

## Mitigate risks for business advantage

*In the second of two articles, Ron Pol and Ashley Balls offer tips to improve existing procedures*

**THE ARTICLE IN THE LAST ISSUE OF** *LawTalk* highlighted new and emerging issues facing most law firms. Although affecting a relatively small proportion of transactions, new laws may unintentionally have made legal services and trust accounts more attractive to criminal activity, and made it more difficult for lawyers to avoid being implicated. This article outlines some pragmatic ways to help protect your business.

Most lawyers are temporarily exempt from the new systems and process requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), which applied to finance businesses from 30 June 2013.

Lawyers' temporary exemption from the AML/CFT Act could potentially be lifted as early as 2014, and the scope of change is so significant that finance businesses reportedly spent \$70-230 million, and three years, getting their businesses ready.

In the face of what will almost certainly be the biggest systems and change management exercise in legal practice for decades, the argument to begin serious preparation certainly seems compelling; and some consultants have reportedly suggested that lawyers should already start to undertake the same extensive risk mitigation exercise completed by finance businesses.

However, important issues need to be addressed in shaping the precise rules that will ultimately apply to lawyers. These include, for example, the interaction between client

confidentiality/privilege and duties to report suspicious transactions, whether voluntary codes of practice may be as effective as regulations, and whether a government agency is the best supervisor for a specialist sector with an existing regulatory body. Indeed, the consultation process to resolve these issues suggests that lawyers' temporary exemption seems likely to stretch beyond 2014.

Yet doing nothing as these issues are finalised also does nothing to mitigate the emerging risks that most legal businesses already face.

Nor will it help lawyers meet their existing duties to ask questions and report suspicious transactions; especially as enforcement officials confide that lawyers' reporting under the Financial Transactions Reporting Act 1996 (FTR Act) already seems "patchy".

Whatever detailed new additional rules will apply to lawyers, the core fundamentals are known. This means that firms keen to meet international best practice can use globally recognised standards to begin reducing their business risk to levels comparable with joining the regime; and for a short time can do so outside the glare of regulatory oversight.

If they choose to do so, firms can effectively remove the risk premium now attached to "gatekeeper" professionals, and secure an easier transition path later; with no hidden surprises.

A pragmatic interim option is also available; and probably offers the biggest initial "bang for buck" for law firms to meet existing

obligations and "step up" more gradually their capability to meet the new obligations when they apply.

Drawing from a wealth of resources that track a multitude of methods used by criminal operations targeting lawyers, firms can isolate key "red flags" that apply specifically to their own business. (See *Stop criminals misusing your firm*). After all, people – not just systems – identify, manage and mitigate risk. So providing staff with knowledge of what to look for can dramatically reduce a firm's risk profile.

If insurers consider the existing and emerging issues and risks sufficiently material, firms that choose to reduce their own exposure may also be able to demonstrate a case for holding back any resultant premium hikes.

In any event, firms report that the exercise itself helps improve business processes, and adds a new dimension to better understanding their clients; in effect helping transform risk mitigation into business advantage.

Lawyers will inevitably join their financial services colleagues by introducing extensive processes that more effectively curb the billions of dollars of criminal funds laundered in New Zealand each year.

Some law firms may choose to improve their own capabilities slightly ahead of the game, but in the meantime all firms at least need to be confident that they can meet their existing duties; which have just been reinforced and influenced by the confluence of new laws and business practices. ■

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### Stop criminals misusing your firm

**HUNDREDS OF INTERNATIONALLY** recognised methods, techniques and typologies are used by criminals targeting lawyers. Firms can use these to advantage by training staff to recognise combinations of key "red flag" indicators that apply specifically to their practice; and build a virtual wall protecting their business from misuse. Examples include:

- use of cash or disproportionate amounts of cash;
- clients acting through or introduced by intermediaries, with no personal contact without reasonable explanation;

- clients buying or selling assets for sums above or below reasonable value;
- multiple transactions with significant change in value within short timeframes;
- doubts about client beneficial ownership of funds or assets;
- sums left on account of future transactions and fees – "parking" money in your trust account; and
- significant and difficult to explain increases in asset transfer activity with no apparent change in circumstances. They can't all be Lotto winners.

### Regulator confirms lawyers' exemption "narrow"

The Financial Markets Authority says that the temporary exemption from AML CFT obligations for occupational groups including lawyers and accountants has "narrow application" that is "not as wide as people might think". The FMA's acting head of primary regulatory operations gives practical examples of services that may be within, and outside, the exemption, in *Lawyers and accountants must still heed rules*, Simone Robbers, NZ Herald, 20 July 2013.