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Submissions Analysis of the Exposure Draft Amendment Bill for Phase 2 of the AML/CFT Reforms

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Contents

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Main themes

This report presents the feedback from 35 submissions on the exposure draft amendment Bill (the draft Bill) for Phase 2 of the AML/CFT Reforms. It is intended to help the Government finalise the draft Bill and reduce the compliance costs associated with the implementation of Phase 2 of the AML/CFT Reforms.

Submitters support the Phase 2 Reforms

Submitters support efforts to improve New Zealand's AML/CFT regime. Submitters appreciate the need to strike a balance between combatting crime, minimising costs and enabling New Zealand to meet its international obligations. Most submitters feel this balance has been achieved.

Submitters support a risk-based approach and the Government's efforts to ensure obligations are commensurate with risk.

Submitters support bringing sectors captured by Phase 2 of the AML/CFT Reforms into the AML/CFT regime. Some submitters are concerned about the impact of the regime on small to medium enterprises. Some submitters are concerned about the practical application of the regime for their sector.

Clarify terminology in provisions for Phase 2 businesses and professions

Submitters suggest the following improvements to the wording of the draft Bill to make it clearer and reduce the likelihood of unintended consequences.

Lawyers and conveyancers: Clarify and/or define 'lawyers', 'incorporated law firms', 'activity' and 'persons'.

Accountants: Clarify and/or define 'accountant', 'accounting practice', 'advice', 'instructions', 'review' and 'audit'.

Real estate: 'Designated non-financial business or profession' is considered too broad.

Gambling: 'Activities involving gambling' and 'transaction' are considered too broad.

Business that deal in high value goods: Clarify and/or define 'high value dealer', 'series of related cash transactions' and 'total value'.

Submitters also comment on issues for Phase 2 business and professions. Some of these issues include the impact of the regime on small businesses, lawyers' ethical duties and legal professional privilege, and the threshold for triggering AML/CFT obligations.

Submitters support strategies to reduce compliance costs

Most submitters agree that the proposed measures may reduce compliance costs. However a few submitters are concerned about their usefulness for small and medium enterprises. Some submitters suggest amendments to the wording of the provisions for suspicious activity reporting, designated business groups, reliance on another business and simplified due diligence.

Suspicious activity reporting: Most submitters support the proposal to report suspicious activities. Submitters think businesses trading in high value goods should be required to make suspicious activity reports. Submitters want clear guidance on how to conduct suspicious activity reporting.

Designated Business Groups: Submitters support expanding the definition of Designated Business Groups to include Phase 2 businesses. Some submitters recommend expanding the definition further to include Limited Partnerships and representative industry bodies. Some submitters also suggest clarifying the definition of a Designated Business Group.

Reliance on another business: Most submitters are supportive of the proposed enhancements to the customer due diligence reliance provisions. They support amending the requirements so documents do not have to be provided unless requested. While most submitters agree with the changes some suggest clarifying the wording in the draft Bill.

Existing customer due diligence: Most submitters support Phase 2 businesses not identifying and verifying existing customers, unless there is a material change in circumstances. Some submitters feel the existing customer due diligence process would not work or be relevant for their industries.

Simplified due diligence provisions: Submitters support extending the simplified due diligence provisions to State-owned enterprises and subsidiaries of publically listed entities in countries with sufficient AML/CFT systems. Submitters feel the simplified due diligence provisions should be extended to several other entities e.g. foreign regulated and licenced financial businesses.

Streamlining the Ministerial exemption process: Submitters support streamlining the Ministerial exemption process to exclude businesses with low level of risk from either part or all of their obligations under the Act.

Submitters support other changes to the legislation

Information sharing: Submitters support the extended information sharing provisions and consider information sharing important for effective enforcement the AML/CFT regime. Some submitters suggest clarifying the terminology to avoid unintended consequences.

Supervision: Most submitters support retaining the current multi-agency supervision model. Some submitters prefer alternative supervisory models and have made substantive comments on this issue.

Statutory review: One submitter comments on statutory review and supports this provision.

Bringing existing regulations into the Act: Submitters support bringing existing regulations into the Act. Submitters consider this would ensure consistent information and improve reporting entities awareness of their obligations.

Submitters consider government support for implementation is important

Government agencies supporting implementation: Submitters agree that undertaking the activities proposed in the consultation paper will help businesses to comply with their AML/CFT obligations. Submitters consider support from government agencies essential for the effective implementation of the Phase 2 of the AML/CFT regime.

Other areas for operational important: Submitters support the suggested operational improvements in annual reports, audits and staff vetting.

Timeline for implementation: Some submitters consider the proposed implementation periods are too short, while other submitters think they are too long. Some submitters do not agree with the staged implementation approach.

