Response ID ANON-Z596-YZC9-D

Submitted to AML/CFT Act review
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Tell us a bit about yourself

1 What age group are you in?

50-64

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

NZ European

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:

Deloitte NZ - AML/CFT Designated Business Group (DBG)

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:
[redacted]@deloitte.co.nz

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?

Yes

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?

No

Please comment on your answer.:

An active prevention focus puts the policing function in the hands of reporting entities instead of the FIU where it currently sits. Reporting transactions enable the FIU to carry out surveillance. If businesses are expected to actively stop transactions, then the risk for tipping off increases which is counterproductive. It might also have the effect of impeding the ordinary flow of business and adding barriers to legitimate business operations

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.:

Not applicable given 1.2

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

No

Please comment on your answer.:

NZ is already a signatory to Chemical Weapons Convention (CWC); Biological Weapons Convention; Nuclear Non-Proliferation Treaty and the Global Partnership Against the Spread of Weapons of Mass Destruction. They provide a more directly targeted counter to the financing of proliferation of weapons of mass destruction.

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?

No

Please give reasons for your answer.:

If included in the legislation, the reach should be wider than Iran and North Korea (ideally a broader sanctions reach). This would be a considerable legislative change, broader than AML/CFT

Unsure

Please comment on your answer.:

If included in the legislation, the reach should be wider than Iran and North Korea (ideally a broader sanctions reach). This would be a considerable legislative change, broader than AML/CFT

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?

Yes

Please comment on your answer.:

We consider this is worth consideration and would reinforce the obligations already required under the Terrorism Suppression Act 2002

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

Please share your comments below.:

We consider more frequent and open levels of communication and consultation between supervisors and their sectors would assist. This would ensure understanding by the supervisors of risk within sectors could be regularly tested and debated as needs be across all who are interested to do so within a sector

1.8 Are the requirements in section 58 still appropriate?

Yes

Please comment on your answer.:

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

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

Please share your comments below.:

A risk based Act, with prescriptive regulation is fine, but the regulation process needs to be more agile than it is currently. This would require more resource at the centre of the AML/CFT regime and more interaction with reporting entities.
Gaps still appear where it is not clear what is required to meet the obligations of the Act i.e., the IVCOP and use of third-party service providers; ongoing CDD and account monitoring obligations under s31 could be explained better

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

Guidance should play a bigger role in areas where the legislation is less prescriptive, and more risk based. There should be more interaction between the Ministry, Supervisors and Reporting Entities

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

Unsure

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

Guidance should play a bigger role in areas where the legislation is less prescriptive, and more risk based. There should be more interaction between the Ministry, Supervisors and Reporting Entities

What role should guidance play in providing further clarity?:

Guidance should play a bigger role in areas where the legislation is less prescriptive, and more risk based. There should be more interaction between the Ministry, Supervisors and Reporting Entities

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 compliance costs to business are already high. Exemptions should be readily available where the cost of compliance completely outweighs any likelihood that the particular requirement will mitigate or reduce ML/FT. We are supportive of the submissions made on this topic by CAANZ

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.:

. Compliance costs are disproportionately high for smaller reporting entities. Any law reform should be considered based on actual data (including data which should now be available from Phase 2 annual reports) of size and capacity.
By removing some of the more cumbersome requirements with seemingly limited value (for detecting and deterring), unnecessary compliance costs would be removed. Engagement with reporting entities as to what they consider is limited value compliance would be useful

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::

The exemption process could be used more effectively more for lower risk activities; and should be more agile to allow for this.
We consider modernisation of technology and sharing of knowledge and resourcing would assist, including, with respect to reliance provisions, whether these could be updated to better reflect risk based approach

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?:

Definitely still required, particularly as Act covers different business types and risks

Yes

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

Unsure

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

Operational decision maker may speed up the process, however we see value in an overseeing Minister being able to step back from the day to day and assess information given by their departments. It is though critical that whoever the ultimate decision maker is, they understand the matter which the exemption seeks to "fix" and the impact on the industry seeking it.

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

Yes

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

We consider it would be helpful if s157(3)(c) specifically required regard to the risk associated with the service (if the exemption relates to the capture of a service) rather than the risk associated with the RE. Similarly, (f) should recognise that the absence of an exemption could place an RE at an unfair disadvantage compared to others.

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

Yes

Please give reasons for your answer.:

It should be low risk of the activity the subject of the application, not the risk of the RE

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

It should be the risk of the activity which is the subject of the exemption not of the business

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

Yes

Please give reasons for your answer.:

Understanding expectations of what information is or is not relevant would create a clearer and more transparent process and make it accessible to all reporting entities. For example, if in order to have regard to the s157(3) factors, does the Minister expect to see information on compliance costs, number of transactions impacted, number of REs impacted. Guidance on relevant information would be appreciated. Similarly, for a renewal, if it was clearer what was required upon the initial application, a renewal process could be based on updates to that information. That would be caveated on the length of time before the renewal – if it was a long period involving regulatory or market change, the Minister may need discretion to request a de novo application.

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

Understanding expectations of what information is or is not relevant would create a clearer and more transparent process and make it accessible to all reporting entities. For example, if in order to have regard to the s157(3) factors, does the Minister expect to see information on compliance costs, number of transactions impacted, number of REs impacted. Guidance on relevant information would be appreciated. Similarly, for a renewal, if it was clearer what was required upon the initial application, a renewal process could be based on updates to that information. That would be caveated on the length of time before the renewal – if it was a long period involving regulatory or market change, the Minister may need discretion to request a de novo application.

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

No

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

Process adequate

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

Yes

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

Clearer guidance on the process, including timelines and who is involved in advising the Minister, should be made formalised and made available to all. A set process around applications, options to met in person to present applications to the advisory group, should be included in this guidance

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

As above

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

Yes

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

Utilise risk-based approach more optimally e.g. change to address verification requirements (as discussed more below) would reduce inability of those with no fixed abode or on communal land accessing (for example) banking services.

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.:

no comment

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?:

We are supportive of the submissions made on this topic by CAANZ around potential new unintended consequences for our profession from items proposed in the Consultation document.

