

Reprint
as at 3 July 2015



Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2014

(LI 2014/142)

Pursuant to section 157(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Minister of Justice gives the following notice,—

- (a) having had regard to the matters specified in section 157(3) of that Act; and
- (b) having consulted in accordance with section 158 of that Act.

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Notice

1 Title

This notice is the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2014.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Ministry of Justice.

3 Interpretation

In this notice, unless the context otherwise requires,—

Act means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

trustee company has the same meaning as in section 2 of the Trustee Companies Act 1967.

4 Application

- (1) A class exemption applies on and from the date specified in the Part of the Schedule setting out the particulars of that class exemption.
- (2) A class exemption expires on the date specified in the Part of the Schedule setting out the particulars of that class exemption and that Part is revoked on that date.

5 Class exemptions

The class exemptions granted under section 157(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 are set out in the Schedule.

Schedule Class exemptions

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Schedule table of contents: revoked, on 3 July 2015, by clause 4(1) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice (No 2) 2015 (LI 2015/169).

Part 1

Public Trust, Māori Trustee, and trustee companies

- 1 As the Minister of Justice, and pursuant to section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt the Public Trust, the Māori Trustee, and each trustee company within the meaning of the Trustee Companies Act 1967 (collectively referred to as the **statutory trustee corporations**) in respect of the classes of transactions listed at paragraph 2 below from the following provisions of the Act:
 - (a) sections 5 to 39; and
 - (b) section 49(3); and
 - (c) sections 50 to 91; and
 - (d) sections 101 to 163.
- 2 The exemption applies to—
 - (a) the statutory trustee corporations in respect of the following personal trust services:
 - (i) acting as an agent to reseal overseas probate or letters of administration in New Zealand;
 - (ii) acting as a property manager under the Protection of Personal and Property Rights Act 1988;
 - (iii) acting as a court-appointed trustee, agent, or receiver (for example, as absentee owner of missing property);
 - (iv) acting as a guardian for a minor as required by court order;
 - (v) acting as a trustee of a funeral trust that does not provide for any cooling-off period or for the ability to withdraw funds prior to the settlor or testator's death;
 - (vi) drafting any will, power of attorney, or trust documentation where required to do so by court order or by operation of statute;
 - (vii) acting as a property attorney under an enduring power of attorney where required to do so by court order or by operation of statute;
 - (b) the Public Trust in respect of the personal trust service of being appointed to act as trustee, agent, manager, or receiver by operation of statute

(for example, having money paid to the Public Trust pursuant to the Local Government (Rating) Act 2002):

- (c) the Māori Trustee in respect of the following personal trust services:
 - (i) acting as statutory trustee in respect of Māori land:
 - (ii) acting as a trustee, agent, or other fiduciary for Māori, or in respect of any Māori land or other interests, in the exercise or performance of its duties, functions, and powers by operation of statute.

3 In this exemption, **personal trust services**—

- (a) means services provided by the statutory trustee corporations in a fiduciary capacity to individuals or the groups listed at clause 2; but
- (b) excludes any services provided by the statutory trustee corporations in their capacities as trustees or supervisors in respect of an issue of securities to the public or activities related to the issue of securities.

4 This exemption is not subject to any conditions.

5 This exemption has been made for the following reasons:

- (a) there is a low risk of money laundering and terrorism financing through the statutory trustee corporations when they are providing personal trust services, because—
 - (i) the statutory trustee corporations operate within a heavily regulated environment that includes requirements to provide services by court order or by operation of statute; and
 - (ii) the court, when requiring the statutory trustee corporations to provide services by court order, subjects the engagement of services to a unique supervisory element; and
 - (iii) the continued imposition of suspicious transaction reporting obligations will adequately address the risk of money laundering and terrorism financing in the circumstances; and
- (b) the obligations imposed on the statutory trustee corporations would be disproportionate given the low risk of money laundering or terrorism financing in the circumstances outlined in this exemption.

