

In Confidence

Office of the Minister of Justice

Chair, Cabinet Economic Development Committee

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Expiring Regulations and New Regulatory Proposals

Proposal

1. This paper seeks agreement to proposals to issue new and amend expiring Regulations under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009.

Executive Summary

2. Two key Regulations issued under the AML/CFT Act expire in the next two years. The AML/CFT (Exemptions) Regulations 2011 expire on 30 June 2020, and the AML/CFT (Definitions) Regulations 2011 partially expire on 27 July 2021. These Regulations provide for critical components of New Zealand's AML/CFT regime. They have expiry dates because the AML/CFT regime was new and untested when the Regulations were first issued. The expiry dates ensured that the Government reviewed these Regulations within five years to make sure they are fit for purpose and in line with the money laundering and terrorism financing risk environment.
3. Following consultation with AML/CFT industry stakeholders and peak bodies, I am recommending three substantive changes and 15 technical changes to the Exemptions and Definitions Regulations. In addition, I am proposing to remove the expiry dates for these Regulations and to consolidate all AML/CFT Regulations into one regulatory instrument. These changes will enhance the operation of the Regulations and the regime overall.
4. I have also taken this opportunity to resolve other issues with the regime with clear and simple regulatory solutions. These issues include situations where the compliance burden for some reporting entities is disproportionate to their risk, as well as situations where there is a vulnerability that needs to be mitigated. To address these issues, I recommend Cabinet approve six new regulations in addition to the substantive and technical changes to the expiring Regulations.

Background

5. Two key AML/CFT Regulations expire in the next two years. These are the:
 - AML/CFT (Exemptions) Regulations 2011 (Exemptions Regulations) which expire on 30 June 2020; and
 - AML/CFT (Definitions) Regulations 2011 (Definitions Regulations) which partially expire on 27 July 2021.

6. These Regulations provide critical aspects of the AML/CFT system. The Definitions Regulations expand on definitions within the AML/CFT regime, such as the types of businesses included or excluded from the scope of 'reporting entity'. The Definitions Regulations also set critical thresholds for when reporting entities have obligations. The Exemptions Regulations exempt proven low risk transactions and services from the scope of the AML/CFT regime.
7. These Regulations have expiry dates because the AML/CFT regime was new and untested when the Regulations were first issued. Expiry dates ensured the Government reviewed the Regulations within five years to make sure that they are fit for purpose and aligned with New Zealand's money laundering (ML) and terrorism financing (TF) risks.
8. Without the definitions, thresholds, and exemptions provided in the Regulations, businesses would be unnecessarily captured by the AML/CFT regime which is not aligned with the purposes of the Act. This would have significant consequences for the operation of the AML/CFT regime: it would no longer be aligned to our risk and a large number of businesses and organisations would suddenly have compliance obligations. It is therefore critical that these Regulations are reissued to ensure the continued optimal operation of the regime.
9. Given that this requires Cabinet approval, I have taken this opportunity to identify other issues that could be resolved through issuing new regulations, which will improve the operation of the regime overall.

Purposes of New Zealand's AML/CFT Regime

10. The purposes of New Zealand's AML/CFT regime outlined in the Act are to: detect and deter ML/TF; maintain and enhance New Zealand's international reputation; and contribute to public confidence in the financial system.
11. I have considered the purposes of the AML/CFT regime in forming my recommendations to Cabinet to make the substantive and technical changes outlined in this paper. Specifically, my recommendations are based on:
- risks of ML and TF associated with products, services and entities affected by the regulations;
 - risks to the effectiveness of the AML/CFT regime, that is the impact on the prevention, detection, investigation, and prosecution of offences;
 - compliance risks, that is the overall impact that making the regulation would have on the integrity of, and compliance with, the AML/CFT regulatory regime.

I have also considered, where appropriate:

- the level of regulatory burden on a reporting entity; and
 - whether the making of the regulation would create an unfair advantage for a reporting entity or would disadvantage other reporting entities.
12. The three substantive changes and four of the proposed new regulations will ensure the compliance burden on reporting entities is proportional to ML/TF risk without negatively impacting ML/TF detection and deterrence. Proportional compliance burdens will contribute to public confidence in the financial system and maintain the integrity of the AML/CFT regime

overall. The proposed changes are also consistent with New Zealand's international obligations.

