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ANTI-MONEY  
LAUNDERING

AND COUNTERING FINANCING OF TERRORISM

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~ FEATURE BY ELLIOT SIM ~

# Anti “dirty” money legislation

**CRIMINALS ARE SAVVIER** than ever in their efforts to launder money and go to great lengths to avoid detection both locally and globally.

Money laundering is the process by which criminals make “dirty” money, obtained from criminal activities, look legitimate or “clean”.

They aim to introduce their “dirty” money into the financial system without being caught. Once in the system, it can be transferred between different bank accounts or financial products in New Zealand or abroad, or used to purchase goods and services.

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) aims to bring New Zealand up to international standards in anti-money laundering efforts to prevent it from becoming a safe harbour for such activities.

The Act was passed in 2009 and comes into full effect on 30 June 2013.

Some parts are already in force, most notably provisions dealing with the cross-border transportation of cash.

Without its implementation, New Zealand would have been considered a weak point of vulnerability globally for money laundering activity.

This could have had a negative impact on local businesses and led to this country being competitively disadvantaged as a result of offshore entities (banks) having to apply additional controls in respect of Kiwi-sourced remittances.

Adopting recommendations issued by the Financial Action Task Force (FATF) will contribute to public confidence in the financial system, and maintain and enhance New Zealand’s international reputation.

The AML/CFT Act applies to “reporting entities”. A reporting entity is currently defined to capture casinos, certain financial advisers and trust and company service providers, and persons who fall within the definition of a “financial institution”.

The definition of financial institution contained in the AML/CFT Act is an activity-based one.

It will capture persons who, in the ordinary course of

business, accept deposits or other repayable funds from the public, lend to or for a customer, undertake financial leasing, transfer money, manage credit or debit cards and the like, trade for someone’s account, engage in currency changing, or invest, administer or manage funds on behalf of other persons.

Under the AML/CFT Act, reporting entities must create, by 30 June 2013, internal policies by undertaking risk assessments and creating procedures and controls to detect and prevent money laundering and financing of terrorism activities.

Section 59(2) of the AML/CFT Act requires a “reporting entity” to audit its risk assessment and AML/CFT

programme every two years or when asked to do so by their supervisor.

Depending on the type of financial activities they undertake, a reporting entity’s supervisor will be the Reserve Bank of New Zealand (RBNZ), Financial Markets Authority (FMA), or the Department of Internal Affairs (DIA).

In addition to assessing their risks, reporting entities are required to establish, implement and maintain an AML/CFT programme, identify and verify the identity of customers with ongoing Customer Due Diligence (CDD).

They are also required to report any suspicious transaction as well as monitor and keep records.

Businesses supervised by the FMA will include issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers.

Banks, life insurers and non-bank deposit takers are to be supervised by the Reserve Bank of New Zealand.

Casinos, money service businesses (including currency exchange and money remittance/transfer), payroll remittance, lending and other services (including non-bank, non-deposit-taking lenders, debt collection and factoring), financial leasing, cash transporters, safe deposit/cash storage, and issuing and managing means of payment (including non-bank credit card providers), and any other reporting entities not supervised by the RBNZ or FMA, are to be supervised by the Department of Internal Affairs (DIA). [LT](#)

## FATF

The FATF is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed a series of recommendations that are recognised as the international standard for combating money laundering and financing terrorism and proliferation of weapons of mass destruction.



*Minter Ellison Rudd Watts funds management and financial services lawyer Karen Mace.*

# Implications for lawyers and law firms

**MINTER ELLISON RUDD WATTS** funds management and financial services lawyer Karen Mace has an intimate knowledge of the new anti-money laundering regime and has been involved in making submissions and advising clients on it since the first consultation documents were released.

She regularly liaises with supervisors about issues faced by her clients in preparing to comply with the regime, and operates as part of a team of AML/CFT lawyers at Minter Ellison Rudd Watts, led by Auckland-based partner Lloyd Kavanagh.

Ms Mace says that lawyers and incorporated law firms will generally be exempt from the AML/CFT Act.

“The regulations provide that a lawyer or incorporated law firm will not be a reporting entity by reason only that they carry out a relevant service in the ordinary course of the person’s business

as a lawyer or incorporated law firm. I would expect that most lawyers and firms would be able to fall within the parameters of the above exemption, although whether or not this is the case will always be a question of fact.

“Lawyers and firms will therefore need to turn their minds to whether all of their activities fall within the above exemption (including considering the guideline released by the supervisors on interpreting what constitutes the ‘ordinary course of business’), and, if not, consider whether those activities are caught by the AML/CFT Act,” she says.

The ability to rely on this exemption will particularly be an issue where the activities of a lawyer or firm are different from those that are usually conducted by the profession.

“An issue also exists where lawyers and firms are providing services to clients through entities that are legally

separate from the firm, such as via trustee companies. We have raised the limitations of the current exemption with the supervisors to see if changes can be made to broaden the current exemption and give effect to Cabinet’s intention of exempting lawyers and firms from the first phase of reforms,” Ms Mace says.

While lawyers and firms should therefore be largely exempt from the new anti-money laundering legislation, Ms Mace believes they will still need to get up to speed with the AML/CFT Act and regulations.

“While lawyers and firms will generally be exempt, we will still need to know about the regime in order to effectively deal with banks and other reporting entities who will need to seek more information from us before processing transactions. In particular, I would expect firms will need to enter into

written agreements with their banks regarding their trust accounts to enable the banks to rely on a partial exemption from customer due diligence in respect of such accounts.”

It is important to note, according to Ms Mace, that while many lawyers and firms will be exempt from the AML/CFT Act, they will still need to comply with any existing legislation that may apply to some or all of their activities, such as the Financial Transactions Reporting Act 1996 and its requirements to make suspicious transaction reports in particular circumstances.

“In addition, a second phase of AML/CFT reform will be introduced in the future which is expected to capture lawyers.

“Cabinet papers have made it clear that a second phase of AML/CFT reforms is intended to be introduced which will capture lawyers, and other businesses and professions such as accountants, conveyancing practitioners and real estate agents. The timing of this second phase is currently unclear, but market expectations are that consultation documents in respect of it will be released some time after the new regime has been implemented.” [LT](#)

# Work on phase two will begin next year

**MINISTRY OF JUSTICE** General Manager Criminal Justice Malcolm Luey says stage two of the anti-money laundering reform, which will capture lawyers, will kick in some time next year.

Initial policy work for phase two of the reform is intended to begin in 2014, as one of the work streams in the All-of-Government Response to Organised Crime (AGROC).

“This work will consider extending AML/CFT measures to designated non-financial businesses and professions such as lawyers, accountants, real estate agents and high value dealers.

“Members of the European Union (such as the United Kingdom) have

implemented AML/CFT reform for lawyers. The Third Anti-Money Laundering Directive, in force since 2005, provides a European framework around the international Financial Action Task Force standards,” he says.

However, Mr Luey says the Financial Transactions Reporting Act 1996 (FTRA) obliges lawyers to carry out due diligence and report suspicious transactions.

“These obligations are intended to continue until such time as phase two of the reform is implemented. We will be communicating with the [legal] profession about phase two at the appropriate time.” [LT](#)

# New Police IT system

**THE NEW ZEALAND POLICE** will be rolling out a new reporting system to help deter money laundering later this year.

From June 30 this year, the New Zealand Police’s Financial Intelligence Unit (FIU) will, under the AML/CFT Act, launch a new IT system called goAML for receiving and analysing suspicious transaction reports.

The goAML financial intelligence analysis tool was developed by the United Nations Office on Drugs and Crime to help combat money laundering and serious crime internationally.

Financial intelligence units around the world use the goAML application to receive and analyse Suspicious Transaction Reports (STRs), Suspicious Property Reports (SPRs) and Border Cash Reports (BCRs).

The goAML tool is an integrated three-step system which replaces several disparate ones, including collection, analysis (rule-based analysis, risk-score and profiling), and dissemination (can

escalate to law enforcement and seek feedback).

The system can analyse and visualise large volumes of data to help understand complex patterns of transactions and develop tactical and strategic intelligence, monitor potentially suspicious accounts and reveal patterns and covert connections.

FIU chief Patrick O’Sullivan worked for the United Nations for about seven years and was instrumental in the development of the system.

Mr O’Sullivan says that with the new IT system it will be much easier to report suspicious financial activities.


“Compared to what we’re using now and the way we are receiving reports now, it will be hugely more efficient. It will be easy for reporting suspicious activities, particularly for the larger institutions, as the reporting system will be fully automated. They will be able to extract data from either their AML solution or from their core

banking solution and directly convert it into the schema format and then just submit it electronically.”

Lawyers, however, are not expected to submit reports as frequently as businesses and will not need to invest in technology to use the system.

“You can just access the website, download the form, fill it out and then just submit it. That comes to us in XML format and is integrated into our database automatically.

“With the big companies investing in AML/CFT solutions, they, themselves, should be a lot better at identifying suspicious or unusual activities within accounts and within transactions. We expect from that a pretty big increase in the volume of reporting compared to what’s happening now,” Mr O’Sullivan says.

Reporting entities will electronically report STRs and SPRs to the FIU through goAML, except in urgent circumstances. **CNTD** 

Reports will be submitted in XML format, unless the provided goAML web forms are used to manually input information.

goAML is accessed through a secure web interface and reporting entities register with the FIU to gain access using unique user logons, which will be provided.

While SPR and STR information can be entered manually, reporting entities expecting large volumes may instead submit reports using the XML schema or the structure of the reports.

Reporting entities simply log on to goAML and upload the XML file containing their reports.

To reduce the amount of manual work required to produce XML reports, the information reported by entities can convert their own information from internal databases to the required XML schema using their automated systems.

Individual elements of the report are organised into collections of similar elements called 'nodes'. These are connected to other nodes, providing the overall structure or charting of the data.

Multiple objects and connections can be included in one report and ancillary files can also be attached to the STR or SPR.

Such files could include surveillance footage, photos, copies of identification and other documentation. These are attached manually.

Information can be submitted using XML data and supporting documents in PDF, JPG, or other format, as long as all relevant information is captured in the XML format. Any information reported in the XML schema via attachment only, will not be accepted.

The FIU may also request further information from reporting entities such as Additional Information Files

(AIF), and use the same XML schema as STRs and SPRs.

Once an STR or SPR is submitted, the reporting entity will receive an automated response from goAML which will indicate whether the report has been accepted or rejected.

Reports may be rejected because they don't match the required schema such as a date of birth in the future, or they may be manually rejected by FIU staff.

goAML also has a secure messaging system, allowing reporting entities to correspond with the FIU regarding submissions of STRs and SPRs.

The system is a fully integrated Windows-based application and further details regarding registration will be released later this year via the FIU webpage at [www.police.govt.nz/service/financial](http://www.police.govt.nz/service/financial). [LT](#)

## INFORMATION FOR LAWYERS

*When a lawyer is advising clients who may be reporting entities or customers of reporting entities and who therefore must comply with the new requirements:*

### Lawyer advising client

While many banks and large financial services groups are advanced in their preparations, large numbers of smaller businesses may not currently be aware that they will fall within the definition of "financial institution".

A good start is to check with clients whether they have registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and if they have it is likely they should be preparing to comply with the AML/CFT Act.

### Lawyer as a customer

Under the new legislation, reporting entities will need to be more rigorous in undertaking Customer Due Diligence (CDD) investigations than under the current law.

The principal impact on lawyers will be as a result of the flow-on effect of the new and increased obligations that are being placed upon banks and other financial sector clients and service providers.

Although exemptions will help, when banks are dealing with a lawyer who is acting as a trustee or as an agent for a

client, the bank will need to ensure they have sufficient CDD information on the beneficiaries of trusts or on the lawyer's client's identity (and some source of funds in some cases).

Financial institutions will require lawyers to obtain and provide such information as a condition of the banking relationship, given the onerous obligations and potential risk of prosecution placed upon the bank in the event of non-compliance.

In addition, Regulation 24 of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 will provide reporting entities with an exemption from s11(1)(b) and s16(1)(b) of the AML/CFT Act, in relation to lawyers and other trust accounts in certain circumstances.

Section 11(1)(b) relates to the need to undertake CDD on the beneficial owner of the customer, and s16(1)(b) relates to the need to verify that identity. The exemption applies where:

- The trust holder is either another reporting entity or subject to the FTRA. Lawyers will be under the FTRA typically.
- The reporting entity has taken reasonable steps to satisfy itself that the trust account is being operated for legitimate and professional purposes and not to obscure the beneficial ownership of the account; and reporting entity has written agreement with the account holder that the account holder will produce to the reporting entity the

information relating to the names and dates of birth of the clients whose funds are held in the trust account.

In order to rely on this exemption, banks and other account providers will likely look to re-document their arrangements with firms in respect of trust accounts.

### Lawyer as a reporting entity

A lawyer would normally be a reporting entity if he/she does work bringing him/her into the definition of a "financial institution".

However, Regulation 20 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 contains an exclusion from the definition of reporting entity for lawyers. It provides that a person is not a reporting entity, for the purposes of the AML/CFT Act, by reason only that the person carries out a relevant service in the ordinary course of the person's business as a lawyer.

Accordingly, to the extent that all of a lawyer's activities actually fall in practice within the scope of this exemption, the lawyer will not be regulated by the AML/CFT Act.

If this is not the case then the lawyer will need to comply with the AML/CFT Act and related regulations in respect of any activities that the exemption does not apply to.

From *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* by Lloyd Kavanagh, Published by NZLS CLE Ltd, October 2012.