6 This exemption comes into force on the day after the date of its notification in the *Gazette*.

7 This exemption will expire on 30 June 2018.

Part 2

Superannuation schemes allowing contributions during unpaid leave of absence

- 1 As the Minister of Justice, and pursuant to section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt specified services that allow regular leave of absence contributions from all provisions of the Act.
- 2 I also exempt persons promoting or operating a superannuation scheme, KiwiSaver scheme, or workplace savings scheme that has been granted an exemption pursuant to section 157 of the Act from the following condition in the exemption: that any mechanism for voluntary contributions other than through payroll must be removed from the trust deed, to the extent that the trust deed may allow (or be amended to allow) regular leave of absence contributions.
- 3 For the purposes of this ministerial exemption,—
 - pre-transition KiwiSaver scheme** means a KiwiSaver scheme that continues to be registered in the KiwiSaver schemes register under clause 18(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013
 - pre-transition superannuation scheme** means a superannuation scheme that continues to be registered under the Superannuation Schemes Act 1989 under clause 18(1)(b) of Schedule 4 of the Financial Markets Conduct Act 2013
 - regular leave of absence contributions** means contributions made by a member to a scheme during a permitted period of unpaid leave of absence
 - specified service** means a service provided in respect of promoting or operating a superannuation scheme, KiwiSaver scheme, or workplace savings scheme that would be exempt from the Act, by reason of complying with regulation 20A of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (the **exemption regulations**), but for the fact that the scheme allows regular leave of absence contributions and so does not comply with clause (d) of the definition of limited employer superannuation scheme in regulation 20A of the exemption regulations.
 - superannuation scheme**—
 - (a) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and
 - (b) includes a pre-transition KiwiSaver scheme and a pre-transition superannuation scheme
- 4 This exemption is subject to the conditions set out in clauses 5 to 7.
- 5 The conditions in relation to the regular leave of absence contributions are that—
 - (a) the employer or the scheme's administrator collects those contributions; and

- (b) the contributions do not exceed (as to either amount or frequency) the contributions that were being paid by the relevant member in accordance with the trust deed for the scheme immediately prior to the member commencing leave of absence.
- 6 Where any regular leave of absence contributions are received from international sources during the permitted period of unpaid leave of absence, the following sections of the Act apply to such contributions:
- (a) sections 10 to 17 (and, for the purposes of section 14(d), the receipt of a contribution from an international source is specified as a circumstance in which standard customer due diligence must be conducted); and
 - (b) sections 40 to 48; and
 - (c) where the transaction is relevant to a suspicious transaction report, sections 49(1) and (2)(a) to (f); and
 - (d) sections 92 to 100.
- 7 Where any withdrawals are made by a member in addition to that member making regular leave of absence contributions during the permitted period of unpaid leave of absence, the following sections of the Act apply to such withdrawals and contributions:
- (a) sections 10 to 17 of the Act (and, for the purposes of section 14(d) of the Act, the first such withdrawal is specified as a circumstance in which standard customer due diligence must be conducted); and
 - (b) sections 40 to 48 of the Act; and
 - (c) where the transaction is relevant to a suspicious transaction report, section 49(1) and (2)(a) to (f) of the Act; and
 - (d) sections 92 to 100 of the Act.
- 8 The exemption has been granted for the following reasons:
- (a) there is a very low risk of money laundering or terrorism financing (because the proposed classes of persons providing the services of promoting or operating superannuation schemes would already be exempt from the Act either under regulation 20A of the exemption regulations or by way of individual ministerial exemptions under section 157 of the Act if the superannuation schemes did not allow regular leave of absence contributions); and
 - (b) an unintended consequence of the exemptions described under paragraph (a) is that, if the schemes did not allow regular leave of absence contributions, members would be adversely affected due to their inability to continue making contributions during a period of unpaid leave of absence; and
 - (c) the conditions address any risks posed by contributions outside of payroll, and contributions from international sources or cycling of funds

through the scheme during the permitted period of unpaid leave of absence; and

- (d) owing to the very low money laundering and terrorism financing risks raised by the schemes and the significant compliance costs that would arise from not granting this exemption, any benefits of requiring compliance with the Act are not justified given the associated costs; and
- (e) this exemption is consistent with (and has no effect on the purpose or intent of) the Act, the Financial Transactions Reporting Act 1996, and New Zealand's international obligations as a member of the Financial Action Task Force and the Asia Pacific Group on Money Laundering.

