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Changes to the AML/CFT Regulations 1 June 2024

On 1 June 2024, the second stage of the amendment regulations under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 (Regulations) will come into force. This follows the first stage which commenced in July 2023, and comes ahead of the third stage on 1 June 2025.

This second stage will bring in significant changes, that reporting entities (and, in particular, virtual asset service providers (VASPs)) will need to be on top of. Compliance documents and processes, as well as systems, will need to be updated.

The investment of time and resources that will take, in order to be compliant on 1 June, should not be underestimated as the amendments to CDD, EDD and wire transfers will affect most.

NOTE: for those that are part of our Limited Partnership outsourcing service, we will apply these changes for you automatically but it is important you understand the impact the changes can have to your interactions with clients.

Key Changes: Stage 2 – 1 June 2024

There are a number of impactful changes around:

- customer due diligence (CDD)
- enhanced customer due diligence (EDD)
- wire transfers

that should be given particular focus, as well as a range of narrower adjustments to the regime. We have included links which will take you to the amendments so you can review.

CDD

This second stage brings changes to the CDD policies, procedures and controls that all reporting entities will need to embed by the 1 June 2024.

This likely represents a substantive change to CDD processes that will need to be reflected in AML/CFT compliance documents. In operationalising these changes, all CDD outlined below will be required to be fully verified. Details are also contained in the table on page 6.

- Standard CDD on legal persons and legal arrangements will have to include obtaining and verifying information relating to their legal form and proof of existence, their ownership and control structure, and any powers that bind and regulate them, as well as additional information for companies (nominee directors or shareholders), limited partnerships (nominee general partners), and trusts (settlers and protectors) – the verification required varies between these, and should be carefully considered.
- Where enhanced CDD is required for a business relationship, a reporting entity must carry out “additional enhanced [CDD] measures” before establishing, and during, the business relationship if source of funds and/or wealth information is “not sufficient to manage and mitigate the risks of money laundering and the financing of terrorism”.
- Ongoing CDD and account monitoring will have to (according to the level of risk) include updating and verifying customer information following the required regular reviews (including considering the adequacy of information held, and when CDD was last conducted), as well as regularly reviewing any information about designated non-financial business or profession activities.

The devil will be in the detail of how this information is obtained, verified, assessed for ML/FT risk as well as the necessary steps taken to mitigate that risk.

Wire Transfers and Reporting

Wire transfers, and the information and reporting requirements around making them, often bring complications for reporting entities. While the Regulations have already clarified much of the uncertainty that there was around wire transfers before, this second stage of changes will pull into that regime entities that may previously not have been.

Link to the amendments are [here](#).

- Ordering institutions making international wire transfers of less than \$1,000 will be required to ensure specified identification information about the originator and beneficiary accompanies each wire transfer, but need not verify that information unless there are grounds to report a suspicious activity.
- Intermediary and beneficiary institutions of international wire transfers will have to, in their AML/CFT compliance programmes, address what steps they will take to identify international wire transfers lacking the required originator or beneficiary information, and what they will do in relation to those transfers.
- The exemption for intermediary institutions from having to submit prescribed transaction reports (PTRs) will stop applying to operators of money or value transfer services (MVTs operators) that are not registered banks, so they will have to begin doing so.
- Ordering institutions making international wire transfers will have to keep records of beneficiary names and account numbers or transaction reference numbers.
- Intermediary institutions processing international wire transfers that, for technological reasons, are unable to provide any information they obtained about originators to respective beneficiary institutions will have to keep a record of that information.
- MVTs operators that are ordering or beneficiary institutions of wire transfers outside New Zealand that are required to make a suspicious activity report will have to provide a copy of that report to the relevant financial intelligence unit in any countries affected by the suspicious activity.

VASP's

VASPs will be paying attention to the ongoing formalisation and clarification of their treatment under the AML/CFT regime in the Regulations. These second-stage additions will mark a significant step up in the compliance and reporting systems that they will need to have in place (and reflected in their documents).

