

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

In accordance with section 157(4) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“Act”), the Associate Minister of Justice gave notice on 7 September 2022 that he has granted the following exemption from the Act:

Ministerial Exemption: The Growth Collective Limited

Exempting The Growth Collective Limited (TGCL) from –

- a. Sections 10–39 of the Act for services relating to the payments of user customer, where the user customers operate an account with a registered New Zealand bank and:
 - i. Either the user customers make payments to a New Zealand school or registered charity.
 - ii. Or if the user customers make payments to an associated school service, a closed loop financial system is in place which does not allow user customer withdrawals.
- b. Sections 10–29, 31 and 37 of the Act for services relating to user customer donations, where:
 - i. The user customers operate an account with a registered New Zealand bank.
 - ii. The cause in relation to which the Donee is raising funds has no connection with any country which is high risk from a money laundering or terrorist financing perspective. This must be determined in accordance with the Countries Assessment Guideline 2012 published by the AML/CFT supervisors.
 - iii. Where the Donees are New Zealand schools or registered charities which also have tax Donee status, the total value of money paid to the Donee in any consecutive 12-month period is less than \$10,000.
 - iv. In respect of other Donees, the total value of money paid to the Donee in any consecutive 12-month period is less than \$1,000.

The exemption is subject to these conditions:

- a. If any of the circumstances in section 22 of the Act apply, TGCL is required to conduct enhanced customer due diligence on its school or club user customers.
- b. All sections in the Act other than sections 10–39 (in relation to payments) or sections 10–29, 31 and 37 (in relation to donations) apply to TGCL’s user customers.
- c. If TGCL does not operate a closed loop operating system, then the exemption relating to the payments of user customers only applies to user customers making payments to a New Zealand school or registered charity.
- d. With respect to donations:

- i. TGCL must identify, monitor, and conduct customer due diligence in compliance with the Act on any Donee which does not meet the criteria, or which exceeds the specified thresholds, set out in this exemption.
 - ii. The donations aggregated in a Donee Account must be paid into an account held at a New Zealand financial institution.
- e. TGCL must inform the Ministry of Justice of any changes that may affect the exemption within 10 working days from when the change affecting the exemption occurs.

In this exemption:

- An account operated with a registered New Zealand bank includes credit / debit cards.
- Associated school service refers to services provided to students through schools, such as canteen and uniform services, which are paid for by user customers.
- Consecutive 12-month period refers to a fixed period such as a tax year or a financial year.
- Donation is defined as a gift of money that does not confer any right, good, or service.
- Payment is defined as an exchange of money for a good or a service.
- Total value of money paid to the Donee refers to total value from each user customer, irrespective of the quantity of their accounts or children.
- User customer is defined as:
 - a. A parent/caregiver, student, or club member.
 - b. Any person who has created an account where it is limited to the purchase of “shop” items such as lunch orders or uniforms.
- New Zealand Schools are defined as:
 - State schools – established and defined in accordance with the Education and Training Act 2020 (ETA).
 - State integrated schools – established and defined in accordance with the ETA.
 - Private schools – established and defined in accordance with the ETA.
- Registered charities are defined for this purpose as entities established, registered, and annually reporting in accordance with the provisions of the Charities Act 2005.

The exemption reflects these points:

- a. While TGCL’s services are similar to those provided by several reporting entities with full or partial exemptions under the Act, the nature, scale, and scope of its activities differ from each of these precedents and so the ML/TF risks associated with it are higher.
- b. Factors which increase the ML/TF risks of TCGL include:
 - i. TGCL currently operates only a partial “closed loop” payment system for services to schools and registered charities. Users can request a withdrawal instead of a credit of any refund, unlike other entities offering similar services.

- ii. The account balances of, and payments made by, its user customers are considerably higher than those associated with the users of some other similar services. TGCL user customers can also top-up their accounts to just under \$10,000.
 - iii. TGCL does not have a direct relationship with its user customers and so it is theoretically possible for a money launderer to use TGCL's services (as a user customer) to legitimise the proceeds of crime. This is most likely to be feasible where the provider customer receiving the payments is not subject to rigorous regulatory or statutory oversight.
- c. Factors which reduce the ML/TF risks of TGCL include:
- i. Cash is not accepted, all funds must come from or be refunded to a registered New Zealand bank, there are no international wire transfers, and just under 99% of user customers are based in New Zealand.
 - ii. User customers are usually closely associated with the student or club member, have limited ability to control funds once they are received by TGCL, have limited right of withdrawal once funds are paid, and the items they purchase are not readily convertible into cash or resale.
 - iii. TGCL is prepared to modify its operating system to become closed loop for services associated with schools such as canteen and uniform providers. This would put it on an equal footing with other payment providers with exemptions from the Act with respect to services not defined as schools or registered charities that are suppliers to New Zealand schools.

The stated conditions mitigate the risks I consider are associated with TGCL's business because TGCL is not exempt from any of the sections of the Act in circumstances where:

- a. Enhanced user customer due diligence is warranted.
- b. A user is not defined as a user customer.
- c. Its user customers are paying an entity that is not defined in this exemption as a New Zealand school or a registered charity (which have robust regulatory oversight and financial accountability) or an associated school service (in constrained circumstances).

This exemption comes into force the day after publication.

This exemption will expire on **5 September 2027**.

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.