Introduction

Money laundering and terrorist financing are significant problems in New Zealand and overseas. They allow criminals to hide the proceeds of their illegal activities and to fund serious crimes such as drug offending, organised crime and tax evasion. It's hard to quantify how much money is laundered in New Zealand, but it's been estimated at about $1.5 billion each year.

The Government is improving New Zealand's ability to tackle money laundering and terrorist financing through changes to the AML/CFT Act. The proposed changes aim to strike a balance between combating crime, minimising costs and enabling New Zealand to meet its international obligations.

Phase 1 of the ALM/CFT laws came into effect in 2013 and covered businesses such as banks, casinos and some trust and company service providers. Phase 2 of the AML/CFT laws extend the Act to include lawyers and conveyancers, accountants, real estate agents, businesses that deal in high value goods and additional gambling operators.

In December 2016 the Ministry released an information paper on the draft amendment Bill. The Ministry sought feedback on the wording and structure of the draft Bill and if the wording of the draft Bill could create unintended consequences. Submitters also used this opportunity to give feedback on the content of the Act.

Submissions by 35 organisations and individuals were analysed

Table 1: Profile of submitters by sector

Sector	Submissions
Legal and conveyancing	12
Accounting	2
Real estate	1
Gambling	2
High value goods	2
Financial services	8
Consultants	4
Other	4
Total	**35**

We gave all submissions equal weight in the analysis process i.e. an individual submitter was treated the same as a large organisation or regulatory body.

Four submissions were received after the deadline for making a submission. One of these submissions was received before the analysis stage and was incorporated into the report. The other three submissions were received too late to incorporate into the analysis and the report, however the submission made by the Privacy Commissioner was considered by The Ministry of Justice.

Phase 2 businesses and professions

The following summarises submitters' comments about the businesses and professions that will be subject to the AML/CFT Act through Phase 2 of the Reforms.

Lawyers and conveyancers

The draft Bill details the services that lawyers and conveyancers provide that will be covered by the Act and the AML/CFT obligations this sector will have to comply with. The draft Bill also addresses how lawyers and conveyancers can navigate their AML/CFT obligations and legal professional privilege.

Twelve submitters comment on the lawyers and conveyancers provisions in the draft Bill.

Clarify terminology to avoid unintended consequences

Eight submitters feel that the wording in the draft Bill is unclear and/or the scope of activities is too broad and may have unintended consequences:

- A few submitters recommend clarifying the definitions of 'designated non-financial business or professions', 'lawyers' and 'incorporated law firms'.
- One submitter is concerned that the terms 'civil offences', 'criminal offences', 'civil liability acts', and 'criminal penalties' are unclear. This submitter considers the use of the terms 'person', 'activity', and 'reasonable grounds to suspect' confusing.
- One submitter feels that the 'circumstance' for when customer due diligence will occur needs clarifying.

Three submitters consider the wording in the draft Bill is clear concerning when lawyers and conveyancers are covered by the draft Bill.

Other comments

Three submitters are concerned about the ethical duties and professional privileges of lawyers. One of these submitters recommends a threshold for lawyers to disclose privileged communications and limited tipping exclusion to prevent lawyers being exposed to unmanageable risk in either breaching the regime or confidentiality of the client.

One submitter thinks there should be clarification as to when in a transaction ascertaining the source of funds provided into the law firm's trust account should take place.

One submitter expresses concerns around the role of the Financial Intelligence Unit in the regime. The submitter recommends creating a code of conduct and statutory limits in the Act to prevent unlawful disclosure.

One submitter thinks the current list of activities would capture legal services that present no AML/CFT risks. This submitter is concerned about the unnecessary capture of regulated legal services.

One submitter thinks there should be more guidance issued before implementation of the Act.

One submitter is concerned about the penalties that apply to lawyers and other professional persons. The submitter recommends the penalties are reduced and be made proportionate to other administrative offences in New Zealand.

One submitter notes the importance on New Zealand's AML/CFT regime aligning with Australia's AML/CFT regime to comply with the Trans-Tasman Mutual Recognition Act.

One submitter is concerned about how the Act will affect New Zealand's reputation as a free and open democracy, believing that the Act criminalises innocent parties where guilt is based on "reasonable grounds for suspicion".

Accountants

The draft Bill details the services that accountants provide that will be covered by the Act and the AML/CFT obligations this sector will have to comply with.

Eight submitters comment on the accountants provisions in the draft Bill.

Clarify terminology to avoid unintended consequences

Five submitters feel the wording and structure of the draft Bill is unclear and could have unintended consequences. Submitters suggest the following improvements to the wording of the draft Bill:

- Define the terms 'accountant', 'accounting practice', 'review', and 'audit'.
- Clarify if the reporting entity is the business or the person conducting the activities.
- Clarify if co-working spaces, shared working spaces and temporary work spaces trigger AML/CFT obligations and what the compliance obligations are in these situations.
- Clarify the difference between the terms 'instructions' and 'advice'. The submitter feels giving 'instructions' poses AML/CFT risk as it involves the movement of funds for or on behalf of a client, as opposed to 'advice' which is making suggestions or recommendations to a client.
- Clarify the definitions of the wording of activities to ensure that attention stays where the risk is highest, movement of funds on behalf of a customer.
- Change the term 'audit' to 'assurance report' in section 59(B).