9 This exemption comes into force on the day after the date of its notification in the *Gazette*.

10 This exemption will expire on 30 June 2018.

Schedule Part 2 clause 2: amended, on 1 December 2014, by clause 4(1) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358).

Schedule Part 2 clause 3 **pre-transition KiwiSaver scheme**: inserted, on 1 December 2014, by clause 4(3) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358).

Schedule Part 2 clause 3 **pre-transition superannuation scheme**: inserted, on 1 December 2014, by clause 4(3) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358).

Schedule Part 2 clause 3 **specified service**: amended, on 1 December 2014, by clause 4(2) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358).

Schedule Part 2 clause 3 **superannuation scheme**: inserted, on 1 December 2014, by clause 4(3) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358).

Part 3

PAYE intermediaries

Schedule Part 3: inserted, on 3 July 2015, by clause 4 of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2015 (LI 2015/168).

1 As the Minister of Justice, and pursuant to section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt all PAYE intermediaries, only with respect to authorised transactions, from the following provisions of the Act:

- (a) sections 11 to 39;
- (b) sections 49 to 71;
- (c) sections 106 to 163.

2 In this exemption,—

authorised transactions means any transaction that satisfies the requirements of section RP 2(2), RP 6, RP 14, RP 15 or RP 16 of the Income Tax Act 2007

or that fulfils the obligations of a PAYE intermediary under any of those provisions

PAYE intermediary means a person who is approved as a PAYE intermediary under section 15D of the Tax Administration Act 1994 (and includes a PAYE intermediary who is approved as a listed PAYE intermediary under section 15G of that Act).

- 3 This exemption is subject to the following conditions:
- (a) the exemption applies only to transfers between New Zealand bank accounts and does not extend to any transfer from or to a foreign bank account:
 - (b) to be eligible for the exemption, a PAYE intermediary must not use or provide any payroll remittance card in the course of its authorised activities.
- 4 This exemption has been made for the following reasons:
- (a) the risk of money laundering or terrorist financing through the authorised transactions conducted by PAYE intermediaries is very low because—
 - (i) PAYE intermediaries must be registered with the Inland Revenue Department:
 - (ii) PAYE intermediaries are regulated by requirements under the Income Tax Act 2007 and the Tax Administration Act 1994:
 - (iii) PAYE intermediaries rely on information provided by the Inland Revenue Department in relation to employees:
 - (iv) wire transfers are repetitive, are periodic, and go repeatedly through the same financial institutions:
 - (v) PAYE intermediaries must provide an employer schedule to the Inland Revenue Commissioner on a monthly basis:
 - (vi) PAYE intermediaries must submit IR348 reports, which include information identifying all parties to any wire transfer:
 - (vii) the tasks performed by PAYE intermediaries in the manipulation and transfer of funds are limited to the deduction and transfer of income tax and other specific deductions:
 - (viii) any risks present within the authorised transactions conducted by PAYE intermediaries are dealt with by the conditions of the exemption:
 - (b) any benefits of requiring compliance with the Act are not justified given the associated costs, due to the very low money laundering and terrorism financing risks raised by the authorised transactions conducted by PAYE intermediaries and the significant compliance costs that would arise from not granting the exemption.

- 5 This exemption comes into force on the day after the date of its notification in the *Gazette*.
- 6 This exemption expires on 30 June 2018.

