

# AML/CFT ‘Early’ Regulatory Package: Exposure Draft

February 2023



MINISTRY OF  
**JUSTICE**  
*Tabu o te Ture*

New Zealand Government

# Overview

The Ministry of Justice has concluded its statutory review of the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 and broadly found that the Act provides a sound regulatory regime that provides the basis to detect and deter money laundering and terrorism financing, but that there are some issues that prevent the regime from being the best it can be for New Zealand.

In response, the Government approved a package of regulatory changes which, at a high-level, respond to the following issues identified in the statutory review:

- Gaps in regulations relating to known high-risk areas of cash, virtual assets, high-risk countries, and high-risk customers. These gaps mean that important intelligence is not being provided, small cash purchases of high-value goods are occurring through pawnbrokers (and outside of the AML/CFT regime, since pawnbrokers are currently exempt from the regime), and generally that important AML/CFT obligations do not match the level of risk in these areas. These are also all areas where we do not comply with Financial Action Task Force (FATF) standards.
- There is limited visibility of how remittance networks operate (such as who their agents are and who is responsible for their compliance) which means there is limited assurance about whether relevant obligations are being met.
- The FATF Standards require information on the parties to a wire transfer to be available to all financial institutions that are part of a chain of transactions and to government agencies. This enables transactions to be traced internationally and suspicious transactions to be identified. We do not currently meet these standards.
- Agencies that observe money laundering and other harms are currently unable to share information with the AML/CFT regime if the information was supplied or obtained under legislation not listed in section 140 of the AML/CFT Act.
- Many definitions and terminology are out of date, unclear, or not fit-for-purpose. This means the regime does not work as effectively as possible to detect and deter money laundering and terrorism financing and places a higher cost on business to comply with their obligations.
- Some obligations are set to a standard of risk higher than actual risk, causing unnecessary costs to business.

As the Government has already approved the regulatory package, the legislative and policy parameters have been set. We are therefore seeking your feedback on a draft of these regulations (contained in a separate document to this). We are mainly interested in whether the wording of the draft regulations is sufficiently clear and meets the intended purpose of the regulations, or how it could be made clearer, and whether anything may create unintended consequences due to the way it is drafted.

For some regulations we ask specific questions as we work through the best way to provide clarity to a broader regulatory goal; for example, in relaxing requirements for low-risk trusts.

We also welcome any other comments you have. Your answers will inform the content of the final regulatory package.

This consultation document explains the policy objectives that the draft regulations are based on. The underlying policy decisions have been agreed to by Cabinet and are not likely to change at this point.

If you have questions about the consultation, please email us at [aml@justice.govt.nz](mailto:aml@justice.govt.nz).

## How to have your say

- Give your feedback online at [consultations.justice.govt.nz](https://consultations.justice.govt.nz)
- Email your submission to [aml@justice.govt.nz](mailto:aml@justice.govt.nz)
- Post your submission to: Terrorism and Law Enforcement Stewardship team Ministry of Justice SX10088 Wellington New Zealand

**Please send us your feedback by 5pm, Friday 14 April 2023.**

## Next steps

After the consultation period, we will analyse the submissions and report to the Justice Minister. The Justice Minister may then seek Cabinet's agreement to issue the regulations.

## Personal information and confidentiality

We will hold your personal information in accordance with the Privacy Act 1993.

We will accept submissions made in confidence or anonymously. If you want your submission to be treated as confidential, we asked you to clearly indicate that in your submission.

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 1993. These laws have provisions to protect sensitive information given in confidence but we can't guarantee the information can be withheld. We won't release individuals' contact details.

## How to read the tables

As noted above, these proposed regulations came from the recommendations made in the Statutory Review. These regulations form the 'early package', with the other recommendations being progressed through a medium- and long-term package. The early package was developed to provide relief and resolve issues where solutions were broadly supported through the statutory review and could be done through regulations. We have grouped the regulations by themes, but each regulation is distinct and comes from a specific recommendation in the statutory review.

To assist in consultation, for each regulation we have outlined:

- the corresponding recommendation number in the statutory review,
- the regulatory objective agreed to by Cabinet, and the corresponding number in the cabinet paper, and
- the regulatory instrument it is contained in.

