Response ID ANON-Z596-YZC3-7

Submitted to AML/CFT Act review
Submitted on 2021-12-03 00:05:47

Tell us a bit about yourself

1 What age group are you in?

Not Answered

2 What is your ethnicity? (You can select more than one.)

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

3 If you're responding on behalf of an organisation or particular interest group, please give details below:

Organisation or special interest group details:

Suburban law firm

4 If you would like to be contacted in the future about AML/CFT work, please include your email address below. (Note you are not required to provide your email address. You can provide your submission anonymously.)

Email address:

1. Institutional arrangements and stewardship

1.1 Are the purposes of the Act still appropriate for New Zealand's Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime?

Not Answered

If you answered 'no', what should be changed?:

If you think there are other purposes that should be added, please give details below::

1.2 Should a purpose of the Act be that it seeks to actively prevent money laundering and terrorism financing, rather than simply deterring or detecting it?

Unsure

Please comment on your answer.:

To actively prevent money laundering would seemingly require significant resources (for example, to monitor all transactions for as-yet-uncertain 'indicators'), and decisions to be made on possibly quite limited information (with the potential for substantial financial and reputational risks to the people making those decisions, if those decisions turned out to be wrong). This is a huge burden to place on numerous small law firms / accountancy firms / etc and on that basis it does not appear sound or fair to impose an obligation to engage in active prevention.

1.3 If you answered 'yes' to Question 1.2, do you have any suggestions how this purpose should be reflected in the Act, including whether there need to be any additional or updated obligations for businesses?

Please share your comments below.:

1.4 Should a purpose of the Act be that it also seeks to counter the financing of proliferation of weapons of mass destruction?

Not Answered

Please comment on your answer.:

1.5 If you answered 'yes' to Question 1.4, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea?

Not Answered

Please give reasons for your answer.:

Not Answered

Please comment on your answer.:

1.6 Should the Act support the implementation terrorism and proliferation financing targeted financial sanctions, required under the Terrorism Suppression Act 2002 and United Nations Act 1946?

Not Answered

Please comment on your answer.:

1.7 What could be improved about New Zealand's framework for sharing information to manage risks?

Please share your comments below.:

1.8 Are the requirements in section 58 still appropriate?

Unsure

Please comment on your answer.:

One factor that confuses the requirements in s58 is (g), applicable guidance material. The supervisors' guidance material is often rather generic (for example, trusts are almost always uniformly treated as higher risk in every situation), and while this may be understandable in some senses it does mean that some of the other requirements in s58 are rendered functionally obsolete (that is, why bother with a proper analysis of our services under (b) or our customers under (d), when (g) requires us to put them in certain categories regardless).

How could the government provide risk information to businesses so that it is more relevant and easily understood?:

The examples given by the supervisors in their risk information/guidance are often laughably unrealistic, and frequently only serve to confuse. Given that the NZLS has numerous subcommittees and organisations that could be asked to provide input (such as real-world situations to be used as examples) it is very disappointing that the supervisors have not accessed this resource.

1.9 What is the right balance between prescriptive regulation compared with the risk-based approach?

Please share your comments below.:

Given the penalties in the Act, the right balance is one where the risk-based elements are contained within a framework of 'safe harbours' (which you could call prescriptive regulation).

Does the Act currently achieve that balance, or is more (or less) prescription required?:

More 'safe harbours' are required, and there are significant areas of uncertainty, which is both frustrating and unproductive.

1.10 Do some obligations require the government to set minimum standards?

Yes

If you answered 'yes', please comment on how this could be done.:

As above, there needs to be a framework of 'safe harbours'. This would usually involve some minimum standards, so that it is clear when you are not doing enough to comply.

What role should guidance play in providing further clarity?:

One would hope that guidance from the supervisors would always provide clarity. This question presumes (correctly) that it does not. As above talking to organisations such as the NZLS and asking for feedback from specialist committees would hopefulyl result in clear guidance materials.

1.11 Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?

Yes

If you answered 'yes', please give reasons for your answer.:

The requirements in the Act are often vague at best, and the penalties in the Act can be quite severe, with the result that many organisations are likely to be 'over cautious', leading to a significant loss in time and productivity. Better guidance material (so that organisations can better assess their actual risk

rather than having to 'assume the worst') may help keep matters in proportion.

1.12 Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime?

No

Please give reasons for your answer.:

There is a significant burden on smaller businesses. While a risk-based approach would suggest the ability to 'tailor' an AML programme to fit the size and needs of a smaller business, the reality is that there is a certain amount of 'core' work that is required regardless. For a smaller business this 'core' work is nonetheless significant. Yet smaller businesses such as suburban law firms do not have sizeable resources to apply to AML matters, nor any great ability/market power to pass the full costs on to our clients (such that the firm has to bear a lot of these costs, one way or another). So there is a mismatch - despite the risk-based approach, the amount of 'core' work required does not appear to be justified by the actual risks faced by an average suburban firm.

1.13 Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to and the size of the business?

Yes

If you answered 'yes', please share your suggestions::

Again, clearer guidance material may help an organisation work out it true risks, rather than having to 'assume the worst'. From a cost perspective, a centralised, government-run database that can be used to satisfy all ID and PEP-check requirements might be ideal, because (if appropriately set up) this could be more cost-effective than each organisation having to design its own system (or pay a third-party provider to provide this service) . That said, we are concerned as to the privacy implications of such a database.

1.14 Are exemptions still required for the regime to operate effectively?

If not, how can we ensure AML/CFT obligations are appropriate for low-risk businesses or activities?:

Not Answered

1.15 Is the Minister of Justice the appropriate decision maker for exemptions under section 157?

Not Answered

If you answered 'no', should it be an operational decision maker such as the Secretary of Justice? Please comment below.:

1.16 Are the factors set out in section 157(3) appropriate?

Not Answered

If you answered 'no', please give reasons for your answer::

1.17 Should it be specified that exemptions can only be granted in instances of proven low risk?

Not Answered

Please give reasons for your answer.:

Should this be the risk of the exemption, or the risk of the business?:

1.18 Should the Act specify what applicants for exemptions under section 157 should provide?

Not Answered

Please give reasons for your answer.:

Should there be a simplified process when applying to renew an existing exemption?:

1.19 Should there be other avenues beyond judicial review for applicants if the Minister decides not to grant an exemption?

Not Answered

If you answered 'yes', what could these avenues look like?:

1.20 Are there any other improvements that we could make to the exemptions function?

Not Answered

If you answered 'yes', please give details::

For example, should the process be more formalised with a linear documentary application process?:

1.21 Can the AML/CFT regime do more to mitigate its potential unintended consequences?

Yes

If you answered 'yes', please give details::

As your materials note, some 'groups of society' (who are in many respects law-abiding and upstanding members of society as a whole) do operate and 'do business' in ways that seem destined to create AML compliance issues. Socially- or Culturally-sensitive AML may be too much to ask for, but a system less reliant on 'bits of paper' and with a greater ability to rely on trusted human sources may assist.

1.22 How could the regime better protect the need for people to access banking services to properly participate in society?

Please share your comments below.:

1.23 Are there any other unintended consequences of the regime?

Yes

If you answered 'yes', what are they and how could we resolve them?:

To be fair, it is not clear whether the vast loss of productive time and the significant costs to small businesses was in fact "unintended" (because it was so obviously going to happen), but insofar as this was not actually intended then this is a significant and unwelcome consequence.

1.24 Can the Act do more to enable private sector collaboration and coordination?

Not Answered

If you answered 'yes', please give details::

1.25 What do you see as the ideal future for public and private sector cooperation?

Please share your comments below.:

Are there any barriers that prevent that future from being realised and if so, what are they?:

1.26 Should there be greater sharing of information from agencies to the private sector?

Yes

If you answered 'yes', would this enhance the operation of the regime?:

With respect, some of the numbers used in official documents (eg "The FIU estimates that NZD $1.35 billion is generated annually for laundering") seem to have little obvious basis in evidence, to the point of appearing made up for effect. Some sharing of the supporting information (even in a highly anonymised form) would help show the actual scale of the problem.

1.27 Should the Act require have a mechanism to enable feedback about the operation and performance of the Act on an ongoing basis?

Yes

If you answered 'yes', what is the mechanism and how could it work?:

Requiring the NZLS (plus other professional orgnaisations whose members are captured as DNFPBs) to create a formal (sub)committee to speak on behalf of its members at an annual review conference, attended by the supervisors and the DNFPBs. Such conference would be empowered to recommend changes to the Act directly to the Minister.

1.28 Should the New Zealand Police Financial Intelligence Unit (FIU) be able to request information from businesses which are not reporting entities in certain circumstances (e.g. requesting information from travel agents or airlines relevant to analysing terrorism financing)?

No

Please give reasons for your answer.:

It is our understanding that the FIU are not in fact empowered to be financial crime investigators. It would be preferable to have such investigations carried out by the Police or another properly empowered investigative body, with an appropriately trained staff who are subject to the necessary level of oversight.

1.29 If the FIU had this power, under what circumstances should it be able to be used and should there be any constraints on using the power?

Please share your comments below.:

1.30 Should the FIU be able to request information from businesses on an ongoing basis?

Not Answered

Please explain your answer:

1.31 If the FIU had this power, what constraints are necessary to ensure that privacy and human rights are adequately protected?

What constraints are needed?:

1.32 Should the Act provide the FIU with a power to freeze, on a time limited basis, funds or transactions in order to prevent harm and victimisation?

Not Answered

If you answered 'yes', how could the power work and operate? In what circumstances could the power be used, and how could we ensure it is a proportionate and reasonable power? Please share your comments below.:

1.33 How can we avoid potentially tipping off suspected criminals when the power is used?

Please share your comments below.:

1.34 Should supervision of implementation of Targeted Financial Sanctions (TFS) fall within the scope of the AML/CFT regime?

Not Answered

Please give reasons for your answer.:

1.35 Which agency or agencies should be empowered to supervise, monitor, and enforce compliance with obligations to implement TFS?

Please describe below and give reasons for your answer.:

1.36 Are the secondary legislation making powers in the Act appropriate, or are there other aspects of the regime that could benefit from having regulation making powers created?

Please share your comments below.:

1.37 How could we better use secondary legislation making powers to ensure the regime is agile and responsive?

Please share your comments below.:

1.38 Are the three Ministers responsible for issuing Codes of Practice the appropriate decision makers, or should it be an operational decision maker such as the chief executives of the AML/CFT supervisors? Why or why not?

Please share your comments below and give reasons for your answer.:

1.39 Should the New Zealand Police also be able to issue Codes of Practice for some types of FIU issued guidance?

Not Answered

If you answered yes, what should the process be?:

1.40 Are Codes of Practice a useful tool for businesses?

Yes

If you answered 'yes', are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice? Please share your comments below.:

Insofar as Codes of Practice can allow for a 'safe habour' then more are needed. Such codes could specify how certain clients can be dealt with on a more nuanced basis. Put simply, not all trusts are created equal in terms of risk. A straighforward code that recognises this and provides 'safe harbours' for established and non-risky trusts would be of great assistance.

1.41 Does the requirement for businesses to demonstrate they are complying through some equally effective means impact the ability for businesses to opt out of a Code of Practice?

Not Answered

If you answered 'yes', please give reasons for your answer.:

1.42 What status should be applied to explanatory notes to Codes of Practice? Are these a reasonable and useful tool?

Please share your comments below.:

1.43 Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act?

Not Answered

Please give reasons for your answer.:

1.44 If you answered 'yes' to the previous question (question 1.43), which operational decision makers would be appropriate, and what could be the process for making the decision? For example, should the decision maker be required to consult with affected parties, and could the formats be modified for specific sectoral needs?

Please share your comments below.:

1.45 Would AML/CFT Rules (or similar) that prescribed how businesses should comply with obligations be a useful tool for business?

Not Answered

Please give reasons for your answer.:

1.46 If we allowed for AML/CFT Rules to be issued, what would they be used for, and who should be responsible for issuing them?

Please share your comments below.:

1.47 Would you support regulations being issued for a tightly constrained direct data access arrangement which enables specific government agencies to query intelligence the FIU holds?

