aml

From: [redacted]@dentons.com>
Sent: Friday, 17 December 2021 11:40 am
To: aml
Cc: [redacted]
Subject: RE: Review of the AML/CFT Act - request for extension for submission to Friday 10 December 2021 [KS-KSNational.FID344817]
Attachments: DKS submission - AML CFT Statutory Review Consultation Document.pdf

Hi Nick

Please find **attached** our submission, and thank you for the extended submission date to today.

Kind regards
Gary

大成 DENTONS KENSINGTON SWAN [redacted]
AML Compliance Officer

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From: aml <aml@justice.govt.nz>
Sent: Monday, 6 December 2021 9:15 a.m.
To: [redacted]@dentons.com>
Subject: RE: Review of the AML/CFT Act - request for extension for submission to Friday 10 December 2021 [KS-KSNational.FID344817]

[WARNING: EXTERNAL SENDER]

Kia ora Gary,

As discussed, the Ministry is happy to accommodate an extension for Dentons Kensington Swan until 17 December.

Ngā mihi,

Nick

[redacted]
Kaitohu Tōmua | Senior Policy Advisor
Criminal Law | Policy Group
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Mon Tues Wed Thur Fri

From: [redacted]@dentons.com>
Sent: Monday, 6 December 2021 8:58 am
To: aml <aml@justice.govt.nz>
Subject: RE: Review of the AML/CFT Act - request for extension for submission to Friday 10 December 2021 [KS-KSNational.FID344817]

Hi Nick

Can you please give me a call. Just a quick question.

Kind regards
Gary

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AML Compliance Officer

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From: aml <aml@justice.govt.nz>
Sent: Friday, 3 December 2021 11:16 a.m.
To: [redacted]@dentons.com>
Cc: [redacted]@dentons.com>
Subject: RE: Review of the AML/CFT Act - request for extension for submission to Friday 10 December 2021 [KS-KSNational.FID344817]

[WARNING: EXTERNAL SENDER]

Kia ora Gary,

Many thanks for your email. More than happy to accommodate an extension until 10 December.

Please let us know if you need anything further.

Ngā mihi,

Nick

MINISTRY OF JUSTICE
Tāhū o te Ture

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Mon Tues Wed Thur Fri

From: [redacted]@dentons.com>
Sent: Friday, 3 December 2021 11:11 am
To: aml <aml@justice.govt.nz>
Cc: [redacted]@dentons.com>
Subject: Review of the AML/CFT Act - request for extension for submission to Friday 10 December 2021 [KS-KSNational.FID344817]

To the AML/CFT consultation team

I am the AML Compliance Officer for Dentons Kensington Swan. Dentons Kensington Swan is a reporting entity under the AML/CFT Act and intending to provide a submission on the review of the AML/CFT Act. Our submission is not yet in final form and we request an extension for the submission of one week to Friday 10 December 2021. We would be grateful if you could please confirm that this request for an extension is approved.

Kind regards
Gary

大成DENTONS KENSINGTON SWAN

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AML Compliance Officer

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17 December 2021

Submission on Consultation Document– AML/CFT Statutory Review

This is a submission by Dentons Kensington Swan on the AML/CFT Statutory Review ('**Consultation Document**') released by the Ministry of Justice ('**MoJ**'). In this submission, the word 'Act' refers to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

About Dentons Kensington Swan

Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.

Dentons Kensington Swan welcomes the opportunity to make submissions on the Act.

General comments

When the Act was drafted, it was drafted with predominantly Phase 1 entities in mind and subsequently enacted as such. Accordingly, when it came for Phase 2 entities, such as law firms, to be subject to the Act, there was a certain level of apprehension of how the law firms would meet their compliance obligations under the Act which were not designed for them. Unfortunately, the apprehension law firms had was well-founded, and law firms have experienced difficulties with compliance since July 2018.

The two main issues we have with the Act, and the two issues which we ask the MoJ to consider when making any changes to the Act are:

1. Please keep in mind that Act covers a wide scope of reporting entities cover many industries. Accordingly a general provision in the Act paired with industry specific regulation or codes of practice may allow better compliance by non-Phase 1 entities.

2. Reporting entities are well placed to assess the risk they face and how to deal with that risk. Accordingly, it is our view is that the Act should allow for a more risk-based approach to be taken by reporting entities, rather than a code to be followed. This will make compliance easier, especially for reporting entities which are not Phase 1 entities.

1 Part 1 – Institutional Arrangements and Stewardship

Purposes of the AML/CFT Act

1.1 *Are the purposes of the Act still appropriate for New Zealand's AML/CFT regime or should they be changed? Are there any other purposes that should be included other than what is mentioned?*

No comment.

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?*

A change to require the *prevention* of money laundering and terrorism financing may have an interpretive effect of requiring a reporting entity to be far more active with its obligations than it should be. We certainly agree that reporting entities do have a part to play with detecting and deterring money laundering and the financing of terrorism, but it is our view that active crime prevention should be the primary responsibility of crown/government organisations. The requirement of active prevention on reporting entities would create an overly burdensome compliance environment on private citizens/entities.

1.3 *If so, 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?*

As above our view is that this should not be incorporated into the Act.

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?*

The issue of proliferation of weapons of mass destruction, and who should have them, and who should not have them is a political issue. The Consultation Document correctly queries whether the focus should be on the financing of proliferation of weapons of mass destruction generally, or countries sanctioned by the UN. If the former, then it would have issues for any reporting entity carrying out captured activities for any government which holds weapons of mass destruction. In addition, in practice it would be very difficult for a reporting entity to identify whether a client is proliferating weapons of mass destruction, or involved in the production or supply of any components of such weapons. This can be evidenced by the problems certain KiwiSaver schemes previously had with unintended exposure to nuclear weapons. Our view is that this is best left to the local authorities (and the United Nations Office for Disarmament Affairs).

1.5 *If so, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea or should the purpose be to combat proliferation financing more generally? Why?*

As above our view is that this should not be incorporated into the Act.

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?*

As above our view is that this should not be incorporated into the Act.

Risk-based approach to regulation

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

This is currently working well.

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?*

Yes requirements in section 58 are still appropriate, Further, subsections (2)(g) and (h) permit flexibility by allowing the Supervisors to issue guidance on risk assessments and changes to be made through Regulations.

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?*

We consider there to be more scope for a risk-based approach to regulation. In our view, the Act is better suited for a risk-based approach as the Act is far reaching, and covers multiple sectors and industries. In addition, a risk-based approach will allow reporting entities to better customise their AML/CFT compliance programmes and risk assessments, and to implement programmes that can be adapted according to changing risks in their relevant sectors/industries.

This will also create more efficiencies in the processes and procedures of AML reporting entities, especially for a 'designated non-financial business or profession' such as a law firm. This is due to both the fiduciary relationship lawyers have with their clients, and in some cases, the longevity of relationships. While the Act currently provides a risk-based framework in certain areas, the Act does not appreciated these types of relationships as between lawyers and clients. Accordingly, there is room for further development (and especially from considering the experiences from reporting entities).

1.10 *Do some obligations require the government to set minimum standards? How could this be done? What role should guidance play in providing further clarity?*

Where Government does set minimum standards, it should be clear the type of entities it will apply to. More often than not, a standard that may rightly apply to a 'financial institution' may not be appropriate or applicable to a 'designated non-financial business or profession' such as a law firm.

However, where common obligations apply regardless of the type of entities, we agree that common minimum standards can be implemented. For instance, customer due diligence obligations apply equally to all reporting entities, and so it would benefit if these obligations are performed consistently (which can be achieved if common standards are introduced).