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

Unsure

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

We have to consider the burden any change would place on Reporting Entities. We are reliant on Supervisors and the Public Sector to provide guidance and monitoring of the burden we already have.
All REs have to follow the same rules – so in that way we are already partnering on a “not in my country” point of view.

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

Please share your comments below.:

public sector needs to have greater knowledge of reporting entities business and obligations and how they translate practically to the prescriptive provisions of the Act.

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

Barriers are a lack of understanding of the application of the Act in real life – public sector needs to have greater knowledge of reporting entities business and obligations and how they translate practically to the prescriptive provisions of the Act.

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?:

We agree that collaboration in this way could enhance the regime and we are open to this in the future. Guardrails would need to be agreed by sectors in sharing information, but we are open to participating in a group similar to the Financial Crime Prevention Network in our sector.

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

No

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

We don’t believe the Act needs to legislate for this. The Annual Report process could be utilised to include feedback on the regime and on the operations of the AML/CFT supervisors. We value the annual FIU Conference including the sector based sessions held. We consider wider engagement in sector groups open to all, rather than smaller advisory groups, would be beneficial

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)?

Yes

Please give reasons for your answer.:

Yes, but only as part of their investigative powers under separate FIU legislation. That is because the AML/CFT Act should cover only matters applicable to reporting entities

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.:

The FIU should allowed to share the information with the Egmont Group and with other FIUs, but only for the purpose of providing intel in relation to an ongoing and current investigation

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

No

Please explain your answer:

No, except in relation perhaps to an investigation connected to information already provided by the Reporting Entity. We would caution against any real time reporting concept being introduced into this legislation
If a power was given so the FIU could request information (say a legitimate PTR filing has alerted the FIU to the entity being a customer of the reporting entity) would this put the reporting entity on notice of an issue with the client, would there be an EDD obligation in this scenario?

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?:

Secrecy and non-disclosure sections would need to be included within the Act. Reporting Entities and their staff/officers would need to be protected to ensure no consequential liability could arise under Privacy / Human Rights legislation.

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?

Yes

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.:

We would support a power to freeze assets or stop transactions in limited and defined circumstances, at a minimum to prevent child sexual exploitation, human trafficking and terrorism financing. We consider further consultation is required whether to extend such powers to instances of scams, frauds or financial crimes, noting there is a risk this may inadvertently result in tipping off to the client if the reporting entity is still providing services

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

Please share your comments below.:

This would be very difficult. A proposed process for this would need to be consulted on

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

Yes

Please give reasons for your answer.:

Yes. Sanctions compliance has a wider scope and catches all entities not just reporting entities, but there would be benefits and synergies.

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.:

We consider this should be carried out by agencies other than the AML/CFT supervisors, though have no view on whom.

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.:

Secondary legislation is important for the Act to remain/become agile, particularly given the legislation covers multiple sectors.
However, numerous pieces of secondary legislation accompany the AML/CFT Act which makes the regime cumbersome, particularly for smaller reporting entities, especially as the secondary legislation is reviewed and amended.

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

Please share your comments below.:

As noted above, the secondary legislation (and associated guidance) is disjointed. Finding a way to combine these into fewer source documents would mean revision and amendment processes could be shortened and certainly easier to digest by Reporting Entities spanning very different sectors. Whilst we appreciate agility, provided the base legislation is robust there will be limited core concepts requiring change at an agile pace through secondary legislation.

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.:

Whilst the Operational decision maker idea has merit given they have an awareness of “on the ground” issues, there is value in Ministerial oversight.

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

Yes

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

Possibly in relation to SAR’s, via consultation with all interested parties

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.:

These are useful tools. Enhancements could be made providing more guidance on exception handling and safe harbour.

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?

Unsure

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

The guidance should be clearer on what ‘equally effective means’ means. This would make Codes more useful for business.

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.:

Explanatory notes are useful to use as guidelines only; and would be more useful if updated regularly

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

Yes

Please give reasons for your answer.:

Yes, but with guidance.

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.:

Wide consultation across the reporting entities. Supervisors should be required to consult broadly across the entire sector to ensure the views of all rather than the few are able to be considered

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

Yes

Please give reasons for your answer.:

Worth consideration and could allow to be more agile. The additional binding information would also allow for more consistency between reporting entities.

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.:

Rules could be issued to give clarity on a sector basis of provisions of the Act which are not easily interpreted between sectors. This could allow for the Act itself to be streamlined. A dedicated operational decision-making body between the Minister and the Supervisors could issue these following supervisor and sector consultation.

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?

Yes

Please give reasons for your answer.:

We support allowing the FIU being allowed to share information it holds with government agencies under strict controls (i.e. in relation to ongoing ML/TF investigation only) and with other FIUs in the Egmont Group. The legislation would have to allow for this and provide protection to any Reporting Entity who has lawfully provided information to the FIU.

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

Yes

Please share your comments below.:

Information should only be shared where a matter of suspicion has been raised. Regular reporting (such as PTRs) which are not considered to be suspicious (by either the Reporting Entity or the FIU) should not be shared. The legislation would have to allow for this and provide protection to any Reporting Entity who has lawfully provided information to the FIU.

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.:

As above

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?

Yes

Please give reasons for your answer.:

The legislation would have to allow for this

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.:

The legislation would have to provide “immunity” to reporting entities and their officers, especially under the PA, in relation to the use of information by other agencies. Businesses who offer services which are also not “captured” would be concerned if the FIU were able to request information held outside of captured services relationship.

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

Yes

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

We are supportive of the submissions made on this topic by CAANZ.
We agree with the Consultation in so far as financial institutions and money remitters should be registered, which we understood was required. We do not agree that DNFBP’s should be subject to a registration regime specific the AML/CFT Act. DNFBP’s are already subject to their own licencing and governing bodies, as well as legislation.
We would be concerned about duplicating registration obligations, which would add additional layers of compliance costs to some businesses and possibly grow a central bureaucracy doing little to reduce AML/CFT risk

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.:

Phase 2 entities already required to comply with the Act and FATF recommendations.
Chartered accountants are already regulated through CAANZ; lawyers and real estate agents regulated through their own professional bodies, so do not feel any further regulation or registration is required for these reporting entities. Perhaps when reporting entities register with their supervisor they could note whether they were already within a professional registration regime.
Possibly consider further the requirement for the registration and regulation of money remitters, virtual asset providers and trust and company service providers

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?

