

Hon Andrew Little

Minister of Justice

Proactive Release – Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT): High-Value Dealer Regulations

Date of issue: 8 August 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	AML/CFT Act 2009: Approval to Consult on High Value Dealer Regulations <i>Cabinet paper</i> Office of the Minister of Justice 29 November 2018	Released in full.
	Consultation Paper on Proposed Regulations for High Value Dealers <i>Attachment to Cabinet paper</i> Ministry of Justice 29 November 2018	Released in full.
2.	AML/CFT Act 2009: Release of Consultation Paper on Proposed High Value Dealer Regulations <i>Cabinet minute</i> Cabinet Office Meeting date: 5 December 2018	Released in full.
3.	AML/CFT (Definitions) Amendment Regulations 2019 <i>Cabinet paper</i> Office of the Minister of Justice 13 June 2019	<p>Some information withheld in accordance with section 9(2)(g)(i) of the OIA to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.</p> <p>Note that the copies of the regulations and commencement orders provided to Ministers with this paper have been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege.</p> <p>The legislative instruments are publicly available from www.legislation.govt.nz.</p>

No.	Document	Comments
4.	AML/CFT (Definitions) Amendment Regulations 2019 <i>Cabinet minute</i> Cabinet Office Meeting date: 18 June 2019	Released in full.

Chair, Cabinet Economic Development Committee

Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Approval to Consult on High Value Dealer Regulations

Proposal

1. This paper seeks the Committee's approval to publicly release the attached consultation document setting out proposals for regulations under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 (the Act).

Background

2. The Act aims to detect and deter money laundering and terrorism financing, maintain and enhance New Zealand's international reputation by implementing international standards on AML/CFT, and contribute to public confidence in the financial system. The Act has been in force since 2013, applying to banks, casinos, a range of financial service providers, and some trust and company service providers (referred to as Phase 1 reporting entities).
3. In August 2017, amendments were made to the Act to extend the AML/CFT regime to cover more businesses at risk of being targeted by criminals to launder money and finance terrorism. These 'Phase 2' reporting entities include lawyers, conveyancers, trust and company service providers, accountants, real estate agents, the New Zealand Racing Board¹ (NZRB), and certain businesses that deal in high value goods. Implementation is being phased in over two years.
4. In December 2017, the first tranche of regulations needed to support the implementation of the Phase 2 reforms were promulgated. These regulations were developed to support lawyers, conveyancers, trust and company service providers, and providers of accountancy services to comply with the Act. They also included amendments that affect all AML/CFT reporting entities (for example, requirements for suspicious activity reporting to Police).
5. In July 2018, regulations to support the inclusion of real estate agents in the regime were promulgated. Real estate agents are required to comply with the Act from 1 January 2019. Regulations to support the inclusion of the New Zealand Racing Board in the regime from 1 August 2019 were promulgated on 15 October 2018.

¹ The NZRB was initially included in the original Act under Phase 1, but received a Ministerial exemption until 1 August 2019.

Dealing in high value goods presents money laundering risks

6. A **high value dealer** is defined in section 5(1) of the Act as “a person who is in trade and in the ordinary course of business, buys or sells any [high value goods]² by way of cash transaction or series of related cash transaction, if the value of that transaction or those transactions is equal to or above the *applicable threshold value*.”

Key money laundering and terrorist financing risks of the high value dealer sector

7. Police intelligence and risk assessments indicate that high value goods are attractive to domestic and transnational organised criminal groups because such transactions can avoid interaction with the financial sector. The purchase of high value goods with cash can be used in the ‘placement’ stage of money laundering– the stage at which criminal proceeds are first inserted into the legitimate economy. Once purchased, high value goods can be easily recapitalised, transported, and concealed. They also maintain their value for long periods.

Case Study: Operation Wigram

In 2013, NZ Police Operation Wigram identified a simple scheme of buying and selling vehicles to launder criminal funds. The offenders used the proceeds of commercial burglaries and methamphetamine dealing to purchase less expensive vehicles in cash. These less expensive vehicles were soon after traded in for a single more expensive vehicle. Although simple, this structure allowed the offenders to structure the effective cash purchase of the final high-value vehicle and establish an origin of funds for the final transaction (the trade-ins).

Source: New Zealand Police

Current AML/CFT obligations for high value dealers

8. If an HVD accepts a cash transaction over the applicable threshold they are required to conduct customer due diligence and report cash transactions at or above \$10,000. They also may make a suspicious activity report to the Financial Intelligence Unit. However, unlike other reporting entities, HVDs are not required to conduct a risk assessment or maintain a compliance programme.
9. A less intensive AML/CFT regime for HVDs reflects the fact that the main money laundering and terrorism financing risks associated with HVDs are cash transactions, rather than the management of client funds or the creation of legal structures that can obfuscate the beneficial owner. Additionally, the HVD sector is not well-placed to implement a full AML/CFT programme and would have disproportionately higher compliance costs compared with other reporting entities.

Regulations relating to high value dealers

10. The attached consultation document contains proposals from the Ministry of Justice (the Ministry) for regulations relating to the ‘high value dealer’ sector. Consistent with

² **High value goods** are jewellery; watches; gold, silver, or other precious metals; diamonds, sapphires, or other precious stones; paintings; prints; protected foreign objects; protected New Zealand objects; sculptures; photographs; carvings in any medium; other artistic or cultural artefacts; motor vehicles; and ships.

other Phase 2 sectors, the Ministry is planning to have necessary regulations made six months in advance of high value dealers (HVDs) coming into the regime on 1 August 2019. One technical regulation relating to the wider HVD sector is also proposed in the consultation document. Details of the draft regulations proposed for consultation are summarised below.

