



Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations (No 2) 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 26th day of June 2023

Present:

The Hon Carmel Sepuloni presiding in Council

These regulations are made under sections 5, 153, and 154 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009—

- (a) on the advice and with the consent of the Executive Council; and
- (b) in relation to regulations made under section 154 of that Act, on the recommendation of the Minister of Justice made in accordance with section 154(2) and (3) of that Act.

Contents

| | | Page |
|---|-----------------------|------|
| 1 | Title | 3 |
| 2 | Commencement | 3 |
| 3 | Principal regulations | 3 |

Part 1

Amendments commencing on 31 July 2023

| | | |
|---|--|---|
| 4 | Regulation 4 amended (Interpretation) | 4 |
| 5 | New regulation 5AA inserted (Inclusion: individual with ultimate ownership or control of customer or person) | 4 |
| | 5AA Inclusion: individual with ultimate ownership or control of customer or person | 4 |

| | | |
|----|---|---|
| 6 | Regulation 5B replaced (Definition of customer) | 4 |
| | 5B Definition of customer: real estate agents | 5 |
| | 5C Definition of customer: liquidators | 5 |
| | 5D Definition of customer: executors or administrators of estates | 5 |
| | 5E Definition of customer: facility provided by reporting entity to trust | 5 |
| | 5F Definition of customer: designated non-financial business or profession acting as formation agent of legal persons or legal arrangement | 5 |
| | 5G Definition of customer: designated non-financial business or profession acting as nominee director, nominee shareholder, or trustee of legal person or legal arrangement | 6 |
| 7 | New regulations 10AAA to 10AAAC and cross-headings inserted | 6 |
| | <i>Definition of financial institution</i> | |
| | 10AAA Inclusion: person who keeps or administers virtual assets | 6 |
| | 10AAA B Exclusion: non-finance businesses that transfer money to facilitate purchase of goods or services | 6 |
| | <i>Definition of legal arrangement</i> | |
| | 10AAA C Prescribed legal arrangements | 6 |
| 8 | Regulation 13A replaced (Inclusion: wire transfers of more than \$1,000) | 7 |
| | 13A Inclusion: wire transfers: \$1,000 or more | 7 |
| | 13B Inclusion: wire transfers of \$1,000 or more made by designated non-financial business or profession through another reporting entity | 7 |
| 9 | Regulation 15 amended (Inclusion: transactions involving certain stored value instruments) | 7 |
| 10 | New regulation 15A and cross-heading inserted | 8 |
| | <i>Definitions of ordering institution, beneficiary institution, and intermediary institution</i> | |
| | 15A Exclusion: designated non-financial business or profession making or receiving wire transfers | 8 |
| 11 | Regulation 16 amended (Inclusion: certain financial advice providers) | 8 |
| 12 | New regulation 17A inserted (Inclusion: Entain New Zealand Limited) | 9 |
| | 17A Inclusion: Entain New Zealand Limited | 9 |
| 13 | Regulation 18A revoked (Exclusion: non-finance businesses that transfer money to facilitate purchase of goods or services) | 9 |

**Anti-Money Laundering and Countering Financing of
Terrorism (Definitions) Amendment Regulations (No 2)
2023**

2023/158

r 3

| | | |
|----|---|---|
| 14 | New regulation 18B inserted (Exclusion: agent of money or value transfer service carrying out certain activities) | 9 |
| | 18B Exclusion: agent of money or value transfer service carrying out certain activities | 9 |
| 15 | Regulation 24A and cross-heading above regulation 24A replaced | 9 |
| | <i>Definition of trust and company service provider</i> | |
| | 24A Exclusion: trust and company service provider | 9 |

Part 2

Amendments commencing on 1 June 2024

| | | |
|----|--|----|
| 16 | Regulation 6 amended (Prescribed election process) | 10 |
| 17 | New regulation 15AA inserted (Inclusion: virtual asset transaction: \$1,000 or more) | 10 |
| | 15AA Inclusion: virtual asset transaction: \$1,000 or more | 10 |
| 18 | Regulation 21 amended (Exclusion: pawnbrokers) | 10 |
| 19 | New regulation 24AA and cross-heading inserted | 10 |
| | <i>Definition of transaction</i> | |
| | 24AA Inclusion: virtual assets | 11 |
| 20 | New regulation 24AB and cross-heading inserted (Inclusion: virtual assets) | 11 |
| | <i>Definition of wire transfer</i> | |
| | 24AB Inclusion: virtual assets | 11 |

Part 3

Amendment commencing on 1 June 2025

| | | |
|----|--|----|
| 21 | Regulation 21A revoked (Exclusion: providers of Internet auctions) | 11 |
|----|--|----|

Regulations

1 Title

These regulations are the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations (No 2) 2023.

