aml

From: [redacted]@mcap.co.nz>
Sent: Tuesday, 14 December 2021 4:56 pm
To: aml
Subject: RE: Review of the AML/CFT Act
Attachments: Mainland Capital MOJ AML Submission_14-12-2021.pdf

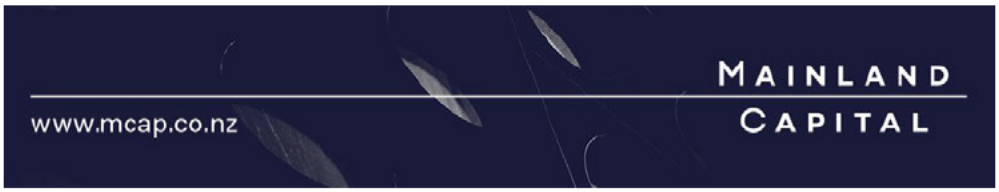
Hello Nick

As discussed, I attach Mainland Capital Investment Management Limited's submission on the MOJ Consultation Document on the review of the AML/CFT Act. Please could you confirm receipt of the submission.
I am happy to discuss further.

Kind regards
[redacted]

[redacted]
Legal & Compliance Manager

[redacted]



From: [redacted]
Sent: Thursday, 9 December 2021 4:53 PM
To: aml <aml@justice.govt.nz>
Subject: RE: Review of the AML/CFT Act - Extension of time to provide submission

Hi Nick

Would I be able to send in Mainland's submission on Tuesday 14 December? Apologies for not being able to meet the deadlines but it is a very busy time for Mainland at the moment. Mainland considers that we have valuable practical input into the review and want to make sure that the submission is complete and comprehensive. In terms of where we are at, I will have finished Mainland's submission tomorrow, but I need to get the approval of Mainland's directors to submit the submission and that will not be available tomorrow.

Kind regards
[redacted]

From: aml <aml@justice.govt.nz>
Sent: Wednesday, 1 December 2021 1:57 PM
To: [redacted]@mcap.co.nz>
Subject: RE: Review of the AML/CFT Act - Extension of time to provide submission

Not a problem at all, let me know if you need any further time.

Nick

From: [redacted]@mcap.co.nz>
Sent: Wednesday, 1 December 2021 1:53 pm
To: aml <aml@justice.govt.nz>
Subject: RE: Review of the AML/CFT Act - Extension of time to provide submission

Yes, I think that will give us enough time to finalise the submission. Thank you for the speedy response.

[redacted]

From: aml <aml@justice.govt.nz>
Sent: Wednesday, 1 December 2021 1:49 PM
To: [redacted]@mcap.co.nz>
Subject: RE: Review of the AML/CFT Act - Extension of time to provide submission

Kia ora [redacted],

Many thanks for your email. Would an extension until 10 December work?

Ngā mihi,

Nick

MINISTRY OF JUSTICE
Tāhū o te Ture

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

Mon Tues Wed Thur Fri

From: [redacted]@mcap.co.nz>
Sent: Wednesday, 1 December 2021 1:44 pm
To: aml <aml@justice.govt.nz>
Subject: Review of the AML/CFT Act - Extension of time to provide submission

To whom it may concern

Mainland Capital has reviewed the Consultation Document on the review of the AML/CFT Act and intends making a submission, but the final submission will not be completed by Friday 3 December. The submission document on page xi said to contact you if we need more time to provide feedback. Could we have an extension of time in which to provide out submission?

I look forward to hearing from you.

Yours faithfully

[redacted]

[redacted]
Legal & Compliance Manager

[redacted]

IMPORTANT NOTICES:
The views expressed in this communication are not necessarily those of Mainland Capital, unless stated otherwise. This email and accompanying attachments contain information that is confidential. If you are not the intended recipient, you must not read, use, distribute or copy the contents of this email. If you have received this email in error, please notify us immediately by reply email or collect telephone to +64 3 355 4244 and delete the original email together with all attachments. Mainland Capital does not accept responsibility for: (a) any changes to this email or its attachments; or (b) any attachments made by others, after we have transmitted it.

Mainland Capital does not represent or warrant that this email or files attached to this email are free from computer viruses or other defects. Any attached files are provided, and may only be used, on the basis that the user assumes all responsibility for any loss, damage or consequence resulting directly or indirectly from their use. The liability of Mainland Capital is limited in any event to either the re-supply of the attached files or the cost of having the attached files re-supplied.