# Contents

<b>Overview .....</b>	<b>i</b>
How to have your say .....	ii
Next steps.....	ii
Personal information and confidentiality.....	ii
How to read the tables.....	iii
<b>Part 1 - Addressing areas of risk.....</b>	<b>6</b>
Stored Value Instruments .....	6
Pawnbrokers.....	6
Border cash reports .....	7
High risk countries .....	8
High risk customers: legal persons and arrangements.....	8
Suspicious activity reports and customer due diligence .....	9
High risk customers: Source of wealth (SOW) versus source of funds (SOF) .....	10
High risk customers: Additional Enhanced CDD measures.....	11
<b>Part 2 - Clarifying definitions and exemptions .....</b>	<b>12</b>
<b>Part 3 - Virtual Assets .....</b>	<b>14</b>
Definition.....	14
Transaction threshold .....	14
International wire transfer obligations.....	15
<b>Part 4 - Remittance networks .....</b>	<b>16</b>
<b>Part 5 - Information sharing.....</b>	<b>17</b>
<b>Part 6 - Clarifying obligations.....</b>	<b>18</b>
Customer due diligence .....	18
Record keeping.....	19
Customer due diligence: beneficial owner.....	20
Customer Due Diligence: Risk based.....	20
Ongoing CDD: information for account monitoring .....	21
Ongoing CDD: non-financial transactions .....	22

Reliance on CDD conducted by another party .....	22
Use of new technologies.....	24
<b>Part 7 - Improving transparency of payments.....</b>	<b>25</b>
<b>Part 8 - Providing regulatory relief .....</b>	<b>27</b>
Trustee or nominee services.....	27
Crown entities.....	27
Registered charities .....	28
Non court appointed liquidator .....	29
Address verification .....	29
Other .....	30

# Part 1 - Addressing areas of risk

## Stored Value Instruments

The current definition of a 'stored value instrument' is intended to cover instruments such as vouchers and gift cards, as well as similar value instruments like travel cards. However, the definition requires that the instrument be portable (implying tangibility), which excludes other purely digital or electronic types of stored value instruments that have since been developed.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
71	1	Amend the definition of "stored value instruments" in clause 15 of AML/CFT (Definitions) Regulations 2011 and clause 15 of the AML/CFT (Exemptions) Regulations 2011 to be technology neutral to capture electronic or digital forms of stored value.	AML/CFT (Exemptions) Regulations: 27, AML/CFT (Definitions) Regulations: 15

## Pawnbrokers

Pawnbrokers are fully exempt from the AML/CFT Act (but subject to obligations in the Secondhand Dealers and Pawnbrokers Act 2004) when they may engage in relevant cash transactions under the Act's definition of High Value Dealers (HVDs). Pawnbrokers are exposed to money laundering and terrorism financing risk when engaging in these cash transactions. Additionally, pawnbrokers may have a small commercial advantage over other HVDs that are not exempted.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
61	2	Amend the exemption to no longer apply to pawnbroker activities that meet the definition of high-value dealer and clarify	AML/CFT (Definitions) Regulations: 18

that pawning is not captured under the Act as providing a loan.

## Border cash reports

The Government has agreed to address several issues with Border Cash Reports (BCR):

- Currently, a BCR is not required for movements of value across the border that do not involve currency or bearer-negotiable instruments, such as vouchers, casino chips, or precious metals and stones. This represents a potential vulnerability that could be exploited.
- The point at which cash is considered brought into or taken out of New Zealand is not defined in the Act, and Customs instead relies on the definitions of import and export in section 5 of the Customs and Excise Act 2018. Under this approach, cash leaving New Zealand must pass the 12 nautical mile limit contiguous zone to become an export, but this can cause difficulties for Customs' enforcement of BCR obligations where cash has been intercepted and seized before it has left Customs' control and no report has been filed. Furthermore, the timing of requirements to complete and submit a BCR for unaccompanied cash is not set in the Act. This makes it difficult for Customs to get cash verification processes in place, if needed.
- BCRs are not necessary for cash on board vessels, such as cruise ships, that is for vessel-related purposes where the cash does not leave the vessel.
- Section 69 of the Act requires that a person must not receive cash moved to the person from outside New Zealand. This section is intended to apply only to unaccompanied cash movements, but the current drafting is unclear. Furthermore, it is unclear how practical this reporting requirement is, and unclear what intelligence value it provides.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
207	3	Require people to submit border cash reports when moving stored value instruments and casino chips into or out of New Zealand.	AML/CFT (Cross border cash) Regulations: 4
211	4	Require border cash reports to be submitted 72 hours before the cash arrives in or leaves New Zealand for unaccompanied cash movements.	AML/CFT (Cross border cash) Regulations: 4



M958A	5	Exempt certain vessels, such as cruise ships, from border cash reporting requirements for cash being carried for vessel-related purposes that does not leave the vessel.	AML/CFT (Cross border cash) Regulations: 5
M958B	6	Exempt persons from being required to submit a border cash report if they have received an accompanied cash movement to ensure that BCRs are only required in respect of receiving unaccompanied cash.	AML/CFT (Cross border cash) Regulations: 4

## High risk countries

As a result of the FATF blacklisting the Democratic People’s Republic of Korea (DPRK), New Zealand is expected to identify and implement appropriate countermeasures against the DPRK in order to combat the global risks it poses. The proposed regulation implements the the FATF requirement to take the necessary measures to close existing branches, subsidiaries, and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
187	7	Prohibit businesses from establishing or maintaining correspondent relationships with Democratic People’s Republic of Korea banks, in line with the Call for Action issued by the Financial Action Task Force.	AML/CFT (Requirements and Compliance) Regulations: 38 (15)

## High risk customers: legal persons and arrangements

Due to the potential use of legal persons and arrangements to mask criminal activity, we explored options to ensure that businesses understand the legal structures of their customers. This is consistent with the FATF Standards that require businesses to understand the nature of the customer’s ownership and control structure, and to obtain and verify its legal form and proof of existence and powers that bind and regulate (e.g., understanding voting rights or founding documents setting out how the legal person or arrangement can operate).

