## aml

**From:** APAC Regulatory <apacregulatory@adyen.com>
**Sent:** Thursday, 16 December 2021 10:36 pm
**To:** aml
**Subject:** Re: AML/CFT Act review - Extension of time for submissions
**Attachments:** Adyen - Submissions on Review of AMLCFT Act.20211216.pdf

Hi Nick

Thank you again for providing us with a 2-week extension to provide our submission.

We are pleased to share with you our submission on review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 as attached.

Please feel free to reach out if you require any clarifications, and have a great rest of the week ahead.

Kind regards
[redacted]

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[redacted]
APAC Regulatory Legal

contact: adyen.com/contact

Adyen Singapore
109 North Bridge Road
#10-22 Funan
179097, Singapore

> On 1 Dec 2021, Wednesday, at 10:35 AM, [redacted]@adyen.com> wrote:
>
> Hi Nick
>
> Thanks very much for your email and quick response, much appreciated.
>
> Have a great rest of the week ahead.
>
> Kind regards
> [redacted]
>
> ---
> [redacted]
> APAC Regulatory Legal
>
> contact: adyen.com/contact
>
> Adyen Singapore
> 109 North Bridge Road
> #10-22 Funan

179097, Singapore

On 1 Dec 2021, Wednesday, at 9:53 AM, aml <aml@justice.govt.nz> wrote:

Kia ora Nicholas,

Many thanks for getting in touch. Happy to provide Adyen with a two week extension in this instance. Please let me know if you need anything further.

Ngā mihi,

Nick

<image001.jpg>

[redacted]
Kaitohu Tōmua | Senior Policy Advisor
Criminal Law | Policy Group
[redacted]
www.justice.govt.nz

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**From:** [redacted]@adyen.com>
**Sent:** Wednesday, 1 December 2021 2:36 pm
**To:** aml <aml@justice.govt.nz>
**Cc:** [redacted]@adyen.com
**Subject:** AML/CFT Act review - Extension of time for submissions

Dear Sirs

We refer to the ongoing public consultation in relation to the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

We note that the closing date for submissions is 5 pm, Friday, 3 December 2021. We are currently coordinating across various internal functions to finalise our submissions, and would be most grateful if Ministry of Justice would indulge us with a 2 week extension (i.e. 17 December 2021) to provide our submissions.

We look forward to hearing from you on our request. Thank you for your time and consideration.

Kind regards
[redacted]

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[redacted]
APAC Regulatory Legal

contact: adyen.com/contact

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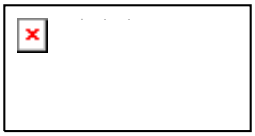
179097, Singapore



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adyen
wherever people pay

**AML/CFT Act Consultation Team**
**Ministry of Justice**
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Wellington
New Zealand

By email only (aml@justice.govt.nz)

16 December 2021

**SUBMISSION OF ADYEN NEW ZEALAND LIMITED ON THE REVIEW OF THE ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ACT**

1. Adyen New Zealand Limited ("**Adyen**") is pleased to make a submission in relation to the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**AML/CFT Act**"). We refer to the Consultation Document published by the Ministry of Justice in October 2021 ("**Consultation Document**").

2. Adyen operates as a payment service provider for New Zealand businesses offering a variety of payment methods to accept payments from consumers. The payment methods offered include debit and credit card acquiring under Adyen's own card acquiring license for the major Schemes such as Visa, MasterCard, and Amex, as well as payment processing for local payment methods such as Alipay, Afterpay and PayPal. The level of service Adyen offers under the different payment methods ranges from full acquiring and settlement (including KYC, onboarding, merchant risk, *etc.*) to a more limited connection such as technical gateway for payment processing only.

Submission

3. Adyen believes that integrity is essential for a sound financial system, and mitigates its integrity risks by ensuring that it pursues a strict risk-based policy in respect of anti-money laundering and countering financing of terrorism ("**AML/CFT**"). As such, Adyen is generally in support of the principles underpinning the proposals set out in the Consultation Document.

4. This submission generally focuses on how clarity may be provided in respect of the preventive measures required to be taken by businesses. As a payment service provider in New Zealand, AML/CFT is a cornerstone of our overall compliance strategy. The issues which we will raise in this submission relate to our experience accumulated across various markets that are part of the wider Adyen group regarding difficulties or pain points in practice we have faced when implementing policies to comply with prevailing legislation, including the AML/CFT Act and its subsidiary legislation. These issues broadly relate to:

   (a) source of wealth versus source of funds;

   (b) the 'person on whose behalf a transaction is conducted';

(c) what information needs to be obtained and verified – a risk-based approach;

(d) verifying the address of customers who are natural persons;

(e) who is required to submit a report (PTR); and

(f) applicable threshold for reporting prescribed transactions.

5. We now address each of the aforementioned issues as follows.

*Source of wealth versus source of funds*

6. We agree in principle with the proposal to provide clearer guidance when information about a customer's source of wealth should ("**SOW**") be obtained and verified versus source of funds ("**SOF**"). Whilst the Enhanced Customer Due Diligence Guideline issued by the AML/CFT supervisors mentions that SOW information should be obtained and verified from a customer when establishing a customer's risk profile and SOF information should be the focus when enhanced customer due diligence is triggered by circumstances involving transactions or activities, the distinction is arbitrary in practice, as a customer's risk profile is necessarily altered by circumstances involving transactions or activities.

7. Considering that situations that may require SOF and SOW information to be obtained and verified may manifest in numerous forms, to (a) allow businesses to have flexibility in handling such matters, and (b) avoid excessive compliance costs in this regard, we are of the view that such guidance ought to remain in the form of guidelines rather than the same being prescribed in regulations. Such an approach would allow different types of financial institutions offering different forms of financial services to tailor their methods accordingly, while meeting the objectives of SOF/SOW legislation – a win-win for stakeholders.

*The 'person on whose behalf a transaction is conducted'*

8. We agree that the inclusion of the "person on whose behalf a transaction is conducted" (or "**POWBATIC**") in both limbs of the definition of "beneficial owner" is problematic. In particular:

(a) as the Consultation Document rightly points out, the inclusion of the POWBATIC as a third type of beneficial ownership has resulted in some businesses being required to treat the customer of a customer as a beneficial owner and obtain and verify the underlying customer's identity. This is unduly onerous on businesses, exponentially increasing the compliance burden and costs entailed; and

(b) the inconsistency of the definition of "beneficial owner" in the AML/CFT Act with standards and guidance of the Financial Action Task Force ("**FATF**") in relation to beneficial ownership has arguably contributed to the POWBATIC being problematically interpreted as a third type of beneficial ownership. Bringing the definition of "beneficial owner" in the AML/CFT Act in line with FATF's standards and guidance would not only clarify and eliminate such problematic interpretation, but also align the New Zealand AML/CFT regime in this respect with global standards.

9. We therefore welcome the proposal to issue regulations which state that for the purposes of the definition of "beneficial owner", transactions being conducted on behalf of another person are only relevant when they imply that the other person is exercising indirect ownership or control over the customer, and clarifying that

businesses do not have a direct obligation to obtain and verify the identity of every underlying customer of their customer, which would also align with the FATF standards.

*What information needs to be obtained and verified – a risk-based approach*

10. The AML/CFT Act currently prescribes different amounts of information to be obtained depending on the level of customer due diligence conducted. As an extension of the existing regime, we propose that a risk-based approach may be further adopted for situations where a reporting entity determines the risk of money laundering and/or terrorism financing ("**ML/TF**") when acting for a customer that it may reasonably face, in accordance with its AML/CFT programme, to be low. In such an approach, the reporting entity would take into consideration various factors when determining the ML/FT risk, including but not limited to the business relationship with the customer, the business activity being undertaken, the amounts being transacted in connection with the business activity, and the customer's AML/CFT systems (where applicable). Where the ML/FT risk is deemed by the reporting entity to be low, the reporting entity would be empowered to decide on the particular reasonable measures to be taken in order to meet the requirements of obtaining and verifying a customer's identity.

11. We believe that the proposed risk-based approach is advantageous in the following ways:

    (a) this approach grants businesses the flexibility to meet the objectives of AML/CFT legislation where the perceived risk of ML/FT is low. Such a risk-based approach would allow businesses to allocate their resources in the most efficient ways, that is – ensuring that measures to prevent or ML/TF are commensurate to the risks identified. In this regard, we note that in Europe, such an approach is validated on the basis of European Union regulations whereby reporting entities are permitted to delay certain verification steps in low-risk situations up to certain monetary thresholds;

    (b) in certain situations, the costs and effort to undertake verification of information obtained compared to the low level of ML/FT risk is unreasonable, especially if that the value of transactions involved were to be considered low (for example, verification of information in respect of customers of customers as described in paragraph 8(a) above). The proposed risk-based approach would minimise the unnecessary incurrence of such unreasonable costs; and

    (c) apart from efficient resource allocation and cost-saving benefits, reporting entities would be trained to consider ML/FT risks and apply corresponding measures in such a risk-based approach. This will hopefully have the beneficial effects of empowering reporting entities to be attuned to the objectives and policy considerations of AML/CFT legislation, whilst creating a more ML/FT risk-aware and AML/CFT legislation compliant climate for New Zealand businesses in the mid to long term; and

    (d) the risk-based approach would only apply in situations where the ML/FT risk is deemed low by a reporting entity. As such, reporting entities would be availed the benefits described in preceding sub-paragraphs, while the overall objectives of AML/CFT legislation can still be met as AML/CFT authorities maintain oversight and supervision over all other situations.

12. As such, it is our view that the risk-based approach as described above would complement the existing AML/CFT regime in a way that would benefit businesses without compromising the objectives of AML/CFT, and we accordingly invite the Ministry of Justice to consider implementation of the same via regulations and/or guidelines.

*Verifying the address of customers who are natural persons*

13. We are in agreement with the issues raised in the Consultation Document in relation to the verification of address of customers who are natural persons. Apart from the issues of negative impact on financial inclusion, disproportionate compliance costs for businesses, current processes for verification of addresses not being robust, and such requirement going beyond FATF standards, we would also add that:

    (a) verification of addresses can take up a large amount of a business' resources. The ways addresses are input by individuals are generally not standardised, and this creates a significant operational burden when manually sieving through addresses that are deemed not verified at first instance. Apart from this incurring disproportionate compliance costs, such resources dedicated solely to verifying addresses could be better utilised;

    (b) there are more useful types of information that can be verified for natural persons which may be less frequently changed than addresses (for example, identification or passport numbers, which also better lend themselves to automation). Further, these types of information would be also more accurate and reliable for the purposes of verifying the identities of natural persons.

14. In view of the above, we are generally aligned with the proposal for verification of address in the short term and the long term, though we would suggest that verification of region / state and country would be sufficient to meet the AML/CFT objectives in this regard. We would also suggest that the Ministry of Justice considers the usefulness of addresses of natural persons in the context of AML/CFT objectives. As mentioned in the Consultation Document, most countries do not require address information to be verified. Further, verification of the identities of individuals can be done via other measures, or via the verification of another datapoint that is more permanent (for example, identification or passport numbers, as described above).

*Who is required to submit a report (PTR)*

15. We note that the Consultation Document has highlighted the issue that it is currently unclear whether DNFBPs or non-bank financial institutions are required to file a PTR when they transfer or receive funds internationally via the banking system on behalf of an underlying customer. Given that the bank is providing the payment rails for such transactions, the bank would logically be subject to the PTR obligations in this regard.

16. We note that the Ministry of Justice is looking to address the issue that a PTR submitted by a non-bank financial institution or DNFBP would be more valuable as it would include this information. For the reason stated above, we are in principle aligned with the idea that banks would be in the best position to provide the PTR. Should there be different reporting requirements imposed on DNFBPs or non-bank financial institutions, we propose that DNFBPs or non-bank financial institutions would only be required to submit information about the customer in question that is not already being submitted by banks to prevent duplicity of information.

*Applicable threshold for reporting prescribed transactions*

17. We note that the Consultation Document has expressed the intention to remove the threshold for international wire transfers so as to detect terrorism financing and child exploitation payments moved through New Zealand, which typically fell under the NZD 1,000 threshold. While we understand the intention behind this proposal, the removal of the NZD 1,000 threshold would result in an exponential number of transactions being reported. Such a significant number of transactions would entail greater monitoring

efforts on the AML/CFT authorities to sieve out suspicious transactions, which significantly increases the operational burden on AML/CFT authorities to generate intelligence out of such a large volume of reported transactions. Such over-reporting would also create redundancy impeding efficiency of the AML/CFT authorities' monitoring operations, which would not be a desirable outcome.

18. In view of this, we would suggest that a better approach might be that the AML/CFT authorities rely on the suspicious activity reporting regime to detect and catch such transactions, whilst retaining the NZD 1,000 threshold. This could entail refinement of the suspicious activity reporting regime to allow businesses to make such reports.

Conclusion

19. Thank you for the opportunity to make a written submission on the review of the AML/CFT Act. Should you have any questions in relation to our submission, please feel free to contact our Regulatory Counsel, our [redacted] at apacregulatory@adyen.com.

Yours faithfully

[redacted]
Country Manager, Australia and New Zealand
Adyen