

Amendment Regulations relating to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

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In June 2021, a suite of four amendment regulations relating to the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime were published. These amendments came into force on 9 July 2021. In July, a transitional compliance period to these amendment regulations (until 29 April 2022) was announced to allow entities more time to update their processes and policies.

In particular, the suite of amendment regulations expands and amends reporting entities' customer due diligence (CDD) duties and obligations where they have customers that are companies or limited partnerships (LPs). In such instances, reporting entities will need to establish whether their customer has any nominee directors, nominee shareholders or nominee general partners, verify information about such persons in the prescribed manner and, where such nominees exist, to undertake enhanced CDD.

Reporting entities should consider how the changes might affect their AML/CFT obligations and processes. If you would like advice on compliance with these amendments, please contact a member of our [financial services regulation team](#).

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Background

The [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) (the AML/CFT Act) is currently supported by a suite of six regulations^[1] (Regulations) that prescribe additional requirements in a number of areas.

Two of the existing Regulations were set to expire in 2021^[2]. These Regulations had expiry dates as they were new and untested when the Regulations were issued, and the expiry dates were designed to ensure a review took place within five years^[3].

In October 2019, prompted by these expiry dates, the Ministry of Justice began a process of consultation with various stakeholders. 19 submissions were received from a variety of industry stakeholders and most were generally supportive of the proposals. The consultation aimed to identify whether changes or updates were needed to the current AML/CFT regime to ensure that the Regulations remained fit for purpose in the current money laundering and terrorism financing risk environment.

In March 2020, the Cabinet Economic Development Committee published a [Cabinet Paper](#) and [Cabinet Minute](#), taking the review as an opportunity to update the suite of Regulations as well as remove the expiry dates for the expiring Regulations. We outline the key changes made in in this article.

Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Amendment Regulations 2021

The Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Amendment Regulations 2021 amends the [Anti-Money Laundering and Countering Financing of Terrorism \(Requirements and Compliance\) Regulations 2011](#). Some of the key changes are as follows:

- Introduces definitions of key terms, including 'nominee director', 'nominee general partner' and 'nominee shareholder'^[4]
- Introduces a requirement for a reporting entity to obtain information about whether a customer which is a company or LP (on whom it is conducting customer due diligence (CDD)) has nominee directors, nominee general partners and/or nominee shareholders. This is in response to the Financial Action Task Force's recommendations that all jurisdictions should put measures in place to ensure that nominee directors are not misused^[5]
- Introduces a requirement for a reporting entity to conduct enhanced CDD for a customer that is a company with nominee director(s) or a customer that is a nominee general partner of a limited partnership/overseas limited partnership
- Replaces the requirement to audit a reporting entity's risk assessment and compliance programme every two years under

section 59(2) of the AML/CFT Act with a default requirement to do this every three years. This change is intended to assist medium and low-risk reporting entities by lowering their compliance burden.[6] Once the regulations are in force, all AML/CFT audits will be required every three years, subject to the AML/CFT supervisors' assessment of a reporting entity's money laundering and terrorism financing risk. The AML/CFT supervisors will notify the reporting entity if it is required to have an audit more or less frequently than every three years.

Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2021

The Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2021 amends the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (Exemptions Regulations). Some of the key changes are as follows:

- Expands the exemption provided to related entities to also capture entities that are not body corporates. This exemption allows for a person to be exempt from the AML/CFT Act if their only customers are related entities. As a result, regulation 16 of the Exemptions Regulations is amended to contain the full definition of a 'related' entity, rather than refer to section 12(2) of the Financial Markets Conduct Act 2013
- Clarifies that regulation 11 of the Exemptions Regulations applies to life insurers only, more specifically life insurers that provide relevant insurance policies that are closed to new customers and new premiums are exempt from the AML/CFT Act
- Prevents the use of structuring (in relation to the stored value instrument exemption in regulation 15 of the Exemption Regulations) to avoid obligations under the AML/CFT Act, by providing that the maximum possible value thresholds in regulation 15(1)(a) and (b) of the Exemptions Regulations apply to the combined total maximum value of all stored value instruments issued that are of the same kind
- Consolidates the exemptions applying to relevant services provided under premium funding agreements by insurance companies and non-insurance companies (previously regulations 17 and 18) into one regulation (new regulation 17)
- Inserts new exemptions for relevant services provided:
 - by court-appointed liquidators
 - in respect of certain third party payments made by a designated non-financial business or profession
 - to a person that is the subject of a Commissioner of Police's order or a production order
 - by a reporting entity acting as executor or administrator of an estate
 - to an executor or administrator of an estate.

Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2021

The Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2021 amends the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 (Definitions Regulations).

Some of the key changes are as follows:

- Clarifies that a company in liquidation is a 'customer' of a court-appointed liquidator under the AML/CFT Act
- Prescribes that related limited partnerships may be members of a designated business group under the AML/CFT Act
- Clarifies that services as an executor, administrator or trustee is excluded from being a financial activity under the AML/CFT Act
- Clarifies that a person carrying out any property management activity is not managing client funds, accounts, securities or other assets for the purposes of the application of designated non-financial business or profession under the AML/CFT Act
- Amends CDD timeframes for real estate agents carrying out agency work in relation to commercial leases – the real estate agent must conduct CDD before the real estate agent presents an offer of lease to the landlord of the commercial property.

Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2021

The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2021 amends the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Regulations 2010 (CBTC Regulations).

It replaces the prescribed form for a border cash report in the Schedule of the CBTC Regulations with an updated list of information that this cash report must contain. This information remains substantially the same as the previous schedule. The change allows for the regulations to prescribe the information instead of the actual form that must be used, modernising the regime by allowing modern approaches to declaring cash movements, such as through using an electronic form.

Transitional Compliance Period

On 9 July 2021, the Reserve Bank of New Zealand, the Department of Internal Affairs, and the Financial Markets Authority, supported by the Ministry of Justice, published a [joint statement](#) announcing that a transitional compliance period will apply in respect of the new amendment regulations.

The statement notes that whilst reporting entities will be expected to comply with the new regulations as soon as possible from 9 July 2021, a transitional compliance period will apply until 29 April 2022. This is in recognition of the fact that reporting entities will need time to amend their processes, procedures and systems.

The transitional compliance period will also be used to raise awareness and understanding of the new regulations.

The joint statement clarifies that any non-compliance with the new amendment regulations beyond 30 April 2022 will be considered a breach of the AML/CFT Act.

[1] AML/CFT (Cross-border Transportation of Cash) Regulations 2010; AML/CFT (Definitions) Regulations 2011; AML/CFT (Exemptions) Regulations 2011; AML/CFT (Ministerial Exemption Form) Regulations 2011; AML/CFT (Prescribed Transaction Reporting) Regulations 2016; AML/CFT (Requirements and Compliance) Regulations 2011.

[2] AML/CFT (Exemptions) Regulations 2011 which expire on 30 June 2021 and AML/CFT (Definitions) Regulations 2011 which partially expire on 27 July 2021.

[3] Office of the Minister of Justice *Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Expiring Regulations and New Regulatory Proposals* (Cabinet paper, 18 March 2020) at [2].

[4] "nominee director" – an individual who is a director and who is required to carry out or accustomed to carrying out that role in accordance with the directions or instructions of someone who is not a director; "nominee general partner" – a person who is a general partner of a LP and who is required to carry out or accustomed to carrying out that role in accordance with the directions or instructions of someone who is not a general partner; and "nominee shareholder" – a person who is a shareholder and who is required to carry out or accustomed to carrying out that role in accordance with the directions or instructions of someone who is not a shareholder (with certain limited exceptions).

[5] Office of the Minister of Justice *Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Expiring Regulations and New Regulatory Proposals* (Cabinet paper, 18 March 2020) at [35].

[6] Office of the Minister of Justice *Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – Expiring Regulations and New Regulatory Proposals* (Cabinet paper, 18 March 2020) at [45].

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