Two submitters think the wording and structure of the draft amendment Bill is clear.

Other comments

One submitter supports and another submitter notes the exclusion of services such as providing tax advice and book keeping from the activities.

One submitter noted that a Deloitte Report commissioned by the Ministry has found that the cost of compliance per client is $64.40. They believe this is not overly prohibitive.

Real estate

Real estate agents will have AML/CFT obligations when they represent sellers or buyers in the sale or purchase of real estate.

Six submitters comment on the provisions for the real estate sector.

Clarify terminology to avoid unintended consequences

Two submitters comment on the wording of the draft Bill.

One submitter feels the wording is unclear and thinks the proposed definition of 'designated non-financial business or profession' is too broad. This submitter feels that this will create uncertainty as to when the agent is a reporting entity. This submitter is concerned that the unclear wording of the draft Bill with have unintended consequences.

The other submitter feels the wording of the draft Bill is clear.

Other comments

Submitters are concerned the regime will impact unfairly on small real estate businesses that do not have in-house compliance resources.

Gambling

Phase 1 of the Act required casinos to comply with AML/CFT regulations. The New Zealand Racing Board was given a Ministerial exemption from AML/CFT Act which expires when Phase 2 comes into force. When the Act comes into force AML/CFT obligations will apply to the Racing Boards activities related to betting, vouchers and accounts.

Ten submitters comment on the gambling provisions in the draft Bill.

Clarify terminology to avoid unintended consequences

Three submitters comment on the wording of the draft Bill.

One submitter is concerned that the definition 'activities involving gambling' is too broad and could unintentionally capture other businesses. The submitter is also concerned the definition of 'transaction' may create uncertainty around betting transactions. The submitter recommends amending the definition to include the placing of a bet and excluding the payments of winnings.

Two submitters feel the wording in the draft Bill is clear and concise.

Submitters want consistent thresholds

Two submitters support the $10,000 threshold, while one submitter suggests the threshold should be lowered to $6,000. Some submitters are concerned about the different thresholds for gambling and high value goods.

Other comments

One submitter feels there are inconsistencies in exemptions around betting vouchers, and suggests that casino betting vouchers and vouchers issued by the New Zealand Racing Board should have similar exemptions.

High value goods

Businesses trading in high value goods are covered in the Act if they trade in certain items and /or accept cash transactions of $15,000 or more for single transactions or a series of related transaction.

Twelve submitters comment on the provisions for businesses trading in high value goods.

Clarify terminology to avoid unintended consequences

Six submitters comment on the wording and structure of the draft Bill.

Two submitters feel the wording and structure of the draft Bill could be improved and reduce the risk of unintended consequences by clarifying:

- The definition of a 'high value dealer'.
- The phrase 'series of related cash transactions'.
- If 'total value' for a transaction is equal to or above $15,000 in a specific sale or the aggregate amount of a dealer's sale.

Submitters disagree with the $15,000 threshold

Six submitters feel that the $15,000 threshold is inappropriate. Of these six submitters, four submitters suggest having a $10,000 threshold as this would be consistent with other thresholds under the regime. The other two submitters do not state a preferred amount for the threshold, however they caution that the $15,000 threshold may result in non-capture of the majority of businesses.

Four submitters state that they, or the industry they represent, would stop taking cash over $15,000 in order to bypass the obligations of AML.

One submitter recommends including a section that allows for regulations to be issued that could specify either general or industry specific thresholds for dealers of other high value goods.

Proposed changes that affect compliance costs

The following summarises submitters' comments on the provisions in the draft Bill that will affect compliance costs for Phase 1 and Phase 2 sectors. The changes are proposed for suspicious activity reporting, designated business groups, reliance on another business, existing customer due diligence, simplified due diligence and streamlining the Ministerial exemptions process.

Suspicious activity reporting

The Government proposes the expansion of the current suspicious transaction reporting requirements to include 'suspicious activities'. This change effects both Phase 1 and Phase 2 entities and aligns the regime with the recommendations in the Shewan report[1].

Eighteen submitters comment on suspicious activity reporting.

