

**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ  
INC**

**SUBMISSION TO THE  
MINISTRY OF JUSTICE**

**ON THE**

**ANTI-MONEY LAUNDERING AND  
COUNTERING FINANCING OF TERRORISM**

**REGULATIONS AND CODES OF PRACTICE**

**CONSULTATION DOCUMENT**

6 September 2010



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# **Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Consultation Document on Regulations and Codes of Practice**

## **1.0 Introduction**

- 1.1 The Investment Savings and Insurance Association (“ISI”) welcomes the opportunity to comment on the Ministry of Justice consultation document on Regulations and Codes of Practice.
- 1.2 ISI represents the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for assets in excess of \$60 billion and a list of member companies appears at the end of this document.
- 1.3 We were pleased to see some recognition of the comments ISI provided on the draft discussion document on regulations and codes of practice in March 2010. This current submission focuses on our remaining concerns on practical issues.

## **2.0 Specific Recommendations**

### **2.1 Life Insurance**

- Low premium rate policies should be totally exempt.

### **2.2 Workplace Superannuation and KiwiSaver**

- Criteria for the proposed reduced CDD measures for workplace superannuation should be amended to make the proposals workable and specifically applicable to KiwiSaver.
- Provisions to allow for the block transfer of members between schemes should be included.

### **2.3 CDD and identity verification**

- A code of practice with safe harbours for identity verification should have sufficient flexibility to cope with exceptions from the prescribed list.
- The safe harbour requirement to check for other persons claiming the same identity is excessive and should be deleted or at least made subject to risk assessment.
- The requirement to collect the names and dates of birth of beneficiaries of trusts should explicitly exclude existing clients.
- There should be clear guidelines as to when a reporting entity may choose to collect information about the classes of beneficiary rather than names and dates of birth where a trust has a large number of potential beneficiaries.

**2.4 Financial Advisers**

- Authorised financial advisers (“AFAs”) will be subject to supervision under the Financial Advisers Act and should not have reporting requirements duplicated under the AML/CFT Act where there is overlap between the two regimes.
- Where an AFA is also a nominated representative of a Qualifying Financial Entity (“QFE”), the reporting requirements of the QFE and AFA should not be duplicated.

**2.5 Reliance on Third Parties**

- CDD requirements in respect of investors investing through wrap platforms should be the responsibility of the reporting entity that is the wrap platform provider rather than the reporting entities that are investment product providers.

## 3.0 Detailed Comments

### 3.1 Exemption for low-risk products and services

We support the proposal for an exemption from the AML/CFT regime for general insurance and pure risk life insurance policies as these products pose very low ML/FT risks in practice. We note that in order for such exemptions to be effective, the issue of definition will need to be carefully considered. This is particularly the case in distinguishing pure risk life policies from life policies with a genuine investment component. On this point, we submit that it would be desirable for the industry to have legislative consistency in the terminology and definitions used in this area, and note that the issue of definition is currently being dealt with by the Ministry of Economic Development in the context of the Financial Advisers Act regulations development and Securities Law review. The ISI believes that the timing of these various activities presents a good opportunity for consistency in this area.

We previously recommended that life insurance investment policies with very low premium rates should also be exempted from the AML/CFT regime on the grounds that they represent a minimal risk. That would be consistent with their treatment in Australia. However, we see from the consultation document that the Ministry is of the view that it has not been provided with sufficient justification for applying a low premium exemption. The ISI would like to address this issue.

We acknowledge that the current proposal is to limit the obligation to requiring CDD verification on payout of the policy. However, this still requires insurers to comply with some obligations of the Act in respect of relevant policies. This requires insurance companies to set up internal systems to administer these policies separately from those that are either totally exempt or totally within the regime. In practice, this may cause more administrative difficulty than simply requiring full compliance with the Act in respect of these policies.

We consider that the compliance costs for the insurance industry imposed by the additional administration are not justified by the minimal risk these policies represent and we recommend that the decision is made to harmonise with Australia and grant them a full exemption.

In terms of substantive justification for such an exemption, it is inherent in and consistent with the risk based approach set out in the Act. Low premium (and accordingly low value) policies provide minimal opportunity or incentive for ML/CT activity.

### 3.2 Superannuation Funds

We have a continuing concern that the criteria required for superannuation schemes to qualify for reduced measures for new and existing customers (listed in paragraphs 150 and 151) will mean that very few will in fact qualify.

- It is not usual for workplace based superannuation schemes to limit withdrawal of funds to members achieving retirement age or their earlier death.
- It is more usual for members of workplace based superannuation schemes in New Zealand to be able to make withdrawals prior to retirement on the grounds of financial hardship, special (compassionate) circumstances such as terminal illness and on leaving employment with that employer.

- Workplace-based KiwiSaver scheme membership also permits withdrawals on grounds of financial hardship and first home purchases.

In addition, the criteria restrict payment on permanent emigration to FATF-compliant countries. That restriction would require an amendment to scheme trust deeds (with the consent of all members) and would be difficult to administer.

We agree that the proposed reduced measures should apply only to schemes that are registered under either the Superannuation Schemes Act 1989 (which requires that the scheme is primarily for the purposes of retirement savings) or the KiwiSaver Act 2006.

We recommend that the criteria be revised, in view of the excessive limitations they impose, in order that the Ministry's intentions stated in paragraphs 152-154 may be achieved for all of those schemes.

Paragraphs 155-157 recognise that it would be difficult for a KiwiSaver provider to conduct CDD on a default member prior to the establishment of the business relationship and propose that provisions similar to those under the FTRA should apply. Unfortunately, the restrictions listed in paragraph 150 mean that most if not all KiwiSaver schemes will not be able to take advantage of the proposal.