Setting the 'applicable threshold' for high value dealers

11. The key regulation that needs to be issued in relation to HVDs is the threshold above which the sale and purchase of a high value good carries obligations under the AML/CFT Act (the 'applicable threshold' in the definition of a high value dealer).
12. The 'applicable threshold' directly impacts the effectiveness of the policy rationale for including HVDs in the AML/CFT regime. It is therefore critical that the 'applicable threshold' is set at the appropriate level:
 - A higher threshold reduces the amount of disruption of illicit activities as well as the amount of intelligence the FIU will receive. However, higher threshold also reduces the potential business compliance costs for the sector.
 - A lower threshold increases the amount of disruption and intelligence, but also increases potential business compliance costs.
13. FIU asset recovery intelligence indicates a threshold of \$15,000 would only capture a less than half (46%) of transactions, whereas a threshold of \$5,000 or \$10,000 would capture 75% and 61% of transactions, respectively.
14. In 2016, the previous Cabinet was provided with the option of setting the 'applicable threshold value' at \$5,000, \$10,000, or \$15,000. Cabinet agreed to set the threshold at \$15,000 [CAB-16-MIN-0052 refers].
15. Cabinet's decision regarding the 'applicable threshold' has not yet been implemented as threshold values for AML/CFT obligations are generally set in regulations. Defining the 'applicable threshold' for HVDs in regulations is consistent with this approach.

Clarifying compliance obligations for registered auctioneers

16. I propose to consult on one additional regulation to clarify the compliance obligations for registered auctioneers, in that only auctioneers who auction high value goods or real estate will have obligations under the AML/CFT Act.
17. The policy rationale of the Phase 2 reforms was that registered auctioneers should have obligations under the AML/CFT Act when auctioning high value goods or when auctioning real estate. To achieve this policy objective, the AML/CFT (Definitions) Amendment Regulations 2018 were issued, which revoked the previous exclusion of registered auctioneers from the regime.
18. It is possible to interpret the definition of 'financial institution' to capture registered auctioneers of goods other than high value goods or real estate (e.g. auctioneers of livestock). This interpretation would result in those auctioneers having full AML/CFT obligations as a financial institution, whereas an auctioneer who only sold high value

goods would have limited obligations as an HVD. This was not the intention of the Phase 2 reforms.

Consultation with affected persons is required before regulations can be issued

19. Sections 153 and 154 of the Act allow for the Governor-General to make AML/CFT regulations. Under section 154, the Governor-General may only make regulations on the recommendation of the Minister of Justice. Section 154 of the Act requires me to take all reasonable steps to consult with all persons who, in my opinion, will be affected by regulations made under that section. Public consultation, as proposed in this paper, would meet this requirement in respect of the proposed regulations.
20. As I am required to consult with the public before regulations can be issued, I consider that there is an opportunity to retest the appropriateness of the \$15,000 threshold. A lower threshold of \$10,000 or \$5,000 may be more appropriate for the sector, and I would like to ensure that the 'applicable threshold' is set at the correct level. I therefore seek the Committee's approval to consult the public on the three 'applicable threshold' options (\$5,000, \$10,000, or \$15,000).

Consultation

21. The Department of Internal Affairs, the Financial Markets Authority, the Reserve Bank of New Zealand, the New Zealand Police, the New Zealand Customs Service, the Inland Revenue Department, the Ministry of Business, Innovation and Employment, and the Ministry of Foreign Affairs and Trade have been consulted on the contents of this paper. The Department of the Prime Minister and Cabinet and the Treasury have been informed.

Financial Implications

22. There are no financial implications with the release of the consultation document.

Legislative Implications

23. The proposals within the attached consultation and the submissions on those proposals will inform final proposals for regulations under the Act.

Impact Analysis

24. The Treasury Regulatory Quality Team has determined that the proposals in this paper are exempt from the Regulatory Impact Analysis requirements on the grounds that the issues have been dealt with by existing Impact Analysis, in the case the Regulatory Impact Statement: *Second phase of reforms to the Anti-Money Laundering/Countering Financing of Terrorism regime*.

Human Rights

25. The proposals in the consultation document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

26. There are no gender implications with the release of the consultation document.

Disability Perspective

27. There are no disability implications with the release of the consultation document.

Publicity

28. If Cabinet agrees, the attached consultation document will be released on the Ministry's website. It is proposed that the Ministry and the AML/CFT Supervisors will engage with relevant industry groups as soon as the consultation document is released. The public will be able to make submissions on the consultation document either online through the Ministry's website or via email or standard mail.

Proactive Release

29. I recommend proactively releasing this Cabinet paper.

Next Steps

30. Subject to Cabinet approval to proceed with consultation on the proposed regulations, consultation will run for two months closing at the end of January 2019. Following analysis of submissions, I will report back to Cabinet seeking decisions on regulations in February 2019.

Recommendations

The Minister of Justice recommends that the Committee:

1. **Note** that regulations are needed to support the inclusion of the 'high value dealers' sector in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime from 1 August 2019;
2. **Note** that the key regulation required for high value dealers is setting the 'applicable threshold value', which determines the point at which a high value dealer has obligations under the AML/CFT Act 2009;
3. **Note** that the effectiveness of the policy rationale for including high value dealers in the AML/CFT regime (disrupting the illicit cash trade and obtaining intelligence about the high value sector) is directly impacted by the 'applicable threshold value'
4. **Note** that the previous Cabinet agreed in 2016 to set the 'applicable threshold value' for high value dealers at \$15,000 [CAB-16-MIN-0052 refers];
5. **Note** that the Minister of Justice is required to take all reasonable steps to consult with all persons who, in my opinion, will be affected by regulations before regulations can be recommended;

