



Submission to the Ministry of Justice

by

Citibank, N.A. New Zealand

on

Improving New Zealand's ability to tackle money laundering and terrorist financing

*Consultation Paper on Phase 2 of the
AML/CFT Act*

16 September 2016

Background

1. Citibank, N.A. is an offshore incorporated entity registered in New Zealand, and holds a banking licence issued by the Reserve Bank of New Zealand (“RBNZ”). Citibank, N.A. New Zealand branch (“Citi NZ”) is regulated as a reporting entity under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
2. Citi NZ welcomes the opportunity to provide feedback to the Ministry of Justice (“MoJ”) on the consultation paper titled ‘Improving New Zealand’s ability to tackle money laundering and terrorist financing’ (“Consultation Paper”), which outlines proposals for implementation of Phase 2 for the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML/CFT Act”).
3. **This Citi NZ submission has been provided to the Ministry of Justice on a commercial in confidence basis. As such, we request that the Ministry of Justice consult with Citi NZ prior to an information release to any external third party, and allow us the opportunity to make submissions as to the appropriateness of any information to be released.**
4. If you would like to discuss any aspect of the submission further, please contact:
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Executive Summary

5. Citi NZ fully supports and endorses recommendations made in the New Zealand Bankers Association submission on the Consultation Paper, dated 16 September 2016, specifically:
 - a) Citi NZ supports the proposals to extend the AML/CFT Act to include those additional business sectors set out in Part 3 of the Consultation Paper.
 - b) Citi NZ submits the model of supervision that would deliver the best outcomes for New Zealand is the **single supervisor model**.
 - c) Citi NZ supports the evident intention behind the proposed expansion of reporting to the Police Financial Intelligence Unit (“NZ FIU”), but submits that detailed regulation and guidelines around the definition of “suspicious activities”, and the circumstances under which reporting will be required.
 - d) Citi NZ is generally in favour of the increased information sharing proposals, however, only within defined circumstances and where such circumstances are in line with supporting the principles and objectives of the AML/CFT Act. Citi NZ also supports implementing information sharing between reporting entities.
 - e) Citi NZ supports the Consultation Paper’s simplified customer due diligence (“CDD”) proposals, and also requests extension of the same to regulated foreign financial institutions carrying on business in low risk jurisdictions.

6. Please refer below for more specific detail.

Part 3: Sector specific issues and questions

7. Citi NZ supports the proposals to extend the AML/CFT Act to include additional business sectors:
 - a) The proposed enhancing of New Zealand's AML/CFT regime to include lawyers, accountants, real estate agents, conveyancers, high value goods dealers and additional gambling service providers shows New Zealand is serious in its intention to build our reputation as a jurisdiction with a strong commitment to combatting money laundering and terrorism financing.
 - b) To ensure consistency of application, however, Citi NZ submits that all provisions of the AML/CFT Act need to be applied to these additional business sectors, subject to any clearly defined and regulated exceptions or exemptions. Citi NZ submits that any exceptions or exemptions approved should be consistent with ensuring the Act's principles remain intact, and its objectives continue to be achieved.
 - c) To this end, Citi NZ submits that a careful review of all proposed exclusions should be undertaken and potential gaps identified and addressed before finalisation of the legislation. For example, the exclusion of leasing and property management services due to an assessment that primary money laundering/terrorist financing ("ML/TF") risk is currently associated with property sales and purchases does not address the ML/TF risk that would remain in this area, or the likely increase in ML/TF activity would result due to the implementation of the proposed legislative changes. Water (and ML/TF activity) flows in the path of least resistance (regulation).