2 Commencement

- (1) These regulations, except Parts 2 and 3, come into force on 31 July 2023.
- (2) Part 2 comes into force on 1 June 2024.
- (3) Part 3 comes into force on 1 June 2025.

3 Principal regulations

These regulations amend the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011.

Part 1

Amendments commencing on 31 July 2023

4 Regulation 4 amended (Interpretation)

In regulation 4, insert in their appropriate alphabetical order:

Entain New Zealand Limited means the company that has entered into a partnering arrangement with TAB NZ in accordance with section 54(4) of the Racing Industry Act 2020

real estate agency work has the same meaning as in section 4(1) of the Real Estate Agents Act 2008

trust account means an account or other arrangement for the purpose of holding funds that belong to more than 1 client of a reporting entity

virtual asset—

- (a) means a digital representation of value that can be—
 - (i) digitally traded or transferred; or
 - (ii) used for payment or investment purposes; but
- (b) does not include—
 - (i) a digital representation of a fiat currency; or
 - (ii) a financial product within the meaning of section 7 of the Financial Markets Conduct Act 2013

5 New regulation 5AA inserted (Inclusion: individual with ultimate ownership or control of customer or person)

After regulation 5, insert:

5AA Inclusion: individual with ultimate ownership or control of customer or person

For the purposes of the definition of beneficial owner in section 5(1) of the Act, **beneficial owner**—

- (a) includes a person with ultimate ownership or control of the customer, whether directly or indirectly;
- (b) includes a person on whose behalf the transaction is conducted that is a customer of a customer, but only if the person meets the requirement set out in paragraph (a).

6 Regulation 5B replaced (Definition of customer)

Replace regulation 5B with:

5B Definition of customer: real estate agents

- (1) For the purposes of paragraphs (b)(iv) and (c) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a real estate agent,—
 - (a) means a client of that real estate agent; and
 - (b) excludes any party to a real estate transaction on whose behalf the real estate agent is not carrying out real estate agency work; but
 - (c) despite paragraph (b), includes a person who conducts an occasional transaction with a real estate agent.
- (2) In subclause (1), **client** has the meaning given in section 4(1) of the Real Estate Agents Act 2008.

5C Definition of customer: liquidators

- (1) For the purposes of paragraph (b)(iv) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a liquidator appointed under section 241(2) of the Companies Act 1993, means the company in liquidation.
- (2) For the purposes of paragraph (b)(iv) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a liquidator appointed under section 88 or 89 of the Limited Partnerships Act 2008, means the limited partnership in liquidation.

5D Definition of customer: executors or administrators of estates

For the purposes of paragraph (b)(iv) of the definition of customer in section 5(1) of the Act, **customer**, in relation to the provision of relevant services to an executor or administrator of an estate, means that executor or administrator.

5E Definition of customer: facility provided by reporting entity to trust

For the purposes of paragraphs (b)(iv) and (c) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a facility provided by a reporting entity to a trust,—

- (a) means the trust;
- (b) excludes trustees of the trust.

5F Definition of customer: designated non-financial business or profession acting as formation agent of legal persons or legal arrangement

- (1) This regulation applies in respect of an occasional activity as described in paragraph (a) of the definition of occasional activity in section 5(1) of the Act.
- (2) For the purposes of paragraph (b)(iv) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a designated non-financial business or profession that is instructed to form a legal person or a legal arrangement, means the person who instructs the designated non-financial business or profession to form the legal person or legal arrangement.

- (3) The designated non-financial business or profession must also comply with section 16(1)(b) of the Act in relation to the legal person or legal arrangement that is being formed.

5G Definition of customer: designated non-financial business or profession acting as nominee director, nominee shareholder, or trustee of legal person or legal arrangement

For the purposes of paragraph (b)(iv) of the definition of customer in section 5(1) of the Act, **customer**, in relation to a designated non-financial business or profession that acts, or arranges for a person to act, as a nominee director or nominee shareholder or trustee of a legal person or legal arrangement, means that legal person or legal arrangement.