Not Answered

Please give reasons for your answer.:

1.48 Are there any other privacy concerns that you think should be mitigated?

Not Answered

Please share your comments below.:

1.49 What, if any, potential impacts do you identify for businesses if information they share is then shared with other agencies? Could there be potential negative repercussions notwithstanding the protections within section 44?

Please share your comments below.:

1.50 Would you support the development of data-matching arrangements with FIU and other agencies to combat other financial offending, including trade-based money laundering and illicit trade?

Not Answered

Please give reasons for your answer.:

1.51 What concerns, privacy or otherwise, would we need to navigate and mitigate if we developed data-matching arrangements? For example, would allowing data-matching impact the likelihood of businesses being willing to file Suspicious Activity Reports (SARs)?

Please share your comments below.:

1.52 Should there be an AML/CFT-specific registration regime which complies with international requirements?

Not Answered

If you answered 'yes', how could it operate, and which agency or agencies would be responsible for its operation? Please share your comments below.:

1.53 If such a regime was established, what is the best way for it to navigate existing registration and licensing requirements?

Please share your comments below.:

1.54 Are there alternative options for how we can ensure proper visibility of which businesses require supervision and that all businesses are subject to appropriate fit-and-proper checks?

Not Answered

Please give reasons for your answer.:

1.55 Should there also be an AML/CFT licensing regime in addition to a registration regime?

Not Answered

Please give reasons for your answer.:

1.56 If we established an AML/CFT licensing regime, how should it operate? How could we ensure the costs involved are not disproportionate?

Please share your comments below.:

1.57 Should a regime only apply to sectors which have been identified as being highly vulnerable to money laundering and terrorism financing, but are not already required to be licensed?

Not Answered

Please give reasons for your answer.:

1.58 If such a regime was established, what is the best way for it to navigate existing licensing requirements?

Please share your comments below.:

1.59 Would requiring risky businesses to be licensed impact the willingness of other businesses to have them as customers? Can you think of any potential negative flow-on effects?

Please share your comments below.:

1.60 Would you support a levy being introduced for the AML/CFT regime to pay for the operating costs of an AML/CFT registration and/or licensing regime?

Please give reasons for your answer.:

Imposing yet more costs on small organisations is not acceptable.

No

1.61 If we developed a levy, who do you think should pay the levy (some or all reporting entities)?

Please share your comments below.:

Imposing yet more costs on small organisations is not acceptable.

1.62 Should all reporting entities pay the same amount, or should the amount be calculated based on, for example, the size of the business, their risk profile, how many reports they make, or some other factor?

Please share your comments below.:

Imposing yet more costs on small organisations is not acceptable.

1.63 Should the levy also cover some or all of the operating costs of the AML/CFT regime more broadly, and thereby enable the regime to be more flexible and responsive?

No

Please give reasons for your answer.:

Imposing yet more costs on small organisations is not acceptable.

1.64 If the levy paid for some or all of the operating costs, how would you want to see the regime's operation improved?

Please share your comments below.:

Imposing yet more costs on small organisations is not acceptable.

2. Scope of the AML/CFT Act

2.1 How should the Act determine whether an activity is captured, particularly for Designated Non-Financial Businesses and Professions (DNFBPs)?

Please share your comments below.:

Yes

Please give reasons for your answer.:

The phrase "ordinary course of business" is vague, and needs an adequate definition.

2.2 If 'ordinary course of business' was amended to provide greater clarity, particularly for DFNBPs, how should it be articulated?

Please share your comments below.:

In simple, plain English.

2.3 Should 'ordinary' be removed?

Not Answered

If so, how could we provide some regulatory relief for businesses which provide activities infrequently? Are there unintended consequences that may result? Please share your comments below.:

2.4 Should businesses be required to apply AML/CFT measures in respect of captured activities, irrespective of whether the business is a financial institution or a DNFBP?

Yes

Please give reasons for your answer.:

All relevant activates should be captured, no matter how they are provided. That said, a business should be allowed to have (if it chooses) one 'omnibus' compliance programme to avoid unnecessary duplication. By this we mean a more formal version of the "interim solution" for corporate trustee companies whose AML/CFT obligations are being fulfilled by a parent law firm.

2.5 If you answered yes to the previous question (Question 2.4), should we remove 'only to the extent' from section 6(4)?

Unsure

Would anything else need to change, e.g. to ensure the application of the Act is not inadvertently expanded? Please share your comments below.:

2.6 Should we issue regulations to clarify that captured activities attract AML/CFT obligations irrespective of the type of reporting entity which provides those activities?

Yes

Please give reasons for your answer.:

As above - all relevant activates should be captured, no matter how they are provided. That said, a business should be allowed to have (if it chooses) one 'omnibus' compliance programme to avoid unnecessary duplication. By this we mean a more formal version of the "interim solution" for corporate trustee companies whose AML/CFT obligations are being fulfilled by a parent law firm.

2.7 Should we remove the overlap between 'managing client funds' and other financial institution activities?

Yes

If you answered 'yes', how could we best do this to avoid any obligations being duplicated for the same activity? Please share your comments below.:

Specify that any organisation that does suffer from any 'overlap' of obligations fro one activity has to comply with the more onerous of any two or more obligations (but not the less onerous ones), for that activity.

2.8 Should we clarify what is meant by 'professional fees'?

Yes

If you answered 'yes', what would be an appropriate definition? Please share your comments below.:

You could simply formalise the view that ‘professional fees’ means a business’ own fees.

2.9 Should the fees of a third party be included within the scope of 'professional fees'?

Unsure

Please give reasons for your answer.:

2.10 Does the current definition appropriately capture those businesses which are involved with a particular activity, including the operation and management of legal persons and arrangements?

Not Answered

Please give reasons for your answer.:

How could it be improved?:

2.11 Have you faced any challenges with interpreting the activity of 'engaging in or giving instructions'?

No

If you answered 'yes', what are those challenges and how could we address them?:

2.12 Should the terminology in the definition of financial institution be better aligned with the meaning of financial service provided in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008?

Not Answered

If you answered yes, how could we achieve this?:

2.13 Are there other elements of the definition of financial institution that cause uncertainty and confusion about the Act's operation?

Not Answered

If you answered 'yes', please give details::

2.14 Should the definition of high-value dealer be amended so businesses which deal in high value articles are high-value dealers irrespective of how frequently they undertake relevant cash transactions?

Not Answered

Please give reasons for your answer.:

Can you think of any unintended consequences that might occur?:

2.15 What do you anticipate would be the compliance impact of this change?

Please share your comments below.:

2.16 Should we revoke the exclusion for pawnbrokers to ensure they can manage their money laundering and terrorism financing risks?

Not Answered

Please give reasons for your answer.:

2.17 Given there is an existing regime for pawnbrokers, what obligations should we avoid duplicating to avoid unnecessary compliance costs?

Please share your comments below.:

2.18 Should we lower the applicable threshold for high value dealers to enable better intelligence about cash transactions?

Not Answered

Please give reasons for your answer.:

2.19 If you answered 'yes' to the previous question (Question 2.18), what would be the appropriate threshold? How many additional transactions would be captured? Would you stop using or accepting cash for these transactions to avoid AML/CFT obligations?

Please share your comments below.:

2.20 Do you currently engage in any transactions involving stores of value that are not portable devices (e.g. digital stored value instruments)?

No

If you answered 'yes', what is the nature and value of those transactions?:

2.21 What risks do you see with stored value instruments that do not use portable devices?

Please share your comments below.:

2.22 Should we amend the definition of "stored value instruments" to be neutral as to the technology involved?

Not Answered

If you answered 'yes', how should we change the definition? Please share your comments below.:

2.23 Should acting as a secretary of a company, partner in a partnership, or equivalent position in other legal persons and arrangements attract AML/CFT obligations?

No

Please give reasons for your answer.:

The are no company secretaries (as understood in other jurisdictions) in New Zealand, so adding this in would only confuse matters, especially because in New Zealand "company secretary" may simply be seen as a convenient job title rather than a strictly defined legal role responsible for the actions your notes above contemplate.

As a side point, we remain confused as to what exactly is a "nominee shareholder". Isn't this a trustee by another name?

2.24 If you are a business which provides this type of activity, what do you estimate the potential compliance costs would be for your business if it attracted AML/CFT obligations?

Please share your comments below.:

How many companies or partnerships do you provide these services for?:

2.25 Should criminal defence lawyers have AML/CFT obligations?

No

If you answered 'yes', what should those obligations be and why?:

We have answered "no" because imposing such obligations may unjustly limit the right of a defendant to a fair trial.

2.26 If you are a criminal defence lawyer, have you noticed any potentially suspicious activities?

Not Answered

If you answered 'yes', without breaching legal privilege, what were those activities and what did you do about them?:

2.27 Are there any unintended consequences that may arise from requiring criminal defence lawyers to have limited AML/CFT obligations, that we will need to be aware of?

Yes

If you answered 'yes', please give details::

It is not clear if you actually consider this to be "unintended" but imposing such obligations may unjustly limit the right of a defendant to a fair trial.

2.28 Should non-life insurance companies become reporting entities under the Act?

Yes

Please give reasons for your answer.:

It seems illogical that the actions of buying and selling an asset can attract AML compliance issues, but not the activities of insuring it when (as your notes above contemplate) destroying the asset for a payment may be the entire point of the exercise.

2.29 If you answered 'yes' to the previous question (Question 2.28), should non-life insurance companies have full obligations, or should they be tailored to the specific risks we have identified?

Full obligations

Please give reasons for your answer.:

There appears no logical reasons why limited obligation should apply.

2.30 If you are a non-life insurance business, what do you estimate would be the costs of having AML/CFT obligations (including limited obligations)?

Please share your comments below.:

2.31 Should we use regulations to ensure that all types of virtual asset service providers have AML/CFT obligations, including by declaring wallet providers which only provide safekeeping or administration are reporting entities?

Yes

If you answered 'yes', how should we do this?:

2.32 Would issuing regulations for this purpose change the scope of capture for virtual asset service providers which are currently captured by the AML/CFT regime?

Unsure

If you answered 'yes', please give reasons for your answer.:

2.33 Is the Act sufficiently clear that preparing or processing invoices can be captured in certain circumstances?

Not Answered

If you answered 'no', please give reasons for your answer.:

2.34 If we clarified the activity, should we also clarify what obligations businesses should have?

Not Answered

If you answered 'yes', please give reasons for your answer.:

2.35 Should preparing accounts and tax statements attract AML/CFT obligations?

Not Answered

Please give reasons for your answer.:

2.36 If you answered 'yes' to the previous question (Question 2.35), what would be the appropriate obligations for businesses which provide these services?

Please share your comments below.:

2.37 Should tax-exempt non-profits and non-resident tax charities be included within the scope of the AML/CFT Act given their vulnerabilities to being misused for terrorism financing?

Yes

Please give reasons for your answer.:

The fact that an organisation has been set up as a charity or non-profit is not a sufficient reason to exclude it from AML obligations.

2.38 If these non-profit organisations were included, what should their obligations be?

Please share your comments below.:

Full obligations in respect of money transfers and staff vetting, at a minimum.

2.39 Are there any other regulatory or class exemptions that need to be revisited, e.g. because they no longer reflect situations of proven low risk or because there are issues with their operation?

Not Answered

If you answered 'yes', please share your suggestions.:

2.40 Should the exemption for internet auctions still apply, and are the settings correct in terms of a wholesale exclusion of all activities?

Not Answered

If you answered 'no', please give reasons for your answer.:

2.41 If it should continue to apply, should online marketplaces be within scope of the exemption?

Not Answered

Please give reasons for your answer.:

2.42 What risks do you see involving internet marketplaces or internet auctions?

Please share your comments below.:

2.43 If we were to no longer exclude online marketplaces or internet auction providers from the Act, what should the scope of their obligations be? What would be the cost and impact of that change?

Please share your comments below.:

2.44 Do you currently rely on this regulatory exemption to offer special remittance card facilities?

Not Answered

If you answered 'yes', how many facilities do you offer to how many customers?:

2.45 Is the exemption workable or are changes needed to improve its operation?

Please share your comments below.:

What would be the impact on compliance costs from those changes?:

2.46 Do you consider the exemption properly mitigates any risks of money laundering or terrorism financing through its conditions?

Not Answered

If you answered 'yes', please give reasons for your answer.:

2.47 Should we amend this regulatory exemption to clarify whether and how it applies to DNFBPs?

Not Answered

If you answered 'yes', please share your suggestions.:

2.48 Should we issue any new regulatory exemptions?

Not Answered

If you answered 'yes', please share your suggestions.:

Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?:

2.49 Do you currently use a company to provide trustee or nominee services?

Yes

If you answered 'yes', why do you use them, and how many do you use? What is the ownership and control structure for those companies?:

We have one company only for one family trust. We use this company because, as a partnership, it is impractical for all partners to be 'the independent trustee' (whereas one company owned and controlled by the partners can fulfill this role).

2.50 Should we issue a new regulatory exemption to exempt legal or natural persons that act as trustee, nominee director, or nominee shareholder where there is a parent reporting entity involved that is responsible for discharging their AML/CFT obligations?

Yes

Please give reasons for your answer.:

Our law firm is subject to full AML compliance measures, and our one trust company is simply an adjunct to our legal services (not a separate profit-making service). The compliance burden for one company acting as a trustee for one trust would be hugely disproportionate, especially as our work is already covered by our firm's compliance programme.

2.51 If so, what conditions should be attached to such an exemption to ensure it does not raise other money laundering or terrorism financing vulnerabilities?

Please share your comments below.:

A condition along the lines of the the current "interim solution" (a corporate trustee company whose AML/CFT obligations are being fulfilled by a parent law firm that is a reporting entity in New Zealand does not need to have its own risk assessment, compliance programme or file annual reports to the DIA, so long as the parent law firm includes the relevant details in their assessment, programme and report).

2.52 Should we issue a new regulatory exemption to exempt Crown entities, entities acting as agents of the Crown, community trusts, and any other similar entities from AML/CFT obligations?

Not Answered

Please give reasons for your answer.:

2.53 If you answered 'yes' to the previous question (Question 2.52), what should be the scope of the exemption and possible conditions to ensure it does not raise other money laundering or terrorism financing vulnerabilities?

Please share your suggestions below.:

2.54 Should we issue an exemption for all reporting entities providing low value loans, particularly where those loans are provided for social or charitable purposes?

Not Answered

Please give reasons for your answer.:

2.55 If so, what conditions should be attached to such an exemption to ensure it does not raise other money laundering or terrorism financing vulnerabilities?

Please share your comments below.:

2.56 Should the AML/CFT Act define its territorial scope?

Not Answered

Please give reasons for your answer.:

2.57 If so, how should the Act define a business or activity to be within the Act's territorial scope?

Please share your comments below.:

3. Supervision, regulation, and enforcement

3.1 Is the AML/CFT supervisory model fit for purpose or should we consider changing it?

Yes

3.1 Please indicate why? :

Your question is poorly designed and cannot be answered by a single "yes" or "no".

So, is the AML/CFT supervisory model fit for purpose? - no. Should we consider changing it? - yes.

Why? Because the DIA has to supervise a number of different types of professions and business (lawyers, accountants, real estate agents) and to date has shown itself to be very poor at understanding any of these types of professions or businesses. Logically, a supervisor that does not understand what it is supervising cannot be doing a good job.

3.2 If it were to change, what supervisory model do you think would be more effective in a New Zealand context?

Regulatory bodies as supervisors - eg. Law Society

3.2 Please provide context for your choice:

A supervisor that actually has some knowledge of how the legal profession operates would be infinitely better than one which does not.

3.3 Do you think the Act appropriately ensures consistency in the application of the law between the three supervisors? If not, how could inconsistencies in the application of obligations be minimised?

Not Answered

3.3 Please provide options for how inconsistencies in the application of obligations could be minimised:

3.4 Does the Act achieve the appropriate balance between ensuring consistency and allowing supervisors to be responsive to sectoral needs? If not, what mechanisms could be included in legislation to achieve a more appropriate balance?

Not Answered

If not, what mechanisms could be included to achieve balance:

3.5 Are the statutory functions and powers of the supervisors appropriate or do they need amending? If so, why?

Not Answered

3.5 If so, why are the statutory functions and powers of the supervisors not appropriate:

3.5 What amendments are required:

3.6 Should AML/CFT Supervisors have the power to conduct onsite inspections of REs operating from a dwelling house? If so, what controls should be implemented to protect the rights of the occupants?

Yes - AML/CFT Supervisors should be able to conduct onsite inspections where REs are operating from a dwelling house

Please explain your answer:

A dwelling house exemption is illogical.

What controls are required to protect the rights of occupants?:

3.7 What are some advantages or disadvantages of remote onsite inspections?

Please share your thoughts:

Remote inspections would be less disruptive to business, and therefore preferable.

3.8 Would virtual inspection options make supervision more efficient? What mechanisms would be required to make virtual inspections work?

Yes

Please explain your answer:

Remote inspections would be less disruptive to business, and therefore preferable.

What mechanisms would be required to make virtual inspections work?:

3.9 Is the process for forming a designated business group (DBG) appropriate? Are there any changes that could make the process more efficient?

Not Answered

Please expalin your answer:

Are there changes that could make the process more efficient?:

3.10 Should supervisors have an explicit role in approving or rejecting formation of a DBG? Why or why not?

Not Answered

Why or why not?:

3.11 Should explicit standards for audits and auditors be introduced? If so, what should those standards be and how could they be used to ensure audits are of higher quality?

Yes

If yes, what should the standards be?:

At a minimum, membership of some form of professional auditors body, with a view to ensuring a consistency of approach/standards.

How could standards be used to ensure audits are of higher quality?:

3.12 Who would be responsible for enforcing the standards of auditors?

AML/CFT supervisors

If other, which agency/organisation would enforce the standards?:

Please explain your answer:

The AML supervisors should enforce standards, on the presumption that they would be the most qualified to do so.

3.13 What impact would that have on cost for audits? What benefits would there be for businesses if we ensured higher quality audits?

Please share your thoughts:

Almost certainty costs would increase.

What benefits would there be for businesses if we ensured higher quality audits?:

Most organisations will want to know that they are compliant, so they do not need to fear an inspection. Higher quality audits would provide a level of comfort that an organisation was compliant.

3.14 Should there be any protections for businesses which rely on audits, or liability for auditors who do not provide a satisfactory audit?

Yes

Please explain your answer:

If an organisation has paid good money for an audit, then it should be given some protection if the audit was fundamentally flawed (and this was not know to the organisation).

If yes, what protections would you want? What should be the nature of the liability for auditors?:

Any organisation that has in good faith prepared its risk assessment and compliance programme, and had those audited, and then followed those in the belief that they were compliant, should not (if areas of non-compliance were found that an auditor should have identified) face any penalty greater than a formal warning (with a suitable time period to rectify the issue) and should not have any details publicised.

3.15 Is it appropriate to specify the role of a consultant in legislation, including what obligations they should have? If so, what are appropriate obligations for consultants?

Yes

Please explain your answer:

If the legislation is to have standards for auditors, it needs to also have standards for consultants.

If a consultant's rule should be specified in legislation, what are the appropriate obligations?:

If a consultant creates and a auditor checks a compliance programme, then a consultant should have essentially mirror obligations to those of an auditor.

3.16 Do we need to specify what standards consultants should be held to? If so, what would it look like? Would it include specific standards that must be met before providing advice?

Yes

Please explain your answer:

Similar to auditors, consultants should be membership of some form of professional body, with a view to ensuring a consistency of approach/standards.

If yes, what should the standards look like?:

3.17 Who would be responsible for enforcing the standard of consultants?

AML/CFT supervisor(s)

If other, please indicate which agency/organisation you see having responsibility:

Please explain your answer:

The AML supervisors should enforce standards, on the presumption that they would be the most qualified to do so.

3.18 Do you currently use agents to assist with your AML/CFT compliance obligations? If so, what do you use agents for?

No

What do you use agents for?:

3.19 Do you currently take any steps to ensure that only appropriate persons are able to act as your agent? What are those steps and why do you take them?

Not Answered

If yes, what are the steps you take to ensure only appropriate persons act as your agent?:

3.20 Should there be any additional measures in place to regulate the use of agents and third parties? For example, should we set out who can be an agent and in what circumstances they can be relied upon?

Yes

Please explain your answer:

It is illogical to have staff vetting but not agent or third party vetting processes.

3.20 If yes, what other additional measures would you like to regulate the use of agents and third parties? :

Similar to those of staff vetting.

3.21 Does the existing penalty framework in the AML/CFT Act allow for effective, proportionate, and dissuasive sanctions to be applied in all circumstances, including for larger entities? Why or why not?

Not Answered

Please explain your answer:

3.22 Would additional enforcement interventions, such as fines for non-compliance or enabling the restriction, suspension, or removal of a license or registration enable more proportionate, effective, and responsive enforcement?

Not Answered

Please explain your answer:

3.23 Are there any other changes we could make to enhance the penalty framework in the Act?

Not Answered

Please provide further detail:

3.24 Should the Act allow for higher penalties at the top end of seriousness to ensure sufficiently dissuasive penalties can be imposed for large businesses? If so, what should the penalties be?

Not Answered

Please provide further information, including what the penalties could be:

3.25 Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees?

Not Answered

Please provide further detail:

3.26 If penalties could apply to senior managers and directors, what is the appropriate penalty amount?

Please share your thoughts:

3.27 Should compliance officers also be subject to sanctions or provided protection from sanctions when acting in good faith?

Please share your thoughts:

The AML law is not always clear. Compliance officers should be provided protection from sanctions when acting in good faith.

3.28 Should the Department of Internal Affairs (DIA) have the power to apply to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act?

Yes

Please provide your comments in the box below:

It would make sense, and allow a company to be ended.

3.29 Should we change the time limit by which prosecutions must be brought by? If so, what should we change the time limit to?

Not Answered

Please provide your thoughts:

If you answered yes, what should we change the time limit to?:

4. Preventive measures

4.1 What challenges do you have with complying with your customer due diligence (CDD) obligations? How could these challenges be resolved?

What challenges do you have with complying with your CDD obligations?:

There are numerous issues, big and small. Two or the more common issues are:

(1) people without current identity documents (usually older clients); and

(2) information relating to trusts. There are a myriad of issues here, with obtaining trust financial details (source of the funds or the wealth) being the most common - they simply don't exist for many family trusts, especially where the trust only owns the family home and the trust has not been carefully administered. Another issue is 'missing' settlors (because a 'nominal settlor' was chosen when the trust was formed many year ago, and that person is no longer traceable).

One issue that occurs occasionally are technical arguments with others over the CDD process. This occurs most frequently in a trust context, for example where another professional (usually an accountant, in our experience) takes umbrage at the CDD process and makes compliance difficult [to be clear, we have found that the vast majority of our clients are co-operative with our CDD process, but (for example) when they have an independent trustee that is another professional or when we require information from that other professional for AML purposes, that professional has sometimes said words to the effect of 'this is all I am prepared to do, because that is all I would do for my compliance process' even though it is obvious their compliance processes is inadequate].

How could these challenges be resolved?:

In respect of the issues with trusts, there is in New Zealand a sizeable group of long-established family trusts (often owning only the family home) that have been poorly administered over the years, although not out of any intent to deceive but rather a combination of ignorance, apathy and cost-aversion. These trusts cause considerable CDD compliance issues due to the lack of necessary CDD documents, and there is a strong argument (we believe) for a less onerous regime for such home-owning family trusts, especially if that trust is now to be wound up.

The challenge of technical arguments with others over the CDD process is probably only resolved by yet more educational materials being delivered by the necessary parties (the supervisors, professional bodies and so on) such that everyone's obligations are clearer.

4.2 Have you experienced any situations where trying to identify the customer can be challenging or not straightforward? What were those situations and why was it challenging?

Yes

If yes, what were those situations and why was it challenging?:

As mentioned above, we have faced numerous issues, big and small. Two or the more common issues are:

(1) people without current identity documents (usually older clients - and this can be compounded when the person is suffering from some level of dementia); and

(2) information relating to trusts. There are a myriad of issues here, with obtaining trust financial details (source of the funds or the wealth) being the most common - they simply don't exist for many family trusts, especially where the trust only owns the family home and the trust has not been carefully administered. Another issue is 'missing' settlors (because a 'nominal settlor' was chosen when the trust was formed many year ago, and that person is no longer traceable).