We recommend that all KiwiSaver scheme providers should be able to rely on CDD undertaken by the employer in conjunction with the IRD and should be required to conduct verification only when a payment is made from the scheme.

Similarly, where an employer has chosen a preferred KiwiSaver scheme (as allowed under section 46 of the KiwiSaver Act) the KiwiSaver provider should be able to rely on the employer and the IRD having verified the identity of the employee.

We would also appreciate clarification of the position of an employed KiwiSaver member who leaves employment without notifying the scheme provider. Do the reduced measures for CDD in respect of that member remain in place until payment is made?

We note that there has been no solution proposed for the problem involving the block transfers of members between superannuation schemes. These transfers routinely involve the transfer of hundreds of members and requiring reporting identities to verify the identity of all members in person or through a 'trusted referee' will be an excessive administrative burden.

### **3.3 Treatment of Financial Advisers**

The discussion document proposes to explicitly include persons who provide financial adviser services to wholesale clients who invest in category 1 products. We would appreciate clarification of whether individuals will be captured as reporting entities when they are employed by a corporate entity acting as an investment manager or whether it will be the investment manager that will qualify as the reporting entity.

We have previously recommended that financial advisers should have an exemption from the requirement to have an AML/CFT programme, compliance officer, risk

assessment audit and annual report. We recommend that, at the very least, reporting requirements should not duplicate those that AFAs will be subject to under the Financial Advisers Act.

We also recommend that, where an AFA is also a nominated representative of a QFE, their reporting requirements under the AML/CFT Act should not be duplicated.

#### **3.4 Customer Due Diligence – Identity Verification**

We support the proposal to use a generic code of practice, with certain safe harbours, as the basis for identity verification. A code should provide the necessary flexibility for customers who may not have access to documents in a list prescribed in regulation. The young, elderly, refugees and recent immigrants may not have a current New Zealand passport or firearms licence and there may be difficulties in obtaining birth certificates or other prescribed identity documents.

In respect of the acceptance (or otherwise) of the New Zealand Driver Licence as a form of identification, while the Ministry may hold concerns about the integrity of this as a source document, its use is widespread and it is the form of identification that most members of the public will expect to provide. It is also an accepted form of identification for other parts of Government, for example in support of documents registered under the Land Transfer system. While it may be that a 'higher' form of identification is considered necessary for suspicious or high risk transactions, it would appear consistent with the risk based approach set out in the Act that the New Zealand Driver Licence be accepted as a valid form of identification for the majority of captured transactions.

We are concerned that the requirement to check a person's details against customer records is extremely onerous. Many financial institutions have multiple products with different risk profiles currently on issue in addition to legacy products (no longer on issue) that have active customers who purchased the products 40 or 50 years ago.

One customer may have subscribed to several different products over the course of many years and records for these products may be maintained by different registries with different software. The proposed 'check' could require a search of multiple databases and detailed analysis of customer files to identify whether the current applicant is the same person who purchased an earlier product.

This requirement appears wholly disproportionate to low to medium risk cases and managing AML/CFT risk in general.

#### **3.5 Document certification**

We endorse the modifications to the proposal to follow a more generic approach.

#### **3.6 Enhanced Due Diligence**

We note the proposal to require reporting entities to collect (but not verify) the name and date of birth of beneficiaries of trusts. It is not clear whether this will be solely in respect of new trust clients (after implementation) or whether it is intended that this is also applied to existing trust clients. We recommend clarification of this point.

We are concerned at the compliance burden of reviewing substantial databases of clients to identify whether individuals are entering into facilities in their capacity as trustees. There may not be an ability to search databases for trustee capacities. Manual searches of tens of thousands of client files to establish trustee status are extremely onerous.

For a number of investment products the registered owner must currently be a legal person such as an individual or a company. In many cases, the issuer of the investment may not currently know whether the legal owner of the investment is an individual holding it on their own account or a trustee holding it on trust for beneficiaries.

For new investments where the reporting entity is aware of a trust that has a large number of beneficiaries, we recommend clarification on:

- the threshold beyond which the reporting entity may record the types of beneficiary (and possibly the numbers within each type) rather than the names and dates of birth of all beneficiaries, and
- whether there will be an obligation on the trust to update the list of beneficiaries if they change from time to time.

### **3.7 Third party reliance**

The third-party issues that arise with investments through a wrap/administration platform are similar to those identified in Section 5 for trust accounts. A reporting entity that is the manufacturer of an investment product has no direct relationship with or knowledge of the underlying investors who are investing through a wrap platform. Individual investor transactions are aggregated by the wrap platform administrator before transaction instructions are given to the issuer/manufacturer of investment products.

Accordingly, we recommend explicit recognition that CDD requirements in respect of investors investing through wrap platforms should be the responsibility of the reporting entity that is the wrap platform provider rather than the reporting entities that are investment product providers.

### **3.8 Commencement Timeframe**

We note that the discussion document proposes a two year implementation period from the date that regulations are gazetted.

While a 3 year implementation period was our preferred option we accept that implementation should be achievable as long as guidance material and codes of practice are released at the same time as the regulations are gazetted.

**List of ISI Members**

**ISI MEMBERS**

AIA NZ  
AMP Financial Services  
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AXA New Zealand  
BNZ Investments and Insurance  
CIGNA Life Insurance NZ Ltd  
Dorchester Life  
Equitable Group  
Fidelity Life Assurance Co Ltd  
FNZ  
Gen Re LifeHealth  
Hannover Life Re of Australasia Ltd  
ING New Zealand Ltd  
Kiwibank Ltd  
Medical Assurance Society NZ Ltd  
Mercer  
Munich Reinsurance Co of Australasia Ltd  
Pinnacle Life  
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