Unsure

Please give reasons for your answer.:

The Ministry should already have an understanding of professional or regulatory reporting regimes covering captured services. If it considered sectors/reporting entities were not appropriately regulated it could put processes in place for certain groups.

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

Unsure

Please give reasons for your answer.:

This would depend on the sector. We are supportive of the submissions made on this topic by CAANZ in relation to the licensing of the accounting profession. We do not consider accountants or restructuring/insolvency professionals require additional licensing as they already have their own licensing regimes. We are not aware of any suggestion that these are not robust regimes

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.:

An additional regime for accountants or restructuring/insolvency professionals is unnecessary and so any additional costs, whether borne by the reporting entity or centrally, would be disproportionate.

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?

Yes

Please give reasons for your answer.:

Yes, to those industries not already regulated by their own body or not already licenced. Acknowledging that it may not be as simple as these, where there are Reporting Entities who provide multiple types of services (and may or may not be licensed)

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.:

No comment at this stage. There would have to be consultation on this if it was determined this was to be established.

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.:

May have positive impact for the business as may be seen as more transparent and considered less of a risk to conduct business with, but we don't see that as a major positive for requiring licensing.

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.:

No, a further licensing regime is unnecessary for accountants

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.:

Whilst we do not support this, if introduced, it would have to be scaled by size of entity's captured business (which could be done through annual report data) to those subject to the regime

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.:

Whilst we do not support this, if introduced, appropriate scaling would be required.

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.:

If a levy were to be charged, it should provide additional operating costs of the regime expressly to support engagement between supervisors and Reporting Entities (RE's)

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.:

Real engagement and more (and consistent) guidance, including more binding guidance.
Equality of treatment across all reporting entities

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.:

No further prescription required; we believe the definition for DNFBPs is clear enough

Not Answered

Please give reasons for your answer.:

No further prescription required; we believe the definition for DNFBPs is clear enough

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.:

No Comment

2.3 Should 'ordinary' be removed?

Unsure

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.:

It would provide less ambiguity. Compliance burden unlikely to be increased for our sectors, as most do not conduct occasional transactions that do not involve a business relationship with the client - the reality is that AML is generally conducted if those circumstances arise

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.:

if a business is engaging in captured activities as part of the ordinary course of business then it should be subject to the Act and regime (in relation to those activities)

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

Yes

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

It would clarify requirements for businesses that carry on those activities or a number of the activities outlined in 6(4)

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?

Unsure

Please give reasons for your answer.:

All reporting entities are aware that captured activities attract AML obligations, the issue is that some entities may need more understanding of when an activity is captured.

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.:

Yes the overlap should be removed. A clear and consistent definition, able to be used by all relevant sectors, would be appropriate.

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.:

Could be useful, but believe this is reasonably clear already

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

Yes

Please give reasons for your answer.:

Yes, as generally disbursed to the client as part of professional fees

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.:

We are supportive of the submissions made on this topic by CAANZ.

How could it be improved?:

More clarity and guidance would be useful; currently uncertain

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?:

Definition applies when engaging in or giving instructions in relation to a financial transaction. We have had no challenges, but it could be clearer in the legislation, especially the scope of 'giving instructions on behalf of a customer'. In a lot of circumstances this could be considered low risk so including it within the scope of the Act provides limited benefit towards achieving the purposes of the Act (an example of this is when giving instructions in relation to tax transfers)

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)?

Not Answered

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.:

We are supportive of the submissions made on this topic by CAANZ. We agree that persons in position of authority can be exposed to ML/FT risks, but that a title or role at an organisation does not necessarily denote such a level of authority. Secretaries (under the Companies Act) should not be included, as this has a different (unlegislated) position in NZ and is largely administrative not authoritative . Depending on the nature of a particular partnership, one partner may have more, or less authority in the day to day management of a partnership than another partner. It is hard to comment on “equivalent position” to those legal persons, but we do agree that providing a service of a role in authority should be considered as a new activity

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.:

We would need to understand the scope of “equivalent positions” to assess additional compliance burden.

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

2.25 Should criminal defence lawyers have AML/CFT obligations?

Not Answered

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

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?

Not Answered

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

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

Not Answered

Please give reasons for your answer.:

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?

Not Answered

Please give reasons for your answer.:

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?

Not Answered

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?

Not Answered

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.:

We do not consider this activity should be included in the regime. We are supportive of the submissions made on this topic by CAANZ, including the need for further research on the extent of trade-based money-laundering.

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

No

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

We are not supportive of any change.

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

No

Please give reasons for your answer.:

We are supportive of the submissions made on this topic by CAANZ. These services should not attract AML/CFT obligations, or at least not those provided as part of an accounting practice. This would considerably increase compliance costs for what we consider to be limited risk activity. We reference the profession's tax transfer exemption in this regard.

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.:

We are not supportive of this for our profession.

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?

Not Answered

Please give reasons for your answer.:

no comment

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

Please share your comments below.:

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?

Yes

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

We are supportive of ensuring clarity here

2.48 Should we issue any new regulatory exemptions?

Not Answered

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

We are supportive of the submissions made on this topic by CAANZ. The pending “Tax transfers” exemption should be a regulatory, not a ministerial, exemption

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?:

Yes. For both trustee and nominee services, we reflect that this has reduced significantly in the profession over recent years. Ownership and control varies

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.:

Yes as it represents duplication of obligations (and compliance). There is currently uncertainty on this as the supervisor is aware.

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.:

All obligations should remain at the parent reporting level ie CDD, SAR obligations

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?

Yes

Please give reasons for your answer.:

Yes. Clarity is best. We are supportive of the submissions made on this topic by CAANZ.

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.:

We can't provide a view at this stage. We recognise extraterritoriality is difficult, though not unprecedented (Privacy Act as an example). In a global economy, with global AML/CFT risk, it would be unfair to reporting entities with a compliance burden to comply with the Act to help protect New Zealand if others acting in our market were not
Similarly, entities to be working on captured services in NZ but the deliverable of that service is offshore, should also be caught by the Act to ensure the purpose of the Act is met.