13. The other two proposals for new regulations will increase the regime's effectiveness at detecting and deterring ML/TF. While one proposal will increase compliance costs for businesses, I consider that these costs are proportional to the associated ML/TF risk. They will also assist with the prevention, detection, investigation, and prosecution of offences.
14. The proposals are informed by, and consistent with, the National AML/CFT strategy, which is to maintain the integrity and stability of the financial system and in doing so contribute to a safe, healthy and prosperous New Zealand and strong international reputation. Cabinet agreed to this strategy in October 2019 [DEV-19-MIN-2070].

Proposed substantive changes to expiring Regulations

15. I recommend making three substantive changes to the Exemptions and Definitions Regulations. More detail of these changes is outlined in **Appendix 1**.
16. I recommend amending Definitions regulation 24A to prescribe that customer due diligence¹ (CDD) must be conducted before an offer to lease is presented to the landlord as part of a commercial lease transaction. This will avoid CDD being duplicated and reduces the overall compliance burden for real estate agents engaging in commercial lease transactions. CDD for all other real estate transactions will continue to be required before the real estate agent enters into an agreement with the customer.
17. I recommend amending Exemptions regulation 16 to expand the concept of 'related' to include entities that are in partnership as well as entities where A is 'controlled' by B (and vice versa) or where A and B are both 'controlled' by C. This change will allow a greater range of low-risk reporting entities to rely on this regulation and ensure their compliance obligations are consistent with their ML/TF risks.

Proposed minor and technical changes to expiring Regulations

18. I recommend making the minor and technical changes to the Definitions and Exemptions Regulations outlined in **Appendix 2**. This includes revoking one regulation as it is no longer required.
19. I also recommend only making drafting clarifications to definitions relating to services included in, or excluded from, the AML/CFT regime. This is because these relate to policy settings relating to the scope of the AML/CFT regime. These settings will be addressed as part of the statutory review scheduled for 2021 which will allow for a system-wide view of how the regime's scope manages ML/TF risk.
20. I also recommend consolidating the existing six current AML/CFT Regulations² into a single regulatory instrument. There is no legislative requirement in the AML/CFT Act for these

¹ **Customer due diligence** (CDD) is a core component of the AML/CFT regime which seeks to prevent businesses from being misused by money launderers or terrorism financiers. CDD generally requires business to obtain and verify information about a customer, such as their name and date of birth, as well as the nature and purpose of the proposed business relationship. In higher risk situations, CDD can also include businesses obtaining and verifying information about the customer's source of wealth.

² AML/CFT (Cross-border Transportation of Cash) Regulations 2010; AML/CFT (Definitions) Regulations 2011; AML/CFT (Exemptions) Regulations; AML/CFT (Ministerial Exemption Form) Regulations 2011;

Regulations to be in six separate instruments. Consolidating the Regulations will provide a single reference point and make the regulations more user friendly for both businesses and AML/CFT agencies.

21. Finally, I recommend removing the expiry dates for the Definitions and Exemptions Regulations. As noted, expiry dates were included because the AML/CFT regime was new and it was important the Government reviewed the Regulations to ensure they remained fit for purpose and aligned with New Zealand's ML/TF risk. Given the maturity of the AML/CFT regime, I consider that the expiry dates are no longer required for these regulations. Removing expiry dates will provide business with more certainty as to the regulatory environment. Future consideration of these regulations should result from a material change in risk and not an arbitrary expiry date.

Policy decisions on proposals for new regulations

22. As reissuing the Definitions and Exemptions Regulations requires Cabinet consideration, I consider that this provides a good opportunity to address other issues with clear and simple solutions available in regulations.
23. I have identified six issues that meet these criteria. I have also identified a technical change to another AML/CFT Regulation, the AML/CFT (Cross-border Transportation of Cash) Regulations 2010. Addressing these issues through regulatory changes will improve the operation of the AML/CFT regime.