MAINLAND
CAPITAL

Tuesday 14 December 2021

AML/CFT Consultation Team
Ministry of Justice
SX 10088
Wellington 6140
New Zealand

By email: aml@justice.govt.nz

Review of the AML/CFT Act

I attach a submission from Mainland Capital Investment Management Limited (Mainland) on the Ministry of Justice's (MOJ) review of the AML/CFT Act Consultation Document dated October 2021 (Consultation).

Mainland is a licensed MIS fund manager under the Financial Markets Conduct Act 2013. It manages two retail and five wholesale property funds with combined value of approximately $130 million. Mainland has formed a designated business group with some related companies which also operate in the property/funds sector.

Mainland has been a reporting entity (RE) since establishment of the AML regime in New Zealand. We welcome the opportunity to submit on the Consultation because we hope that our feedback will assist to improve New Zealand's AML regime by addressing practical difficulties that have been encountered when carrying out obligations under the Act.

As this is a substantive review, we have responded to questions that directly impact Mainland and removed questions on areas that do not directly impact Mainland.

Mainland's main comments on the Consultation are:

- The Consultation asks a number of questions about whether more regulations should be prescribed. Mainland is of the view that prescribing more regulations is not consistent with a risk based approach because it provides less flexibility for RE's to be able to rely on their assessment of a customer's risk. The number of reporting entities from a variety of sectors means that it would be difficult for the regime to be tailored to apply to all RE's. It is likely that inadvertently, some RE's may not be able to comply, or would be subject to requirements that are not appropriate to their level of risk. For this reason Mainland would prefer that no additional regulations are drafted.
- Mainland is not supportive of any changes to the Act which would result in RE's taking on a more investigative role, as opposed to reporting instances of suspected ML/TF. Changing the purpose of the Act from deterring and detecting ML/TF to preventing ML/TF would have this effect.
- If changes to NZ's AML regime would significantly add to compliance costs, while only having an insignificant effect on deterring and detecting ML/TF then they should not be implemented.
- Mainland is supportive of a digital framework which would enable RE's to be able to rely on one source of truth for verifications of identity.

- New Zealand should be meeting FATF requirements, but should not be going over and above these. Any NZ requirements that go beyond the FATF requirements should be removed (such as the requirement to verify addresses).

My email is [redacted]@mcap.co.nz if you want to discuss any aspect of this submission. Mainland is willing to be involved if more industry specific feedback is sought.

Yours faithfully

[redacted]

Legal & Compliance Manager
Mainland Capital Investment Management Limited

MAINLAND CAPITAL INVESTMENT MANAGEMENT LIMITED'S SUBMISSION ON THE MINISTRY OF JUSTICE REVIEW OF THE AML/CFT ACT CONSULTATION DOCUMENT - DECEMBER 2021

PART 1 - INSTITUTIONAL ARANGEMENTS AND STEWARDSHIP

1.1 Are the purposes of the Act still appropriate for NZ's AML/CFT regime? If no, why. What should be changed?

Mainland considers that the current purposes of the AML/CFT Act are still appropriate.

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?

Mainland does not support the extension of the Act to actively prevent money laundering (ML) and terrorism financing (TF). While adding significant compliance costs to RE's, collecting information and reporting instances where a suspicion of ML/TF is formed is able to be done in conjunction with the operation of its businesses. Extending the Act would result in RE's taking on an investigative role, which is not appropriate to RE's. For RE's to operate their business so as to prevent ML/TF would mean significant changes to the operations of RE's business. This would significantly increase compliance costs for RE's for any resultant gain that are likely to be negligible.

1.4. Should a purpose of the Act be that it also seeks to counter the financing of proliferation of weapons of mass destruction? Why or why not? 1 https://www.fatf-gafi.org/publications/financingofproliferation/documents/statement-proliferation-financing2020.html

As above, Mainland considers that the current purposes of the AML/CFT Act are still appropriate and do not need to be extended. The Act should not be referring to every kind of crime that the Act it is designed to detect and deter. The flow on effects of such amendment is likely to be greater than the risk that it is trying to suppress, and this may capture lawful activities.

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? Why or why not?

This is outside of the remit of the Act and would be better dealt with by Ministry of Foreign Affairs and Trade (MFAT).

1.8. Are the requirements in section 58 still appropriate? How could the government provide risk information to businesses so that it is more relevant and easily understood?

Mainland considers that the requirements in s58 are still appropriate, apart from S58(f) - the institutions it deals with. All businesses have third party service providers such as IT providers, insurers, accountants, lawyers and insurance brokers. This is not relevant to the ability of customers to use RE's such as Mainland to launder money or finance terrorism.

1.9. What is the right balance between prescriptive regulation compared with the risk-based approach? Does the Act currently achieve that balance, or is more (or less) prescription required?