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
121	9	Prescribe that reporting entities must obtain, as part of customer due diligence, information about legal form and proof of existence, ownership and control structure, and powers that bind and regulate, and verify this information according to the level of risk.	AML/CFT (Requirements and Compliance) Regulations: 34
116	28	Require reporting entities to obtain the identity of the settlor or protector of a trust, nominees in relation legal persons, and other equivalent positions for other types of legal arrangements to ensure reporting entities are taking reasonable steps to verify the beneficial ownership of these customers.	AML/CFT (Requirements and Compliance) Regulations: 34



We acknowledge that in some circumstances it may be difficult to obtain or verify identity information relating to the settlor of a trust, for example, is the settlor is deceased. Should the drafting include regulatory relief in circumstances where it is not possible to conduct CDD on a settlor? If so, how should we approach this?

## Suspicious activity reports and customer due diligence

There is currently a gap in the Act relating to transactions occurring outside of a business relationship, but under any applicable threshold to be captured as an occasional transaction. While these transactions are typically considered low risk, this is not always so. Notably, there are some types of high-risk or suspicious transactions that may only be relatively low value (e.g., where there is risk of terrorism financing or online child exploitation).

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
127	8	Prescribe that customer due diligence must be conducted if a person seeks to conduct an activity or transaction through a reporting entity that is (a) outside a business relationship, (b) not an occasional transaction or activity, and (c) where there may be grounds to report a suspicious activity as per section 39A of the Act.	AML/CFT (Requirements and Compliance) Regulations: 37
M6.1.9	12	Declare that simplified CDD is not appropriate where there may be grounds to report a suspicious activity as per section 39A of the AML/CFT Act.	AML/CFT (Requirements and Compliance) Regulations: 36

## High risk customers: Source of wealth (SOW) versus source of funds (SOF)

Enhanced Customer Due Diligence (CDD) is a key component of determining whether a high-risk customer, transaction or situation is suspicious, or whether activities appear high risk but can ultimately be established as legitimate.

Under the Act's current settings, the enhanced CDD measures are limited to obtaining and verifying information regarding source of wealth OR funds. There is no differentiation between the two even though they can be quite different.

Source of funds is 'where' the specific funds are coming from, while source of wealth is broader and relates to the customer's overall financial assets.

The lack of differentiation means enhanced CDD efforts may not necessarily be directed at which of the two, or both, is most relevant to mitigate the risks. As a result, funds in control of a high net wealth individual might be automatically assumed to be legitimate, regardless of the specific circumstances in a particular transaction.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
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123	10	Prescribe that reporting entities must differentiate in their AML/CFT compliance programme when information must be obtained and verified regarding source of wealth or source of funds, or both, as is required to mitigate the risks.	AML/CFT (Requirements and Compliance) Regulations: 38
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## High risk customers: Additional Enhanced CDD measures

Enhanced CDD is a key component of determining whether a high-risk customer, transaction or situation is suspicious, or whether activities appear high risk but can ultimately be established as legitimate. Under the Act's current settings, the enhanced CDD measures are limited to obtaining and verifying information regarding SOW or SOF. The AML/CFT Act does not include options for implementing other enhanced CDD measures to mitigate risks.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
124	11	Prescribe that reporting entities must implement any additional enhanced customer due diligence measures at the start and for the duration of a business relationship as are required to mitigate the risks and provide a list of potential additional measures the reporting entity may apply.	AML/CFT (Requirements and Compliance) Regulations: 37



This regulation is intended to require implementation of one or more of these additional enhanced CDD measures only if and where it is necessary to do so to effectively mitigate the risks. Does the drafting achieve its purpose? If not, how should we approach this?

# Part 2 - Clarifying definitions and exemptions

The statutory review found that many of the Act’s definitions and terminology are out of date, unclear, or not fit-for-purpose. This means the regime does not work as effectively as possible to detect and prevent money laundering and terrorism financing and places a higher cost on businesses to comply with their obligations.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
65	16	Define that a reporting entity that undertakes captured activities other than relating to its category of reporting entity must comply with the Act.	AML/CFT (Requirements and Compliance) Regulations: 38
66	17	Exclude from the definition of “trust and company service provider” persons whose only activity is “managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets” if that person is already captured as a financial institution.	AML/CFT (Definitions) Regulations: 20
67	18	Specify that “sums paid as fees for professional services” in the definition of “managing client funds” only applies to the reporting entity’s own professional fees.	AML/CFT (Definitions) Regulations: 9
68	19	Clarify the scope of “engaging in or giving instructions on behalf of a customer to another person” and the extent to which it captures processing or preparing invoices and applies to real estate transactions.	AML/CFT (Definitions) Regulations: 9
M4.2.7	20	Limit the exclusion of cheque deposits in the definition of “occasional transaction” only to deposits made at a bank, non-bank deposit taker, or similar institution in line with the original policy intent.	AML/CFT (Definitions) Regulations: 11

M4.2.7	21	Define “legal arrangement” to include unincorporated societies and any other types of legal arrangements to ensure that forming or operating those arrangements attracts AML/CFT obligations.	AML/CFT (Definitions) Regulations: 10
M4.2.7	22	Amend clause 15 of the AML/CFT (Definitions) Regulations 2011 and clause 15 of the AML/CFT (Exemptions) Regulations 2011 to clarify the extent to which they apply to the bulk-selling of stored value instruments to a corporate customer, in circumstances in which each stored value instrument complies with the relevant threshold and is intended for a different recipient.	AML/CFT (Exemptions) Regulations: 27
M4.4.6	23	Clarify that the definition of “debt collection services” in clause 22 of the AML/CFT (Exemptions) Regulations 2011 only relates to the collection of unpaid debt rather than the collection of any funds owed by one person to another.	AML/CFT (Exemptions) Regulations: 28
M4.4.6	24	Clarify that the exemption provided by clause 9 of the AML/CFT (Exemptions) Regulations 2011 applies to hotel providers which only undertake currency exchange transactions below NZD 1000.	AML/CFT (Exemptions) Regulations: 24
M6.1.9	25	Amend the definition of nominee director in clause 11 of the AML/CFT (Requirements and Compliance) Regulations 2011 to exclude instances where the director is required or accustomed to follow the directions of a holding company or appointing shareholder.	AML/CFT (Requirements and Compliance) Regulations: 34
77 & 78	26	Revoke clause 21 of the AML/CFT (Definitions) Regulations 2011 and replace with a more tailored exemption for online marketplaces following a risk assessment of the relevant activities.	AML/CFT (Exemptions) Regulations: 25
80	27	Clarify the scope of clause 18A of the AML/CFT (Definitions) Regulations 2011, by limiting the application of the exclusion to financial institutions only.	AML/CFT (Definitions) Regulations: 17

# Part 3 - Virtual Assets

## Definition

Currently, there is no clear definition of virtual asset service providers (VASPs) under the AML/CFT Act, instead they are covered under section 5 as Financial Institutions meaning not all types of VASPs are captured. There is an opportunity to provide proper clarity to enable AML/CFT obligations to be met, especially as this is considered a high-risk sector.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
54	13	Define virtual asset service providers as a type of reporting entity using the definition provided by the Financial Action Task Force.	AML/CFT (Definitions) Regs: 16

## Transaction threshold

There are currently no specific provisions for occasional transactions involving virtual assets (such as crypto currencies and non-fungible tokens), although some relevant transactions are captured through existing provisions in the Act. For example, the existing thresholds that apply to cash also apply to virtual asset transactions, and vice versa, of NZD 10,000. However, this does not comply with the FATF Standards, which require all virtual asset occasional transaction thresholds to be set at USD/EUR 1,000 due to the inherent risks associated with virtual assets. This approach also does not include virtual asset to virtual asset transactions.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
55	14	Prescribe that all virtual asset transactions at or above NZD 1,000 are occasional transactions, including virtual asset to virtual asset transfers.	AML/CFT (Definitions) Regulations: 14

## International wire transfer obligations

The definition of wire transfers does not cover some types of virtual asset transfers while the extent to the definition cover other transfers of virtual assets is unclear. This creates uncertainty for virtual asset service providers and gaps in the regime.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
56	15	Prescribe virtual asset transfers as international wire transfers unless the entity is satisfied otherwise. Appropriate identity and verification requirements should also be prescribed that reflect the nature and risk of the underlying transactions, such as differentiating between hosted and unhosted wallets.	AML/CFT (Requirements and Compliance) Regulations: 38

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# Part 4 - Remittance networks

