

Hon Aupito William Sio

MP for Māngere

Minister for Pacific Peoples

Minister for Courts

Associate Minister of Foreign Affairs

Associate Minister of Education (Pacific Peoples)

Associate Minister of Justice

Associate Minister of Health (Pacific Peoples)



10 MAR 2021

New Zealand Bar Association

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Ministerial class exemption: Barristers sole

1. As the Associate Minister of Justice, and under section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**the Act**), I exempt barristers as a class of reporting entities from provisions of the Act as set out below.
2. A barrister who receives instructions from a solicitor (who is not an in-house lawyer, other than an in-house lawyer employed by the Crown) in respect of a client is exempt from the following provisions of the Act in relation to the client as a customer under that Act:
 - a. sections 11 (customer due diligence) and 12 (reliance on risk assessment when establishing level of risk):
 - b. sections 14 to 21 (standard and simplified customer due diligence):
 - c. section 22(1), (2), and (5) (circumstances in which enhanced customer due diligence applies):
 - d. sections 22A to 25 (enhanced customer due diligence):
 - e. section 26 (politically exposed person):
 - f. section 30 (new or developing technologies, or products, that might favour anonymity):
 - g. section 31 (ongoing customer due diligence and account monitoring):
 - h. sections 37 to 39 (prohibitions):
 - i. sections 56 (reporting entity must have AML/CFT programme and AML/CFT compliance officer) and 57 (minimum requirements for AML/CFT programmes):

- j. sections 58 (risk assessment) and 59 (review and audit of risk assessment and AML/CFT programmes):
 - k. section 59B (who carries out audit):
 - l. section 60 (annual AML/CFT report).
3. Barristers who receive instructions from the Crown are exempt from the following provisions of the Act:
- a. exempt from section 11 (customer due diligence), except where sections 22(1) and 22A apply; and
 - b. section 12 (reliance on risk assessment when establishing level of risk):
 - c. sections 14 to 17 (standard customer due diligence):
 - d. section 22(2) and (5) (circumstances in which enhanced customer due diligence applies):
 - e. section 26 (politically exposed person):
 - f. sections 30 (new or developing technologies, or products, that might favour anonymity) and 31 (ongoing customer due diligence and account monitoring):
 - g. sections 56 (reporting entity must have AML/CFT programme and AML/CFT compliance officer) and 57 (minimum requirements for AML/CFT programmes):
 - h. sections 58 (risk assessment) and 59 (review and audit of risk assessment and AML/CFT programmes requirements):
 - i. section 59B (who carries out audit):
 - j. section 60 (annual AML/CFT report).
4. The exemption does not apply to—
- a. a barrister who receives instructions directly from a client (other than the Crown or a solicitor in respect of a client); or
 - b. a barrister who performs the activities listed in the definition of a designated non-financial business or profession in section 5 of the Act (outside of the instructions of a lawyer).
5. For the purposes of this exemption--

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

barrister means a person who holds a practising certificate as a barrister only, and not as a barrister and solicitor, in accordance with the Lawyers and Conveyancers Act 2006)

Crown means a customer described in section 18(2)(b) to (f), (j), (l), or (m) of the Act

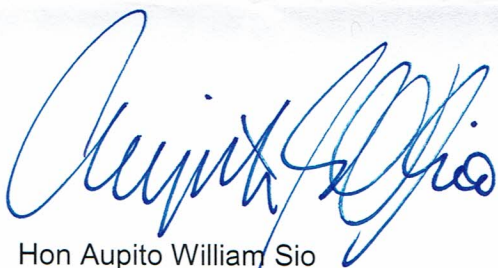
in-house lawyer has the same meaning as in rule 15.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008

ML/TF means money laundering and terrorist financing

solicitor means a person holding a practising certificate as a barrister and solicitor in accordance with the Lawyers and Conveyancers Act 2006

6. The exemption has been granted for the following reasons:
 - a. the ML/TF risks associated with barristers are mitigated by:
 - i. the restrictions on the activities a barrister may perform under rule 14.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008; and
 - ii. the obligations to report relevant information under rules 2.4, 2.8 to 2.10, and 7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008; and
 - iii. solicitors' obligations to clients under the Act (as a second reporting entity, where the barrister receives instruction); and
 - iv. the low ML/TF risk associated with instructions from Crown entities:
 - b. barristers who are captured by the Act will still be required to file suspicious activity reports, complete simplified customer due diligence when taking instructions from the Crown, conduct enhanced due diligence in specific circumstances, keep the appropriate records, and make the records available to the Department of Internal Affairs when requested:
 - c. the instructing solicitor is subject to full AML/CFT obligations with respect to the same work and same client. This means that requiring barristers to comply with the full suite of obligations under Part 2 of the Act is unlikely to increase the overall effectiveness of the AML/CFT regime:
 - d. given how barristers operate their business (as sole practitioners with few, if any, dedicated support staff), full AML/CFT obligations would result in a disproportionate compliance burden for barristers.
7. The exemption comes into force on 15 March 2021.
8. The exemption expires on 15 March 2026.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Aupito William Sio', is written over a horizontal line.

Hon Aupito William Sio
Associate Minister of Justice