Prescriptive regulation is not consistent with a risk based approach. As New Zealand has a large number of RE's from many different sectors, a risk based approach is preferable to a more prescriptive approach.

Mainland considers that increased prescription would make it more difficult for RE's to take a risk based approach because once procedures are regulated, RE's must comply with them. Given the variety of sectors and types of RE's, prescriptive regulations are unlikely to be able to be applied by all RE's, as they may not be relevant to a particular RE or their business within a sector risk group. This would make it difficult for RE's to comply in their particular circumstances, and is likely to result in being obliged to carry out certain activities that do not result in the deterrence and detection of ML/TF. For example, transaction monitoring and ongoing CDD applies to all RE's even though some entities (like Mainland) have closed funds that do not redeem so there are limited transactions. It is difficult to see that undertaking ongoing CDD would detect or deter ML/TF. Further, once regulations are prescribed, they become more difficult to change (in the even that they inadvertently are unworkable for some RE's).

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

Yes. New Zealand has so many RE's in many different sectors, all with different risk profiles (even those in the same sector) that obligations under the Act are not appropriate to all RE's in terms of the ML/TF risks they are exposed to. For example, closed property funds that are non-redeeming are in the same sector as managed funds, yet the risk profile of each is very different when managed funds are continuous issuers where redemptions are permitted. Prescriptive regulation is inconsistent with a risk based approach and would result in RE's obligations not being in proportion to the ML/TF risks that they are exposed to.

1.12. Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime? Why or why not?

Although the NZ regime is a risk based approach, the obligations of many RE's are not in proportion to the risks that they are exposed to. This is because there are so many different types of RE's from a range of sectors and industries. This means that even some RE's that are within the same sector, their ML/TF risk levels differ.

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? If so, what?

Although the regime is considered a risk based regime, the published guidance makes it difficult for an RE to take a risk based approach. E.g. Ongoing CDD - RE's that have very few transactions or primarily NZ investors should have simplified Ongoing CDD obligations.

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?

Mainland needs to have the ability to rely on another RE to conduct CDD – such as a financial advisory firm or share broker that has already collected CDD on behalf of a mutual customer, regardless of whether the reliance is permitted via an exemption or in some other way. Otherwise there is a double up in the collection of CDD.

1.18. *Should the Act specify what applicants for exemptions under section 157 should provide? Should there be a simplified process when applying to renew an existing exemption?*

It is not necessary that this be prescribed in the Act however there should be a simplified process when applying to renew an existing exemption.

1.21. Can the AML/CFT regime do more to mitigate its potential unintended consequences? If so, what could be done?

The ability to rely for RE's to rely on one source of truth for CDD will mitigate the risks associated with many RE's holding the same personal information (CDD) about a single customer.

1.23. Are there any other unintended consequences of the regime? If so, what are they and how could we resolve them?

As above, an unintended consequence of the regime is that many different organisations hold personal information on the same individual customers. This would magnify the impact of a cyber security breach or privacy breach in the event that that occurred. A centralised agency which can verify identification that all RE's can rely on would mitigate this risk.

1.24. Can the Act do more to enable private sector collaboration and coordination, and if so, what?

Giving RE's the ability to rely on CDD from one internal source, such as RealMe.

1.25. What do you see as the ideal future for public and private sector cooperation? Are there any barriers that prevent that future from being realised and if so, what are they?

The ideal future for public and private sector cooperation is the ability to rely on CDD from one external source, such as RealMe.

1.26. Should there be greater sharing of information from agencies to the private sector? Would this enhance the operation of the regime?

Yes. It would be good if RE's are able to rely on proof of identity information held by a private sector agency, i.e. RealMe.

1.27. Should the Act require have a mechanism to enable feedback about the operation and performance of the Act on an ongoing basis? If so, what is the mechanism and how could it work?

No, it is not necessary that this be prescribed in the Act. Feedback should be able to be provided to the Supervisor in some forum.

1.28. Should the 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)? Why or why not?

Yes – this power should be consistent with police procedures when requesting information.

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

This power should be consistent with police procedures when requesting information.

1.30. Should the FIU be able to request information from businesses on an ongoing basis? Why or why not?

Yes, this should be part of the FIU 's function to detect ML/TF.

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

This should be consistent with police powers.

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? If so, 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?

The FIU's powers to freeze assets should only occur where ML has been proved, not simply where a suspicion has arisen. E.g. liquidity issues may arise for some investment funds where units are able to be redeemed, if assets are able to be frozen. RE's are likely to suffer damage to their reputation from taking such action and could be exposed to action from disgruntled customers.

