

Ministerial Exemptions Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

In accordance with section 157(6)(b) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“Act”), the Associate Minister of Justice hereby gives notice that he has granted the following exemption from Part 2 of the Act:

Ministerial Exemption: Fletcher Building Retirement Plan

1. This exemption is granted subject to the following conditions:
 - a. The Fletcher Building Retirement Plan (“Plan”) must remain a registered superannuation scheme as defined under the Superannuation Schemes Act 1989, or a registered scheme under the Financial Markets Conduct Act 2013, as applicable.
 - b. Apart from members, only former members that have reached retirement age but are still employed and make contributions through payroll to a deferred withdrawal account can be considered “members” of the scheme for the purposes of Regulation 20A in the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (“Regulation 20A”).
 - c. The Plan must have a cap on voluntary contributions made (other than those made through payroll). The cap should be set at the amount required to enable a member to maximise those government contributions set out in section MK 4 of the Income Tax Act 2007.
 - d. Subject to paragraph 3 below, the Trustee is required to remove any mechanisms contained in the Plan’s Trust Deed that enable members to contribute to the Plan voluntarily other than through payroll.
 - e. The Plan must, in all other aspects, comply with the definition of “limited employer superannuation scheme” pursuant to Regulation 20A.
2. The Trust Deed for the Plan may permit contributions to be made to the Plan other than through payroll by a member during a permitted period of unpaid leave of absence (Regular Leave of Absence Contributions) where:
 - a. the employer or the Plan’s administrator collects those contributions; and
 - b. the contributions do not exceed (as to either amount or frequency) the contributions that were being paid by the relevant member in accordance with the Trust Deed for the Plan immediately prior to the member commencing leave of absence.
3. Where any Regular Leave of Absence Contributions are received from international sources during the permitted period of unpaid leave of absence, the following sections of the Act apply to such contributions:
 - a. sections 10-17 of the Act (and for the purposes of section 14(d) of the Act the receipt of a contribution from an international source is specified as a circumstance in which standard customer due diligence must be conducted);
 - b. sections 40-48 of the Act;
 - c. where the transaction is relevant to a suspicious transaction report, section 49(1) and 2(a)-(f) of the Act; and
 - d. sections 92-100 of the Act.
4. Where any withdrawals are made by a member in addition to that member making Regular Leave of Absence Contributions during the permitted period of unpaid leave of absence, the following sections of the Act apply to such withdrawals and contributions:
 - a. sections 10-17 of the Act (and for the purposes of section 14(d) of the Act the first such withdrawal is specified as a circumstance in which standard customer due diligence must be conducted);
 - b. sections 40-48 of the Act;
 - c. where the transaction is relevant to a suspicious transaction report, section 49(1) and 2(a)-(f) of the Act; and
 - d. sections 92-100 of the Act.

5. The exemption has been granted for the following reasons:
 - a. There is a low risk of money laundering or the financing of terrorism associated with allowing former members, who are still employees of a participating employer, to continue contributing to the fund through payroll.
 - b. Regulation 20A grants an exemption for services provided in respect of promoting or operating a limited employer superannuation scheme or a specified restricted scheme. This reflects the idea that an employee making contributions through their employer to a superannuation scheme presents a low risk of money laundering or terrorist financing.
 - c. Due to the very low money laundering and terrorism financing risks raised by the Plan and the significant compliance costs that would arise from not granting this exemption, I consider that any benefits of requiring compliance with the Act are not justified by the associated costs.
 - d. This exemption is consistent with (and has no effect on the purpose or intent of) the Act, the Financial Transactions Reporting Act 1996 and New Zealand's international obligations as a member of the Financial Action Task Force and the Asia/Pacific Group on Money Laundering.
6. This exemption came into force on the day after the date I granted this exemption (**22 September 2016**).
7. This exemption will expire on **30 June 2020**.

Any person wishing to provide comment on this notice should contact the Criminal Law Team at the Ministry of Justice by emailing international.crime@justice.govt.nz.

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