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# BILLS DIGEST

Digest No. 1711

## Anti-Money Laundering and Countering Financing of Terrorism Bill 2009 (2009 No 46-2)

<b>Date of Introduction:</b>	25 June 2009
<b>Portfolio:</b>	Justice
<b>Select Committee:</b>	Foreign Affairs, Defence and Trade
<b>Date report presented:</b>	14 September 2009
<b>Published: 23 September 2009</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of this Bill is to " ... bring New Zealand into line with the international standards for [anti-money laundering and countering financing of terrorism] AML/CFT frameworks, as set out by the Financial Action Task Force (FATF)" " ... in areas including customer due diligence, record-keeping standards, and in the supervision of AML/CFT activity"<sup>1</sup>.

### Main changes to the Bill

#### Commencement

The Select Committee has recommended that the Bill, in general, should come into effect on a date to be appointed by the Governor-General by Order in Council except for Part 1 and most of Part 4 which

<sup>1</sup> Anti-Money Laundering and Countering of Terrorism Bill, 2009 No 46-2, As reported from the Foreign Affairs, Defence and Trade Committee, Commentary, p. 1.

will come into effect on the day after the date that the Bill receives the Royal assent and for the following provisions which will come into effect 12 months after the Royal assent:

- cash transport reporting to the Police Commissioner (*Part 2, Subpart 6, Clauses 65-68*);
- offences relating to cross-border transportation of cash (*Part 3, Subpart 3, Clauses 104-112A*);
- amendments to the Financial Transactions Reporting Act 1996 (*Part 4, Subpart 2, Clause 157*).

Clause 156 (which amends the Financial Transactions Reporting Act 1996 may only be brought into force by Order in Council when every provision of Part 2 of the Bill has been brought into force (*Clause 2*).

## Politically exposed persons

The Bill provides for an enhanced financial scrutiny to be carried out by financial institutions in respect of "politically exposed persons" (PEPs) (i.e. broadly an enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have performed, prominent public functions, and their family members, and close associates). The term "politically exposed persons" is defined in the Bill to include individuals who hold in New Zealand the "prominent public functions" of Prime Minister, minister of the Crown, Judge of the Supreme Court, Governor of the Reserve Bank of New Zealand, ambassador or high commissioner, Chief of the Defence Force, and "board chair, chief executive, or chief financial officer of any State enterprise as defined by the State Owned Enterprise Act 1986".

The Select Committee has recommended that the definition exclude all these New Zealand positions and only apply to foreign exposed political persons and has also recommended that the required checks on such persons may follow an "occasional transaction" and not be required before any transaction (*Part 1, Clause 4, substituting the definition of "politically exposed person"; Part 2, substituting Clause 23*).

### Comment

"We consider that New Zealand-based PEPs are already required to conform to robust accounting, audit, company and trust legislation, practice, and procedures"<sup>2</sup>.

## Protection from liability

The Select Committee has recommended the removal of explicit senior management liability of reporting entities when exercising their functions under this Bill. It is also recommended that AML/CFT supervisors (in relation to a reporting entity, AML/CFT supervisors are broadly responsible for supervising the reporting entity under parts 3 and 4 of the Bill ) or reporting entities (financial institutions and others subject to this Bill) be protected from inappropriate civil or criminal proceedings. AML/CFT supervisors are protected against civil or criminal proceedings unless they have acted in bad faith in exercising or intending to exercise their functions under the Bill. Reporting entities are protected from civil or criminal liability in circumstances where reasonable action was taken in good faith to comply with the Bill (*Part 3, Subpart 1, inserting New Sections 72A and 72B and deleting Clauses 73-75; cf. Part 1, Clause 4, definitions of "AML/CFT supervisor" and "reporting entity"*).

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<sup>2</sup> Anti-Money Laundering and Countering Financing of Terrorism Bill, 2009 No 46-2), As reported from the Foreign Affairs, Defence and Trade Committee, Commentary, pp. 4 and 5.

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