet international standards in a manner better than the status quo.[296] Option 3 however worsens privacy the most.[297] Responses to the discussion document agree, in principle, on the problem of NZ's current transparency of beneficial ownership status subject NZ to ML/TF risks. Without effective access to information on beneficial owners in complex corporate webs detecting, prosecuting, and deterring criminals involved in ML is increasingly difficult.[298] Responses differ however on what a proportionate response to the problem looks like. Proportionate costs versus benefits are a recurring problem in AML/CFT policy. The main concerns with increasing transparency of beneficial ownership are costs and business impact, privacy, and information accuracy.

1. Submission concerns

There have been no official costing reports produced like there were before the commencement of phase II. Time implications of beneficial ownership searches varied between submitters from hours to days. As outlined in part IV the effort required to obtain beneficial ownership information is regularly uncertain. The imposition of a register would clarify and mandate this in almost all situations. This will inevitably involve more work for companies and thus more costs, as reflected by MBIE's prediction.[299] New Zealand businesses are predominantly small businesses.[300] Some are therefore concerned more requirements will add a cost and complexity

295 At [101].
296 At [101 – 102].
297 At [101].
298 At [32 – 35].
299 At [101].
300 Ministry of Business, Employment and Innovation, above n 203.

barrier for smaller businesses.[301] The prominence of small businesses in NZ meant MBIE could not exclude them from a register without mitigating chances of preventing criminal activity.[302] Ultimately this proposal comes back to a costs versus benefits analysis for which much of the business community again sees as more burdensome than beneficial. Part VI discusses how these costs impacted companies in the UK. Their results must be remembered as reflective of a differently structured economy though.

All submitters recognise option 3's impact on privacy. Submitters main privacy concerns were commercial sensitivity, possible safety risks, and general confidentiality. The extent of these risks varies depending on what information is displayed on the register and to whom it is available. The UK's PSCR has a protection regime which NZ could adapt to provide additional security against privacy concerns. MBIE's option 2 however mostly removes the need for that additional administration.

Many submissions noted the importance of a register having accurate and up-to-date information to create any ML reduction.[303] Inaccuracy will otherwise see additional costs and worsened privacy for no benefit. This is a relevant concern reflected in the PSCR regime. NZ currently allows nominee directors and shareholders. The availability of these resources facilitates money launderers side-stepping beneficial ownership requirements. Therefore so long as nominees are legal and accessible, imposing more obligations of reporting entities to retrieve information seems fruitless.

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301 Equifax "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018" at [3].

302 Ministry of Business, Innovation and Employment, above n 20, at [77].

303 Office of the Privacy Commissioner "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018", at [2]; Chartered Accountants Australia and New Zealand "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018" at 3; ANZ "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018" at 3.

Ultimately, incremental additions to the AML/CFT regime are unlikely to noticeably impact detection and deterrence of ML. [304] Imposing additional requirements on reporting entities could be a counterintuitive move where business community buy-in for AML compliance is already low. Mark Fenwick and Erik Vermeulen suggest increasing disclosure requirements may encourage increasingly creative criminals as opposed to preventing ML/TF.[305] Whilst this seems to lean away from increased transparency, a comparison with the UK's AML/CFT regime could help provide insight to any benefits such a register could provide. As the leading country in AML policy, one would presume the UK AML regime is *effective.* The UK thus should be a good assessment point to understand how NZ compares.

VI. United Kingdom Comparison

The UK is a leading country in AML/CFT compliance and effectiveness.[306] As the world's largest centre for cross-border banking the UK is a financial hub.[307] Consequently the UK, potentially more so than NZ, is vulnerable to ML/TF threats. The UK has a much larger economy than NZ. As a common law nation and global leader in AML/CFT and corporate transparency the UK still makes a worthwhile AML/CFT regime comparison. In its last MER (2018) the UK received no non-compliance or low effectiveness ratings. In fact, the UK received only 3 moderate effectiveness ratings and two partially compliant ratings.[308] The UK received 4 highly effective ratings against the FATF 11 IOs, this was the highest number of such a rating received by any country.[309] The UK received 23 compliant ratings for the FATF 40 recommendations, only surpassed by Spain with 28.[310] Ronald Pol expressed this successful rating was something many in the industry were surprised by.[311] This surprise raises further questions about the FATF's assessment mechanism.

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304 Rafael Pontes and others, above n 88, at 5.

305 Mark Fenwick and Erik P M Vermeulen *Focus 14: Disclosure of Beneficial Ownership after the Panama Papers* (International Finance Corporation, 2016) at 18.

306 Financial Action Task Force, above n 32, at 4.

307 At 5.

308 FATF, above n 289.

309 FATF, above n 289.

310 FATF, above n 289.

311 Ron Pol, above n 245.

The legal framework of the UK's AML/CFT regime is much like NZ's. It is spread across a variety of legislative acts, regulations and guidelines. The UK's framework however has the additional aspect of incorporating the various European Union Anti-Money Laundering Directives. This means the European Parliament acts an additional body looking to update regulations and close gaps in AML policy.[312] The UK's AML/CFT regime applies to "relevant persons".[313] Relevant persons are mostly all those who are reporting entities under NZ legislation.[314] These relevant persons must carry out business risk assessments, CDD, and look out for suspicious activity in the same way NZ requires. Where the UK's AML/CFT regime has obviously developed beyond NZ's requirements is in relation to beneficial ownership. A beneficial ownership register is currently being considered in NZ, though has not presented as a priority given the lack of movement since MBIE's 2018 discussion paper. The UK's beneficial ownership register is the PSCR. As the clear divergence between NZ and the UK's AML/CFT regimes, and NZ currently considering this addition, the PSCR is a useful point of assessment. If the PSCR can be seen to create a more effective AML regime than NZ's current state it could provide NZ with a route forward.

A. Persons with Significant Control Register

In 2016 the UK implemented its PSCR.[315] This is a public, searchable register of beneficial owners of companies. The PSCR's objective is to "enhance corporate transparency and, thereby, to facilitate economic growth and help tackle misuse of companies".[316] The PSCR does this by identifying who holds significant influence or control in companies, Societates Europaeae, limited liability partnerships, and eligible Scottish partnerships.[317] Broadly a

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312 Comply Advantage "EU Anti Money Laundering Directives: A Summary" <www.complyadvantage.com>.

313 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (UK) c 2, reg 8.