Because Money Value Transfer Service (MVTs) providers (or ‘remitters’) can be involved in both sides of the transaction, they may be in a position to spot suspicious activity that otherwise might not be spotted. The Government has therefore agreed that MVTs providers which control both the ordering and beneficiary end of a wire transfer should consider information from both sides of the transfer to determine whether a suspicious activity report (SAR) is required. If a SAR is required, this should be submitted to the FIU in any of the countries affected by the suspicious transfer.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
165	76	Require remitters who control both the ordering and beneficiary end of a wire transfer to consider information from both sides of the transfer to determine whether a suspicious activity report is required. If so, the report should be submitted to the Financial Intelligence Unit in any countries affected by the suspicious transfer.	AML/CFT (Exemptions) Regulations: 32

# Part 5 - Information sharing

Several key Acts are currently not included under section 140 of the AML/CFT Act; either through the statutory list or through regulations as provided for under section 140(2)(x). The key agencies responsible for the listed legislation have observed money laundering and other harms but are currently unable to share information with the AML/CFT agencies.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
M3.6.2	59	Include within scope of section 140 the following Acts: Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, Animal Welfare Act 1999, Biosecurity Act 1993, Child Support Act 1991, Commerce Act 1986, Corrections Act 2004, Defence Act 1990, Environment Act 1986, Fisheries Act 1996, Food Act 2014, Forests Act 1949, Gaming Duties Act 1971, Immigration Act 2009, Policing Act 2008, Student Loans Scheme Act 2011, Trusts Act 2019 and Wine Act 2003.	AML/CFT (Requirements and Compliance) Regulations: 38

# Part 6 - Clarifying obligations

## Customer due diligence

Customer due diligence is a key obligation on reporting entities. Through the statutory review we explored how obligations could be either clarified (where there is some confusion or lack of precision on the obligation), or made more risk-based, to reduce compliance costs for reporting entities.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
144	35	Clarify the application of AML/CFT obligations in circumstances where a designated non-financial business or profession has a repeat client but does not have ongoing instructions, activities, or transactions occurring within a business relationship.	AML/CFT (Requirements and Compliance) Regulations: 37
139	38	Prescribe appropriate customer due diligence obligations for the formation of a legal person or legal arrangement. This should include a requirement to identify and verify the identities of the beneficial owners of the (to be formed) legal person or arrangement, as well as any person acting on their behalf.	AML/CFT (Definition) Regulations: 8
140	39	Prescribe the customer as the relevant legal person or arrangement when acting or arranging for someone to act as a nominee director, nominee shareholder or a trustee.	AML/CFT (Requirements and Compliance) Regulations: 8
185	40	Prescribe that the references to countries with insufficient AML/CFT systems or measures in place in sections 22(1)(a)(ii), 22(1)(b)(ii), and 57(1)(h) refers exclusively to those countries identified by the	AML/CFT (Requirements and Compliance) Regulations: 38

Financial Action Task Force as being high-risk jurisdictions subject to a Call to Action.

M6.1.9	41	Clarify that a conjunction agent (acting for a real estate agent whose client is a vendor) does not have any direct obligations to conduct customer due diligence on the vendor, but that suspicious activity reporting obligations continue to apply.	AML/CFT (Requirements and Compliance) Regulations: 19
M6.1.9	42	Amend clause 12 of the AML/CFT (Requirements and Compliance) Regulations 2011 to state “a customer ...that is b) a limited partnership or overseas limited partnership with a nominee general partner”.	AML/CFT (Requirements and Compliance) Regulations: 35

## Record keeping

Effective record keeping is key for an AML/CFT regime to operate effectively. The purpose of keeping records is three-fold: it should enable law enforcement agencies to reconstruct individual transactions to investigate and if necessary, provide evidence for prosecution of criminal activity. It should also enable businesses to review and reconstruct a customer’s transaction history when undertaking ongoing CDD and account monitoring, and to report suspicious activity. Finally, it should provide sufficient basis for supervisors to determine the extent to which a business is complying with obligations, particularly CDD and account monitoring obligations.

The statutory review found two gaps in the current regime:

- Businesses are not required to keep records of prescribed transaction reports.
- The Act does not set out how long businesses should retain account files, business correspondence, and written findings.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
M6.2.2	43	Require reporting entities to keep records of prescribed transaction reports, account files, business correspondence, and written findings for five years.	AML/CFT (Requirements and Compliance) Regulations: 38

## Customer due diligence: beneficial owner

The current definition of beneficial owner poses challenges for businesses and the regime overall. It does not include a person with "ultimate ownership or control". This may lead to certain persons not being identified as beneficial owners that should be, which means that businesses may not fully appreciate the risks associated with the customer. Conversely, both limbs of the definition include a person on whose behalf a transaction is conducted (POWBATIC). This may result in other persons being caught by the definition unnecessarily such as customers of customers and significantly increases compliance costs for businesses.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
118	29	Clarify that the definition of beneficial owner includes a person with ultimate ownership or control, and only applies to a "person on whose behalf a transaction is conducted" that meets this threshold, whether directly or indirectly.	AML/CFT (Definitions) Regulations: 7
119	30	Revoke clause 24 of the AML/CFT (Exemptions) Regulations 2011 in relation to trust accounts.	AML/CFT (Exemptions) Regulations: 28



Initial analysis suggests that clarifying the definition of beneficial owner as above would make parts of the current managing intermediaries exemption redundant; in particular, the parts of the exemption relating to "person on whose behalf a transaction is conducted". However, the exemptions relating to LMI and the exemption from enhanced CDD for SMI are unaffected by this change to the beneficial owner definition.