6. **Note** that the attached consultation document contains proposals for regulations to:
 - 6.1. Set the 'applicable threshold value' in the definition of a 'high value dealer' in section 5(1) of the AML/CFT Act 2009 at \$5,000, \$10,000, or \$15,000; and
 - 6.2. Clarify AML/CFT obligations for registered auctioneers;
7. **Agree** to release the attached consultation document on proposed AML/CFT regulations for public comment, with a consultation period of two months from the day of release;
8. **Note** that the Minister of Justice will report back to Cabinet in February 2019 on the outcome of this consultation and seek final decisions on the regulations to support

Authorised for lodgement

Hon Andrew Little

Minister of Justice

Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Consultation Paper on Proposed
Regulations for High Value Dealers



New Zealand Government

RELEASED BY THE MINISTER OF JUSTICE

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RELEASED BY THE MINISTER OF JUSTICE

About this paper

The Ministry of Justice is seeking submissions on proposals for regulations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The regulations will outline how various anti-money laundering and countering financing of terrorism measures will work for high value dealers. There are specific questions where we are particularly interested in your feedback. We also welcome any other comments you may have. Your feedback will help ensure the most effective regulations.

How to have your say.

You can:

- read about the proposals and give your feedback online at consultations.justice.govt.nz
- download and read the consultation document and either:
 - email a submission to aml@justice.govt.nz
 - post a written submission to AML/CFT consultation team, Ministry of Justice, SX10088, Wellington, New Zealand

Please send us your views by 5pm, 15 February 2019.

Personal information and confidentiality

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

We accept submissions made in confidence or anonymously. Please clearly indicate if you want your submission to be treated as confidential.

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 will be withheld. However, we won't release individuals' contact details.

Overview

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

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act) aims to detect and deter money laundering and terrorism financing. It requires certain businesses to put anti-money laundering and countering financing of terrorism (AML/CFT) measures in place. These include assessing the money laundering and terrorism financing risks their business may face, establishing a compliance programme, confirming their customers' identities, and reporting suspicious activities and certain transactions.

Banks, casinos and a range of financial service providers ('Phase 1 reporting entities') have been subject to the Act since 2013.

Amendments to the Act in 2017 extended the AML/CFT regime to cover more businesses at risk of being used to launder money and finance terrorism (referred to here as 'Phase 2 reporting entities'). A staged approach is being taken to implementation of these businesses which include:

- lawyers, conveyancers and trust and company service providers – must comply from 1 July 2018
- accountants – must comply from 1 October 2018
- real estate agents – must comply from 1 January 2019
- the certain businesses that deal in high value goods (such as cars, boats, jewellery, art) and the New Zealand Racing Board (which administers all racing and sports betting in New Zealand) – must comply from 1 August 2019.

The 2017 amendments also made changes to the Act which apply to all reporting entities, for example, expanding reporting to Police from suspicious transactions to a broader class of suspicious activities.

The Act can be found at: www.legislation.govt.nz

General information on the AML/CFT regime is available at: www.justice.govt.nz/aml-cft
This includes Cabinet papers setting out policy decisions on the Amendment Act.

The proposed regulations are discussed below.

Current Regulations

A range of regulations have already been made under the Act. Additional regulations are required to implement Phase 2 of the AML/CFT reforms.

New regulations are being made in a series of 'tranches'. The **first tranche** of regulations was released in December 2017. This tranche was made in readiness for the first Phase 2 reporting entities (lawyers, conveyancers, and trust and company service providers) to comply on 1 July 2018, and providers of accountancy services to comply on 1 October 2018. In addition, regulations which affect all reporting entities, such as suspicious activity report requirements, were included.

The **second tranche** of regulations related to real estate agents and the New Zealand Racing Board. Regulations relating to real estate agents were released on 30 July 2018, and the regulations relating to the New Zealand Racing Board were released on 15 October 2018.

Alongside the work on regulations, the New Zealand Police's Financial Intelligence Unit (FIU) has provided a revised National Risk Assessment. The Department of Internal Affairs has provided a Phase 2 Sector Risk Assessment and sector guidelines to help businesses understand and meet their AML/CFT obligations.

Proposals for the third tranche of regulations

The proposals for the third tranche of regulations are focused on setting the cash threshold for high value dealers, above which the business has AML/CFT obligations.

One technical amendment to clarify the coverage of auctioneers is also included in this consultation paper.

Timing

We expect the third tranche of regulations will be in place in March/April 2019. This will give affected businesses a reasonable lead-in time to set-up the required AML/CFT systems and processes before they must comply on 1 August 2019.

High value dealers

What is a high value dealer?

A high value dealer is someone who, in trade and in the ordinary course of business, buys or sells specific 'high value goods' for cash at or above a threshold.

These **high value goods** are:

- jewellery
- watches
- gold, silver or other precious stones
- paintings
- prints
- sculptures
- photographs
- carvings in any medium
- protected foreign objects (within the meaning of section 2(1) of the Protected Objects Act 1975)
- protected New Zealand objects (within the meaning of section 2(1) of the Protected Objects Act 1975)
- other artistic or cultural artefacts
- motor vehicles (within the meaning of section 6(1) of the Motor Vehicle Sales Act 2003)
- ships (within the meaning of section 2(1) of the Maritime Transport Act 1994)

Auctioneers who sell any of high value goods at or above the threshold are also covered as high value dealers.

Why are high value dealers covered by AML/CFT?

Buying and selling high value assets is attractive for criminals because such transactions can avoid interaction with the financial sector. Many such assets may be easily hidden and can be transferred to third parties with limited documentation. In particular, criminals may buy such goods with cash (that is, physical currency) and give them to other parties to avoid detection by financial institutions.