Part 4

Reporting entities whose customers are licensed managing intermediaries

Schedule Part 4: inserted, on 3 July 2015, by clause 4(2) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice (No 2) 2015 (LI 2015/169).

- 1 As the Minister of Justice, and pursuant to section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt those reporting entities whose customers include licensed managing intermediaries from carrying out the following requirements in respect of those customers:
- (a) the requirement to conduct standard customer due diligence under sections 14 to 17 of the Act;
 - (b) the requirement, in any circumstances where the reporting entity is required to conduct enhanced customer due diligence, to carry out the identification and verification requirements under sections 23 and 24(1) of the Act on any beneficial owner of the customer;
 - (c) the requirement to conduct enhanced customer due diligence, under sections 23 to 25 of the Act, in circumstances where—
 - (i) the customer is a trust; and
 - (ii) the reporting entity is only required to conduct enhanced customer due diligence because section 22(1)(a)(i) or (b)(i) of the Act applies.
- 2 In this exemption, **licensed managing intermediary** means any of the following:
- (a) an NBDT (as defined in section 5 of the Non-bank Deposit Takers Act 2013) holding an NBDT licence granted under section 17 of that Act;
 - (b) a registered scheme (as defined in section 6(1) of the Financial Markets Conduct Act 2013);
 - (c) a person who holds, or is authorised to provide services under, a licence under Part 6 of the Financial Markets Conduct Act 2013;
 - (d) a scheme that, under clause 18(1), 34, or 35 of Schedule 4 of the Financial Markets Conduct Act 2013, continues to be registered or continues to be subject to another enactment;
 - (e) a supervisor or statutory supervisor holding a licence under section 10 of the Financial Markets Supervisors Act 2011;

- (f) an FMA appointee (as defined in sections 22(2) and 37(1) of the Financial Markets Supervisors Act 2011).
- 3 This exemption is subject to the following conditions:
- (a) the reporting entity must conduct simplified customer due diligence on a customer in respect of which the exemption is relied on; and
 - (b) the reporting entity must, in any circumstances where the reporting entity is required to conduct enhanced customer due diligence on a customer in respect of which the exemption is relied on, carry out the identification and verification requirements under sections 23 and 24(1) of the Act on those beneficial owners of the customer that have effective control, or own more than 25%, of the customer; and
 - (c) the reporting entity must conduct enhanced customer due diligence on a customer in respect of which the exemption is relied on if the customer conducts a transaction to which regulation 5A of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 applies; and
 - (d) the reporting entity must take reasonable steps to verify that a customer in respect of which this exemption is relied on is a licensed managing intermediary (for example, by checking a register kept by the Registrar of Financial Service Providers); and
 - (e) the reporting entity must comply with any request from its AML/CFT supervisor for the name of 1 or more customers in respect of which the exemption is relied on.
- 4 This exemption has been made for the following reasons:
- (a) there is a low risk of money laundering and terrorism financing in respect of transactions between reporting entities and licensed managing intermediaries because licensed managing intermediaries operate within a heavily regulated environment; and
 - (b) the requirement for a reporting entity to conduct standard customer due diligence on a licensed managing intermediary may lead to duplication of customer due diligence obligations; and
 - (c) the requirement for a reporting entity to conduct customer due diligence on all beneficial owners of a licensed managing intermediary—
 - (i) has associated costs, may give rise to privacy concerns, and may deter international investment; and
 - (ii) is out of proportion to the risk of money laundering and terrorism financing posed by licensed managing intermediaries.
- 5 This exemption comes into force on the day after the date of its notification in the *Gazette*.
- 6 This exemption expires on 30 June 2018.

Part 5

Reporting entities whose customers are specified managing intermediaries

Schedule Part 5: inserted, on 3 July 2015, by clause 4(2) of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice (No 2) 2015 (LI 2015/169).

