

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, the Associate Minister of Justice gave notice on 17 December 2019 that he has granted the following exemption from the Act:

Ministerial Exemption: Crown Infrastructure Partners Limited (CIP):

Exempting CIP Entities from the following provisions of the Act:

- a. Part 2, subpart 1;
- b. Sections 50 and 51; and
- c. Part 2, subpart 4.

In this exemption, unless the context otherwise requires:

- CIP means Crown Infrastructure Partners Limited;
- CIP SPV means any wholly owned subsidiary of CIP;
- CIP Entities means Crown Infrastructure Partners Limited and any CIP SPV;
- Encumbrance means a registered mortgage, encumbrance or other similar instrument;
- Encumbrance model means a transaction or arrangement with the following characteristics:
 - a. it is sponsored or arranged by CIP;
 - b. it is implemented by a CIP SPV;
 - c. the relevant CIP SPV makes advances to one or more land developers for the purposes of the construction of bulk infrastructure (roading and/or water and other associated infrastructure, including all relevant civil works) on or relating to land owned or controlled by the developers, plus associated costs and expenses;
 - d. the developer is able to fully or partially satisfy its obligation to repay the advances made by the CIP SPV by registering Encumbrances over subdivided sections of land, securing the registered landowners' obligation to make Infrastructure Payments to the CIP SPV or its successor CIP SPV;
 - e. the CIP SPV does not provide any advances directly to a residential landowner;
 - f. the obligation to make the Infrastructure Payments runs with the relevant land; and
 - g. landowners have no ability to re-draw any Infrastructure Payments once paid.

- Infrastructure Payments means payments secured against land by an Encumbrance, under which the landowner from time to time is required to make specified periodic payments to a CIP SPV, or its successor CIP SPV, for a specified term.

This exemption is made subject to the following conditions:

- CIP is a reporting entity compliant with its obligations under the Act.
- The CIP SPVs have been created for the specific purpose of undertaking one or more Encumbrance Model transactions.
- This exemption applies solely to the CIP Entities when acting in respect of “Encumbrance Model” transactions.
- This exemption does not apply to the relationship between the CIP Entities and any developers to which they make advances, or to any other activities of the Entities outside the Encumbrance Model.
- The CIP Entities remain subject to Subpart 2 of the Act—Suspicious Activity Reports and sections 49 and 49A—Record keeping.
- No CIP Entity will accept Infrastructure Payments in cash.
- Landowners have no ability to re-draw any Infrastructure Payments once paid.
- CIP must inform the Ministry of Justice of any changes that may affect the exemption and/or conditions imposed by this written instrument within 14 days from when the change affecting the exemption occurs.

The exemption has been made for the following reasons:

- granting this exemption would have little to no impact on the prevention, detection and prosecution of money laundering/terrorist financing offences;
- the money laundering/terrorist financing risks associated with the CIP Entities, in connection with the Encumbrance Model are low;
- the CIP Entities have no visibility on transactions outside of the scope of their own lending activities, therefore the ability to detect money laundering and terrorist financing activities is limited. Any residual risk of money laundering/terrorism financing associated with the lending activities is mitigated by CIP Entities being subject to suspicious activity reporting;
- in the absence of an exemption, the CIP Entities would be subject to an undue regulatory burden, as the compliance requirements imposed under the Act are likely to be disproportionate to the low risk of money laundering/terrorism financing through the CIP Entities in connection with the Encumbrance Model;
- the CIP Entities are subject to extensive public accountability mechanisms under all or some of the Public Finance Act 1989, the Crown Entities Act 2004, the Companies Act 1993, the Official Information Act 1982 and the Ombudsman Act 1975;

- f. the exemption does not create an unfair advantage for the reporting entity or disadvantage third party reporting entities, including from a market competition perspective; and
- g. given that the CIP Entities remain subject to suspicious activity reporting obligations, and the Encumbrance Model is structured so that the risk of money laundering/terrorism financing is low, the exemption does not derogate from the integrity of, and compliance with, the AML/CFT regulatory regime.

This exemption comes into force on 14 November 2019.

This exemption will expire on 31 October 2024.

Any person wishing to provide comment on this notice should contact the Terrorism and Law Enforcement Stewardship Team at the Ministry of Justice by emailing amlcft.exemptions@justice.govt.nz.