Clarify terminology to avoid unintended consequences

Thirteen submitters comment on the clarity of the wording and structure of the draft Bill. Four submitters think the wording of the draft Bill is unclear and suggest the following improvements to reduce the likelihood of unintended consequences:

- Clarify the definition of 'suspicious activity' and provide a non-exhaustive list of suspicious activities.
- Expand the definition of 'service' in section 39A.
- Define what 'when a suspicion was formed' means in terms of the three day reporting timeframe. One submitter suggests the three day timeframe should start from when the AML compliance officer is satisfied that there is reasonable grounds for suspicion.
- Clarify if 'person' includes entities in section 44 and 45.
- Determine if 'civil, criminal or disciplinary proceedings' includes proceedings brought under any statue or common law.
- Describe what constitutes 'bad faith'.
- Amend Clause 44 to exclude protection for lawyers who release privileged information who are not obliged to do so. Lawyers should not be exempted from the complaints and disciplinary procedures of the Lawyers and Conveyancers Act.
- Expand the definitions of 'service' and 'enforcement' in section 39A to create a wider catchment.
- Amend section 5A of the AML/CFT Regulations 2011 by removing the requirement for the reporting entity to carry out enhanced customer due diligence.
- Clarify reporting entities obligations where the suspicious activity is related to a service that is not provided in the ordinary course of business.

[1] John Shewan. *Government Inquiry into Foreign Trust Disclosure Rules.* New Zealand Government. June 2016.

- Clarify the wording for activities that 'may give rise to a risk of money laundering or financing of terrorism' as this could effect when or how financial institutions comply with the Act.

Submitters support suspicious activity reporting

Most submitters support the proposal to require suspicious activity reporting. These submitters consider this change will result in a more effective AML/CFT regime. One of these submitter's notes the importance of retaining the focus on the activities identified as high risk in the Shewan report.

Two submitters do not support requiring suspicious activity reporting:

- One submitter feels that the change from suspicious transaction reporting to suspicious activity reporting is unnecessary. This submitter states that the Financial Action Task Force requirements are for suspicious transaction reporting only. This submitter notes that the existing section40(1)a of the AML/CFT Act already has a reporting requirement where 'a person conducts or seeks to conduct a transaction through a reporting entity'.
- One submitter notes that suspicious activity reporting holds several challenges for the real estate sector because real estate agents engage with and receive enquiries from a large number of people. This submitter is concerned the costs of a suspicious activity reporting regime will be unduly burdensome for the real estate sector.

Submitters think businesses dealing in high value goods should be required to report suspicious activities

Submitters think businesses dealing in high value goods should be required to report suspicious activities. Submitters note the wording of section 40(5) states 'a high value dealer may report a suspicious activity, or a proposed activity'. This suggests that it is not mandatory for businesses dealing in high value goods to report suspicious activity. Submitters think that high value dealers should have the same obligations as all other reporting entities and assist with building the intelligence network.

One off comments in relation to suspicious activity reporting for the high value goods sector include:

- It is unclear if high value dealers who do not accept large cash payments will have to report suspicious activities.
- Clarity is needed about what suspicious activity looks like for the high value goods sector to ensure that suspicious activity is recognised and reported.
- All suspicious transactions should be reported, despite the cash value.
- For motor vehicle dealers in particular, a simplified regime should be introduced that includes a requirement for suspicious transaction reporting.

Other comments

Submitters state the importance of providing guidance, especially for small businesses, sole practitioners etc. who do not have AML/CFT knowledge and expertise. One submitter notes the guidance provided should align with guidance for other jurisdictions.

Submitters note that goAML should be adapted to allow reporting entities to file suspicious activity reports. Submitters also consider that goAML should be adequately resourced to respond to the increase in reporting.

Submitters consider that lawyers should have up to seven days to file a suspicious activity report due to the additional complexity around legal professional privilege.

One submitter notes that reporting entities should be exempt from requirements to file suspicious activity reports where it is not possible to do so due to lack of information. This submitter thinks it is important that guidance is provided on what to do in these situations.

One submitter considers suspicious activity reporting may create issues for lawyers and their responsibility to uphold legal professional privilege.

One submitter notes that when a lawyer is required to make a suspicious transaction report they may have to continue acting with the client to avoid tipping them off. The submitter recommends clarifying when a lawyer's ethical obligations may be overridden by their obligations under the regime.

Designated Business Groups

The Government proposes the expansion of the definition of Designated Business Groups (DBGs) to include Phase 2 businesses.

Sixteen submitters comment on DBGs.

Clarify terminology to avoid unintended consequences

Some submitters consider the wording and structure of a DBG could be clearer and suggest the following improvements:

- Clarifying what 'related' means in subparagraphs (d)(vi)-(x). Submitters ask if it is intended to be within the meaning of section 12(2) of the Financial Markets Conduct Act 2013 as in subparagraph (d)(v). If so, it is unclear that this definition would apply to partnerships under the Partnership Act 1908. The application of this to law and accounting firms that are often structured as a partnership is therefore uncertain.
- Clarifying what is meant by 'a related accounting practice' in section 5(2)(d)(vii) of the draft Bill. Submitters note the information paper states that a DBG includes businesses operating under the same brand name or franchise. However, it is not clear that this is, and therefore needs to be clarified.
- Including 'related conveyancing firm' in the definition of a DBG. One submitter notes that the definition of a DBG includes a related law firm, a related accountancy practice, a related TCSP, and a related real estate agent. However, there is no mention in the definition of a related conveyancing firm.
- Clarifying the term 'a related accounting practice'.
- Clarifying if law firms can create a DBG that includes a connected nominee company.
- Clarifying whether 'related real estate agents' includes agents within the same franchise group and branches linked to a head office.

