ANTI-MONEY LAUNDERING
AND COUNTERING FINANCING OF TERRORISM

~ 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 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.

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 RRNZ or FMA, are to be supervised by the Department of Internal Affairs (DIA).
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.”

**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.”

**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.
Reports will be submitted in XML format, unless the provided goAML webforms 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.