

AML/CFT Amendment Act 2017

Information Sheet

Introduction

The Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Bill has received 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 solely for a service which is 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 customer 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 customer in relation to creating, operating, and managing a legal person and any other legal arrangement.

Compliance obligations

1. Appoint an **AML/CFT 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 assesses the risks the reporting entity may reasonably expect to face. 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 customers 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 internal procedures, policies and controls around:
 -) **Vetting** of senior managers, the AML/CFT compliance officer and any other employee that is engaged in AML/CFT related duties.
 -) **Training** on AML/CFT matters for senior managers, the AML/CFT 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 is customer identification and verification using documents, data or information issued by a reliable and independent source. There are three types of CDD; standard, simplified and enhanced. The nature and extent of CDD depends on the customer and the type of transactions they conduct.

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

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

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

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

CDD must be conducted when:

 -) A reporting entity establishes a business relationship with a **new customer**.
 -) A customer seeks to conduct an **occasional transaction** (a cash transaction of NZ\$10,000 or more that occurs outside of a business relationship) **or activity** through a reporting entity.
 -) There has been a **material change** in the nature or purpose of the business relationship with an existing customer.

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 customer conducts a domestic physical cash transaction that is more than NZ\$10,000 or an international wire transfer that is more than NZ\$1,000.

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 accounting practices 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.

Copyright

Copyright © August 2017 Chartered Accountants Australia and New Zealand. All rights reserved.

Disclaimer

This information sheet has been prepared for use by members of Chartered Accountants Australia and New Zealand (CA ANZ) in New Zealand only. It is not intended for use by any person who is not a CA ANZ member and/or does not have appropriate expertise in the subject matter.

This information sheet is intended to provide general information and is not intended to provide or substitute legal or professional advice on a specific matter. Laws, practices and regulations may have changed since publication of this information sheet. Users should make their own inquiries as to the currency of relevant laws, practices and regulations.

No warranty is given as to the correctness of the information contained in this information sheet, or of its suitability for use by you. To the fullest extent permitted by law, CA ANZ is not liable for any statement or opinion, or for any error or omission contained in this information sheet and disclaims all warranties with regard to the information contained in it, including, without limitation, all implied warranties of merchantability and fitness for a particular purpose. CA ANZ is not liable for any direct, indirect, special or consequential losses or damages of any kind, or loss of profit, loss or corruption of data, business interruption or indirect costs, arising out of or in connection with the use of this publication or the information contained in it, whether such loss or damage arises in contract, negligence, tort, under statute, or otherwise.