



Te Tari Taiwhenua
Internal Affairs

New Zealand Government

User Guide:

**Annual AML/CFT Report by
Designated Non-Financial
Businesses and Professions**

March 2018

Contents

| | |
|---|----|
| Introduction | 3 |
| Part 1: Contact details and organisation structure | 5 |
| Part 2: AML/CFT risk assessment and programme | 7 |
| Part 3: Products, services and customers | 13 |
| Part 4: Captured activities | 22 |
| Part 5: Ministerial exemption | 26 |
| Part 6: Declaration and signature | 27 |
| Endnotes | 28 |

Introduction

The purpose of this user guide is to help you complete your annual anti-money laundering and countering financing of terrorism (AML/CFT) report on your AML/CFT risk assessment and programme. This report is required under section 60 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act).¹

The information in your annual reports helps the Department of Internal Affairs (DIA), in its role as AML/CFT supervisor (supervisors are responsible for monitoring compliance with the Act), to get to know your business better and understand the money laundering/terrorism financing (ML/TF) risks you face. This helps DIA to better target resources to areas of highest risk. The process of filling in your annual report also assists you in identifying any changes to your business, and where you might need to revise your AML/CFT risk assessment and AML/CFT programme. We recognise that your annual report may hold commercially sensitive information and we will treat it confidentially.

Only reporting entities need to complete an annual report. Please refer to section 5 of the Act to determine whether you or your business is a reporting entity under the Act.² The annual report requirements for designated non-financial businesses and professions (DNFBPs, all supervised by DIA) are set out in Schedule 2A of the AML/CFT (Requirements and Compliance) Amendment Regulations 2017.³ Note that there is a separate report form and user guide for financial institutions, who are supervised by DIA, the Reserve Bank of New Zealand, and the Financial Markets Authority.

All reporting entities must complete an annual report form. Reporting entities that are eligible members of a designated business group (DBG)⁴ may allow another member of the DBG to complete Part 2 of the report on their behalf. However, they must still complete an annual report form. This is explained further below.

The information required in the annual report is for the period from 1 July to 30 June (the reporting period). You may submit your annual report any time from 1 July, but by no later than 31 August in the year following the reporting period. Use the secure electronic uploading facility provided on the DIA website⁵, which will be available for new reporting entities prior to the first report being due.

DIA will notify all reporting entities when it is available to them. If, for any reason, you are unable to complete or upload your annual report, please contact us well before the 31 August deadline at amlcft@dia.govt.nz or by phone on 0800 25 78 87.

The first report for DNFBPs is due by 31 August 2019. The period that this covers depends on when you become subject to the Act. You should start collecting the information required from when you become subject to the Act.

| Sector | Implementation date | First annual reporting period |
|--|---------------------|-------------------------------|
| Lawyers | 1 July 2018 | 1 July 2018 – 30 June 2019 |
| Conveyancers | 1 July 2018 | 1 July 2018 – 30 June 2019 |
| All trust and company service providers (including those not currently covered by the Act) | 1 July 2018 | 1 July 2018 – 30 June 2019 |
| Accountants | 1 October 2018 | 1 October 2018 – 30 June 2019 |
| Real estate agents | 1 January 2019 | 1 January 2019 – 30 June 2019 |

Please make sure the information provided in your report is accurate. You only need to provide details on the activities that are captured by the Act that you have conducted during the reporting period. Captured activities are listed in the definition of “DNFBP” in section 5 of the Act.⁶ If you are unsure whether your activities should be reported, please contact us.

Before you begin:

Please read all questions carefully.

Please complete all relevant sections. Note that some questions may not be relevant to your business, so please leave those ones blank or write “Not applicable” or “N/A”.

Please do not include aggregated information, such as consolidated data for a group of reporting entities. Each reporting entity’s unique data is required (except where information for a DBG may be provided as indicated in the Note in Part 2).

The guidelines⁷ prepared for your sector will also help you to answer these questions.

Disclaimer

This user guide is provided for information only and cannot be relied on as evidence of complying with the requirements of the AML/CFT Act. It does not constitute legal advice and cannot be relied on as such. After reading this user guide, if you do not fully understand your obligations you should seek legal advice or contact DIA at amlcft@dia.govt.nz.

Part 1: Contact details and organisation structure

These questions are requesting information about your organisation such as contact details and organisational structure.

Answer **all** questions in this part.

| Part 1 | Annual report question | Guidance |
|--------|---|--|
| 1 | Period of report | |
| 1.1 | <p>Period that this report covers: <i>[specify year]</i> This is the period referred to as “during the year” or “at the end of the year” by this form.</p> | <p>Your report should cover the most recent 1 July to 30 June period.* Please state the calendar years this covers (eg, 1 July 2018 to 30 June 2019).</p> <p>* The first report you complete may only cover a part year, depending on when your sector becomes subject to the Act.</p> |
| 2 | Contact details | |
| 2.1 | <p><i>Entity registration details</i> Reporting entity’s legal name: Type of entity (natural person, company, partnership, other legal person, trust): Registered or company incorporation number, or equivalent (if applicable): Trading name(s) (if different from legal name):</p> | <p>Make sure that you answer all parts of this question, or write “N/A” if a question is not applicable.</p> |
| 2.2 | <p><i>Physical address</i> Street name and number: Suburb or town: City: Postcode:</p> | <p>If you have more than one physical address, provide details of the main address from where the activities captured by the Act are conducted. Include information such as unit or floor number.</p> |
| 2.3 | <p><i>Postal address (if different from physical address)</i> Street name and number or PO Box: Suburb or town: City: Postcode:</p> | <p>If you have more than one postal address, provide details of the address where we can contact your AML/CFT compliance officer (see below).</p> |
| 2.4 | <p><i>Other contact details</i> Full name of reporting entity’s AML/CFT compliance officer: Reporting entity’s AML/CFT contact email address (if available): Reporting entity’s AML/CFT contact telephone number (if available): Reporting entity’s website (if available):</p> | <p>AML/CFT compliance officer means the person designated as a compliance officer under section 56 of the Act⁸ (the person who administers and maintains the AML/CFT programme for your reporting entity). (Note: DIA also has roles called “compliance officers”, but the questions in the annual report refer to the compliance officer for your reporting entity, not a DIA staff member that you have dealt with previously.) The AML/CFT contact email address can be that of the AML/CFT compliance officer for your entity.</p> |