4.3 Would a more prescriptive approach to the definition of a customer be helpful? For example, should we issue regulations to define who the customer is in various circumstances and when various services are provided?

Unsure

Please share your thoughts:

The AML definition of customer is, with respect, unhelpful to a law firm. We deal with clients not customers - a subtle or non-existent distinction to the DIA but a vitally important one to us. If the definition of "customer" for lawyers was amended to "client" (as we use this term in the Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Client Care) Rules 2008) then this would be preferable.

4.4 If so, what are the situations where more prescription is required to define the customer?

What do you think?:

As above, if the definition of "customer" for lawyers was amended to "client" (as we use this term in the Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Client Care) Rules 2008) then this would be preferable.

4.5 Do you anticipate that there would be any benefits or additional challenges from a more prescriptive approach being taken?

Please share your thoughts:

4.6 Should we amend the existing regulations to require real estate agents to conduct CDD on both the purchaser and vendor?

Not Answered

Please provide comments below :

4.7 What challenges do you anticipate would occur if this was required? How might these be addressed? What do you estimate would be the costs of the change?

What challenges do you anticipate would occur if CDD was required on both parties?:

How might the challenges be addressed?:

What do you estimate the costs of the change would be?:

4.8 When is the appropriate time for CDD on the vendor and purchaser to be conducted in real estate transactions?

Later - when contracts are signed

If you have indicated other above or have more comments to make please provide them in the box below:

The questions seems only to relate to real estate agents. From a lawyers perspective, we try to get CDD done asap (well before any contracts are signed) but that is not always possible. In that case, for us, the answer is to have CDD done (at the latest) when the contracts are signed.

4.9 Are the prescribed points where CDD must be conducted clear and appropriate? If not, how could we improve them?

Unsure

Please provide further detail below:

In practice, the phrase "material change in the nature or purpose of the business relationship " is not useful to a lawyer. As a result we have defaulted to the view that CDD must be done on all clients as soon as possible to ensure we have it 'on file' (usually this means before we can actually act for them, but in some cases - Wills, etc where CDD is not required - this is done at the earliest opportunity and in advance of actually being needed). It would simplify matters if the requirement was simply to do CDD on all customers regardless (because this is, practically, the only 'safe harbour' position for us).

4.10 For enhanced CDD, is the trigger for unusual or complex transactions sufficiently clear?

No

Please provide further detail below:

We doubt any two lawyers would agree on a simple definition of "unusual or complex transactions" - after all, one law firm's unusual transaction will be another's everyday business. It makes no sense that a client could face different costs (presuming that a firm can in fact pass on some of its CDD processing costs to the client concerned, which is itself doubtful) for the same transaction just because one firm views a transaction as unusable and another would not.

4.11 Should CDD be required in all instances where suspicions arise?

Yes

Please provide your comments in the box below:

As mentioned above, we have defaulted to the view that CDD must be done on all clients as soon as possible to ensure we have it 'on file' (because this is, practically, the only 'safe harbour' position for us). It would simplify matters if the requirement was simply to do CDD on all customers, regardless

4.12 If so, what level of CDD should be required, and what should be the requirements regarding verification? Is there any information that businesses should not need to obtain or verify?

Standard customer due diligence

What should be the requirements regarding verification?:

If standard was conducted on all customers on all occasions then at a minimum you would have some information to begin tracing the person. While enhanced CDD may be desirable, we feel that having some information is preferable to pushing for more information, and then not being able to get that (with the possible result that you end up with no information at all).

Is there any information that businesses should not need to obtain or verify?:

4.13 How can we ensure that this obligation does not put businesses in a position where they are likely to tip off the person?

Please provide your comments in the box below:

If standard was conducted on all customers on all occasions then there would be no 'tipping off' - everyone is subject to the same rules, so no one feels they are singled out (tipped off).

4.14 What money laundering risks are you seeing in relation to law firm trust accounts?

Please provide your comments in the box below:

To the best of knowledge and belief, our firm has not seen any money laundering through our trust account.

It is our understanding that real estate transactions are considered a high AML risk, but the simple fact is that the vast majority of our firm's transactions involve people selling one house to buy another (which frequently involves a mortgage), or buying a house for the first time (usually with the help of Kiwsaver and a huge mortgage), or selling a house to buy an ORA. In short there is nothing inherently suspicious in any of this - people do have to live somewhere after all, and if they are getting a mortgage then we would suggest that this reduces the likelihood of money laundering (because the banks will have checked the person's financial position much more carefully than we can).

The most common trust account issue our firm faces is obtaining suitable verification of client's bank account details. This may suggest a money laundering risk but is actually more about people being poor at keeping bank statements or being able to do screenshots of their accounts. Banks' online systems could help a lot if they simply presented all of the necessary information on one simple screen for the customer to send to us.

4.15 Are there any specific AML/CFT requirements or controls that could be put in place to mitigate the risks? If so, what types of circumstances or transactions should they apply to and what should the AML/CFT requirements be?

Unsure

Please share your thoughts:

The theoretical risk we perceive (but have not seen in practice) is if part of a house purchase was funded by an 'odd' source, say a 'distant uncle'. A control that could be put on would be some means by which the client's contribution to the purchase (that is, any amount paid by the client themselves rather than by their bank as a mortgage advance) has to be verified as having been accumulated over time from a job (a bank may be able to generate a document to this effect) or received from a traceable source (such as an inheritance). This may be similar to the requirements to verify funds by people seeking work/student visas.

If you answered yes, what types of circumstances or transactions should they apply to and what should the AML/CFT requirements be?:

4.16 Should this only apply to law firm trust accounts or to any DNFBP that holds funds in its trust account?

Apply to any DNFBP that holds funds in its trust account

Please provide your comments in the box below:

In practice a law firm will take some confidence in receiving funds from another DNFBP, because they are a DNFBP and so should have done CDD etc. For that reason it makes sense to treat all trust accounts equally, such that this confidence is better justified.

4.17 What do you estimate would be the costs of any additional controls you have identified?

Please provide your comments in the box below:

It is impossible to estimate, save that the costs will be greater than we imagine and will invariably fall on the businesses concerned, which will almost certainty be unable to pass them directly on to their clients.

4.18 Is the information that the Act requires to be obtained and verified still appropriate? If not, what should be changed?

No

Please share your thoughts:

Standard CDD is acceptable, but as noted above, a means of reducing enhanced CDD on long-established family trusts that simply own the family home should be introduced.

4.19 Are the obligations to obtain and verify information clear?

Yes

Please provide your comments in the box below:

4.20 Is the information that businesses should obtain and verify about their customers still appropriate?

Unsure

Please provide your comments in the box below:

Our only comment is that some information - such as 'information about the nature and purpose of the proposed business relationship with the customer' - only really becomes available during the source of a retainer, and so requiring this to be obtained and verified at the outset is impractical.

4.21 Is there any other information that the Act should require businesses to obtain or verify as part of CDD to better identify and manage a customer's risks?

Please provide your comments in the box below:

4.22 Should we issue regulations to require businesses to obtain and verify information about a legal person or legal arrangement's form and proof of existence, ownership and control structure, and powers that bind and regulate? Why?

No

Please provide your thoughts :

Some legal persons or legal arrangements (such as partnerships and trusts) do not have a simple registration number, nor do they necessarily have 'voting rights' or similar. There is often an implicit assumption in DIA and FATF documents that all legal persons and legal arrangements are akin to companies (with registration numbers, shares giving voting rights, and so on); they are not, and so treating them as though they are companies is pointless.

4.23 Do you already obtain some or all of this information, even though it is not explicitly required? If so, what information do you already obtain and why?

Yes

If so, what information do you already obtain and why?:

As a matter of practice it is hard to follow through on a client's instruction if you do not understand the form of the client (company or trust or partnership etc) , and the 'control structures' (that is, who is actually empowered to give you instructions and who will ultimately sign any necessary documents). We always collect such documents and information as are necessary to complete a client's instructions.

4.24 What do you estimate would be the impact on your compliance costs for your business if regulations explicitly required this information to be obtained and verified?

Please estimate the impact on your compliance costs in the box below:

Costs would increase, on the grounds that the information would almost certainly have to be obtained at the outset (at present the information is usually obtained as needed as the matter progresses) and would have to be verified to a standard (at present we verify to our own standard of satisfaction, not a regulated one).

4.25 Should we issue regulations to prescribe when information about a customer's source of wealth should be obtained and verified versus source of funds? If so, what should the requirements be for businesses?

Yes

Please provide further details below:

It would assist to have clarity on this matter, because out of a 'safe harbour approach we usually seek to obtain all if this information at the outset (often causing additional stress and costs).

If so, what should the requirements be for businesses?:

An obligation to have collected the information before a financial transaction is completed (eg before the house purchase is actually settled), rather than at the outset of a matter (that is, before being able to act for the client).

4.26 Are there any instances where businesses should not be required to obtain this information? Are there any circumstances when source of funds and source of wealth should be obtained and verified?

Yes

Please provide your thoughts:

As noted above, a means of reducing enhanced CDD (by not requiring all of this information to be collected) on long-established family trusts that simply own the family home should be introduced.

4.27 Would there be any additional costs resulting from prescribing further requirements for source of wealth and source of funds?

Yes

Please provide your estimate of additional costs in the box below:

There will almost always be further costs. If anything, that seems to be one of the key underlying purposes of the AML legislation (increasing the costs of doing business, such that people choose not to do so).

4.28 Should we issue regulations to require businesses to obtain information about the beneficiary/ies of a life insurance or investment-related insurance policy and prescribe the beneficiary/ies as a relevant risk factor when determining the appropriate level of CDD to conduct? Why or why not?

Not Answered

4.28 Please provide your comments on why or why not in the box below:

4.29 If we required this approach to be taken regarding beneficiaries of life and other investment-related insurance policies, should the obligations only apply for moderate or high-risk insurance policies? Are there any other steps we could take to ensure compliance costs are proportionate to risks?

Not Answered

Please provide your comments in the box below:

Are there any other steps we could take to ensure compliance costs are proportionate to risks?:

4.30 Have you encountered issues with the definition of a beneficial owner? If so, what about the definition was unclear or problematic?

Yes

If so, what about the definition was unclear or problematic?:

There have been issues around the 'level of control' required, and arguments that a 'beneficial owner' does not in fact have any real ownership or control despite being defined as such.

4.31 How can we improve the definition in the Act as well as in guidance to address those challenges?

Please provide your thoughts:

4.32 Should we issue a regulation which states that businesses should be focusing on identifying the "ultimate" beneficial owner? If so, how could “ultimate” beneficial owner be defined?

Unsure

Please provide your thoughts:

The concept of an "ultimate" beneficial owner only works if there is documentary proof of such an owner. In that case we consider that the current rules sufficiently capture the requirement to identify that owner.

If a criminal had structured their affairs to be the "ultimate" (but hidden) beneficial owner, would their 'front people' really reveal that? Presumably no. So an honest and a dishonest organisation will both say that there is no ultimate owner, and without any real suspicion or proof otherwise, how is a DNFBP supposed to investigate?

If so, how could "ultimate" beneficial owner be defined:

4.33 To what extent are you focusing beneficial ownership checks on the "ultimate" beneficial owner, even though it is not strictly required?

Sometimes

Please provide any comments you have on "ultimate" beneficial owner checks in the box below:

We say "sometimes" on the grounds mentioned above - where there is documentary proof of such an owner then we identify that owner. If the clients mentions someone who meets the test of control we would also identify them, but we cannot know if a client is 'hiding' the real owner.

4.34 Would there be any additional costs resulting from prescribing that businesses should focus on the “ultimate” beneficial owner?

Yes

Please provide your thoughts:

As noted above, it may be impossible to tell if there is an "ultimate” beneficial owner. So the costs of a 'wild goose chase' must be high.

If yes, can you please indicate the level of costs you think apply:

High - after all, when does the investigation stop if you do not know whether what you are looking for even exists (but you are obligated to look for it).

4.35 Should we issue a regulation which states that for the purposes of the definition of beneficial owner, a person on whose behalf a transaction is conducted is restricted to a person with indirect ownership or control of the customer (to align with the Financial Action Task Force (FATF) standards)? Why or why not?

Yes

Please provide your thoughts below:

If we read you noted correctly, this should reduce a compliance burden.

