

Clarifying anti-money laundering compliance

In response to John Hart's Letter to the Editor
(*Law News Issue 21, 12 July 2013*):

The last minute amendment to the anti-money laundering regulations extended the scope of lawyers' temporary exemption from the AML/CFT Act.

Directors, employees, agents and other persons acting in the course of, and for the purposes of, a lawyer's business are now also exempt – as are executors and trustees in estate administration, as Mr Hart mentions.

Before 30 June, services delivered by separate entities (eg. a trust and company service provider operated by a law firm) would not have been covered by lawyers' temporary exemption. That is, separate entities performing the same activities as other businesses under the Act would also have been included.

Since the amendment on 27 May, however, which took effect on 30 June 2013, the exemption now extends, as Mr Hart says, to many (probably most) externally owned entities operated by lawyers.

The extent of the amendment is, however, unclear, in several respects.

For example, the amendment references the exempt (law firm) business. Yet if the separate entity (say a trust and company services provider) is partly externally owned (eg. by partners' spouses as noted in paragraph 2 of the original sidebar to which Mr Hart refers), it is not itself a law firm and could not be under the *Lawyers and Conveyancers Act 2006* (nor, until 30 June, did that matter).

Now, however, if the separate entity was and remains the vehicle through which relevant services are provided, such that before 30 June the law firm itself didn't provide those services, after 30 June the separate entity is arguably not acting "in the course of and for the purposes of" the "ordinary course of" the law firm business; the firm doesn't offer those services.

Nonetheless, it could then be argued that the separate entity should still be covered by the "agent or other person" element to which Mr Hart refers. In essence, that means pretty much anyone acting on a law firm's behalf is now covered by the exemption.

If that's not too long a bow to draw, it might extend the exemption across a 'captive' separate

entity that operates solely for the law firm and in which every customer of the separate entity is also a client of the law firm.

But if the separate entity provides services to others, or if any customer of the separate entity was not a client of the law firm, can the separate entity still claim to be acting as an "agent" of and "in the course of and for the purpose of" the (exempt) law firm business?

Mr Hart correctly expresses the intention of the last minute amendment. It was intended to further extend lawyers' temporary exemption to also cover "subsidiaries" of law firms.

The inelegant wording of the amendment, and the practical reality that many separate entities are not "subsidiaries" of law firms in the usual sense (and may have external ownership such as partners' spouses, trusts, etc), leaves some uncertainty as to its actual scope.

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