Support for expanding the definition to include Phase 2 reporting entities

Submitters welcome expanding the definition of DBGs to include Phase 2 reporting entities. They consider this will allow some professions and businesses to share costs and maximise resources. Some submitters comment that many professions and businesses would not be able to take advantage of the expanded definition of DBGs e.g. independent law firms and accountancy practices.

Further expand the scope of representative bodies

Two submitters recommend amending the legislation to permit Limited Partnerships who are reporting entities to become members of DBGs. Submitters consider the wording of the draft Bill does not allow Limited Partnerships to achieve the potential benefits and reduce compliance costs.

One submitter also recommends expanding the legislation to allow representative industry bodies to be members of DBGs.

Other comments

One submitter states that more guidance is needed for the real estate sector on the intent of the term 'related' in the context of real estate agents. The submitter thinks that this will help agents understand the extent of their abilities to form DBGs.

The same submitter considers that the structure of DBGs should be more straightforward. This submitter suggests that members of a DBG should be able to rely on the processes carried out and materials prepared by the ultimate complying individuals. This submitter thinks that this will make the DBG mechanism a more attractive option, thereby increasing the overall standard and uniformity of compliance across the industry.

Reliance on another business provisions

The Government proposes amendments to the provisions for reliance on another business. The amendments propose that documents used to undertake due diligence only need to be provided on request. The provisions also make an entity (entity A) not liable if it relies on another reporting entity (entity B) under certain conditions.

Sixteen submitters comment on the amended reliance on another business provisions.

Clarify terminology to avoid unintended consequences

Submitters suggested several specific amendments to the wording of the draft Bill to reduce the risk of unintended consequences by:

- Making section 33(2)(c)(ii) a standalone provision because as it stands reporting entities could be in breach of the conditions if the third party failed to provide the information requested within 5 working days of the request. There is a risk of retrospective non-compliance through breach of this condition and the above amendment would rectify this unintended consequence.
- Changing section 33(2)(b) as there should not be a requirement for the entity being relied on to have an ongoing relationship with the customer. If customer due diligence has been conducted to the relevant standard the lack of an ongoing relationship should not act as a barrier to the reporting entity relying on the customer due diligence undertaken by the third party.
- In section 33(2)(d) stating that entity B either consents to conducting customer due diligence or where entity B has already conducted customer due diligence they can confirm that customer due diligence has been conducted to the standard required by the Act or that of an equivalent AML/CFT regime.
- Making the conditions for reliance by a reporting entity on a third party to do customer due diligence clearer.
- Providing guidance on 'reasonable cause' in Clause 13, section3A(b) of the amendment bill.

- Changing the wording of clause 13, section 3A(b) to read 'the reporting entity has reasonable cause to believe the third party that is relied on'.
- Clarifying if clause13(2) subsection 3A represents an alternative method or standard for reliance or if the existing conditions in subsection 2 will still apply to those specified in subsection 3A.

Submitters support proposed enhancements to reliance provisions

Most submitters are supportive of the proposed enhancements to the reliance on another business provisions. Submitters feel these provisions will avoid duplication and reduce the burden of compliance on small businesses. One submitter notes it is important to ensure that increased use of reliance on another business does not lead to a lessening of responsibility.

One submitter is concerned about the use of reliance on another business. This submitter thinks the ability to conduct good due diligence is reliant on having an understanding of the nature of the relationship and activities being undertaken.

Submitters support the proposal to provide documents on request

Most submitters support amending the customer due diligence requirements so that the documents used to undertake due diligence only have to be provided on request. One submitter suggests removing the requirement to provide copies through creating a standard form to be issued by the entity that completed the customer due diligence.

One submitter does not support this provision as they feel it puts unnecessary burden on entity B. The submitter notes that when entity B has commenced their relationship with the customer at an earlier date they will reach the end of the five year document retention period before entity A. The submitter feels entity B should not have to retain the documents used for customer due diligence for entity A once entity B no longer requires them. This submitter suggests that entity A should have to obtain consent and copies of the necessary identification documents to mitigate this situation.

Support for changes that reduce liability for entity A

Most submitters support the changes that reduce the liability for entity A when it relies on entity B under certain conditions.

Submitters think it needs to be made clear:

- which entities will be approved for others to rely on
- if reliance on a third party can or cannot be passed onto another reporting entity
- who holds the responsibility for customer due diligence.