The money laundering and terrorism financing risks associated with high value goods include:

- In New Zealand, valuable assets such as silver and gold, jewellery and precious stones, cars, boats, artwork and other items have been associated with offenders.
- Criminals may also use cash to buy high value goods such as jewellery or watches, then travel overseas with them to transfer value while avoiding detection by financial institutions.

- Organised crime groups may use cash to purchase high value goods then sell them for cash, so they can disguise the origin of the funds and deposit the money into the financial system without raising red flags.
- Criminals use criminal proceeds to buy real estate and luxury goods such as motor vehicles and boats for personal use.

Introducing AML/CFT measures will deter criminals from using those services and help detect them if they do. Importantly, it will also strengthen the overall AML/CFT system. It will make it harder for criminals to move cash anonymously using high value goods. Reporting by high value dealers will provide valuable information and help make it easier to detect crime.

Case study 1: cash purchase of high value goods

In June 2016, Northland Police seized a record-breaking amount of methamphetamine in Kaitia – 448 kilos, thought to have an approximate NZ street value of around \$448 million. The investigation revealed a cash payment for a \$98,000 boat which was used by criminals involved in the importation of significant amounts of methamphetamine found on Ninety Mile beach in June 2016. The investigation is ongoing.

Case study 2: purchase of high value items with illicit proceeds

In May 2016, 18 people were arrested and charged as part of a large-scale Police operation against the manufacture and supply of methamphetamine. Search warrants were carried out at more than 30 different addresses in Northland, Auckland, Bay of Plenty, Waikato and Canterbury. The Police Asset Recovery Unit seized several high-end vehicles including a highly modified Nissan GTL Skyline vehicle, a Harley Davidson, a Chevrolet Camaro a 2015 Kawasaki motorbike and a boat.

Case study 3: Operation Wigram

In 2013, NZ Police Operation Wigram identified a simple scheme of buying and selling vehicles to launder criminal funds. The offenders used the proceeds of commercial burglaries and methamphetamine dealing to purchase less expensive vehicles in cash. These less expensive vehicles were soon after traded in for a single more expensive vehicle. Although simple, this structure allowed the offenders to structure the effective cash purchase of the final high value vehicle and establish an origin of funds for the final transaction (the trade-ins).

Source: NZ Police

What do high value dealers have to do to comply?

High value dealers are only covered when making or accepting cash payments at or above the threshold. Any payment not made in cash or made below the threshold does not attract any mandatory AML/CFT obligations (unless it is part of a series of related cash transactions which exceeds the threshold).

The obligations a high value dealer have under the AML/CFT Act when transacting in cash at or above the threshold are to:

- verify the identity of the customer. For more information about verifying customers' identities, see: [Information for customers about AML/CFT laws](#)
- keep a record of the customer's identity and their transaction.
- send a prescribed transaction report to the Police Financial Intelligence Unit (FIU) for cash transactions at or above \$10,000, setting out details about the transaction.

If a customer's activity is suspicious, a reporting entity may decide to file a suspicious activity report with the FIU. For high value dealers, this is optional.

High value dealers have fewer AML/CFT obligations compared to the other businesses captured by the AML/CFT regime. High value dealers are not required to conduct a risk assessment, maintain a compliance programme, appoint a compliance officer, or to submit an annual report.

Setting the cash threshold for high value dealers

We are seeking your views about what level to set the threshold for cash transactions for high value dealers. We consider there to be three appropriate levels: \$5,000, \$10,000, or \$15,000, and would like your views on the appropriate threshold.

The three threshold options are different in the following ways:

- **A threshold of \$5,000** would cover the most transactions and would provide more intelligence to the FIU. It would likely have the highest deterrence and disruption effects for criminals seeking to purchase high value goods. However, of the three options, this threshold would potentially impose the highest compliance costs upon HVD businesses.
- **A threshold of \$10,000** would capture fewer transactions and provide less intelligence to the FIU than a threshold of \$5,000, but would also impose lower compliance costs upon HVD businesses. As this threshold would capture the majority of transactions, it would have a moderate deterrent and disruption effect for criminals seeking to purchase high value goods.
- **A threshold of \$15,000** would capture the fewest transactions. It would provide the lowest amount of intelligence to the FIU, and have the lowest disruption or deterrence effect of the three options. However, this threshold would potentially impose the lowest compliance costs upon HVD businesses.

Consistency with other reporting obligations

Another factor that should be considered is whether the 'applicable threshold' for high value dealers should be aligned with the existing 'prescribed transaction reporting' (PTR) threshold.

A 'prescribed transaction' includes domestic cash transactions at or above \$10,000. If a prescribed transaction occurs, the reporting entity is required to send a report to the FIU with the details of the transaction (e.g. date and time, amount, type of funds, customer details). PTRs help the FIU build an intelligence picture across the entire financial system and increase transparency of transactions.

An aligned threshold may reduce the potential for confusion and avoid unintended consequences.

- **A threshold of \$5,000** would mean that a high value dealer will be subject to the Act for all transactions above \$5,000, and will also have to submit PTRs for transactions at or above \$10,000.
- **A threshold of \$10,000** would mean that every transaction that triggers AML/CFT obligations will also require a PTR to be filed.
- **A threshold of \$15,000** would potentially undermine how PTRs operate. With this threshold, a business which sells high value goods only becomes a 'high value dealer' when transacting in cash at or above \$15,000. It is only once the business is a 'high value dealer' that it would be under an obligation to file a PTR. This would mean that cash transactions below \$15,000 will not require a PTR to be filed, even if the transaction is above the PTR threshold of \$10,000.

Questions



1. We would like to understand how businesses would respond to the applicable threshold being set at one of the three potential levels. Please outline what you anticipate would happen if the threshold was set at:
 - a. \$5,000
 - b. \$10,000, and
 - c. \$15,000
2. If you are a high value dealer, would you continue to transact in cash at or above the threshold? Why?
3. Given the above, what is the appropriate threshold for high value dealers, and why?

