

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 gave notice on 10 November 2021 that he has granted the following exemption from the Act:

Ministerial Exemption: Smartshares Limited

Exempting Smartshares Limited from the following provisions of the Act:

- a. Sections 16(2) and 16(3); and
- b. Sections 24(2) and 24(3).

In this exemption, unless the context otherwise requires:

Compulsory Contributions means contributions made by members of the Nauru Super Scheme pursuant to section 26 of the Nauru Superannuation Act 2018;

Exempt Member means a member of the Smartshares Scheme who is an individual natural person and who is also a member of the Nauru Super Scheme;

Nauru Super Scheme means the Nauru Government’s superannuation scheme established under the Nauru Superannuation Act 2018;

Permitted Withdrawals means a withdrawal of compulsory contributions where:

- a. the member reaches age 55 or ceases employment (whichever is later); or
- b. the member suffers total and permanent disablement as defined in section 35 of the Nauru Superannuation Act 2018; or
- c. the member dies;

Smartshares Scheme means a scheme registered under the Financial Markets Conduct Act 2013 managed by Smartshares Limited; and

Voluntary Contributions means contributions made by members of the Nauru Super Scheme pursuant to section 27(4) of the Nauru Superannuation Act 2018.

This exemption is made subject to the following conditions:

- a. The exemption only applies where Smartshares is accepting members of the Nauru Super Scheme as members of the Smartshares Scheme and only to Exempt Members where an employer facilitates the Exempt Member’s membership of the Smartshares Scheme;
- b. The Smartshares Scheme’s governing documents provide that that Permitted Withdrawals can only be made by and to the Exempt Member, or, if the Exempt Member dies, to the beneficiary elected by the Exempt Member or otherwise in accordance with Nauru law;

- c. Smartshares Limited verifies an Exempt Member's customer information in accordance with section 16(1) and section 24(1) (as appropriate) of the Act before any payment is made to that Exempt Member;
- d. Smartshares Limited verifies an Exempt Member's customer information in accordance with section 16(1) and section 24(1) (as appropriate) of the Act before it accepts a direct lump sum voluntary contribution from that Exempt Member; and
- e. Smartshares Limited must inform the Ministry of Justice of any changes that may affect the exemption and/or conditions imposed by this written instrument within 10 working days from when the change affecting the exemption occurs.

This exemption has been made for the following reasons:

- a. The proposed exemption relates to a compulsory superannuation scheme which operates only in Nauru and is governed by the Nauru Superannuation Act 2018. Nauru is a small Pacific island nation with a population of less than 10,000. It has a small economy which is largely cash based and reliant on formal and informal remittances. Nauru was assessed by the Asia Pacific Group on Money Laundering in 2012 as facing low risks of money laundering and terrorism financing. Nauru has not been identified by the Financial Action Task Force as a jurisdiction with strategic AML/CFT weaknesses;
- b. Membership of the Nauru Super Scheme is limited. Only Nauru citizens that are aged 18 or older, living or normally living in Nauru, and who are employees of an employer registered in Nauru can join. Self-employed persons are not eligible to join;
- c. All eligible Nauruans must join the scheme and make compulsory contributions of 5% of the members' earnings. Members can also make voluntary contributions by either increasing the amount they contribute from their earnings or by making direct lump sum contributions. All contributions must be made through wire transfer. Voluntary contributions (however made) are kept separate from compulsory contributions;
- d. The reasons for a member withdrawing their compulsory contributions are limited to: reaching age of 55 or ceasing employment (whichever is later); suffering total and permanent disablement; or dying;
- e. There are no restrictions for why a member may withdraw their voluntary contributions. However, withdrawal is limited to once every two years and members can only withdraw their voluntary contributions once they have been a member for two years. There is an inherent risk of money laundering and terrorism financing associated with making and withdrawing voluntary contributions. Nevertheless, the condition which requires Smartshares Limited to verify customer information before accepting direct lump sum voluntary contributions mitigates this risk; and
- f. Under the terms of the proposed exemption, Smartshares Limited must verify customer information before any payment is made to a member. As such, the exemption essentially defers verification to a later point in time. Furthermore, Smartshares Limited will still be required to file suspicious activity reports which ensures that detection and investigation of money laundering or terrorism financing is not negatively impacted by the exemption.

This exemption comes into force on 4 August 2020.

This exemption will expire on 4 August 2025.

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.