

KordaMentha's Submission to the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (‘the Bill’)

March 2025

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Executive summary

Kia ora Justice Committee,

Thank you for the opportunity to make a submission to the Committee as part of the Justice Select Committee’s consideration of the Bill. By way of background, KordaMentha is a corporate advisory firm operating across Asia-Pacific, that works with New Zealand Reporting Entities of various sizes and across multiple sectors to deliver Anti-Money Laundering and Countering Financing of Terrorism (‘AML/CFT’) consulting and assurance services.

We have focused our feedback on those areas where we consider we can add the most value. Those areas are detailed below in Appendix 1.

Introduction to KordaMentha

KordaMentha is an independent and trusted advisory firm providing specialist financial crime, forensic accounting, restructuring, cybersecurity, performance improvement, and real estate services. Our team of more than 400 extends across the Asia-Pacific and has experience ranging from C-suite advisory to finance, real estate, and law enforcement.

Since 2002, KordaMentha has been entrusted with some of the region’s most complex and sensitive commercial situations. We work together to solve the challenges facing corporations, financiers, lawyers, private investors, and government clients.

Our financial crime advisory team operates in both the Australian and New Zealand markets and understands the commercial challenges of implementing AML/CFT obligations.

We have gained experience from a range of roles in industry, including some of New Zealand’s largest regulated entities, and former regulatory roles across all three AML/CFT Supervisors.

As a result, our team has a unique perspective on both the practical implementation of compliance requirements and the expectations of regulators. This dual perspective allows us to provide insights that balance compliance with operational realities of challenges facing industry.

The views provided in this submission are made on a general basis and limited to the the clauses contained within the Bill. As a technologically and politically neutral firm, KordaMentha supports the development of regulation that offers consistency and alignment with international best practise, clear guidance or business, and effective supervision and enforcement of the regulatory regime.

We welcome continued collaboration with New Zealand Regulators and the Ministry of Justice in its role to build resilience in the financial system and disrupt money laundering, terrorism financing and other serious crime.

Appendix 1

Introduction

We support the use of the Regulatory Systems Amendment Bill process to implement targeted enhancements to the AML/CFT regime.

Given the often-lengthy process for substantive legislative reform, this mechanism provides a valuable opportunity to progress necessary refinements in a timely manner. Ensuring the regime remains risk-based and proportionate is critical to directing resources towards high-risk areas, rather than reinforcing a compliance-driven, tick-box approach.

We understand the Bill seeks to improve the effectiveness and efficiency of the AML/CFT regime by refining existing obligations, strengthening enforcement provisions, and reducing unnecessary compliance burdens.

These amendments reflect recommendations from recent reviews of New Zealand’s AML/CFT framework and align with broader efforts to enhance regulatory clarity and international compliance. Our feedback focuses specifically on clauses 5 and 9 of the Bill.

We welcome these steps towards a more practical and risk-focused regime and appreciate the opportunity to contribute to this process.

Clause 5 | Application of this Act to Reporting Entities

KordaMentha supports the proposed change, recognising its potential to create greater clarity and consistency in the application of AML/CFT obligations.

By removing the phrase “*only to the extent that*” the law would be simplified and less open to interpretation, helping businesses better understand the scope of their obligations. This change would also enhance the alignment of New Zealand’s AML/CFT regime with international best practices, particularly with the FATF) recommendations.

The removal of this phrase would:

- Improve the transparency of regulatory requirements for businesses.
- Strengthen the integrity of New Zealand’s financial crime prevention framework.
- Provide clearer guidance to businesses on their obligations, reducing the risk of non-compliance due to misunderstandings.

However, we have several concerns regarding the broader application of clause 5, particularly for smaller businesses and those new to the regime:

- **Impact on Smaller Businesses:** Smaller entities may lack the resources to comply with expanded AML/CFT requirements, leading to potential operational and resource strain. A tiered or risk-based approach to compliance, with additional guidance for low-risk businesses, would help mitigate this.
- **Increased Compliance Costs:** The expanded scope may result in significant compliance costs, especially for businesses that were previously outside the scope of the Act. Introducing support mechanisms such as financial assistance or guidance for these businesses would ease the burden while achieving the desired outcome.
- **Risk of Regulatory Overreach:** There is potential for businesses with minimal risk exposure to face the full weight of AML/CFT requirements. A risk-based approach should remain in place to ensure proportionality in the application of obligations.

Clause 9 | Customer Due Diligence for Trusts

We support the proposed change.

The Statutory Review acknowledges (from paragraph 701) that “not all trusts or other vehicles for holding personal assets are inherently high risk,” and that mandatory enhanced customer due diligence (ECDD) for trusts is not a requirement under the Financial Action Task Force (‘FATF’) standards.

We believe that imposing a blanket requirement for ECDD on all trusts, on the premise that they are inherently high risk, is inconsistent with the risk-based approach that the AML/CFT regime promotes. A more proportionate approach would ensure resources are directed to areas of actual risk rather than applying unnecessary compliance burdens.

Furthermore, New Zealand’s 2020 Mutual Evaluation (at paragraph 118) recommended that authorities consider a “*more nuanced approach to mitigating the risks posed by trusts*.” Aligning with this guidance would enhance both regulatory effectiveness and compliance efficiency.

However, KordaMentha would like to highlight concerns regarding the maturity of the risk-based approach within the industry and the potential for misinterpretation or misuse.

From our experience, many reporting entities struggle to accurately assess ML/TF risk, which could result in:

- High-risk trusts being incorrectly classified as low-risk and not subject to ECDD,
- Less experienced reporting entities being uncertain about what constitutes a truly high-risk trust, leading to inconsistent application of due diligence measures, or;
- The indiscriminate application of a blanket high-risk approach, even when a trust’s risk profile does not warrant it.

While we support this change, we strongly recommend that AML/CFT Supervisors support the change with clear and practical guidance on the factors to consider when assessing the risk of trusts. This will be critical to ensuring consistency, regulatory effectiveness, and alignment with international best practices.

We recommend a risk-based, graduated compliance approach, along with additional guidance and transitional support for businesses newly affected by the expanded scope. Clear communication about the changes and who they affect will be crucial for ensuring compliance and minimising confusion. to manage their risks, and that will at times include outsourcing.

Conclusion

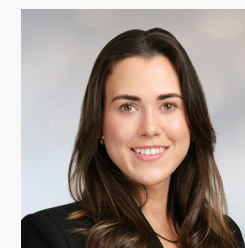
KordaMentha would be pleased to speak in front of the Select Committee to elaborate on our submission

Should you require any clarification of the matters in this submission, wish us to discuss our views in person, or are seeking further engagement on this review please let us know.

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