Technical amendments

Clarifying obligations for registered auctioneers

Registered auctioneers are included in the AML/CFT regime when auctioning high value goods or auctioning real estate. In line with this, we removed the exclusion of registered auctioneers in Regulation 21A(1) of the AML/CFT (Definitions) Regulations 2011.

It is possible to interpret the definition of 'financial institution' to capture registered auctioneers of goods other than high value goods or real estate (e.g. auctioneers of livestock). This interpretation would result in those auctioneers having full AML/CFT obligations as a financial institution, whereas an auctioneer who only sold high value goods would have limited obligations as an HVD. This was not the intention of the Phase 2 reforms.

We would like to issue an additional regulation which clarifies that only auctioneers of high value goods or real estate have obligations under the AML/CFT Act.

Note, however, that auctioneers who additionally provide financial services (e.g. credit or loans to customers) will be captured as financial institutions. This regulation would only clarify how activity of auctioning goods is captured by the regime.



Questions

4. Should a regulation be issued which clarifies that only registered auctioneers of high value goods or real estate have obligations under the AML/CFT Act?

Ministry of Justice
Tāhū o te Ture

justice.govt.nz

info@justice.govt.nz

0800 COURTS
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National Office
Justice Centre | 19 Aitken St
DX SX10088 | Wellington | New Zealand



[New Zealand Government](http://www.govt.nz)



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Release of Consultation Paper on Proposed High Value Dealer Regulations

Portfolio Justice

On 5 December 2018, the Cabinet Economic Development Committee:

- 1 **noted** that regulations are needed to support the inclusion of the ‘high value dealers’ sector in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime from 1 August 2019;
- 2 **noted** that the key regulation required for high value dealers is setting the ‘applicable threshold value’, which determines the point at which a high value dealer has obligations under the AML/CFT Act 2009;
- 3 **noted** that the effectiveness of the policy rationale for including high value dealers in the AML/CFT regime (disrupting the illicit cash trade and obtaining intelligence about the high value sector) is directly impacted by the ‘applicable threshold value’;
- 4 **noted** that in October 2016, the previous government agreed to set the ‘applicable threshold value’ for high value dealers at \$15,000 [CAB-16-MIN-0052];
- 5 **noted** that the Minister of Justice is required to take all reasonable steps to consult with all persons who, in the Minister’s opinion, will be affected by regulations before regulations can be recommended;
- 6 **noted** that the consultation paper *Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Consultation Paper on Proposed Regulations for High Value Dealers* (the consultation paper), attached to the submission under DEV-18-SUB-0287, contains proposals for regulations to:
 - 6.1 set the ‘applicable threshold value’ in the definition of a ‘high value dealer’ in section 5(1) of the AML/CFT Act 2009 at \$5,000, \$10,000, or \$15,000; and
 - 6.2 clarify AML/CFT obligations for registered auctioneers;
- 7 **agreed** to the release the consultation paper for public comment, with a consultation period of two months from the day of release, subject to any minor or editorial changes that may be authorised by the Minister of Justice before its release;

8 **noted** that the Minister of Justice will report back to Cabinet in February 2019 on the outcome of this consultation and seek final decisions on the regulations.

Janine Harvey
Committee Secretary

Present:

Hon Phil Twyford
Hon Dr Megan Woods (Chair)
Hon Andrew Little
Hon David Parker
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Shane Jones
Hon Willie Jackson
Hon Julie Anne Genter
Hon Eugenie Sage
Fletcher Tabuteau MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Justice

Chair, Cabinet Legislation Committee

Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019.

Executive Summary

2. The Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 was amended in 2017 to capture specific non-financial businesses and professions that are at risk of being misused for money laundering or terrorist financing. Implementation of this change is being phased in over two years, and the final sector to be included are high-value dealers, who will have obligations from 1 August 2019.
3. The key regulation required before high-value dealers are captured is setting the 'applicable threshold value'. The 'applicable threshold' defines the value a cash transaction needs to be at or above to trigger obligations under the AML/CFT Act.
4. The previous Cabinet decided in 2016 to set the 'applicable threshold value' at \$15,000 [CAB-16-MIN-0052]. However, Cabinet agreed in 2018 to re-test this threshold [DEV-18-MIN-0287] in accordance with section 154 of the AML/CFT Act, which requires public consultation before regulations may be issued.
5. Following formal consultation with the high-value dealer sector, I recommend that the 'applicable threshold value' be set at \$10,000. A \$10,000 threshold is likely to capture the majority of transactions that are of interest; is consistent with other thresholds in the AML/CFT Act; and avoids an unintended gap in prescribed transaction reporting.¹ The recommended lower \$10,000 threshold will have some fiscal impacts on businesses and the Crown.
6. I also recommend that a technical regulation be issued which clarifies the capture of registered auctioneers by the AML/CFT Act. This regulation will ensure that only registered auctioneers that sell real estate or high-value goods will be captured for their auctioning activity.

Background

7. The AML/CFT Act aims to detect and deter money laundering and terrorism financing, maintain and enhance New Zealand's international reputation by implementing

¹ Prescribed Transactions are transactions conducted through a reporting entity in respect of international wire transfers of NZD\$1,000 or more, or domestic, physical cash transactions of NZD\$10,000 or more involving the use of physical currency.

international standards on AML/CFT, and contribute to public confidence in the financial system. The AML/CFT Act has been in force since 2013, applying to banks, casinos, a range of financial service providers, and some trust and company service providers (referred to as 'Phase 1' reporting entities).