3. Supervision, regulation, and enforcement

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

Unsure

3.1 Please indicate why? :

Whilst we consider there are some issues with the model, that is based on resourcing and the significant increase in reporting entities over the past three years. We consider it is at, or near, fit for purpose though expect with increased resourcing improvements would occur such as increased engagement, greater consistency amongst the 3 supervisors, better guidance and online training tools. We agree with the submission made on this topic by CAANZ.

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

Other

3.2 Please provide context for your choice:

If a change was to occur, moving to a single supervisor with FIU embedded could be considered. We do not consider a model with more supervisors, including sole sector joint regulator/supervisors would be beneficial. That would increase the weaknesses of the current 3 supervisor model.

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:

On the face of it the guidance applies across all reporting entities. Inconsistencies could be avoided with the one-supervisor model, although we consider it is difficult to have true consistency across very different sectors.

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:

no comment

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

Yes - the functions and powers are appropriate

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?

Unsure

Please explain your answer:

Only where the dwelling is the principal place of business in NZ. Would need controls in place to ensure there is no extension to home addresses of principals of a reporting entity.

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

Would need controls in place to ensure there is no extension to home addresses of principals of a reporting entity.

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

Please share your thoughts:

Potentially less disruptive and reflective of a modern working environment. Privacy and security issues need to be addressed before remote onsite access. Controls would need to be in place to allow information to be viewed but not retained, as they would be in an onsite review. Both sides would have to have appropriate tech and security systems – this may not be easy for smaller reporting entities.

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

Unsure

Please explain your answer:

Possibly more efficient, provided technology exists to ensure security of information

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

As above

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

Yes

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?

Yes

Why or why not?:

A DBG is beneficial, from a compliance perspective, for reporting entities. We would expect oversight from supervisors to ensure DBGs were being formed in the spirit of the Act.

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?

No

If yes, what should the standards be?:

We are supportive of the submissions made on this topic by CAANZ and submit further in 3.11 – 3.14. Specific standards are not required as assurance standard already exist for regulated auditors. Our expectation is those providing services in this market are already meeting professional standards. We understand the issue is with quality of auditors outside of the regulated profession.

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

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

Not Answered

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

Please explain your answer:

Professional auditors already regulated, the others should also be regulated to the extent they aren't already, but it is important there is no double-regulation

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:

Cost of instructing an auditor would presumably increase in relation to auditors who are not currently meeting an appropriate standard and pricing accordingly.
To the extent there are individuals providing AML audit services who are not meeting professional standards, regulating this would have a positive impact – reporting entities have limited ability to assess quality vs non-quality audits. Regulation of unregulated auditors should remove risk of reporting entities relying on poor audits.
Compliance costs could rise in the short term for some entities, but presumably costs would eventually plateau as reporting entities developed strong compliance programmes
Costs disproportionate for small reporting entities due to required scale of audits. This could also drive down the numbers of auditors in market, which is already problematic given the increase in reporting entities since 2018.

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

As above

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:

Yes, there should be protections for businesses if explicit standards are implemented for auditors and the entity relies on the audit to its detriment. Licenced audit firms and individuals already have significant penalties- for others, yes, they should be required to meet the same standard

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

Licenced audit firms and individuals already have significant penalties- for others, yes, they should be required to meet the same standard

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?

No

Please explain your answer:

It is not appropriate to provide for this in legislation; it appears unprecedented across New Zealand legislation.

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

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?

No

Please explain your answer:

No. Supervisors could provide guidance to reporting entities as to what qualifications consultants should have for various services given.

If yes, what should the standards look like?:

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

Other

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

The market will do this.

Please explain your answer:

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

Yes

What do you use agents for?:

Yes, some outsourced CDD and screening completed by agent

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?

Yes

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

We have an inhouse compliance team providing oversight of the outsource process, testing of it and final approval of all CDD and screening. We do this to ensure we are compliant with laws and provide a client service.

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:

Clarification of standards required and registration of agents' worth consideration
We think it would be helpful if there was a “tick of approval” for certain types of agents from the supervisors. This would help to protect smaller REs and also, for CDD, customers.
Legislation could be clearer on what can and can’t be outsourced to agents.

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

We think it would be helpful if there was a “tick of approval” for certain types of agents from the supervisors. This would help to protect smaller REs and also, for CDD, customers.
Legislation could be clearer on what can and can’t be outsourced to agents.

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?

Yes

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?

No

Please explain your answer:

We consider the penalty regime to be robust and current enforcement measures, which include fines, act as a good deterrent. Removal of licence may be considered depending on the level and gravity of offending, but there would need to be careful consideration of this and how it would work for regulated entities.

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

No

Please provide further detail:

No. Fines are already significant. There should be no proportionality for size and scale of RE – penalties should be based on behaviour and risk.

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?

No

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

$5M is a significant criminal penalty, $2M civil in NZ for wrongdoing. We don't consider there to be evidence in NZ that these fines don't dissuade.

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

Unsure

Please provide further detail:

We can't comment on whether this would increase compliance outcomes – we've seen no evidence that of this. If changes were to be made it should be limited to those with ultimate responsibility within the organisation – this may be senior to the AMLCO.

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

Please share your thoughts:

No comment. It would need to align to the level of control the individual had in a reporting entity's AML process

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 Act allows for substantial penalties and possible imprisonment against individuals for any offence of sections 91-97. However, some protection against civil and criminal liability is available under section 77 if the action was taken in good faith and was reasonable in the circumstances. A reporting entity must be able to ensure that staff will be comfortable taking on the AMLCO role.

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:

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?

Unsure

Please provide your thoughts:

More information would be required to assess this. We would expect amendment to be proposed only where there is evidence of conduct going unpunished. No illustration of this has been provided

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?:

Guidance is not as clear as it could be on this topic, but we note the Consultation document is also unclear as to proposed scope of changes. We are supportive of the submissions made on this topic by CAANZ and note further:
Lack of guidance provides challenges in the following areas: when/how to apply exception handling procedures; practicality of collection and storage of wet-ink documents (though note recent DIA guidance); the divergence from the NZ regime and FATF standards mean we are out of step in many areas with the global baseline which causes confusion on a cross border basis; how to collect for trusts and charities, and lack of practical guidance on the collection of simplified CDD from Crown organisations. Customer frustration is another challenge – both because of repetition of processes between REs because of the difficulties of reliance, because of the different requirements in different jurisdictions (for overseas clients), and also for different interpretations between reporting entities in NZ. No (or low) deminimis threshold in certain cases adds to this frustration on the client side
Since the implementation of the regime, CDD in a formal insolvency context has been, and continues to be, challenging both at the beginning of the interaction and on an ongoing basis. We understand this is a profession-wide dilemma. The nature of an insolvency situation is not well addressed by the legislation and we would ask that the Ministry engage fully with RITANZ in relation to this before finalising any law reform after this consultation.

How could these challenges be resolved?:

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?:

Yes, when client is domiciled in a jurisdiction where obtaining the UBO information is difficult or costly (for example, translations required, no simple process for visiting someone able to certify).
Obtaining CDD on board members of Māori Trusts and charitable organisations
company incorporations, receiverships, Maori trusts etc

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?

Yes

Please share your thoughts:

Yes, particularly for trusts and charities. Use of regulation has helped in some areas, for example liquidations.

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

What do you think?:

Yes, particularly for trusts and charities

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:

Both positives and drawbacks, the risk-based approach does offer some flexibility, but more helpful definition of what is required for Māori Trusts and charities would be useful as currently obtaining CDD on all board or trustees seems unnecessary in order to meet the purpose of the regime, and it is very time consuming and can be expensive for both sides as a result

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?

Not Answered

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

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

Yes

Please provide further detail below:

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

Not Answered

Please provide further detail below:

More clarity would be useful

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

Yes

Please provide your comments in the box below:

Yes, should be completed if reporting entity is going to provide services.
SAR procedure to apply outside of captured services too?

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?

Enhanced customer due diligence

What should be the requirements regarding verification?:

Should be enhanced level of due diligence

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:

As with the discussion around conducting EDD following a SAR being filed, we consider a delay may be necessary in reasonable circumstances to avoid tipping 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:

Can't comment as not applicable to our sector.

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?

Not Answered

Please share your thoughts:

Reporting entities should be encouraged to minimise transactions through their trust accounts. We don't consider that CDD should be completed on a non-customer recipient (if that is what the consultation document is suggesting).

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:

Any DNFPB. We do not consider that a law firm's trust account is more vulnerable than an accounting firm (for example)

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:

Negligible

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:

Address verification not required under the FATF recommendations and not being required by other jurisdictions. This is onerous and seems unnecessary. Appreciate it is helpful information for Police, but could be outdated the next day and is an additional cost of compliance (as well as additional personal information to be held by agencies).

4.19 Are the obligations to obtain and verify information clear?

Not Answered

Please provide your comments in the box below:

The obligations would be clearer if all in one place (rather than across Act, regulation, code and guidance), and readily accessible in that format to customers to understand why we need the info.

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

Yes

Please provide your comments in the box below:

Yes, other than addresses. We note and welcome recent guidance from the DIA on the collection of wet-ink copies. This has been a largely unnecessary obligation and leads to storage issues and also Privacy Act risk.

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:

We consider Place of birth could be helpful information to gather for the purpose of verification.

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?

Unsure

Please provide your thoughts :

Whilst we may do this voluntarily, regulating this will be difficult depending on the client base and location of that client base. It can be difficult to access such information, or verify its currency, from overseas jurisdictions (nothing like the Companies Office in all jurisdictions, or for entity types). The absence of it is not in itself a risk indicator of the client or the jurisdiction.
get Yes, we already do this to a degree when collecting KYC about client structure; trust documents; constitution documents; and financials etc
Additional requirements would not allow us to be agile – likely severe delay

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?:

Yes, obtain client structure (via companies' office etc) and Trust Deeds and source of wealth; constitution documents etc. We do this to meet other risk considerations. We appreciate that not all reporting entities would be resourced to do so.

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:

If required to understand structure of entity, voting rights etc, would actually need lawyers in the team to do this analysis. For most reporting entities, that would be a considerable investment and that would have to be weighed against the value. Our own compliance costs may not increase significantly, but I don't think that would be equal across all reporting entities.

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:

We agree this is not clear. It would be useful to clarify though we have no comment as to the requirements.

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

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:

Simplified due diligence customers.
Accountants existing clients- as will likely already holds financial information
Difficultly of who to obtain and verify it for – what risks are being put on e.g. accountants who are asked by clients to certify to another reporting entity?

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

Unsure

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

Probably not at our end – but could be for the customer in seeking to obtain it. Also places risk on advisers asked to prove it?

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?

No

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

We have not encountered issues. Provision of better guidance in certain situations would be beneficial to ensure reporting entities were addressing this in a consistent way i.e., if no UBO then must get directors and board etc; and do we need the whole board? There are certain customers where this is immensely different, for example, organisations such as Maori trusts, charitable boards.

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

Please provide your thoughts:

As Above

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:

We do not consider there to be uncertainty on the point. But, if there is, it should be clarified.

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?

Always

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

We already conduct CDD on UBO and consider this is required under the Act, as identifying the UBO is one of the core elements to CDD and identifying the customer. We agree an 'avoidance of doubt' note may be required if there is confusion on this point.

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

No

Please provide your thoughts:

As we consider this should already be undertaken, provided capture is not extended there should not be additional costs

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

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:

We agree alignment is necessary, this would further the objectives of our legislation. Guidance would need to be provided

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?

No

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?

No

Please provide your thoughts:

We don't consider given our current programme aligns already

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?

Not Answered

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

Deloitte currently following the process as outlined in steps 1-3

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:

Code of practice may be useful to ensure consistent understanding and application.

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

No

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?

No

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:

Code of practice would be beneficial to ensure both certainty and consistency amongst reporting entities

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

No

Please provide further details below:

No impact given nature of our compliance programme

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?

Yes

Please provide your thoughts:

Yes, currently clear and appropriate. However, verification of address is an issue, and the requirement for wet-ink copies of certified identification documents (noting recent DIA guidance on this) to be sighted is cumbersome and not practical in many situations

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?:

Biometric process could be clarified better; clarity on exceptions processes and its impact on the safe harbour. There appears to be confusion in the sector, and differences between tools created and sold by various technology companies. This creates risk for reporting entities that the services they procure do not meet the IVCOP – certainty is required. Could be clearer what 'to a high level of confidence' means. Guidelines when using outsourced providers would be beneficial

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

Not Answered

Please provide your comments in the box below:

As above

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?