Including limited partnerships in a designated business group

24. A designated business group (DBG) allows reporting entities to pool resources and reduce their compliance burden where they are operating in a larger group of entities as a collective. The AML/CFT Act treats the DBG effectively as a single reporting entity for most compliance obligations. This can significantly reduce the compliance burden that each reporting entity faces.
25. It is currently unclear whether limited partnerships established under the Limited Partnerships Act 2008 are able to be included in a DBG where other members are related through ownership of voting products (e.g. a holding company with subsidiaries). This is because limited partnerships do not have voting products that can be owned. This appears to be an oversight and is inconsistent with the policy rationale of DBGs.
26. I recommend issuing a regulation that prescribes that limited partnerships are eligible for inclusion in a DBG where they are otherwise related to the other members of the DBG. This will reduce their compliance obligations. As the AML/CFT supervisors³ assess the formation of DBGs and confirm the members meet the eligibility criteria, I do not consider that this amendment will negatively impact detection and deterrence of ML/TF.

Excluding low-risk pre-payments for transactions with third parties from the scope of 'managing client funds'

AML/CFT (Prescribed Transaction Reporting) Regulations 2016; AML/CFT (Requirements and Compliance) Regulations 2011

³ Department of Internal Affairs, Financial Markets Authority, and Reserve Bank of New Zealand

27. The AML/CFT regime treats monies paid in advance to a designated non-financial business or profession (DNFBP), such as a lawyer, as managing client funds (a captured activity). This includes where the money is paid for a disbursement, and where the DNFBP pays a third party for services or goods provided to the client, such as for filing Government applications on behalf of the client. Upon receipt of this money, the DNFBP is required to conduct CDD on the client and cease acting if CDD cannot be conducted.
28. I consider that the risk associated with disbursements varies and recommend exempting proven low-risk disbursements based on the intended receipt of the disbursement. Doing so would ensure the compliance burden for DNFBPs is in line with their ML/TF risks, especially for those which are only captured as a result of receiving disbursements. I propose to exclude:
- Disbursements for New Zealand Government departments, New Zealand Police, or local authorities;
 - Disbursements for barristers, expert witnesses, and professional mediators and adjudicators carrying out business in New Zealand; and
 - All other disbursements intended for all third parties carrying out business in New Zealand where the value of the transaction, or series of transactions, is less than \$1,000.
29. I consider that exempting them from the AML/CFT regime will not negatively impact the detection and deterrence of ML/TF as these types of disbursements are identified as low risk. In addition, exempting these disbursements will reduce the compliance burden for DNFBPs, particularly for those DNFBPs that are only captured because they receive disbursements.
30. I do not consider that payments for disbursements for services provided in other jurisdictions should be captured by this exclusion. Payments for services provided by third parties carrying out business in other jurisdictions are inherently higher risk.

Providing a limited exemption for reporting entities subject to a Commissioner's Order and production orders

31. The Commissioner of Police can issue orders under section 143(1)(a) of the AML/CFT Act to require production of more information relevant to a suspicious activity report or prescribed transaction report (a Commissioner's Order). However, there is a risk that a reporting entity may inadvertently 'tip off' the customer upon receipt of a Commissioner's Order by applying the CDD requirements in the AML/CFT Act.
32. To avoid this risk, I recommend issuing a regulation that exempts reporting entities from conducting enhanced CDD (ECDD) in respect of the subject of the Commissioner's Order. I also recommend that this exemption apply for the production orders issued under the Search and Surveillance Act 2012. The exemption would be time-bound and would last for a period of 30 days (unless otherwise notified by the Police).
33. Reducing the risk of 'tipping off' enhances the AML/CFT regime's ability to detect and deter ML/TF by reducing the chances that an investigation is undermined or sabotaged through the ordinary operation of the Act.

Requiring enhanced customer due diligence for companies with nominee directors

34. Nominee director relationship exist where a registered director (the nominee) effectively operates on the instructions of a third person (the nominator).⁴ Companies with nominee directors are a significant vulnerability as they allow for the natural person who effectively controls the company (the beneficial owner) to be obscured.
35. The Financial Action Task Force (FATF) requires all jurisdictions to put measures in place to ensure nominee directors are not misused. These measures could include requiring nominee directors to disclose the identity of their nominator and this information be included on a register or requiring nominee directors to be licensed.
36. There are no substantial measures in place to prevent the misuse of nominee directors in New Zealand, and I am aware of several instances of nominee director relationships being misused. I consider the potential misuse of nominee directors to be a significant vulnerability for New Zealand.
37. I therefore recommend issuing a regulation that requires reporting entities to conduct ECDD on companies with nominee directors to partially address this vulnerability. This is consistent with how companies with nominee shareholders are treated by the AML/CFT regime, which carry similar ML/TF risks to companies with nominee directors. Requiring ECDD increase ML/TF detection and deterrence. It will also aid in the prevention, detection, investigation, and prosecution of offences.
38. To help reporting entities comply with this requirement, I recommend issuing regulation requiring reporting entities to obtain information from companies as to the existence of any nominee directors and shareholders and the identity of the nominator as part of standard CDD. Companies will be incentivised to provide this information as the reporting entity would be prohibited from establishing a business relationship if CDD cannot be completed.

Providing a limited exemption for court-appointed liquidators

39. A 'court-appointed' liquidator is appointed by an order of the High Court under section 241(2)(c) of the Companies Act 1993. Their liquidation services attract AML/CFT obligations and the court-appointed liquidator is required to conduct CDD on their customer.
40. Court-appointed liquidators have faced difficulties with complying with their obligations as they do not have an obvious customer and the company being liquidated may be unwilling or unable to provide CDD information. A liquidator cannot proceed with the liquidation until CDD is completed, which directly conflicts with the obligations to conduct the court-mandated liquidation.
41. I recommend issuing a new regulation to provide a limited exemption for court-appointed liquidators from some CDD requirements, except where there are ML/TF risks with the liquidation (e.g. paying money to a creditor in a different country). I also recommend

⁴ This can occur either formally where a legal arrangement exists between the nominee and nominator (such as a power of attorney) or informally where no legal arrangement exists but the nominee nevertheless acts on the instructions of the nominator. In either instance, the nominator will not appear on the company register and will not be able to be readily identified.

prescribing that the customer of a court-appointed liquidator is the company in liquidation, to ensure the liquidator can submit suspicious activity reports if required.

42. I consider that this exemption will reduce the compliance burden for liquidators and ensure compliance obligations are appropriate in the context of a court-appointed liquidation. In addition, as court-appointed liquidators are more likely to detect past ML/TF than be exposed to ongoing ML/TF, this exemption is unlikely to negatively impact detection and deterrence of ML/TF.

Allow for a more risk-based approach to be taken for section 59 audits

43. Section 59 of the AML/CFT Act requires reporting entities have their risk assessment and compliance programme audited every two years. The relevant AML/CFT supervisor can also request an audit be conducted more frequently if required. The Reserve Bank of New Zealand and the Department of Internal Affairs consider a two-year timeframe is too frequent for a significant portion of their reporting entities and inconsistent with the risk these reporting entities pose. The Financial Markets Authority supports the status quo of a two-year timeframe but is comfortable with a longer timeframe being set.
44. I recommend issuing a new regulation that extends the maximum to three years between audits with an additional option of four years between audits for reporting entities identified by the supervisor as 'low risk'. The AML/CFT supervisors consider a three-year timeframe appropriate for most reporting entities and can request more frequent audits where a reporting entity poses a higher risk. However, this regulation would also allow for a longer timeframe for entities the supervisor determines to be 'low risk'.
45. I consider this proposal will ensure that a more risk-based approach for section 59 audits can be taken than is currently possible under the AML/CFT Act. As a result, medium and low-risk reporting entities will likely face a lower compliance burden by not having to have their compliance programme audited as frequently.
46. I anticipate that higher-risk reporting entities will, in practice, continue to have their programmes audited more frequently as supervisors will request this.

Technical changes to the Cross-Border Transportation of Cash Regulations

47. The AML/CFT (Cross-Border Transportation of Cash) Regulations 2010 deal with declarations of physical cash that cross New Zealand's border. The regulations prescribe the value above which physical cash must be declared as well as the form of the cash report that must be submitted.
48. Unlike all other AML/CFT regulations, these regulations prescribe the actual form that must be used, rather than the information that must be contained within the form. As a result, it is not currently possible to take modern approaches to declaring cash movements, e.g. through using an electronic form. I recommend amending these regulations to no longer prescribe the specific form to be used but instead prescribe the information the form must contain.

Consultation

49. I am required under section 154 of the AML/CFT Act to consult with persons who will be impacted by the proposed regulations, or their representatives. To comply with this

requirement, officials conducted targeted consultation with key industry stakeholders and peak bodies on proposals to amend the expiring Regulations and issue new regulations.