Do you agree that the elements in the managing intermediaries exemption relating to "person on whose behalf a transaction is conducted" are redundant following the change to the definition of beneficial owner as above?

## Customer Due Diligence: Risk based

Many of the requirements of the Act are risk-based, in that they are required to be implemented according to the level of risk posed by the customer, transaction, or

activity. A risk-based approach applies to the level of required verification of CDD information and the frequency and intensity of ongoing CDD and account monitoring.

To assist and support businesses in navigating the Act’s risk-based requirements, the Government has agreed to explicitly require businesses to risk-rate customers as part of CDD, including ongoing CDD.


While businesses must review CDD information when undertaking ongoing CDD and account monitoring, there is no explicit requirement to update a customer’s records during this process (outside of situations when enhanced CDD is triggered). Similarly, there is no explicit requirement to consider when CDD was last conducted. Without updating relevant customer records, businesses may not have a full understanding of their customer’s identity and risk profile. This does not comply with the FATF Standards.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
133	31	Explicitly require that reporting entities risk-rate new customers as well as require reporting entities to consider and update risk ratings as part of ongoing customer due diligence and account monitoring over the course of a business relationship.	AML/CFT (Requirements and Compliance) Regulations: 37
135	33	Require reporting entities to, according to the level of risk involved and as part of ongoing customer due diligence, update (for a post-Act customer) or obtain (for an existing customer) customer due diligence information if required.	AML/CFT (Requirements and Compliance) Regulations: 38

## Ongoing CDD: information for account monitoring

Section 31 combines ongoing CDD and account monitoring obligations together. It is not always clear what is needed for each, and how to apply a risk-based approach to these obligations.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
134	32	Clarify that the requirement of section 31(4)(a) and (b) to review a customer's account activity, transaction behaviour and customer due diligence information (or for an existing customer, other information held) is according to the level of risk involved.	AML/CFT (Definitions) Regulations: 37



This regulation, and SR135 above, are not intended to impose a disproportionate (or blanket) requirement to regularly obtain or update CDD records across all customers. It is only intended to apply as part of risk-based reviews during ongoing CDD and account monitoring to ensure that the risks associated with a post-Act or existing customer can be properly identified and assessed. Does the drafting achieve this purpose? If not, how should we approach this?

## Ongoing CDD: non-financial transactions

Section 31 of the AML/CFT Act only contains explicit requirements to monitor financial transactions. There is no accompanying requirement to monitor other activities, including DNFBP activities within a business relationship, such as actions as a nominee or trustee, real estate agency work or providing a business or correspondence address.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
136	34	Issue regulations of the Act to state "regularly review any customer's activities described in the definition of designated non-financial business or profession in section 5(1) of the Act." These changes should then be enacted in section 31 of the Act.	AML/CFT (Requirements and Compliance) Regulations: 37

## Reliance on CDD conducted by another party

A fundamental AML/CFT principle is that each business is responsible and liable for conducting CDD on its customer to the level required by the Act. That said, both the AML/CFT Act and the FATF Standards include mechanisms for a business to rely on

CDD conducted by another party, without needing to conduct it again in full. This includes relying on another unrelated reporting entity (or equivalent business overseas) that already has a business relationship with the customer.

There are some circumstances where conditions for relying on a third party do not comply with the FATF standards. This arises in relation to record keeping and reliance on a third party in an overseas jurisdiction, which poses some vulnerability to the AML/CFT system. Closing these gaps will ensure that ML/TF risks are mitigated.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
176	44	Prescribe that the relying party must consider the level of country risk if the relied-on party is not in New Zealand when engaging in section 33(2)(e) reliance.	AML/CFT (Requirements and Compliance) Regulations: 38
177	45	Prescribe that the relying party to take steps to satisfy itself when engaging in section 33(2)(e) reliance that the relied-on party has record keeping measures in place and will make verification information available as soon as practicable on request, but within five working days.	AML/CFT (Requirements and Compliance) Regulations: 38
181	46	Prescribe that the relevant AML/CFT supervisor is required to approve formation of a designated business group.	AML/CFT (Requirements and Compliance) Regulations: 38
M862	47	Prescribe that an overseas member of a designated business group must conduct customer due diligence to level required by the AML/CFT Act.	AML/CFT (Requirements and Compliance) Regulations: 38
M862	48	Clarify that “verification information” (for the purposes of these sections 32 to 34 of the AML/CFT Act) means a copy of the records used by the relied-on party to verify customer identity.	AML/CFT (Requirements and Compliance) Regulations: 38



## Use of new technologies

Developing new products, new delivery mechanisms, and using new or developing technologies can expose a business to emerging risks not previously considered. As a result, the FATF Standards require businesses to identify, assess, and mitigate the risks associated with developing or using new products, practices, and technologies.

Section 30 of the AML/CFT Act only specifies that additional measures must be taken if the new technology or the product favours anonymity. There is no explicit requirement for a risk assessment.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
166	49	Require businesses to assess the money laundering and terrorist financing risks associated with new products and new business practices. The risk assessment should consider new delivery mechanisms, as well as the use of new or developing technologies for new and existing products. The risk assessment must be conducted before the technology or product is used.	AML/CFT (Requirements and Compliance) Regulations: 38

# Part 7 - Improving transparency of payments

The FATF Standards require information on the parties to a wire transfer to be available to all financial institutions that are part of a chain of transactions and to government agencies. This enables transactions to be traced internationally and suspicious transactions to be identified. New Zealand does not currently meet these standards.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
168	50	Prescribe that all forms of money or value transfer service systems, including informal remittance, are subject to wire transfer provisions.	AML/CFT (Requirements and Compliance) Regulations: 38
169	51	Require ordering institutions to obtain and transmit name and account or transaction numbers for an originator and beneficiary of an international wire transfer below NZD 1,000 and specify that this information does not need to be verified unless there may be grounds to report a suspicious activity report.	AML/CFT (Requirements and Compliance) Regulations: 38
M823	52	Issue regulations to require an ordering institution to keep records of then beneficiary account number or unique transaction numbers for five years.	AML/CFT (Requirements and Compliance) Regulations: 38
171	53	Require intermediary institutions to include in their compliance programme the reasonable steps they will take to identify wire transfers lacking required information and the risk-based policies and procedures they will apply when a wire transfer lacking the required information is identified.	AML/CFT (Requirements and Compliance) Regulations: 38
172	54	Require intermediary institutions to keep records for five years where technological limitations prevent the relevant information	AML/CFT (Requirements and

		about the parties from being transmitted with a related domestic wire transfer.	Compliance) Regulations: 38
174	55	Require beneficiary institutions to specify in their compliance programme the reasonable steps they will take to identify international wire transfers lacking required originator and beneficiary information. These measures should be risk-based and can include post-event or real time monitoring where feasible and appropriate.	AML/CFT (Requirements and Compliance) Regulations: 38
197	56	Prescribe or exempt specific transactions (e.g., MT202s and certain currency exchange transactions) from requiring prescribed transaction reporting, including requiring reports when a remittance provider deposits cash into a beneficiary's bank account to settle an inbound remittance.	AML/CFT (Prescribed Transaction Reporting) Regulations: 40 (9)
198	57	Require designated non-financial businesses or professions to submit a prescribed transaction report when undertaking or receiving international wire transfers through another reporting entity on behalf of an underlying client. The report should include relevant information it holds as well as information necessary to enable the FIU to match complementary prescribed transaction reports submitted by other businesses.	AML/CFT (Prescribed Transaction Reporting) Regulations: 41
199	58	Declare that a designated non-financial business or profession is not the ordering or beneficiary institution of a wire transfer when undertaking or receiving international wire transfers through another reporting entity on behalf of an underlying client.	AML/CFT (Exemptions) Regulations: 14

# Part 8 - Providing regulatory relief

## Trustee or nominee services

Many Designated Non-Financial Businesses and Professions (DNFBPs) provide 'acting as a trustee or nominee' services by establishing one or more separate companies. Typically, these are wholly owned and controlled subsidiaries of a DNFBP that have obligations under the Act, including in circumstances when the parent DNFBP also has the same obligations.

Many trustee or nominee companies are genuinely set up for administrative purposes only and do not pose any additional risks that cannot be effectively mitigated under the parent reporting entity's AML/CFT programme. There is an opportunity to provide regulatory relief to these types of companies in certain situations.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
83	60	Exempt companies that act as a trustee or nominee from AML/CFT obligations where the company is controlled by and delivering services on behalf of a parent reporting entity in New Zealand that has full AML/CFT responsibilities for activities of the nominee or trustee company subject to further engagement with the sector to determine how control should be defined and the appropriate amount of oversight that the parent reporting entity should maintain over the companies.	AML/CFT (Exemptions) Regulations: 31

## Crown entities

The statutory review recommended issuing a regulatory exemption to Crown entities, agents, and companies; however, the exemption would need to be risk based and not introduce vulnerabilities into the AML/CFT regulatory regime. Seventeen Crown entities, agents, or companies currently have at least a partial exemption from the Act, generally in relation to specific products or ventures.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
84	61	Exempt Crown-Owned Enterprises, Crown agents and other relevant Crown entities from AML/CFT obligations where they engage in low-risk activities (e.g. where the Crown is the sole customer of the activity, or where the Crown entity uses public funds to provide loans to the public with appropriate conditions necessary to manage any residual risks).	AML/CFT (Exemptions) Regulations: 31

## Registered charities

Low-value loans can play an important role in providing support to communities in need, and the funds are typically provided by charities and used to support community projects and social outcomes. However, providing loans attracts AML/CFT obligations, which can make it harder for organisations to provide this support, and these organisations often seek to be granted an exemption.