Some submitters feel the responsibility for the customer due diligence checks should remain with entity A and others feel that the responsibility should lie with entity B. One submitter notes that the current arrangement where entity A retains responsibility has maintained a high level of compliance.

Submitters suggest how to improve the provisions

Submitters suggest improvements to the reliance on another business provisions as follows:

- Ensure that approved entities or approved class of entities conduct reliable customer due diligence to ensure that the efficacy of the AML/CFT regime is not compromised.

- Provide assurance that the prescribed entities customer due diligence procedures meet the required standard so reporting entities could be confident that they could rely on customer due diligence undertaken by the prescribed entities without the need for further investigation.
- Allow reporting entities to rely on the customer due diligence of offshore entities that have conducted customer due diligence to the standard required by the local AML/CFT regime.
- Require entity B to give their consent for entity A to rely on them. Provide templates for entities to use to reduce compliance burden.
- Extend section 33 so that reporting entities can rely on another business for the filing of suspicious activity reports.
- Amend the reliance regime for lawyers due to the complexities faced by the legal services sector.
- Allow entities to make agency agreements under section 34 to enable entities to manage relationships on their own terms.
- Amend DBG provisions to an 'on request' system to ensure that reporting requirements are not more onerous for DBGs than for reporting entities relying on third parties.
- Allow third parties that are not reporting entities to be relied on to undertake customer due diligence.
- Clarify if entity A needs proof of entity B being given consent to undertake due diligence.

Other comments

One submitter acknowledges that most real estate agents are connected with another reporting entity, and suggests that this means real estate agents could use an increased level of reliance put in place by the other entity.

One submitter notes that section 33(3A)(b) states that new conditions for reliance on other reporting entities or persons in another country could be prescribed by regulations. This submitter considers that further consultation is needed to ensure that any new conditions are workable and do not undermine the efficacy of the regime.

Existing customer due diligence

The Government proposes that Phase 2 businesses will not be required to identify and verify existing customers unless there is a material change in the service or circumstances.

Sixteen submitters comment on the proposed existing customer due diligence provisions in the draft Bill. Submitters do not comment on the wording of the existing customer due diligence provisions in the draft Bill or the likelihood of unintended consequences.

Submitters support the existing customer due diligence provisions

Submitters support the existing customer due diligence provisions and consider they will help them to meet their obligations under the Act and avoid duplication.

Two submitters feel that existing customer due diligence would not be applicable or useful to their industries. One of these submitters states that although the motor vehicle industry has high levels of repeat customers, reporting entities are not always aware of customer's circumstances. This submitter suggests that customer due diligence should be required for

any future dealings with existing customers in accordance with any new requirements under the Act.

Submitters suggest how to improve the provisions

Three submitters request further guidelines for when customer due diligence will be required for existing customers.

Two submitters consider there is a need for a central register to allow reporting entities to obtain the information needed for customer due diligence. This will save businesses time and resources and be more convenient for customers who have already provided information to other reporting entities.

Simplified due diligence

The simplified due diligence provisions in the draft Bill have been extended to include state-owned enterprises and subsidiaries of publically listed entities in countries with sufficient AML/CFT systems.

Nine submitters comment on the simplified due diligence provisions in the draft Bill.

Clarify terminology to avoid unintended consequences

Submitters suggest amendments to the wording of the draft Bill as below:

- Clarify if 'owned' applies to state owned entities that are 100% state owned.
- Clarify if 'subsidiary' applies to subsidiaries that are 100% publicly owned.
- Define what constitutes a country with 'sufficient anti-money laundering... systems in place' in section 18(2)(o)(ii).
- Clarify if the government body or the jurisdiction must be regulated in section 18(2)(o)(ii).
- Clarify if the conditions are intended to apply to only the holding company or both the holding company and subsidiary in section 18(2)(o).

Submitters support the proposed extensions to simplified due diligence

Submitters support extending simplified due diligence provisions to include state-owned enterprises and subsidiaries of publically listed entities in countries with sufficient AML/CFT systems.

Submitters state that the simplified due diligence provisions should be extended to foreign regulated and licenced financial businesses, subsidiaries of NZ listed issuers, majority owned subsidiaries of entities subject to customer due diligence, AFSL licensees and ADIs, majority owned subsidiaries of publicly traded entities in NZ and low risk overseas jurisdictions, and subsidiaries of other entities already subject to simplified customer due diligence.

Submitters support bringing the simplified customer due diligence rules from regulation into the Act.

General comments on customer due diligence

Submitters make general comments about customer due diligence as below:

- There are upcoming opportunities to use technology assisted identification systems for customer due diligence, which could reduce compliance costs. One of these submitters acknowledges the usefulness of technology, but emphasises the importance of having face-to-face systems.

- There is a need for more flexible customer due diligence requirements for lawyers undertaking time-sensitive work. The submitters recommend an amendment to allow lawyers to complete customer due diligence on a new client after the business relationship has been established.

- Enhanced customer due diligence should be further expanded to address cases where the customer is a power of attorney or nominee. The submitter thinks there should be a requirement to identify the parties related to the transaction. The submitter highlights that when a bare trust is used in a transaction the proposed section will not address who is the true beneficiary.

- The term 'trusted referees' needs to be clearly defined as when undertaking customer due diligence many banks and financial institutions use different terms.

- Customer due diligence should not be required if the client is an entity wholly-owned by another client, if customer due diligence has already been conducted on that client.

- Additional guidance and material is needed to ensure that the AML/CFT requirements are effectively implemented across all professions covered by the Act.

- There are practical issues with undertaking customer due diligence. These issues include when lawyers and conveyancers, accountants or real estate agents facilitate a single transaction for a client or when real estate agents do not have visibility of the purchaser e.g. in an auction environment.

- There are concerns about the practical application of beneficial ownership and identifying the source of funds in a trust. It is suggested further guidance material is issued to clarify.

- Consider the use of a verifying officer for identification, and an extension of the list of trusted referees to include, at times, employees of reporting entities e.g. a bank.

- Include domestic politically exposed persons in line with Recommendation 12 of the Financial Action Task Force 40 Recommendations.

Streamlining the Ministerial exemption process

The Government proposes to streamline the Ministerial exemptions process to decrease the time it takes to get approval for a Ministerial exemption. These changes include delegating the power to make a decision about whether to grant an exemption to the Secretary of Justice and increasing the emphasis the decision-maker gives to the actual risk that a business poses of money laundering and terrorist financing.

Six submitters comment on streamlining the Ministerial exemptions process. Submitters do not comment on the wording or likelihood of unintended consequences being created by this provision in draft Bill.

Submitters support streamlining the Ministerial exemption process

Submitters support streamlining the Ministerial exemption process to exclude businesses that have a low level of risk from either part or all of their obligations under the Act.

Submitters welcome changes that would increase the efficiency of the exemption process and decrease the time it takes to get approval.

One submitter states that the AML/CFT Act and supporting regulations are technical by nature, and therefore it is imperative that there is an efficient exemption process to ensure that the correct entities and relevant activities are subject to the AML/CFT legislations.

One submitter has experienced unnecessary costs due to the current deficiencies in the existing Ministerial exemption process.

Other changes to the legislation

The following summarises submitters' comments in relation to proposed changes to the AML/CFT laws for information sharing, supervision, statutory review and bringing existing regulations into the Act.

Information sharing

The Ministry proposes legislative changes to information sharing provisions to address gaps that have been identified in the current regime. The information sharing provisions will be extended to allow information sharing with agencies and relevant bodies with an interest in the AML/CFT regime.

Ten submitters comment on the information sharing provisions outlined in the draft Bill.

Information sharing is important for an effective AML/CFT regime

Five submitters note the importance of information sharing for effective enforcement of the regime.

One submitter feels that the information sharing provisions should be extended to allow for more effective enforcement of the AML/CFT regime. Another submitter feels the proposed extensions of the information sharing provisions are too broad. This submitter thinks the information sharing provisions in the AML/CFT regime should be consistent with the upcoming reform of New Zealand's Privacy laws.

Submitters also note the need for information sharing to occur in good faith and ensuring appropriate precautions are taken when sharing information.

Clarify terminology to avoid unintended consequences

Four submitters comment on the clarity of the wording and structure of the information sharing provisions in the draft Bill. Two submitters consider the wording is unclear and could create unintended consequences. These submitters think the wording can be improved by:

- Making the information sharing amendments in clauses 32-34 of the draft Bill consistent with section 48 of the Act.
- Removing the statement 'professional body responsible for oversight of a particular industry...' as it is unnecessary given the continuation of the current supervisory model.

Two submitters think the wording of the draft Bill is clear.

One submitter notes that Clause 32 has been improved as it now qualifies that information sharing will only take place to enforce the AML/CFT regime.

Other comments

Two submitters state the importance of enabling reporting entities to share information in time sensitive situations. These submitters think there is a need to clarify if reporting entities can share information with other reporting entities.

Supervision

The Ministry proposes retaining the current multi-supervisor model. The Financial Markets Authority, the Reserve Bank of New Zealand and the Department of Internal Affairs are the government agencies that will supervise the AML/CFT regime. Phase 2 entities will be supervised by the Department of Internal Affairs.

Eleven submitters comment on supervision of the AML/CFT regime.

Submitters do not address the questions in the consultation document regarding the structure and clarity of the wording in the draft Bill or the likelihood the wording of the draft Bill could create unintended consequences.

Most submitters support the multi-supervisor model

Six submitters support the decision to retain the current multi-supervisor model. A self-regulatory body expresses their interest in working with the supervisory body for their sector.

Five of these submitters agree the Department of Internal Affairs is the appropriate regulatory body for the Phase 2 reporting entities. One submitter considers the Financial Markets Authority is the most appropriate supervisor for accountants. This submitter thinks that if the Financial Markets Authority were to supervise the accounting sector this would leverage the existing regulatory oversight mechanisms that are already in place, avoiding duplication and decreasing compliance costs.

Two submitters state a preference for a single supervisor model. One of these submitters believes this model will be more effective than multiple agency supervision by self-regulatory bodies.

Two submitters state a preference for multiple agency supervision with self-regulatory bodies. These submitters feel this supervision model would be the most effective option.

The New Zealand Law Society (the Law Society) makes a substantive submission detailing their rationale for making the Law Society the supervisor of the legal profession. See their submission for further information.

Other comments

Two submitters note the importance of adequately resourcing supervisors to allow for effective supervision.

One submitter feels that it is important to ensure that reporting entities are not unduly burdened by supervisory levies. The submitter states reporting entities should receive effective guidance, support and training to support them to comply.

One submitter recommends having adequate external processes to ensure that all reporting entities comply with the regime.

One submitter suggests reporting should register their businesses with supervisors to enable effective supervision of the sector.

One submitter suggests considering whether there should be a limit for lending before the activity is captured by the Act, and whether supervision is justified at these transaction levels.

Statutory review

The Ministry included a provision in the draft Bill that allows for statutory review of the AML/CFT Act.

One submitter comments on the provisions. This submitter states time is of the essence in the effort to strengthen New Zealand's AML/CFT regime in advance of the Financial Action Task Force review in 2020. This submitter notes the evaluation will assess the effectiveness of the regime, as well as technical compliance with laws and regulations.

Bringing existing regulations into the Act

Amendments in the draft Bill will bring existing obligations from Regulations into the AML/CFT Act.

Three submitters comment on bringing existing regulations into the Act. These submitters support bringing existing obligations that are currently Regulations into the AML/CFT Act. These submitters feel that consolidating the Regulations into the Act makes AML/CFT compliance easier and ensures reporting entities are aware of their obligations.

Supporting implementation

The following summarises submitters' views on the proposed activities Government agencies could undertake to support implementation and other areas for operational improvement.

Government agencies supporting implementation

The Ministry proposes several activities government agencies could undertake to help businesses comply with AML/CFT obligations.

Ten submitters comment on the provisions.

Proposed activities are necessary for successful implementation

Submitters support Government agencies undertaking the proposed activities to support implementation. Submitters feel the proposed activities are necessary for the successful implementation of Phase 2 of the AML/CFT regime.

Three submitters suggest providing sector specific risk assessments that can be used by reporting entities to develop their own policies and procedures. One submitter suggests providing checklists for businesses.

One submitter states the importance of adequately resourcing Government agencies to undertake the proposed activities. A few submitters suggest allowing time for consultation on proposed changes to legislation and regulations.

One submitter notes the challenges of disseminating information to businesses that are not aligned with professional bodies or associations i.e. high value goods.

Other areas for operational improvement

The Government proposes operational improvements through changes to annual reports, audits and staff vetting processes. These changes are intended to reduce compliance obligations while maintaining the integrity of the regime.

Eleven submitters comment on the proposed areas for operational improvement.

Submitters support other areas for operational improvement provisions

Five submitters agree with the proposal to make the annual reporting process more efficient. Six submitters support the suggestion to reduce the frequency of independent audits where appropriate and suggest the adopting a risk based approach. Two submitters agree with using existing staff vetting processes to reduce vetting obligations in the regime.

Other comments

One submitter notes the term 'audit' is often used in a different context and should be replaced with a different term, possibly 'assure' or assurance'.

One submitter objects to the independent audit required for high value goods dealers and thinks obligations should be consistent across all entities under the act.

Two submitters suggest creating a centralised login for goAML for designated business groups to simplify administration processes and reduce email traffic.

One submitter suggests an accreditation or licencing system to ensure that AML/CFT consultants are providing reporting entities with the correct information. This submitter thinks this will enable reporting entities to comply with the regime.

Implementation timeframes

Eight submitters comment on the timeframe for implementation of Phase 2 of the AML/CFT Reforms.

Submitters from Phase 2 businesses and professions feel the proposed implementation periods for their sectors are too short. These submitters are from the lawyers and conveyancers, accounting, real estate and gambling sectors. The submitters propose implementation timeframes from between one to four years. One submitter notes implementing the Act will be challenging for their sector as the commencement date falls at a busy time for their sector.

Some submitters feel the proposed implementation periods are too long. These submitters think the Act should come into force earlier than the proposed dates. Some submitters did not agree with the staged implementation approach and think the implementation period should be the same for all Phase 2 businesses.

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