



CROWN LAW OFFICE
GOVERNMENT OF NIUE

**Workshop Report: Asia Pacific Group on Money Laundering (APG) Pre- Mutual
Evaluation Training, Sydney, Australia from 6th – 10th June, 2011.**

1. Introduction

The APGML holds the responsibility of ensuring that its members have adequate legislative and regulatory framework to curb money laundering activities. The APGML framework is based on 40 recommendations + 9 special recommendations of the Financial Action Task Force (FATF). The APGML carries out this role through a mutual evaluation process where a team of evaluators consisting of experts from the legal, financial, regulatory and law enforcement, and a member from the APG Secretariat undertakes an on-site visit to the member being evaluated.

Niue's first APG Mutual Evaluation (ME) was undertaken in 2004 and its report was adopted at the 2005 APG Annual Meeting. Our next ME is scheduled for November, 2011. Prior to an ME a preparatory regional workshop is usually held for members with an upcoming ME. Niue however is only one of two countries that are due to be evaluated in the next 12 months hence instead of a regional workshop, APG offered to train the Niue officers at their headquarters. The offer was made for 2 people from the Crown Law Office being responsible for the legislative framework and an officer from either the Police (regulatory) or Customs department. The Police and Customs were unable to select any nominee thus only the Crown Law representative was able to attend.

2. Mutual Evaluation Process

The ME process will provide a snapshot of Niue's compliance with the FATF recommendations, compliance ratings and recommendations to improve Niue's systems. The report will be published once it is adopted and will be a reference document on whether a special implementation procedure will need to be drawn up by APG for Niue. The process will involve an assessment of each individual FATF recommendation and an assessment of anti-money laundering (AML) risk and combating the financing of terrorism (CFT) effectiveness. The evaluators will also assess the arrangements of the Financial Intelligence Unit (FIU) and Designated Non-Financial Body Procedures (DNFBP). Additionally the evaluators will assess the circumstances in which the current laws and other enforceable means (regulatory framework) will satisfy the FATF standards.

The ME is a lengthy process and a proposed timeline for Niue is as follows:

Key Times:

1. Start to prepare MEQ at least 6 months before it is due
2. Complete MEQ 8 weeks before on-site
3. Secretariat to prepare partial draft MER in advance
4. Complete draft meeting schedule 4 weeks before on-site
5. On-site visit: 13–15 days, with 7-9 days of meetings, 3-5 days of write up on-site + wrap up meeting
6. Draft MER considered by APG Expert Quality Control Group
7. 1st draft MER – to jurisdiction 12-14 weeks after on-site visit
8. Review by jurisdiction + comments – 5 weeks to comment (often second review)
9. Executive Summary/ROSC
10. Draft MER to APG members 28 days before Annual Meeting
11. Plenary discussion – adoption of MER and summary
12. Publication and follow-up process.

The ME process involves the filing of a ME Questionnaire (MEQ) and the more comprehensive the MEQ will be the easier it will be for the final stages which will commence under paragraph 6 above. A comprehensive MEQ will contain data or statistics that conveys the effectiveness of existing systems or as proof to support the statements in the MEQ. For instance if Niue has a ‘nil’ response to any part of the MEQ this is to be supported with factual data through tables or graphs collected by relevant GON departments. Supporting data will add to the ratings given to each recommendation. The final report will contain a rating that is a composite of the rating for each recommendation as opposed to an aggregated rating. Therefore should Niue fulfil all the requirements of one part of the MEQ but lack information for other parts the overall rating for Niue will be reflective of that.

3. Current Legislation

The Financial Transactions and Reporting Act (FTRA) 2006 was used as the main legislative reference during the training and the Secretariat were impressed that our legislation covered majority of the FATF recommendations. However the implementation side may impact on the MEQ as although legislatively the processes are in place we have not had the opportunity to fully implement them due to minimal financial and suspicious transaction activities here on Niue. Hence the effectiveness of our legislation is yet to be fully tested.

Therefore our legislation complies to a large extent with the FATF recommendations and the only weakness so far that was identified during the training is that it does not cover DNFBP which are private lawyers and accountants. The reason may have been that in 2006 when the FTRA was drafted there were no DNFBPs on Niue and it is only recent that we have a lawyer and an accountant in private practice. Hence there is a need to amend our current legislation to cover for DNFBPs.

4. AUSTRAC

The APG Secretariat arranged a visit to Australia’s Transactions Reports and Analysis Centre where meetings were held with the FIU personnel and Austrac’s Pacific section. Both meetings were fruitful as Austrac advised that for a small FIU such as Niue the vital factors are to ensure that a proper paper trail is in place to log transactions and enable a search and retrieve system as well as flagging suspicious transactions. A simple system using Excel may also assist with statistic purposes for analyses. The wide dissemination of information is also considered important for the improvement of the existing

systems.

The Pacific Section of Austrac was able to sight Niue's FIU forms and advised that they need to be standardised and designed in a way that the requirements are brief but the information to be obtained is restricted to only the necessary information. Austrac provided copies of their forms for Niue's reference and to assist with the review of our forms.

During the discussions, Austrac offered that since New Zealand is our gateway and they have relevant forms in place such as passenger arrival and departure declaration forms in particular the section regarding travelling with more than \$10,000 that Niue implements the same reporting requirements. This will allow for mirror reporting and ease of reference if we are to require New Zealand assistance in a suspicious transaction matter.

5. Conclusion

Niue is the smallest member of the APG and the Pre-ME training is necessary to help with preparation of the upcoming on-site visit. The Secretariat advised that from their experience a member who undertakes the pre-ME training have always been more helpful during the ME process. The training offered an insight on what the APG expectations are and how Niue can accommodate and cater to the evaluators.

It is important to note that the MEQ is the prerogative of Niue to submit and the on-site visit will assess the MEQ and the processes that are in place on Niue. Overall the training enabled the APG secretariat to establish relations with Ms. Hekau who will be the co-ordinator for the MEQ process.

6. Recommendation

It is recommended that Cabinet endorses the:

1. Timeline provided in paragraph 2 of this report; and
2. Note the timing of the ME on-site visit to be held on the week of 21 – 25 November, 2011.

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7th July, 2011