1.34. Should supervision of implementation of Targeted Financial Sanctions fall within the scope of the AML/CFT regime? Why or why not?

No – it is not appropriate that this is in the scope of the Act as it is extending the powers too far. Targeted financial sanctions should be supervised by MFAT.

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

MFAT, as it deals with international security and counter terrorism.

1.39. Should the New Zealand Police also be able to issue Codes of Practice for some types of FIU issued guidance? If so, what should the process be?

No. All guidance should be issued by the Supervisors, not the NZ Police. Consistency is an issue between the 3 Supervisors and allowing the NZ Police to issue FIU Guidance may inadvertently create more inconsistencies.

1.40. Are Codes of Practice a useful tool for businesses? If so, are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice?

Codes of practice are a useful tool for businesses, but in some instances the Codes extend the Act in a way that has not yet been tested in the courts. It is only the regulator's interpretation of the law. If a RE is able to justify an approach that is inconsistent with a Code, then the RE should be able to opt out of the relevant part of the Code.

E.g. the Act only requires that proof of identity and address must be required before entry into a business relationship. The Act does not mandate that current ID must be held on record for a customer at all times, but issued guidance recommends this practice. Using a risk based approach, RE's could waive this requirement for low and medium risk customers.

1.43. *Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act? Why or why not?*

Yes, for reports such as the Annual Report and SAR. This would provide more flexibility in that changes can be made in a timely manner, if required, which provides more flexibility.

1.45. Would AML/CFT Rules (or similar) that prescribed how businesses should comply with obligations be a useful tool for business? Why or why not?

Mainland does not consider that drafting prescriptive rules is consistent with a risk based approach. Prescribing rules would make it more difficult for RE's to adopt a risk based approach in terms of what action it takes to comply with the Act.

Licensing and Registration

1.52. Should there be an AML/CFT-specific registration regime which complies with international requirements? If so, how could it operate, and which agency or agencies would be responsible for its operation?

Any AML registration regime should not apply to REs that already hold a license under other New Zealand legislation.

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

Any AML registration regime should not apply REs that already hold a license under other New Zealand legislation.

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?

Mainland agrees with this approach.

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?

It is likely that this would make other businesses more willing to have them as customers.

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? Why or why not?

No. This would result in increased compliance costs for what is likely to be only a small reduction in ML/TF.

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

Any levy should only be paid by the RE's that it applies to.

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?

Any payment should be based on size of the business, risk profile and the number of reports made.

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?

PART 2 – SCOPE OF THE ACT

2.3. Should "ordinary" be removed, and if so, how could we provide some regulatory relief for businesses which provide activities infrequently? Are there unintended consequences that may result?

Unintended consequences would be that businesses that only provide the services infrequently would be captured by the Act and the compliance costs would be disproportionate.

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? If so, how could we achieve this?

It would be good if the definitions were better aligned, but if such alignment would result in the capturing of businesses not originally intended to be covered by the Act, then the compliance costs would be disproportionate.

PART 3 - SUPERVISION, REGULATION AND ENFORCEMENT

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

Having 3 Supervisors results in some inconsistencies with the application of the Act.

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

One supervisor.

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?

Inconsistencies in interpretation between supervisors can be confusing.

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

If the RE's registered business address is a dwelling house, then the Supervisor should be able to conduct an onsite inspection.

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

Remote onsite inspections are fit for purpose for a low risk customer. Interviews should be able to be conducted remotely. A remote inspection is better than no inspection at all.

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

Virtual inspection options would make supervision more efficient but RE's may be unable to provide access to their system, which may make it difficult for this to occur.

Approving the formation of a Designated Business Group

3.9. Is the process for forming a DBG appropriate? Are there any changes that could make the process more efficient?

When Mainland formed its DBG, it was unclear whether a new/recent member of the DBG is able to rely on CDD information collected by another member, before the DBG was formed. Some guidance on this would be useful.

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

This is not necessary.

Regulating auditors, consultants, and agents

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?

Mandating all AML auditors to hold an AML qualification would ensure higher quality audits.

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

FMA – as licensing body for other auditors.

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

If introducing standards for auditors imposes stringent requirements, then this will reduce the number of auditors as some auditors will stop providing the services. While it is better to have ineffective auditors exit the industry, reducing the number of auditors will increase the costs of audits as the pool of auditors gets smaller. E.g. financial audits are a reducing market with increasing costs where the large auditors such as PWC dominate. This will further increase compliance costs for RE's.

