

NZ AML/CFT Amendment Act 2017 Information Sheet



Introduction

The New Zealand Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Bill has received the Royal assent. Accountants will have to comply with the legislation from **1 October 2018**. The **Department of Internal Affairs** (DIA) is tasked with overseeing and enforcing the regime for all Phase 2 reporting entities.

Scope

An accounting practice that, in the ordinary course of business, carries out one or more of the following activities will be a **reporting entity** under the Act.

Trust and company service provider functions

- Acting as a formation agent of legal persons or legal arrangements.
- Acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements.
- Providing a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or for any other legal person or arrangement (unless it is ancillary to the provision of other services which are not in scope).

Gatekeeper functions

- Managing client funds, accounts, securities, or other assets (other than sums paid as fees for professional services).
- Engaging in or giving instructions on behalf of a client to another person for:
 - Any conveyancing; or
 - The transfer of a beneficial interest in land or other property; or
 - A transaction on behalf of any person in relation to the buying, transferring or selling of a business or legal person and any other legal arrangement; or
 - A transaction on behalf of a client in relation to creating, operating, and managing a legal person and any other legal arrangement.

Compliance obligations

1. Appoint a **compliance officer** to administer and maintain the AML/CFT programme. This is a designated employee (or other person) who reports to a senior manager.
2. Produce a written **risk assessment** that identifies and assesses the ML/FT risks the reporting entity may reasonably expect to face. This should also be reassessed on a regular basis. All the following should be covered:
 - The nature, size and complexity of the business
 - The products and services it offers
 - The way it delivers its products and services
 - The types of clients it deals with
 - The countries it deals with
 - The institutions it deals with
3. Establish a written **AML/CFT programme** based on the risk assessment. This should also be reassessed on a regular basis. It must contain adequate and effective policies, procedures and controls around:

- **Vetting** of senior managers, the compliance officer and any other employee that is engaged in AML/CFT related duties.
 - **Training** on AML/CFT matters for senior managers, the compliance officer and any other employee that is engaged in AML/CFT related duties.
 - Complying with **customer due diligence** requirements (including ongoing customer due diligence and account monitoring)
 - **Reporting suspicious activities**
 - **Reporting prescribed transactions**
 - **Record keeping**
4. Perform **customer due diligence (CDD)**. This involves obtaining and verifying the identity of clients. There are three levels of CDD; standard, simplified and enhanced. The nature and extent of CDD depends on the type of client and is according to the level of risk involved.

CDD must be conducted on the following parties (if applicable):

- The client; and
- Any beneficial owner of a client; and
- Any person acting on behalf of a client.

A **beneficial owner** is any individual (a natural person):

- Who owns greater than 25% of the client; or
- Who has effective control of the client; or
- On whose behalf a transaction is conducted.

CDD must be conducted when:

- A reporting entity establishes a business relationship with a **new client**.
 - Someone seeks to conduct an **occasional transaction** (a cash transaction of NZ\$10,000 or more that occurs outside of a business relationship) or **occasional activity** (provision of an in-scope service without forming a business relationship) through a reporting entity.
 - There has been a material change in the nature or purpose of the business relationship with an **existing client** and insufficient information is held.
5. Submit a **suspicious activity report** to the Financial Intelligence Unit (FIU) through the goAML online portal if there is reasonable grounds to suspect that an activity may be relevant to the investigation or prosecution of an offence.
6. Submit a **prescribed transaction report** to the FIU through the goAML online portal when a client conducts one of the following through the reporting entity;
- A domestic physical cash transaction of NZ\$10,000 or more; or
 - An international wire transfer of NZ\$1,000 or more.
7. File an **annual report** with the Department of Internal Affairs (DIA) each year by 31 August in respect of the period 1 July–30 June. The form and content is prescribed.
8. Get an **independent audit** of the risk assessment and AML/CFT programme every two years by an independent and appropriately qualified person. ‘Independent’ means the individual must not be involved in the development of the risk assessment, or the establishment, implementation or maintenance of the AML/CFT programme. ‘Qualified’ means the person has the relevant skills and experience to conduct the audit, including knowledge of the Act and Regulations.
9. **Keep records** generally for at least five years.

Potential relief

Certain obligations may be shared by two or more related reporting entities if they form a **designated business group**.

Penalties

Maximum penalties for non-compliance are as follows:

- Individual – a term of imprisonment of not more than 2 years and a fine of up to \$300,000.
- Reporting Entity – a fine of up to NZ\$5 million.

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