4.36 Would this change make the “specified managing intermediaries” exemption or Regulation 24 of the AML/CFT (Exemption) Regulations 2011 unnecessary? If so, should the exemptions be revoked?

Unsure

Please provide your thoughts:

4.37 Would there be any additional compliance costs or other consequences for your business from this change? If so, what steps could be taken to minimise theses costs or other consequences?

Unsure

Please provide your thoughts:

4.38 What process do you currently follow to identify who ultimately owns or controls a legal person, and to what extent is it consistent with the process set out in the FATF standards?

NZ AML/CFT Supervisor guidance on Beneficial Ownership

To what extent is the process you follow consistent with the process set out in the FATF standards?:

4.39 Should we issue regulations or a Code of Practice which is consistent with the FATF standards for identifying the beneficial owner of a legal person?

Issue a Code of Practice

Please provide any further comments you have in the box below:

4.40 Are there any aspects of the process the FATF has identified that are not appropriate for New Zealand businesses?

Not Answered

If yes, please indicate what aspects they are and why they are not appropriate for New Zealand businesses:

4.41 Would there be an impact on your compliance costs by mandating this process? If so, what would be the impact?

Not Answered

If so, what would be the impact?:

4.42 Should we issue regulations or a Code of Practice that allows businesses to satisfy their beneficial ownership obligations by identifying the settlor, the trustee(s), the protector and any other person exercising ultimate effective control over the trust or legal arrangement?

Issue a Code of Practice

Please provide any comments you have in the box below:

The requirement to identify the settlor is often troublesome and redundant in New Zealand, given that 'nominal' settlors were often used in days gone by. A Code of Practice that allowed us not to have to identify a 'nominal' settlor would be of great assistance.

4.43 Would there be an impact on your compliance costs by mandating that this process be applied? If so, what is the impact?

Yes

Please provide further details below:

As above, if A Code of Practice was issued that allowed us not to have to identify a 'nominal' settlor, that would be of great assistance and significantly reduce compliance costs.

4.44 Are the standards of verification and the basis by which verification of identity must be done clear and still appropriate? If not, how could they be improved?

No

Please provide your thoughts:

We consider the standards are clear, but given what we see of the practices of others, we begin to have our doubts . . . On that basis, the standards should be clarified.

4.45 Do you encounter any challenges with using Identity Verification Code of Practice (IVCOP)? If so, what are they, and how could they be resolved?

Yes

4.48 If so, what are they, and how could they be resolved?:

The rule around "certification must have been carried out in the three months preceding the presentation of the copied documents" has proven inconvenient on occasions.

The obligations when a trusted referee acts to certify could be made plainer by stating that the referee must meet the person face to face (as is the requirement on us).

The requirement to have an "appropriate exception handling procedures in place, for circumstances when a customer demonstrates that they are unable to satisfy the requirements in 1 to 3 above" is unbelievably vague. We accept some further guidance has been issued, which we interpret to the effect that this exception handling process really only applies to elderly clients without current ID, but some actual guidance on the exception handling process would assist greatly.

4.46 Is the approach in IVCOP clear and appropriate? If not, why?

No

Please provide your comments in the box below:

See comment above as to some of our issues.

In addition, the rules on electronic identity verification are so confusing that we have simply not even bothered to pursue this.

4.47 Should we amend or expand the IVCOP to include other AML/CFT verification requirements, e.g. verifying name and date of birth of high-risk customers verifying legal persons or arrangements, ongoing CDD, or sharing CDD information between businesses?

Unsure

What other verification requirements could be included?:

Insofar as to IVCOP is functionally mandatory (s67 of the Act refers) then having further verification rules in it would help, for the purposes of clarification. Having matters relating to verifying legal persons or arrangements would not help (for reasons noted in our comments above).

4.48 Are there any identity documents or other forms of identity verification that businesses should be able to use to verify a customer's identity?

Please provide your comments in the box below:

4.49 Do you have any challenges in complying with Part 3 of IVCOP in relation to electronic verification? What are those challenges and how could we address them?

Yes

What challenges have you faced? :

The rules are simply to complex to actually use in practice. We have to stick to the 'safe harbour' of meeting people face to face (that said, this is how our firm likes to operate anyway).

How could those challenges be addressed?:

If the supervisors could formally approve one or more systems/providers then we would know that we could operate in a 'safe harbour' in this regard.

4.50 What challenges have you faced with verification of address information? What have been the impacts of those challenges?

What challenges have you faced with verification of address information?:

We have had quite a number of issues where clients do not have 'adequate' address documents.

4.53 What have been the impacts of those challenges?:

This has added to our costs of CDD, which cannot be easily passed on to clients (in short, the firm has to bear the cost). It can also cause issues with the client relationship - some clients have become unnecessarily stressed or antagonistic because of this.

4.51 In your view, when should address information be verified, and how should that verification occur?

When should address information be verified?:

When the ID documents are verified.

How should verification occur?:

In the most cost-effective way possible.

4.52 How could we address challenges with address verification while also ensuring law enforcement outcomes are not undermined? Are there any fixes we could make in the short term?

How could we address challenges with address verification while also ensuring law enforcement outcomes are not undermined? :

Are there any fixes we could make in the short term?:

4.53 Do you currently take any of the steps identified by the FATF standards to manage high-risk customers, transactions or activities? If so, what steps do you take and why?

Yes

If you answered yes, what steps do you take and why?:

Just to clarify - we have not researched the FATF standards, but we do follow the law and the DIA guidance on such matters, and whenever there is some confusion or complexity in a matter we always seek to obtain additional information on the intended nature of the business relationship and reasons for intended or performed transactions (or as we put it, further and better instructions).

4.54 Should we issue regulations or a Code of Practice which outlines the additional measures that businesses can take as part of enhanced CDD?

Issue a Code of Practice

Please provide any further comments you have in the box below:

As noted above, a Code of Practice containing a means of reducing enhanced CDD (by not requiring all of this information to be collected) on long-established family trusts that simply own the family home should be introduced.

4.55 Should any of the additional measures be mandatory? If so, how should they be mandated, and in what circumstances?

Yes

If you answered yes, what measures should be mandatory?:

As noted above, a Code of Practice containing a means of reducing enhanced CDD (by not requiring all of this information to be collected) on long-established family trusts that simply own the family home should be introduced.

How shouild we make the measures mandatory?:

When should the measures be mandatory?:

4.56 Are there ways we can enhance or streamline the operation of the simplified CDD obligations, in particular where the customer is a large organisation?

Unsure

Please provide further detail below :

4.57 Should we issue regulations to allow employees to be delegated by a senior manager without triggering CDD in each circumstance? Why?

Yes

Why? Please provide your response in the box below:

It is not uncommon that an employee is (effectively) a conduit of information, rather than the decision-maker. Such 'conduits' should not need to be subject to CDD.

4.58 Should we remove the requirement for enhanced CDD to be conducted for all trusts or vehicles for holding personal assets? Why or why not?

Yes

Why or why not? Please elaborate:

As noted above, requirements for enhanced CDD on long-established family trusts that simply own the family home should be removed.

4.59 If we removed this requirement, what further guidance would need to be provided to enable businesses to appropriately identify high risks trusts and conduct enhanced CDD?

Please provide further detail below:

The guidance should identify what is a long-established family trusts that simply owns the family home (for which CDD should be reduced) vs other trusts (for which enhanced CDD may be appropriate).

4.60 Should high-risk categories of trusts which require enhanced CDD be identified in regulation or legislation? If so, what sorts of trusts would fall into this category?

Yes

Please provide further detail below:

A trust that is not a long-established family trusts that simply owns the family home could be considered as being of a higher risk.

If so, what sorts of trusts would fall into this category?:

A trust that is not a long-established family trusts that simply owns the family home could be considered as being of a higher risk.

4.61 Are the ongoing CDD and account monitoring obligations in section 31 clear and appropriate, or are there changes we should consider making?

No

Please provide further detail below:

Account monitoring is not a sensible concept for a law firm (clients simply do not have on-going accounts as with a bank).

A law firms acts for clients as and when they approach us with a 'problem' (whether it be buying a house, doing a Will, sorting a neighbor dispute, reviewing an employment contract, or what have you). Once the 'problem' is solved then we do not - and cannot practically - monitor them, unless they come back to us with another 'problem'. Hence s31 is functionally meaningless for us.

What changes should we consider making to clarify CDD and account monitoring obligations in section 31?:

Lawyers should not be obligated to comply with s31.

4.62 As part of ongoing CDD and account monitoring, do you consider whether and when CDD was last conducted and the adequacy of the information previously obtained?

Yes

Please provide any further comments in the box below:

If the clients ID documents have expired then we would look to do new CDD on them with their new documents, at a convenient time should they instruct us again.

4.63 Should we issue regulations to require businesses to consider these factors when conducting ongoing CDD and account monitoring? Why?

No

Why? Please provide your comments in the box below:

For the reasons mentioned above, account monitoring is not a sensible concept for a law firm (clients simply do not have on-going accounts as with a bank).

4.64 What would be the impact on your compliance costs if we issued regulations to make this change? Would ongoing CDD be triggered more often?

What would be the impact on your compliance costs if we issued regulations to make this change?:

Compliance costs would increase as we would need to follow up on clients even through they were not actively instructing us at that time. Some clients would be unlikely to co-operate.

Yes - ongoing CDD would be triggered more often

4.65 Should we mandate any other requirements for ongoing CDD, e.g. how frequently it needs to be conducted?

No

Why? Please provide further detail below:

As noted above, we conduct CDD when approached by clients and review when they they come back to us for more work (and if ID documents have expired, then we do new CDD). That is the natural frequency for a review of CDD for a law firm, and seeking to impose a more frequent time frame would be costly, wasteful and unlikely to assist in the client relationship.

Please provide any other examples of mandated requirements for ongoing CDD in the box below:

4.66 If you are a DNFBP, how do you currently approach your ongoing CDD and account monitoring obligations where there are few or no financial transactions?

Please provide your response in the box below:

As noted above, we conduct CDD when approached by clients and review when they they come back to us for more work (and if ID documents have expired, then we do new CDD).

4.67 Should we issue regulations to require businesses to review activities provided to the customer as well as account activity and transaction behaviour? What reviews would you consider to be appropriate?

No

Please provide further information below:

The concepts of activities, account activity and transaction behaviour do not easily translate to a law firm - we do not have on-going clients accounts like a bank, but often simply handle funds for a very short period (eg on a house sale/purchase this can be as little as a day). So reviewing activity or transaction behaviour should not apply to law firms.

What reviews would you consider to be appropriate?:

4.68 What would be the impact on your compliance costs if we issued regulations to make this change?

What would be the impact on your compliance costs if we issued regulations to make this change?:

Significant, as we would need to devise a sensible means by which to comply with these regulations, despite the fact (as explained above) that they do not easily apply to a law firm.

4.69 Do you currently review other information beyond what is required in the Act as part of account monitoring? If so, what information do you review and why?

Yes

If so, what information do you review and why?:

Insofar as it is necessary for acting on a clients' instructions, or ensuring that we comply with the various laws and regulations applicable to lawyers (by way of example only, trust account regulations), we frequently review information well beyond the scope of the AML legislation but which indirectly relates to its purposes.

4.70 Should we issue regulations requiring businesses to review other information where appropriate as part of account monitoring? If so, what information should regulations require businesses to regularly review?

Unsure

Please provide further information below:

The exact information to be reviewed needs to be considered carefully on a sector/industry/profession basis. The AML legislation is often taken to be 'one size fits all', but many of its requirements do not fit well for law firms. A blanket requirement to review a certain sort of information applicable to (say) a bank should not be imposed on a non-bank entity such as a law firm.

If you answered yes, what information should regulations require businesses to regularly review?:

4.71 How could we ensure that existing (pre-Act) customers are subject to the appropriate level of CDD? Are any of the options appropriate and are there any other options we have not identified? What would be the cost implications of the options?

Changing what is meant by a 'material change'

Why? Please provide further details below:

As noted above, the current "material change" concept does not work well for a law firm, hence we have taken the 'safe harbour' view that essentially all clients (existing or otherwise) are subject to AML requirements when they provide us with instructions on a new matter. Altering the "material change" concept would probably validate this potion, albeit not actually change our current practice.