In our view, small to medium businesses may find it difficult to conduct business where there is lack of clarity surrounding what is expected of them from an AML perspective. We believe that by implementing minimum standards (where applicable), this will benefit small to medium businesses that have limited resources, and will increase the ease of doing business in New Zealand.

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

We agree that ensuring that business' obligations are in proportion to the risks they are exposed to is desirable, and a key element to drive compliance. Permitting a more expansive risk-based approach to compliance would go a long way to achieving this goal. However, we also note that determining the level of risk might be a difficult task to undertake – as it involves many different factors and considerations.

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

Yes and no. Yes in the way that the Act allows a risk-based approach, albeit this approach could be expanded. No as the Act is a 'one size fits all' approach to compliance requirements. As stated above, the Act captures such a wide range of businesses that sometimes required nuance is lost to generality.

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?*

See our comment to 1.9.

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?*

Exemptions are required as an exemption gives a level of certainty and comfort to a relevant reporting entity that it does not have to comply with certain parts of the Act, or has limited compliance requirements. The comfort is that whatever that reporting entity does, or does not do, in line with the exemption, it will not run afoul of the Act or its AML/CFT Supervisor. Exemptions are also a good way to minimise any unintended consequences of the Act (which is far reaching in its application).

Otherwise, the reporting entity would take a risk-based approach and hope that its approach is in line with its AML/CFT Supervisor.

1.15 *Is the Minister of Justice the appropriate decision maker for exemptions under section 157, or should it be an operational decision maker such as the Secretary of Justice? Why or why not?*

No comment.

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

No comment.

1.17 *Should it be specified that exemptions can only be granted in instances of proven low risk? Should this be the risk of the exemption, or the risk of the business?*

No comment.

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?*

We believe there should be a simplified process when applying to renew an existing exemption. More likely than not the nature of the business and the risk of the business being used for ML or TF purposes has not changed. Given almost all exemptions will contain a condition that the exempt reporting entity will notify MoJ of any changes that may affect the exemption, it makes practical sense to have a simplified process for renewals.

1.19 *Should there be other avenues beyond judicial review for applicants if the Minister decides not to grant an exemption? If so, what could these avenues look like?*

No comment.

1.20 *Are there any other improvements that we could make to the exemptions function? For example, should the process be more formalised with a linear documentary application process?*

Our view is that it may be beneficial to reporting entities if the exemption process is more formalised. In particular, there should be set timeframes on how long the process would take – this will provide

certainty to applicants, allowing them to better manage and plan their businesses. A linear documentary application process would also help by streamlining this process.

Mitigating unintended consequences

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

We stress caution on putting too much pressure on banks and money remitters to apply overly restrictive risk procedures in order to comply with the Act. Such pressure may result in banks and money remitters off-boarding customers merely due to risk avoidance for black letter compliance, than actual money laundering risk. This may have further flow on effects by excluding some customers/individuals from the banking and money payment system who are risky for a reason other than money laundering. In addition, this may also drive customers/individuals to cryptocurrency and other unregulated assets which will mean their activities will be out of sight from reporting entities and with reduced notification to the FIU (via SARs/STRs).

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

As above.

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

As above.

The role of the private sector

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

No comment.

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?*

No comment. The Law Society being on the DIA Industry Advisory Group is a good initiative.

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

No comment.

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?*

Yes, there should be a feedback mechanism for the operation and performance of the Act. This could be in the form of a questionnaire every two years and open to all reporting entities.

Powers and functions of AML/CFT agencies (i.e. Financial Intelligence Unit ('FIU'))

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?*

Given the wide-ranging powers the FIU has under the Act, we do not agree with this position. This appears to be an overreach in powers. If any increase in powers were to go ahead, which we are of the view they should not, such increase in powers must be scrutinised and only proceed where absolutely necessary. As far as we are aware, there is nothing to stop the FIU going to the Court and getting an order in the usual manner and the proposed increased appears to grant the FIU powers without any oversight by the Court.

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?*

As above, our view is that the FIU should not have these increased powers. However, if the FIU did obtain these powers, then instances of their use must be subject to oversight by an independent body.

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

We are of the view that this would be problematic. Having the FIU effectivity looking over the shoulder of a reporting entity "in real-time" would increase compliance costs on reporting entities and not to mention cause business disruption. We echo our comments above that business should be allowed to conduct its business without having to commit resources to law enforcement.

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

If the FIU had this power, privacy and human rights would most likely be subordinated to the FIU's 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?*

No comment.

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

No comment.

1.34 *Should supervision of implementation of targeted financial sanctions fall within the scope of the AML/CFT regime? Why or why not?*

Financial sanctions are more of the political tool rather than AML or CFT. We think it should be kept out the AML/CFT regime.

1.35 *Which agency or agencies should be empowered to supervise, monitor, and enforce compliance with obligations to implement targeted financial sanctions? Why?*

No comment.

Secondary legislation making powers

1.36 *Are the secondary legislation making powers in the Act appropriate, or are there other aspects of the regime that could benefit from further or amended powers?*

No comment.

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

No comment.

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?*

Our view is who issues the Code of Practice is less important than consultation that takes place before a Code is issued to ensure the Code is practicable for reporting entities.

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 comment.

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?*

The Codes are generally useful. However, where a Code will lose it effectiveness is where the Code tries to apply a general rule to the wide range of businesses that encompass all reporting entities. This issue can be seen with the Act itself. More industry specific Codes, or Codes with industry specific sections would be helpful.

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?*

Yes. Opting out of a Code of Practice should be a matter of practice for the reporting entity, rather than one of notice. It should be up to the reporting entity to decide whether the Code of Practice is entirely applicable to its business, as per our response to 1.40 above, and act in accordance with a risk-based approach.

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

Explanatory notes to Codes of Practice are useful, but they should not be held in high regard for statutory interpretation. The Codes are a recommendation/direction of the AML/CFT Supervisors, not the will of Parliament.

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?*

No comment.

1.44 *If so, 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?*

No comment.

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?*

We echo our view above that the Act is too general to apply to certain sectors and industries other than Phase 1 entities. Accordingly, Rules would be useful if the Rules addresses whit problem.

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?*

An option would be for the relevant AML/CFT Supervisor(s) should be responsible for issuing Rules, but only after consultation with industry bodies.

Information sharing

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? Why or why not?*

Given the type of information that the FIU holds, we oppose this proposal. Also see our comments at 1.50 below. However, if this does proceed, there needs to be an independent review of the information being accessed, and whether it is being used in a proper manner.

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

No comment.

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?*

We expect one consequence could be a reluctance in the extent (and quality) of information shared by reporting entities, especially those who have trust as a commodity. A fundamental cornerstone of legal practice is the lawyer's philosophy that client information is confidential (or privileged). Providing information (even that which is not privileged) in a SAR/STR is already at odds with how a lawyer deals with client information. Knowledge that the information shared will then be shared more widely would put further strain on a lawyer's willingness to provide information.

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? Why or why not?*

Reporting entities need a level of confidence that the information they share with the FIU does not go any further, or is subject to restrictive controls. Otherwise, as stated above, reporting entities may be reluctant with providing some information that they usually would share.

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 SARs?*

See above.

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?*

We do not believe it is practical to introduce a registration regime, especially when there is a wide range of reporting entities within the industry. It would also be unnecessarily cumbersome for the AML/CFT Supervisors to maintain a register (considering each supervisor will have different sets of reporting entities). However, if any such registration regime was introduced, there should be a very

light touch for any reporting entities already subject to other types of regimes, such as lawyers, chartered accountants, and financial service providers.

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

See above.

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?*

No comment.

1.55 *Should there also be an AML/CFT licensing regime in addition to a registration regime? Why or why not?*

An additional licensing regime for reporting entities already subject to other/existing licensing regimes would just add unnecessary compliance costs. For instance, lawyers are subject to a licensing regime (including the requirement to hold a practising certificate issued by the New Zealand Law Society). Lawyers, in particular, are also subject to high levels of ethical and conduct obligations, and are overseen by the New Zealand Law Society as a professional body.