8. In August 2017, amendments were made to the Act to extend the AML/CFT regime to cover more businesses at risk of being targeted by criminals to launder money and finance terrorism. These 'Phase 2' reporting entities include lawyers, conveyancers, trust and company service providers, accountants, real estate agents, the New Zealand Racing Board (NZRB), and certain businesses that deal in high value goods.²
9. Implementation is being phased in over two years, and regulations have been issued to support Phase 2 sectors as they come into the regime and ensure the regime is fit-for-purpose. In December 2017, regulations were issued to support lawyers, conveyancers, trust and company service providers, and providers of accountancy services to comply with the Act. Regulations to support real estate agents were issued in July 2018, and regulations to support the NZRB were issued in October 2018.
10. The final sector to come into the AML/CFT regime are businesses that deal in high-value goods.

Policy decisions

11. On 5 December 2018, the Cabinet Economic Development Committee agreed to the release of a consultation document containing proposals for regulations relating to businesses that deal in high value goods [DEV-18-MIN-0287 refers]. The proposed regulations, and my recommendations on those regulations, are discussed below.

Revisiting Cabinet's previous decision on the 'applicable threshold value' for high-value dealers

12. A **high-value dealer** is defined in section 5(1) of the AML/CFT Act as "a person who is in trade and in the ordinary course of business, buys or sells any [high value goods] by way of cash transaction or series of related cash transaction, if the value of that transaction or those transactions is equal to or above the *applicable threshold value*."
13. In 2016, the previous Cabinet agreed to set the threshold value at \$15,000 [CAB-16-MIN-0052]. However, section 154 of the AML/CFT Act requires I take all reasonable steps to consult with all persons who will be affected by regulations made under that section. In 2018, I received Cabinet approval to re-test the 'applicable threshold,' and publicly consult on three options (\$5,000, \$10,000, and \$15,000) [DEV-18-MIN-0287].
14. A recommendation to move the 'applicable threshold' from \$15,000 to \$10,000 is a minor policy decision and as such falls within the mandate of the Cabinet Legislation Committee and is not required to return to the Cabinet Economic Development Committee.

A majority of submitters were comfortable with a \$10,000 threshold

² **High value goods** are jewellery; watches; gold, silver, or other precious metals; diamonds, sapphires, or other precious stones; paintings; prints; protected foreign objects; protected New Zealand objects; sculptures; photographs; carvings in any medium; other artistic or cultural artefacts; motor vehicles; and ships.

15. A public consultation document on regulations relating to high-value dealers was released in December 2018. Comment was invited from industry groups and related businesses, and the Ministry of Justice proactively contacted businesses likely to be impacted by the regulations. In total, 19 submissions were received from businesses and industry bodies.
16. Cumulatively, a majority of submitters were comfortable with a \$10,000 threshold. Consultation found 9 submitters preferred \$15,000 (including 2 that preferred higher), 6 preferred \$10,000, and 3 preferred \$5,000. However, some submitters who preferred \$15,000 explicitly or implicitly indicated they could comply with a threshold of \$10,000 for cash transactions. Conversely, most opposed a \$5,000 threshold due to concerns about the level of compliance costs.
17. Industry bodies that made a submission were closely divided, 4-to-3 preferring a \$10,000 threshold.³ These bodies represent a large proportion of affected businesses. The two industry bodies that surveyed their members (Motor Trade Association and NZ Marine Industry Association) supported a \$10,000 threshold.
18. A consistent theme from submitters was that they did not typically conduct cash transactions above their preferred threshold. About half of submitters would continue to accept such transactions, either because they form an important part of their business, and/or are infrequent enough that the compliance costs will be low. The other half said they would not conduct cash transactions above the threshold, though many noted such transactions were infrequent or non-existent, and could divert to wire transfers (which would then be captured by financial institutions' reporting obligations instead).

A lower 'applicable threshold' value has some fiscal impacts on the Crown and businesses

19. A \$10,000 threshold will marginally increase compliance costs for businesses as well as costs to the Crown for supervision and receiving and processing intelligence reports from the sector.
20. It is difficult to estimate the increase in compliance costs for businesses that will result from a \$10,000 threshold compared with a \$15,000 threshold. A lower threshold is unlikely to capture more businesses but is likely to capture more transactions for those businesses.
21. The following figures were provided to Cabinet in 2016 as approximations to demonstrate the relative magnitude between threshold options:

Table 1 – Estimated business compliance costs for threshold options:

	\$15,000	\$10,000	\$5,000
Business compliance costs	Set-up: \$2.6 million Ongoing: \$2.2 million p.a.	Set-up: \$3.2 million Ongoing: \$3.3 million p.a.	Set up: \$3.8 million Ongoing: \$6.5 million p.a.

³ Prefer \$10,000 threshold: Financial Services Federation, Motor Trade Association (surveyed a cross-section of their dealers), NZ Marine Industry Association (canvassed their members), and TradeMe;
Prefer \$15,000 threshold: Licenced Traders Association, Jewellers and Watchmakers NZ, and Retail NZ.