7 New regulations 10AAA to 10AAAC and cross-headings inserted

Before the cross-heading above regulation 10, insert:

Definition of financial institution

10AAA Inclusion: person who keeps or administers virtual assets

- (1) This regulation applies to a person who, in the ordinary course of business, provides safekeeping or administration of virtual assets on behalf of any person.
- (2) A person to whom this regulation applies is declared to be a financial institution for the purposes of the Act.

10AAAB Exclusion: non-finance businesses that transfer money to facilitate purchase of goods or services

- (1) A person is declared not to be a financial institution for the purposes of the Act by reason only that, in the ordinary course of a non-finance business, the person transfers money on behalf of a customer to facilitate the purchase of goods or services by the customer.
- (2) In this regulation, **non-finance business** means a person whose only or principal business is the provision of goods or services that are not relevant services.

Definition of legal arrangement

10AAAC Prescribed legal arrangements

For the purposes of paragraph (d) of the definition of legal arrangement in section 5(1) of the Act, the following are prescribed as **legal arrangements** for the purposes of the Act:

- (a) an unincorporated society;
- (b) a fiducie, a treuhand, or a fideicomiso.

8 Regulation 13A replaced (Inclusion: wire transfers of more than \$1,000)

Replace regulation 13A with:

13A Inclusion: wire transfers: \$1,000 or more

- (1) This regulation applies to every transaction—
 - (a) that is a wire transfer; and
 - (b) that involves an amount of \$1,000 or more (whether the transaction is carried out in a single operation or several operations that appear to be linked); and
 - (c) that—
 - (i) is carried out by a financial institution that is an ordering institution and occurs outside of a business relationship with the originator; or
 - (ii) involves the receipt of funds by a financial institution that is a beneficiary institution and occurs outside of a business relationship with the beneficiary.
- (2) Every transaction to which this regulation applies is declared to be an occasional transaction for the purposes of the Act.

13B Inclusion: wire transfers of \$1,000 or more made by designated non-financial business or profession through another reporting entity

- (1) This regulation applies to every transaction that—
 - (a) is a wire transfer made by a designated non-financial business or profession from its trust account on behalf of a person through another reporting entity; and
 - (b) involves an amount of \$1,000 or more (whether the transaction is carried out in a single operation or several operations that appear to be linked); and
 - (c) occurs outside of a business relationship with the person instructing the designated non-financial business or profession to make the wire transfer.
- (2) Every transaction to which this regulation applies is declared to be an occasional transaction for the purposes of the Act.

9 Regulation 15 amended (Inclusion: transactions involving certain stored value instruments)

- (1) After regulation 15(1A), insert:
- (1B) This regulation applies to a relevant service in respect of a stored value instrument to which subclause (1A) applies that is issued or provided to a customer in which each stored value instrument appears to be for a different final recipient.

- (2) In regulation 15(4), replace the definition of **stored value instrument** with:

stored value instrument—

- (a) means an instrument (whether tangible or intangible), including a gift facility or voucher, that is capable of storing monetary value in a form that is not physical currency or giving access to monetary value stored in a form that is not physical currency, regardless of whether the instrument is reloadable or able to be redeemed for cash; and
- (b) includes—
 - (i) a portable instrument (whether tangible or intangible) whose value, or associated value, is transferable to a third party or able to be remitted; and
 - (ii) any account or other arrangement associated with the value stored on the instrument; but
- (c) does not include—
 - (i) a credit card or a debit card; or
 - (ii) an instrument that stores a virtual asset.

10 New regulation 15A and cross-heading inserted

After regulation 15, insert:

Definitions of ordering institution, beneficiary institution, and intermediary institution

15A Exclusion: designated non-financial business or profession making or receiving wire transfers

- (1) This regulation applies to a designated non-financial business or profession that—
 - (a) makes a wire transfer from its trust account held with another reporting entity on behalf of a customer; or
 - (b) receives a wire transfer into its trust account held with another reporting entity on behalf of a customer.
- (2) A designated non-financial business or profession to which this regulation applies is declared not to be any of the following for the purposes of the Act:
 - (a) an ordering institution:
 - (b) a beneficiary institution:
 - (c) an intermediary institution.

11 Regulation 16 amended (Inclusion: certain financial advice providers)

In regulation 16(2), replace “Subject to regulation 20, a financial” with “A financial”.

12 New regulation 17A inserted (Inclusion: Entain New Zealand Limited)

Before regulation 18, insert:

17A Inclusion: Entain New Zealand Limited

Entain New Zealand Limited is declared to be a reporting entity for the purposes of the Act to the extent that it—

- (a) conducts betting under the Racing Industry Act 2020;
- (b) operates accounts or provides vouchers.

13 Regulation 18A revoked (Exclusion: non-finance businesses that transfer money to facilitate purchase of goods or services)

Revoke regulation 18A.

14 New regulation 18B inserted (Exclusion: agent of money or value transfer service carrying out certain activities)

After regulation 18A, insert:

18B Exclusion: agent of money or value transfer service carrying out certain activities

- (1) This regulation applies to an agent of an operator of a money or value transfer service that is, in the ordinary course of business, carrying out training, monitoring, or other assurance activities in relation to a sub-agent of the operator.
- (2) A person to whom this regulation applies is declared not to be a reporting entity for the purposes of the Act while they are carrying out training, monitoring, or other assurance activities in relation to the sub-agent of the operator.

15 Regulation 24A and cross-heading above regulation 24A replaced

Replace regulation 24A and the cross-heading above regulation 24A with:

Definition of trust and company service provider

24A Exclusion: trust and company service provider

- (1) If the circumstances in subclause (2) are satisfied, it is declared that a person is not a trust and company service provider for the purposes of the Act.
- (2) The circumstances are that—
 - (a) the person is a financial institution; and
 - (b) the person's only DNFBP activity is managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets.
- (3) In this regulation, **DNFBP activity** means an activity described in paragraphs (a)(i) to (vi) of the definition of designated non-financial business or profession in section 5(1) of the Act.

Part 2

Amendments commencing on 1 June 2024

16 Regulation 6 amended (Prescribed election process)

Replace regulation 6(2)(a) and (b) with:

- (a) the expiry of the initial 30-day period if the AML/CFT supervisor—
 - (i) has not requested further information during that period; and
 - (ii) has not declined formation of the designated business group during that period:
- (b) if the AML/CFT supervisor has requested further information during the initial 30-day period, the expiry of any second or subsequent 30-day period during which the AML/CFT supervisor—
 - (i) has not indicated that the entity is ineligible or that its eligibility cannot be determined; and
 - (ii) has not declined formation of the designated business group:

17 New regulation 15AA inserted (Inclusion: virtual asset transaction: \$1,000 or more)

After regulation 15, insert:

15AA Inclusion: virtual asset transaction: \$1,000 or more

- (1) This regulation applies to a transaction that—
 - (a) is a virtual asset transaction or a virtual asset-to-virtual asset transaction; and
 - (b) is for an amount of \$1,000 or more (whether the transaction is carried out in a single operation or several operations that appear to be linked); and
 - (c) occurs outside of a business relationship.
- (2) Every transaction to which this regulation applies is declared to be an occasional transaction for the purposes of the Act.

18 Regulation 21 amended (Exclusion: pawnbrokers)

In regulation 21, insert as subclause (2):

- (2) However, a pawnbroker that is a high-value dealer (as defined in section 5(1) of the Act) is declared to be a reporting entity for the purposes of the Act.

19 New regulation 24AA and cross-heading inserted

After regulation 24, insert:

Definition of transaction

24AA Inclusion: virtual assets

For the purposes of paragraph (b)(ii) of the definition of transaction in section 5(1) of the Act, the deposit, withdrawal, exchange, or transfer of a virtual asset is declared to be a transaction for the purposes of the Act.

20 New regulation 24AB and cross-heading inserted (Inclusion: virtual assets)

After regulation 24A, insert:

Definition of wire transfer

24AB Inclusion: virtual assets

For the purposes of paragraph (b) of the definition of wire transfer in section 5(1) of the Act, the following transfers are declared to be wire transfers for the purposes of the Act:

- (a) a virtual asset to virtual asset transfer:
- (b) a virtual asset to fiat currency transfer (or vice-versa).

Part 3

Amendment commencing on 1 June 2025

21 Regulation 21A revoked (Exclusion: providers of Internet auctions)

Revoke regulation 21A.

Diana Hawker,
Acting Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 (the **principal regulations**), which deal with matters relating to certain terms defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**). The regulations come into force as follows:

- *Part 1* comes into force on 31 July 2023:
- *Part 2* comes into force on 1 June 2024:
- *Part 3* comes into force on 1 June 2025.

Part 1 amends the principal regulations to—

- insert new definitions of the terms Entain New Zealand Limited, real estate agency work, trust account, and virtual asset into the principal regulations:
- clarify that a customer of a real estate agent means the client of the agent but does not include a party to a real estate transaction on whose behalf the real estate agent is not carrying out real estate agency work:
- clarify that a customer, in relation to the provision of relevant services to a liquidator appointed under the Companies Act 1993 or the Limited Partnerships Act 2008, means the company or limited partnership in liquidation:
- clarify that a customer, in relation to the provision of relevant services to the executor or administrator of an estate, means the executor or administrator of the estate:
- clarify that a customer, in relation to a facility provided by a reporting entity to a trust, means the trust (and does not include the trustees of the trust):
- clarify that a customer, in relation to a designated non-financial business or profession that is instructed to form a legal person or a legal arrangement, means the person who instructs the designated non-financial business or profession to form the legal person or legal arrangement:
- clarify that a customer, in relation to a designated non-financial business or profession that acts as a nominee director or nominee shareholder or trustee of a legal person or legal arrangement, means the legal person or legal arrangement arranging for someone to act:
- clarify that definition of beneficial owner in section 5(1) of the Act includes a person with ultimate ownership or control of the customer, whether directly or indirectly, but excludes a person on whose behalf the transaction is conducted that is a customer of a customer if specified criteria are met:
- declare a virtual asset service provider who provides safekeeping or administration of virtual assets on behalf of any person to be a financial institution for the purposes of the Act:
- declare a non-finance business that transfers money to facilitate purchase of goods or services not to be a financial institution for the purposes of the Act:
- prescribe unincorporated societies and certain foreign legal arrangements to be legal arrangements for the purposes of the Act:
- declare wire transfers of \$1,000 or more made by a designated non-financial business or profession through another reporting entity to be occasional transactions for the purposes of the Act:
- declare certain wire transfers of \$1,000 or more carried out by financial institutions to be occasional transactions for the purposes of the Act:
- adjust the definition of stored value instrument in regulation 15(4) to ensure that it covers any device:

- declare that a designated non-financial business or profession that makes or receives a wire transfer through another reporting entity on behalf of a customer is not an ordering institution, a beneficiary institution, nor an intermediary institution for the purposes of the Act:
- remove a cross-reference in regulation 16 that refers to a regulation that has been revoked:
- declare Entain New Zealand Limited to be a reporting entity for the purposes of the Act, following a partnership agreement between Entain New Zealand Limited and TAB NZ authorised by the Minister for Racing under section 54(4) of the Racing Industry Act 2020:
- revoke regulation 18A, as it has been replaced by *new regulation 10AAAB*:
- declare that an agent of an operator of a money or value transfer service is not a reporting entity for the purposes of the Act while they are carrying out training, monitoring, or other assurance activities in relation to a sub-agent of the operator:
- declare a financial institution whose only activity is managing client funds not to be a trust and company service provider for the purposes of the Act.

Part 2 amends the principal regulations to—

- clarify the prescribed election process in regulation 6 of the principal regulations:
- declare virtual asset transactions or virtual asset-to-virtual asset transactions of \$1,000 or more and that occur outside a business relationship to be occasional transactions for the purposes of the Act:
- declare the deposit, withdrawal, exchange, or transfer of a virtual asset to be a transaction for the purposes of the Act:
- provide that the exclusion of pawnbrokers from the definition of reporting entity in section 5(1) of the Act does apply to a pawnbroker who is a high-value dealer (as defined in that section):
- declare certain virtual asset transfers to be wire transfers for the purposes of the Act.

Part 3 revokes the exclusion of providers of internet auctions from the definition of reporting entity in section 5(1) of the Act (set out in regulation 21A).

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 12 October 2022 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/assets/Documents/Publications/RIS-AMLCFT-Early-Regulatory-Proposals.pdf>

**Anti-Money Laundering and Countering Financing of
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Explanatory note

2023/158

- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

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These regulations are administered by the Ministry of Justice.

Wellington, New Zealand:

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