However, we do not oppose some level of regulation for those reporting entities who are not currently subject to any licensing regime, and are therefore unregulated service providers.

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

Any licensing regime introduced should not be overly complicated so as to allow reporting entities (especially those with limited resources) to navigate through. The important factors should be focussed on ethical/professional standards, which ensures reporting entities perform their obligations under the Act.

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?*

Our view is that any licensing regime introduced should apply to sectors identified as being highly vulnerable to money laundering and terrorism financing, or those which are not specifically identified as highly vulnerable but are unregulated nonetheless. An advantage of having a licensing regime is that there will be clear direction regarding the operation of certain high risk instruments.

1.58 *However, as mentioned in 1.55 above, any licensing regime should not apply to any sectors that are already subject to licensing requirements (i.e. lawyers and chartered accountants).If such a regime was established, what is the best way for it to navigate existing licensing requirements?*

No comment.

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?*

No comment.

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?*

Our starting point is that the AML/CFT regime is an obligation placed on the government by FATF, so it should be seen as a cost the government must absorb. However, if a levy was to be introduced, it should not be shared across other reporting entities who are already paying practising or other licensing fees – but instead, should be paid only by those newly licensed businesses under the regime.

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

As above, we oppose any such levy as this cost should be borne by the government. However, if it were to be introduced, then our view is that not all reporting entities should pay the levy (only those that are subject to any licensing regime under the Act).

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?*

We oppose any such levy. However, it the levy was introduced it would need to take into account the financial resources of businesses.

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?*

We oppose any such levy.

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?*

Our view is that a licensing and AML/CFT-specific registration regime is excessive. With self-reporting obligations on reporting entities under the AML/CFT and with almost all reporting entities having specific licensing regimes that apply to them, we consider that the disadvantages grossly outweigh the advantages for a licensing and AML/CFT-specific registration regime.

2 Scope of the Act

Challenges with existing terminology

2.1 *How should the Act determine whether an activity is captured, particularly for DNFBPs? Does the Act need to prescribe how businesses should determine when something is in the "ordinary course of business"?*

This does not need to be more prescriptive in the Act. The guidance note issued by the AML/CFT Supervisors does help. Although some (non-binding) examples added to the guidance note would be even more helpful.

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

No comment.

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?*

No, "ordinary" should not be removed. Our view is that if "ordinary" is removed then businesses would be caught with infrequent activities, which would see those businesses incur unnecessary compliance costs and restrict business freedom and activity.

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? Why or why not?*

No comment.

2.5 *If so, should we remove "only to the extent" from section 6(4)? Would anything else need to change, e.g. to ensure the application of the Act is not inadvertently expanded?*

No comment.

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? Why or why not?*

Any certainty to compliance with the Act is welcome.

2.7 *Should we remove the overlap between "managing client funds" and other financial institution activities? If so, how could we best do this to avoid any obligations being duplicated for the same activity?*

No comment.

2.8 *Should we clarify what is meant by 'professional fees'? If so, what would be an appropriate definition?*

It would be helpful if 'professional fees' was clarified to also mean fees paid up in advance as a retainer. However, there would need to be risk mitigation for AML and CFT so perhaps professional fees was limited, for fess paid up front, only to the extent that the entirety of those funds are used by the reporting entity and no funds are sent back to the client or to a third party.

2.9 *Should the fees of a third party be included within the scope of 'professional fees'? Why or why not?*

Yes, we submit that this would certainly be beneficial to reporting entities (especially lawyers) but there would need to be reasonable limitations or parameters in place. The current exemption in regulations limits the amount to $1,000. However, this amount does not give any compliance relief to firms who engage third parties, such as mediators or arbitrators, on larger matters or disputes and who charge much larger amounts. In addition, to balance the AML and CFT risk, we are of the view that the third party fees should only be exempt where reasonably incurred and directly related to the activity being carried out by the reporting entity receipting the 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? Why or why not? How could it be improved?*

No comment.

2.11 *Have you faced any challenges with interpreting the activity of "engaging in or giving instructions"? What are those challenges and how could we address them?*

Our view is that there is uncertainty as to when 'engaging in' triggers AML/CFT obligations. For example, if a client approaches a law firm about due diligence on an auction for residential property they may wish to buy, and need advice on a LIM report, must the law firm conduct customer due diligence at that stage? At that stage there is no certainty that any conveyance (transfer in land) will occur, or a contract be entered into. At that stage it is simply a request for information to see whether the property is suitable. In our view, if there is no certainty that a captured activity will proceed, then the risk of money laundering and the financing of terrorism is negligible at that point. Accordingly, we

believe that the provision of advice (even if the advice is relating to a captured activity) will not be caught by the Act – it is only at the point when the client engages in the captured activity following receipt of that advice is when the Act applies, or where there is a reasonably high level of certainty a captured activity will actually proceed. This distinction should be clearly outlined in the Act (or through any guidance released by the AML/CFT Supervisors).

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?*

As noted in the Consultation Document, the slight differences in approach of definitions can cause confusion and inconsistencies for businesses. To avoid confusion, if the intention is to capture reporting entities that 'are in the business of providing a financial service' (as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008) into the realms of the AML/CFT regime, then the wording used in the Financial Service Providers (Registration and Dispute Resolution) Act should be consistent with the financial activities set out under the definition of 'financial institution' in the Act.

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

For the moment no. However, as businesses and technology develop, there is potential that the elements in the definition will be out of date or not fit for purpose. However, in these situations, the Supervisors can issue guidance on the specific financial activities that makes a business meet the definition of 'financial institution'.

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? Why or why not? Can you think of any unintended consequences that might occur?*

No comment.

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

No comment.

2.16 *Should we revoke the exclusion for pawnbrokers to ensure they can manage their money laundering and terrorism financing risks? Why or why not?*

No comment.

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

No comment.

2.18 *Should we lower the applicable threshold for high value dealers to enable better intelligence about cash transactions? Why or why not?*

Any lowering of the threshold may result in unproportionally high compliance costs for high value dealers to build into the sale price of the relevant goods.

2.19 *If so, 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?*

No comment.

2.20 *Do you currently engage in any transactions involving stores of value that are not portable devices (e.g. digital stored value instruments)? What is the nature and value of those transactions?*

No comment.

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

No comment.

2.22 *Should we amend the definition of "stored value instruments" to be neutral as to the technology involved? If so, how should we change the definition?*

No comment.

Potential new activities

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?*

We do not see acting as a secretary of a company as something that is common or widespread in New Zealand. In addition, we do not see how legislating the acting in any of those capacities as having a comparable benefit to the burden it creates. This is because when the company, partnership etc. proceeds to undertake a captured activity, it will need the assistance of a reporting entity. The reporting entity will be required to undertake CDD on the entity, including the relevant individuals.

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

No comment.

2.25 *Should criminal defence lawyers have AML/CFT obligations? If so, what should those obligations be and why?*

We vehemently oppose AML/CFT obligations being extended to criminal defence lawyers. A right to a defence is a cornerstone of New Zealand's democracy which should be protected and preserved. Any such provision would create a barrier to justice. In addition, it would be unjustly burdensome on criminal defence lawyers to consider AML/CFT reporting obligations when simultaneously working on a defence for their client.

2.26 *If you are a criminal defence lawyer, have you noticed any potentially suspicious activities? Without breaching legal privilege, what were those activities and what did you do about them?*

No comment.

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

See our comment at 2.25 above. In addition, this has the effect of requiring a criminal defence lawyer to investigate their own client rather than concentrating on defending their client.