50. In total, 19 submissions were received from a variety of industry stakeholders⁵ and peak bodies.⁶ Submissions were generally very supportive of the proposals. Only the proposal to require ECDD for companies with nominee directors attracted opposition from three submitters, largely based on concerns about practically identifying those companies. I consider my proposal for requiring reporting entities to obtain information as to the existence of nominee directors or shareholders will address this practical concern.
51. Some submitters raised suggestions for other regulations that could be issued as part of this process. I have carefully considered these suggestions and do not consider that any of the suggestions are sufficiently urgent to be included at this time. These proposals will be considered as part of the statutory review of the AML/CFT Act in 2021.⁷
52. The Department of Internal Affairs, Reserve Bank of New Zealand, Financial Markets Authority, Ministry of Business, Innovation, and Employment, New Zealand Police, the New Zealand Customs Service, the Treasury, and Te Arawhiti were consulted on this paper. The Department of Prime Minister and Cabinet was informed.

Financial Implications

Potential costs for the Crown

53. Three proposals may result in costs for the three AML/CFT supervisors (DIA, FMA, RBNZ) and the New Zealand Police. These costs are likely to be negligible and will be met from within Departmental baselines.

Potential benefits to the Crown

54. I consider the proposal to increase the scope of Exemptions regulation 16 will avoid future expenditure incurred from processing Ministerial exemption applications and reapplications. The Ministry of Justice, AML/CFT supervisors, and the New Zealand Police are involved in processing Ministerial exemption applications.

Legislative Implications

55. The proposed changes require amendments to existing regulatory instruments and the introduction of new regulations. In order to ensure the continued operation of the AML/CFT regime, I intend to seek Cabinet approval for the amended AML/CFT regulations in May 2020. This will allow for the regulations to be promulgated in advance of the AML/CFT (Exemptions) Regulations expiring on 30 June 2020.

⁵ AIA New Zealand; ANZ New Zealand; ASB; Bank of Baroda NZ; Bayleys; Gary Hughes; HSBC; Kensington Swan; Kiwibank; KiwiWealth; MinterEllisonRuddWatts; Russell McVeagh; and Westpac NZ.

⁶ Chartered Accountants Australia and New Zealand; Financial Services Incorporated; New Zealand Institute of Certified Bookkeepers; New Zealand Law Society; Real Estate Institute of New Zealand; and Restructuring, Insolvency and Turnaround Association New Zealand Incorporated.

⁷ Section 156A of the AML/CFT Act requires the Minister of Justice to request the Ministry of Justice to request a review of the operation of the Act with a view to whether any amendments are necessary or desirable. This request must not be made later than 1 July 2021.

56. The six existing instruments will need to be revoked and replaced with one regulatory instrument in order to consolidate the AML/CFT regulations. As consolidating the existing regulations is not time sensitive, I will seek Cabinet approval for the consolidated regulations in the latter half of 2020.

Impact Analysis

Regulatory Impact Statement

57. The Ministry of Justice has reviewed the Regulatory Impact Assessment and associated supporting material and consider that the information and analysis summarised in the Regulatory Impact Assessment **meets** the Quality Assurance criteria.
58. While there are limits to targeted consultation and full costings are unable to be provided, we note that the risk of imposing unnecessary compliance costs on businesses are mitigated by the existing exemption regime and that the effectiveness of the proposals will be further reviewed during the scheduled statutory review of the AML/CFT Act in 2021. We do not consider these limitations impair the ability of Cabinet to fully rely on the analysis in the Regulatory Impact Assessment for its decision making.
59. With respect to the proposed technical changes, the Treasury Regulatory Quality Team has determined that a Regulatory Impact Assessment is required for these proposals as they are expected to have only minor impacts on businesses, individuals or not-for-profit entities and repeal or remove redundant legislative provisions.

Human Rights

60. The proposals in this paper appear to be consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Treaty of Waitangi Implications

61. While the AML/CFT regime may raise some issues in respect of Te Tiriti o Waitangi, I do not consider that any of the proposals in this paper are of concern.
62. The Financial Action Task Force (FATF) has identified that some CDD requirements can be difficult for vulnerable portions of society, which can negatively impact the ability of some people to participate in the financial system. In particular, the FATF has identified that requirements to verify a customer's address can be difficult for disadvantaged and vulnerable people to comply with, including low income households, disabled persons, and individuals in rural communities. New Zealand's AML/CFT regime requires verification of address: to the extent that Māori are vulnerable, they may be disproportionately impacted by this requirement.
63. The proposals contained within this paper do not engage with these issues. These issues can be further considered as part of the statutory review of the AML/CFT Act in 2021.

