

Hon Kiri Allan
Minister of Justice

Proactive release – Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023

Date of issue: 15 May 2023

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

No.	Document	Comments
1	Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023 Cabinet Paper Ministry of Justice 11 April 2023	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• S9(2)(g)(i)
2	Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023 Cabinet Minute Ministry of Justice 11 April 2023	Released in full.

IN CONFIDENCE**In Confidence**

Office of the Minister for Justice

Chair, Cabinet Legislation Committee

**Anti-Money Laundering and Countering Financing of Terrorism (Definitions)
Amendment Regulations 2023****Proposal**

- 1 This paper follows passage of the Criminal Activity Intervention Legislation Bill (**the Bill**) on 29 March 2023. The Bill prohibits cash transactions for specified high-value goods over a 'prescribed threshold'.
- 2 The prescribed threshold above which cash transactions will be prohibited now needs to be set. This paper seeks approval of setting this threshold at \$10,000 in the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023; and authorising those regulations for submission to the Executive Council.

Policy on gang harm intervention

- 3 The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**the AML/CFT Act**) is a risk-based regime that detects and deters money laundering and terrorism financing and implements relevant international obligations.
- 4 In July 2022, in response to criminal activities and harms caused by gangs, Cabinet agreed to a package of legislative changes. The package included an amendment to the AML/CFT Act to prohibit cash payments for 'specified high value goods' over a prescribed threshold.
- 5 The intent of this change is to make it harder for gangs to hide their criminal proceeds in cash transactions and force them to put funds through other financial processes that are more able to detect and monitor suspicious activities.
- 6 The 'specified high value goods' for which cash purchases over a prescribed threshold are prohibited are: jewellery and watches, precious metals and stones, motor vehicles and boats [CAB-22-MIN-0264]. Officials considered these goods are the most likely to be purchased in cash by gang members seeking to launder funds obtained from criminal activities, thus avoiding scrutiny by the AML/CFT regulatory regime.
- 7 The Bill gave effect to these decisions by specifying in the AML/CFT Act the high value goods. The Bill also introduced new civil and criminal penalties for those who buy or sell these high value goods using cash over the prescribed amount.

Determining the threshold value for cash transactions of specified goods

Why is the threshold set in regulations?

- 8 Cabinet decided to set the threshold value via regulations rather than in the primary legislation, and an existing regulation-making power in the AML/CFT Act enables the Governor-General, by Order in Council, to prescribe the cash threshold.
- 9 Threshold values in the AML/CFT regime are most commonly set through regulations. Amendments in primary legislation cannot be made nimbly enough to keep pace with factors like inflation, which could impact the cash value of criminal assets and require a quick adjustment to the threshold. Regulations are the right vehicle for these responsive adjustments, and better enable the regime to reflect how money-laundering and terrorist financing are currently happening.
- 10 Setting the threshold in regulations also gave officials time between the introduction of the Bill and its passage to undertake a risk assessment on different threshold levels to determine where the appropriate level is.

What should the prohibited value for cash transactions of the specified goods be?

- 11 The policy rationale for prescribing a threshold is to disrupt illicitly derived cash used to purchase high value goods. However, this objective needs to be balanced against the impacts on people and compliance costs for the sector. It is therefore critical that the threshold is set at the appropriate level
- 12 Officials conducted a risk assessment to determine which threshold value struck a balance between being low enough to disrupt illicit trade but not so low that it significantly impacts people conducting low-risk, legitimate transactions (particularly, vulnerable communities who are more likely to be conducting cash transactions) and adds to the compliance costs for businesses and the Crown.

The results of the risk assessment

- 13 The risk assessment showed that there is limited data available on the number or value of cash transactions for the specified high value goods. Based on the data that is available, Justice officials estimate that most of the known value of criminals' high value assets would be captured by a \$10,000 threshold (96%). If the threshold were set at \$5,000, officials estimate that 99% of the known value of criminal high value assets would be captured, which only amounts to a marginal increase of 3% of value captured. However, the Ministry of Justice was concerned that a threshold of \$5,000 would disproportionately impact vulnerable people who are conducting legitimate cash transactions for the specified goods.

- 14 s(9)(2)(g)(i)

15 s9(2)(g)(i)

A higher threshold of \$10,000 for motor vehicles reflects that access to a motor vehicle is a necessity for many New Zealanders and a that lower threshold would have a more significant impact on those who are not able to access cash alternatives.

