

REGULATORY INTELLIGENCE

New Zealand unveils detailed plans for second phase of AML/CFT regime

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Nathan Lynch, Regulatory Intelligence

The New Zealand government has detailed its plans for a second phase of the country's anti-money laundering and counter financing of terrorism (AML/CFT) regime, with the Department of Internal Affairs set to take a much larger role in supervision and enforcement. The Justice Ministry released draft legislation this morning that has dashed the affected industries' hopes for a light-touch self-regulatory regime for lawyers, accountants, real estate agents, conveyancers, certain high-value goods dealers and gambling service providers.

The government said it wanted to retain the multi-supervisor model with oversight split between the Department of Internal Affairs (DIA), the Reserve Bank of New Zealand (RBNZ) and the Financial Markets Authority (FMA). The DIA will assume responsibility for the supervision of all reporting entities captured under the phase two legislation — the so-called designated non-financial businesses and professions (DNFBPs).

Cabinet decided not to move to a single supervisor model, despite AML/CFT experts strongly supporting this in an earlier consultation on the regime. The government said that establishing a single supervisor, similar to Australia's AUSTRAC, would be more costly in the short term and would require "significant time to build the expertise, systems and structures required for effective supervision."

Cabinet also decided that supervision by self-regulatory bodies, as is the case in the UK, would not be appropriate for DNFBPs in New Zealand.

"Although self-regulatory bodies could utilise the existing relationships they have with their entities, they have no experience in AML/CFT supervision and would need to build capability to ensure effective, risk-based, proactive monitoring and enforcement. Establishing a wider group of supervisors also increases the risk of inconsistency across supervisors," the government said in an Information Paper on the draft legislation.

Striking a balance

The government said the draft legislation had been designed to strike a balance between combating crime, minimising compliance costs and enabling New Zealand to meet its international obligations. An analysis from EY suggested that the second phase of New Zealand's AML/CFT regime could impose compliance costs on businesses of up to NZ\$1.6 billion over the next decade.

The government said it had designed the legislation to reduce those estimated compliance costs. "We are now seeking input from sector groups on those options for businesses, and other ways to further reduce compliance costs," it said.

In terms of timing, phase two will incorporate a staggered approach with lawyers and conveyancers facing the most onerous compliance timetable. These business sectors will have to comply with the AML/CFT regime just six months after it is passed. Legal industry sources said this would be challenging, even despite the level of expertise in the sector and the lengthy lead-up to the introduction of "phase two" legislation.

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.

Minimising compliance costs

Amy Adams, the justice minister, said the laws were designed to put a significant dent in the NZ\$1.3 billion that the government estimates is laundered in New Zealand each year. She said minimising compliance costs and streamlining the introduction of the new laws had been a primary focus in the drafting of the AML/CFT regime.

"Our goal is to make sure the regime is as effective as possible, while minimising the impact on businesses and their customers. We need to address the real risks money laundering and terrorist financing pose, while also ensuring compliance costs are as low as possible," she said.

The government estimates that the reforms will disrupt up to NZ\$5 billion worth of criminal activity over the next decade. This includes NZ\$1.7 billion in fraud and drug-related crime.

"The reforms will also protect and help New Zealand live up to its reputation as being corruption free and a good place to do business. They will bring us into line with international standards, and help prevent New Zealand becoming a target for overseas money launderers and terrorist financiers," Adams said.

Legal professional privilege

The government has also attempted to address the concerns in the legal industry that the laws must not undermine the principle of legal professional privilege. The draft laws include a new definition of "privileged communication" to align it with the Evidence Act 2006.

Privileged communication will include communications with legal advisers, preparatory materials for proceedings and settlement negotiations or mediation. Legal professional privilege will not apply, however, in situations where information is created for "dishonest or illegal purposes".

Real estate agents will be captured under the AML/CFT regime when they represent buyers or sellers in real estate transactions. Agents will have to undertake customer due diligence (CDD) on their client, not the other party to a transaction. Any agent that accepts a cash deposit of more than NZ\$10,000 from the purchaser will have to conduct CDD on the person paying the deposit, however, even if they are not their client.

In all transactions where the client is a trust, the real estate agent will have to make inquiries into the legitimacy of the trust's source of funds.

High-value goods dealers, meanwhile, will only be covered by the AML/CFT regime if they accept cash payments of NZ\$15,000 or more for single transactions or a series of related transactions. The threshold will be set in regulations to allow the government to adjust this figure in response to inflation or AML/CFT risks. The AML/CFT laws will cover businesses that trade in jewellery, precious metals, precious stones, watches, motor vehicles, boats, art or antiquities.

High-value goods dealers can avoid AML/CFT regulation by placing a hard limit on cash payments to ensure they do not exceed the NZ\$15,000 threshold set in regulations. The government said this threshold was intended to target the illicit cash economy without imposing an undue burden on businesses.

Timing and reviews

The government had aimed to introduce legislation to parliament before the end of this year. That deadline has now slipped to early 2017. Despite these delays, the government still aims to have the laws passed by mid-2017 to ensure that they are locked in before the next election.

The government will also introduce a statutory review period to ensure that the laws are fulfilling their intended purpose. The first review will take place after the Financial Action Task Force's (FATF) mutual evaluation assessment around 2020. The statutory review will consider the FATF's findings and identify any early issues with the AML/CFT regime.

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