- 1 As the Minister of Justice, and pursuant to section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt those reporting entities whose customers include specified managing intermediaries from carrying out the following requirements in respect of those customers:
- (a) the requirement to conduct customer due diligence, under section 11(1)(b) of the Act, on any beneficial owner of a customer:
 - (b) the requirement, in any circumstances where the reporting entity is required to conduct enhanced customer due diligence, to carry out the identification and verification requirements under sections 23 and 24(1) of the Act on any beneficial owner of the customer:
 - (c) the requirement to conduct enhanced customer due diligence, under sections 23 to 25 of the Act, in circumstances where—
 - (i) the customer is a trust; and
 - (ii) the reporting entity is only required to conduct enhanced customer due diligence because section 22(1)(a)(i) or (b)(i) of the Act applies.
- 2 In this exemption,—
- foreign financial institution** means a financial institution that—
- (a) has its principal place of business in an overseas jurisdiction with sufficient AML/CFT systems and measures in place; and
 - (b) is supervised for AML/CFT purposes
- managed investment scheme** has the meaning set out in section 9 of the Financial Markets Conduct Act 2013
- manager** has the meaning given in section 6(1) of the Financial Markets Conduct Act 2013
- senior manager** means,—
- (a) in relation to a financial institution to which the Act applies, a senior manager to whom a reporting entity's AML/CFT compliance officer must report under section 56(4) of the Act:
 - (b) in relation to a foreign financial institution, a person holding a comparable position to a senior manager (as defined in paragraph (a)):

- (c) in relation to a managed investment scheme, a senior manager (as defined in paragraph (a) or (b)) of the specified managing intermediary that is the manager, or a trustee, of that scheme

specified managing intermediary—

- (a) means any of the following:
 - (i) a financial institution to which the Act applies;
 - (ii) a foreign financial institution;
 - (iii) a managed investment scheme, the manager or a trustee of which is a person described in subparagraph (i) or (ii); but
- (b) excludes a licensed managing intermediary (as defined in Part 4 of this schedule).

3 This exemption is subject to the following conditions:

- (a) clause (1)(a) and (b) must not be relied on in respect of a beneficial owner that has effective control, or owns more than 25%, of a customer that is a specified managing intermediary; and
- (b) the reporting entity must conduct enhanced customer due diligence on a customer in respect of which the exemption is relied on if the customer conducts a transaction to which regulation 5A of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 applies; and
- (c) the reporting entity—
 - (i) must obtain written confirmation, signed by a senior manager of the customer, to the effect that the customer (or, if the customer is a managed investment scheme, the specified managing intermediary that is the manager or a trustee of that scheme)—
 - (A) has an AML/CFT programme (or a foreign equivalent); and
 - (B) has its principal place of business in a jurisdiction with sufficient AML/CFT systems and measures in place; and
 - (C) is supervised for AML/CFT purposes; and
 - (D) is conducting customer due diligence in accordance with the Act (or its foreign equivalent); but
 - (ii) is not required to verify a written confirmation obtained under subparagraph (i) unless there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the written confirmation; and
- (d) the reporting entity must comply with any request from its AML/CFT supervisor for the name of 1 or more customers in respect of which the exemption is relied on.

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- 4 This exemption has been granted because the requirement for a reporting entity to conduct customer due diligence on all beneficial owners of a specified managing intermediary—
- (a) may lead to duplication of customer due diligence obligations; and
 - (b) has associated costs, may give rise to privacy concerns, and may deter international investment; and
 - (c) is out of proportion to the risk of money laundering and terrorism financing posed by specified managing intermediaries.
- 5 This exemption comes into force on the day after the date of its notification in the *Gazette*.
- 6 This exemption expires on 30 June 2018.

Dated at Wellington this 28th day of April 2014.

Judith Collins,
Minister of Justice.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 1 May 2014.

Reprints notes

1 *General*

This is a reprint of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2014 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice (No 2) 2015 (LI 2015/169)

Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2015 (LI 2015/168)

Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (LI 2014/358)