314 Clause 2, reg 8.

315 Open Ownership and Global Witness *Learning the lessons from the UK's public beneficial ownership register* (October 2017) at 2 and 3.

316 Department for Business, Energy & Industrial Strategy *Review of the implementation of the PSC Register* (BEIS Research Paper 2019/005, August 2019) at 4.

317 Companies House and Department for Business, Energy & Industrial Strategy *Summary guide for companies – register of people with significant control* (January 2016) at [1 – 2].

Person with Significant Control (PSC) is someone who holds 25% or more voting rights or shares.[318] By creating this transparency over who owns and controls these corporate structures investors are informed when making investment decisions and enforcement agencies are assisted in ML investigations.[319] This is something which would benefit NZ outside of AML. A 25% ownership threshold does however leave out many potential beneficial owners.

As the first country to create such a register,[320] five years on its effects are beginning to be assessed. Before the PSCR was implemented many of the concerns seen in NZ (part VII) were also voiced concerns in the UK. The assessment of the PSCR below will be addressed through concerns of compliance costs/ business impact, privacy, and information accuracy. Between the extension of the PSCR to Scottish Limited Partnerships in 2017 and the UK's 2018 MER, there was an 80% decrease in registrations of those partnerships.[321] This could indicate the PSCR has a deterrent effect on corporate vehicles being misused for nefarious purposes.[322] This is prima facie favourable, though there is always the risk this pushes individuals to other corporate vehicles providing them with the anonymity they desire. Black markets inevitably result when laws prohibit something. Similarly, different organisational structures are constantly developing[323] and meeting the changing needs of their users.

1. Compliance costs/ business impact

In its 2019 PSCR Review the UK Department for Business, Energy and Industrial Strategy (BEIS) broke down the various costs involved in businesses implementing the PSCR.[324] The costs were broken into initial costs and ongoing maintenance costs. The total average initial costs for businesses was £259.[325] Ongoing maintenance costs included "checking the information about the business's PSCs; identifying new PSCs; collecting and collating

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318 Companies House and Department for Business, Energy & Industrial Strategy, above n 218, at [2.1].

319 At [3].

320 Open Ownership and Global Witness, above n 319, at 2.

321 Financial Action Task Force, above n 32, at [438].

322 At [438].

323 Carl Pacini and others, above n 42, at 19 and 27.

324 Department for Business, Energy & Industrial Strategy, above n 320, at 20.

325 At 28, table 3.9.

information about new PSCs; and submitting information about new PSCs".[326] The average total maintenance costs for businesses was £29.[327] Subsequently the average total costs for compliance with PSCR regulations per business was £287.[328] The micro to small business averages are a better reflection of NZ's economy. The mean for total compliance costs for micro to small businesses in the UK was £265 (lower than large businesses' costs).[329] Objectively, these costs do not appear overly burdensome for a business. This should be reassuring to the NZ business community.

The majority of businesses did not report the PSCR having a noticeable impact on business operations.[330] The Review however does not detail the size of the businesses which felt the PSCR impacted the way business was done. A 95% neutral impact[331] in conjunction with reasonable costs is not a bad result. Although this neutrality was also from those who should benefit from the PSCR. Therefore, unless there is measurable ML deterrence/ benefit from this Register it is unclear whether the costs are worthwhile. Applying this to NZ's different economy also does not guarantee the same results.

2. Privacy

Privacy is a factor heavily weighted against a public beneficial ownership register. The PSCR makes information public, but limits what parts are publicly available.[332] Information not made public includes residential addresses and dates of birth, although certain agencies and authorities can access this information.[333] Submitters to NZ's MBIE discussion document had privacy as a key concern. The UK has attempted to manage privacy concerns for those with legitimate risk by creating a Protection Regime.[334]

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326 At 20.

327 At 28, table 3.9.

328 At 28, table 3.9.

329 At 28, table 3.9.

330 At 29.

331 At 5.

332 Open Ownership and Global Witness, above n 319, at 5.

333 Department for Business, Energy & Industrial Strategy, above n 320, at 41.

334 At 41.

There are two different categories of protection PSCs can apply for. PSCs can apply for credit reference agencies to be restricted from using their residential addresses.[335] Alternatively PSCs can apply for restriction of all information from the public and credit reference agencies (specified public authorities retain access).[336] To be successful in a protection application a PSC must show "a serious risk of violence or intimidation to the PSC or someone who lives with the PSC".[337] For credit reference agency restriction the risk must arise out of the company activities the PSC is involved with.[338] This is likely to be the case when a business engages in contentious or sensitive topics.[339] For complete public protection the risk must arise from the activities of the company or from the PSC associating with the company.[340] This means personal characteristics of the PSC can be considered.[341] Directors of companies already have their addresses privatised, if they are also a PSC they could apply for an extension of this.[342] The Companies House assesses these applications on a case by case basis and consults with the National Crime Agency in making a decision on the matter.[343]

The BEIS Review found that 88% of residential address applications had been granted, but only 16% of applications for protection of all information were successful.[344] The risk these applications can be granted for is arguably too narrow. For instance, the Companies House recorded someone being stalked for reasons unrelated to business as ineligible for protection.[345] Occurrences of such activity highlights the danger of having addresses and information on a public register and make current protections seem insufficient. If NZ were to implement a PSCR it should provide more thorough protections. There are still many opposing opinions on

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335 At 41.

336 At 41.

337 Companies House and Department for Business, Energy & Industrial Strategy, above n 321, at Annex 1 [6].

338 At Annex 1 [7]

339 At Annex 1 [7]

340 At Annex 1 [8]

341 Department for Business, Energy & Industrial Strategy, above n 320, at 41.

342 Companies House and Department for Business, Energy & Industrial Strategy, above n 321, at Annex 1 [18 - 19].

343 At Annex 1 [9].

344 Department for Business, Energy & Industrial Strategy, above n 320, at 43.

345 At 43.

how much publicity is warranted to prevent ML/TF.[346] Similar to business costs, one would want to see real deterrence of ML and illicit uses of corporate vehicles to feel this limitation on their privacy was justified.

3. Information accuracy

Having an accessible register will only be useful if the information is accurate and up to date. The BEIS PSCR Review found 56% of businesses checked information they submitted to the PSCR was correct.[347] Micro to small businesses were less likely to be checking this information than larger organisations.[348] This does not bode well for NZ given its business make-up. With PSCR information not being verified non-compliance can result.[349] This is a flaw in the Register requirements. The PSCR's potential is also mitigated by inaccuracies in information.[350] The public nature of the Register however allows inaccuracies to be picked up by a variety of people which can cumulatively help improve the register's data.[351] So whilst this could be improved, with mechanisms like assigning ID codes, inaccuracies have not completely undermined the PSCR's impact. Again though, this impact does not have a quantified link to ML detection and deterrence.

Increased transparency and information disclosure can be helpful for market efficiency as it allows for confident investors because they can access all the information they need.[352] Whilst improvements can be made to the PSCR, most stakeholders deemed it to have a neutral to positive impact on their business and it improved corporate transparency.[353] Burdens imposed by the PSCR seem relatively balanced against positive business assistance. The PSCR thus provides some insight into what protocols deliver outcomes, regarding concerns of costs,

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346 Paul Michael Gilmour "Lifting the veil on beneficial ownership: Challenges of implementing the UK's registers of beneficial owners" (2020) 23(4) Journal of Money Laundering Control 717 at 725.

347 Department for Business, Energy & Industrial Strategy, above n 320, at 15.

348 At 15.

349 Open Ownership and Global Witness, above n 319, at 8.

350 Department for Business, Energy & Industrial Strategy, above n 320, at 37 – 38.

351 Open Ownership and Global Witness, above n 319, at 3.

352 John Kong Shan Ho "Enhancing Corporate Transparency in the United Kingdom: Compelling Identity Verification of People with Significant Control" (2021) 42 Business University LA 79 at 80 – 81.

353 Department for Business, Energy & Industrial Strategy, above n 320, at 45.

privacy and information accuracy. For instance, NZ would want a mechanism for information verification such as cross-checking with government databases so inaccuracies do not undermine the register's effectiveness.[354] Even with the PSCR the UK was only largely compliant in the FATF's view for corporate transparency.[355] This means the PSCR is not effective nor efficient enough as it stands. Significant work must be done in NZ to ever achieve compliance based on this international standard of transparency. Without proper understanding of the PSCR having effective ML deterrence and detection results, the implementation of such a register would go only towards international appeasement (and other corporate transparency benefits outside AML). More analysis would be required before implementing a PSCR equivalent in NZ. Currently one cannot definitively determine additional rules will create more effective outcomes.

B. UK Statistics

In the UK hundreds of billions of pounds are estimated to be laundered annually.[356] In 2020 there was an increase in predicate ML crimes (drugs and fraud), consequently the threat of ML has been predicted to have increased in the UK.[357] In light of COVID-19 more over-the-counter methods have been seen in the UK to introduce illegal money into the economy.[358] This is possibly resulting in less illegitimate uses of corporate vehicles. Nonetheless, "professional enablers" like lawyers or trust and service providers are continuing to facilitate the movement of illegitimate funds and using corporate vehicles to do so.[359] Like NZ there are no finite numbers of ML from year to year. Other than with defence against money laundering (DAML) SARS there is also no clear correlation between seized laundered money and the use and effectiveness of the UK's AML/CFT regime.

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354 Open Ownership and Global Witness, above n 319, at 9; Department for Business, Energy & Industrial Strategy, above n 320, at 39.

355 Financial Action Task Force, above n 32, at 215.

356 National Crime Agency *National Strategic Assessment of Serious and Organised Crime* (2021) at [143].

357 At 10.

358 At [144].

359 At [147].

SARs are utilised in the UK for ML/TF suspicion but also suspicion of many other criminal acts.[360] Between 2019 and 2020 573,085 SARs were received and processed in the UK.[361] This is a 20% increase from the last period.[362] Specific ML SARs are DAML SARs.[363] DAML SARs increased by 116% between 2019 and 2020 to a total of 7,252 requests.[364] As a result of DAMLs £172 million was retained from suspect criminals, a £40 million increase from the previous period and a £120 million increase from the 2017 – 2018 period.[365] NZ lacks this clear connection in its reports between SARs and money seizures. The UK FIU also provides a substantive breakdown of the DAMLs received, accepted and rejected. The significant number of SARs is promising, suggesting entities are actively on the look for any activity which may involve illegitimate uses of corporate vehicles. One drawback of increased reports though is the increased number of mistakes resulting in wasted administrative time and effort. As discussed with NZ, limited ML statistics means only a portion of the picture is told. Even if the results from DAMLs in the UK are positive they only make an impact to 2% of all criminal funds, a very small proportion. Other crimes may also be tipping off these findings.

The Her Majesty's Revenue and Customs Department (HMRC), as one of the UK's AML/CFT supervisory bodies, has the following (mostly civil) available actions available to it to "encourage compliance or respond to non-compliance":[366]

- Inspect a business premises
- Issue a penalty
- Refuse or remove fit and proper status from an individual
- Refuse or remove an approval from an individual
- Refuse, suspend or cancel a business's registration
- Issue a notice to request information or attendance at a meeting
- Issue a public statement naming and censuring a business or person

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360 National Crime Agency "Suspicious Activity Reports" <www.nationalcrimeagency.gov.uk>.

361 UK Financial Intelligence Unit *Suspicious Activity Reports: Annual Report 2020* (National Crime Agency, 2020) at 2.

362 At 2.

363 National Crime Agency *SARs Reporter Booklet* (January 2021) at 4.

364 UK Financial Intelligence Unit, above n 365, at 2.

365 At 2.

366 Her Majesty's Revenue and Customs "Guidance: Civil measures for money laundering supervision" (9 December 2020) <www.gov.uk>.

- Suspend or prohibit an individual from holding a managerial role
- Seek a court order to enter premises or to restrain a person from committing a breach

The UK has more available sanctions to it than NZ. Perhaps this is why the number of penalties applied by the HMRC during 2019 – 2020 to businesses was just 16 penalties totalling £882,074. Additionally, 15 companies received a penalty notice during this time too. Although these are just the statistics for one supervisory body, it is a surprisingly low number when one considers how many more companies the HMRC would be looking after in comparison to NZ's supervisory bodies.

C. Other Mechanisms to Increase Transparency

As a leading jurisdiction in corporate transparency, the PSCR is only one of the UK's initiatives. In 2017 the Home Revenue and Customs Department introduced a beneficial ownership register for UK and foreign trusts with tax consequences.[367] This register was expanded to all express trusts after the Fifth Anti-Money Laundering Directive.[368] Only authorised personnel can access this with permission,[369] unless a legitimate interest in a trust can be explained (such as a journalist investigating ML).[370] This is a step up from NZ's current situation of no domestic trust register. Another new measure, yet to be fully implemented, is a Register on Overseas Entities. This will be a public register of beneficial ownership of UK land and property.[371] This register aims increase transparency in the property market,[372] thus preventing the use of property in ML schemes.