| Part 1 | Annual report question | Guidance |
|----------|--|---|
| 2.5 | <p>What sector(s) best describe your business activities. Select 1 or more of the following:</p> <ul style="list-style-type: none"> • Accounting practice • Bookkeeping • Barrister sole • Barrister and solicitor • Law firm • Incorporated conveyancing firm • Conveyancing practitioner • Real estate agent • Trust and company service provider • Other <i>[specify]</i> | <p>These sector groupings describe the business activities that are captured by the Act. Select all of the sector(s) that apply. You can select more than one.</p> <p>If you select “other” please specify what the sector is.</p> <p>Note: Trust and company service providers that were already subject to the Act under Phase 1 of its implementation will fill in this DNFBP template from the annual report covering the reporting period 1 July 2018 to 30 June 2019.</p> |
| 3 | Organisation structure | |
| 3.1 | <p>Is your reporting entity a branch or a subsidiary of an offshore parent? <i>Yes/No</i></p> <p>If “yes”, specify: <i>[branch or subsidiary]</i></p> | <p>In this question, branch means the New Zealand place of business of an overseas company.</p> <p>Subsidiary means a company that is controlled by another company, as defined in section 5 of the Companies Act 1993.⁹</p> |
| 3.2 | <p>In what country is your largest owner based? <i>[specify]</i></p> <p>If your reporting entity does not have a clear owner, in what country is your largest beneficial owner based? <i>[specify]</i></p> | <p>Largest owner means the person or entity that either directly or indirectly owns the largest proportion of the reporting entity.</p> <p>Largest beneficial owner means the individual who has effective control of, or owns the largest shareholding of, your reporting entity. The <i>Beneficial Ownership Guideline</i> provides more detail about the meaning of the terms “beneficial owner” and “effective control”.¹⁰</p> |
| 3.3 | <p>How many people work for your reporting entity? <i>[specify]</i></p> | <p>Include all staff members currently employed by your business both in New Zealand and overseas.</p> |
| 3.4 | <p>Number of physical branch/office locations in New Zealand (exclude agent’s branch location): <i>[specify number]</i></p> | <p>This question applies whether or not the reporting entity is a branch itself (Q. 3.1).</p> <p>Include the number of physical places in New Zealand from which you conduct activities captured by the Act or regulations.</p> |
| 3.5 | <p>Number of New Zealand subsidiaries: <i>[specify number]</i></p> | <p>If your reporting entity controls any other companies in New Zealand, then specify the number.</p> <p>Subsidiary means a company that is controlled by another company, as defined in section 5 of the Companies Act 1993.¹¹</p> <p>Only include subsidiaries conducting an activity captured by the Act or regulations.</p> |
| 3.6 | <p>If known, number of physical branch/office locations outside New Zealand: <i>[specify number or state “unknown”]</i></p> | <p>Only include physical locations outside New Zealand where a captured activity is conducted. A captured activity is an activity that is captured by the Act or regulations.</p> |
| 3.7 | <p>Number of subsidiaries located or incorporated outside New Zealand: <i>[specify number]</i></p> | <p>Subsidiary means a company that is controlled by another company, as defined in section 5 of the Companies Act 1993.¹²</p> |

Part 2: AML/CFT risk assessment and programme

The questions in Part 2 relate to **designated business groups** (see below for definition) and request information on your AML/CFT risk assessment and programme, including your processes for **customer due diligence**. Answer **all relevant** questions in this part.

| Part 2 | Annual report question | Guidance |
|----------|--|---|
| Notes | | <p>A designated business group (DBG) is defined in section 5 of the Act.¹³</p> <p>A DBG is a group of two or more eligible persons (reporting entities) who have elected in writing, notified their AML/CFT supervisor, and had the supervisor confirm their eligibility, to form a group to enable some obligations under the Act to be met on a shared basis. Guidelines for the scope and formation of DBGs are available on the DIA website.¹⁴</p> <p>A member of a DBG can rely on another member to carry out some AML/CFT obligations on their behalf, as set out in section 32 of the Act.¹⁵ These include risk assessments, parts of an AML/CFT programme, and making suspicious activity reports or prescribed transaction reports.</p> <p>If you are a member of a DBG, you may allow another member to answer this Part on your behalf. However, please note that you are responsible for the accuracy of information provided.</p> |
| 4 | Designated business group questions | |
| 4.1 | <p>Are you a member of a DBG? <i>Yes/No</i></p> <p><i>[If you answer No, then complete Part 2 and the rest of this form as applicable.]</i></p> | <p>If you are not a member of a DBG, you do not need to answer 4.2 but you do need to complete the rest of Part 2.</p> <p>If you are a member of a DBG, go to question 4.2.</p> |
| 4.2 | <p>If you answered “yes” to 4.1, are you completing Part 2 on behalf of the DBG? <i>Yes/No</i></p> <p><i>[If you are not completing the form for the DBG, please note the legal name of the DBG reporting entity completing Part 2 for you. Then leave the rest of Part 2 blank and go to Part 3. You are required to answer all parts of this form.]</i></p> | <p>Only answer this question if you are a member of a DBG.</p> <p>If you are completing Part 2 of this form on behalf of the DBG, answer “yes”.</p> <p>If you are not, then note the legal name of the reporting entity for the DBG and leave the rest of Part 2 blank.</p> |