Publicity

64. The Ministry of Justice and AML/CFT supervisors will issue a press release following Cabinet's decision to announce the agreed changes.

Proactive Release

65. 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.

Recommendations

66. The Minister of Justice recommends that the Committee:
 1. **note** that the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations will expire on 30 June 2020, and the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations will partially expire on 27 June 2021;

Substantive changes to expiring Regulations

2. **agree** to amend regulation 24A of the AML/CFT (Definitions) Regulations 2011 to prescribe that customer due diligence must be conducted before an offer to lease is presented to the landlord for commercial lease transactions;
3. **agree** to amend regulation 16 of the AML/CFT (Exemptions) Regulations 2011 to include within the scope of the regulation entities that are in partnership as well as entities where A is 'controlled' by B (and vice versa) or where A and B are both controlled by C to ensure a broader range of reporting entities can be considered 'related';

Technical changes to expiring Regulations

4. **agree** to make the identified technical changes to the AML/CFT (Definitions) Regulations 2011 and AML/CFT (Exemptions) Regulations 2011 outlined in **Appendix 2**;
5. **agree** that the AML/CFT (Definitions) Regulations 2011 and AML/CFT (Exemptions) Regulations should not expire;

Proposals for new regulations

6. **agree** to issue new regulations to:
 - 6.1. prescribe that limited partnerships established under the Limited Partnerships Act 2008 are eligible for inclusion in a designated business group;
 - 6.2. exempt from the scope of 'managing client funds' money paid to a reporting entity for the purposes of the reporting entity paying a third party where that third party is:
 - 6.2.1. a New Zealand Government department, New Zealand Police, or local authority; or
 - 6.2.2. A barrister, expert witness, and professional mediator carrying out its business in New Zealand; or

- 6.2.3. Any other third party carrying out its business in New Zealand where the value of the transaction, or series of transactions, is less than \$1,000;
- 6.3. exempt reporting entities subject to a section 143(1)(a) order or a production order under the Search and Surveillance Act 2012 from all requirements to conduct ECDD with respect to the customer that is the subject of the order for a period of 30 days unless otherwise notified by the Police;
- 6.4. require reporting entities to conduct enhanced customer due diligence on companies with nominee directors;
- 6.5. require reporting entities to obtain information from a customer that is a company as to whether any of its directors or shareholders are nominee directors or shareholders and, if so, the identity of the nominator;
- 6.6. exempt court-appointed liquidators from all requirements to conduct customer due diligence except where there are ML/TF risks with the liquidation;
- 6.7. prescribe that a customer of a court-appointed liquidator is the company in liquidation;
- 6.8. prescribe that audits must be completed every three years, or, if the relevant AML/CFT supervisor determines the entity to be low risk, four years;

Technical changes to other regulations

7. **agree** to amend the AML/CFT (Cross-Border Transportation of Cash) Regulations 2010 to prescribe the information the declaration form must contain instead of the actual form to be used;
8. **agree** to consolidate the six existing AML/CFT Regulations into one regulatory instrument;

Financial implications

9. **note** that three proposals may result in negligible costs for Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand and the New Zealand Police and that these costs will be met from within departmental baselines;

Drafting instructions

10. **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations.

Authorised for lodgement

Hon Andrew Little

Minister of Justice

Date signed:

Attachments:

Appendix 1 – Substantive changes

Appendix 2 – Technical changes and revocations

Regulatory Impact Statement (RIS)