- 16 Acknowledging these views, I recommend that on balance the adoption of a simpler and more conservative approach for the initial implementation of this prohibition by setting the threshold value to \$10,000. This approach means that we are not setting the threshold too low and disproportionately impacting vulnerable people who are conducting legitimate cash transactions for the specified goods. As the prohibition applies to multiple classes of high value goods, I recommend a single and consistent threshold across all the specified classes of goods to ensure that the threshold is clear and can be consistently implemented.
- 17 This threshold also has the advantage of aligning with other thresholds in the AML/CFT regime. For example, the threshold at which cash deposits to financial institutions attract due diligence requirements and the value for reporting cash transactions is \$10,000. This threshold is common and well understood by industry and the public. Different thresholds for different goods would create two settings for traders to comply with and inconsistent standards for the public.

Communication with businesses

- 18 The Department of Internal Affairs, Ministry of Justice and Police will engage with high-value dealers and relevant reporting entities to help them understand their obligations under the AML/CFT Act. This would include informing them of the threshold value once this has been approved and set in Regulations.

Ongoing review

- 19 There will be opportunities to review the impacts of the threshold during mid-to-long term implementation of changes following the statutory review of the AML/CFT regime. Subject to Government priorities, these could include changes to regulations in 2024/25.
- 20 If investigations or intelligence indicate avoidance of the threshold through purchases in smaller amounts of cash proceeds, this ongoing work would be used to consider a \$5,000 threshold. The mid-long term work on the AML/CFT regime will require extensive public engagement, providing opportunity to evaluate the impact on communities.
- 21 The amendment to the Regulations is attached for your approval and sets the cash threshold at \$10,000. Once in force, cash transactions of \$10,000 and above will be prohibited for persons in trade for the specified high value goods.

Timing and 28-day rule

- 22 No waiver of the 28-day rule is sought. The Amendment Regulations are expected to come into force on or about 10 May 2023, which is 28 days after the Regulations are expected to be notified in the New Zealand *Gazette*.

Compliance

- 23 Cabinet has already considered the statement about the compliance of the wider policy proposals with the principles of the Treaty, rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993, relevant international standards and the Legislation Guidelines.

Regulations Review Committee

- 24 There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives as a Standing Order requirement.

Certification by Parliamentary Counsel

- 25 The draft regulations were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 26 A Supplementary Analysis Report (SAR) was prepared at the time the Legislative Cabinet Committee considered the Criminal Activity Intervention Legislation Bill [CAB-22-MIN-0366].
- 27 A cross-agency quality assurance panel comprising New Zealand Police, the Ministry of Justice and the Ministry of Transport reviewed considered the information and analysis in the SAR **partially meets** the Quality Assurance criteria. The Panel assesses that, overall, the SAR provides a reasonable basis for Ministers' decision-making while highlighting the significant limitations under which the document was developed.

Publicity

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

Proactive release

- 29 I propose to proactively release this paper on the Ministry of Justice's website, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Consultation

- 30 The Ministry of Justice consulted with the Reserve Bank of New Zealand, New Zealand Police, Inland Revenue, the Serious Fraud Office, Department of Internal Affairs, the Financial Markets Authority, Ministry of Business, Innovation and Employment and New Zealand Customs Service. The Department of Prime Minister and Cabinet and the Treasury were informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 4 July 2022 Cabinet [CAB-22-MIN-0264] agreed to amend the AML/CFT Act to prohibit cash transactions for specified high value goods (jewellery and watches, precious metal and stones, motor vehicles and boats) over a prescribed threshold;
- 2 **agree** to set the cash transaction threshold value for the specified high value goods noted in recommendation 1 above to \$10,000;
- 3 **authorise** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023;
- 4 **note** that the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023 will come into force 28 days after published in *the Gazette*.

Authorised for lodgement

Hon Kiri Allan

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

Portfolio **Justice**

On 6 April 2023, the Cabinet Legislation Committee:

- 1 **noted** that on 4 July 2022, Cabinet agreed to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit cash transactions for specified high value goods (jewellery and watches, precious metal and stones, motor vehicles and boats) over a prescribed threshold;
- 2 **agreed** to set the cash transaction threshold value for the specified high value goods noted in paragraph 1 to \$10,000;
- 3 **authorised** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023 [PCO 25432/7.0];
- 4 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2023 will come into force on 11 May 2023.

Vivien Meek
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Megan Woods
Hon Andrew Little
Hon David Parker
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Willow-Jean Prime
Tangi Utikere, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG