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LAWNEWS

+ Money laundering

NEW ZEALAND TAKES MONEY LAUNDERERS TO THE CLEANERS

By Rod Vaughan

Long overdue legislation designed to combat money laundering in New Zealand and meet our international obligations will take effect on June 30th. It has been in the pipeline since 2009 and is designed to wipe out a $1.5 billion a year business that has tarnished New Zealand's financial reputation.

The Ministry of Business, Innovation and Employment says New Zealand's lax company registration procedures and non-compliance with international money laundering agreements have made the country a "domicile of choice" for international criminals wanting to launder money and traffic arms and drugs.

"Those who wish to conduct unlawful activities are increasingly seeking to incorporate companies in New Zealand."

Last year New Zealand was removed from the European Union's "white list" of trusted banking jurisdictions after an Auckland-based shell company was used to channel kickbacks to eastern European officials. Two years before that, another shell company operating from the same address chartered a Georgian-registered aircraft in an attempt to fly arms from North Korea to the Middle East. These were not isolated cases.

A major investigation by Fairfax Media into the misuse of New Zealand shell companies uncovered links between entities on our Companies Register and the looting of hundreds of millions of dollars from a state-owned bank in Kyrgyzstan, millions of dollars in laundering by Mexican drug cartels and the rorting of the Ukrainian Ministry of Health.

Continued on page 2


Bryan Mahon

LAWNEWS THIS ISSUE:

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Continued from page 1

In fact, such is the scale of the problem that the Reserve Bank says it has identified 1000 entities "potentially involved in frauds in overseas jurisdictions."

However, the impetus to get to grips with the issue goes back to 2003 when New Zealand was audited by the international Financial Action Task Force. It examined our laws regarding money laundering and funding of terrorism and was not impressed with what it found.

This later prompted former Justice Minister Simon Power to introduce a bill four years ago to stop international criminals and terrorists using this country as a safe haven for their money laundering operations.

"This bill will demonstrate New Zealand's dedication to global anti-money laundering and counter-terrorism efforts," he said at the time.

But whether the ponderously titled *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* will make much difference is a moot point with officials conceding that it is not a silver bullet.

In essence the new legislation attempts to strike a balance between cracking down on organised crime while not penalising legitimate business, which means complex laundering operations could still slip through the net.

And if that happens our credit ratings and trade relationships with other countries could be adversely affected, so there is a lot riding on the legislation that is about to take effect.

The Act applies to so-called "reporting entities" which includes banks, life insurers, finance companies, building societies, credit unions, issuers of securities, trustee companies, futures dealers, brokers, certain financial advisors, casinos, money service businesses, those involved in financial leasing and safe deposit businesses.

Lawyers and incorporated law firms are generally exempt from the Act but a second phase is intended to be introduced next year which will capture them, as well as other businesses and professions such as accountants, conveyancing practitioners and real estate agents.

Reporting entities will be obliged to provide:

- A written risk assessment of money laundering and financing of terrorism that could be expected in their business;
- An anti-money laundering and countering financing of terrorism programme that includes procedures to detect, deter, manage and mitigate money laundering and the financing of terrorism;
- A compliance officer appointed to administer and maintain the programme;
- Customer due diligence processes based on their risk assessment including customer identification and verification of identity; and
- Suspicious transaction reporting, record keeping, auditing and annual reporting systems and processes.

Failure to comply with the Act carries a range of penalties, including fines of up to $200,000 for an individual and $2 million for a body corporate. The Act also provides for criminal penalties of up to two years imprisonment, a $300,000 fine for an individual or a $5 million fine for a body corporate.

In other parts of the world much harsher sanctions can be imposed on those not complying with such legislation. Last year US authorities fined HSBC US$1.9 billion over allegations that, with Standard Chartered, it acted as banker for rogue states, terrorists and drug lords, channelling billions of dollars through the US financial system.

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But even this is a modest sum when measured against the global cost of money laundering and the financing of terrorism. The International Monetary Fund and World Bank estimate that US$2 trillion is laundered around the world every year.

In New Zealand the responsibility for policing the Act is split between the Reserve Bank, Internal Affairs and the Financial Markets Authority.

The Reserve Bank will oversee banks, life insurers and non-bank deposit takers such as finance companies, building societies and credit unions; Internal Affairs will look after casinos, non-deposit taking lenders, money changers and any other financial institutions not supervised by the Reserve Bank or FMA; and the FMA will supervise issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisors.

A risk assessment report prepared by the Reserve Bank ranks banks as being a high money laundering risk, finance companies and building societies medium risk, credit unions low risk and life insurers medium to low risk.

Reporting entities are all expected to be fully compliant with the legislation when it takes effect on June 30th, given the long lead-in time and extensive outreach and education programmes that have been in place.

Those that aren't or fail to comply with the regulations can expect to face firm action.

WHAT DOES THIS MEAN FOR YOU?

Ashley Balls, Principal of LegalBestPractice, urges lawyers to assess whether their practice is compliant with new and existing legislation. "The* AML/CFT Act *exemption clause for lawyers, accountants, licensed conveyancers and estate agents, which obviates the need to take any meaningful action now, is potentially dangerous and simplistic in its approach," he warns. "The exemption is not a get-out-of-jail-free card."

Balls cites the following reasons why lawyers should be prudent now:

1. Overseas experience (USA, UK and South Africa especially) clearly demonstrates that as the legislative and compliance grip on financial transactions has tightened, criminals have sought new means to launder money, and lawyers' trust/client accounts have become a prime target.
2. Law firms having trust administration and mortgage nominee companies may not have ANY exemption from the activities those subsidiaries perform – even after publication of the further regulations (25 May 2013). If there is any external ownership of these subsidiaries (eg. partners' spouses), the exemption will almost certainly not apply.
3. Protection & Indemnity insurance may be jeopardised after 30 June as cover may not extend to subsidiaries.
4. Existing legislation has strict reporting requirements already – all of the following place obligations on lawyers to 'lift the lid' and report illegal and/or suspicious activity – the *Crimes Act 1961* s 243 (money laundering), *Misuse of Drugs Act 1975* s 12, *Criminal Proceeds (Recovery) Act 2009, Mutual Assistance in Criminal Matters Act 1992, Extradition Act 1996, Financial Transactions Reporting Act 1996* and the *Terrorism Suppression Act 2002.*
5. The financial services industry had 3 years to prepare and some struggled to meet the deadline.
6. The compliance costs are considerable – the annual average costs incurred by the top 200 hundred law firms in the UK is currently running at £320,000.

ADLSI CPD is presenting a webinar on 10 July on *Anti-Money Laundering 101: Immediate implications for every lawyer*. Ashley Balls and Ron Pol will discuss the new legislation and your obligations. See the CPD calendar at www.adls.org.nz and page 7 of this issue for details.

Continued on page 10