The UK has prohibited the use bearer shares.[373] Whilst nominee shareholders are permitted their risk is somewhat mitigated in comparison to countries like NZ. This is because where the

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367 Financial Action Task Force, above n 32, at [439].

368 Ali Shalchi and Federico Mor *Registers of beneficial ownership* (UK Briefing Paper 8259, 8 February 2021) at 14.

369 Financial Action Task Force, above n 32, at [439].

370 Ali Shalchi and Federico, above n 372, at 14.

371 Draft Registration of Overseas Entities Bill: Government Response to Joint Committee Report 2019 (UK, CP 135).

372 Paul Michael Gilmour, above n 350, at 721.

373 Financial Action Task Force, above n 32, at [440].

nominee shareholder amounts to a PSC it is the nominator who must be recognised not the nominee.[374] Additional mechanisms to increase transparency are continuously being created in the UK. As a global AML leader this may be signalling to the rest of the world that increased transparency is the path to take. Although even with these additional transparency regimes the business community perception in the UK is one not overly different to NZ. Businesses see AML as a burdensome system where the costs outweigh the benefits without even stopping criminals.[375] The director of Deloitte's forum for tackling illicit finances commented that "the volume of fraud offences reported and significant ML 'scandals'" impacting the UK highlight that the regime is not "wholly effective".[376]

D. NZ Reflections on the UK

Last year the UK's transparent AML/CFT regime seized £172 million of an estimated hundreds of billions of pounds laundered annually. This is an increase on previous seizure amounts. Nonetheless £172 million is only a small percentage of the country's ML. The UK's shining review is hard to reconcile with these high ML statistics, incidents of scandals and perceptions from people working in the industry. The UK's 2018 MER left the UK as a global leader, but there are no overt reasons the regime is more effective at preventing ML than NZ. The obvious difference is increased transparency, but so long as nominees are legal in NZ the benefits of a beneficial ownership register should not be overexaggerated. Whilst the PSCR Review shows a positive experience, on balance, the difference in NZ and the UK's economy is a necessary consideration. As time progresses the impact on profitability may diminish with new technologies easing the costs and burdens of compliance.[377] This could potentially make the UK's experience more comparable to NZ. The introduction of the PSCR took 10 years of consultation[378] and its flaws are still being ironed out; its addition to NZ's regimes clearly would not be a quick fix to achieve a regime more effective at detecting and deterring ML.

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374 Companies Act 2006 (UK), schedule 1A, paragraph 19.

375 Rafael Pontes and others, above n 88, at 3 and 9.

376 Natasha Teja "Primer: UK's AML/CFT consultation" IFLR (2 September 2021). <www.iflr.com>.

377 Christina Wang, above n 283, at 21.

378 Open Ownership and Global Witness, above n 319, at 2.

Unfortunately this look at an AML world leader still leaves many questions about how one can measure the effectiveness of an AML regime. When trying to understand the practical implications and factors linked to the regime (such as costs, business perceptions and statistics) the same problems encountered with assessing NZ's effectiveness are present. Ultimately this comes down to a lack of appropriate mechanisms for measurement.[379] It seems apparent the FATF MER measure is lacking and statistics of ML or asset seizures are only chapters of the full story. A continued push by the FATF and governments to comply with AML procedures and add new ones with the limited amount of evidence available shows a global acceptance of AML policy as "effective". This "effectiveness" is essentially a presumption as there is a lack of evidence explaining why it is effective. So how should effectiveness be assessed if current measures are incapable of doing so? Hopkins and Shelton contend the correct approach is one which orients the regime around closing ML opportunities.[380] Meanwhile Pol suggests we need to realign our perspective of effectiveness from outcomes to outputs.[381] There is no apparent silver bullet that can be added on to any existing regimes. Whilst this would not fix NZ's AML/CFT regime, an addition to the kinds of sanctions supervisory bodies could apply (as recommended by the FATF) may be beneficial in helping companies understand the importance of compliance. The seemingly incoming trend of high penalties to encourage compliance has doubts in policy communities. The UK statistics showed relatively low numbers penalties though across the year which could potentially be a result of more available resolutions than just warnings or penalties.

AML/CFT systems are internationally regarded as essential. They play a critical role in the construction of organisational structures and any transactions between them. Since it is the business community having to comply with much of this law buy-in from them is important. Without that buy-in these essential regimes may not reach their full potential. Consequently it

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379 Antoinette Verhage "Great expectations but little evidence: policing money laundering" (2017) 37 International Journal of Sociology and Social Policy 477 at 479; Ronald Pol, above n 219, at 8; Michael Levi, Peter Reuter and Terrence Halliday, above n 3, at 310.

380 M Hopkins and N Shelton "Identifying money laundering in the United Kingdom observations from national risk assessments and proposed alternative methodology" (2019) 25 European Journal on Criminal Policy and Research 63, as cited in Rafael Pontes and others "Anti-money laundering in the United Kingdom: new directions for a more effective regime" (2021) 24 Journal of Money Laundering Control, at 3.

381 Interview with Dr Ron Pol, outcomes scientist in AML policy (Kathryn Ryan, Nine to Noon, National Radio, 26 August 2021).

seems the only way to improve the regime's legitimacy and assess its effectiveness is an overhaul of the regime. A reconstruction of the law which re-situates inputs and outputs and is created against what will be measured, as practitioners like Pol suggest, is required. In the meantime the creation of additional deterrents, like a beneficial ownership register, can largely be viewed as adding burdens (until specific AML benefits which outweigh those burdens are found). This is pertinent given the prevalence of small business structures in NZ's economy. The regime in its present form is beginning to seem futile. Trying to overcome new challenges like crypto-currencies will be a stab in the dark until we re-orient these laws with measurable outcomes.

