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Submission on the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill

On behalf of Transparency International New Zealand (TINZ), thank you for the opportunity to make a submission to the Parliamentary Select Committee on the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (“the Amendment Bill”).

TINZ strongly supports the adoption of the Amendment Bill which will implement Phase 2 of the anti-money laundering and countering the financing of terrorism (AML/CFT) reforms to extend the laws to cover lawyers, conveyancers, accountants, real estate agents, the New Zealand Racing Board and high value dealers (referred to in the Amendment Bill as “designated non-financial businesses and professions”).

Support for the Amendment Bill

The implementation of Phase 2 will improve the integrity of New Zealand’s financial system by closing existing loopholes. It will complete New Zealand’s AML/CFT framework, and to ensure that New Zealand is not considered to be a soft target by international criminal groups.

This is an important policy initiative to combat illicit money flows in and out of New Zealand. This will help to deter criminals from using New Zealand to move and hold illicit funds in New Zealand, and it will help law enforcement and the Inland Revenue Department to ‘follow the money’ in investigations. This is important to help detect money laundering coming from corruption, drug trafficking, tax evasion and other serious crimes.

The criminal risks associated with the designated non-financial businesses and professions covered by the Amendment Bill are well known. In 2010, NZ Police’s [AML/CFT National Risk Assessment](#) assessed the level of money laundering risk associated with shell companies, real estate, valuable commodities, professional services (gatekeepers) as high. More recently, the Reserve Bank of New Zealand’s [2017 Sector Risk Assessment](#) of the banking and insurance sectors found that money launderers and terrorist financiers may seek out gatekeepers (lawyers, accountants, real estate agents), or use shell companies and trusts, to circumvent controls in the banking sector.

Internationally, Transparency International has conducted significant studies into the misuse of corporate vehicles by hiding beneficial ownership¹ and high value commodities (such as real estate, motor vehicles and luxury items)².

The Panama Papers have identified that there are hundreds of thousands of offshore corporate vehicles domiciled in countries other than the principal residences of the beneficial owners. This highlighted the fact that New Zealand does not have a comprehensive system to ensure to identify the beneficial owners of its corporate vehicles. Phase 2 will mitigate the risk to some extent by ensuring that lawyers and accountants involved in setting up and maintaining these corporate vehicles identify their clients and the beneficial owners, and identify and report suspicious activity.

It is important to recognise that most corporate vehicles registered in New Zealand are used for legitimate purposes. However, the risk to New Zealand is that domestic criminals hide behind these corporate vehicles to move criminal funds, or that its reputation attracts international criminals seeking to hide behind New Zealand's good standing.

This initiative is timely to strengthen New Zealand's AML/CFT framework in advance of the next Financial Action Task Force (FATF) review under the 4th evaluation round, which is scheduled for 2020. The FATF focuses on assessing the effectiveness of New Zealand's AML/CFT regime and the changes in the Amendment Bill will support New Zealand's evaluation. A positive evaluation will enhance New Zealand's international reputation as a country hostile to financial crime.

TINZ Recommendations

While TINZ supports the adoption of the Amendment Bill, it makes the following specific recommendations for the Committee's consideration:

1. *Phase 2 sectors need to implement robust AML/CFT controls on a risk-based approach*

Lawyers, accountants and real estate agents need to be encouraged to carry out customer due diligence on their customers (including identifying the beneficial owner, the natural person controlling the customer) and report suspicious activity. This provides a deterrence from criminals to misuse their services and provides records and leads for law enforcement and the Internal Revenue Department to follow the money in investigations.

2. *The staggered implementation timeframe of 2 years is appropriate*

The Amendment Bill establishes a staggered implementation of the various Phase 2 sectors, with lawyers and accountants brought within the AML/CFT regime in 2018, and real estate agents, the New Zealand Racing Board and high value dealers in 2019. This timeframe is appropriate as affected businesses will have time to develop and implement their obligations. Any extensions to this timeframe would mean that loopholes remain which could be exploited and would have a negative impact on New Zealand's FATF evaluation.

3. *The Department of Internal Affairs (DIA) needs appropriate resources to effectively supervise and support Phase 2 businesses*

The DIA needs sufficient resources to supervise Phase 2 businesses to support and ensure compliance with the new laws. TINZ recognises that Phase 2 will have a cost impact on affected businesses and professions. In this respect, TINZ considers

¹ For example, see "[Policy Brief: Ending Secrecy to end Impunity: Tracing the Beneficial Owner](#)" or "[Just for Show: Reviewing G20 Promises on Beneficial Ownership](#)"

² For example, see "[Tainted Treasures: Money Laundering Risks in Luxury Markets](#)" or "[Doors Wide Open: Corruption and Real Estate in Four Key Markets](#)"

that estimate cost impact is appropriate given the risks identified in these sectors. TINZ also suggests that the cost impact can be reduced by ensuring that businesses and professions obtain sufficient education and guidance from the DIA. This could include for example, online training on AML/CFT like TINZ's online training tool on the prevention of corruption. The DIA also needs sufficient resources to monitor compliance to ensure that the system is implemented in practice and that there is a level playing field for regulated businesses.

4. *The proposed cash threshold for high value dealers (\$15,000) needs to align with other cash thresholds in the AML/CFT regime (\$10,000)*

The second consultation paper on Phase 2 proposed a cash threshold of \$15,000 for high value dealers. This is inconsistent with the \$10,000 threshold for other parts of the AML/CFT regime (including cash reporting and customer due diligence in occasional transactions). While the thresholds are set in regulations rather than the Amendment Bill, TINZ recommends that the threshold for high value dealers be \$10,000 to align with other parts of the regime.

5. *The new section 33(3A) which reduces responsibility when one business relies on another for customer due diligence is inappropriate and needs to be removed from the Amendment Bill*

The Amendment Bill includes a new provision in which a business relying on another for customer due diligence is not responsible for that due diligence when it acts in good faith and follows certain conditions that will be set out in regulations. While the detail in the regulations remains to be seen, this provision is impractical and will weaken the regime as businesses would not be liable for compliance with their obligations. TINZ considers that the existing good faith provisions in the AML/CFT Act are sufficient and recommends that the provision be removed from the Amendment Bill.

6. *Caution is needed to ensure that de-risking does not lead to profiling of customers*
Profiling has been seen by some entities as a way of de-risking transactions. This only shifts these clients to other vendors who may have less rigorous due diligence. Properly conducted due diligence is enough to ensure compliance.

7. *The expansion of the suspicious transaction reporting regime to include suspicious activities is a positive step*

The Shewn Inquiry identified an issue that suspicious activity could not be reported to the NZ Police Financial Intelligence Unit where there was no underlying transaction in New Zealand. TINZ supports the proposed change in the Amendment Bill to expand this to include suspicious activities. This will mean, for example, that a New Zealand trust holding funds offshore could report suspicious activity identified through the management of the trust in New Zealand.

8. *New Zealand needs to establish a public register of beneficial ownership for all corporate vehicles (trusts, companies, co-ops, charities)*

A beneficial ownership registry which is administered by a registry with adequate resources and powers will ensure an effective and efficient mitigation of the criminal risks from large international transactions seeking a place to put assets or launder money. This will also assist businesses regulated by the AML/CFT laws to comply with their obligations. While, this is not addressed in the Amendment Bill, TINZ recommends that this work be fast tracked to avoid being left behind internationally.

Presenting to the Select Committee

The Amendment Bill is an important measure to protect New Zealand's reputation and combat the misuse of New Zealand corporate vehicles and real estate. TINZ has been collecting information and building knowledge in this area for some time. We also work internationally with Transparency International which has examined similar issues globally for some time.

TINZ would greatly welcome the opportunity to present before the Select Committee on the issues associated with the Amendment Bill.

Yours sincerely,

Suzanne Snively, ONZM
Chair, Transparency International New Zealand Inc.

Appendix 1 – Role of TINZ

About TINZ

Transparency International New Zealand (TINZ) is the local chapter of the global organisation - <http://www.transparency.org.nz/>. TINZ works to actively promote the highest levels of transparency, accountability, integrity and public participation in government and civil society in New Zealand and the Pacific Islands.

Transparency International New Zealand provides a free [Anti-Corruption Training Tool](http://transparency.org.nz/Anti-Corruption-Training) (transparency.org.nz/Anti-Corruption-Training) designed by leading experts in the field, and enables organisations to provide training for their personnel. This was developed in partnership with the Serious Fraud Office and BusinessNZ.

Transparency International New Zealand published the [*Integrity Plus 2013 New Zealand National Integrity System Assessment*](#) and is actively engaged in the implementation of its recommendations.