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

No comment.

2.29 *If so, should non-life insurance companies have full obligations, or should they be tailored to the specific risks we have identified?*

No comment.

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)?*

No comment.

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? If so, how should we?*

Yes, it would make sense to capture wallet providers too. This can be done by extending the definition of 'financial institution' to capture the safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets.

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?*

We do not think it would. As noted in the Consultation Document, the Ministry of Justice is not aware of any business while solely offers safekeeping or administration of virtual assets. Globally, this type of service is additional to other services VASPs provide.

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

No comment.

2.34 *If we clarified the activity, should we also clarify what obligations businesses should have? If so, what obligations would be appropriate?*

Clarification is always welcome.

2.35 *Should preparing accounts and tax statements attract AML/CFT obligations? Why or why not?*

We consider that the risk of an entity that prepares accounts and tax statements in the ordinary course of its business being used for money laundering or terrorism financing purposes is negligible and should not attract AML/CFT obligations.

2.36 *If so, what would be the appropriate obligations for businesses which provide these services?*

No comment.

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?*

We do not have a strong view. However, we note that where transactions between such entities are undertaken by banks in New Zealand, the activities should be sufficiently monitored.

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

No comment.

Currently exempt sectors or activities

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 that we are aware of. However we consider an absurd situation is created when the DIA does not consider the act of setting up of a trust to require inquiry as to source of wealth or source of funds because, technically, the customer in such a situation is the settlor rather than the trust. We are not aware of any other supervisor in the world, including in the so called “tax havens”, that is so dismissive to the money laundering risk arising from that approach.

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

In our view, the regulatory burden and compliance cost of the AML/CFT regime on an internet auction provider would outweigh any benefits. If any change is going to be made, then we consider a partial exemption may be more reasonable. For example, requiring the internet auction provider to carry out CDD on customers that sell goods over a certain value.

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

As noted if online marketplaces are captured, then it should relate to goods over a certain value.

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

We appreciate how they can (unwillingly) be a part of a ML operation. However, we consider that the burden of becoming a reporting entity to significantly outweigh its benefits.

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?*

We cannot comment on what the cost and impact of such a change be aside from saying that is more likely that the regulatory burden would outweigh the benefits on capturing them within the scope of the AML/CFT regime.

2.44 *Do you currently rely on this regulatory exemption to offer special remittance card facilities? If so, how many facilities do you offer to how many customers?*

No.

2.45 *Is the exemption workable or are changes needed to improve its operation? What would be the impact on compliance costs from those changes?*

No comment.

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

No comment.

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

No comment.

Potential new regulatory exemptions

2.48 *Should we issue any new regulatory exemptions? Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?*

In our view, certain low risk activities should be given regulatory exemptions under the Act including activities relating to trustee services, the management of estates and property relationship services.

2.49 *Do you currently use a company to provide trustee or nominee services? If so, why do you use them, and how many do you use? What is the ownership and control structure for those companies?*

Yes, this firm uses companies to provide both trustee or nominee services. The main reasons are managing fiduciary risk, and also providing some independence to governance and decision making. We reported on numbers of trustee services and nominee services to the DIA via our annual report.

The ownership and control structure are comprised by the partners of this firm. Control is by partners in relevant areas of practice acting as directors of the companies. Ownership is by partners who hold board seats or other high offices in the partnership.

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? Why or why not?*

Exempting legal or natural persons that act as trustee would be welcome. The way that trustee companies of law firms are operated are often indistinguishable to the advice provided by the law firm. Additionally, where the trustee company performs a captured activity, the law firm will also be involved in that captured activity and will be required to discharge its AML/CFT obligations as a reporting entity. Any requirement for a trustee company to also discharge AML/CFT obligations would result in unnecessary duplication.

Our comments above do not extend to nominee directors, who have no standing in the Companies Act 1993.

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?*

In addition to the conditions noted in the Consultation Document, there should be a requirement for the ownership of trustee companies of law firms, to be held by the partners/lawyers as partners/lawyers for the law firm, not on their own accord. Furthermore, the law firm operating the trustee company must be a reporting entity. This would also extend to sole practitioners.

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?*

We agree with this proposal. It should not be up to the private sector to police the public sector. Our expectation is that crown entities (and state enterprises) would already be subject to rigid internal checks and balances that make the risk of money laundering or terrorist financing negligible.

2.53 *If so, what should be the scope of the exemption and possible conditions to ensure it does not raise other money laundering or terrorism financing vulnerabilities?*

One possibility is that the scope of the exemption could to the extent that the relevant entity is subject to sufficient oversight and reporting requirements to mitigate the risks. In regards to conditions, there could either a monetary threshold in conjunction with the requirement that the crown entity is undertaking an activity that is in its ordinary course of business.

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?*

We disagree. Allowing an exemption for this type of activity would open an avenue for money launderers to exploit.

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?*

See above.

Territorial scope

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

Our view is that the starting point should be that the AML/CFT Act applies to all entities which are situated (physically or virtually) in New Zealand, regardless of whether captured activities are taking place in New Zealand or in foreign jurisdictions. It would be damaging to New Zealand's reputation to have entities situated in New Zealand which are carrying out money laundering or terrorist financing activities in other jurisdictions. It would make New Zealand appear as a money laundering haven. An exemption may apply where an entity situated in New Zealand is subject to appropriate AML and CFT laws in the other jurisdiction.

In regards to foreign entities operating in New Zealand, there is a need for clarity or better guidance.

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

It would be beneficial if the definition of territorial scope could have some consistency with, or reference to, the definition of 'carrying on business in New Zealand' under the Companies Act 1993 and/or the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

3 Supervision, regulation and enforcement

Agency supervision model

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

We consider the AML/CFT supervisory model to be fit-for-purpose. In particular, the current supervision model of having three different agencies mean that the AML/CFT supervisors can focus on specific sectors within the industry, thereby creating efficiencies. We also consider this model to be more effective rather than having just one regulatory body as a supervisor (akin to the Australian model).In addition, our suggestion to address any potential inconsistencies and differences between each supervisor is to encourage better cooperation and sharing of knowledge between these agencies.

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

It may be an option that certain designated non-financial businesses or professions are supervised by industry bodies. For example, the New Zealand Law Society supervising lawyers and law firms. Otherwise, we suggest specialists are engaged/employed by the respective AML/CFT Supervisors in specific areas relating to the different designated non-financial businesses or professions to ensure supervision is fit for purpose.

Ensuring consistency

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?*

We view the approach as mainly consistent. One option to increase consistency is the establishment of a committee to oversee and audit the application of the law by the three AML/CFT Supervisors. The structure of this committee could be similar to the AML/CFT co-ordination committee whereby personnel from the Ministry, the three supervisors, and a representative of the Commissioner are included, but with industry bodies as well.

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?*

Our view is that the Act does not achieve the appropriate balance between ensuring consistency and allowing supervisors to be responsive to sectoral needs. We suggest more industry consultation.

Power and functions

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

No comment.

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?*

Our view is that the power to conduct onsite inspections of reporting entities operating from a dwelling house is appropriate, subject to constraints.

Businesses operating from dwelling houses are becoming more commonplace with the advent of COVID-19, and because of a choice to do so. Where someone voluntarily elects to operate from a dwelling house, they should not benefit from automatic protection from legal requirements. We, therefore, consider section 133(1) of the AML/CFT Act should be amended to remove the exclusions on dwelling house. However, constraints should be included to protect the rights of occupants, such as, the requirement that onsite inspections can only be done during business hours, and with sufficient notice.

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

The main advantage is that a reporting entity can be inspected even during lockdowns – thereby removing the need for AML/CFT Supervisors to create exemptions. In addition, the cost and inconvenience of performing onsite inspections can be greatly reduced.

