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GUIDANCE NOTE

AMENDMENTS TO AML/CFT REGULATIONS - JULY 2021

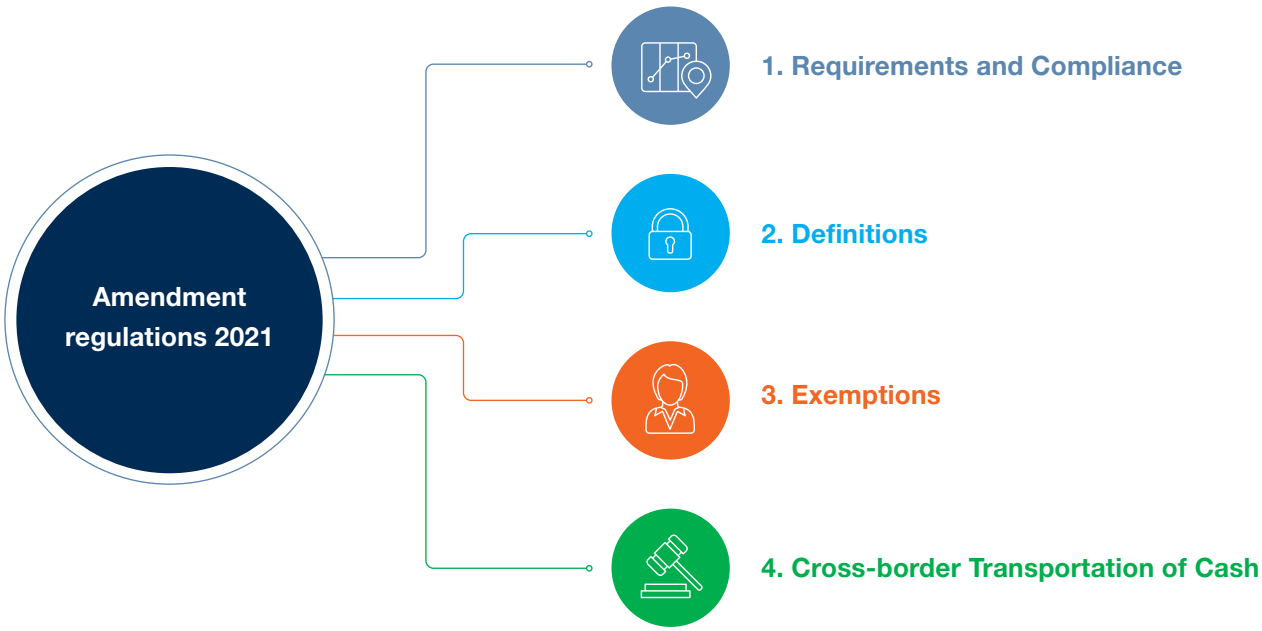
VERSION 1, JULY 2021

Background

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) sets up the AML/CFT framework in New Zealand. Alongside the Act are six sets of supporting regulations that relate to its application. New Zealand's AML/CFT system is intended to adapt as money laundering (ML) and terrorism financing (FT) risks evolve. On 9 July 2021, new amendment regulations became effective and amended four of the six regulations. These amendments are collectively referred to as the 'amendment regulations'.

Some of the changes introduced by the amendment regulations are technical, removing upcoming expiry dates and providing clarification to the existing regulations and exemptions. Others have a more substantial effect and will change the way many reporting entities need to implement their AML/CFT programmes. Although most of the amendment regulations have the effect of reducing the AML/CFT compliance burden for reporting entities, some impose additional AML/CFT obligations. Reporting entities need to be aware of these changes and take immediate preparatory action to ensure they are operating compliantly from 9 July 2021.

Amendment regulations



The three AML/CFT supervisors, the Department of Internal Affairs (DIA), Financial Markets Authority (FMA) and Reserve Bank of New Zealand (RBNZ) announced a transitional compliance period (until 29 April 2022) in relation to one of the new regulations. The implications of this transitional period are described below.

High level overview of most significant changes:

1. New requirement for reporting entities dealing with companies, limited partnerships, and overseas limited partnerships to establish and verify the existence of nominee directors, nominee shareholders and nominee general partners as part of customer due diligence (CDD). If any exist, the reporting entity must conduct enhanced CDD (EDD) on the customer.
2. Increase of the default audit period for most reporting entities from two years to three years (with a possibility of a four-year time period upon notification by the relevant AML/CFT supervisor).
3. Redefinition of the term 'related' to apply to entities that are not body corporates - resulting in an expanded 'related entity' exemption, and also the ability for related limited partnerships to form DBGs.
4. New exemptions and limited exemptions from AML/CFT obligations for entities providing certain relevant services, such as a designated non-financial business or profession (DNFBP) making low risk transactions, parties subject to certain Police orders, and court appointed liquidators.
5. Delayed timing for real estate agents conducting CDD in relation to commercial lease transactions.

These changes are detailed in this Guidance Note, with other minor changes introduced by the amendment regulations. For most reporting entities, the changes that will have the most significant implications are those described in 1 and 2 above.

The supervisors jointly announced a transitional compliance period, from 9 July 2021 until 29 April 2022, in relation to the new obligation to conduct CDD on nominee directors and nominee general partners. Although reporting entities are expected to comply with this obligation from 9 July 2021, our interpretation of the transitional period is that supervisors will exercise discretion as to how to respond to non-compliance, and whether non-compliance will attract any adverse consequences during this transitional period.

01

Amendments *increasing* AML/CFT compliance burden

Reporting entities dealing with companies and limited partnerships

Reporting entities will now have increased AML/CFT obligations when they deal with customers/clients (customers) that are companies, limited partnerships (LPs) and overseas limited partnerships (OLPs).[1] The aim of these new regulations is to protect businesses from companies that misuse nominees to obscure their beneficial owner.

The new regulations require reporting entities to:

1. As part of standard customer due diligence (CDD), obtain information from a company to determine whether there are any nominee director or nominee shareholder relationships, and from any LP or OLP to determine the existence of any nominee general partner.[2]
2. If the company determines that such a relationship exists, the reporting entity must then conduct enhanced CDD (EDD) on the company, LP or OLP.[3]

Although this new obligation will increase compliance costs for businesses, it is hoped the additional obligation will not be too onerous, as companies are required to hold information about the existence of any nominee directors or shareholders and should have it readily available.

Q&A

What does this mean in practice?

Reporting entities that deal with customers that are companies, LPs and OLPs will need to update their AML/CFT risk assessments and programmes to reflect the new regulations. The amended AML/CFT programme will need to describe how it undertakes the following process:

1. Establish whether the customer is a company, a limited partnership (LP), or an overseas limited partnership (OLP).
2. If so, does the company have any nominee directors and/or nominee shareholders (for companies) or nominee general partners (for LPS and OLPs)?
3. If so, take reasonable steps (according to the level of risk involved) to verify the existence and name of any nominee director, nominee shareholder, or nominee general partner, so that the reporting entity is satisfied it knows this information.
    - The reporting entity is not required to verify this information based on documents, data, or information issued by a reliable and independent source (as normally required for identity verification). Other reasonable steps will be adequate.
4. Where the customer is a company with a nominee director or a LP/OLP with a nominee general partner, the reporting entity must conduct enhanced CDD (EDD). This supplements the reporting entity's existing obligation to conduct EDD where a customer is a company with a nominee shareholder.

Continued over page ▸

[1] Regulations 11-12 Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011

[2] Regulation 11, Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011

[3] Regulation 12, Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011

The Regulations do not explicitly require reporting entities to obtain the name of the nominator, only the nominee. However, in some cases, the nominator may have effective control over the company/LP/OLP and so the nominator may also be subject to CDD under the reporting entity's obligation to conduct CDD on any person that has effective control of a customer (such person being included in the definition of 'beneficial owner').

Transitional compliance period

On the same day the amendment regulations came into force, the supervisors jointly announced a transitional compliance period until 29 April 2022, in relation to the new obligation to conduct CDD on nominee directors and nominee general partners (new nominee regulation). The compliance period is an acknowledgement of the fact it may take some time for reporting entities to amend their systems, processes, policies, and AML/CFT risk assessment and programme to comply with the new nominee regulation.

The supervisors' announcement does not offer reporting entities much clarity as to the effect of the transitional period. It states that "reporting entities will be expected to comply" with the obligations relating to nominee directors/general partners "as soon as possible from 9 July 2021", but that the supervisors will focus their efforts during the transitional period on "assisting compliance, and raising awareness and understanding of the new regulations", and "non-compliance beyond 30 April 2020 will be considered a breach" of the AML/CFT Act.