Appendix 1 – Substantive changes

Regulation	Change proposed	Rationale
<p>Definitions regulation 24A – <i>time at which real estate agents must conduct customer due diligence</i></p>	<p>Prescribing that CDD must be conducted before an offer to lease is presented to the landlord as part of a commercial lease transaction.</p>	<p>Definitions regulation 24A requires real estate agents to complete CDD before the agent enters into an agreement with the customer. However, commercial landlords often enter into more than one agency agreement when they have multiple real estate agents working on their behalf to find a tenant. As a result, the same landlord may have CDD conducted on them multiple times. This increases the compliance burden for both the landlord and the real estate agents involved.</p>
<p>Exemptions regulation 16 – <i>Exclusions: relevant services provided to related entities</i></p>	<p>Expand 'related' to include entities that are in partnership as well as entities where A is 'controlled' by B (and vice versa), or where A and B are both 'controlled' by C.</p>	<p>Exemptions regulation 16 exempts services provided between a reporting entity and customer where the reporting entity and the customer are 'related'. This exemption exists as services provided wholly within a group of related entities and without an external customer carry a lower ML/TF risk.</p> <p>The definition of 'related' used in this regulation excludes legal persons without voting products or shares (e.g. incorporated societies) and legal arrangements (e.g. trusts and partnerships). This is an oversight and inconsistent with the original policy intent for the regulation. This has resulted in several Ministerial exemption applications from business that are arguably related but unable to meet the terms of the current definition.</p> <p>Expanding the definition of 'related' will allow other low-risk reporting entities to rely on the exclusion and ensure their compliance burden is consistent with their ML/TF risk.</p>

Appendix 2 – Technical changes and revocations

Regulation	Change proposed
Definitions regulation 13A – <i>Inclusion: wire transfer of more than \$1,000</i>	Clarify that this regulation applies to ordering institutions for wire transfers that occur outside of a business relationship with a customer, as well as applying to beneficiary institutions for wire transfers that are received outside of a business relationship with a customer.
Definitions regulation 15 – <i>Inclusion: transactions involving certain stored value instruments</i>	Amend the definition of ‘debit card’ to replace the reference to ‘financial institution’ with ‘bank and non-bank deposit taker’; ensure structuring with stored value instruments cannot occur.
Definitions regulation 16 – <i>Inclusion: certain financial advisors</i>	Update regulation to continue including financial advisors who are proximate to products and services offered by other reporting entities that carry a higher money laundering or terrorism financing risk, but without relying on the ‘category 1’ distinction.
Definitions regulation 18A – <i>Exclusion: non-finance businesses that transfer money to facilitate purchase of goods and services</i>	Clarify that the regulation does not apply to designated non-financial businesses and professions in respect of managing client funds; amalgamate this regulation with Exemptions regulation 13.
Definitions regulation 20 – <i>Exclusion: lawyers, etc</i>	Update heading to reflect amended scope of exemption (estate administration and family trusts); restructure the regulation to exclude the relevant activities instead of reporting entities who only provides the relevant activities.
Definitions regulation 21B – <i>Exclusion: persons carrying out property management activities</i>	Restructure the regulation to exclude the activity of property management from the scope of ‘managing client funds’ instead of excluding reporting entities which only provide that activity.
Definitions regulation 25 – <i>Financial Service Providers (Registration and Dispute Resolution) Act 2008 prescribed for certain purposes</i>	This regulation can be revoked as it is no longer required. This regulation prescribed the FSPR Act 2008 for information sharing purposes under section 140(2)(x), and the Statutes Amendment Act 2019 inserted the FSPR Act 2008 as section 140(2)(ha).
Exemptions regulation 8 – <i>Transactions that are not occasional transactions or wire transfers exempt from section 49(2)(d) of Act</i>	Clarify this regulation by repealing regulation 8(1)(b); repeal regulation 8(3) as it is unnecessary.
Exemptions regulation 11 – <i>Relevant services provided in respect of insurance policies that are closed to new customers and new premiums</i>	Clarify that the regulation only applies to life insurers and not all insurance policies.

Regulation	Change proposed
<p>Exemptions regulation 15 – Relevant services provided in respect of certain stored value instruments</p>	<p>Amend the definition of ‘debit card’ to replace the reference to ‘financial institution’ with ‘bank and non-bank deposit taker’; ensure structuring with stored value instruments cannot occur.</p>
<p>Exemptions regulation 17 – Relevant services provided under premium funding agreement by insurance company</p> <p>Exemptions regulation 18 – Relevant services provided under premium funding agreement by non-insurance company</p>	<p>The definitions for both reg 17 and reg 18 are contained within reg 17, which has the potential for confusion. As the regulations are similar in scope it is appropriate to amalgamate the regulations.</p>
<p>Exemptions regulation 19 – Relevant services provided in respect of certain low-value life insurance policies</p>	<p>Remove contracts of consumer credit from scope of the regulation as they are pure risk contracts and exempt by virtue of Exemptions reg 12.</p>
<p>Exemptions regulation 20 – Relevant services provided in respect of certain superannuation schemes</p> <p>Exemptions regulation 20A – Relevant services provided in respect of certain employer superannuation schemes</p>	<p>Update these regulations to also capture retirement schemes excluded by the ‘Services provided in relation to certain retirement schemes’ exemption. This class exemption was intended to act as a temporary solution as some retirement schemes cannot rely on reg 20A.</p>