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

Virtual inspections may be more efficient as it allows the AML/CFT Supervisors to allocate key personnel more adequately. For instance, by removing the barrier of physical presence, a key personnel is then able to perform virtual inspection on more than one reporting entity remotely.

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

We consider that it might be unnecessarily burdensome for the process to include an explicit step where a supervisor can approve or reject the formation of a designated business group. We consider that it is more appropriate that businesses make this determination. Our suggestion is for more tools to be developed to assist business in making this self-determination.

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

Our view is that the formation of a DBG should be a self-assessment based on a subjective test. The onus should, however, be on the reporting entity to provide a full summary on the formation of a DBG during its annual audit.

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?*

We agree that there is a wide variation in the quality of independent audits. We consider the regulation of agents to be useful and required. Namely, setting a minimum level of competency for auditors, consultants, and agents will assist with consistency with oversight. Certain terms should also be defined. For example, the term 'auditor' is not clear. Just because a person is a financial report auditor, it doesn't necessarily mean they have the appropriate legal knowledge to carry out an AML/CFT audit.

There are a number of businesses that offer AML audits. However, many of them do not understand law firms, specific AML issues they face, lawyers' obligations of client confidentiality and privilege. Supervisor guidance on AML audits as they relate to each sector/business type (e.g. lawyers, accountants etc) will be very helpful here.

Guidance should have an element of prescriptiveness but ultimately be risk-based.

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

Each AML/CFT Supervisor for their respective reporting entities. They are in the best position to enforce standards.

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

The cost for audits would inevitable increase in the short run, however this is balanced by the fact that audits could potentially be done virtually. The benefits for businesses if higher quality audits are ensured is that we would see far less AML breaches, thereby encouraging confidence in the market. Over time we would expect the cost to stabilise once suppliers to the market are established.

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

This is a balancing act. While we have the view is that there should be liability for auditors who do not provide an audit to a satisfactory level, auditors should not be liable where the issues are not clear and defined.

Reporting entities rely on auditors to let them know if there are any gaps in their AML compliance programme and procedures, and must report on deficiencies in their annual report. Therefore, if the

audit is inadequate, it is the reporting entity that will be held liable. The auditors must stand by their work, but auditors should not be held liable where the issues may be arguable.

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?*

Our view is that the existence of a consultant should be specified in the Act, but the requirements and expectations should be set down in regulations or guidelines. There should be an expectation on consultants to provide sound advice to clients, and any enforcement should be focussed on negligence (or gross negligence) by the consultants.

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?*

As above, we consider imposing minimum standards that each consultant must meet before being able to dispense advice. Guidelines must be provided to assist consultants ensuring they are meeting the minimum standards required of them, otherwise there would be uncertainty on who can be a consultant, and whether a reporting entity can rely on the consultant.

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

The AML/CFT Supervisors.

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

We do not use agents.

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?*

No comment.

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?*

We are aware of third party services that provide AML consultancy services and their related entities provide audit services, including auditing compliance programmes prepared by the related entity that provided the consultancy services. We consider related entities should be prohibited from providing AML auditing services in these situations. Further, directors being appointed to the boards of either the auditor or reporting entity should be required to declare their interests annually to avoid AML conflicts of interest.

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?*

Our view is that the penalties are currently high enough.

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

No.

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

From conversations we have had with other reporting entities, it is clear that businesses are doing their best to comply with the Act. However, sometimes reporting entities fall short of the mark or having a different interpretation on issues due to the Act not being entirely suitable for non-Phase 1 entities. We are of the opinion that further penalties, fines, public shaming are not the answer in the majority of situations. Instead, it would be preferable for first offences, low level offences, or offences where it is clear the reporting entity is trying to comply, for the AML/CFT Supervisors to work with reporting entities to fix issues with non-compliance.

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?*

Other than the main banks and finance companies, top law firms, top accounting practices, and top real estate agencies. most reporting entities would not be able to survive the maximum fines. Our view is that the Act should focus more on compliance than enforcement.

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

Our view is that piercing the corporate veil should only be done in extreme and rare circumstances, rather than merely an option. One possible example of this is where it can be proven that a director or senior manager is aware that their actions will lead to a substantial breach of the Act, and they carry on with the action, or cause the action to be carried on, regardless. Minor or procedural offences should not be included. Otherwise, another option is a statutory bar on executive or senior management bonuses/options where the reporting entity has been found in breach of the Act for serious offences.

In addition to the above, employees should not be subject to sanctions where they are acting in accordance with their employment duties and do not have a high level of cognitive awareness that their actions are in breach of the Act.

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

See 3.25 above.

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

Our view is that compliance officers should be provided protection from sanctions when acting in good faith. If compliance officers were subject to sanctions, then many people (including high-quality people) would be dissuaded from becoming compliance officers. As the AML/CFT regime values compliance officers, and needs good compliance officers, such a move would cause the AML/CFT regime as a whole to suffer.

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?*

The purpose the AML/CFT regime is to detect and deter money laundering and the finance of terrorism. Not to liquidate businesses. While we are not of the view such a provision is critical, we do understand it may be required. However, if any such provision in incorporated into the Act, the provision needs to be tightly regulated. Perhaps the more critical issue is where the DIA would sit in

priority in a liquidation. Where the business is a company, the DIA should not be able to benefit from any special priorities, and prioritise its claim in Schedule 7 of the Companies Act 1993. Secured creditors and preferential claims should have priority to the DIA.

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?*

We consider that the current regime is adequate for the purposes of offences and penalties. We also note that any proposed changes under this heading must be in-line with international approach (especially on the topic of whether there should be penalties for employees, senior managers, and directors of businesses.)

4 Preventative Measures

Customer due diligence

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

IVCOP is good for financial institutions, but not entirely fit for purposes for DNFBs such as law firms. DNFBs such as law firms would benefit from more focus on a risk-based approach, rather than rules based.

For the most part, clients are happy to provide the due diligence documentation when requested. However, the biggest challenges we face are due to the pandemic lockdowns and requiring 'wet ink' certified documents. These both need to change for law firms, and perhaps other DNFBs.

As a matter of standard practice, there should be an allowance to conduct identity due diligence over Zoom or Teams (or other video conferencing means) where appropriate on a risk-based approach, not just during a pandemic and relying on the delayed due diligence procedure.

The requirement for 'wet ink' certified documents for standard matters is problematic and heavy-handed. Lawyers can reply on scanned documents to effect land transfers on Land Information New Zealand, and can also provide scanned documents to the Overseas Investment Office to fulfil its requirements. Asking for 'wet ink' certified documents creates separate identity procedures to the established government procedures, and creates an unnecessary clog in commercial activity.

Furthermore, lawyers are subject to professional standards and obligations and failure to meet these can have significant disciplinary consequences. As well as being expected to accept instructions (except in prescribed circumstances), we are also expected to carry out the instructions in a timely manner. In some instances we have to start work immediately in order to respond to the urgency of the instruction, however conducting CDD and requiring original documents creates a potential barrier.

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?*

Our most challenging situations to identifying a client are:

a. Where the client is elderly and does not have a passport and driver licence.

b. Where the ownership of a client flows overseas and we must obtain foreign jurisdiction searches to prove lineage of ownership and any ultimate beneficial owners.

c. Where a client (a vendor) may own a property for many years before the sale. There is no guidance on how far we are expected to go in confirming the source of funds used to acquire that property.

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?*

It would be helpful if there were clearer definitions of a 'customer'. However, when considering definitions, it is important that there isn't a simple ;blanket capture' and definitions properly require CDD where there is genuine risk and relevance.

We suggest prior to any definitions being agreed and implemented, there be engagement with reporting entities to ensure definitions are appropriate in light of the risk-based principles of the regime.