Our interpretation of the transitional compliance period is as follows:

1. It only applies to the new obligation to conduct CDD for nominee directors and nominee general partners. It does not apply to obligations in relation to a company's nominee shareholders. The existing obligation to conduct EDD on nominee shareholders still applies.
2. The new nominee regulation applies from 9 July 2021 and reporting entities should amend their systems and processes and update their risk assessment and programme to comply from this date. The supervisors expect compliance with the new nominee regulation from 9 July 2021 and any non-compliance with this regulation during the transitional period is technically a breach of the AML/CFT Act.
3. The supervisors will exercise their discretion as to how the reporting entity's non-compliance with the new nominee regulation within the transitional period will be dealt with and whether it will attract any adverse consequences.
4. If a reporting entity acts unreasonably and with blatant disregard for the new nominee obligation during the transitional compliance period, it is possible the relevant supervisor will still take adverse regulatory action against the reporting entity and find them in breach of the AML/CFT Act.
5. Reporting entities may have contractual obligations to report non-compliance with the AML/CFT Act. Depending on the wording of the contract, non-compliance with the new nominee regulation may trigger such reporting requirements.

Directors have a duty to act in the best interest of the company and ensure it complies with its regulatory obligations. Given the uncertain effect of the transitional period, and the remaining possibility of adverse consequences for non-compliance, all senior managers and directors should work to ensure the company/reporting entity is operating in compliance with the new regulations.

Other minor clarifications and modifications

Other minor clarifications which may in effect increase the compliance burden for some reporting entities are:

1. Widening of capture of wire transfers as 'occasional transactions'[4]

Under the AML/CFT Act, reporting entities must conduct full CDD on customers (and comply with other AML/CFT obligations such as record keeping) where customers seek to conduct an 'occasional transaction' through the reporting entity. The amendment regulations alter the position so reporting entities carrying out, and receiving wire transfers, of a sufficient size, occurring outside a business relationship will be captured and defined as 'occasional transactions'. Previously the regulations only captured the receipt of wire transfers as occasional transactions.

The amendment regulations state that wire transfers totalling $1,000 or more (either a single transaction or series of linked transactions), either carried out by a reporting entity that is an ordering institution and occurring outside the business relationship with the person sending the funds, or received by a reporting entity that is a beneficiary institution for somebody it does not have a business relationship with, are now captured as 'occasional transactions'.

Q&A

What does this mean in practice?

- Now, if a reporting entity carries out (or receives) a wire transfer over $1,000 outside of a business relationship with a customer, these transfers will be classified as 'occasional transactions' and will be subject to the CDD obligations under the AML/CFT Act. Previously, if a reporting entity only made the wire transfer, they were not captured by the AML/CFT Act in relation to this transaction and had no CDD obligations in relation to the customer.
- Reporting entities that carry out such occasional transactions will need to amend their AML/CFT risk assessment and programme to reflect this obligation, describe these customers and their risk, and their processes for complying with their AML/CFT obligations.
- *Note:* this regulation only prescribes CDD obligations. However, the reporting entity may also have additional AML/CFT obligations in relation to the wire transfer (e.g. making prescribed transaction reports (PTR) and suspicious activity reports (SAR), and EDD for certain wire transfers).

[4] Regulation 13A, Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011

2. Modification of the stored value instrument (SVI) provisions to reduce ability of reporting entities to avoid AML/CFT obligations[5]

Under the existing regulations, issuing or providing SVIs of a certain value, outside business relationships are captured as 'occasional transactions'. The amendment regulations have been modified so the value thresholds apply to the total maximum of all SVIs of the same kind, rather than each individual SVI. This change prevents multiple transactions of SVIs being issued, coming under the value thresholds, to avoid the application of AML/CFT requirements.

Under this regulation, a stored value instrument (SVI) is a portable device (including a gift voucher but excluding a credit or debit card) that contains monetary value that is not physical currency.

Additionally, the definition of 'debit card' is amended so the reference in the regulation to 'financial institution' does not apply to a non-finance business. This clarifies that non-finance businesses, such as cafes issuing loyalty cards with funds held on account, are not captured as reporting entities under the SVI provisions.

Q&A

What does this mean in practice?

- If a business issues or provides SVIs, it can no longer issue multiple, linked, smaller value SVIs to avoid conducting CDD. If the value of the combined SVIs which are of a same kind (i.e. all the SVIs redeemable for cash, or all the SVIs not redeemable for cash), the business issuing the SVIs is a reporting entity and must conduct CDD on the customer.
- Reporting entities that carry out such occasional transactions will need to amend their AML/CFT risk assessment and programme to reflect this obligation, describe these customers and their risk, and their processes for complying with their AML/CFT obligations.

[5] Regulation 15, Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011

3. Clarification that exemption for closed insurance policies only applies to life insurers[6]

There is an existing exemption applying in respect of insurance policies that are closed to new customers and new premiums. The new regulations have clarified that this exemption now only applies to life insurance policies, rather than any insurance policies that satisfied the characteristics described in the regulations

Q&A

What does this mean in practice?

- Any person relying on this exemption in respect of an insurance policy which is not a life insurance policy, will now no longer be able to rely on this exemption.
- If the person does not satisfy any other exemption in relation to the insurance policy, they will be a reporting entity and must comply with all requirements under the AML/CFT Act (including having a risk assessment and AML/CFT programme and conducting CDD on customers

[6] Regulation 11, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011

02

Amendments *reducing* **AML/CFT compliance burden**

Extended timeframe for compulsory audits[7]

One of the most significant changes introduced by the amendment regulations is the amendment to the AML/CFT independent audit requirements in section 59 of the AML/CFT Act. Reporting entities (other than high-value dealers) must now ensure they have their risk assessment and AML/CFT programme audited at least every three years (or every four years if the reporting entity's supervisor notifies the reporting entity a four-year (or more frequent) audit period applies).

This is a change from the current default two-year audit time frame and is intended to give better effect to the AML/CFT regime's risk-based approach and reflect the low to medium ML/FT risk presented by most reporting entities.

Under the amended regulations, the default audit period is three years, however AML/CFT supervisors may request more frequent audits for higher-risk reporting entities, and less frequent audits from lower risk reporting entities.

[7] Regulation 13, Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011

What does this mean in practice?

- The AML/CFT supervisors have not provided much guidance about when a four-year audit period might apply, or whether a reporting entity will need to apply to be considered, and how this might occur. We anticipate guidance will be released in due course. The Ministry of Justice's Regulatory Impact Statement from 2020 suggests reporting entities may be able to demonstrate to their supervisor they are low-risk by providing certain products or services with low ML/FT risk, or by presenting supervisory inspections showing consistently high levels of compliance. However, there is currently no official benchmark or guidance on which reporting entities can assess themselves to determine whether they may be deemed suitably low risk to warrant a four-year audit period.
- The next audit due date will change for some reporting entities, depending on the due date of their next audit under the original regulations:

    1. If a reporting entity was due to have an audit undertaken **before 9 July 2021** (but has not yet done so), the law states that the two-year timeframe for this audit still applies. If the reporting entity was due to have an audit prior to 9 July 2021 but has not done so, it is non-compliant with the law and its audit obligations.

        i. Despite this non-compliance, *DIA guidance issued on 3 December 2020* provided DIA supervised entities some supervisory lenience. This guidance explicitly stated that reporting entities with audits due between January 2021 and July 2021 would not be subject to any adverse compliance action if they did not complete an audit by the original deadline. This was conditional on the reporting entity acting in good faith and completing their audit within the three-year deadline (i.e. 1 January 2022 for real estate agents), or three years from the date of their last audit or the date they became a reporting entity.

        ii. If a reporting entity, supervised by either the FMA or RBNZ had an audit due before 9 July 2021 and it has not completed the audit, it is non-compliant with the law. Neither FMA nor RBNZ released any guidance confirming the DIA's lenient approach would be taken for non-compliant entities under their supervision. These reporting entities should complete their audits as soon as possible or seek clarification from the relevant supervisor that no adverse compliance action will be taken against them. Reporting entities supervised by FMA or RBNZ should not rely on the DIA's guidance and assume they

will not be subject to adverse consequences in relation to any non-compliance with audit timeframes.

2. If a reporting entity is due to have an audit undertaken **after 9 July 2021**, the next audit will be due three years from the date of the last audit (rather than two years). For example, if the reporting entity's last audit was 10 July 2019 and it was due to have its next audit on 10 July 2021, the new three-year time period will apply. The reporting entity will now be required to undertake an audit by 10 July 2022, three years after the date of the last audit.
3. If the reporting entity hasn't yet had an audit and its first audit date was due after 9 July 2021, the reporting entity's first audit date will now be due three years after the date it became a reporting entity (rather than two).

- Reporting entities will need to update their AML/CFT programmes to account for this changed timeframe and ensure they arrange to complete their independent audit well in advance of their next audit deadline. It is likely the supervisors will strictly enforce these timeframes and will not be lenient if a reporting entity has been given an additional year but has still not arranged their audit in time.
- Due to the default timeframe being automatically extended, some reporting entities will be at increased risk of ML/FT, and of non-compliance with the AML/CFT Act. Independent audits are a crucial tool for many reporting entities to identify and remedy weaknesses and gaps in their processes. For reporting entities that are already struggling and non-compliant with the law, this additional year before their next audit may provide an opportunity for criminals seeking to launder money or finance terrorism through their business, and an increased risk to the business if the supervisor inspects their business and finds non-compliant practices.
- We recommend businesses that have not yet completed their first audit, businesses whose risks have significantly changed since their last audit, and businesses that had significant issues raised in their last audit, arrange their audit within a two-year (rather than three year) time period. This will provide the reporting entity assurance as to whether their AML/CFT risk assessment and programme are operating effectively before they move onto a three-year audit cycle.

Expanded and new exemptions and definitions

The amendment regulations have also expanded definitions and the application of exemptions. These changes will reduce the AML/CFT compliance burden for some reporting entities.

1

Related limited partnerships can join designated business groups (DBG)[8]

A new regulation states that limited partnerships (LP)[9] are eligible for inclusion in a DBG where they are related to other members of the DBG. Under the original regulations, LPs could not join a DBG unless they provided a service under a joint venture agreement with other members of the group. This limited definition of DBG excluded many related LPs from forming or joining DBGs.

Q&A

What does this mean in practice?

- All related LPs (whether or not they provide services under a joint venture agreement) are now eligible to form a DBG and pool compliance resources with other members of the DBG.
- If a LP is eligible to be part of a DBG with another person(s) it will need to elect in writing, to be part of the DBG. The contact person for the DBG will need to notify the relevant AML/CFT supervisor within 30 days of the election to the DBG in accordance with the regulations.
- Under section 32 of the AML/CFT Act, the LP will be able to rely on another member of the DBG to fulfil many of its AML/CFT obligations when they are operating as a collective. The DBG is effectively treated as a single reporting entity, thus reducing the compliance obligations of each individual reporting entity within the DBG.
- The LP will need to amend its AML/CFT risk assessment and programme to reflect any systems, processes, and obligations it now shares with other members in the DBG, and how the reporting entity's risk assessment has changed.

2

'Related entity' exemption expanded to include other business relationships[10]

The regulations exempt 'related entities', providing relevant services to each other, from all AML/CFT obligations because the ML/FT risk is deemed to be low where there is no 'external' party. Under the current exemption, the definition of 'related' is tied to the Financial Markets Conduct Act 2013 (FMCA) and requires both parties (the reporting entity (A) and the recipient of the service (B)) to be companies and have voting products or shares, to be 'related entities' under this exemption.

[8] Regulation 7A, Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011

[9] Section 6, Limited Partnerships Act 2008

[10] Regulation 16, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011

These restrictions no longer apply, and the amendment regulations have expanded the exemption's definition of 'related entities' to include relationships where A is 'controlled' by B (and vice versa), or where A and B are both controlled by C, or where A and B are in partnership.

Q&A

What does this mean in practice?

- This expansion of the definition may allow other business structures such as incorporated societies, trusts, partnerships, and religious orders to be eligible for the exemption.
- If eligible for the exemption, the reporting entity will not have any AML/CFT obligations in relation to any relevant service provided to the related entity.
    1. If a person only deals with customers that are related entities, they may be entirely exempt from the AML/CFT Act. In this case, it will no longer be a reporting entity and will not need to conduct any CDD, or have a risk assessment or AML/CFT programme.
- Related businesses/trusts/partnerships etc should assess whether they are eligible for the exemption. If they are, they can amend their AML/CFT risk assessment and programme to reflect the exemption and that AML/CFT obligations will no longer apply to captured services provided to the 'related entity'.

3 'Related entity' exemption expanded to include other business relationships

a) For DNFBPs in relation to certain low risk transactions to third parties[11]

Under the new exemption, if a designated non-financial business or profession (DNFBP) receives a payment from a customer for the purpose of making a payment to one of the below parties, the transaction is not captured by the AML/CFT Act:

1. A New Zealand government department, the New Zealand Police, or a local authority;
2. A barrister; or
3. Any other third party carrying out business in New Zealand, where the payment relates to the provision of that business, and where the value of the transaction (or series of transactions) is less than $1,000.

[11] Regulation 24AB, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011

What does this mean in practice?

- These types of disbursements (identified above) will no longer attract AML/CFT obligations.
- Some DNFBPs only have AML/CFT obligations due to receiving and making such payments on behalf of clients. These DNFBPs will now be entirely exempt from the AML/CFT Act, will not be reporting entities and will no longer need to conduct CDD or have a risk assessment or AML/CFT programme.
- If a DNFBP is still a reporting entity in relation to other related services it provides, it will no longer have AML/CFT obligations in relation to the disbursements and transactions described above and (among other things) will not need to conduct CDD on these clients.

b) For reporting entities subject to certain Police orders[12]

Under a new exemption, if a reporting entity is subject to a Commissioner's Order[13] or production order[14] to provide information to the Police, relevant to an intelligence gathering enquiry, they will be temporarily exempt from certain obligations under the AML/CFT Act. This is to avoid compromising Police investigations and tipping off the person who is subject to the inquiry.

What does this mean in practice?

- For 30 days, the reporting entity will now no longer be required to conduct enhanced CDD, ongoing CDD, and account monitoring on a person subject to the inquiry, and will be exempt from the prohibition on doing business with a person on whom CDD cannot be conducted.
- The temporary exemption only applies for 30 days, unless otherwise notified by the Police.

[12] Regulation 24AC, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011
[13] Section 143, Anti-Money Laundering and Countering Financing of Terrorism Act 2009
[14] Section 74, Search and Surveillance Act 2012

4 For court appointed liquidators in relation to the liquidated company[15]

The amendment regulations clarify that a liquidator's customer for AML/CFT purposes is the company in liquidation.[16] Under a new regulation, reporting entities that are court appointed liquidators[17] are exempt from some CDD requirements in relation to the liquidated company. This new partial exemption addresses the difficulties liquidators face in complying with their initial and ongoing CDD requirements, while still ensuring CDD is conducted for higher risk customers and services (e.g. payments to beneficial owners, wire transfers, making PTRs and SARs).

What does this mean in practice?

- If a reporting entity is a court-appointed liquidator, in most cases, it will no longer be required to conduct initial or ongoing CDD on the liquidated company and is exempt from certain provisions of the AML/CFT Act.[18]
- The liquidator will still have obligations under the AML/CFT Act in respect of the liquidation in relation to payments to beneficial owners, wire transfers, PTRs and SARs (among other things).
- Court appointed liquidators should amend their AML/CFT programme to describe any changed processes resulting from its reduced obligations under this partial exemption. The reporting entity will still need to have processes to comply with its remaining obligations, and to ensure it is able to correctly identify the circumstances in which the partial exemption applies. The liquidator will need to ensure it complies with its remaining obligations when providing an international wire transfer (EDD, ID and verification of ID) and disbursing funds to any beneficial owners (verification of ID).

5 For reporting entities acting as executors and administrators of an estate[19] , and (a limited exemption) for services provided to an executor or administrator of an estate[20]

A new exemption applies to services provided while carrying out the role of executor or administrator. When acting in this capacity, the reporting entity will no longer have to conduct CDD in respect of services to the estate and will be exempt from all AML/CFT obligations in relation to those services, except those relating to suspicious activity reporting (SAR) and associated record keeping.

[15] Regulation 24AA, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011
[16] Regulation 5B(2), Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011
[17] Section 241(2)(c), Companies Act 1993
[18] Partial exemption from sections 14-17, 22(1)(a)-(c), 22(2)-(6), 22A, 27, 28, 31, 37 Anti-Money Laundering and Countering Financing of Terrorism Act 2009
[19] Regulation 24AD, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011
[20] Regulation 24AE, Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011

Additionally, where a reporting entity provides a relevant service to an executor or administrator of an estate (but is not the executor or administrator itself), the reporting entity is exempt from the requirements to verify the source of wealth/funds when conducting EDD on the executor/administrator and does not need to terminate the business relationship where CDD cannot be conducted.
In all other respects, when providing services to the executor/administrator (the customer), the reporting entity must comply with AML/CFT Act obligations in relation to the executor/administrator.

- One exception to this is where the reporting entity is providing services to an executor/administrator who is also a reporting entity. In these circumstances, the reporting entity will not need to conduct CDD on the executor/administrator and is only required to comply with SAR and associated record keeping obligations.

03 Amendments affecting real estate agents and property managers

Change in timing for real estate agents conducting CDD on commercial lease transactions[21]

A new regulation defines the time at which real estate agents engaging in commercial lease transactions must complete CDD on the landlord/lessor. The amendment regulations state the agent must conduct CDD before they present an offer to lease. This changes the current position which requires agents to conduct CDD in relation to the commercial lease transaction at the time they sign the agency agreement. This will reduce the compliance burden on real estate agents who sign an agency agreement, but do not actually present an offer to lease. This amendment is consistent with a risk-based approach because the ML/FT risk arises at the time a lease is offered/signed.

For other types of real estate transactions, the compliance requirements for CDD remain the same. Real estate agents must still conduct CDD on the customer before entering into an agency agreement with them.

Clarification of term 'customer' for real estate agents

The regulations also clarify that if a real estate agent is not carrying out real estate agency work on behalf of a person, they are not a 'customer' of the agent (unless the person conducts an 'occasional transaction' with the agent). If a person is a party to a real estate transaction, but the real estate agent is not carrying out real estate work on their behalf, they are not a 'customer', and the real estate agent does not need to conduct CDD on that person.

Property management activities do not attract AML/CFT obligations

The amendment regulations also clarify that property management activities do not fall under the scope of 'managing client funds'. The modification makes clear that even if you provide other real estate services that do attract AML/CFT obligations, no AML/CFT obligations apply to any property management activities that are also conducted.

Q&A

What does this mean in practice?

1. Real estate agents will need to amend their processes in their AML/CFT programme to reflect the new timing for completing CDD in commercial lease situations.
2. Real estate agents may need to amend their risk assessments and definitions of customer, as well as processes in the AML/CFT programme to reflect that CDD now does not need to be undertaken on these people.
3. Real estate agents may need to amend their AML/CFT programmes and processes to reflect that CDD is no longer conducted in relation to property management activities (unless there is an existing requirement to conduct CDD in relation to another real estate activity).

[21] Regulation 24A, Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011

04 Overall implications of amendment regulations

Although most reporting entities will not be significantly affected by the amendment regulations, the new amendments need to be read and understood by all reporting entities. The AML/CFT supervisors have provided limited guidance about these new amendment regulations, and many reporting entities are unaware of their existence, let alone their effects and how to compliantly adapt to the changes. It is not an excuse for a reporting entity to be non-compliant, merely because they have not read or understood the new changes.

Although most of the amendments will result in a reduction in compliance obligations for reporting entities, some of the changes will impose additional requirements. Reporting entities therefore need to be prepared to comply with these additional obligations from 9 July 2021. In particular, reporting entities dealing with customers which are companies and limited partnerships, will need to update their policies, processes, controls, and AML/CFT risk assessments and programmes to reflect their additional obligations in relation to any nominee directors, shareholders and general partners. If a reporting entity is changing its processes to reflect any of the changes introduced by the amendment regulations, these need to be clearly documented in their risk assessment and AML/CFT programme.

Although the supervisors have announced a transitional compliance period in relation to the new obligations relating to nominee directors and general partners until 29 April 2022, the supervisors' announcement does not explicitly exempt all non-compliance with this obligation during this period. While the supervisors will focus their efforts during this period on educating reporting entities and helping them understand how to comply, they may exercise their discretion in determining how to respond to non-compliance. Reporting entities should not seek to rely on this transitional period and should aim to comply with the new nominee obligations as soon as possible.

All other amendment regulations apply from 9 July 2021 and the transitional compliance period does not affect the application of these.

Strategi can help you understand how these regulations and changes affect you and your business. Don't hesitate to get in touch with us if you have any questions.

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GUIDANCE NOTE

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