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: Expiring Regulations and New Proposals

Portfolio Justice

On 18 March 2020, the Cabinet Economic Development Committee:

Background

- 1 noted that:
 - 1.1 the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (the Exemptions Regulations) will expire on 30 June 2020;
 - 1.2 the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 (the Definitions Regulations) will partially expire on 27 June 2021;

Substantive changes to expiring regulations

- 2 agreed to amend regulation 24A of the Definitions Regulations to prescribe that customer due diligence must be conducted before an offer to lease is presented to the landlord for commercial lease transactions;
- 3 agreed to amend regulation 16 of the Exemptions Regulations to include within the scope of the regulation entities that are in partnership, as well as entities where A is 'controlled' by B (and vice versa) or where A and B are both controlled by C, to ensure a broader range of reporting entities can be considered 'related';

Technical changes to expiring regulations

- 4 agreed to make the identified technical changes to the Definitions Regulations and the Exemptions Regulations, as outlined in Appendix 2 to the paper under DEV-20-SUB-0040;
- 5 agreed that the Definitions Regulations and the Exemptions Regulations should not expire;

Proposals for new regulations

- 6 agreed to issue new Regulations to:
 - 6.1 prescribe that limited partnerships established under the Limited Partnerships Act 2008 are eligible for inclusion in a designated business group;

- 6.2 exempt from the scope of 'managing client funds' money paid to a reporting entity for the purposes of the reporting entity paying a third party where that third party is:
- 6.2.1 a New Zealand Government department, New Zealand Police, or local authority; or
 - 6.2.2 a barrister, expert witness, or professional mediator carrying out its business in New Zealand; or
 - 6.2.3 any other third party carrying out its business in New Zealand where the value of the transaction, or series of transactions, is less than \$1,000;
- 6.3 exempt reporting entities subject to a section 143(1)(a) order or a production order under the Search and Surveillance Act 2012 from all requirements to conduct enhanced customer due diligence with respect to the customer that is the subject of the order for a period of 30 days, unless otherwise notified by the Police;
- 6.4 require reporting entities to conduct enhanced customer due diligence on companies with nominee directors;
- 6.5 require reporting entities to obtain information from a customer that is a company as to whether any of its directors or shareholders are nominee directors or shareholders and, if so, the identity of the nominator;
- 6.6 exempt court-appointed liquidators from all requirements to conduct customer due diligence except where there are money laundering/terrorism financing risks with the liquidation;
- 6.7 prescribe that a customer of a court-appointed liquidator is the company in liquidation;
- 6.8 prescribe that audits must be completed every three years, or, if the relevant AML/CFT supervisor determines the entity to be low risk, four years;

Technical changes to other regulations

- 7 **agreed** to amend the AML/CFT (Cross-Border Transportation of Cash) Regulations 2010 to prescribe the information the declaration form must contain instead of the actual form to be used;
- 8 **agreed** to consolidate the six existing AML/CFT Regulations into one regulatory instrument;

Financial implications

- 9 **noted** that three proposals may result in negligible costs for Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand and the New Zealand Police, and that these costs will be met from within departmental baselines;

Legislative implications

- 10 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta (via phone)
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Shane Jones
Hon James Shaw
Hon Eugenie Sage

Hard-copy distribution:

Minister of Justice

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hon Andrew Little

Minister of Justice

Proactive Release – Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act – Expiring Regulations and New Regulatory Proposals

Date of issue: 12 May 2020

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

No.	Document	Comments
1.	Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Expiring Regulations and New Regulatory Proposals <i>Cabinet paper</i> Office of the Minister of Justice 12 March 2020	Released in full.
2.	Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Expiring Regulations and New Proposals <i>Cabinet Minute</i> Cabinet Office Meeting date: 18 March 2020	Released in full.