- The deposit, withdrawal, exchange, or transfer of virtual assets will be considered transactions for the purposes of the AML/CFT Act.
- Virtual asset to virtual asset transfers and virtual asset to fiat currency (or vice versa) transfers will be treated as wire transfers, and in particular will have to be treated as international wire transfers (unless the reporting

entity is satisfied all parties are in New Zealand) – formalising what is currently supervisor expectation.

- Virtual asset transactions for an amount of \$1,000 or more (individually, or as several linked operations) outside of a business relationship will be considered occasional transactions.

Other changes:

- The enhanced CDD trigger for nominees in respect of limited partnerships will be reframed as being where the customer is a limited partnership with a nominee general partner, rather than the customer being the nominee general partner itself.
- Where reporting entities rely on other entities overseas for CDD purposes, they will be required to take particular steps to ensure that the standards applied are comparable to the AML/CFT Act or that the relevant other country's risk level has been appropriately considered (as applicable).
- Standard CDD will be required where a person seeks to conduct a transaction through a reporting entity outside of a business relationship but that is not an occasional transaction where there are grounds to report a suspicious activity.
- MVTs operators will explicitly have to comply with the wire transfer requirements, and where they utilise an agent/sub-agent for wire transfers the originator or beneficiary will be their customer rather than the agent/sub-agent.
- MVTs operators that make funds available to beneficiaries of international wire transfers by depositing physical cash into bank accounts at registered banks will be required to submit PTRs of the information they hold.
- Reporting entities will be required to, in their AML/CFT compliance programmes, set out specified procedures, policies, and controls for the use of agents and appropriately distinguish between when they will obtain and verify source of funds information, source of wealth information, or both for enhanced CDD.
- Reporting entities will be required to review their risk assessments to take account of any new or developing technologies or products (including any new delivery mechanisms) that they use, before they use them.
- The record-keeping requirements with undefined retention periods will gain one of at least 5 years. Prescribed transaction reports will be considered records.
- The exemption from some record-keeping requirements for transactions outside business relationships but that are not occasional transactions will be revoked.
- Reporting entities that, in the ordinary course of business, carry out activities of other types of reporting entity will be required to comply with the AML/CFT Act in respect of them.
- An express reference will be added to AML/CFT supervisors being able to decline the formation of designated business groups.

- The exemption from some parts of the regime for relevant services provided in respect of certain remittance card facilities will be revoked.
- The amount of time in advance reports for the cross-border transportation of unaccompanied cash must be provided will be set to at least 72 hours ahead of receipt or departure (as the case may be).
- The exclusion of pawnbrokers from being reporting entities will no longer apply to those that are high-value dealers.
- Reporting entities will be prohibited from establishing or continuing correspondent banking relationships with banks registered in North Korea. To our understanding, this is the first instance under this regime of prohibiting relationships with entities from a prescribed country.

What's changed?	Link to Regulation	Who does it impact?	Notes
<p>Additional information requirement for standard customer due diligence: legal persons.</p>	<p><u>Reg 11</u></p>	<p>All reporting entities.</p>	<p>(1) This regulation applies in respect of a customer who is a legal person.</p> <p>(2) A reporting entity must, as part of standard customer due diligence, obtain information relating to—</p> <ul style="list-style-type: none"> (a) the customer's legal form and proof of existence; and (b) the customer's ownership and control structure; and (c) any powers that bind and regulate the customer; and (d) if the customer is a company, the existence and name of any of the following: <ul style="list-style-type: none"> (i) any nominee director; (ii) any nominee shareholder; and (iii) if the customer is a limited partnership, about the existence and name of any nominee general partner. <p>(3) The reporting entity must take reasonable steps to verify the information specified in subclause (2) according to the level of risk involved and,—</p> <ul style="list-style-type: none"> (a) in the case of the information specified in subclause (2)(a) to (c), on the basis of documents, data, or information issued by a reliable and independent source; (b) in the case of the information specified in subclause (2)(d) and (e), on the basis of documents, data, or information issued by a reliable source.