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

RE's should be able to rely on the audit result. Auditors who do not provide a satisfactory audit could be stood down or supervised (peer review). Any increased liability for auditors is likely to increase the cost of an audit.

Consultants

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?

This is not appropriate. Lawyers already advise on AML matters, and they are effectively a consultant.

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.

Agents

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

Mainland uses agents for the collection of EIV.

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?

if who can be an agent is prescribed, care needs to be taken to ensure that that it does not inadvertently exclude an entity that RE's currently use as an agent. E.g. currently, Mainland accesses a registry platform provided by a third party (that is not an RE) and CDD is held on that platform). EIV is included as part of the subscription, but the EIV arrangement is through the platform provider. This relationship would need to be covered by any definition of agent.

Offences and Penalties

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. Significant amounts are involved.

3.22. Would additional enforcement interventions, such as fines for noncompliance or enabling the restriction, suspension, or removal of a licence or registration enable more proportionate, effective, and responsive enforcement?

No.

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?

The current penalties are already sufficiently high.

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

The scope of civil sanctions should not be broadened for senior managers. Senior managers are employees who should not be censured for following instructions.

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

Compliance officers should be provided with protection when they are acting in good faith. Compliance officers are employees and should not be penalised for following instructions.

3.28. Should DIA have the power to apply to a court to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act?

No. Existing recovery processes are adequate.

PART 4 - PREVENTATIVE MEASURES

4.1. What challenges do you have with complying with your CDD obligations? How could these challenges be resolved?

Mainland has experienced challenges in the following areas:

- **Holding Personal Information**: The obligations associated with holding CDD. Mainland is very conscious of cyber security incidents, which are becoming increasingly common (despite best endeavours to protect systems). If a RE's system is hacked and investor information is stolen, then this could result in a major privacy breach.
- **Historic Funds**: Mainland has one historic fund pre the AML regime that was established over 20 years ago, so many of the original investors are now elderly. Elderly investors don't have the same access or willingness to access the computer or no longer have the valid identification (when the system relies on government issued documents). More discretion around ID and address proof and more use of an exceptions register would be helpful. We have been told by AML auditors that the exceptions register should only hold a very small percentage of investors. Bio-verify does not always work with elderly investors. E.g. one elderly investor was unable to bio verify because his hand shook so much.
- **Proof of Identity and Holding Current ID on file**: The Act only states that the investors must provide proof of identity and address. Nowhere in the Act does it say that ID must be current. Having to always hold current ID for people who have provided CDD increases the risks around cyber or internet security breaches or a significant privacy breach.
- **Nature and purpose of a business relationship**: This is difficult for entities where there are no ongoing transactions and where investments are on a case by case basis. Each individual investment on its own merits. Mainland confirms NAP on each new investment as each investment has different characteristics so that it is inappropriate to rely on previously stated NAP.
- **Reasons for exiting an investment**: If asking someone why they are exiting an investment – a difficult line between privacy / AML regime.
- **Costs**: Additional costs to customers of verifying documents, if a customer is an entity. Hard copies are problematic because so much information is now electronic.
- **Termination of a Business Relationship**: Mainland's investment funds are non-redeeming. This would make it difficult to terminate a business relationship for example in situations where enhanced source of funds is required but not provided.

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?

Mainland does not consider that this is necessary.

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

No. The obligation to collect CDD should only sit with the party with whom there is a contractual relationship. An agent acts for the vendor and the contractual relationship is with the vendor.

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?

This would result in duplication where more than one party is conducting CDD on the same entity. This would not result in any increased deterrence of ML/TF.

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

At the time that a listing agreement is signed by a seller and when the lawyer or conveyancer is appointed to act for the purchaser.

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

It is sufficiently clear when CDD needs to be conducted – at the start of a business relationship. EDD is also sufficiently clear.

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

No, this is not appropriate in all instances. If suspicions arise before a business relationship has commenced, such as if a customer contacts a RE about investing then does not proceed after having been asked for CDD, then it would be difficult for a RE to obtain CDD without tipping off the customer.

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?

As above, requesting more information in such circumstances and requiring it to be verified is likely to tip off a customer. If the customer is attempting to ML/TF then they are likely to be on the lookout for indications that the RE may be suspicious, so they are more likely to be tipped off.

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?

By not requiring CDD if a business relationship has not already commenced. People are less likely to be tipped off if CDD information does not have to be verified.

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

The requirement to verify addresses is not appropriate due to the fact that businesses increasingly discourage customers from receiving documents by post. New Zealand's aim should be to comply with FATF requirements – if proof address is not required by FATF then it should not be a NZ requirement.

4.19. *Are the obligations to obtain and verify information clear?*

Address verification is no longer appropriate as discussed above.

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

As discussed above, it has become very difficult to manually verify an address as most bills and invoices are electronic. Some verifiers do not use the exact wording required of manual verifications. For a low risk customer it adds to compliance costs to go back and get the verification

wording corrected. If the exact wording of the verification Is not used, then this would not result in an increased likelihood of ML/TF.

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?*

It would be good if RE's can rely on one source of truth for CDD, such as RealMe.

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?

It is easy to identify the form and proof of existence of a NZ company from the NZ Companies Office. However, the listing of different classes of shares on the NZ Companies register would assist in confirmation of a company's ownership and legal structure. Mainland does not consider that it is appropriate that RE's obtain copies of shareholder agreements. This would significantly increase the cost to the customer if legal or business advisers have to verify this information, and would also increase the compliance costs for RE's.

This is easy to confirm for partnerships and trusts and by obtaining a copy of the trust deed or partnership deed. However, a trusts register would assist to confirm details of the settlor and trustees, although this disclosure should already be provided as part of effective control or beneficial ownership.

The provision of additional verifications from a professional adviser would add additional costs to the customer, and increase compliance costs for RE's.

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?

Compliance costs would increase if RE's have to obtain and verify documents that are not on public record. Some information would be easier to obtain, and compliance costs would be lower if there was a trust register or if the NZ Companies Office register extract showed different classes of issued shares.

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?

Issuing regulations is not consistent with a risk based approach. RE's should be able to determine, taking a risk based approach, whether the SOF information provided is acceptable. SOF and SOW information is sometimes the same, but if a customer has provided SOF information to a RE, it is not always appropriate that the RE then requires SOW information.

The RE's obligation should be to identify that the money coming into their business is legitimate. The RE should not be obliged to query what other funds are invested into other businesses. E.g. if a customer owns a business with a considerable turnover (such as a supermarket, which earns tens of millions of dollars of annual profit), that customer would likely have many different investments that generate profits. It is not appropriate that a RE should not be concerned with any of those other income streams.

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?

Presently all trusts are required to provide SOF information. Most New Zealand family trusts would be a low risk of ML/ TF, but they currently have to provide SOF. The requirement to not require SOF on low risk / simple family trusts could be linked to the location of the trust (the country risk level of any overseas family trust). If a particular transaction is a high risk or suspicious transaction then SOW information could be required for the specific transaction (in circumstances where SOF has already been provided), but there is a risk that this would tip off a customer.

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

There would be more work to obtain this information and increase compliance costs for the customer and the RE.

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

The requirement for CDD on a beneficial owner of a company is very clear and should not result in additional costs being incurred for collecting for a company. It is more difficult to determine the ultimate beneficial owner of a trust and such identification may increase compliance costs. This would be easier to collect if trust information was available on a register of trusts and would reduce compliance costs.

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 these costs or other consequences?

If RE's are unable to rely on an agent or the SMI exemption, then if enhanced CDD is triggered this would result in doubling up of the collection of CDD. This would result in additional compliance costs and would not actually achieve the objective of reducing ML and TF.

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?

It would be better to issue a Code of Practice rather than regulations, as regulations are more prescriptive and harder to change. A Code of Practice is more consistent with a risk based approach.

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?

In discretionary family trusts it is not always appropriate to obtain CDD on the settlor of the trust, such as where the trusts are very old, and the settlor no longer has any involvement of the Trust. Any guidance should consider circumstances when it is not necessary to obtain CDD on a settlor (such as If the settlor is not a beneficiary, not a trustee and has no ability to appoint trustees).

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

Compliance costs would increase. A trusts register for NZ trusts would reduce compliance costs. The above comment on the settlor also applies to this question.

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?

Mainland considers that verifying the name and date of birth of a verifier should only apply to high risk 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?

There should be one source of truth available to RE's, such as RealMe or something similar. Associated companies should be able to rely on each other's information, without having to form a DBG.

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?

If EIV providers are be licensed, then RE's should be able to rely on them. This would reduce the RE's costs. Mainland has a challenge in that it uses a third party for EIV, but this is provided through an external registry platform provider which has its own (bulk) agreement with a third party EIV provider (so Mainland does not have a contractual relationship with the EIV provider). If the EIV provider sets out the grounds on which it satisfies (a) to (g) of clause 17 of the IVCOP, it should not be necessary that the RE repeats this information in its Compliance Programme. It is difficult to see how duplicating this information in the RE's Compliance Programme would deter and detect ML/TF).