Yes

What other verification requirements could be included?:

Yes, would be useful and beneficial for reporting entities and customers

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:

no comment

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?

Not Answered

What challenges have you faced? :

see response to 4.45

How could those challenges be addressed?:

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?:

High fail rate with electronic, and assumes customers have a stable address or accounts in their name. It prolongs the CDD process by requiring clients to provide proof of address. There is also a question about “original” address in an age where most accounts are sent online. Uncertainty and delay seem unnecessary given the requirements of verification of identity.

4.53 What have been the impacts of those challenges?:

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

When should address information be verified?:

It shouldn't be required

How should verification occur?:

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? :

We are not aware that verification of address assists law enforcement in any real way to balance the compliance obligation here. Unless this can be quantified, we consider the obligation should be removed

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?

Not Answered

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

no comment

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?

Not Answered

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

We are not opposed to additional requirements to align with the FATF, via guideline.

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

No

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

EDD for high risk customers is already mandatory in the legislation when providing captured services to high risk customers. Guidance, based on FATF, for reporting entities to consider taking a risk based approach of the particular customer could be provided.

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?

No

Please provide further detail below :

We consider the simplified due diligence process is clear. Reporting Entities take a risk based approach to who is authorised. The variety of sectors and reporting entities mean there could be a wide variety in how this is practically conducted.

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

Unsure

Why? Please provide your response in the box below:

We would need more information on what is proposed to consider this.

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:

Yes. Not all trusts are inherently high risk e.g. trusts that are family trusts (i.e. Simple trusts- e.g. the family home etc)

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:

According to type of trust and type of service provided to it by the reporting entity. In most circumstances, with guidance, the reporting entity would be able to take a risk based assessment.

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:

Yes, this would provide clarification and certainty although setting a list in the legislation would not allow for market changes. Regulation or guidance would be preferred. We consider those with complex structures, those with stakeholders in high risk jurisdictions should require EDD

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

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:

We consider this should be clearer, at least to provide certainty and ensure consistency amongst reporting entities.

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

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:

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:

We don’t consider this is required as it is implicit and reporting entities should already be considering this as part of their ongoing risk based obligations. Given the different sectors covered by the Act, this would be difficult to regulate succinctly and risk losing agility within the regulatory regime

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?:

We don’t consider changes are required. If changes are to be proposed it may well increase costs significantly for some reporting entities. Further consultation would be required per sector.

Unsure

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:

We do not think so. However we acknowledge this would add to certainty, which would create consistency amongst sectors.

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:

We have various touchpoints set for consideration of refreshing CDD, including engagement renewal; QRM views, change in nature and purpose of the business relationship; material change in the ownership of client

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:

No. This should be implicit in the existing legislation. Prescription would be difficult amongst the different types of businesses covered by the Act. Would most likely increase compliance burden and costs. Additional consultation would be required across the sectors on any proposal.

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?:

Would most likely increase compliance burden and costs. Additional consultation would be required across the sectors on any proposal.

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?

No

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

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?

No

Please provide further information below:

No as it would be outside the scope and purpose of the Act

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?

Why? Please provide further details below:

No comment on the approach, other than noting there would be different impacts across reporting entities and undoubtedly additional compliance costs.

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

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?

No

Why? Please provide more information below:

We don't think this is necessary. Guidance at most could be introduced. This is largely an area requiring common sense and education relevant to the services and client base of the entity

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:

Agree this should be introduced. It is hard to see how the sudden need to conduct EDD on a client who has not had EDD conducted before could not tip off.

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:

We aren't sure that this can be prescriptive. We imagine for many reporting entities, the need to report a suspicion would change the risk profile of the customer in such a way that the entity would not continue to provide services in the further.

Why? Please provide further detail below:

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?:

per 4.73

If yes, how could we address those challenges?:

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:

Whilst noting the recent DIA guidance, citing Wet-ink copies as part of best practice model is problematic when documents have been certified overseas and need to be posted. This also places a burden on the reporting entity on the storage of physical documents containing sensitive personal information which is undesirable and unnecessary to further the purposes of the Act.

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?

Not Answered

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

no comment

Why? Please provide any additional information:

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:

No challenges in addition to general CDD challenges.

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?

Not Answered

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

It would be prudent for reporting entities to have a process for approval of PEP relationships outside of the AML Compliance approvals. It does not make sense for this to be prescribed in legislation or regulation; but could be suggested in guidance.

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?:

Unless other red flags apply, we do not consider Domestic PEPs for AML purposes given not covered by the legislation.

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:

Yes, though with limits. We consider domestic PEPs are considerably limited risk under this regime given NZ's corruption index.

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

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?

Unsure

Please provide any further comments in the box below:

We are not sure how this could be tracked and managed. There is separate legislation around the integrity of our election financing. We do not consider the AML/CFT legislation should be used to bolster that

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?:

For 4.83, potentially large as unsure how this would be practically managed. For changes at 4.81, 4.82 yes an additional cost.

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 assess wider risk patterns (i.e. country risk, what type of PE- were they convicted of a predicate crime etc) and length of time since being a PEP. If they were a high-risk PEP (e.g. Known link to a terrorist organisation or fraud conviction etc), then further assessment will be made and escalated for risk assessment by more senior stakeholders prior to any decision to proceed

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:

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

No

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

minimal if any

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?:

Electronic screening; internet searches and research

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?

No

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

Does not fully align with FATF. Guidance would assist to ensure certainty and consistency

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?

No

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

No. Perhaps guidance or sectorial advice would assist.

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?

Yes

4.91 Please provide any further comments in the box below:

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:

Risk based approach

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:

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?:

We cannot comment on the sector cost as there are a wide variety of organisations within it. This would not add significant costs to our existing processes.

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?:

Risk based decision based on screening, red flags etc

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?

Yes

4.98 Please provide your comments in the box below:

We consider the regime should align with FATF. Noting AMLCO has to report to management so there is already a level of stakeholder oversight.

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?:

Unable to comment as don't know what the additional steps would entail. The question should be whether there are onerous additional compliance costs, and whether this outweighs value of additional checks. There would have to be proof of this before amendment.

