

## REGULATORY INTELLIGENCE

**Experts give cautious "thumbs up" to New Zealand's new AML/CFT laws**

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Regulatory specialists have given a broad stamp of approval to New Zealand's proposals to extend the anti-money laundering regime to include lawyers, accountants, real estate agents, conveyancers, high-value goods dealers and gambling service providers. They said while concerns remained about the timing, effectiveness of the regime and the supervisory structure, overall the laws were a welcome development.

The Ministry of Justice [released draft legislation this week](#) to extend the anti-money laundering and counter-financing of terrorism (AML/CFT) laws in line with international standards. A consultation period will run until January, with a revised bill expected to be introduced to parliament in March next year. The government aims to have the laws passed by mid-2017 to ensure the regime is finalised before the next election.

The proposed laws would see the Department of Internal Affairs (DIA) appointed as the supervisor for all reporting entities captured under the phase two legislation. The so-called designated non-financial businesses and professions (DNFBPs) would have to comply with the new laws based on a staggered timetable from the start of 2018 through to mid-2019.

Lawyers and conveyancers will face the most onerous compliance timetable, with these business sectors required to comply with the AML/CFT regime just six months after it is passed. Legal industry sources said this could prove challenging, especially for smaller law firms and conveyancers.

Accountants will have 12 months to comply with the new regime; real estate agents and the New Zealand Racing Board (NZRB) will have 18 months to comply; and high-value dealers will have a two-year transition period.

Lloyd Kavanagh, partner at Minter Ellison Rudd Watts in Auckland, said the government's commitment to a second phase of the AML/CFT regime was encouraging. He said the Ministry of Justice's mid-2017 goal for having the legislation enacted would be challenging, as would the short transition period for lawyers.

"Personally, I think a longer transition will be required for many lawyers who will not be familiar with the regime, but we understand the ministry is committed to its timeline," he said. "If the legislation is enacted by mid-2017 as projected, that means all lawyers may need to be compliant by January 1, 2017. That's a massive ask for the hundreds of small and mid-sized law firms who will have no AML/CFT expertise in house."

Kavanagh said law firms would need to understand the regime, appoint appropriate compliance staff to key roles, undertake client risk assessments, create compliance and monitoring programs, train partners and staff and potentially purchase monitoring software — all in one year.

"I predict on this timeline many small and mid-sized law firms will be in breach from day one, unless they receive significant support from MoJ and DIA from early next year," he said.

**Multi-supervisor model**

Kavanagh said the government's decision to retain the existing multi-supervisor model was a disappointment, but was unlikely to change.

"This will be a significant increase in the scope of DIA's supervisory role. We recommended in our submission a move to a single specialist supervisor and we continue to think that is the better long-term solution, but, in the meantime, lawyers, accountants, real estate agents and high-value goods dealers will need to work positively with DIA," Kavanagh said.

Paddy Oliver, a Melbourne-based AML consultant and lawyer, said it was a positive sign that New Zealand policymakers had resisted pressure from industry groups to self-regulate their members. Cabinet decided that supervision by self-regulatory bodies, as is the case in the UK, would not be appropriate for DNFBPs in New Zealand.

"This is a significant decision considering that certain self-regulatory bodies had shown an interest in adding AML regulation to their regulatory portfolio," Oliver said.

He agreed with Kavanagh that the DIA would have a steep learning curve with regard to regulating a raft of new reporting entities from various industry sectors.



Oliver said that, based on his experience helping lawyers and conveyancers in the UK to comply with their regulatory obligations, the six-month transition period would be onerous.

"Firms will need to understand the regulatory regime, undertake ML/TF risk assessments, write AML/CFT programs, change operational processes and train solicitors and staff. There is a lot to do in six months," he said.

### **Tight timetable**

Ron Pol, an AML consultant in Wellington, said the government had set out a challenging compliance timetable for new reporting entities. He said if the deadlines did not change during the consultation on the draft laws, it was inevitable that many reporting entities would not be ready.

"The simple reality is that many businesses will be unable to prepare their systems or train staff in time. Eighteen months for real estate agents is ambitious; six months for lawyers means that a great many will likely be completely unprepared — and many others poorly prepared — to meet the new obligations. A timetable that ignores reality simply guarantees non-compliance," he said.

Pol said there were many sensible elements to the proposals, including the plans to align the legal professional privilege provisions of the [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) with those in the Evidence Act 2006. This should help to reduce confusion and avoid unnecessary compliance costs, he said.

Oliver said the new laws would require lawyers to revisit what they knew and understood about legal professional privilege, client confidentiality and this new concept of privileged communication. They would also need to consider the associated legal ethical rules.

"From my experience assisting lawyers implement AML reforms in [the] UK, the issue of what is not reportable due to legal professional privilege will prove challenging. As will the definition of 'reasonable suspicion' and the question of whether the lawyer should withdraw from the client retainer if a suspicious activity report has been made," he said.

### **Transactions versus activities**

The proposed laws would also broaden the reporting requirement from suspicious transactions to suspicious activities. This would address concerns that if a customer does not proceed with a transaction then there are no grounds for reporting the matter to the Police Financial Intelligence Unit, even if the behaviour is highly suspicious.

Pol has undertaken academic research that revealed the ways in which lawyers, accountants and real estate agents have been used by criminals to launder the proceeds of serious crime. The research unearthed cases where professionals faced situations that might not be classified as "transactions". As such, they were not reportable under the existing legislation.

"Closing the 'transactions versus activities' loophole should help," Pol said.

Pol shared the concerns of Oliver and Kavanagh that the multi-supervisor model would lead to further inconsistencies in oversight and fragmentation.

### **FATF fourth-round evaluation**

He was also worried that the government might be doing "enough to meet international standards", without thinking too much about the effectiveness of the regime. The Financial Action Task Force's fourth-round evaluation, due by 2020, will focus specifically on the effectiveness of New Zealand's AML/CFT framework.

Pol said the new rules are a "reasonable fit" with FATF's 2012 and 2013 standards. He also said there were indications that these standards may be revised — possibly before New Zealand's next evaluation.

"The new approach doesn't just ask 'do we have rules?' or 'do they meet international standards?' It also asks 'do they work?'

This "outcomes and policy effectiveness" approach to AML controls was the subject of Pol's doctoral research.

"The emerging approach asks whether any new rules would materially and substantially improve New Zealand's capacity to detect and deter crime," Pol said. "On that front, the new rules should help, a little. But they risk achieving an underwhelming policy objective, at considerable cost."