Part 4: Supervision

8. Citi NZ submits that the model of supervision to deliver the best outcomes for New Zealand is a single supervisor model:
 - a) Citi NZ supports and endorses the points made in the NZBA submission on issues with the current multi-agency model, and the support for a single supervisor model. In particular:
 - a single supervisor model will enhance the New Zealand AML/CFT regime and ensure an effective, equitable and sustainable supervisory model, and
 - the recommendation that the Ministry of Justice ("MoJ") request an appropriate allocation of funding from the Proceeds of Crime Fund to help properly resource and fund the establishment, and ongoing operation, of a single supervisor entity.
 - b) Should this recommendation be accepted, Citi NZ notes that the regulatory changes required to implement a single supervisor model should ensure no

impact on the existing legislated delegation of AML/CFT reporting activity to the NZ FIU (through the Commissioner of Police).

- c) Citi NZ does not support the establishment of a multi-agency supervisory model which includes self-regulatory or professional industry bodies. It is considered that this would further contribute to the potential for, and risk of, inconsistent supervision across industry sectors, reduced supervisor responsiveness, and material lack of AML/CFT regulatory experience. In addition, Citi NZ submits that consideration must be given to the potential for inherent conflict of interests that would arise with the inclusion of self-regulatory or professional industry bodies. At a minimum, the MoJ would need to review, and possibly materially revise, the AML supervisory powers in a situation where supervisory entities include non-government entities.

Part 5: Implementation period and costs

9. Citi NZ supports and endorses the points made in the NZBA submission on Part 5 of the Phase Two proposals: specifically, a recommended two year timeframe from finalisation of regulations.
10. As noted under 8. b) above, Citi NZ recommends the Ministry of Justice (“MoJ”) request an appropriate allocation of funding from the Proceeds of Crime Fund to help properly resource and fund the establishment, and ongoing operation, of a single supervisor entity.

Part 6: Enhancing the AML/CFT Act

11. **Expanded Reporting to NZ FIU**

Citi NZ supports the evident intention behind the proposed expansion of reporting to the Police Financial Intelligence Unit (“NZ FIU”), but submits that detailed regulations and guidelines are required, including around the definition of “suspicious activities” and the circumstances under which reporting will be required.

12. **Information Sharing**

- a) Increased information sharing powers: Citi NZ fully supports and endorses the points made in the NZBA submission in related to information sharing powers –
 - i. Information sharing should only be permissible where it is reasonably necessary in order to meet the objectives of the AML/CFT Act, for example, to deter, detect or investigate money laundering;
 - ii. In line with the above, Citi NZ does not support any proposal that would see AML/CFT supervisors being able to share AML/CFT related information with other government agencies that are not involved in the supervision, investigation or enforcement of AML/CFT related matters.
- b) Information about customers:

- i. As noted in the NZBA submission, Citi NZ is also unclear on the purpose of the proposal seeking to allow AML/CFT supervisors to share customer information with other government agencies, and would appreciate clarification as to this.
 - ii. In addition, appropriate safeguards must be in place to ensure the ability to share customer information is not abused.
 - iii. Finally, In line with the above, Citi NZ does not support any proposal that would see AML/CFT supervisors being able to share customer information with other government agencies for purposes that are not related to the supervision, investigation or enforcement of AML/CFT related matters. Such sharing is best addressed in the appropriate and relevant legislation, outside of the AML/CFT Act.
- c) Information sharing between reporting entities: Citi NZ submits the New Zealand AML/CFT regime would benefit significantly if reporting entities were able to share financial intelligence/customer information with other reporting entities (and Citi banking entities globally) in appropriate and defined circumstances. Such information sharing would assist banks with international representation (such as Citi NZ) to complete a more comprehensive, global investigation and gather substantially enhanced financial intelligence that may be shared with NZ FIU (where permitted by international privacy and confidentiality laws).

13. **Simplified Customer Due Diligence**

- a) Citi NZ supports the extension of simplified due diligence provisions to SOEs and the majority-owned subsidiaries of listed entities (on a stock exchange in a country with sufficient ML/TF systems and controls). Citi NZ further submits that consideration be given to extending the latter proposal to where majority – or, alternatively, 100% – ownership extends down more than one level of ownership (but no more than four levels).
- b) Citi NZ also supports extension of simplified due diligence provisions to regulated foreign financial institutions, where the regulators are located in jurisdictions with sufficient ML/TF systems and controls.