22. Businesses that deal in high-value goods can opt-out of AML/CFT obligations by refusing to transact in cash with their customers (e.g. by using EFTPOS or credit cards instead of cash). I anticipate that many businesses will change their business processes to avoid dealing in cash transactions above the threshold, which will have the benefit of reducing money laundering risks within the sector. A business which refuses to transact in large sums of cash will be less attractive to criminals seeking to launder the proceeds of their crime.
23. In 2016, Cabinet was presented with conservative cost estimates for the Phase 2 reforms. Based on these estimates, Cabinet agreed to increase the Vote Police, Vote Justice, and Vote Internal Affairs appropriations to provide the necessary funding to implement Phase 2 [CAB-16-MIN-0052 and CAB-17-MIN-0084 refer].
24. Using the 2016 estimates, we can show the marginal differences between the threshold options. I estimate that the fiscal impact for the Crown from 2019/20 until 2020/21 (and outyears) for supervision to be as follows:

Table 2 - Estimated costs to the Crown for supervision for threshold options:

Threshold	2019/20	Marginal difference from \$15,000	2020/21 (and outyears)	Marginal difference from \$15,000
\$15,000	\$10.92 million	N/A	\$11.31 million	N/A
\$10,000	\$11.2 million	+\$0.28 million	\$11.6 million	+\$0.29 million
\$5,000	\$11.5 million	+\$0.58 million	\$11.9 millions	+\$0.59 million


25. The costs of including high-value dealers in the regime are borne by the Department of Internal Affairs (as statutory supervisor) and the New Zealand Police (for receiving and processing intelligence). Both Police and DIA will meet costs from within existing baselines.

I recommend setting an 'applicable threshold value' of \$10,000 for high-value dealers

26. I propose to set the 'applicable threshold value' for high-value dealers at \$10,000 and invite Cabinet to rescind the previous decision.
27. The 'applicable threshold' directly impacts the effectiveness of the regime for high-value dealers. The policy rationale for including high-value dealers is to disrupt illicit trade in high value goods and obtain financial intelligence about the sector. However, these policy objectives need to be balanced against the compliance costs for the sector. It is therefore critical that the 'applicable threshold' is set at the appropriate level.
28. I consider that a \$10,000 threshold level strikes the appropriate balance between policy effectiveness and compliance costs. A \$10,000 threshold is likely to capture the majority of cash transactions; is consistent with other thresholds in the AML/CFT Act; and avoids an unintended gap in prescribed transaction reporting (PTR).

29. As I indicated to Cabinet in December 2018, analysis from the New Zealand Police indicates that an 'applicable threshold' of \$10,000 will likely capture the majority (61%) of transactions involving illicit drug proceeds, whereas a threshold of \$15,000 will capture less than half (46%) of transactions. I consider that it is better to capture the majority of transactions as this is more likely to have the intended disruption effect in line with the policy intent.
30. A \$10,000 threshold has the additional benefit of being consistent with the threshold for other activities captured by the Act, particularly PTR obligations. Consistency between the thresholds will reduce the risk of the sector misunderstanding their obligations and will simplify communication with the sector.
31. In particular, a \$10,000 threshold avoids an unintended and undesirable gap in PTR. Currently, businesses with AML/CFT obligations ('reporting entities') must report cash transactions at or above \$10,000. These reports provide Police with valuable intelligence about the movement of substantial amounts of cash in New Zealand's economy. However, high-value dealers only become reporting entities once they transact in cash above the 'applicable threshold'. An applicable threshold above \$10,000 would therefore exclude potentially significant cash transactions from being reported to the Police.

s9(2)(g)(i)



Clarifying auctioneers' capture by the AML/CFT regime

34. I propose to use the AML/CFT (Definitions Regulations) to clarify that only auctioneers who auction real estate or high value goods are captured by the AML/CFT regime for their auctioning activity. Auctioning of other goods (such as livestock) is not intended to be captured by the AML/CFT regime, but it is currently possible to interpret the AML/CFT Act in a way that captures all registered auctioneers. This regulation ensures the capture of registered auctioneers is consistent with identified money laundering and terrorism financing risks.
35. There was near-consensus among submitters that there would be value in clarifying auctioneers' capture by the AML/CFT regime.
36. I note that this regulation would only clarify how the activity of auctioning goods is captured by the regime. Registered auctioneers who provide additional captured services (e.g. credit or loans to customers) will continue to be captured as financial institutions and will not be affected by this regulation.

Timing and 28-day rule

37. No waiver of the 28-day rule is sought. The AML/CFT (Definitions) Amendment Regulations 2019 will come into force on 1 August 2019.

Compliance

38. The proposals in this paper appear to be consistent with:

- 38.1. the principles of the Treaty of Waitangi;
- 38.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 38.3. the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- 38.4. relevant international standards and obligations;
- 38.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory requirements

39. These regulations relate to the application of the AML/CFT Act and are made pursuant to section 154 of the AML/CFT Act. Section 154(2) of the Act requires that the Minister must, before recommending that the Governor-General make regulations under that section, have regard to:

- 39.1. the purposes of the AML/CFT Act;
- 39.2. the risk of money laundering and the financing of terrorism;
- 39.3. the impact on the prevention, detection, investigation, and prosecution of offences;
- 39.4. the level of regulatory burden on a reporting entity;
- 39.5. whether the regulation would create an unfair advantage for a reporting entity or would disadvantage other reporting entities; and
- 39.6. the overall impact that making the regulation would have on the integrity of, and compliance with, the AML/CFT regulatory regime.

40. I have had regard to these matters set out in section 154(2) of the AML/CFT Act, having considered advice from officials.

41. Section 154(3) requires the Minister of Justice to take reasonable steps to consult with all persons who, in the Minister's opinion, will be affected by the proposed new regulations. I consider that this requirement has already been met by the consultation the Ministry of Justice has carried out on these regulations (refer paragraph 15).

Regulations Review Committee

42. I do not consider there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House.

Certification by Parliamentary Counsel

43. The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

44. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment. The relevant issues have been addressed by existing impact analysis, specifically the Ministry of Justice Regulatory Impact Assessment *Second Phase of Reforms to the Anti-Money Laundering and Countering Financing of Terrorism regime*.

Publicity

45. The Ministry of Justice and the Department of Internal Affairs will communicate with relevant industry groups once regulations are approved by Cabinet and notified in the Gazette. Information about the regulations will also be provided through wider AML/CFT communications such as the Ministry's and the Department's websites.