VII. Conclusion

This paper has expressed the deficiency in available measures to assess the effectiveness of NZ's AML/CFT regime (and all AML regimes more broadly). The qualitative FATF MER lacks adequate consideration of practical business views and quantitative factors. Meanwhile quantitative measures and statistics in isolation lack definitive meaning; they can be reasoned for both sides of the coin. For instance, increasing numbers of SARs reports could be reasoned as due to more ML occurring and thus an ineffective AML regime. [382] Alternatively, the increase could be because of efficient detection systems and thus an effective AML regime.[383] According to the FATF NZ's AML regime is one of the top 19 in the world[384] suggesting it is relatively effective. However this paper has struggled to articulate sufficient evidence showing AML laws as anything other than being against ML. Therefore the regime cannot be labelled as anything other than effective in being *anti* money laundering, per its name. If we are to have AML regimes which effectively *deter* and *prevent* ML*,* per its purpose, there needs to be an overhaul of AML laws which re-orients the regime to focus on closing ML opportunities.[385] How exactly this would look is outside the scope of the paper and requires more research.

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382 Lucia dalla Pellegrina and others "Organised crime, suspicious transaction reporting and anti-money laundering regulation" (2020) 54 Regional Studies 1761 at 1766.

383 At 1766

384 FATF, above n 289.

385 M Hopkins and N Shelton, above n 387; GRC World Forum "AML is the least effective anti-crime measure anywhere, ever" (19 May 2021) <www.grcworldforums.com>.

The current inadequate measures make an overhaul of AML laws important especially as more laws are added and tightened globally. The shape of the market for ML is ever-changing with new crypto-currency innovations providing the potential for new ML techniques. Such developments make understanding where ML risks lie and how they operate increasingly difficult.[386] Creating new AML laws, whether those be adapting to new risks or increasing transparency, is an inefficient effort until the outcomes current laws are understood. Legislative changes to increase transparency and tighten the existing AML/CFT laws may have some benefits to the economy such as providing shareholders with more information. However, so long as nominees are legal and allow many requirements to be side-stepped the addition of burdens on the business community is mostly fruitless in the ML context. Ultimately, the creation of laws in conjunction with measurable outcomes is required if we are ever to be able call an AML regime effective at deterring ML. For now, true to its name NZ's AML regime is *anti* ML.

386 Mohammed Khair Alshaleel "The UK and the EU's Fifth Anti-Money Laundering Directive: Exceeding Expectations" (2020) 17(4) European Company LJ 123 at 128.

VIII. Bibliography

A. Cases

Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Limited and Xialan Xiao [2017] NZHC 2363.

E-Trans International Finance Ltd v Kiwibank Ltd [2016] NZHC 1031, [2016] 3 NZLR 241.

Financial Markets Authority v CLSA New Zealand Premium Limited [2021] NZHC 2325.

R v Jiaxin Finance Limited [2020] NZHC 366, [2020] NZCCLR 18.

Reserve Bank of New Zealand v TSB Bank Limited [2021] NZHC 2241.

B. Legislation and Regulations

1. New Zealand

Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Companies Act 1993.

Criminal Proceeds (Recovery) Act 2009.

The Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011.

The Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011.

The Anti-Money Laundering and Countering Financing of Terrorism (Ministerial Exemption Form) Regulations 2011.

Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016.

The Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011.

2. United Kingdom

Companies Act 2006 (UK)

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (UK).

The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (UK).

The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (UK).

C. Commentary and Guidance

Companies House and Department for Business, Energy & Industrial Strategy *Summary guide for companies – register of people with significant control* (January 2016).

Department of Internal Affairs *Guideline: Assessing Country Risk – Guideline for Reporting Entities Supervised by the Department of Internal Affairs* (June 2021).

Financial Action Task Force *Best Practices on Beneficial Ownership for Legal Persons* (October 2019).

Financial Action Task Force *Guidance for a Risk-Based Approach for Money or Value Transfer Services* (2016).

Financial Markets Authority, Reserve Bank of New Zealand and Department of Internal Affairs *Amended Identity Verification Code of Practice 2013* (2013).

Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *Amended Identity Verification Code of Practice 2013: Explanatory Note*.

Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT Beneficial Ownership Guideline* (December 2012).

Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT: Customer Due Diligence – Companies* (July 2019).

Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT: Customer Due Diligence – Trusts* (July 2019).

Financial Markets Authority, Reserve Bank of New Zealand, Department of Internal Affairs *AML/CFT Explanatory Note: Electronic Identity Verification Guide* (July 2021).

International Finance Corporation *Anti-Money-Laundering (AML) & Countering Financing of Terrorism (CFT) Risk Management in Emerging Market Banks: Good Practice Note* (2019).

Michael Harris *Laws of New Zealand* Companies (online ed).

New Zealand Financial Intelligence Unit *Prescribed Transactions Reporting (PTR): Reporting Obligation Guidance* (New Zealand Police, April 2018).

New Zealand Financial Intelligence Unit *Suspicious Activity Reporting Guideline* (New Zealand Police, 2018).

Office for Professional Body AML Supervision and Financial Conduct Authority *Sourcebook for professional body anti-money laundering supervisors* (February 2021).

Reserve Bank of New Zealand, Department of Internal Affairs and Financial Markets Authority *New regulation for nominee directors and nominee general partners* (13 July 2021).

Rodney Craig *Morison's Company Law (NZ)* (online looseleaf ed, LexisNexis NZ Limited).

D. Books and Chapters in Books

Anne Harvey *Anti-money Laundering and Counter-terrorism Financing Law and Policy: Showcasing Australia* (Brill, Leiden, 2019).

Brigitte Slot and Linette de Swart "Assessing the outcomes of anti-money laundering policies. Ambitions and reality" in Petrus van Duyne and others (eds) *Constructing and organising crime in Europe* (Eleven International Publishing, Ukraine, 2019) 399 at 409.

Emile van der Does de Wilebois and others *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (The World Bank, Washington, 2011).

J C Sharman *The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption* (Cornell University Press, Ithaca, 2017).

J C Sharman *The Money Laundry: Regulating Criminal Finance in the Global Economy* (Cornell University Press, New York, 2011).

Jenik Radon, Mahima Achuthan, and Nandini Ravichandran in "Beneficial Ownership: Filling the Gap in Transparency and Accountability in the Extractive Industries and Improving Governance" Roy Krøvel and Mona Thowsen (eds) *Making Transparency Possible: An Interdisciplinary Dialogue* (Cappelen Damn Akademisk, Norway, 2019) 159.

Michael G Findley, Daniel L Nielson and J C Sharman *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism* (Cambridge University Press, Cambridge, 2014).

Paul Schott *Reference Guide to Anti-Money Laundering and Combatting the Financing of Terrorism* (2nd ed, The World Bank, Washington, 2016).

Peter Allridge *What Went Wrong With Money Laundering Law?* (Macmillan Publishers Ltd, London, 2016).

