Ministerial Exemptions Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

In accordance with section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("Act"), the Associate Minister of Justice granted the following exemption from the Act:

Ministerial Exemption: Foodstuffs South Island

Exempting Foodstuffs South Island (FSSI) from:

a. Sections 10–39 and 49–71 of the Act in relation to its operation of At-Call accounts owned by shareholding members (only) because:

    i. FSSI has in-depth knowledge of its members and undertakes a robust due diligence process on any person applying to become a member.

    ii. FSSI undertakes regular reviews and robust monitoring of its members.

The exemption is subject to the following conditions:

a. FSSI must continue to retain an in-depth knowledge of, and monitor, its members.

b. FSSI must comply with sections 39A to 48C of the Act in relation to its operation of At-Call accounts owned by shareholding members.

c. FSSI must comply with all sections of the Act in relation to the operation of At-Call accounts owned by non-members and in relation to all other activity relevant to being a reporting entity under the Act.

d. Where a non-member is any person, company, trust or any other entity not an active shareholding member in the cooperative, including but not limited to ex-members, staff, ex-staff, limited "related parties" of the aforementioned (related to members, ex-members, and current staff), and other "depositors" (ex-staff and people related to ex-staff).

e. FSSI must inform the Ministry of Justice of any changes that may affect the exemption and/or conditions imposed by this written instrument within 10 working days from which the change affecting the exemption occurs.

The reason to confine the exemption to shareholding members, only, is because FSSI's At-Call accounts owned by non-member account holders to be a high money laundering and financing of terrorism (ML/TF) risk. This is because:

General

a. While the risk of ML/FT in the securities sector (in which FSSI operates) is low, FSSI is also a cooperative and, as such, is highly vulnerable to the laundering of cash.

b. FSSI is a substantial issuer of debt securities on an ongoing basis to a substantial number of account holders, accepting (on average) significant deposits from the account holders on an ongoing basis. As such, FSSI is unlikely to be remote from the risk of ML/TF.

c. Without the discipline of the Act’s requirements, FSSI could not avoid or reduce the risk of ML/TF. This is of particular concern with respect to non-member account holders.

d. To approve a wholesale exemption for a reporting entity of FSSI’s scale does not appear to further the purposes, or maintain the integrity, of the Act.

e. There are no precedents of an exemption for a reporting entity with similar characteristics to FSSI. Foodstuffs North Island Limited (FSNI), which has an exemption from the Act, differs to FSSI in that its accounts are only available to members, it has significantly fewer accounts, and it does not offer the capacity for withdrawals.

f. A wholescale exemption would give FSSI (with respect to its non-member account holders which make up at least 42% of At-Call account holders) a competitive advantage relative to other reporting entities complying with the Act, where they offer deposits or other similar financial products to investors.

Volume of transactions/account activity

g. The high volume of transactions, which is relevant to ML/FT risk. In the year ending 28 February 2022, for example, there were 24,792 inflow (deposit) transactions and 11,034 outflow (withdrawal) transactions. Of these, 18% and 14%, respectively, related to non-member accounts.

Source of deposits

h. A significant proportion of deposits into At-Call accounts are not sourced from FSSI. In the year ending 28 February 2022, for example, 20% of all deposits into these accounts and 85% of deposits into accounts specifically owned by “related parties” and “depositors”, were not from FSSI.

Close relationships

i. FSSI’s inability to have close relationships with the sheer number of At-Call account holders (1,322 as at 28 February 2022), and particularly those who are “related parties” (45), “depositors” (296), companies (505) and their controlling members, as well as trusts (49) and their trustees and beneficiaries.

Accounts owned by “related parties” and “depositors” are of particular concern

j. The high and potentially increasing number and proportion of At-Call accounts owned by “related parties” and “depositors”. The number of “related parties” and “depositors” increased by 37 people between 28 February 2021 and 28 February 2022. As a proportion of all At-Call accounts, these account holders increased from 22% to 25%. Ex-members and ex-staff will continue to increase.

k. Due diligence procedures are only applied to new potential FSSI members, not to those categorised as “related parties” or “depositors”.

The exemption comes into force the day after publication.

The exemption will expire on 17 January 2028.

Any person wishing to provide comment on this notice should contact the Criminal Law Team at the Ministry of Justice by emailing amlcft.exemptions@justice.govt.nz.