What's changed?	Link to Regulation	Who does it impact?	Notes
			<p><u>Next steps:</u></p> <p>Update your CDD policies and processes in your AML programme to incorporate this change. Make sure your documents reflect the new definition and that staff understand this means they may have to take extra steps when conducting the process above.</p>
<p>Additional information requirement for standard customer due diligence: legal arrangements</p>	<p>Reg 11a</p>	<p>As above</p>	<p>(1) This regulation applies in respect of a customer that is a legal arrangement.</p> <p>(2) A reporting entity must, as part of standard customer due diligence, obtain information relating to—</p> <ul style="list-style-type: none"> (a) the customer's legal form and proof of existence; and (b) the customer's ownership and control structure; and (c) any powers that bind and regulate the customer; and (d) if the customer is a trust,— <ul style="list-style-type: none"> (i) the settlor (or settlors) of the trust; and (ii) any protector (or protectors) of the trust. <p>(3) The reporting entity must take reasonable steps to verify the information specified in subclause (2) according to the level of risk involved and,—</p> <ul style="list-style-type: none"> (a) in the case of the information specified in subclause (2)(a) to (c), on the basis of documents, data, or information issued by a reliable source: (b) in the case of the information specified in subclause (2)(d), on the basis of documents, data, or information issued by a reliable and independent source.

What's changed?	Link to Regulation	Who does it impact?	Notes
<p>Enhanced Due Diligence required if a reporting entity has grounds to report suspicious activity</p> <p>Stage 2 clarifies that enhanced CDD must be done where there are grounds to report a suspicious activity, even where simplified CDD would otherwise apply.</p>	<p>Reg 12AA</p>	<p>All reporting entities.</p>	<p>For the purposes of section 22(1)(e) of the Act, a reporting entity must conduct enhanced customer due diligence on a person in the circumstances described in section 18(1) and (3) of the Act if there are grounds to report a suspicious activity (within the meaning of section 39A of the Act) in relation to any of those circumstances.</p> <p>Next steps:</p> <p>Update your CDD policies and processes in your AML programme to include the above.</p> <p>We recommend including a higher level of sign-off when a decision is made to submit a suspicious activity.</p>

What's changed?	Link to Regulation	Who does it impact?	Notes
<p>Additional enhanced customer due diligence requirements in certain cases relating to business relationships</p>	<p>12AB</p>	<p>All reporting entities</p>	<p>(1) This regulation applies when a reporting entity is conducting enhanced customer due diligence under section 22(1)(a), (c), or (d) of the Act within a business relationship.</p> <p>(2) A reporting entity must carry out additional enhanced customer due diligence measures before establishing, and during, the business relationship if complying with sections 23(1)(a) and 24(1)(b) of the Act is not sufficient to manage and mitigate the risks of money laundering and the financing of terrorism.</p> <p>(3) The additional enhanced customer due diligence measures include—</p> <ul style="list-style-type: none"> (a) obtaining further information from the customer in relation to a transaction; or (b) examining the purpose of a transaction; or (c) enhanced monitoring of a business relationship; or (d) obtaining senior management approval for transactions or to continue the business relationship.

The Regulations in full can be found at the following links:

- [Anti-Money Laundering and Countering Financing of Terrorism \(Cross-border Transportation of Cash\) Amendment Regulations 2023](#)
- [Anti-Money Laundering and Countering Financing of Terrorism \(Definitions\) Amendment Regulations \(No 2\) 2023](#)
- [Anti-Money Laundering and Countering Financing of Terrorism \(Exemptions\) Amendment Regulations 2023](#)
- [Anti-Money Laundering and Countering Financing of Terrorism \(Prescribed Transactions Reporting\) Amendment Regulations 2023](#)
- [Anti-Money Laundering and Countering Financing of Terrorism \(Requirements and Compliance\) Amendment Regulations 2023](#)

How to generally stay in touch:

<https://www.justice.govt.nz/justice-sector-policy/key-initiatives/aml-cft/aml-cft-review/>

Please note: We highly recommend that you sign up for updates directly from your regulator. Here are links:

DIA: <https://www.dia.govt.nz/AML-CFT-News>

FMA: <https://www.fma.govt.nz/business/focus-areas/amlcft/>

- You can bookmark this page to keep updated, or

<https://www.fma.govt.nz/subscribe-to-fma-news-and-alerts/>

- You can sign up here, however, this may include information that does not necessarily pertain to your business.

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