Peter Reuter and Edwin Truman *Chasing Dirty Money: The Fight Against Money Laundering* (PIIE Press, Massachusetts, 2004).

Peter Watts, Neil Campbell and Christopher Hare *Company Law in New Zealand* (2nd ed, LexisNexis New Zealand Limited, Wellington, 2016).

E. Journal Articles

Anda Simona Rādelescu "Tax Havens within Legal Boundaries. Older and Newer Cases" (2017) 64 The Romanian Economic Journal 97.

Andrew Emerson Clarke "Is there a commendable regime for combatting money laundering in international businesses transactions?" (2021) 24 Journal of Money Laundering Control 163.

Anne Imobersteg Harvey "Anti-money Laundering and Counter-terrorism Financing Law and Policy: Showcasing Australia"

Antoinette Verhage "Great expectations but little evidence: policing money laundering" (2017) 37 International Journal of Sociology and Social Policy 477.

Brent B Alldred and others "Anonymous shell companies: A global audit study and field experiment in 176 countries" (2017) 48 Journal of International Business Studies 596.

Brian D Burton "FACTA 2016 Update: The Panama Papers and Beyond" (2016) 94 Taxes: The Magazine 21.

Brandon Garrett and Gregory Mitchell "Testing Compliance" (2020) 83 Law and Contemporary Problems 47.

Carl Pacini and Nate Wadlinger "How Shell Entities and lack of ownership transparency facilitate tax evasion and modern policy responses to these problems*"* (2018) 102 Marq L Rev 111.

Carl Pacini and others "An Analysis of Money Laundering, Shell Entities and No Ownership Transparency That Washed off and on Many Shores: A building Tidal Wave of Policy Responses" (2020) 30 Kansas J of L & Public Policy 1.

Caroline Liss and J C Sharman "Global corporate crime-fighters: Private transnational responses to piracy and money laundering" (2015) 22 Review of International Political Economy 693.

Doron Goldbarsht and Hannah Harris "Transnational regulatory networks: a study in compliance and legitimacy in counter-terrorist financing" (2020) 27 Journal of Financial Crime 855.

Ehi Eric Esoimeme "Identifying and reducing the money laundering risks posed by individuals who have been unknowingly recruited as money mules" (2021) 24 Journal of Money Laundering Control 201.

Fabian Maximilian Johannes Teichmann "Twelve methods of money laundering" (2017) 20 Journal of Money Laundering Control 130.

Financial Crimes Enforcement Network, Treasury "Anti-Money Laundering Program Effectiveness" (2020) 85 Federal Register 58023.

Firas Murrar and Khaled Barakat "Role of FATF in spearheading AML and CFT" (2021) 24 Journal of Money Laundering Control 77.

John Kong Shan Ho "Enhancing Corporate Transparency in the United Kingdom: Compelling Identity Verification of People with Significant Control" (2021) 42 Business University LA 79.

Lill Marie Martinez Cruz "After the Panama Papers… A More Transparent Corporate Business Model?" (2020) 33 Asian Journal of Latin American Studies 135.

Lucia dalla Pellegrina and others "Organised crime, suspicious transaction reporting and anti-money laundering regulation" (2020) 54 Regional Studies 1761.

Mark Bennett "Implications of the Panama Papers for the New Zealand Foreign Trusts Regime" (2015) 21 NZACL Yearbook 27.

Michael Doran "Tax Penalties and Tax Compliance" (2009) 46 Harvard Journal on Legislation 111.

Michael Levi, Peter Reuter and Terrence Halliday "Can the AML system be evaluated without better data?" (2017) 69 Crime Law and Social Change 307.

Michael Littlewood “Foreign Trusts, the Panama Papers and the Shewan Report” [2017] NZ L Rev 59.

Mohammed Khair Alshaleel “The UK and the EU’s Fifth Anti-Money Laundering Directive: Exceeding Expectations” (2020) 17 European Company LJ 123.

Nicholas Vail “Cracking Shells: The Panama Papers & Looking to the European Union’s Anti-Money Laundering Directive as a Framework for Implementing a Multilateral Agreement to Combat the Harmful Effects of Shell Companies” (2017) 5 Texas A&M Law Review 133.

Paul Michael Gilmour “Lifting the veil on beneficial ownership: Challenges of implementing the UK’s registers of beneficial owners” (2020) 23 Journal of Money Laundering Control 717.

Rafael Pontes and others “Anti-money laundering in the United Kingdom: new directions for a more effective regime” (2021) 24 Journal of Money Laundering Control.

Rebecca Hirsch and Susan Watts “The Link Between Corporate Governance and Corruption in New Zealand” (2010) 24 NZULR 42.

Riki Fuji-Rajani “Money Remitters Left Out in the Cold: Blanket De-Risking Policies, Counterterrorism and Government Intervention in New Zealand” (2017) 23 Auckland ULR 204.

Ronald Pol “Anti-money laundering effectiveness: assessing outcomes or ticking boxes?” (2018) 21 Journal of Money Laundering Control 215.

Ronald Pol “Anti-money laundering: The world’s least effective policy experiment? Together, we can fix it” [2020] Policy Design and Practice 1.

Ronald Pol “Anti-money laundering ratings: uncovering evidence hidden in plain sight” (2019) 22 Journal of Money Laundering Control 836.

Ronald Pol “Response to money laundering scandal: evidence-informed or perception driven?” (2020) 23 Journal of Money Laundering Control 103.

Ronald Pol “Uncomfortable truths? ML = BS and AML = BS^2” (2018) 25(2) Journal of Financial Crime 294.

Sorin Silviu Finta “International bodies with duties in fighting against money laundering” (2018) 1 Research and Science Today 7.

Sungyoung Kang “Rethinking the global anti-money laundering regulations to deter corruption” (2018) 67 International and Comparative Law Quarterly 695.

Vineet Chandra "Ending Corporate Anonymity: Beneficial Ownership, Sanctions Evasion, and what the United Nations Should Do about It" (2020) 42 Michigan J of Int'l Law 177.

F. Government Materials

1. New Zealand

(30 June 2009) 655 NZPD 4768.

Ministry of Justice *Regulatory Impact Statement: Second phase of reforms to the Anti-Money Laundering and Countering Financing of Terrorism regime* (March 2017)

2. United Kingdom

Ali Shalchi and Federico Mor *Registers of beneficial ownership* (UK Briefing Paper 8259, 8 February 2021) at 14.

Draft Registration of Overseas Entities Bill: Government Response to Joint Committee Report 2019 (UK, CP 135).

G. Reports

Andrew Li *The Importance of AML Model Governance and Variation* (ACAMS, July 2016).

Brendan Gage *Regulatory Impact Statement: Second phase of reforms to the Anti-Money Laundering and Countering Financing of Terrorism regime* (Ministry of Justice, 24 March 2017).

Bell Gully *The Big Picture: Anti-Money Laundering – Is regulatory change on the horizon?* (December 2020).

Christina Wang *Balancing AML Compliance with Business Objective as a SME* (ACAMS, June 2019).

Deloitte *AML program effectiveness: A new focus on outcomes for law enforcement and national security* (2021).

Deloitte *Phase II Anti-money laundering reforms: Business Compliance Impacts* (Ministry of Justice, September 2016).

Department for Business, Energy & Industrial Strategy *Review of the implementation of the PSC Register* (BEIS Research Paper 2019/005, August 2019).

Department of Internal Affairs *Anti-Money Laundering and Countering Financing of Terrorism: Regulatory Findings Report 2018 – 2019* (2019).

Financial Action Task Force *Anti-money laundering and counter-terrorist financing measures – New Zealand fourth round mutual evaluation report* (2021).

Financial Action Task Force *Anti-money laundering and counter-terrorist financing measures – United Kingdom Fourth Round Mutual Evaluation Report* (2018)

Financial Action Task Force *Consolidated Table of Assessment Ratings: 4th Round Ratings* (11 August 2021).

Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris, 2020).

Financial Action Task Force *Methodology for assessing technical compliance with the FATF Recommendations and effectiveness of AML/CFT systems* (2013).

Financial Action Task Force *Professional Money Laundering* (July 2018).

Financial Action Task Force *Revision of Recommendation 24 – White Paper for Public Consultation* (2021).

Financial Action Task Force and Egmont Group of Financial Intelligence Units *Concealment of Beneficial Ownership* (2018).

Financial Markets Authority *Anti-Money Laundering and Countering Financing of Terrorism – Regulations Update* (July 2021).

Financial Markets Authority, Reserve Bank of New Zealand and Department of Internal Affairs *AML/CFT Supervisory Framework* (November 2019).

Financial Markets Authority *Getting the best outcome from your AML/CFT audit* (2014).

HM Treasury *Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022: Consultation* (July 2021).

HM Treasury *Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime* (July 2021).

Janne Miettien *What makes an AML Operating Model Effective?* (ACAMS, February 2020).

Law Commission *Review of the Law of Trusts: Preferred Approach* (NZLC IP31, 2012).

Mark Fenwick and Erik P M Vermeulen *Focus 14: Disclosure of Beneficial Ownership after the Panama Papers* (International Finance Corporation, 2016).

Michael Pisa *Does the Financial Action Task Force (FATF) Help or Hinder Financial Inclusion? A Study of FATF Mutual Evaluation Reports* (Center For Global Development, Policy Paper 143, May 2019).

Ministry of Business, Innovation & Employment *Discussion Document: Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships* (June 2018).

Ministry of Justice *Phase II Anti-money laundering reforms: Business Compliance Impacts* (September 2016).

National Crime Agency *National Strategic Assessment of Serious and Organised Crime* (2021).

New Zealand Financial Intelligence Unit *Prescribed Transactions Reporting (PTR): Understanding the Regulations* (New Zealand Police, March 2018).

New Zealand Financial Intelligence Unit *The Suspicious Activity Report* (New Zealand Police, June 2021).

New Zealand Police Financial Intelligence Unit *National Risk Assessment of Money Laundering and Terrorism Financing* (New Zealand Police, 2019).

Open Ownership and Global Witness *Learning the lessons from the UK's public beneficial ownership register* (October 2017).

Organisation for Economic Co-operation and Development *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (2001).

Reserve Bank of New Zealand *Correspondent Banking, Prescribed Transaction Reporting and Transaction Monitoring Survey: AML Supervision* (August 2021).

UK Financial Intelligence Unit *Suspicious Activity Reports: Annual Report 2020* (National Crime Agency, 2020).

Yoko Hoshido *AML/CTF Program Efficiency* (ACAMS, February 2020).

H. Dissertations

Kimberly Moody "Analysis of Global Compliance of the Financial Action Task Force's Forty Recommendations" Kimberly Moody (MS, Dissertation, Utica College, 2013).

Cassandra Nottage "Compliance Strategies to Reduce the Risk of Money Laundering and Terrorist Financing" (DBA, Dissertation, Walden University, 2018).

Sarah Samara Sekouti "A Comprehensive Analysis of the Legal Issues Relating to Nominee Directors" (LLM Thesis, University of Montreal, 2009).

I. Internet Resources

Blair Keown and others "A solid report card for New Zealand's AML/CFT regime, with room for improvement" (3 May 2021) Bell Gully <www.bellgully.com>

Comply Advantage "Anti Money Laundering Regulations in the UK" <www.complyadvantage.com>.

Comply Advantage "EU Anti Money Laundering Directives: A Summary" <www.complyadvantage.com>.

Dan Byrne "NZ needs to improve multiple AML defences; latest FATF report warns that progress may be 'undermined' by loopholes in areas like beneficial ownership" (AML Intelligence, 29 April 2021) <www.amlintelligence.com>.

Department of Internal Affairs "AML/CFT Legislation" (2019) <www.dia.govt.nz>.

Department of Internal Affairs "Frequently Asked Questions for DIA Reporting Entities" <www.dia.govt.nz>.

Department of Internal Affairs "Leading NZ workplace provider issued with DIA formal warning" (16 July 2019) <www.dia.govt.nz>.

FATF "An effective system to combat money laundering and terrorist financing" <www.fatf-gafi.org>.

FATF "High risk and other monitored jurisdictions" (2019) <ww.fatf-gafi.org>.

FATF "History of the FATF" <www.fatf-gafi.org>.

FATF "Who we are" (2021) FATF < ww.fatf-gafi.org>.

FATF "What we do" <www.fatf-gafi.org>.

Financial Markets Authority “AML/CFT FAQs” (21 June 2021) <www.fma.govt.nz>.

Financial Markets Authority “AML/CFT regulations update 2021” (9 July 2021) <www.fma.govt.nz>.

Fiona Tregonning and Emma Peart “AML Offending Doesn’t Pay: First Criminal Sentencing under the AML/CFT Act” MinterEllison (5 March 2020) <www.minterellison.co.nz>

GRC World Forum “AML is the least effective anti-crime measure anywhere, ever” (19 May 2021) <www.grcworldforums.com>.

Her Majesty’s Revenue and Customs “Corporate Report: Businesses that have not complied with the regulations, and suspensions and cancellations of registration (2020 to 2021)” (9 September 2021) <www.gov.uk>.

Her Majesty’s Revenue and Customs “Corporate Report: List of businesses for tax year 2019 to 2020 that have not complied with the 2017 money laundering regulations” (9 September 2021) <www.gov.uk>.

Her Majesty’s Revenue and Customs “Guidance: Civil measures for money laundering supervision” (9 December 2020) <www.gov.uk>.

John F Saavarese and others “Wachtell Liption Discusses White-Collar and Regulatory Enforcement: What Mattered in 2020 and What to Expect in 2021” (February 10 2021) The CLS Blue Sky Blog <clsbluesky.law.columbia.edu>.

Jon Holland, Rob Moulton and Jonathan Ritson-Candler “HM Treasury Initiates Post-Brexit Review of the UK’s AML and CTF Regime” Latham and Watkins (29 July 2021) <www.gobalfinregblog.com>.

Merriam-Webster Dictionary “effective” (1 October 2021) <www.merriam-webster.com>.

Ministry of Business, Employment and Innovation “Small Business” (28 September 2020) <www.mbie.govt.nz>.

Ministry of Justice “AML/CFT Phase 2 costs and benefits reports” (17 December 2020) <www.justice.govt.nz>.

Ministry of Justice “Costs and benefits of AML/CFT laws” (17 December 2020) <www.justice.govt.nz>.

Ministry of Justice “Tackling money laundering and terrorist financing” (28 April 2021) <www.justice.govt.nz>.

Ministry of Justice "Trust law reform" (7 December 2020) <www.justice.govt.nz>.

Natasha Teja "Primer: UK's AML/CFT consultation" IFLR (2 September 2021). <www.iflr.com>.

Nathan Lynch "New Zealand central bank has failed on AML/CFT supervision, says FATF" (Thomson Reuters, 20 May 2021). <www. insight.thomsonreuters.com.au>.

New Zealand Law Society "NZ money remitter convicted of AML/CFT offences" (4 March 2020) <www.lawsociety.org.nz>.

New Zealand Police "Financial Crime Prevention Network" <www.police.govt.nz>.

New Zealand Police "NZ Financial Intelligence Unit (FIU)" <www.police.govt.nz>.

Nicholas Gilmour "The disparities of AML/CFT compliance obligations in NZ" Scoop Business (1 March 2019) <www.scoop.co.nz>.

Robert Appleton "The End of the Anonymous Shell Company in the United States" (4 February 2021) Harvard Law School Forum on Corporate Governance <www.corpgov.law.harvard.edu>.

Rod Vaughan "International assessors probe our AML regime" (6 March 2020) ADLS <https://adls.org.nz>.

Ronald Pol "Anti-money Laundering "Almost Completely Ineffective" Why it Harms Us All" (3 March 2020) <www.medium.com>.

Ronald Pol "Ron Pol reflects on effectiveness issues revealed by the UK's leaked AML/CFT evaluation & shares new visualisations of the ratings methodology that will be used to assess NZ's regime" (24 October 2018) Interest <www.interest.co.nz>.

Ronald Pol "The global war on money laundering is a failed experiment" (21 October 2019) The Conversation <www.theconversation.com>.

STEP "FATF prepares tightening of beneficial ownership rules" (16 August 2021) <www.step.org>.

Steven Dukenson "The AML/CFT regime – some further queries and comments" (21 July 2020) New Zealand Law Society <www.lawsociety.org.nz>.

Suzanne Snively "A Matter of Trust – Beneficial Ownership in New Zealand" (July 7, 2020) Transparency International New Zealand <www.transparency.org.nz>.

Team Business Forensics “The History of Financial Crime: Exploring Examples of Modern Money Crimes” (27 January 2021) Business Forensics <www.businessforensics.nl>.

The World Bank “Ease of Doing Business rankings” <www.doingbusiness.org>.

J. News and Media

“FMA tells finance firms to up their game” *Radio New Zealand* (online ed, New Zealand, 25 September 2020).

Insight “Money Laundering in NZ” (22 July 2018) Radio New Zealand <www. Rnz.co.nz>.

Interview with Dr Ron Pol, outcomes scientist in AML policy (Kathryn Ryan, Nine to Noon, National Radio, 26 August 2021).
Ireland Hendry-Tennent “Sharesies issued formal warning for breaching Anti-Money Laundering and Countering Financing of Terrorism Act” *Newshub* (online ed, New Zealand, 23 August 2021).

K. Submissions to Government

ANZ “Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018”.

Chapman Tripp “Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018”.

Chartered Accountants Australia and New Zealand “Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018”.

Equifax “Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018”.

Institute of Directors “Submission to the Ministry of Business, Innovation and Employment of Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships”.

New Zealand Law Society “Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018”.

New Zealand Private Equity and Venture Capital Association Inc "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

Office of the Privacy Commissioner "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

Perpetual Guardian "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

Public Trust "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

Russell McVeagh "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

Transparency International New Zealand "Submission to the Ministry of Business, Innovation and Employment on Discussion Document: Increasing the Transparency of Beneficial Ownership of New Zealand Companies and Limited Partnerships 2018".

L. Press Releases and Letters

Financial Markets Authority "FMA files proceedings against CLSAP NZ (formerly KVB Kunlun) for alleged anti-money laundering breaches" (media release 2020-19, 23 June 2020).

Letter from James Greig (Director of Supervision Financial Markets Authority) to Sharesies Limited and Sharesies Nominee Liminted regarding Formal warning for purposes of section 80 of Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (13 August 2021).

Reserve Bank of New Zealand "Enforcement action under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Westpac Banking Corporation" (warning, 11 August 2021).

Reserve Bank of New Zealand "Managing Not Avoiding Risk – Improving Financial Inclusion" (news release, 15 March 2021).

Reserve Bank of New Zealand “Reserve Bank welcomes High Court decision penalising TSB Bank for AML/CFT Act breaches” (press release, 31 August 2021).

IX. Word Count

Word Count: The text of this paper (excluding title, abstract, footnotes and bibliography) comprises 14,889 words.