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

Clearer definitions of customer in the context of limited partnerships, trusts, and complex company groups will be helpful. We consider that prescribing an overly broad capture of individuals will not achieve the requisite balance between risk and efficacy and sustainability..

Legal professionals refer to customers as clients, as the term 'customer' symbolises one-off transactions and a brief relationship, rather than the term 'client' which symbolises a relationship of longevity and trust. Accordingly, legislation should include 'client' in the definition of a 'customer'.

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

Until we know what any proposed changes are, we cannot comment.

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

Where each party has its own lawyer, and CDD must also be done by the lawyer, we do not see how CDD by the estate agent on both parties will achieve anything other than double-up on compliance.

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?*

No comment.

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

No comment.

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

We consider the requirement to verify a customer's address in all situations is superfluous and may not provide sufficient benefit for the challenges faced obtaining and verifying this personal information. We consider it more appropriate for address verification to be used for situations where the reporting entity requires more certainty when determining 'who' the client is for AML/CFT purposes.

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

We consider that the trigger for this is not sufficiently clear. A definition that provides parameters would be helpful here.

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

This provision is good in theory. However, it may result in overly burdensome compliance requirements for high-risk reporting entities.

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?*

No comment.

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?*

Our view is to make the requirement for CDD only to extent possible without tipping off the customer, as opposed to mandatory.

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

The risk is that when funds come from a law firm's trust account, the funds are viewed as clean and reputable. That means that the use of trust accounts are desirable by those wishing to 'clean' funds.

However, those risks are mitigated as solicitor trust accounts have the benefit of coming under the Law Practitioners' Regulatory regime. As part of this they have some level of audit or inspection review. We are unaware on the level of scrutiny for other professional regulatory bodies (if any).

Transactions which pass through an internal trust account(s) have a greater need for proper processes to be followed. It is more challenging for banks to provide oversight of each underlying transaction which will be recorded internally and not through the bank account.

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?*

No. The procedures in place with CDD and PTRs are sufficient for time-being.

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

We consider that where trust account is subject to a form of professional or independent review (like law firm trust accounts), they generally present less risk than those are not subject to any independent review.

Therefore, we consider that it should apply to sectors that have the ability to operate trust accounts and those trust accounts are not subject to independent review.

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

See 4.15 above.

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

No comment.

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

Yes - however, there is still room for more clarity and guidance surrounding the nature/purpose and source of wealth. In addition, it is also not entirely clear what the thresholds are for information collection to determine if a customer is subject to enhanced due diligence (or not).

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

For the most part, yes. However, lawyers have fiduciary relationships with their clients meaning that they have a deeper understanding of their clients than other reporting entities. This should be made clear to be able to be taken into consideration in conjunction with a risk-based approached.

In addition, the onus should be on a reporting entity to consider what additional information is required when performing enhanced due diligence. We note that a one-size-fits all approach when it comes to enhanced due diligence is not palatable because high risk businesses can come in many shapes and form (i.e. the reporting entity must determine what further information is required given the specific risk factors).

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?*

No comment.

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?*

See 4.23 below.

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?*

All this information should be known by a lawyer. Lawyers are usually involved in establishing trust/corporate structures and the incorporating documents. Knowledge of a client's structure is required in order for a lawyer to give proper legal advice. Accordingly, we do not consider it necessary as any prescriptive regulation under this part might increase compliance costs and also has the potential to create barriers for lawyers/legal persons to discharge their professional obligations.

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?*

No comment.

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?*

The guidance note on source of wealth versus source of funds is fine.
For a standard risk matter, where a lawyer has acted for a client for many years, then the lawyer should be able to make a file note in regards to source of wealth, provided the lawyer is comfortable to do so. Otherwise, an email or letter from the client's/customer's accountant acknowledging the

information is required under the Act and a brief explanation should be sufficient in majority of the circumstances. Accountants are well placed to understand a customer's financial position.

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?*

Verification of source of funds or source of wealth can be costly and time consuming. Our view is that it should be left up to the reporting entity to determine whether verification of the information is required on a risk-based approach. However, it would be helpful for some brief guidance from the AML/CFT Supervisors to ensure reporting entities can identify red flags.

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

We would have to see the Regulations first to comment.

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?*

We do not see this as any sort of endemic issue.

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?*

From a human element, asking for due diligence information from a beneficiary following the death of a loved one may cause emotional stress. We do appreciate life polices can be used to launder money, but query whether the problem is such that justifies a change in position.

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

Yes – the concept of effective control can be tricky especially when legal professionals deal with a range of entities with different structures.

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

This can be improved by ensuring that any guidance is consistent with the definition in the Act. There should also be guidance to ensure clarity when dealing with overseas entities where it is difficult to determine and verify the ultimate beneficial owners (and controlling owners).

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?*

We agree that this will be beneficial. Any regulation introduced must assist in the determination of ultimate beneficial owners of complex structures and other overseas entities. We consider aligning any definitions with the FATF standards.

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

We currently look through all holding entities to ascertain whether there is any 'ultimate' beneficial owner.

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

Yes. Most businesses do not have access to, or understand how to obtain ownership information when ownership flows overseas. However, if clearer definitions and guidelines are released, any additional compliance cost might be able to be minimised,

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 FATF standards)? Why or why not?*

No comment.

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 comment.

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 comment.

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?*

In order to get a picture of the ultimate ownership of a client, we undertake searches of the New Zealand Companies office and analogous searches of overseas jurisdiction registers (such as ASIC in Australia and Companies House in the UK). We also obtain and review trust deeds, limited partnership agreements, and other incorporation documents.

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?*

Yes – we agree that reporting entities will benefit from an additional regulations or a Code of Practice which is consistent with the FATF standards of identifying the beneficial owner of a legal person (especially in instances where it would be difficult in identifying who a beneficial owner is).

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

No comment.

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

No comment.

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?*

Yes, although the wording should be "and any other person exercising, or who can exercise, ultimate effective control over all or any part of the trust or legal arrangement"

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 comment.

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?*

See 4.1 above, our view is that IVCOP needs amending.

As a matter of standard practice, there should be an allowance to conduct identity due diligence over Zoom or Teams (or other video conferencing means) where appropriate on a risk-based approach, not just during a pandemic and relying on the delayed due diligence procedure.

The requirement for 'wet ink' certified documents for standard matters is problematic and heavy-handed. We can reply on scanned documents to effect land transfers on Land Information New Zealand, and also for Overseas Investment Office requirements. Asking for 'wet ink' certified documents creates separate identity procedures to the established government procedures, and creates an unnecessary clog in commercial activity.

4.45 *Do you encounter any challenges with using IVCOP? If so, what are they, and how could they be resolved?*

See 4.1 and 4.44 above.

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

The approach is clear, but not appropriate as per above. As also noted above, IVCOP must be constantly updated to cater for any technological advancement (i.e. electronic verification and signatures).

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?*

It would be helpful if some of the examples in the Consultation Document were included in IVCOP, such as: being able to rely on an Australian driver licence; guidance on higher risk customers; and expanding allowances on electronic verification,

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?*

Currently, there are differing identification requirements for an Authority and Instruction form for Land Information New Zealand and for AML/CFT requirements. It would create efficiencies if there was cohesion between the identification requirements under an Authority and Instruction form for Land Information New Zealand and for AML/CFT requirements.

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

Yes – the challenges are mainly when dealing with clients who do not have New Zealand documents (that can be verified electronically online). The verification of international documents are not as seamless as it does not integrate well into the New Zealand system.

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

More and more we are seeing clients/customers are having correspondence emailed to them rather than hard copies through the postal service. This proves problematic when asking for hard copies for proof of address.

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

When the risk demands it. Otherwise, proof of address is superfluous in many situations (such as buying or selling a home – it is obvious where the person is or is going to).

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?*

No comment.

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?*

As a matter of course, lawyers undertake many of the steps identified by the FATF standards when advising clients even on a standard risk activity. This is because a lawyer needs a deep understanding of the client in order to give proper advice and are usually involved in the transaction.

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 would be preferable over regulations, but the code must take into account industry practices.

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

No comment.

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 comment.

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

Such a regulation would be beneficial, but there would need to be conditions, such as the activity being carried out by the employee for the large businesses is usual and not out of the ordinary for the business, and it does not appear that the employee is acting *ultra vires*.

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?*

While the blanket requirement for enhanced CDD to be conducted on all trusts can be a burden, given the way trusts can hide ownership we think this should remain. However, the requirement for CDD on executors of estates should be reconsidered. Often an executor is the child of the deceased, and explaining that we must conduct AML on them due to the death of a parent can sometimes be confronting in a time of grief. Given that to obtain probate (or letters of administration) a court application is required, with an affidavit, and the time and expense involved, we do not see estate administration as a high-risk avenue for AML or CFT.

Regulations excluding estates (executors) from CDD would be welcome. Otherwise, allowing CDD to be done after the application for probate, but before distribution of assets may be a solution.

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?*

As above, we do not think this requirement should be removed.

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?*

Our view is to leave this up to the reporting entity to make an assessment to determine whether the trust is high risk and then, to take appropriate measures.

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

The effect of section 31 is that a reporting entity must keep an eye on all of its customers for AML risk, whatever the instruction. The section talks about customer due diligence (which would include captured matters) and also undertaking account monitoring (which may include a decided lapse in time and/or other types of instructions). In our view the Act cannot mean that a reporting entity (such as a DNFBP) must closely police its customers/clients on a fully continuous basis, as this would incur disproportionate expense. Instead, the obligation under section 31 is surely for a reporting entity to have some form of continuing monitoring procedures in place which, taking into consideration the risk profile, best fits its practice and its customers and alerts the FIU of any suspicious behaviour.

The section says why ongoing customer due diligence and account monitoring is being done (section 31(2)), what to consider (section 31(3)), and how to do it (section 31(4)). The conjunctive word ‘and’ in each list means all items/elements in each list need to be considered/actioned together. The section seems to be more geared towards Phase 1 entities and does not fully take into consideration the manner in which Phase 2 entities (such as law firms and accountants) conduct business.

For DNFBPs (such as law firms and accountants), the requirements in section 31 should have defined trigger events, such as undertaking a captured activity.

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, for ongoing CDD. As above, the account monitoring obligations in section 31 are problematic for lawyers.

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

We expect reporting entities (lawyers especially) to do this as a matter of practice anyway.

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?*

No comment.

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

Any mandate should not extend to lawyers for the reasons above. For all other reporting entities, any mandate might potentially increase compliance costs and therefore increase the burden of smaller businesses, so it is our view that any mandate introduced must be proportional and reasonable.

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?*

CDD is reviewed each time a captured activity is undertaken.

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 – in our view, the reporting entity should make its own risk assessment and judgement. We do not believe a prescriptive approach here is beneficial.

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

Our compliance costs would exponentially increase in our accounts team.

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

Yes, depending on the relationship and instructions, lawyers review all parts of a business'/trust's governance, ownership, financials, and liability exposure.

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 comment.

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?*

We agree that introducing a timeframe or sinking lid for existing (pre-Act) customers will ensure that CDD is constantly updated. We also believe that the term 'material change' is helpful and fit for purpose, and do not propose the trigger to be simply 'change'.

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

Yes, that type of guidance would be helpful..

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

Yes. The requirement to conduct enhanced CDD puts reporting entities in a difficult position when trying to avoid tipping off. The requirement should only be triggered when possible to do so.

4.74 *If so, 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)?*

The requirement to conduct enhanced CDD should only be triggered when reasonably possible to do so as not to tip-off the relevant person.

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?*

No comment.

Record keeping

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

As legal professionals, we believe that the Act should specify requirements to safeguard any request for privileged information.

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

Lawyers already need to keep extensive records.

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

No comment.

Politically exposed persons

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

No.

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

No comment (as not applicable).

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

No comment.

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?*

No. Our view is that for domestic PEPs the compliance costs would outweigh the risk.

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?*

We disagree. This proposal would be using the Act to cast the net far too wide into other law. Our view is to keep the Act to AML and CFT issues, not for Electoral Act issues.

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

See 4.82 above.

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

No comment (as not applicable).

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?*

No comment (as not applicable).

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

No comment.

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

We use GreenID for every relevant individual involved in a captured activity. GreenID is a web based application which has a PEP watchlist.

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 comment.

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

We agree. For example, requiring lawyers in remote urban areas to take reasonable steps to determine whether their client is a PEP is a heavy compliance burden for a risk which is minimal, or even negligible.

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

No. The costs would greatly outweigh the benefits.

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?*

No comment (as not applicable).

4.93 *If we include domestic PEPs and PEPs from international organisations within scope of the Act, should the Act allow for business 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?*

We disagree with including domestic PEPs and PEPs from international organisations within scope of the Act. However, if such a provision was introduced, then the reporting entity should only have to take reasonable steps to identify the client/customer as such.

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

We would have to check whether GreenID allows for this. Otherwise see 4.91 above.

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?*

No. This is casting the net too wide.

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

No comment.

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

We have not acted for a PEP yet.

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

No. New Zealand is number 1 on Transparency International's Corruption Perception Index. FAFT appears to creating a blanket rule for all countries to mitigate a risk which is not as prevalent in New Zealand as other countries.

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

See 4.91 above.

Implementation of targeted financial sanctions

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

We oppose this proposal. To require businesses to make such as assessment, and undertake ongoing compliance, would divert even more resources of the private sector away from their own businesses to carry out a function that should be the responsibility of government bodies. Our view is that businesses should be free to concentrate on their business while sanctions are the responsibly of government bodies to monitor.

4.101 *What support would businesses need to conduct this assessment?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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

As above, we oppose this proposal.

4.105 *How should businesses receive timely updates to sanctions lists?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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

As above, we oppose this proposal.

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

We currently use GreenID to screen all clients and in some cases Accuity Online Compliance (LexisNexis).

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?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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?*

As above, we oppose this proposal.

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

As above, we oppose this proposal.

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

As above, we oppose this proposal.

Correspondent banking

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?*

No comment.

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?*

No comment.

Money or value transfer service providers

4.117 *If you are an MVTS provider which uses agents, how do you currently maintain visibility of how many agents you have?*

Not applicable.

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

No comment.

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)?*

No comment.

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?*

No comment.

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 applicable.

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?*

No comment.

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

No comment.

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

No comment.

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?*

No comment.

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

No comment.

New technologies

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?*

No comment.

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?*

We do not see this as requiring regulation. We view this as part of risk assessment by the reporting entity.

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

This would be difficult to implement, as law and regulation usually lags behind developments in technology.

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

No comment.

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

We do not see this as requiring regulation. We view this as part of risk assessment by the reporting entity.

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

If the mitigation of risk was done in conjunction with the reporting entity's risk assessment, then the cost may be manageable. However, his position would change if the reporting entity had to constantly refer to regulations as per 4.131 of the Consultation Document.

Virtual asset service providers

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?*

No comment.

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

No comment.

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?*

No comment.

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

No comment.

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

No comment.

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

No comment.

Wire transfers

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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?*

Our view is this is low risk for lawyers and law firms which operate trust accounts, and which are subject to trust account rules. Accordingly we do not see regulations as adding much value to lawyers and law firms which operate trust accounts.

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

The compliance cost would start to outweigh the benefit to the client.