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

The challenge with verification of address information is that it is increasingly encouraged and viewed as standard procedure for persons to receive bills electronically, which makes it difficult to provide a hard copy original invoice for verifying. Accessing alternative sources from public records for verification takes additional time, which increases compliance costs for RE's.

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

Address information should be verified for high risk customers or customers from a high risk country or if a transaction is suspicious (provided that does not result in tipping off a customer).

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?

As address verification is not a FATF requirement then this requirement should be removed.

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?

A Code of Practice could be useful and is consistent with a risk based approach. Once matters are prescribed into regulations then they are difficult to change. Any exemptions would have to be dealt

with as an exemption. Note that while a Code of Practise is useful, it is only an interpretation of the Act – the interpretation it is not confirmed unless it has been tested in legal proceedings.

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

Making additional measures mandatory is not consistent with a risk based approach.

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?

Mainland supports the removal of the requirement for enhanced CDD to be conducted for **all** trusts. It may still be appropriate for enhanced CDD to apply to complex / high risk trusts / foreign trusts. Mainland considers that the requirement for enhanced CDD should be removed for standard family trusts that are low risk. Enhanced CDD for standard family trusts is not consistent with a low risk profile. This removal would lower compliance costs.

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?

Some guidance in the form of a Guidance Note would be helpful and appropriate.

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

Legislation or regulations setting out the criteria for a high risk trust is not consistent with a risk based approach. Criteria to be considered as a high risk trust could include:

- if the beneficial owner who is a natural person is unable to be identified
- foreign trusts
- if all trustees are professional advisers or no trustees are legal persons

A NZ Trusts register would assist with in obtaining this information identification.

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

Mainland considers that the current provisions for Ongoing CDD are not appropriate for customers who do not transact and where there has been no change to the nature and purpose of business relationship. For RE's that have minimal transactions after the first transaction, the ongoing CDD obligation should only arise if there is a change to the NAP or when a transaction occurs.

The CDD requirement is to is to obtain proof of identity and address of the customer at the start of the business relationship. Once identity and address have been verified, why should it be necessary to hold a copy of current identification on file? It is difficult to see how this would deter and detect ML/TF.

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

Mainland would prefer that no additional regulations are issued as regulations are prescriptive and unable to easily be changed. Regulations are not conducive to a risk based approach. Any guidance

or any change of approach should reduce the ongoing CDD obligations for customers that do not transact or who are low risk.

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?

Compliance costs are likely to increase.

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

No. Mandating the frequency is not consistent with a risk based approach to the AML regime. Mainland would rather set its own CDD frequency requirements based on the risk profile of its customers.

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. This is not appropriate.

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?

Mainland considers that the current requirement is adequate, in terms of clause 14(1)(c)(i) and (ii).

Mainland has one inherited Fund with existing pre-Act customers, who are largely elderly. We have periodically been onboarding those investors but have a small number of customers who are not yet onboarded. The inherited Fund was established by Perpetual Trust in 1999 (Perpetual). Perpetual's building (PGC Building) collapsed in the February 2011 Christchurch earthquake, so no records are available from the time of Fund establishment or pre-2011.

Introducing a timeframe for onboarding would be problematic for Mainland, as the Fund does not permit redemptions, so these investors are unable to be exited. It is not appropriate to have a trigger date, particularly in circumstances where a business relationship is not able to be terminated.

The current requirements of clause 14(1)(c) are adequate in that an exit of the investment would be a change in business relationship so CDD should be obtained before funds are paid out to the investor.

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?

It is difficult to see how requesting further information on a transaction would not tip off a person engaged in ML or TF. Some guidance on steps that could be taken that what constitutes tipping off would be helpful. This would only affect prospective customers who have not already provided CDD information or enhanced CDD.

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

This would be appropriate in in some circumstances, including:

- if a business relationship has not yet been established at the time that a suspicion has been formed then requesting enhanced CDD is likely to tip off a potential customer.
- if a business relationship has already been established it may be more difficult to request enhanced CDD without tipping off the customer.

4.*76. Do you have any challenges with complying with your record keeping obligations? How could we address those challenges?*

There is an inconsistency between the AML legislative record keeping requirements of five years and the statute of limitation period for holding records is 7 years. There amount of personal information that is required to be held presents challenges in terms of privacy and cyber security.

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?

Mainland does not consider that the definition of PEPs should be included to cover domestic PEPs.

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?

A risk based approach should apply to any determination of whether a customer who no longer occupies a public function should be treated as a PEP. This is provided that such a person is identifiable through a PEP check.

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?*

Mainland is not in favour of a prescriptive approach. This is likely to add significant compliance costs to RE's.