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

Yes

Please provide your comments in the box below:

Yes, if not already being done by entities

4.101 What support would businesses need to conduct this assessment?

Please provide your comments in the box below:

Better information from government on sanctions entities relevant in an NZ context. This is very piecemeal and, we expect, not widely understood across all reporting entities.

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:

Yes, but only in relation to AML/CFT compliance and aligning to FATF

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:

Yes. However, TFS obligations will apply to many reporting entities more broadly than their captured services. It would be better that this be governed elsewhere under a separate legal regime, though noting there may be synergies per business of managing together should they wish to do so.

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

Please provide your comments in the box below:

Training and guidance from the supervisors, better information from central government

4.105 How should businesses receive timely updates to sanctions lists?

Please provide your comments in the box below:

Updates are already provided by the FIU via Go AML and also from MFAT (Provided reporting entities are registered and aware of these)

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:

No

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:

Would a centralised register be possible?

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:

Yes, screening completed on all relevant individuals when onboarding new clients. Existing client screening renewed at various points of the client cycle or upon certain events.

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:

No comment

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:

Create a technology solution accessible to all reporting entities.

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:

Notification via the FIU. Though the obligations are broader than for Reporting Entities. This could be dealt with through different legislation.

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:

No comment. Additional consultation would be required on this point

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

Yes

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:

No comment

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:

Nil to date

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?

No

Why or why not?:

Consider that as an entity's Risk Assessment is a living document, any new Services/Products should be considered per s58 already. We do not see a need to further regulate this, but if there is actual uncertainty on the point it should be included in the Act.

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:

As per 4.128

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:

No additional cost as should already be considered for s58 compliance.

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

No

Why or why not?:

No additional regulation required. Explanatory note or guidance may be useful to clarify what 'a business relationship that involves new or developing technologies that might favour anonymity' means, and the level of due diligence required, as some reporting entities are confused by this

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

Unsure

If yes, what are your views?:

It is possible, though it would not be unreasonable. Services should always mitigate the risk of ML/FT.

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?

Not Answered

Why?:

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:

None

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

No

If so, how?:

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

No

If yes, what are your views?:

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:

Do not file report. Transaction internally recorded only; AML team not notified unless it is out of ordinary, or CDD is required

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?:

No, time and cost outweigh benefit; other measures (such as SAR) could be considered.

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:

High, definitely increase in compliance burden for limited apparent value in relation to purpose of the Act.

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:

All information required to complete PTR for 1000+ is provided so that it is able to be processed successfully in GoAML

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?

No

Why or why not?:

No, when the PTR is filed with FIU any gaps will be identified and dealt with by FIU where necessary, where cannot be matched with information provided by other institutions /reporting entities.

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?:

No. Reporting entities are not policing AML/CFT. Providing of information to FIU to enable it to do this is enough.

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:

Comply with s27(6) of the Act

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

Unsure

Why or why not?:

Could require this to be kept as part of internal record keeping

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:

Risk based assessment in place

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

Yes

Why or why not?:

Yes, consistency with FATF seems valuable in this case.

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

Please provide your comments in the box below:

Definitely an increase in compliance burden and cost if not already completed internally by reporting entities

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? :

Yes, all international wire transfers are in relation to known clients; AML completed on receipt (if not before); all information required for filing PTR is completed

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?

No

If yes, what are your views?:

We consider the obligations should be clear enough already to reporting entities. Regulation not required, perhaps guidance could be issued if it is considered to be uncertainty on this issue amongst reporting entities.

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

Please provide your comments in the box below:

Nil from our perspective.

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?

Yes

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

We believe these are requirements are clear

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?

Not Answered

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

Only that the Go AML site could be more practical. Process for filing PTRs is cumbersome due to the layout of Go AML – which may be less practical for phase 2 entities.

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

Unsure

Please provide your comments in the box below:

Guidance would be useful. Given the variety of sectors/reporting entities, regulations or a COP may not be practical. In particular, the nature of the services provided by insolvency professionals, and how (and why) funds are distributed, mean it is not clear on the face of current sectorial guidance how to comply with the requirements. Whilst we take the most prudent interpretation, engaging with professionals or RITANZ on their behalf would assist.

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:

Reporting obligations could be easier if Go AML were more practical

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:

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:

If consistency is possible given differences between sectors, it would be preferred.

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:

Not Aware

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?

No

Please provide your comments in the box below:

No. But can see 10 working days could be problematic in smaller organisations who have 1 designated PTR filing (Due to limits on Go AML training, and the fact Go AML is not the easiest tool to use).

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?:

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:

Fundamental change to the GoAML platform

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

Please provide your comments in the box below:

It would be manageable but would add considerable additional compliance costs which we do not think are warranted.

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

Please provide your comments in the box below:

Minimal

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?:

Yes, DBG(s32); and relying on an agent (s34)

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:

Inconsistency between interpretation of CDD obligations – aided by lack of detailed guidance from supervisors and sector discussion. Potentially with the additional guidance etc proposed in this consultation, the use of reliance provisions may increase because there will be fewer chance of different interpretations

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?:

Clear guidance for obligations of third-party agents to ensure they are complying with the Act and guidelines, in particular biometric requirements

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?

Not Answered

Please provide your comments in the box below:

Neutral on this point. However, it would be prudent for the supervisors to approve entities so that reporting entities do have the safe harbour of section 33(3A). Consider also how does s 33(3A) apply to agents or just to other reporting entities in another country? How would this work if the reporting entity in another country is not held to the same standard as the NZ legislation?

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:

Should be held to the same standard as NZ legislation. We would be particularly interested in understanding whether a government department or tool could be approved – for example use of Real Me

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?:

No. Too much of a compliance burden and risk for our type of organisation. We could see merit in banks being approved, given wide customer base. This would be beneficial for customers and reporting entities.

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

Yes

Please provide your comments in the box below:

Regulation could confirm that due diligence could be completed in tandem by RE's involved in the same transaction (e.g. lawyers/accounts/real-estate agents involved in a transaction) – including who holds any physical documentation.

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?:

neutral

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

No

Please provide your comments in the box below:

We should not hold overseas entities to a standard higher than that required in their own jurisdiction

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

No

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:

no comment

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.

Yes

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?:

minimal

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

No

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?

Yes

If so, how would those reliance relationships work?:

Make it clear that one organisation can "hold the docs" or that one party to a transaction has sighted originals.

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:

no comment

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

Yes

Please provide your comments in the box below:

Still remains adequate for our entity. We are supportive of the submissions made on this topic by CAANZ.

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?

No

Please provide your comments in the box below:

No. Not practical in all REs – needs someone involved day to day. However there should be a clear reporting line to management, with a management sponsor (if the AMLCO is not management) of AML/CFT compliance.

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?:

Yes, would be useful through guidance notes

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:

Yes, if not already implied

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:

Quality of auditors as discussed elsewhere in this consultation

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:

Yes a Code would be useful, including guidance on how to measure country risk.

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

No

Please provide your comments in the box below:

No. But guidance would be useful on these jurisdictions, and that could be combined with 4.195

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:

Guidance note

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?:

This information forms part of a risk based assessment concluded by the reporting entity, it would not necessarily be determinative without consideration of other factors including nature of the services provided (though could be).

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?

No

Please provide your comments in the box below:

No. Sanctions compliance is wider than AML/CFT obligations for reporting entities. If the government wishes to create a sanctions regime it should do so rather than shoehorning it into this legislation.

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:

no comment

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

Please provide your comments in the box below:

It is not up to reporting entities to protect third party rights. We can only take a risk based assessment based on the customer considering the legislation we are required to deal under.

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?:

If made, then yes. No comment on the process.

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:

Regular PTR's (ie, monthly set payments) should be subject to a shorter report. Better guidance documentation on completing PTRs, and a more purpose-made Go AML platform would also assist.
Better guidance. Better Go AML platform.

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

Please provide your comments in the box below:

A purpose-made Go AML site that was easier to use and clearer.

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

No

Please provide your comments in the box below:

No, the whole idea is to capture offending. Reporting entities are not the police, it is not for us to determine what may/may not be offending of whatever level. As such, hard to see how a threshold would work for the purpose of the Act, as $ could be spread across REs and it be the pattern that is relevant. That is something the FIU can assess, not reporting entities. We are supportive of the submissions made on this topic by CAANZ.

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?

Not Answered

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

In relation to the sharing between governmental agencies, we have no comment other than any sharing would have to be clearly defined at law and limited to avoid abuse. There would have to be caution as to the use of information required by law to be given by reporting entities being widely shared for non-AML/CFT purposes.

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)?

Not Answered

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

As per 4.206

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?

Not Answered

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

We are supportive of the submissions made on this topic by CAANZ. We understand many individuals are concerned about the collection and use of their personal information, and a (perceived or real) mismatch between the Privacy Act and the AML/CFT Act. There does seem to be an imbalance from a privacy perspective of the information need to be sighted and held (for a long period) on individuals and, in relation to PTRs, shared with the FIU when there is no suspicion of wrongdoing. The need to obtain and hold this information also puts reporting entities at risk as agencies under the Privacy Act. The Office of the Privacy Commissioner should be consulted in relation to obligations to obtain and hold information for CDD and PTR purposes, as well as any additional information sharing rights provided to the FIU through this process and between governmental agencies.
The rise of numerous outsourced CDD agencies is also a concern. As reporting entities look to reduce their burden for outsourcing, not all will be in the same position around reviewing agent controls around holding personal information. We understand customers are concerned about what outsourced entities are doing with their information in particular including the provision to other entities without customer approval.

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

Yes

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.:

FIU retention obligations should be clear

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

Yes

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

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

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

Yes

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

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.:

We are supportive of the submissions made on this topic by CAANZ. Privacy, reliance, wet-ink, lack of guidance or “approval” from supervisors; GO AML. We consider there should be a focus on potential use by agencies of RealMe to verify without holding information. Technological development should be considered hand in hand with any new obligations placed on reporting entities as a result of this reform. This is a regime based on data and analysis, yet there has not really be promotion of tech advancement since it was implemented other than APIs. Entities may be worried about being penalised individually – it would be great if there could be sector wide focus on it as a solution to the compliance burden all face.

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.:

Whether the technology is fit for purpose and complies with the standards required by the Act, Supervisors need to take more of an active role in understanding technology and its application across sectors.

How can we overcome those challenges?:

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

Unsure

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

Problematic as Australia does not capture phase 2 entities; however, reliance on related businesses CDD would be helpful if there was harmonisation.

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

Please share your suggestions below.:

Better guidance and education from supervisors; guidance for exception handling processes; drop verification of address requirement and wet ink copies . We would be concerned that resilience and agility will be compromised if the regime becomes more prescriptive than it currently is.

6. Minor changes

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

Please share your comments below.:

Definitions and Terminology
A – no comment
B – no comment
C - no comment
D - no comment

Information Sharing
A: Further information required on the Acts intended to be added, and what the information would be used for.
B: Supportive
C: This should be considered fully throughout the consultation. When comparing earlier subsections for the other supervisors, those sharing rights reference legislation directly relevant to reporting entities it supervises (rather than other areas of government responsibility of the supervisor itself)
D: Clarify required to understand how this compares to other legislative regimes in New Zealand; and to understand what the limit on enquiries are.

SARs/PTRs
A: Supportive of clarity
B: Supportive

Exemptions
A: No comment
B: No comment

C: no comment
D: no comment
E: Supportive

Offences and penalties
A: Do not agree. Noting that the regulated form for the Formal Warning already includes details of required action, the change to “censure” seems unnecessary. That language is more relevant in a professional licensing regime, which this is not.
B: Supportive

Preventative Measures
A: Agree. A process for submissions on national and sectorial risks would need to be worked through if Reporting Entities are no longer able to consider but disregard the risk as it relates to their particular business (particularly in diverse sectors)
B: Agree
C: supportive
D Supportive
E: Supportive
F: Supportive
G: Supportive
H: Agree, provided there is reasonableness here (ie, with the amount of data stored, very little is able to be made available immediately on request).
I: Supportive
J: Do not agree. It is not reasonable or perhaps even workable in a Cloud based working environment to require copies of records to be kept in New Zealand. .
K: Supportive
L: No comment
M: Agree

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.: