

AML / CFT

Anti-money laundering and countering financing of terrorism

Designated Business Group – Formation and Change Guideline

Updated in February 2020



Te Tari Taiwhenua
Internal Affairs

Guideline to reporting entities on eligibility, formation, notification and withdrawal from a designated business group

1. This guideline is designed to help reporting entities forming a designated business group (DBG) to understand the process for doing so. Entities may form a DBG if they are eligible to do so under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act) and associated regulations. This guideline highlights the eligibility criteria and election process; and explains the process for notifying an AML/CFT supervisor of the formation of a DBG, any addition or withdrawal of a member, or any change in details. Guidance on information sharing in a DBG is provided in the *DBG Scope Guideline*.
2. This guideline 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 from any of the AML/CFT supervisors and cannot be relied on as such.

What you will find in this guideline

3. This guideline is in three parts. These relate to:
 - Eligibility of members of a DBG
 - Election and notification
 - Withdrawal from a DBG – including dissolution of the DBG
4. The form that you will need to elect, form, change or terminate a DBG is attached at the end of this guideline. Reporting entities supervised by the Department of Internal Affairs (DIA) may also use “AML Online” to create and manage DBGs. Where this guideline refers to the DBG notification form, or requirements to undertake the process in writing, these requirements are also fulfilled through the use of AML Online.

Eligibility for forming a DBG

5. A DBG is a group of two or more eligible persons that have elected (in writing) to form a group to enable some obligations under the AML/CFT Act to be met on a shared basis. Section 5(1) of the AML/CFT Act and the AML/CFT (Definitions) Regulations 2011 define a DBG and give details of the types of entities eligible to form a DBG.
6. Guidance on developing an AML/CFT programme is available in the *AML/CFT Programme Guideline* from the AML/CFT supervisors. Guidance on the obligations that may be shared by members of a DBG is provided in the *DBG Scope Guideline*. Eligible entities may elect to form a DBG and rely on one member of the DBG for policies, procedures and controls relating to certain parts of an AML/CFT programme.
7. There are a number of ways members of a DBG can be related, including:
 - A related company within the meaning of section 2(3) the Companies Act 1993 that is a reporting entity in New Zealand or a person in a country with sufficient

AML/CFT systems and is regulated for AML/CFT purposes¹

- Providers of a service under a joint venture agreement to which each member of the group is a party
 - Government departments, State enterprises or Crown entities
 - Providers of products or services in common with a government department, State enterprise or Crown entity
 - A body corporate that is:
 - A company, either overseas or domestic, within the meaning of section 2 of the Companies Act 1993; and
 - Related to every other body corporate; and
 - Either a reporting entity resident in New Zealand or in a country with sufficient AML/CFT systems
 - A related law firm or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where lawyers are supervised/regulated within a sufficient AML/CFT system
 - A related conveyancer or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where conveyancing is supervised/regulated within a sufficient AML/CFT system
 - A related accounting practice or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where accountants are supervised/regulated within a sufficient AML/CFT system
 - A related trust and company service provider or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where trust and company service providers are supervised/regulated within a sufficient AML/CFT system
 - A related real estate agent or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where real estate agents are supervised/regulated within a sufficient AML/CFT system
 - A related high-value dealer or subsidiary that is a reporting entity in New Zealand or an equivalent body in another country where high-value dealers are supervised/regulated within a sufficient AML/CFT system
 - A group of money transfer agents or sub-agents
 - An entity or class of entities prescribed by regulations
8. Members of a DBG do not have to be reporting entities. As mentioned above, entity types within the definition of a DBG include government departments that are not covered by the scope of the AML/CFT Act. Any third party, such as an overseas parent company, may elect to join a DBG where they meet the eligibility criteria and undertake activities or obligations on behalf of other members of a DBG. It should be noted that a reporting entity ultimately remains accountable for compliance with its own AML/CFT obligations.
9. No member of a DBG is able to be a member of more than one DBG in New

¹ Refer to subsection (d)(i) in the definition of “designated business group” in section 5(1) of the AML/CFT Act.

Zealand.² However, members of a DBG in New Zealand that operate overseas may also be a member of an overseas arrangement similar in nature to a DBG as defined in the AML/CFT Act.

10. Information to assist an assessment of what constitutes a country with sufficient AML/CFT systems is available in the *Countries Assessment Guideline* issued by the AML/CFT supervisors.
11. A DBG must elect a contact person. The contact person must notify the AML/CFT supervisor of any changes to the DBG, including withdrawal of any members of the DBG or termination of the DBG.³ Any notification must be in writing and received by the AML/CFT supervisor within 30 days of the change. The form included with this guideline should be used for notifying the AML/CFT supervisors.

Election and notification

12. The form in this guideline is designed to assist entities with the election process and to ensure entities meet the requirements of the AML/CFT Act and Regulations.
13. The AML/CFT (Definitions) Regulations 2011 state that certain information must be included in an election form. The following information must be provided:
 - a. The name of each entity electing to join the DBG
 - b. The name and contact details of the contact person for the DBG
 - c. The name and contact details of each entity's intended AML/CFT compliance officer
 - d. Sufficient information to determine that each entity is eligible; and
 - e. The date that the election will take effect (if more than 30 days from submission of an application containing the information in paragraphs (a) to (d))
14. Reporting entities must notify the relevant AML/CFT supervisors by submitting the form in this guideline. This requirement is also fulfilled through the use of AML Online.
15. Each reporting entity must elect to be a member of the DBG. Elections must be in writing and include agreement to adhere to privacy requirements.
16. Section 36 of the AML/CFT Act sets out how to deal with personal information within a DBG. Importantly, all members of a DBG must agree in writing to comply with privacy principles 5–11 in section 6 of the Privacy Act 1993, which cover storage, access and accuracy of personal information held and limits on its use and disclosure.
17. New Zealand based members are already required to comply with the Privacy Act. However, they must still confirm that they will comply with the privacy principles. Overseas-based members must also provide assurance in writing that they will comply with the privacy principles in the Privacy Act or the equivalent protections in their jurisdiction.
18. The contact person of the DBG must agree to notify the AML/CFT supervisor of any change in information previously provided to any AML/CFT supervisor about the DBG.

2 Criterion (c) of the definition of “designated business group” in section 5(1) of the AML/CFT Act.

3 Criterion (e) of the definition of “designated business group” in section 5(1) of the AML/CFT Act.

19. The contact person of the DBG should send the completed form to the relevant AML/CFT supervisor for that member. This will not necessarily be the AML/CFT supervisor for all members of the proposed DBG.

Timing and Approval

20. A DBG will be supervised by only one AML/CFT Supervisor; either the Reserve Bank of New Zealand, Financial Markets Authority, or Department of Internal Affairs.
21. When the products and services provided by members of a DBG are covered by more than one AML/CFT supervisor, the AML/CFT supervisors will agree on the appropriate AML/CFT supervisor for that DBG. This decision will be based on the composition of the membership for the DBG and agreed at the Sector Supervisors Forum (**'SSF'**) (see the *Supervisory Framework Guideline* for further information). Following the SSF, the agreed AML/CFT supervisor will notify the DBG accordingly.
22. An AML/CFT supervisor will respond to the DBG contact person in writing within 30 days of receiving the application for forming a DBG. The 30-day period starts the day after receipt of the notification of election.
23. An AML/CFT supervisor may request further information from the reporting entity or proposed DBG member to determine whether they are eligible for membership in a DBG. The AML/CFT supervisor must do this within 30 days, starting from the day after receipt of the form by the AML/CFT supervisor. If the AML/CFT supervisor requires additional information, then the election does not come into force. A new 30-day period will begin the day after further information is received by the AML/CFT supervisor.
24. An AML/CFT supervisor may request further information that is necessary to establish eligibility for membership. It may include establishing:
- The relationship to other entities (if entities are required to be related)
 - That the entities are in a joint venture
 - That each entity has agreed to the privacy principles
 - That an overseas entity is based in a country with sufficient AML/CFT systems and measures and how that was determined; or
 - That the overseas entity is supervised or regulated.
25. Elections will come into force 30 days after the AML/CFT supervisor receives the election form (not counting the day of receipt) unless, during that 30-day period, the AML/CFT supervisor requests further information. Members of a DBG may choose a date in the future for the DBG to take effect, provided that date is more than 30 days after the date the election form is submitted.

Additional members

26. New members may elect to join an existing DBG at any time so long as:
- a. Sufficient information is provided to determine whether the proposed new member meets the eligibility criteria; and
 - b. The AML/CFT supervisor is given notice, by the contact person of the DBG 30 days before the election to join the DBG is intended to take effect.

Withdrawal or dissolving a DBG

27. When a member of a DBG withdraws from the DBG, the contact person for the DBG is required to notify the relevant AML/CFT supervisor of the withdrawal of that entity.⁴
28. Similarly, the contact person must notify the AML/CFT supervisor if the DBG is to be terminated.
29. The form in this guideline should be used to notify the AML/CFT supervisor of changes to the DBG. The withdrawal of a member or dissolution of a DBG will be effective following receipt of notification by the AML/CFT supervisor, unless a later effective date is specified in the notice. You do not need your AML/CFT supervisor's approval to withdraw a member from a DBG or terminate a DBG.
30. When a member withdraws from a DBG, or the DBG is dissolved, each reporting entity must ensure that all aspects of a risk assessment and AML/CFT programme that were previously shared with another member of the DBG are now suitably provided for by the reporting entity. This includes ensuring that the policies, procedures and controls applying to each aspect of the AML/CFT programme are adequate and effective for the reporting entity.
31. If the same systems were used across the DBG, a reporting entity must make sure provision is made for duplicate or new systems, where appropriate, before withdrawal from the DBG is effective. For example, if record-keeping obligations are undertaken by one member of the DBG, it may still be appropriate for the reporting entity withdrawing from the DBG to use the same processes as the DBG.
32. The reporting entity is responsible for ensuring that they will continue to comply with any privacy requirements.

This guideline refers to the *DBG Scope Guideline*, *Countries Assessment Guideline* and the *AML/CFT Programme Guideline* which are available on the websites of the AML/CFT supervisors.

Version history

| | |
|---------------|---|
| November 2014 | Initial version |
| December 2017 | Various changes |
| February 2020 | Combined forms, added reference to AML Online for DIA reporting entities and other minor changes that do not impact on guidance |

⁴ Section 5(3) of the AML/CFT Act.

Form: Notification to AML/CFT supervisor about designated business group

| | |
|---|--|
| Name of designated business group: | |
|---|--|

Contact person for the designated business group:

| | |
|------------------------------|--|
| Name of contact: | |
| Role in entity: | |
| Name of entity: | |
| Office address: | |
| Contact phone number: | |
| Email: | |

Purpose of this notification:

- Formation of a new designated business group (complete Part A below)
- Election of a new member to an existing designated business group (complete Part A below)
- Other changes to an existing designated business group (complete Part B below)

Part A: for forming a new DBG or electing a new member to an existing DBG

- Members electing to join the designated business group (continue on a separate page if necessary):

| Name of member | Name of compliance officer |
|----------------|----------------------------|
| | |
| | |
| | |
| | |
| | |

- Have all members elected in writing to join the designated business group?
- Have all members agreed in writing to adhere to the privacy principles 5–11 as set out in section 6 of the Privacy Act 1993?

2. Each member of the designated business group is one of the following criteria:
- Related to each other member of the group within the meaning of section 2(3) of the Companies Act 1993 and is –
 - i. A reporting entity resident in New Zealand; or
 - ii. A person that is resident in a country with sufficient anti-money laundering and countering financing of terrorism (AML/CFT) systems and is supervised or regulated for AML/CFT purposes; or
 - Providing a service under a joint venture agreement, to which each member of the group is a party; or
 - A government department named in Schedule 1 of the State Sector Act 1988, a State enterprise under the State-Owned Enterprises Act 1986, or a Crown entity under section 7 of the Crown Entities Act 2004; or
 - Related to one or more of the entities in Schedule 1 of the State Sector Act 1988, a State enterprise under the State-Owned Enterprises Act 1986, or a Crown entity under section 7 of the Crown Entities Act 2004 through the provision of common products or services; or
 - A body corporate that is either a company (within the meaning of section 2(1) of the Companies Act 1993) or an overseas company within the meaning of that section; and is related (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013) to every body corporate in the designated business group or proposed designated business group, and is either –
 - i. A reporting entity resident in New Zealand; or
 - ii. A person that is resident in a country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or
 - A related law firm, or a subsidiary of a law firm, that is either –
 - i. A reporting entity resident in New Zealand; or
 - ii. The equivalent body in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or
 - A related conveyancer, or a subsidiary of a conveyancer, that is either –
 - i. A reporting entity resident in New Zealand; or
 - ii. The equivalent body in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or
 - A related accounting practice, or a subsidiary of an accounting practice, that is either –
 - i. A reporting entity resident in New Zealand; or
 - ii. The equivalent body in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or
 - A related trust and company service provider, or a subsidiary of a trust and company
-

service provider, that is either –

- i. A reporting entity resident in New Zealand; or
- ii. The equivalent body in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or

A related real estate agent, or a subsidiary of a real estate agent, that is either –

- i. A reporting entity resident in New Zealand; or
- ii. The equivalent in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or

A related high-value dealer, or a subsidiary of a high-value dealer, that is either –

- i. A reporting entity resident in New Zealand; or
- ii. An equivalent person resident in another country with sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or

A money transfer agent or sub-agent and related to every other entity in the designated business group or proposed designated business group in either of the following ways:

- i. One of those entities is a money transfer agent and the other entities are the sub-agents of that agent; or
- ii. Those entities are each sub-agents of the same money transfer agent; or

An entity or class of entities prescribed by regulations to be eligible to become a member of a designated business group.

Note: Please also provide evidence to support this notification. The evidence can be in forms of an organisation chart, written business agreements or a description of how the members are related.

3. I confirm that I am the contact person of this designated business group and I will notify the AML/CFT supervisor, in writing within 30 days, of any of the following:

- (a) A withdrawal of a member from the designated business group
- (b) The termination of the designated business group
- (c) Any other change in the details previously notified to any AML/CFT supervisor in respect of the designated business group

4. The election is to be effective from _____
[Date – must be a minimum of 30 days from sending]

Name:

Role:

Signature:

Date:

Part B: for other changes to an existing DBG

1. Changes to the designated business group:

- A withdrawal of a member from the designated business group
- The termination of the designated business group
- A change in contact person for the designated business group
- Any other change in the details previously notified to any AML/CFT supervisor in respect of the designated business group
- Other

Please describe the proposed change in detail:

2. The change to the designated business group is to be effective from

_____ [Date]

Name:

Role:

Signature:

Date:
