+ 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.

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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 bring them under the Act. 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.


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 £200,000.

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.