



Submission to the

Ministry of Justice

on the

**Anti-Money Laundering and Countering Financing
of Terrorism Act 2009
Regulations and Codes of Practice
Consultation Document, August 2010**

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SUBMISSION BY THE NEW ZEALAND BANKERS' ASSOCIATION TO THE MINISTRY OF JUSTICE ON THE ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM REGULATIONS AND CODES OF PRACTICE CONSULTATION DOCUMENT, AUGUST 2010

1. Thank you for the opportunity to make a written submission on the Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) Regulations and Codes of Practice Consultation Document of August 2010 (consultation document).

ABOUT NZBA

2. Established in 1891, the New Zealand Bankers Association (NZBA) is a non-profit unincorporated association funded by member banks. In conjunction with its members, NZBA develops and promotes the banking industry viewpoint in policy discussions and in the media. NZBA also facilitates good practices in the banking industry.
3. NZBA works with its members on a consensus basis to provide a range of services including:
 - Collective submissions on public policy and regulation which affect banks in relation to, for example, taxation, consumer credit, privacy, terrorism and money laundering
 - Development of the self-regulatory Code of Banking Practice
 - Communication on non-competitive industry issues.
4. Membership of the NZBA is open to any bank registered under the Reserve Bank of New Zealand Act 1989. Currently nine registered banks are members of the NZBA. Our members are:
 - ANZ New Zealand Limited
 - ASB Bank Limited
 - Bank of New Zealand
 - Citibank, N.A.

- Hongkong and Shanghai Banking Corporation Limited
- Kiwibank Limited
- Rabobank New Zealand Limited
- TSB Bank Limited
- Westpac New Zealand Limited.

SUBMISSION

5. This submission forms the collective view of NZBA's member banks.
6. We appreciate recognition in the latest consultation document of our submission on the February 2010 AML/CFT discussion document. We support the provision of clarity in the development of regulations and codes of practice, and the overall shape of the regime. Accordingly, our comments are limited to matters of practical concern relating to the implementation of the regime for industry.
7. Our submission makes the following main points:
 - Financial products in the scope of the regulations should be aligned with the categories set out in Financial Advisers Act 2008 (FAA)
 - Address verification requirements are unduly onerous, and would be inconsistent for residents and non-residents
 - The definition of workplace-based superannuation funds needs to be broadened
 - Driver licence verification will be unduly onerous for low value transactions. There are also inconsistencies between the use of international identification documents and New Zealand documents
 - Clarification of electronic identity verification methods within regulations would help to achieve consistency across industry and harmonisation with Australia
 - Collecting the dates of birth of trust beneficiaries is unnecessary
 - The provision of written agreements by solicitors who provide client information, for the purpose of trust account beneficial ownership obligation exemptions, should be simplified

- The risks identified by the Financial Action Task Force in relation to private banking do not reflect private banking practice in New Zealand
- The suspicious transaction reporting system needs improvement.

PRODUCTS IN SCOPE OF REGULATIONS

8. The consultation document does not clearly define those products to be exempted from, and included in, the regulations. NZBA submits that products covered by the AML/CFT regulations be aligned with category 1 and 2 products defined in section 5 of the FAA.

ADDRESS VERIFICATION REQUIREMENTS

9. Paragraph 128 recognises that verification of customer addresses will present practical difficulties. The NZBA agrees and opposes the proposed obligation for banks to verify addresses of New Zealand resident customers. The value of resident address verification is unclear, impractical, costly, and inconsistent with the exemption for non-residents proposed in paragraph 128.1.
10. The obligation to verify the addresses of New Zealand residents will be unduly onerous, particularly for low to moderate risk customers and low value transactions, especially as it would include occasional transactions conducted outside a business relationship, as identified in paragraph 130. There would be potentially high compliance costs in both verifying addresses and keeping this information for five years after the end of the business relationship (under section 50(3) of the AML/CFT Act). We see no corresponding benefit from the additional costs incurred by this requirement.
11. Moreover, this obligation is inconsistent with the proposal to exempt non-resident address verification. If there were a good reason for address verification, then it should apply to all customers. Address verification would, however, be impossible to implement universally. There would be practical difficulties in determining which customers were resident and which were non-resident. The standard of care expected of an organisation in determining resident versus non-resident status

could be disproportionately onerous. Residents could pose as tourists, and non-residents may have difficulty proving they are not resident in New Zealand.

WORKPLACE-BASED SUPERANNUATION FUNDS

12. Paragraph 150.4 proposes reduced measures for new and existing customers of superannuation schemes where funds can only be withdrawn on achieving retirement age (or death). Reference to retirement age is problematic for two reasons. First, most workplace superannuation schemes vest on exiting employment rather than retirement. Second, under the Human Rights Act 1993 there is effectively no retirement age in New Zealand, although the Act does contain reference to eligibility for national superannuation. We submit that this proposal be expanded to include reference to ~~exiting employment~~ as well as ~~vesting age~~

DOCUMENTARY IDENTITY VERIFICATION

13. Driver licences are ubiquitous and, in the absence of a national identification register, function as the main form of identification in New Zealand. They are currently used by banks as a primary form of identification. NZBA submits that the proposal to require verification of New Zealand driver licences used for identification purposes by low to moderate risk customers (paragraph 314.2) would be impractical and costly for industry. Instead, Government may wish to consider improving driver licence issuance processes to avoid the need for further verification. This would recognise the fact that driver licences are the most common form of identification in New Zealand, regardless of their original purpose. The cost of improving processes to verify identity once only at the point of licence issuance would be much more efficient and effective than the cost of multiple verification every time a driver licence is used for identification purposes.
14. The costs to industry of verifying driver licences against the national register would include system establishment costs as well as ongoing transaction costs. Customer-facing staff would need to contact a credit reporting agency to verify driver licences. The cost of verification is estimated at approximately \$2 per request, which represents a significant ongoing cost to banks, considering a

substantial majority of new and occasional bank customers use a driver licence for identification.

15. The verification proposal would impact on industry business practice by significantly increasing the time spent by customer-facing staff on verification on a daily basis. The extra time required to verify would unduly inconvenience customers (both being verified as well as waiting), delay the opening of bank accounts and require extra resources to accommodate this new compliance measure. The impact on business practice would outweigh any benefit of verification for low to moderate risk customers. Improved driver licence issuance represents a much more cost-effective approach to the issue of customer verification. Being able to rely on a driver licence as identification would level the playing field and ensure parity for resident and non-resident identification.
16. Costs to industry could be reduced if reporting entities were able to have direct, read-only and free access to the national register of driver licences to facilitate verification. This approach would still involve customer inconvenience and extra staff resources, but would avoid the credit reporting agency cost for every verification.
17. As well as cost efficiency and industry practice considerations, we have concerns about the proposal to accept international documents that could not be verified for low to moderate risk customers. For example, paragraph 314.1.8 proposes the use of foreign national identity cards, and under paragraph 314.4 an overseas citizenship or birth certificate could be used in conjunction with an international driving permit; neither of which could be verified. This approach would be inconsistent with the proposal to require verification for New Zealand driver licences. There should not be a lower standard of identity verification for customers holding only international documents.

ELECTRONIC IDENTITY VERIFICATION

18. NZBA supports in principle the proposed electronic identity verification requirements for reporting entities set out in paragraphs 331-339. We note that

electronic verification methods are not yet widely available in New Zealand, and that a prescribed approach is not proposed. Reporting entities will accordingly have to develop their own processes for electronic identity verification and be able to demonstrate that process to the supervisor. While we agree prescription is not necessary, these requirements should be clarified further in the regulations. This would assist reporting entities in developing verification processes that achieve some consistency across industry. Facilitating a consistent approach would strengthen electronic identity verification processes.

19. It would be greatly beneficial to harmonise with Australian practice in the area of electronic identity verification. We understand that in Australia banks are not responsible for verifying that the customer details match that person. Australian banks are only required to verify that the customer details match a real person. NZBA supports such an approach.

ENHANCED DUE DILIGENCE IDENTITY REQUIREMENTS

20. Paragraph 357 proposes a requirement for reporting entities to collect, but not verify, the names and dates of birth of beneficiaries of trusts. We submit that collecting the dates of birth of beneficiaries is unnecessary and of little value. As the date of birth information would not need to be verified, the collection and holding of this information is questionable. Further, this would not align with Australian practice where only the full name of beneficiaries is required.

TRUST ACCOUNTS

21. Paragraph 371 proposes an exemption from beneficial ownership obligations where trust accounts are held by another reporting entity and the facility holder has a written agreement from that other reporting entity that client identity information will be produced on request and without delay. NZBA submits that obtaining such written agreement could be difficult, especially where the facility is a solicitor's trust account. To assist reporting entities in requesting written agreements from solicitors, we ask that the Ministry of Justice engage with the New Zealand Law Society to draw this regulatory requirement to the attention of its members.

22. Under paragraph 383.2 reporting entities would be allowed to rely on other reporting entities for customer due diligence (CDD), provided that, among other things, the other reporting entity has conducted relevant CDD to at least the standard required by the AML/CFT Act. A reporting entity could only have certainty that the other reporting entity had met this standard if the other entity provided copies of documents demonstrating the completion of CDD. The regulations should provide clarification on this point.

PRIVATE BANKING

23. NZBA notes the proposal to require reporting entities to consider the money-laundering and financing of terrorism risks of private banking in their risk assessment (paragraph 364). NZBA submits that special consideration is not needed for private banking. Private banking typically deals with high net worth customers. These customers are treated like all other customers in New Zealand banks. While products and services may be tailored to meet the needs of these customers, the AML/CFT risk is the same as that for other customers. The definition of private banking set out in paragraph 365 does not correspond with private banking services provided by New Zealand banks. In particular, private banking customer identity and account details are not shielded. The Financial Action Task Force's concerns about account detail shielding and customer anonymity are therefore unfounded in the context of the New Zealand banking system.

SUSPICIOUS TRANSACTION REPORTS

24. NZBA member banks have identified operational issues with the current system to generate electronic suspicious transaction reports (STRs) to the New Zealand Police Financial Intelligence Unit (FIU). The system is considered cumbersome and could be improved. For example, the ability to submit STRs in batches, rather than individual reports being keyed into the FIU system, would enhance submission efficiency for industry and, in all likelihood, for the FIU.