| Part 2 | Annual report question | Guidance |
|----------|--|--|
| 5 | AML/CFT risk assessment | |
| 5.1 | Does your risk assessment meet the requirements of section 58 of the Act? <i>Meets all/Meets some/Meets none</i> | Section 58 of the Act specifies what the risk assessment must cover. ¹⁶ The risk assessment must identify the ML/TF risks in your business, explain how you will ensure that the assessment remains current, and enable you to determine the level of risk involved in relation to the Act. Refer to the <i>Risk Assessment Guideline</i> for more information. ¹⁷ |
| 5.2 | If your risk assessment meets only some of the requirements of section 58 of the Act, list all subsections that it is not fully compliant with (eg, sections 58(1), 58(2)(a) to (h), 58(3)(a) to (c)). <i>[list, using commas to separate each entry]</i> | Make sure you list all subsections in section 58 ¹⁸ that your risk assessment is not fully compliant with. |
| 5.3 | When was the most recent internal review of your risk assessment completed? <i>[date]</i> | Internal review means that someone within your business checks your risk assessment to make sure it is current, identifies any weaknesses, and makes changes as necessary. If you have not reviewed your risk assessment since it was initially prepared, insert the date it was first prepared. Section 59 of the Act specifies the requirements for review and audit of AML/CFT programmes and risk assessments. ¹⁹ |
| 5.4 | Has your risk assessment been independently audited? <i>Yes/No</i> | Independent audit means a systematic check of your risk assessment by an independent and suitably qualified person, resulting in a written report. Further information is available in the <i>Guideline for Audits of Risk Assessments and AML/CFT Programmes</i> . ²⁰ |
| 5.5 | If you answered “yes” to 5.4, when was the most recent audit of your risk assessment completed? <i>[date]</i> | Only answer this question if you answered “yes” to 5.4. |
| 5.6 | If you answered “yes” to 5.4, did the most recent audit of your risk assessment highlight any deficiencies? <i>Yes/No</i> | Only answer this question if you answered “yes” to 5.4. |

| Part 2 | Annual report question | Guidance |
|--------|--|---|
| 5.7 | <p>If you answered “yes” to 5.4 and 5.6, have you made the changes identified as being necessary in the most recent audit?</p> <p><i>Yes, complete/Not yet complete</i></p> <p>If you answered “Not yet complete” please explain: <i>[insert detailed explanation]</i></p> | <p>Only answer this question if you answered “yes” to 5.4 and 5.6.</p> <p>If you have not made all the changes, then you need to answer “Not yet complete” and briefly explain what changes are yet to be made and your plans for making these changes.</p> |
| 5.8 | <p>During the year, did you introduce a new service or activity regulated by the Act (eg, a new product, service or channel) that is not considered in your risk assessment? <i>Yes/No</i></p> | <p>Are you conducting a new activity or providing a new service to your customers that is regulated by the Act (see definition of “designated non-financial business or profession” in section 5 of the Act²¹) and not considered in your risk assessment?</p> |

| 6 | AML/CFT programme | |
|-----|---|---|
| 6.1 | <p>Does your AML/CFT programme meet the requirements of section 57 of the Act?</p> <p><i>Meets all/Meets some/Meets none</i></p> | <p>Section 57 of the Act specifies what your AML/CFT programme must cover.²²</p> <p>Your AML/CFT programme must be based on your risk assessment and include adequate and effective procedures, policies and controls for:</p> <ul style="list-style-type: none"> • Vetting and training staff • Complying with customer due diligence (CDD) requirements • Reporting suspicious activities and transactions • Prescribed transaction reporting • Record keeping • AML/CFT risk management <p>Customer due diligence (CDD) is the process through which you identify and develop an understanding of your customers and the ML/TF risks they pose to your business.</p> |
| 6.2 | <p>If your AML/CFT programme meets only some of the requirements of section 57 of the Act, list all paragraphs that it is not fully compliant with. Use commas to separate each entry: <i>[list relevant paragraphs from section 57(1)(a) to (l)]</i></p> | <p>Make sure you list all paragraphs in section 57²³ that your AML/CFT programme is not fully compliant with.</p> <p>You may wish to add a brief explanation of how you intend to reach compliance with these sub-sections.</p> |
| 6.3 | <p>When was the most recent internal review of your programme completed? <i>[date]</i></p> | <p>Internal review means that someone within your business checks your AML/CFT programme to make sure it is current, identifies any weaknesses, and makes changes as necessary. Your AML/CFT programme should describe how often it is reviewed, and you should keep a record of the reviews.</p> <p>If you have not reviewed your AML/CFT programme since it was initially prepared, insert the date it was first prepared.</p> |
| 6.4 | <p>Has your programme been independently audited? <i>Yes/No</i></p> | <p>Independent audit means a systematic check of your AML/CFT programme by an independent and suitably qualified person resulting in a written report.</p> <p>Section 59 of the Act²⁴ specifies the requirements for review and audit of AML/CFT programmes and risk assessments. Further information is available in the <i>Guideline for Audits of Risk Assessments and AML/CFT Programmes</i>.²⁵</p> |
| 6.5 | <p>If you answered “yes” to 6.4, when was the most recent audit of your programme completed? <i>[date]</i></p> | <p>Only answer this question if you answered “yes” to 6.4.</p> |
| 6.6 | <p>If you answered “yes” to 6.4, did the most recent audit of your programme highlight any deficiencies? <i>Yes/No</i></p> | <p>Only answer this question if you answered “yes” to 6.4.</p> |

| | | |
|-----|---|--|
| 6.7 | <p>If you answered “yes” to 6.4 and 6.6, have you made the changes identified as being necessary in the most recent audit?</p> <p><i>Yes, complete/Not yet complete</i></p> <p>If you answered “Not yet complete”, please explain: <i>[insert detailed explanation]</i></p> | <p>Only answer this question if you answered “yes” to 6.4 and 6.6.</p> <p>If you have not made all the changes, then you need to answer “Not yet complete” and briefly explain what changes are yet to be made, and your plans for making these changes.</p> |
| 6.8 | <p>Do you have procedures to identify and verify the identity of:</p> <p>a. a new customer (including the customer’s beneficial owners or any person acting on behalf of a customer)? <i>Yes/No</i></p> <p>b. a person seeking to conduct an occasional transaction or occasional activity through your reporting entity? <i>Yes/No</i></p> <p>c. an existing customer, according to the level of risk involved, if there has been a material change in the nature or purpose of the business relationship and your reporting entity considers that it has insufficient information about the customer? <i>Yes/No</i></p> | <p>Do you have processes and systems in place to make sure your customer is who they say they are?</p> <p>The Act defines beneficial owner as the individual who has effective control of a customer or person on whose behalf a transaction is conducted; or owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted.</p> <p>The customer or person could be a legal person or legal arrangement.</p> <p>An occasional activity means an activity captured by the Act that occurs outside of a business relationship between a reporting entity and the reporting entity’s customer.</p> <p>A business relationship means a business, professional, or commercial relationship between a reporting entity and a customer that has an element of duration or that is expected by the reporting entity, at the time when contact is established, to have an element of duration.</p> <p>Definitions for all terms are in section 5 of the Act.²⁶</p> <p>For question 6.8(c), sufficient procedures mean you have clearly defined what a material change in the nature and purpose of the business relationship is in your policies, procedures and controls documents.</p> |
| 6.9 | <p>Do you have exception handling procedures for issues related to customer due diligence (CDD) (eg, clause 4 of the Amended Identity Verification Code of Practice 2013)? <i>Yes/No</i></p> | <p>Exception handling procedures are the systems or processes you have in your AML/CFT programme for dealing with situations when a customer cannot provide the required identification (ie, a process you use when a new customer has no or insufficient forms of identification).</p> <p>The <i>Amended Identity Verification Code of Practice 2013</i> provides suggested best practice and should be read in tandem with the <i>Explanatory Note</i>.²⁷</p> |

| | | |
|------|--|---|
| 6.10 | Outside a DBG, do you outsource any CDD requirements to third parties (as set out in sections 32 to 34 of the Act)? <i>Yes/No</i> | This includes any external person or entity completing CDD as a reporting entity, or equivalent in another country, in accordance with section 33, ²⁸ or as an agent for your business under section 34 of the Act. ²⁹ This does not include any member of your DBG who conducts your CDD under section 32. ³⁰ |
| 6.11 | Do you use electronic processes to fulfil the statutory requirement to monitor accounts as required under section 31 of the Act? <i>Yes/No</i> | <p>By electronic processes we mean if you rely on electronic or automated systems to monitor accounts.</p> <p>Section 31³¹ sets out the requirements for ongoing CDD and account monitoring, in order to make sure that the reporting entity can identify any suspicious activities. This includes determining the level of risk involved and regularly reviewing the customer’s activity.</p> <p>Ongoing account monitoring means you must regularly review your customer’s business relationship with you (ie, the nature of their “account” with you) and their transactional behaviour and activities if you have been involved in assisting these to take place.</p> |

Part 3: Products, services and customers

This section provides DIA with valuable information to help us support you by better understanding your business and what products and services it offers. Question 7.8 is optional. Answer **all** other questions in this part.

| Part 3 | Annual report question | Guidance |
|----------|--|--|
| A | Products and services | |
| Note | How to determine whether advice provided to your customer is captured | <p>There will be circumstances where you give advice in relation to a captured activity (without necessarily then carrying out the activity). Generally, advice alone, in the absence of any actual captured activity on the reporting entity's part, will not be caught by the definition of "designated non-financial business or profession".</p> <p>It may be that in practice you expect to provide a mixture of advice and captured activities for a customer over a period of time. In those circumstances, you would need to conduct CDD to the required level prior to establishing a business relationship with the customer (and prior to providing any advice).</p> <p>You also need to be aware of your obligations to report suspicious activities, which can include requests or enquiries about particular services you offer from potential new customers (regardless of whether you ultimately provide those services).</p> |
| 7.1 | <p>Do you act as a formation agent of legal persons or arrangements? <i>Yes/No</i></p> <p>If you answered "yes", estimate how many of the following you have formed in the last year. <i>Select the estimated number.</i></p> <ul style="list-style-type: none"> • Companies: 0; 1–10; 11–100; 101–999; 1000+ • Trusts (excluding charitable trusts): 0; 1–10; 11–100; 101–999; 1000+ • Partnerships (including limited partnerships): 0; 1–10; 11–100; 101–999; 1000+ • Charities (including charitable trusts and other charitable entities): 0; 1–10; 11–100; 101–999; 1000+ • Other: <i>[specify]</i> | <p>By legal person we mean a person or entity with legal rights and responsibilities. It can include a company.</p> <p>The Act³² defines a legal arrangement as a trust, a partnership, a charitable entity, or any other prescribed arrangement that involves a risk of money laundering or terrorism financing.</p> <p>If you have formed any "other" legal persons or arrangements, then you need to specify what they were, as well as estimating the total number.</p> |

| Part 3 | Annual report question | Guidance |
|--------|--|--|
| 7.2 | <p>Do you act as, or arrange for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements? Yes/No</p> <p>If you answered “yes”, estimate:</p> <ul style="list-style-type: none"> • the number of nominee directorship roles your reporting entity holds: <i>[number]</i> • the number of nominee shareholder roles your reporting entity holds: <i>[number]</i> • the number of trustee roles your reporting entity holds: <i>[number]</i> | <p>If you act, or arrange for a person to act, as a nominee director, nominee shareholder, or trustee in the ordinary course of your business, then you need to estimate the numbers of these roles your reporting entity holds.</p> <p>If you are conducting a captured activity in your personal capacity (as opposed to in your professional capacity) you are not captured by the Act.</p> |
| 7.3 | <p>Do you provide a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or any other legal person or arrangement? * Yes/No</p> <p>If you answered “yes”, estimate the number of companies, partnerships, or other legal persons or arrangements that your reporting entity provides these services to. Select the estimated number.</p> <ul style="list-style-type: none"> • Companies: 0; 1–10; 11–100; 101–999; 1000+ • Trusts (excluding charitable trusts): 0; 1–10; 11–100; 101–999; 1000+ • Partnerships (including limited partnerships): 0; 1–10; 11–100; 101–999; 1000+ • Charities (including charitable trusts and other charitable entities): 0; 1–10; 11–100; 101–999; 1000+ <p>*Unless the office or address is provided solely as an ancillary service to the provision of other services.</p> | <p>Estimate the number of each type of entity you provide an address for, unless it is provided only as an ancillary service to other services you are providing the customer (that are not captured by the Act). Include sole traders.</p> |

| Part 3 | Annual report question | Guidance |
|--------|---|--|
| 7.4 | <p>Do you manage client funds (other than sums paid as fees for professional services), accounts, securities, or other assets? <i>Yes/No</i></p> <p>If you answered “yes”, estimate the value of funds managed in the last year. Select the estimated value.</p> <p>0; \$1–999,999; \$1,000,000–\$9,999,999; \$10,000,000–\$49,999,999; \$50,000,000 and over</p> | <p>Managing payments to or from your customers’ accounts (including via your trust accounts) is captured by the Act. With the exception of payments for professional fees, any instance where you receive or hold customer funds and control the distribution of those funds will also be captured.</p> <p>Note that the terms “customers” and “clients” are used interchangeably in the Act and regulations.</p> |
| 7.5 | <p>Do you provide real estate agency work (within the meaning of section 4(1) of the Real Estate Agents Act 2008) to effect a transaction (within the meaning of section 4(1) of that Act)? <i>Yes/No</i></p> | <p>Section 4 of the Real Estate Agents Act 2008 defines real estate agency work as follows:³³</p> <p>real estate agency work or agency work—</p> <ol style="list-style-type: none"> a. means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and b. includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but c. does not include— <ol style="list-style-type: none"> i. the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or ii. the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or iii. the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or iv. the lending of money on mortgage or otherwise; or v. the provision of investment advice; or vi. the provision of conveyancing services within the meaning of the Lawyers and Conveyancers Act 2006 |

| Part 3 | Annual report question | Guidance |
|--------|---|---|
| 7.6 | <p>Specify which of the following services you engage in or give instructions on behalf of a customer to another person for:</p> <ul style="list-style-type: none"> a. any conveyancing (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) to effect a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008, and as specified in paragraph (a)(vi)(A) of the definition of “designated non-financial business or profession” in section 5(1) of the Act); b. a transaction within the meaning of section 4(1) of the Real Estate Agents Act 2008; c. the transfer of a beneficial interest in land or other real property; d. a transaction on behalf of any person in relation to the buying, transferring, or selling of a business or legal person (for example, a company) or any other legal arrangement; e. a transaction on behalf of a customer in relation to creating, operating, and managing a legal person (for example, a company) or any other legal arrangement. | <p>Select all of the following services which you engage in.</p> <p>Conveyancing as defined in section 6 of the Lawyers and Conveyancers Act:³⁴</p> <ul style="list-style-type: none"> a. means— <ul style="list-style-type: none"> i. legal work carried out for the purpose of effecting or documenting any transaction or prospective transaction that does or would create, vary, transfer, or extinguish a legal or equitable estate, interest, or right in any real property; and ii. legal work carried out for the purpose of effecting or documenting a sale or purchase of a business, whether or not land is involved; and b. includes legal work carried out for the purpose of effecting or documenting— <ul style="list-style-type: none"> i. a lease of land; or ii. the grant of a mortgage or charge over any interest in land; or iii. the creation of a trust affecting any real property or any interest in land; and c. includes any legal services that are incidental to, or ancillary to, any work of a kind described in paragraph (a) or paragraph (b); and d. includes, in particular, the presenting of any instrument for registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908 and the carrying out of any other work required by either of those Acts to be performed by, or on behalf of, persons seeking to effect registration of instruments; but e. does not include the legal work involved in the preparation or drafting of a will; and f. despite paragraph (d), does not include the work (not being legal work) involved in an agent of a practitioner or incorporated firm presenting an instrument for registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908 <p>A transaction as defined in section 4(1) of the Real Estate Agents Act³⁵ means any one or more of the following:</p> <ul style="list-style-type: none"> a. the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land; b. the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies); c. the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952; d. the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003; e. the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land). <p>Both 7.6(d) and (e) (in the left column: transactions on behalf of) mean undertaking any one of the activities mentioned, not a combination of all activities at once.</p> |

| Part 3 | Annual report question | Guidance |
|----------|--|--|
| 7.7 | <p>Estimate the total value of the transactions listed in 7.6 above (excluding your professional fees) for the last year. Select the total estimated value.</p> <p>0; \$1–999,999; \$1,000,000–\$9,999,999; \$10,000,000–\$49,999,999; \$50,000,000 and over</p> | <p>Add together the total value of all transactions for all the services listed in question 7.6, but do not include any professional fees obtained for these services.</p> |
| B | Supplementary activities | |
| Note | | <p>This section provides DIA with valuable information to help us support you by better understanding your business and its needs.</p> |

| Part 3 | Annual report question | Guidance |
|--------|---|--|
| 7.8 | <p>Select whichever of the following activities you provide:</p> <ul style="list-style-type: none"> a. accepting deposits or other repayable funds from the public; b. lending to or for a customer, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions (including forfeiting); c. financial leasing (excluding financial leasing arrangements in relation to consumer products); d. transferring money or value for, or on behalf of, a customer; e. undertaking financial guarantees and commitments; f. trading for, or on behalf of, a customer in any of the following using the person's account or the customer's account; <ul style="list-style-type: none"> i. money market instruments (for example, cheques, bills, certificates of deposit, or derivatives); ii. foreign exchange; iii. exchange, interest rate, or index instruments; iv. transferable securities; v. commodity futures trading; g. participating in securities issues and the provision of financial services related to those issues; h. managing individual or collective portfolios; i. safe keeping or administering of cash or liquid securities on behalf of other persons; j. investing, administering, or managing funds or money on behalf of other persons; k. issuing, or undertaking liability under, life insurance policies as an insurer. | <p>Select all of the activities that you provide.</p> <p>In question 7.8(a), accepting deposits or other repayable funds includes for property transactions.</p> <p>In question 7.8(d), this includes transferring to or from a trust account.</p> |

| Part 3 | Annual report question | Guidance |
|----------|--|---|
| c | Supplementary questions (answer all these questions) | |
| 7.9 | Do you accept cash (physical currency or bearer negotiable instruments)? <i>Yes/No</i> If you answered “yes”, estimate what percentage of your business involves cash: <i>[percentage]</i> | A bearer negotiable instrument is a non-cash monetary instrument, which may contain the instruction “pay to the bearer”. Examples of bearer negotiable instruments include cheques, promissory notes, traveller’s cheques, bearer bonds, money orders and postal orders. If you accept cash or bearer negotiable instruments, then you must estimate the percentage of your total income that is formed through cash. |
| 7.10 | Do you send/receive funds from other countries (including the payment of fees either on your own behalf or on behalf of someone else)? <i>Yes/No</i> If you answered “yes”, estimate the total value of transactions for the past year. Select the estimated total value of transactions for the past year. 0; \$1–999,999; \$1,000,000–\$9,999,999; \$10,000,000–\$49,999,999; \$50,000,000 and over List your 3 most common products and/or services (described in sections A to C above). <i>[specify]</i> | For this question, this includes sending or receiving overseas payments of professional fees (including from an overseas branch of your company). Make sure you include these in the total amount. |
| 8 | Customers (including clients) | |
| 8.1 | Estimate how many customers you conducted CDD on this year in the course of carrying out activities regulated by the Act: <i>[estimate number]</i> | Customer due diligence (CDD) is about knowing your customer and verifying their identity. It is also the process through which you develop an understanding of your customers, the kind of activities you can expect them to undertake through your business, and the ML/TF risks they pose to your business. This relates to the customers to whom you have provided services that include the activities that are captured by the Act. Refer to the guidance ³⁶ for your sector for further information on CDD. If you have not on-boarded any new customers, then the answer may be zero. You should state why this is the case. |

| Part 3 | Annual report question | Guidance |
|--------|--|---|
| 8.2 | <p>Estimate how many of the customers referred to in question 8.1 above are:</p> <ul style="list-style-type: none"> • classified as politically exposed persons (PEPs) (include your customers that are beneficially owned or are controlled by, or for the benefit of, a PEP): <i>[number]</i> • a trust or another vehicle for holding personal assets: <i>[number]</i> • an overseas government body: <i>[number]</i> • a New Zealand resident individual: <i>[number]</i> • a New Zealand resident entity (including companies, partnerships, trusts, charities, and other incorporated or unincorporated entities): <i>[number]</i> • a non-resident individual: <i>[number]</i> • a non-resident entity (including companies, partnerships, trusts, charities, and incorporated societies): <i>[number]</i> | <p>Politically exposed persons (PEPs) are individuals (and their family and close associates) who, by virtue of their position in public life, may be vulnerable to corruption. New Zealand legislation currently limits this concept to foreign PEPs.</p> <p>Overseas government bodies means any overseas government or body or agency or inter-governmental organisation.</p> <p>New Zealand resident individuals are natural persons who are ordinarily resident in New Zealand. It does not include entities.</p> <p>New Zealand resident entities (including companies, partnerships, trusts, charities, and other incorporated or unincorporated entities) includes:</p> <ul style="list-style-type: none"> • Any type of New Zealand entity or organisation that is incorporated/registered/etc. in New Zealand, and has a principal place of business in New Zealand, even if the owners/controllers/directors/trustees are overseas • New Zealand government bodies/agencies <p>It does not include individuals or overseas entities.</p> <p>Non-resident individuals are natural persons who are not ordinarily resident in New Zealand.</p> <p>Non-resident entities (including companies, partnerships, trusts, charities, and incorporated societies) includes any type of entity or organisation (whether or not it is incorporated/registered/etc. in New Zealand) that does not have its principal place of business in New Zealand. It does not include overseas government bodies.</p> |

| Part 3 | Annual report question | Guidance |
|--------|--|---|
| 8.3 | <p>Indicate whether you use the following methods to carry out CDD on new customers who requested new activities subject to the Act during the annual reporting year. If so, please indicate the most common method.</p> <ol style="list-style-type: none"> 1. Face-to-face (over the counter, other than intermediaries) 2. Non face-to-face (including electronic, telephone, post and all other types of remote access – other than intermediaries) 3. Domestic intermediaries/ agents/third-party referral (exclude your reporting entity’s employees) 4. Overseas intermediaries/ agents/ third-party referral (exclude your reporting entity’s employees who are acting as advisors working outside the main offices) 5. Other <p><i>[Indicate from 1–5 which is the most common method of acceptance for you or enter N/A]</i></p> | <p>Rank the methods used for CDD in order of most common (1) to least common (5). Note that this refers to new customers and to the CDD process – it isn’t about your general methods of interactions with customers after CDD has been carried out. If you use another method, select “other” and specify the method(s).</p> <p>If you do not use a particular method, enter “N/A”.</p> <ol style="list-style-type: none"> 1. Face-to-face (over the counter, other than intermediaries) includes “over-the-counter” or similar interaction between your staff and the customer. Include, for example, meetings in your offices and interactions with employees of your customer. (Exclude interactions via an intermediary – refer to methods 3 and 4 below). 2. Non face-to-face (including electronic, telephone, post and all other types of remote access – other than intermediaries) includes any other method except interaction with customers via an intermediary (see methods 3 and 4 below). 3. Domestic intermediaries/agents/third-party referral (exclude your reporting entity’s employees) includes all third parties and intermediaries who are physically located and operating in New Zealand. Intermediaries include all third parties making referrals and introductions of business. Include accountants, solicitors, brokers and agents, whether independent or tied advisers. Exclude your reporting entity’s employees even where those employees do not work at the reporting entity’s main address. 4. Overseas intermediaries/agents/third-party referral (exclude your reporting entity’s employees who are acting as advisors working outside the main offices) includes all third parties and intermediaries who are not primarily physically located and operating in New Zealand. Intermediaries include all third parties making referrals and introductions of business. Include accountants, solicitors, brokers and agents, including independent or tied advisers. Exclude your reporting entity’s employees working abroad. |

Part 4: Captured activities

The questions in this part are requesting information about particular activities that are captured by the AML/CFT Act. Answer **all** questions relevant to your reporting entity.

| Part 4 | Annual report question | Guidance |
|----------|---|--|
| 9 | Sector-specific questions | |
| Note | Only answer questions relevant to your sector, but ensure that you answer all the questions in that section. | Note that there will be circumstances where you give advice in relation to a captured activity (without necessarily then carrying out the activity). Generally, advice alone, in the absence of any actual captured activity on your part, will not be caught by the definition of “designated non-financial business or profession”. If you expect to provide a mixture of advice and captured activities for a customer over a period of time, then this should be included. |
| | All designated non-financial business groups or professions (DNFBPs) | |
| 9.1 | Do you incorporate companies or form trusts or other legal structures or arrangements in jurisdictions outside New Zealand? <i>Yes/No</i> | |
| 9.2 | If the answer to 9.1 above is “yes”, please select the 3 most common jurisdictions in which you incorporate companies, or form trusts or other legal structures or arrangements: <i>[select from drop down list]</i> | Only answer this question if you answered “yes” to 9.1. Select the countries from the drop-down menu. |
| 9.3 | Do you handle the receipt and transmission of customer/client money? <i>Yes/No</i> | This excludes payment of fees for services you provide. |
| 9.4 | Do you manage customer/client bank accounts? <i>Yes/No</i> | Managing payments to or from your customers’ accounts, including via your trust accounts, is captured. With the exception of payments for professional fees, any instance where you receive or hold customer funds and distribute those funds will also be captured. The key determining factor is whether you have control over the flow of money – if you do have control, then your activity is captured. |
| 9.5 | For your customers and clients who are overseas corporations with shares in bearer form, do your policies provide for maintaining the physical control of those bearer-shares to ensure that ownership of the corporate entity does not change without your knowledge? <i>Yes/No/ N/A</i> | We want to know if you have a way of ensuring that you can track ownership of bearer-shares for customers who are overseas corporations. |

| Part 4 | Annual report question | Guidance |
|--------|--|--|
| 9.6 | Do you provide AML/CFT regulated services to other DNFBPs in New Zealand? <i>Yes/No/Unknown if customers are DNFBPs</i> | We want to know if you have customers that are also AML/CFT reporting entities in New Zealand (eg, lawyers, accountants, or trust and company service providers). |
| 9.7 | Do you provide AML/CFT regulated services to other DNFBP equivalents located overseas? <i>Yes/No/Unknown if customers are DNFBP equivalents</i> | We want to know if you have customers in overseas countries that are also regulated by AML/CFT legislation in those countries. |
| 9.8 | When providing AML/CFT regulated services, do you use intermediaries or agents within New Zealand? <i>Yes/No</i> | A reporting entity may authorise a person to be its agent and rely on that agent to conduct CDD and obtain any information required for CDD records. “Agent” is not defined in the Act; instead, the ordinary principles of agency law apply. |
| 9.9 | When providing AML/CFT regulated services, do you use intermediaries or agents based overseas? <i>Yes/No</i> | |
| 9.10 | If you answered “yes” to question 9.9, list the overseas countries your intermediaries are based in: <i>[list]</i> | Only answer this question if you answered “yes” to 9.9. Select the countries from the drop-down list. |

| Part 4 | Annual report question | Guidance |
|-------------|---|---|
| | <p>Questions for real estate agents, conveyancing practitioners, and lawyers carrying out conveyancing activities</p> | |
| <p>Note</p> | <p>Only answer these questions if you are a real estate agent, conveyancing practitioner, or a lawyer who carries out conveyancing activities.</p> | <p>A real estate agent is a licensed agent who carries out real estate work, as defined in section 4 of the Real Estate Agents Act 2008.³⁷</p> <p>A conveyancing practitioner means a person who holds a current practising certificate issued by the New Zealand Society of Conveyancers, as defined in section 4 of the Real Estate Agents Act 2008.³⁸</p> <p>Conveyancing as defined in section 6 of the Lawyers and Conveyancers Act:³⁹</p> <ol style="list-style-type: none"> a. means— <ol style="list-style-type: none"> i. legal work carried out for the purpose of effecting or documenting any transaction or prospective transaction that does or would create, vary, transfer, or extinguish a legal or equitable estate, interest, or right in any real property; and ii. legal work carried out for the purpose of effecting or documenting a sale or purchase of a business, whether or not land is involved; and b. includes legal work carried out for the purpose of effecting or documenting— <ol style="list-style-type: none"> i. a lease of land; or ii. the grant of a mortgage or charge over any interest in land; or iii. the creation of a trust affecting any real property or any interest in land; and c. includes any legal services that are incidental to, or ancillary to, any work of a kind described in paragraph (a) or paragraph (b); and d. includes, in particular, the presenting of any instrument for registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908 and the carrying out of any other work required by either of those Acts to be performed by, or on behalf of, persons seeking to effect registration of instruments; but e. does not include the legal work involved in the preparation or drafting of a will; and f. despite paragraph (d), does not include the work (not being legal work) involved in an agent of a practitioner or incorporated firm presenting an instrument for registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908 |

| Part 4 | Annual report question | Guidance |
|--------|--|---|
| 9.11 | <p>Have you received cash as part of a real estate transaction? <i>Yes/No</i> If you answered yes, how often in the last year? How much? <i>NZ\$[amount]</i></p> | <p>A transaction as defined in section 4 of the Real Estate Agents Act means any one or more of the following:⁴⁰</p> <ol style="list-style-type: none"> the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land; the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies); the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952; the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003; the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land). |
| 9.12 | <p>Are you providing residential property sales or services (eg, people buying homes)? <i>Yes/No</i></p> | <p>Residential property means any property used, or intended to be used, exclusively or principally for residential purposes.</p> |
| 9.13 | <p>Are you providing commercial property sales or other services? <i>Yes/No</i> If you answered “yes” to both 9.12 and 9.13, what is the estimated split between residential and commercial property sales and services? <i>[percentage]</i></p> | <p>Commercial property means any property used, or intended to be used, exclusively or principally for commercial purposes. Only answer the second part of this question if you answered “yes” to both 9.12 and 9.13.</p> |

Part 5: Ministerial exemption

These questions relate the conditions of a ministerial exemption. Answer **all relevant** questions.

| Part 5 | Annual report question | Guidance |
|-----------|--|---|
| 10 | Conditions of ministerial exemption | |
| Note | | The questions in Part 5 relate to reporting entities that have been granted an exemption from the Act by the Minister of Justice. If your ministerial exemption exempts you from section 60 of the Act ⁴¹ (requirement for an annual AML/CFT report) in relation to all relevant services, then you are not required to complete any parts of the annual report. (Unless and until a ministerial exemption is granted, reporting entities will be expected to comply with obligations under the Act.) |
| 10.1 | Have you been granted any ministerial exemption that is subject to conditions? <i>Yes/No</i> | |
| 10.2 | Provide a description of your compliance with all conditions on any such exemption. | Only answer this question if you answered “yes” to 10.1. |

Part 6: Declaration and signature

Declaration and signature

Endnotes

- ¹ Section 60, AML/CFT Act: <http://bit.ly/2gQqiUa>
- ² Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ³ AML/CFT (Requirements and Compliance) Amendment Regulations 2017 <http://bit.ly/2pukO6c>
- ⁴ Designated Business Group Guidelines: <http://bit.ly/2y4KpFa>
- ⁵ www.dia.govt.nz (note that the electronic uploading facility will be available before the first report is due)
- ⁶ Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ⁷ Codes of Practice and Guidelines, DIA: <http://bit.ly/2gQ3lev>
- ⁸ Section 56, AML/CFT Act: <http://bit.ly/2znn4Dd>
- ⁹ Section 5, Companies Act 1993: <http://bit.ly/2EqTM8E>
- ¹⁰ Beneficial Ownership Guideline: <http://bit.ly/2Bxp2Pc>
- ¹¹ Section 5, Companies Act 1993: <http://bit.ly/2EqTM8E>
- ¹² Section 5, Companies Act 1993: <http://bit.ly/2EqTM8E>
- ¹³ Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ¹⁴ Designated Business Group Guidelines: <http://bit.ly/2y4KpFa>
- ¹⁵ Section 32, AML/CFT Act: <http://bit.ly/2hjDuF3>
- ¹⁶ Section 58, AML/CFT Act: <http://bit.ly/2ly11Dz>
- ¹⁷ Risk Assessment Guideline: <http://bit.ly/2sdlv83>
- ¹⁸ Section 58, AML/CFT Act: <http://bit.ly/2ly11Dz>
- ¹⁹ Section 59, AML/CFT Act: <http://bit.ly/2xJWm2P>
- ²⁰ Guideline for Audits of Risk Assessments and AML/CFT Programmes: <http://bit.ly/2AfTf7m>
- ²¹ Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ²² Section 57, AML/CFT Act: <http://bit.ly/2h2nN59>
- ²³ Section 57, AML/CFT Act: <http://bit.ly/2h2nN59>
- ²⁴ Section 59, AML/CFT Act: <http://bit.ly/2xJWm2P>
- ²⁵ Guideline for Audits of Risk Assessments and AML/CFT Programmes: <http://bit.ly/2AfTf7m>
- ²⁶ Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ²⁷ Amended Identity Verification Code of Practice: <http://bit.ly/2hXLpod>
- ²⁸ Section 33, AML/CFT Act: <http://bit.ly/2nQNm8F>
- ²⁹ Section 34, AML/CFT Act: <http://bit.ly/2BdPsrn>
- ³⁰ Section 32, AML/CFT Act: <http://bit.ly/2hjDuF3>
- ³¹ Section 31, AML/CFT Act: <http://bit.ly/2z1eCIX>
- ³² Section 5, AML/CFT Act: <http://bit.ly/2xHGfmy>
- ³³ Section 4, Real Estate Agents Act 2008: <http://bit.ly/2E9wgOb>
- ³⁴ Section 6, Lawyers and Conveyancers Act 2006: <http://bit.ly/2EaeqdY>
- ³⁵ Section 4(1), Real Estate Agents Act: <http://bit.ly/2E9wgOb>
- ³⁶ Codes of Practice and Guidelines, DIA: <http://bit.ly/2gQ3lev>
- ³⁷ Section 4, Real Estate Agents Act: <http://bit.ly/2E9wgOb>
- ³⁸ Section 4, Real Estate Agents Act: <http://bit.ly/2E9wgOb>
- ³⁹ Section 6, Lawyers and Conveyancers Act 2006: <http://bit.ly/2EaeqdY>
- ⁴⁰ Section 4, Real Estate Agents Act: <http://bit.ly/2E9wgOb>
- ⁴¹ Section 60, AML/CFT Act: <http://bit.ly/2gQqiUa>