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?*

No comment.

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 comment.

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

No comment.

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

No comment.

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

No comment.

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?*

We only act where we have the required information. As a matter of practice we retain all information.

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

No comment.

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

No comment.

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?*

No comment.

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 comment.

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

We consider that designated non-financial businesses and professions like law firms/lawyers should be exempted under this heading. This is especially because any risks via wire transfers by non-financial institutions/professions are already assumed by the banks that are being utilised for those transfers. The onus is effectively on the banks to manage these risks.

Prescribed transaction reports

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

No comment.

4.157 *Have you encountered any challenges in complying with your PTR obligations? What are those challenges and how could we resolve them?*

We do not encounter any significant challenges. However, the portal is not user friendly.

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

Yes. A Code would be helpful.

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?*

No comment.

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

See 4.155 above.

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?*

See 4.155 above.

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?*

We do not favour additional measures. Where lawyers operate trust accounts held with banks, any applicable transaction of funds triggers two PTRs, one by the bank and one by the law firm. In this regard, there is already double reporting on a single transaction. Further reporting is not required.

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

No comment.

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?*

No comment.

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

No comment.

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 comment.

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?*

Our view is that the threshold is fine where it is.

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

No comment.

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

This would incur a massive impact due to the time required to submit PTRs.

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

We do not agree with a lowering of the threshold, but if it done, we would need time to employ and train staff.

Reliance on third parties

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

We use Section 33, but only in in rare circumstances from other law firms.

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

The liability in section 33(3).

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

Section 33 allows for reporting entities to rely on one another that customer due diligence has been carried out. However, subsection (3) still puts the onus on the reporting entity relying on a third party, albeit this can be mitigated by subsection 3(A), for an approved entity or is within an approved class of entities. We would suggest:

a. Specification of who is "an approved entity" or "an approved class of entities".

b. It is made clear in the Act that section 33(3) is subject to section 33(3A).

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?*

If there are no "approved entities", and no "approved entities" planned, then the subclause is redundant. However, the approved entities approach can still work. See our comments below.

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?*

A better approach would be to have “approved class of entities”, set out in regulations. This would enable industry bodies to also set boundaries for the differing types of reporting entities. Some requirements to consider are:

a. The reporting entity is not subject to any active formal warnings under the Act.

b. The reporting entity has been subject to an independent audit pursuant to s.59 of the Act, and that audit has not identified any deficiencies, or where deficiencies have been identified, they have been rectified.

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

Yes. It would make some commercial activity between law firms and other reporting entities far more efficient. It is not efficient where a person buys or sells a house with finance, they must give their due diligence information to their estate agent, lawyer, and bank. This creates unnecessary duplication with three reporting entities collecting the same information.

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

No comment.

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?*

No comment.

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

Our view is that the starting point should be yes, but then exclusions could apply for those overseas DBG members who are subject to comparable or stricter AML and CFT laws.

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

No comment.

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

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.*

No comment.

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

No comment.

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

No comment.

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

New Zealand banks are seen as the front line (gate-keepers) of AML and CFT compliance. Accordingly, reporting entities should be allowed to have a minimum level of confidence and risk adjustment when receipting money in from a New Zealand bank. Our view is that it should be reasonable to presume that a New Zealand bank has done some level of due diligence on the account holder and to some extent the funds.

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?*

This is a fine balancing act which can be seen in section 33. If the Act makes reliance overly burdensome with liability, then no reporting entity will use the provision. However, a reporting entity should not be able to rely on another entity when it is not reasonable to do so. There needs to be a holistic risk based approach which is dependent on factors such as the customer, the transaction, and the other reporting entity.

Internal policies, procedures, and controls

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

No comment.

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 – each reporting entity should assess each individual compliance officer to determine if they have the required skills and qualifications to perform the role (not solely based on their seniority).

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

Yes – we agree, and also note that this function should not be outsourced to a third party as the responsibility to ensure compliance with the Act lies with the reporting entity.

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?*

No comment.

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?*

No comment.

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?*

Any clarification should be done in a guidance note issued by the AML/CFT Supervisors.

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

Yes – we consider this to be helpful.

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?*

As noted in 3.11 above, regulation of auditors might prove beneficial in ensuring that any audit work is done consistently and in line with what is required under the Act.

Higher-risk countries

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?*

The guidance is fine. However it would be beneficial if the DIA, or all AML/CFT Supervisors, had a webpage which listed all countries and provided a risk rating for each country.

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

No comment.

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

No comment.

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

No comment.

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 comment.

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?*

No comment.

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

No comment.

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?*

No comment.

Suspicious activity reporting

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

The previous portal by the FIU was only applicable to Phase 1 entities. Accordingly, any other reporting entity trying to submit a SAR/STR had to "fit a square peg in a round hole". We expect the new portal will see an increase in quality from non-Phase 1 entities.

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

Legal privilege prevents us from reporting on certain matters. However, this position must remain and cannot be undermined. The threshold for loss of privilege is much higher than the normal standard – and therefore it is challenging for a lawyer to make this determination in a tight timeframe.

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

No comment.

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?*

This should be carefully considered. The knowledge that information in a SAR/STR may be shared with other agencies may result in reporting entities under reporting some information.

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)?*

No comment.

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?*

No comment.

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

No comment.

High value dealers obligations

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

No comment.

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?*

No comment.

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

We consider the current regime to be appropriate with respect to this matter.

5 Other topics and issues

Cross-border transportation of cash

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

No comment.

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?*

No comment.

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)?*

No comment.

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

No comment.

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?*

No comment.

5.6 *If so, how could we constrain this power to ensure it does not constitute an unreasonable search and seizure power?*

No comment.

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?*

No comment.

Harnessing technology

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

No comment.

5.9 *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?*

No comment.

Privacy and protection of information

5.10 *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?*

No comment.

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

Yes, this would be useful.

5.12 *If so, what types of information should have retention periods, and what should those periods be?*

No comment.

5.13 *Does the Act appropriately protect the disclosure of legally privileged information? Are there other circumstances where people should be allowed not to disclose information if it is privileged?*

No comment.

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

No comment.

Harmonisation with Australia

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

Yes. We consider it would be greatly beneficial for both nations to have AML/CFT law which is more harmonised. Harmonised law would have benefits for DBG's with entities in both Australia and New Zealand, and also for New Zealand lawyers dealing with Australian counterparts, or where we have clients based in Australia. However, we stress caution where harmonisation leads, or may lead, to increased compliance requirements.

Ensuring system resilience

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

The AML/CFT system needs to be able to change with how business is done. During the pandemic people were confined to their houses, the local post was operating on reduced services, and international post was even slower. While AML and CFT are very important issues, compliance must not result in blocking commercial activity. One example we have used above is the strict reliance on hard copies of documents. Our view is that there should not be a requirement for 'wet ink' certifications, but rather permit scanned certifications and certification done virtually.

Minor changes

5.17 *What are your views regarding the minor changes we have identified? Are there any that you do not support? Why?*

Information sharing (s132(2)(e)) – Given the wide powers of the AML/CFT Supervisors, this change requires constraints should the overseas investigation be politically motivated rather that connected to an actual predicate crime or terrorism.

Offence and penalties (formal warnings/censure) – The word ‘censure’ may be an overcorrection, as that term may carry more punitive weight than the actual breach itself. One possibility is to have both terms available for use depending on the seriousness of the civil liability act under section 78.

Preventative measures (records stored in NZ) – This provision may have unintended consequences where a reporting entity stores some information on the ‘cloud’. The ‘cloud’ may be outside of New Zealand.

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

No. We have expressed our views above.

Further information

We are happy to discuss any aspect of our feedback on the Consultation Document.

Thank you for the opportunity to submit.

Yours faithfully

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