The statutory review recommended issuing a ministerial class exemption; however in planning for the implementation of the statutory review recommendations we considered this would be better implemented as a regulatory exemption. This allowed the Government to consider the merits of this exemption alongside other regulatory exemptions in this package and means that the exemption can be issued without a time limit on it (which will provide consistency to the NGO sector).

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
85	62	Exempt registered charities from AML/CFT obligations providing loans to customers below where the maximum amount that can be loaned to a customer is no more than NZD 6,000. This exemption should include conditions which limit the loans to one per customer and restrict the ability to repay loans quickly and in cash.	AML/CFT (Exemptions) Regulations: 31

## Non court appointed liquidator

Regulations were issued in 2021 for court appointed liquidations to clarify who should be considered the customer and ensure AML/CFT requirements were appropriately tailored. However, feedback from submitters indicated that clarifications should also be provided for non-court appointed liquidations, in respect of which the application of the Act can be challenging.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
82	63	Exempt non-court appointed liquidators from appropriate and relevant AML/CFT obligations where they are incompatible with the nature of the liquidator's work where there is a low risk of money laundering and terrorism financing.	AML/CFT (Exemptions) Regulations: 29

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## Address verification

Address verification imposes compliance costs disproportionate to the risk being mitigated. Reducing verification requirements would be cost saving for businesses.

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
114	64	Exempt all reporting entities from conducting address verification for all customers, beneficial owners and persons acting on behalf of a customer other than when enhanced CDD is required and instead require businesses to verify, according to the level of risk, that an address as genuine.	AML/CFT (Exemptions) Regulations: 31

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## Other

Statutory Review Recommendation #	Cabinet agreement #	Cabinet agreement	Regulatory Instrument and clause in draft
115	65	Declare that reporting entities can use reliable (but not independent) verification data, documents, or information in circumstances where a reliable and independent source of information does not exist. This does not apply to biographical information or information regarding source of wealth or source of funds.	AML/CFT (Requirements and Compliance) Regulations: 37
126	66	Prescribe the process that reporting entities must follow when conducting enhanced customer due diligence on trusts, including identifying types of trusts that are suitably low risk and other factors to consider when assessing the level of risk. Where trusts are suitably low-risk, exempt reporting entities from the requirement to verify relevant information about the source of wealth or source of funds.	AML/CFT (Requirements and Compliance) Regulations: 37
132	67	Enable a senior manager of a customer (that has been identified and verified in accordance with sections 19-20) to delegate authority to employees to act on behalf of the customer by electronic means with appropriate conditions and requirements to manage any residual risks.	AML/CFT (Requirements and Compliance) Regulations: 37
194	68	Extend the timeframe for law firms to submit a suspicious activity report to allow enough time for law firms to determine whether any information within a SAR is privileged.	AML/CFT (Requirements and Compliance) Regulations: 37
205	69	Extend the timeframe for submitting PTRs from 10 to 20 days.	AML/CFT (Requirements and Compliance) Regulations: 37
M4.4.6	70	Expand the exemption in clause 24AC of the AML/CFT (Exemptions) Regulations 2011 to include reporting entities subject to an order issued under section 252 of the Customs and	AML/CFT (Exemptions) Regulations: 30

Excise Act 2018 as well as in respect of any suspicious associates who are identified in the process of complying with the relevant order.

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M6.1.9	71	For a customer that is a vendor, amend clause 24A of the AML/CFT (Definitions) Regulations 2011 to require customer due diligence to be conducted prior to listing the property, or prior to the sale and purchase agreement being signed (whichever is earlier).	AML/CFT (Definitions) Regulations: 19
M862	72	Issue regulations to enable members of a designated business groups to share a compliance officer.	AML/CFT (Requirements and Compliance) Regulations: 37

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The regulation above related to enhanced CDD for low-risk trusts is intended to provide relief. To achieve this, we are considering whether the regulation needs to define what a low-risk trust is. This could be achieved through prescribing certain types of trusts that are low-risk (e.g. family trusts) or prescribing characteristics of a low-risk trust.

Do you agree that the regulation should define a low-risk trust? If so, what definition would provide the most amount of clarity?

What other elements of enhanced CDD should be prescribed as mandatory for trusts that are not low-risk?



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