Are there any other options for ensuring existing (pre-Act) customers are subject to the appropriate levels of CDD?:

Simply make all clients subject to AML.

What would be the cost implications of the options?:

4.72 Should the Act set out what can constitute tipping off and set out a test for businesses to apply to determine whether conducting CDD or enhanced CDD may tip off a customer?

Yes

Why? Please provide more information below:

Any client can ask us about any law of New Zealand and we are expected to answer them truthfully. It is not hard to see how a discussion of the AML legislation could, if appropriate question were asked by a client, lead to talking about 'tipping off'. In some contexts this itself could lead to being seen as having 'tipped off' a client. There needs to be some protection for lawyers who simply answer client's questions, and hence some clarity around what 'tipping off' means.

4.73 Once suspicion has been formed, should reporting entities have the discretion not to conduct enhanced CDD to avoid tipping off?

Yes

Please provide any further information below:

It is easy to see that conducting enhanced CDD 'late in the day' would act to 'tip off' someone. There needs to be a means by which reporting entities can simply report what they have without being obligated to devise an impossible scheme to get enhanced CDD without arousing suspicion (of someone, please remember, they now consider to be engaging in criminal behaviour).

4.74 If you answered yes to question 4.73, in what circumstances should this apply? For example, should it apply only to business relationships (rather than occasional transactions or activities)? Or should it only apply to certain types of business relationships where the customer holds a facility for the customer (such as a bank account)?

Other

If other, please provide details in the box below:

It should apply to lawyer/client relationships.

Why? Please provide further detail below:

Because that is the relationship we have with our clients.

4.75 Are there any other challenges with the existing requirements to conduct enhanced CDD as soon as practicable after becoming aware that a SAR must be reported? How could we address those challenges?

Yes

What are those challenges?:

As noted above, it is easy to see that conducting enhanced CDD 'late in the day' would act to 'tip off' someone. A 'softly, softly' approach may gain more information than a mandatory requirement for urgency.

If yes, how could we address those challenges?:

Clarify that "as soon as practicable" can be read as allowing for a longer, 'softly, softly' approach.

4.76 Do you have any challenges with complying with your record keeping obligations? How could we address those challenges?

Yes

Please provide more detail below:

There are issues in terms of both time and money. When transactions are time-sensitive, creating the necessary records in a timely fashion is an unwelcome hindrance. There are costs on collating and storing the records. In addition, there is a degree of duplication between our trust account records and the AML records which is costs both time and money to deal with.

If yes, how could we address those challenges?:

4.77 Are there any other records we should require businesses to keep, depending on the nature of their business?

No

If yes, what are the other records and why should they be kept?:

4.78 Does the exemption from keeping records of the parties to a transaction where the transaction is outside a business relationship or below the occasional transaction threshold hinder reconstruction of transactions? If so, should the exemption be modified or removed?

No

If so, should the exemption be modified or removed?:

We record all client transactions, so there is practically no issue of "outside a business relationship or below the occasional transaction threshold". All records are kept as per NZLS, LINZ and other legal requirements.

Why? Please provide any additional information:

We record all client transactions, so there is practically no issue of "outside a business relationship or below the occasional transaction threshold". All records are kept as per NZLS, LINZ and other legal requirements.

4.79 Do you have any challenges with complying with the obligations regarding politically exposed persons? How could we address those challenges?

No

Please provide any additional information below:

We use Cloudcheck, an electronic service to check ID documents, and this includes a PEP check. Insofar as Cloudcheck's service complies, we consider we are compliant.

If you answered yes, how could we address those challenges?:

4.80 Do you take any additional steps to mitigate the risks of politically exposed persons (PEPs) that are not required by the Act? What are those steps and why do you take them?

Yes

If yes, what are those steps and why do you take them?:

When speaking with clients we often find out about their families etc. If anything comes up as part of such conversations then, regardless of the PEP check already done via Cloudcheck, we look into the issue further (and if necessary, comply with the additional PEP requirements).

4.81 How do you currently treat customers who are domestic PEPs or PEPs from international organisations?

How do you currently treat customers who are domestic PEPs or PEPs from international organisations?:

Domestic PEPs have not been treated as PEPs. We are not aware of any international organisation PEPs.

Foreign PEPs we have treated as having a 'wide' immediate family - eg the NZ citizen father of a NZ citizen son who has married a foreign PEP is still treated as a PEP, even where the matter has no relationship to the foreign PEP and there is no reasons to suspect any PEP involvement at all.

4.82 Should the definition of “politically exposed persons” be expanded to include domestic PEPs and/or PEPs from international organisations? If so, what should the definitions be?

Yes

Please provide any additional information below:

Any level of government influence should be considered as a PEP, and all should be considered equally. It is not logical to assume that (say) Justin Trudeau's sister is automatically higher risk than Jacinda Adern's mother.

If you answered yes, how do you think these terms should be defined?:

Any level of government influence should be considered as a PEP.

4.83 If we included domestic PEPs, should we also include political candidates and persons who receive party donations to improve the integrity of our electoral financing regime?

Yes

Please provide any further comments in the box below:

The integrity of our political system needs to be maintained.

4.84 What would be the cost implications of such a measure for your business or sector?

4.84 What would be the cost implications of such a measure for your business or sector?:

This would simply add to the costs, most of which we would be again unable to recover from the clients.

4.85 How do you currently treat customers who were once PEPs?

4.85 How do you currently treat customers who were once PEPs?:

We treat them as no longer a PEP.

4.86 Should we require a risk-based approach to determine whether a customer who no longer occupies a public function should still nonetheless be treated as a PEP?

Yes

4.86 If you want to elaborate on your choice please provide your comments in the box below:

As the career of Vladimir Vladimirovich Putin shows, just because you leave a job doesn't mean you lose control.

4.87 Would a risk-based approach to former PEPs impact compliance costs compared to the current prescriptive approach?

Yes

4.87 Please provide any further comments you would like to make in the box below:

It all adds to costs - the phrase "risk-based" just means more time to be spent and more documents to be produced, signed and stored.

4.88 What steps do you take, proactive or otherwise, to determine whether a customer is a foreign PEP?

4.88 What steps do you take, proactive or otherwise, to determine whether a customer is a foreign PEP?:

As noted above, we use Cloudcheck (an electronic service) and information gleaned from speaking with clients.

4.89 Do you consider the Act's use of "take reasonable steps" aligns with the FATF's expectations that businesses have risk management systems in place to enable proactive steps to be taken to identify whether a customer or beneficial owner is a foreign PEP? If not, how can we make it clearer?

Yes

4.89 If not, how can we make it clearer?:

4.90 Should the Act clearly allow businesses to consider their level of exposure to foreign PEPs when determining the extent to which they need to take proactive steps?

Yes

4.90 Please provide any further comments you would like to make in the box below:

Some law firms will deal with many PEPs, others few or none. It makes no sense for a firm that has few or no PEPs (a fact that should by now be apparent to them) to undertake expensive additional steps for a problem they do not have.

4.91 Should the Act mandate that businesses undertake the necessary checks to determine whether the customer or beneficial owner is a foreign PEP before the relationship is established or occasional activity or transaction is conducted?

No

4.91 Please provide any further comments in the box below:

Requiring people to give you their full family tree and the job history of all members of their family when they first instruct you is simply ridiculous. While we do our initial PEP checking process (via Cloudcheck) at the outset, the reality is that you can find out more when you speak with people in a more relaxed manner at a later date.

4.92 How do you currently deal with domestic PEPs or international organisation PEPs? For example, do you take risk-based measures to determine whether a customer is a domestic PEP, even though our law does not require this to be done?

Do you take risk-based measures to determine whether a customer is a domestic PEP

4.92 If there are other ways you currently deal with domestic PEPs or international organisation PEPs please indicate what you do in the box below:

As mentioned, we do our initial PEP checking process (via Cloudcheck) at the outset, and this can identify any PEP known to the databases checked, including domestic ones. In addition, talking to the client during the course of the retainer usually reveals any further PEP-related information (parents love to tell you if their children have an important job, for example, and this information frequently comes up in the course of discussing matters such as Wills or EPOAs).

4.93 If we include domestic PEPs and PEPs from international organisations within scope of the Act, should the Act allow for businesses to take reasonable steps, according to the level of risk involved, to determine whether a customer or beneficial owner is a domestic or international organisation PEP?

Yes

4.93 Please provide any further comments in the box below:

From our perspective, all PEPs could be treated equally because our current systems would identify them in the same manner.

4.94 What would the cost implications of including domestic PEPs and PEPs from international organisations be for your business or sector?

4.94 What would the cost implications of including domestic PEPs and PEPs from international organisations be for your business or sector?:

Extra paperwork because a person is a PEP = extra cost to our business.

4.95 Should businesses be required to take reasonable steps to determine whether the beneficiary (or beneficial owner of a beneficiary) of a life insurance policy is a PEP before any money is paid out?

Not Answered

4.95 Please provide any comments you have in the box below:

4.96 What would be the cost implications of requiring life insurers to determine whether a beneficiary is a PEP?

4.96 What would be the cost implications of requiring life insurers to determine whether a beneficiary is a PEP?:

4.97 What steps do you currently take to mitigate the risks of customers who are PEPs?

4.97 What steps do you currently take to mitigate the risks of customers who are PEPs?:

If a PEP is identified then the partners review the matter and determine if we all approve acting for the PEP. Depending on the matter, additional monitoring and consideration (if there is to be a transaction of some nature) may be required.

4.98 Should the Act mandate businesses take the necessary mitigation steps the FATF expects for all foreign PEPs, and, if domestic or international organisation PEPs are included within scope, where they present higher risks?

No

4.98 Please provide your comments in the box below:

While we take no issue with having to identify all PEPs foreign and domestic, requiring enhanced measures (mitigation) for all PEPs is not justified in our view.

4.99 What would be the cost implications of requiring businesses to take further steps to mitigate the risks of customers who are PEPs?

4.99 What would be the cost implications of requiring businesses to take further steps to mitigate the risks of customers who are PEPs?:

Once again, extra mitigation measures because a person is a PEP = extra cost to our business.

4.100 Should businesses be required to assess their exposure to designated individuals or entities?

Not Answered

Please provide your comments in the box below:

4.101 What support would businesses need to conduct this assessment?

Please provide your comments in the box below:

4.102 If we require businesses to assess their proliferation financing risks, what should the requirement look like? Should this assessment be restricted to the risk of sanctions evasion (in line with FATF standards) or more generally consider proliferation financing risks?

Please provide your comments in the box below:

4.103 Should legislation require businesses to include, as part of their AML/CFT programme, policies, procedures, and controls to implement TFS obligations without delay? How prescriptive should the requirement be?

Please provide your comments in the box below:

4.104 What support would businesses need to develop such policies, procedures, and controls?

Please provide your comments in the box below:

4.105 How should businesses receive timely updates to sanctions lists?

Please provide your comments in the box below:

4.106 Do we need to amend the Act to ensure all businesses are receiving timely updates to sanctions lists? If so, what would such an obligation look like?

Please provide your comments in the box below:

4.107 How can we support and enable businesses to identify associates and persons acting on behalf of designated persons or entities?

Please provide your comments in the box below:

4.108 Do you currently screen for customers and transactions involving designated persons and entities? If so, what is the process that you follow?

Please provide your comments in the box below:

4.109 How could the Act support businesses to screen customers and transactions to ensure they do not involve designated persons and entities? Are any obligations or safe harbours required?

Please provide your comments in the box below:

4.110 If we created obligations in the Act, how could we ensure that the obligations can be implemented efficiently and that we minimise compliance costs?

Please provide your comments in the box below:

4.111 How can we streamline current reporting obligations and ensure there is an appropriate notification process for property frozen in compliance with regulations issued under the United Nations Act?

Please provide your comments in the box below:

4.112 If we included a new reporting obligation in the Act which complies with UN and FATF requirements, how could that obligation look? How could we ensure there is no duplication of reporting requirements?

Please provide your comments in the box below:

4.113 Should the government provide assurance to businesses that have frozen assets that the actions taken are appropriate?

Not Answered

Please provide your comments in the box below:

4.114 If so, what could that assurance look like and how would it work?

Please provide your comments in the box below:

4.115 Are the requirements for managing the risks of correspondent banking relationships set out in section 29 still fit-for-purpose or do they need updating?

Not Answered

Please provide your comments in the box below:

4.116 Are you aware of any correspondent relationships in non-banking sectors? If so, do you consider those relationships to be risky and should the requirements in section 29 also apply to those correspondent relationships?

Not Answered

Please provide your comments in the box below:

4.117 If you are a money or value transfer service (MVTS) provider which uses agents, how do you currently maintain visibility of how many agents you have?

Please provide your comments in the box below:

4.118 Should a MVTS provider be required to maintain a current list of its agents as part of its AML/CFT programme?

Not Answered

Please provide your comments in the box below:

4.119 Should a MVTS provider be explicitly required to monitor and manage its agents for compliance with its AML/CFT programme (including vetting and training obligations)?

Not Answered

Please provide your comments in the box below:

4.120 Should the Act explicitly state that a MVTS provider is responsible and liable for AML/CFT compliance of any activities undertaken by its agent? Why or why not?

Not Answered

Why or why not?:

4.121 If you are an MVTS provider which uses agents, do you currently include your agents in your programme, and monitor them for compliance (including conducting vetting and training)? Why or why not?

Not Answered

Why or why not?:

4.122 Should we issue regulations to explicitly require MVTS providers to monitor and manage its agents for compliance with its AML/CFT programme (including vetting and training obligations)? Why or why not?

Not Answered

Why or why not?:

4.123 What would be the cost implications of requiring MVTS providers to include agents in their programmes?

Please provide your comments in the box below:

4.124 Who should be responsible for the AML/CFT compliance for sub-agents for MVTS providers which use a multi-layer approach? Should it be the MVTS provider, the master agent, or both?

Please provide your comments in the box below:

4.125 Should we issue regulations to declare that master agents are reporting entities under the Act in their own right? Why or why not?

Not Answered

Why or why not?:

4.126 What would be the cost implications of requiring MVTS providers to include agents in their programmes?

Please provide your comments in the box below:

4.127 What risks with new products or technologies have you identified in your business or sector? What do you currently do with those risks?

Please provide your comments in the box below:

4.128 Should we issue regulations to explicitly require businesses to assess risks in relation to the development of new products, new business practices (including new delivery mechanisms), and using new or developing technologies for both new and pre-existing products? Why or why not?

Not Answered

Why or why not?:

4.129 If so, should the risks be assessed prior to the launch or use of any new products or technologies?

Please provide your comments in the box below:

4.130 What would be the cost implications of explicitly requiring businesses to assess the risks of new products or technologies?

Please provide your comments in the box below:

4.131 Should we issue regulations to explicitly require businesses to mitigate risks identified with new products or technologies? Why or why not?

Not Answered

Why or why not?:

4.132 Would there be any cost implications of explicitly requiring business to mitigate the risks of new products or technologies?

Not Answered

If yes, what are your views?:

4.133 Are there any obligations we need to tailor for virtual asset service providers? Is there any further support that we should provide to assist them with complying with their obligations?

Not Answered

Please provide your comments in the box below:

4.134 Should we set specific thresholds for occasional transactions for virtual asset service providers? Why or why not?

Not Answered

Why or why not?:

4.135 If so, should the threshold be set at NZD 1,500 (in line with the FATF standards) or NZD 1,000 (in line with the Act's existing threshold for currency exchange and wire transfers)? Why?

Yes

Why?:

$1,000 is too low for any exchange requirement.

4.136 Are there any challenges that we would need to navigate in setting occasional transaction thresholds for virtual assets?

Not Answered

Please provide your comments in the box below:

4.137 Should we issue regulations to declare that transfers of virtual assets to be cross-border wire transfers? Why or why not?

Not Answered

Why or why not?:

4.138 Would there be any challenges with taking this approach? How could we address those challenges?

Not Answered

Please provide your comments in the box below:

4.139 What challenges have you encountered with the definitions involved in a wire transfer, including international wire transfers?

Please provide your comments in the box below:

We have struggled with the definitions, to the point where we may well have submitted PTRs in situations where this was not strictly required.

4.140 Do the definitions need to be modernised and amended to be better reflect business practices? If so, how?

Yes

If so, how?:

The terminology needs to reflect the words actually used by those transferring funds, so that we can be clearer as to our obligations.

4.141 Are there any other issues with the definitions that we have not identified?

Yes

If yes, what are your views?:

Some of the terminology used in the guidance (originating party, and so on) are confusing. The vast majority of our international wire transfers involve sending money from Estates to beneficiaries (children and grandchildren of the deceased) overseas - the terminology should be able to be understood easily so as to interpret how it works for such simple transactions.

4.142 What information, if any, do you currently provide when conducting wire transfers below NZD 1000?

Please provide your comments in the box below:

As a law firm we provide data sufficient to identify the payment in accordance with trust accounting regulations (together with any specific information that may be required by the recipient for identification purposes).

4.143 Should we issue regulations requiring wire transfers below NZD 1000 to be accompanied with some information about the originator and beneficiary? Why or why not?

No

Why or why not?:

We consider this is already covered for law firms by our compliance with the trust accounting regulations.

4.144 What would be the cost implications from requiring specific information be collected for and accompany wire transfers of less than NZD 1000?

Please provide your comments in the box below:

As noted above, we provide certain information in accordance with trust accounting regulations anyway. So long as the specific information you are contemplating is the same as we already provide then there would be no cost implication.

4.145 How do you currently treat wire transfers which lack the required information about the originator or beneficiary, including below the NZD 1000 threshold?

Please provide your comments in the box below:

As a law firm we must comply with trust accounting regulations. This means we must identify each and every payment regardless.

4.146 Should ordering institutions be explicitly prohibited from executing wire transfers in all circumstances where information about the parties is missing, including information about the beneficiary? Why or why not?

Yes

Why or why not?:

As a law firm we must comply with trust accounting regulations. This means we must be certain of the recipient of every transfer, regardless. Hence such a rule would have little practical impact on the way we do business because we would already be complying with it.

4.147 Would there be any impact on compliance costs if an explicit prohibition existed for ordering institutions?

No

If yes, what are your views?:

As a law firm we must comply with trust accounting regulations. This means we must be certain of the recipient of every transfer, regardless. Hence such a rule would have little practical impact on the way we do business because we would already be complying with it.

4.148 When acting as an intermediary institution, what do you currently do with information about the originator and beneficiary?

Please provide your comments in the box below:

4.149 Should we amend the Act to mandate intermediary institutions to retain the information with the wire transfer? Why or why not?

Not Answered

Why or why not?:

4.150 If you act as an intermediary institution, do you do some or all of the following:• keep records where relevant information cannot be passed along in the domestic leg of a wire transfer where technical limitations prevent the information from being accompanied?• take reasonable measures to identify international wire transfers lacking the required information?• have risk-based policies in place for determining what to do with wire transfers lacking the required information?

Not Answered

Please provide your comments in the box below:

4.151 Should we issue regulations requiring intermediary institutions to take these steps, in line with the FATF standards? Why or why not?

Not Answered

Why or why not?:

4.152 What would be the cost implications from requiring intermediary institutions to take these steps?

Please provide your comments in the box below:

4.153 Do you currently take any reasonable measures to identify international wire transfers that lack required information? If so, what are those measures and why do you take them?

Yes

If so, what are those measures and why do you take them? :

As a law firm we must comply with trust accounting regulations. This means we must identify each and every payment regardless.

4.154 Should we issue regulations requiring beneficiary institutions to take reasonable measures, which may include post-event or real time monitoring, to identify international wire transfers that lack the required originator or beneficiary information?

Yes

If yes, what are your views?:

As a law firm we must comply with trust accounting regulations. This means we must identify each and every payment regardless. Hence we consider we would already be complying with such a regulation.

4.155 What would be the cost implications from requiring beneficiary institutions to take these steps?

Please provide your comments in the box below:

As a law firm we must comply with trust accounting regulations. This means we must identify each and every payment regardless. Hence such a rule would have little practical impact on costs because we would already be complying with it.

4.156 Are the prescribed transaction reporting requirements clear, fit for purpose, and relevant? If not, what improvements or changes do we need to make?

No

If not, what improvements or changes do we need to make?:

The vast majority of our international wire transfers involve sending money from Estates to beneficiaries (children and grandchildren of the deceased) overseas - we believe that this is true for most law firms. As such the terminology should be able to be understood easily so as to interpret how it works for such simple transactions, and if anything we consider that such payments should only be covered by a limited/reduced PTR requirement, given our understanding that Estates are not seen as a significant AML risk.

4.157 Have you encountered any challenges in complying with your prescribed transaction reporting (PTR) obligations? What are those challenges and how could we resolve them?

Yes

If yes, what are those challenges and how could we resolve them?:

A lack of clarity in the definitions has meant we have had to ask the FIU for particular guidance on several occasions. The terminology should be able to be understood easily so as to interpret how it works.

4.158 Should we issue regulations or a Code of Practice to provide more clarity about the sorts of transactions that require a PTR?

Yes

Please provide your comments in the box below:

More clarity would be most helpful. Moreover, given that most of our international wire transfers involve sending money from Estates to beneficiaries (children and grandchildren of the deceased) overseas, and Estates pose a low AML risk, we consider tat a reduced PTR requirement should be allowed for such payments.

4.159 If so, what transactions have you identified where the PTR obligation is unclear? What makes the reporting obligation unclear, and how could we clarify the obligation?

Please provide your comments in the box below:

One example is that transactions involving money being transferred through entitles such as Transferwise caused us issues, due to unclear PTR rules. After consulting the FIU it became apparent that whether a PTR was required was down to the exact manner by which the Transferwise account was opened and the money transfer conducted. Having plainer rules around organisations such as Transferwise would help.

4.160 Should non-bank financial institutions (other than MVTS providers) and DNFBPs be required to report PTRs for international fund transfers?

Yes

Please provide your comments in the box below:

We take the view that as a DNFBP we are already required to submit PTRs for all international wire transfers.

4.161 If so, should the PTR obligations on non-bank financial institutions and DNFBPs be separate to those imposed on banks and MVTS providers?

Please provide your comments in the box below:

A separate obligation would help - the PTR system often asks for exchange rates which we do no know. We simply should be able to provide the details we have (such as the dollar amount that was paid out or received into our trust account).

4.162 Are there any other options to ensure that New Zealand has a robust PTR obligation that maximises financial intelligence available to the FIU, while minimising the accompanying compliance burden across all reporting entities?

Unsure

Please provide your comments in the box below:

4.163 Should we amend the existing regulatory exemption for intermediary institutions so that it does not apply to MVTS providers?

Not Answered

Please provide your comments in the box below:

4.164 Are there any alternative options that we should consider which ensure that financial intelligence on international wire transfers is collected when multiple MVTS providers are involved in the transaction?

Not Answered

If yes, what are your views?:

4.165 Are there any other intermediary institutions that should be included in the exemption?

Not Answered

If yes, what are your views?:

4.166 Are there situations you have encountered where submitting a PTR within the required 10 working days has been challenging? What was the cause of that situation and what would have been an appropriate timeframe?

Yes

Please provide your comments in the box below:

We are a busy law practice, so even 10 working days can be a problem (in terms of finding the time to do additional data entry - the PTR computer system is not very user friendly). Issues such a covid lockdowns have caused additional problems - it is hard to submit a report when the data required is in an office you cannot easily access.

4.167 Do you consider that a lower threshold for PTRs to be more in line with New Zealand's risk and context? If so, what would be the appropriate threshold for reporting?

No

If so, what would be the appropriate threshold for reporting?:

We would consider raising the threshold, at least for certain types of payments. Most of our international wire transfers involve sending money from Estates to beneficiaries (children and grandchildren of the deceased) overseas, and Estates pose a low AML risk, so we consider that a reduced PTR requirement should be allowed for such payments.

4.168 Are there any practical issues not identified in this document that we should address before changing any PTR threshold?

Yes

Please provide your comments in the box below:

The PTR computer system operated by the FIU is not very user friendly It requires a lot of manual data entry. We understand that because the PTR system is international it is hard/impossible to make the system more user friendly. This does however create a real practical issue for us - namely a lot of time is lost on manual data entry into a difficult system. Making every payment subject to a PTR will impact on costs significantly.

4.169 How much would a change in reporting threshold impact your business?

Please provide your comments in the box below:

The PTR computer system operated by the FIU is not very user friendly It requires a lot of manual data entry. We understand that because the PTR system is international it is hard/impossible to make the system more user friendly. This does however create a real practical issue for us - namely a lot of time is lost on manual data entry into a difficult system. Making every payment subject to a PTR will impact on costs significantly.

4.170 How much time would you need to implement the change?

Please provide your comments in the box below:

It is not the change, so much as the increase on manual data entry that is the real time problems for us.

4.171 Do you use any of the reliance provisions in the AML/CFT Act? If so, which provisions do you use?

Yes

If so, what provisions do you use?:

On two or three occasions we have used s33.

4.172 Are there any barriers to you using reliance to the extent you would like to?

Yes

Please provide your comments in the box below:

As we will be held liable regardless, we prefer to control the process rather than have to check up on the other reporting entity under s33. In one case where we tried to use s33 the other reporting entity was not prepared to certify that they consented to conducting the customer due diligence procedures for us (s33(2)(d)), hence we could not use s33. We have not tried using s33 since.

4.173 Are there any changes that could be made to the reliance provisions that would mean you used them more? If so, what?

Yes

If so, what?:

The removal or rephrasing of of s33(2)(d) may make the s33 process more attractive to law firms.

4.174 Given the 'approved entities' approach is inconsistent with FATF standards and no entities have been approved, should we continue to have an 'approved entities' approach?

Yes

Please provide your comments in the box below:

There may be some merit in a centralised CDD sytem, if this is cost-effective, sufficiently private (no one else can tell if you have requested CDD on a client), and secure.

4.175 If so, how should the government approve an entity for third party reliance? What standards should an entity be required to meet to become approved?

Please provide your comments in the box below:

The easiest system may be to 'spin off' a CDD checking system out of Births Deaths and Marriages, because they would be a government-run organisation and they have the primary data anyway.

4.176 If your business is a reporting entity, would you want to be an approved entity? Why or why not?

No

Why or why not?:

We are lawyers, that is what we do.

4.177 Are there any alternative approaches we should consider to enable liability to be shared during reliance?

Unsure

Please provide your comments in the box below:

4.178 Should we issue regulations to enable other types of businesses to form DBGs, if so, what are those types of businesses and why should they be eligible to form a DBG?

Not Answered

If so, what are those types of businesses and why should they be eligible to form a DBG?:

4.179 Should we issue regulations to prescribe that overseas DBG members must conduct CDD to the level required by our Act?

Not Answered

Please provide your comments in the box below:

4.180 Do we need to change existing eligibility criteria for forming DBGs? Why?

Not Answered

Why?:

4.181 Are there any other obligations that DBG members should be able to share?

Not Answered

Please provide your comments in the box below:

4.182 Should we issue regulations to explicitly require business to do the following before relying on a third party for CDD:• consider the level of country risk when determining whether a third party in another country can be relied upon;• take steps to satisfy themselves that copies of identification data and other relevant documentation will be made available upon request without delay; and• be satisfied that the third party has record keeping arrangements in place.

Not Answered

Please provide your comments in the box below:

4.183 Would doing so have an impact on compliance costs for your business? If so, what is the nature of that impact?

Not Answered

If so, what is the nature of that impact?:

4.184 Are there any other issues or improvements that we can make to third party reliance provisions?

Not Answered

Please provide your comments in the box below:

4.185 Are there other forms of reliance that we should enable? If so, how would those reliance relationships work?

Not Answered

If so, how would those reliance relationships work?:

4.186 What conditions should be imposed to ensure we do not inadvertently increase money laundering and terrorism financing vulnerabilities by allowing for other forms of reliance?

Please provide your comments in the box below:

4.187 Are the minimum requirements set out still appropriate? Are there other requirements that should be prescribed, or requirements that should be clarified?

Not Answered

Please provide your comments in the box below:

4.188 Should the Act mandate that compliance officers need to be at the senior management level of the business, in line with the FATF standards?

Yes

Please provide your comments in the box below:

Compliance officers have a hard role. They need to be senior enough to withstand the inevitable 'push back'.

4.189 Should the Act clarify that compliance officers must be natural persons, to avoid legal persons being appointed as compliance officers?

Yes

Please provide your comments in the box below:

4.190 If you are a member of a financial or non-financial group, do you already implement a group-wide programme even though it is not required?

Please provide your comments in the box below:

4.191 Should we mandate that groups of financial and non-financial businesses implement group-wide programmes to address the risks groups are exposed to?

Not Answered

Please provide your comments in the box below:

4.192 Do we need to clarify expectations regarding reviewing and keeping AML/CFT programmes up to date? If so, how should we clarify what is required?

Yes

If so, how should we clarify what is required?:

Currently the 'safe harbour' appears to be to review your AML programme etc just prior to an audit. It is not clear if this is correct.

4.193 Should legislation state that the purpose of independent audits is to test the effectiveness of a business's AML/CFT system?

Yes

Please provide your comments in the box below:

Having been audited, we are not actually sure what we paid for.

4.194 What other improvements or changes could we make to the independent audit or review requirements to ensure the obligation is useful for businesses without imposing unnecessary compliance costs?

Please provide your comments in the box below:

4.195 How can we better enable businesses to understand and mitigate the risk of the countries they deal with, and determine whether countries have sufficient or insufficient AML/CFT systems and measures in place? For example, would a code of practice (rather than guidance) setting out the steps that businesses should take when considering country risk be useful?

Please provide your comments in the box below:

Having the supervisors publish an actual list of countries with insufficient AML/CFT systems and measures in place would be the most help. It is not clear why we are being asked to determine this, when surely this should be a matter of fact not opinion, and the the supervisors have the information necessary to compile such a list that we can then follow.

4.196 Should we issue regulations to impose proportionate and appropriate countermeasures to mitigate the risk of countries on FATF's blacklist?

Not Answered

Please provide your comments in the box below:

4.197 If so, what do you think would be appropriate measures to counter the risks these countries pose?

Please provide your comments in the box below:

4.198 Is the FATF blacklist an appropriate threshold? If not, what threshold would you prefer?

Not Answered

If not, what threshold would you prefer?:

4.199 Should we use section 155 to impose countermeasures against specific individuals and entities where it is necessary to protect New Zealand from specific money laundering threats?

Not Answered

Please provide your comments in the box below:

4.200 If so, how can we ensure the power is only used when it is appropriate? What evidence would be required for the Governor-General to decide to impose a countermeasure?

Please provide your comments in the box below:

4.201 How can we protect the rights of bona fide third parties?

Please provide your comments in the box below:

4.202 Should there be a process for affected parties to apply to revoke a countermeasure once made? If so, what could that process look like?

Not Answered

If so, what could that process look like?:

4.203 How can we improve the quality of reports received by the FIU and avoid low-quality, defensive reporting?

Please provide your comments in the box below:

Make the rules plainer and the penalties less onerous. To be blunt, poor legislation is the reason for what you call "defensive reporting", but as the people liable if we get it wrong we know exactly why "defensive reporting" happens.

4.204 What barriers might you have to providing high quality reporting to the FIU?

Please provide your comments in the box below:

Poorly drafted legislation.

4.205 Should the threshold for reporting be amended to not capture low level offending?

Unsure

Please provide your comments in the box below:

4.206 Should we expand the circumstances in which SARs or SAR information can be shared? If so, in what circumstances should this information be able to be shared?

Yes

If so, in what circumstances should this information be able to be shared?:

One law firm should be able to consult another (whether to clarify a point before submitting a SAR, or to seek guidance as needed) without penalty.

4.207 Should there be specific conditions that need to be fulfilled before this information can be shared? If so, what conditions should be imposed (e.g. application to the FIU)?

Yes

If so, what conditions should be imposed (e.g. application to the FIU)?:

Any sharing should be done between reporting entities for the purposes of clarifying a point before submitting a SAR, or seeking legal advice if needed.

4.208 Should we issue regulations to state that a MVTS provider that controls both the ordering and beneficiary ends of a wire transfer is required to consider both sides of the transfer to determine whether a SAR is required? Why or why not?

Not Answered

Why or why not?:

4.209 If a SAR is required, should it be explicitly stated that it must be submitted in any jurisdiction where it is relevant?

Not Answered

Please provide your comments in the box below:

4.210 Should we extend additional AML/CFT obligations to high value dealers? Why or why not? If so, what should their obligations be?

Not Answered

Why or why not? If so, what should their obligations be?:

4.211 Should all high value dealers have increased obligations, or only certain types, e.g., dealers in precious metals and stones, motor vehicle dealers?

Not Answered

Please provide your comments in the box below:

4.212 Are there any new risks in the high value dealer sector that you are seeing?

Not Answered

Please provide your comments in the box below:

5. Other issues or topics

5.1 Should the AML/CFT Act define the point at which a movement of cash or other instruments becomes an import or export?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.2 Should the timing of the requirement to complete a BCR be set to the time any Customs trade and/or mail declaration is made, before the item leaves New Zealand, for exports, and the time at which the item arrives in New Zealand, for imports?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.3 Should there be instances where certain groups or categories of vessel are not required to complete a BCR (for example, cruise ships or other vessels with items on board, where those items are not coming off the vessel)?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.4 How can we ensure the penalties for non-declared or falsely declared transportation of cash are effective, proportionate, and dissuasive?

Please share your suggestions below.:

5.5 Should the Act allow for Customs officers to detain cash even where it is declared appropriately through creating a power, similar to an unexplained wealth order that could be applied where people are attempting to move suspiciously large volumes of cash?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.6 If you answered 'yes' to the previous question (Question 5.5), how could we constrain this power to ensure it does not constitute an unreasonable search and seizure power?

Please share your suggestions below.:

5.7 Should BCRs be required for more than just physical currency and bearer-negotiable instruments and also include other forms of value movements such as stored value instruments, casino chips, and precious metals and stones?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.8 Does the AML/CFT Act properly balance its purposes with the need to protect people’s information and other privacy concerns?

No

If you answered 'no', how could we better protect people's privacy?:

We are concerned that some people are unaware how their personal data is being collected and used. Some companies which offer AML services such as performing CDD checking appear to be collecting a lot of people's information and then (essentially) selling this on. We are not sure that people actually understand that this is happening. Stricter rules around the way data is collected and who may hold it (we consider it should be reporting entities with a direct relationship with the client, not third party service providers, who hold the information) would better balance the privacy concerns.

5.9 Should we specify in the Act how long agencies can retain information, including financial intelligence held by the FIU?

Not Answered

Please give reasons for your answer.:

5.10 If you answered 'yes' to the previous question (Question 5.9), what types of information should have retention periods, and what should those periods be?

Please share your suggestions below.:

5.11 Does the Act appropriately protect the disclosure of legally privileged information?

No

If you answered 'no', please give reasons for your answer.:

Privilege is already covered by legislation (the Evidence Act), and so a separate AML-specific process for dealing with privilege is unnecessary and confusing,.

Are there other circumstances where people should be allowed not to disclose information if it is privileged?:

Privilege is already covered by legislation (the Evidence Act), and this should determine the matter.

5.12 Is the process for testing assertions that a document or piece of information is privileged set out in section 159A appropriate?

No

If you answered 'no', please give reasons for your answer.:

Privilege is already covered by legislation (the Evidence Act), and this should determine the matter.

5.13 What challenges or barriers have you identified that prevent you from harnessing technology to improve efficiencies and effectiveness?

Please share your comments below.:

How can we overcome those challenges? Please share your suggestions below.:

5.14 What additional challenges or barriers may exist which would prevent the adoption of digital identity once the Digital Identity Trust Framework is established and operational?

Please share your comments below.:

How can we overcome those challenges?:

5.15 Should we achieve greater harmonisation with Australia's regulation?

Not Answered

If you answered yes, tell us why and any suggestions you have for how we could achieve this.:

5.16 How can we ensure the AML/CFT system is resilient to long- and short-term challenges?

Please share your suggestions below.:

6. Minor changes

6.1 What are your views regarding the minor changes we have identified?

Please share your comments below.:

Are there any changes you don't support? Please tell us what they are and why you don't support them.:

6.2 Are there any other minor changes that we should make to the Act or regulations?

Not Answered

If you answered 'yes', please share your suggestions.: