

## One Asia Lawyers Compliance News Letter (July 2021)

(ENGLISH VERSION)

# <u>Updates on Anti-Money Laundering & Countering Financing of Terrorism</u> (AML/CFT)

## 1) Amendments to the AML/CFT Regulations in New Zealand

Four sets of amendments were made to New Zealand's Anti-Money Laundering and Countering Financing of Terrorism regulations ("AML/CFT Regulations") on 8<sup>th</sup> June 2021, and these have now come into force as of 9<sup>th</sup> July 2021. These amendments were prompted by the scheduled expiries of two of these Regulations. They had been scheduled to ensure that the Government of New Zealand reviews these Regulations within five years, as the Regulations were new and untested at the



time of issuance.<sup>1</sup> The AML/CFT (Exemptions) Regulations 2011 have now expired as of 30<sup>th</sup> June 2020, and the AML/CFT (Definitions) Regulations 2011 will partially expire on 27<sup>th</sup> July 2021.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Office of the Minister of Justice. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 - Expiring Regulations and New Regulatory Proposals. (Cabinet paper, 18 March 2020) <a href="https://www.justice.govt.nz/assets/Documents/Publications/Expiring-Anti-Money-Laundering-and-Countering-Financing-of-Terrorism-Act-2009-regulations-substantive-and-technical-changes-and-new-regulatory-proposals-LOCKED-1.pdf">https://www.justice.govt.nz/assets/Documents/Publications/Expiring-Anti-Money-Laundering-and-Countering-Financing-of-Terrorism-Act-2009-regulations-substantive-and-technical-changes-and-new-regulatory-proposals-LOCKED-1.pdf</a>

<sup>&</sup>lt;sup>2</sup> Department of Internal Affairs (Te Tari Taiwhenua). Changes to anti-money laundering and countering financing of terrorism regulations FAQs. (June 2021)

<a href="https://www.dia.govt.nz/AML-CFT-Changes-to-regulations-FAQs---Update-June-2021">https://www.dia.govt.nz/AML-CFT-Changes-to-regulations-FAQs----Update-June-2021</a>



#### The four sets of amendments are as follows:

- 1. The Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Amendment Regulations 2021 ("Requirements and Compliance Amendment")<sup>3</sup>
- 2. The Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2021 ("Exemptions Amendment")<sup>4</sup>
- 3. The Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2021 ("Definitions Amendment")<sup>5</sup>
- 4. The Anti-Money Laundering and Countering Financing of Terrorism (Crossborder Transportation of Cash) Amendment Regulations 2021 ("Crossborder Transportation of Cash Amendment")<sup>6</sup>

The points below highlight some of the key changes brought about by these Amendments.

### 1. Requirements and Compliance Amendment

 Reporting entities must obtain information from customers, who are companies, as to whether there are any nominee director relationships or nominee shareholder relationships. If the company declares that such a relationship exists, they are required to conduct enhanced customer due diligence.

3<a href="https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40regulation\_2021\_rc%40regula

<sup>&</sup>lt;sup>5</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0145/latest/LMS499212.html?search=y\_r">https://www.legislation.govt.nz/regulation/public/2021/0145/latest/LMS499212.html?search=y\_r</a> egulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1>

<sup>&</sup>lt;sup>6</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0144/latest/LMS499306.html?search=y\_r">https://www.legislation.govt.nz/regulation/public/2021/0144/latest/LMS499306.html?search=y\_r</a> egulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1>



• The default timeframe for AML/CFT audits is extended from every two years to every three years, with some businesses potentially being eligible to be audited every four years. 8

### 2. Exemptions Amendment

- It amends the exemption provided to related entities (regulation 16) so that it applies to entities that are not body corporates (therefore, more types of businesses will be captured by the 'related businesses' exemption<sup>9</sup>).
- It clarifies that regulation 11 of the Exemptions Regulations applies to life insurers only (i.e. only life insurers that provide relevant insurance policies that are closed to new customers and premiums are exempt from the AML/CFT Act<sup>10</sup>).
- Inserts new regulations relating to exemptions for relevant services provided in respect of court-appointed liquidations and certain third-party transactions, and to a subject of a Commissioner of Police's order or production order.

## 3. Definitions Amendment

 Clarifies the definition of 'customer' under the AML/CFT Act - a company in liquidation is a 'customer' of the liquidator, and in relation to the provision of relevant services to an executor or administrator of an estate, a 'customer' means that executor or administrator.

<sup>&</sup>lt;sup>7</sup> Department of Internal Affairs ((Te Tari Taiwhenua). *Information for Accountants, Audit Guideline.* 

<sup>&</sup>lt;https://www.dia.govt.nz/AML-CFT-Information-for-Accountants>

<sup>&</sup>lt;sup>8</sup> Financial Markets Authority (FMA) - Te Mana Tatai Hokohoko. *Anti-Money Laundering and Countering Financing of Terrorism - regulations update.* (July 2021)

<sup>&</sup>lt;https://www.fma.govt.nz/assets/Guidance/AML.CFT-Regulation-Update-2021.pdf>

<sup>&</sup>lt;sup>9</sup> Financial Markets Authority (FMA) - Te Mana Tatai Hokohoko. *Anti-Money Laundering and Countering Financing of Terrorism - regulations update.* (July 2021)

<sup>&</sup>lt;a href="https://www.fma.govt.nz/assets/Guidance/AML.CFT-Regulation-Update-2021.pdf">https://www.fma.govt.nz/assets/Guidance/AML.CFT-Regulation-Update-2021.pdf</a>

<sup>&</sup>lt;sup>10</sup> AML/CFL Act being the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

- Limited partnerships are now eligible for inclusion in a designated business group under the AML/CFT Act, where they are related to the other members of the designated business group.
- Clarifies the exclusion of services as an executor, administrator, or trustee from being a financial activity for the purposes of the AML/CFT Act.

#### 4. Cross-border Transportation of Cash (CBTC) Amendment

 Replaces the prescribed form for a border cash report in the Schedule<sup>11</sup> of the CBTC regulations with a list of the prescribed information that the report must contain.

As noted in a statement published by The Reserve Bank of New Zealand - Te Pūtea Matua, the Financial Markets Authority and Te Tari Taiwhenua - Department of Internal Affairs, <sup>12</sup> reporting entities will be expected to comply with the new regulations as soon as possible from 9 July 2021. However, in recognition that reporting entities will need to amend their processes and procedures (and potentially systems) a transitional compliance period will apply until 29 April 2022.

New regulation for nominee directors and nominee general partners. (9 July 2021) <a href="https://www.fma.govt.nz/assets/Guidance/Regulation-for-nominee-directors-and-nominee-general-partners-2021.pdf">https://www.fma.govt.nz/assets/Guidance/Regulation-for-nominee-directors-and-nominee-general-partners-2021.pdf</a>



## 2) New Additions to FATF (Financial Action Task Force) "grey list"

On 25<sup>th</sup> June 2021, the Financial Action Task Force (FATF) - the global money laundering and terrorist financing watchdog - announced that it had added Malta, Haiti, the Philippines and South Sudan to its list of countries under increased monitoring, which is often referred to as the "grey list". <sup>13</sup> The "grey list" indicates countries with higher risk of money laundering and terrorism financing, but which have officially committed to working with



FATF to resolve their deficiencies in this area. In fact, Malta is the first European Union country to have been placed on this list.<sup>14</sup>

Malta will work to implement its FATF action plan by (1) continuing to demonstrate that beneficial ownership information is accurate, and that authorities crack down decisively when information about beneficial ownership is found to be inaccurate; (2) enhancing the use of the FIU's (Financial Intelligence Unit's) financial intelligence to support authorities pursuing criminal tax and related money laundering cases (which includes clarifying the roles and responsibilities of the Commissioner for Revenue and the FIU); and (3) increasing the focus of the FIU's analysis on these types of criminal tax offences, to produce intelligence that helps Maltese law enforcement detect and investigate cases in line with Malta's identified money laundering risks related to tax evasion.<sup>15</sup>

Leigh, Thomas; Van Overstraeten, Benoit; Vidaon Dominique; Blair, Edmund. Reuters. *Global dirty money watchdog adds Malta to 'grey list', keeps Pakistan.* (June 26 2021)

 $<sup>\</sup>label{lem:lem:money-watchdog-adds-malta-grey-list-keeps-pakistan-2021-06-25/} $$ \frac{\hdots - \hdots - \hdots$ 

 $<sup>^{\</sup>rm 14}$  Greens/EFA. Unprecedented: Malta placed on the global grey list for money laundering. (25 June 2021)

<sup>&</sup>lt;a href="https://sven-giegold.de/en/malta-on-global-grey-list-for-money-laundering/">https://sven-giegold.de/en/malta-on-global-grey-list-for-money-laundering/</a>

<sup>&</sup>lt;sup>15</sup> Financial Actions Task Force. Jurisdictions under Increased Monitoring - June 2021.

<sup>&</sup>lt;https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-</pre>

jurisdictions/documents/increased-monitoring-june-2021.html>

 $<sup>\</sup>underline{\text{https://www.internationalinvestment.net/news/4033532/fatf-officially-reveals-malta-countries-grey-list}$ 



## One Asia Lawyers コンプライアンスニューズレター (2021 年 7 月号)

(日本語版)

## 資金洗浄・テロ資金供与防止 (AML/CFT) に関する最新情報

## 1) ニュージーランドにおける AML/CFT 規制の改正について

2021年6月8日、ニュージーランドの資金洗浄・テロ資金供与防止関連規則(以下、「AML/CFT規則」)に4組の改正が行われ、2021年7月9日より

施行されました。今回の改正は、これらの規則のうち 2 組の規則が期限切れとなることを受けて行われたもので、これらの規則は発行時には新しく未検証であったため、ニュージーランド政府が 5 年以内に本規則を見直すことが予定されていました $^1$ 。 2011 年 AML/CFT (免除) 規則はすでに 2020 年 6 月 30 日に失効しており、また 2011 年 AML/CFT (定義) 規則は 2021 年 7 月 27 日に一部失効します $^2$ 。



### 4組の改正は以下の通りです:

<sup>&</sup>lt;sup>1</sup> (法務大臣室)。 2009 年マネーロンダリング・テロ資金供与防止法-期限切れ規制と新規制案。 (内閣府 2020年3月18日) 〈https://www.justice.govt.nz/assets/Documents/Publications/Expiring-Anti-Money-Laundering-and-Countering-Financing-of-Terrorism-Act-2009-regulations-substantive-and-technical-changes-and-new-regulatory-proposals-LOCKED-1.pdf〉

<sup>&</sup>lt;sup>2</sup> 内務省 (Te Tari Taiwhenua)。マネーロンダリング防止およびテロ資金対策に関する規制の変更についてのFAQ。 (June 2021)

<sup>&</sup>lt;https://www.dia.govt.nz/AML-CFT-Changes-to-regulations-FAQs---Update-June-2021>

- 1. 2 0 2 1 年資金洗浄・テロ資金供与防止(要件およびコンプライアンス)改正規則 (以下「要件およびコンプライアンス改正」)<sup>3</sup>
- 2. 2 0 2 1 年資金洗浄・テロ資金供与防止(免除)改正規則(以下「免除改正」)<sup>4</sup>
- 3. 2 0 2 1 年資金洗浄・テロ資金供与防止(定義)改正規則(以下「定義改正」)<sup>5</sup>
- 4. 2021年資金洗浄・テロ資金供与防止(クロスボーダー現金輸送)改正規則(以下「クロスボーダー現金輸送改正」)<sup>6</sup>

以下のポイントは、改正された規則による主要な変更点の一部をご紹介いたします。

## 1. 要件およびコンプライアンス改正

• 報告主体は、企業である顧客から、ノミニーダイレクター (nominee director) 関係・ノミニー株主 (nominee shareholder) 関係の有無につき、情報を得なければなりません。このような関係があると申告した場合、企業は強化された顧客管理措置 (enhanced customer due diligence)を行う必要があります。

<sup>&</sup>lt;sup>3</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_r">https://www.legislation.govt.nz/regulation/public/2021/0147/latest/LMS499118.html?search=y\_r</a> egulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1>

<sup>&</sup>lt;sup>4</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0146/latest/LMS499387.html?search=y\_regulation%40regulation\_2021\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0146/latest/LMS499387.html?search=y\_regulation%40regulation\_2021\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1</a>

<sup>&</sup>lt;sup>5</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0145/latest/LMS499212.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1">https://www.legislation.govt.nz/regulation/public/2021/0145/latest/LMS499212.html?search=y\_regulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1</a>

<sup>&</sup>lt;sup>6</sup><a href="https://www.legislation.govt.nz/regulation/public/2021/0144/latest/LMS499306.html?search=y\_r">https://www.legislation.govt.nz/regulation/public/2021/0144/latest/LMS499306.html?search=y\_r</a> egulation%40regulation\_2021\_\_rc%40rinf%40rnif\_an%40bn%40rn\_25\_a&p=1>



• AML/CFT 監査の既定期間は、2年ごとから3年ごとに延長され<sup>7</sup>、一部の 企業は4年ごとに監査を受けることが可能となります<sup>8</sup>。

## 2. 免除改正

- 関連事業体に対する免除(規則16)を修正し、法人ではない事業体にも適用されるようにしたものです。したがって、関連事業 ('related businesses')の免除の対象となる事業体の種類が増えます<sup>9</sup>。
- 免除規則の規制 11 は、生命保険業者のみに適用されることを明確にして おります(すなわち、新規顧客や新規保険料の募集を締め切った、該当保 険契約を提供する生命保険業者のみ AML/CFT 法の対象外となります<sup>10</sup>)。
- 裁判所の任命する清算人により提供される関連サービスおよび特定の第三者取引に関して提供される関連サービス、また、警察庁長官の命令または生産命令の対象者に関して提供される関連サービスを免除とする新しい規制を挿入しているものです。

## 3. 定義改正

• 本改正は、AML/CFT 法における「顧客」の定義を明確にするものです。 清算中の会社は清算人の「顧客」であり、遺産の執行者または管理者に関 連するサービスの提供に関しては、「顧客」はその執行者または管理者を 意味します。

<sup>&</sup>lt;sup>7</sup>内務省 ((Te Tari Taiwhenua)。*会計士向け情報、監査ガイドライン。.* 

<sup>&</sup>lt;https://www.dia.govt.nz/AML-CFT-Information-for-Accountants>

<sup>&</sup>lt;sup>8</sup> 金融庁(FMA) - Te Mana Tatai Hokohoko. マネーロンダリング防止およびテロ資金供与対策-規則の更新。(2021年7月)

<sup>&</sup>lt;https://www.fma.govt.nz/assets/Guidance/AML.CFT-Regulation-Update-2021.pdf>

<sup>&</sup>lt;sup>9</sup> 金融庁 (FMA) - Te Mana Tatai Hokohoko. マネーロンダリング防止およびテロ資金供与対策-規則の更 新。(2021年7月)

<sup>&</sup>lt;https://www.fma.govt.nz/assets/Guidance/AML.CFT-Regulation-Update-2021.pdf>

<sup>10</sup> AML/CFT 法は 2009 年資金洗浄・テロ資金供与防止法を示す。

- 有限責任組合は、指定ビジネスグループの他のメンバーと関係がある場合、 AML/CFT 法にて指定ビジネスグループに含めることができるようになり ました。
- 本改正は、AML/CFT 法の目的上、執行者、管理者、受託者としてのサービスが金融活動から除外されることを明確にします。

### 4. クロスボーダー現金輸送改正

• 本規則の別表にあるボーダーキャッシュ報告書の所定の書式<sup>11</sup>を、報告書 が含まなければならない所定の情報のリストに置き換えます。

ニュージーランド準備銀行(Reserve Bank of New Zealand)、金融庁 (Financial Markets Authority)、内務省(Department of Internal Affairs)が発表した声明により<sup>12</sup>、2021年7月9日以降、報告主体は早速この新しい規制に準拠することが求められます。しかし、報告主体がプロセス・手続き(および潜在的なシステム)等修正する必要があることを考慮し、2022年4月29日まで過渡的な遵守期間が適用されます。

<sup>12</sup> ノミニーダイレクターとノミニージェネラルパートナーの新規制(2021年7月9日)

 $<sup>\</sup>label{lem:lem:massets/Guidance/Regulation-for-nominee-directors-and-nominee-general-partners-2021.pdf} $$ \sum_{n=1}^{\infty} \frac{1}{n} \left( \frac{1}{n} \right) \left( \frac{1}{n} \right)$ 

## 2) 金融活動作業部会 (FATF) の 「グレーリスト」への新規追加について

2021年6月25日、資金洗浄・テロ資金供与の国際的監視機関である金融

活動作業部会 (FATF)は、マルタ、ハイチ、フィリピン、南スーダンを監視強化対象の「グレーリスト」に追加されました<sup>13</sup>。「グレーリスト」とは、資金洗浄・テロ資金供与のリスクが高いものの、この分野での欠陥を解消するため、FATF と協力することを公式に約束している国を示しています。実際、マルタはこのリストに掲載された初めての欧州連合の国となりました<sup>14</sup>。



マルタは、以下の方法にて FATF 行動計画の実施に取り組みます。

- (1) 受益者情報が正確であること、および受益者情報が不正確であることが判明した場合に当局が断固として取り締まることを引き続き実証すること。
- (2) 金融情報機関 (Financial Intelligence Unit, 'FIU') による金融情報の 活用を強化し、税務およびマネーロンダリング関連の刑事事件を追う当局を支援 すること(これには、歳入庁長官と FIU の役割と責任の明確化が含まれます)。
- (3) マルタの法執行機関が脱税に関連するマルタで特定されたマネーロンダリングリスクに沿った事件を発見・捜査するためにこれらのタイプの刑事上の税犯罪に対する FIU の分析対象を拡大すること <sup>15</sup>。

 $<sup>^{13}</sup>$  ロイター (2021年6月28日) 〈https://www.reuters.com/article/fatf-finance-idJPKCN2E30M8〉

<sup>&</sup>lt;sup>14</sup> Greens/EFA. *前代未聞。マルタがマネーロンダリングの世界的なグレーリストに掲載されました。* ( 2021 年 7 月 25 日)

<sup>&</sup>lt;https://sven-giegold.de/en/malta-on-global-grey-list-for-money-laundering/>

<sup>15</sup> 金融活動作業部会。監視を強化している管轄国 - 2021 年 6 月.

<sup>&</sup>lt;https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-</pre>

jurisdictions/documents/increased-monitoring-june-2021.html>

 $<sup>\</sup>underline{\text{https://www.internationalinvestment.net/news/4033532/fatf-officially-reveals-malta-countries-grey-list}$