Proactive release

46. Once the regulations are approved by Cabinet and notified in the Gazette, I propose to proactively release this paper on the Ministry of Justice's website in whole, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Consultation

47. Department of Internal Affairs, the Financial Markets Authority, the Reserve Bank of New Zealand, the New Zealand Police, the New Zealand Customs Service, the Inland Revenue Department, the Ministry of Business, Innovation, and Employment, and the Ministry of Foreign Affairs and Trade have been consulted on the contents of this paper. The Department of the Prime Minister and Cabinet and the Treasury have been informed.

48. s9(2)(g)(i) . New Zealand's illicit cash economy is publicly listed as being one of New Zealand's top eight risks for money laundering and terrorism financing – especially in respect of illicit drugs. Cash spending on motorcycles and cars is a key indicator of organised crime involvement. The data Police presented for this analysis is based on the value of recovered assets, it is not an assessment of expected rates of cash transactions that would be reported to Police under a new policy. Police expects the rate of reported cash transactions to be lower due to the behaviours of high value dealers and their cash customers following the introduction of a threshold. Police is monitoring the rate of cash reporting from Phase II entities at the \$10,000 threshold, which to date, is low. If the high value dealers' sector behaves similarly, Police will not likely receive the cash reporting needed to detect and disrupt the illicit cash economy at a \$10,000 threshold.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **Note** that the Phase 2 Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) reforms extended the current regime to cover more businesses at risk of being targeted by criminals to launder money and finance terrorism;
- 2 **Note** that the attached regulations will support implementation of the Phase 2 Anti-Money Laundering and Countering Financing of Terrorism reforms by high-value dealers, which will be covered by the regime from 1 August 2019;
- 3 **Note** that the key regulation required for high-value dealers is setting the 'applicable threshold value', which determines the point at which a high-value dealer has obligations under the AML/CFT Act 2009;
- 4 **Note** that the effectiveness of the policy rationale for including high-value dealers in the AML/CFT regime (disrupting the illicit cash trade and obtaining intelligence about the high value sector) is directly impacted by the 'applicable threshold value';
- 5 **Rescind** Cabinet's decision to set the 'applicable threshold value' for high-value dealers at \$15,000 [CAB-16-MIN-0052 refers] **and instead**;
- 6 **Agree** to set the 'applicable threshold value' for high-value dealers at \$10,000;
- 7 **Note** that an 'applicable threshold value' of \$10,000 will marginally increase the costs to the Crown of the AML/CFT compared to the cost estimates provided to Cabinet in 2016 [CAB-16-MIN-0052 and CAB-17-MIN-0084 refer];
- 8 **Note** that the cost increase (estimated at \$0.28 million for 2019/20 and \$0.29 million for 2020/21 and outyears) will be borne by Vote Police and Vote Internal Affairs, and met from within departmental baselines.
- 9 **Note** that section 154(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which relates to regulations made under section 154, requires that the responsible Minister have regard to the matters set out in that section before recommending the making of an Order in Council under section 154;
- 10 **Note** that section 154(3) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which relates to regulations made under section 154, requires that the responsible Minister meets specified consultation requirements, before recommending the making of an Order in Council under section 154;
- 11 **Note** the advice of the Minister of Justice that the requirements noted in Recommendations 9 and 10 have been met;
- 12 **Authorise** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019;

- 13 **Note** that the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019 will come into force on 1 August 2019.

Authorised for lodgement

Hon Andrew Little
Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019

Portfolio Justice

On 18 June 2019, the Cabinet Legislation Committee:

- 1 **noted** that the Phase 2 Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) reforms extended the current regime to cover more businesses at risk of being targeted by criminals to launder money and finance terrorism;
- 2 **noted** that the regulations, attached under LEG-19-SUB-0085, will support implementation of the Phase 2 Anti-Money Laundering and Countering Financing of Terrorism reforms by high-value dealers, which will be covered by the regime from 1 August 2019;
- 3 **noted** that the key regulation required for high-value dealers is setting the 'applicable threshold value', which determines the point at which a high-value dealer has obligations under the AML/CFT Act 2009;
- 4 **noted** that the effectiveness of the policy rationale for including high-value dealers in the AML/CFT regime (disrupting the illicit cash trade and obtaining intelligence about the high value sector) is directly impacted by the 'applicable threshold value';
- 5 **agree to recommend** that Cabinet rescind the previous decision to set the 'applicable threshold value' for high-value dealers at \$15,000 [CAB-16-MIN-0052]; and instead;
- 6 **agreed** to set the 'applicable threshold value' for high-value dealers at \$10,000;
- 7 **noted** that an 'applicable threshold value' of \$10,000 will marginally increase the costs to the Crown of the AML/CFT compared to the cost estimates provided to Cabinet in 2016 [CAB-16-MIN-0052 and CAB-17-MIN-0084];
- 8 **noted** that the cost increase (estimated at \$0.28 million for 2019/20 and \$0.29 million for 2020/21 and outyears) will be borne by Vote Police and Vote Internal Affairs, and met from within departmental baselines;
- 9 **noted** that section 154(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which relates to regulations made under section 154, requires that the responsible Minister have regard to the matters set out in that section before recommending the making of an Order in Council under section 154;

- 10 **noted** that section 154(3) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which relates to regulations made under section 154, requires that the responsible Minister meets specified consultation requirements, before recommending the making of an Order in Council under section 154;
- 11 **noted** the advice of the Minister of Justice that the requirements noted in paragraphs 9 and 10 have been met;
- 12 **authorised** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019 [PCO 22027/6.0];
- 13 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2019 will come into force on 1 August 2019.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Tracey Martin
Hon Eugenie Sage
Hon Ruth Dyson (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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