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

Mainland does not consider that it is appropriate that assets are frozen, but if that happens then the government should provide assurances to businesses. Consideration needs to be given as to whether RE's might be exposed to actions by disgruntled customers (whose assets have been frozen). Any such assurance should indemnify RE's in the event that this occurs.

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?

Mainland is not in favour of a prescriptive approach with many new regulations. It is implicit in the Risk Assessment Guidance that the purpose of the review of the Risk Assessment is to ensure it remains current at all times, identify any deficiencies in its effectiveness and make any changes that are identified as being necessary in this process. It is implicit that a new product would be a change that would be necessary. Rather than prescribing in regulations, it would be better to update the Guidance.

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

The risks should be assessed in conjunction with the launch of a new product or technology.

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

As this is something that should already be factored into a Risk Assessment, it should not impact on costs. Whether costs would increase would depend on the nature of the regulation and what the actual requirement was.

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

Mainland considers that this would be unnecessary as the role of the Compliance Programme is to mitigate all risks identified in the Risk Assessment.

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

Wire transfers should be reported by one party only to avoid overlapping and duplication of reporting.

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

The ability to rely on RealMe or something similar would assist with the collection of CDD.

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

One DBG should be able to prepare an Annual Report on behalf of all members. Currently one member of a DBG can rely on another member to report on some aspects of its AML regime, but not other aspects.

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.*

This would not appear to be too onerous for RE's to comply with, although Mainland is not in favour of more regulations as this is not consistent with a risk based approach.

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

It would be useful if RE's were able to rely on CDD collected by other RE's with whom they have a transact or have a business relationship, such as a bank, solicitor.

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

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

- 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.

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?

This could be difficult for smaller companies with not many staff – e.g. where an individual is running the business then it would not be appropriate for the compliance officer to be that person. However, it is appropriate that a compliance officer is at the level where they can influence decision making in the business.

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

Mainland agrees that compliance officers should be natural persons.

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?*

If this can only be done by forming a DBG then this seems like excessive action. In response to bullet point 1, if a customer from a RE is recommended to a part of the business that is not subject to ML, then this should not be an issue. If it is the other way round – then the AML should be caught at the time the customer is referred to the other entity.

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?*

Mainland does not consider that it is necessary that this be mandated in regulations. A review should be at least annual basis. If a matter that requires changing is not urgent, then it could be saved for an annual review.

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

Th purpose of an independent audit should be to test compliance with the Act. If the RE is compliant with the Act but is not effective at ML/TF, then the Act is not effective. A RE cannot be found wanting for that. This creates uncertainty for RE's.

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?

Licensing of auditors, although note previous comment at question 3.13 about licensing resulting in a smaller number of auditors which would increase costs.

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

This would appear to extend the scope of the Act and may inadvertently capture many businesses that are not RE's that have business relationships with these countries. It would be onerous for any business that does business or conducts transactions with those countries to have to have an AML Risk Assessment and Compliance Programme in place.

PART 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?

Mainland considers that this goes beyond the scope of the Act

5.8. Does the AML/CFT Act properly balance its purposes with the need to protect people's information and other privacy concerns? If not, how could we better protect people's privacy?

As mentioned at question 1.23, numerous RE's are holding the CDD on the same customer which means that there is duplication of information. Having one central source of truth for CDD, such as RealMe, that RE's can rely on would better protect people's privacy. Not having to hold current ID on file would further protect privacy.

5.13. What challenges or barriers have you identified that prevent you from harnessing technology to improve efficiencies and effectiveness? How can we overcome those challenges?

If there was one source of truth for CDD obligations that RE's could rely on, then this would be better.

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? How can we overcome those challenges?

Mainland is fully supportive of a Digital Identity Trust Framework.

5.15. Should we achieve greater harmonisation with Australia's regulation? If so, why and how?

Mainland considers that it is essential that NZ continues with a risk based approach to ML and TF. If greater harmonisation with Australia results in New Zealand's AML regime becoming more prescriptive then Mainland is not supportive of this.

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

Mainland considers that prescribing a number of new regulations would make NZ's AML regime less resilient to long and short term challenges. This is because there are so many RE's in a variety of industries that it would be difficult for regulations to apply to all RE's. This AML review appears to be considering removing exemptions. If a number of new regulations are introduced, it is likely that exemptions will need to be passed for RE's that cannot comply with the regulations or for RE's that complying with those regulations causes unnecessary is an unintended consequence of the regulations. Further, regulations can be difficult to change and slow to change so if there are any unintended consequences then it may be difficult to change them.