

Submission

to the

Ministry of Justice

on the

Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Consultation Paper on Draft Regulations (tranche one)

31 October 2017

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following sixteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Ministry of Justice (**MoJ**) on its Consultation Paper on Draft Regulations (tranche one) (**Consultation Paper**) and commends the work that has gone into developing the Consultation Paper.
4. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Policy Director & Legal Counsel
04 802 3351 / 021 255 4043
antony.buick-constable@nzba.org.nz

Suspicious Activity Report Requirements

5. NZBA considers that the details to be contained in suspicious activity reports are generally clear, subject to the following comments:
 - (a) *Schedule 1, reg 2(b)*: it will be very difficult to capture the date and time of many activities, and it is close to impossible to capture the date and time of proposed transactions and non-financial interactions.

- (b) *Schedule 1, reg 3:*
- (i) NZBA seeks clarification as to whether the expectation is that, where a reporting entity has indicated it holds a relevant document, it also has to provide that document (our assumption is that such documentation would only be provided upon receipt of a further information request that met applicable legal requirements).
 - (ii) The categories of documents listed are very wide. NZBA seeks clarification in respect of the following:
 - (aa) What is the scope of “transactional documents”? That could potentially include statements for an extended period and therefore capture information only tangentially relevant to the suspicious activities.
 - (bb) What is the intended scope of “other”?
 - (cc) What is the intended scope of “... relevant to the grounds for suspicion”?
- (c) *Schedule 1, reg 4:* much of the information required under reg 4 will be very difficult (if not impossible) to capture in the context of persons seeking to conduct proposed transactions or services. Given that a suspicious activity could be a simple inquiry that does not progress, the reporting entity may not obtain any of the listed information. As such, “as available” will need to be an option for each of these details. Additionally, it is unclear whether reg 4 captures deposits made to the account of a customer by a person who is not acting on behalf of the customer (for example, a deposit made by a person who is not the customer or an authorised representative of the customer). If the regulation is intended to apply to transactions conducted by such persons, the information required in this section should be “as available” in recognition of the limited information that may be held by a reporting entity in relation to such persons.
- (d) *Schedule 1, reg 9:* this provision is very widely drafted and the cumulative effect of regs 3 and 9 is onerous with respect to information / documentation relating to customers and third parties.

NZBA seeks clarification in respect of the following:

- (aa) What is the intended scope of “third party involved in a suspicious activity”? For example, would a bank’s employee who processed the suspicious activity, or a legal professional who provided services to a bank’s customer involved in a suspicious activity, be considered a “third party”?
- (bb) What does it mean to be “involved” in a suspicious activity?
- (cc) In what format is the information to be provided? Will there be a dedicated “as applicable” free format section in the Schema to complete?

Classes of 'occasional activity'

6. NZBA agrees that financial institution activities should be excluded from being an 'occasional activity' for the purposes of the AML/CFT Act.
7. If financial institution activities were to be included as a class of 'occasional activity' the impact on banks (and customers) would be significant. It would mean that banks would need to conduct, and customers would need to provide information for, customer due diligence (**CDD**) any time a customer conducted a transaction at a bank other than their own, regardless of the value of the transaction. That would extend the CDD and AML/CFT obligations disproportionately, inconsistent with the risk-based nature of the AML/CFT regime.