

Response to the consultation paper on Phase Two of the AML/CFT Act September 2016

Improving New Zealand's ability to tackle ML/FT

We would like to thank the New Zealand Ministry of Justice for the opportunity to provide input into this important consultation on how to improve New Zealand's ability to tackle money laundering and terrorist financing.

AML/CFT over recent years has become a topic of increased focus around the world, as organisations respond to increasing expectations from regulators and the public in general. In particular that the all parts of the private sector play an active role in deterring, detecting, and reporting AML/CFT and the predicate offences that give rise to money laundering and the financing of terrorism.

This focus has been further enhanced by the activities of the FATF and the changes to the FATF recommendation and their mutual evaluation process in place since 2012, together with targeted activity internationally on tax crimes, including the issues raised by the publication of the "Panama Papers".

About Us

AML Accelerate is a joint venture between Financial Crime Solutions (FCS) and Initialism. AML Accelerate has been established to provide automated cost effective solutions to support reporting entities compliance with AML/CFT obligations.

AML Accelerate has recently developed a product for reporting entities that allows them to undertake an ML/TF risk assessment and develop a AML/CTF program that it compliant with AML/CFT requirements in a particular country (including New Zealand) where they are offering products and services to customers.

This product is tailored to the industry sector, and aimed at the smaller organisations covered by Phase 1 as well as those soon to be covered by Phase 2. The product provides cost effective solutions that allow reporting entities to achieve compliance in a high efficient and sustainable way.

In developing this product AML Accelerate draws on unique and unparalleled knowledge and experience contained within the joint venture partners.

Financial Crimes Solutions (FCS) was founded in 2011 to tackle an escalating problem with financial crime losses. The founders of FCS spent over 20 years working with some of the world's largest consulting firms, investment and retail banks and understand the challenges that these organisations face in managing these risks.

The vision was to bring together financial crime subject matter experts and world class technology skills to create solutions to assist organisations in identifying and mitigating financial crime risks, by allowing companies of different size and industry to both assess the specific financial crimes and compliances issues they face and what to do about them by receiving recommendations on line.

Financial Crimes Solutions was founded by passionate risk and compliance experts who understood, that even for those who could afford it, understanding your financial crime risk and how to mitigate it was overly cumbersome, expensive and many available solutions were not effective and difficult to implement.



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Combining over 100 years of hands-on, practical experience our experts have developed practical end-to-end solutions for conducting risk assessments and compliance assurance monitoring. The tools provide a framework for identifying, assessing, mitigating and managing risk. Critically the tools provide tangible and actionable recommendations based on input to the tools.

Designed for different industries and company sizes each tool asks a series of expertly designed questions to assess the situation. The responses are then analysed to deliver practical recommendations to mitigate the risk or ensure compliance with industry regulations.

You can find out more about Financial Crime Solutions at <http://www.financialcrimessolutions.com/>

Initialism brings together unparalleled expert knowledge, experience, and real world perspectives in the area of Anti-Money Laundering (AML)/Counter Terrorism Financing (CTF) and Targeted Financial Sanction (TFS) compliance and financial crime risk management.

Initialism's people have unique backgrounds in financial crime risk management spanning the last 30 years, covering all market segments, with a proven track record in delivering compliant, proportionate, and business sensitive AML/CTF and TFS compliance and risk management solutions.

Initialism's experience, knowledge, and expertise has been developed through many years of working across all aspects of AML/CTF and TFS.

This includes domestic and international money laundering law enforcement investigations, developing and implementing national AML regulation and regulatory supervision techniques, and developing pragmatic responses and achieving industry-wide consensus on solutions for AML/CTF and TFS compliance and financial crime risk management.

Initialism's experience also includes working at senior levels within major financial institutions managing AML/CTF and TFS compliance across Australia, Asia, Europe (including the UK), and the Americas (including the USA).

Since 2012, Initialism's principals have built on their experience and expertise, undertaken consulting assignments and delivered proportionate and business sensitive compliance and risk management solutions for all types and sizes of businesses subject to AML/CTF obligations and financial crime risks.

Based in Australia, and leveraging its extensive collective expertise, global experience and industry knowledge, Initialism is able to deliver cost effective solutions to support AML/CTF and TFS compliance and risk management needs regardless of the type of business, its size, or the complexity of product, customers, or business operations.

You can find out more about Initialism at <http://initialism.com.au/>



Our Response to Your Questions

Lawyers

Q1. How should AML/CFT requirements apply to the legal services sector to help ensure the Act addresses the risks specific to it? For example, which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done?

Q2. Is the existing mechanism that protects legal professional privilege appropriate for responding to money laundering and terrorist financing, and for the legal profession to comply with its expected obligations under the Act? If not, what else is required?

We are of the view that the legal profession should be included in the AML/CFT regime. The main issue for lawyers is receiving money into their trust accounts and establishing trusts and corporate structures for individuals who might use those for illegitimate purposes, or the concealment of funds or assets gained from illegitimate activity.

Our comments recognise that the principle protections for clients of lawyers is legal professional privilege which has been embedded in Common Law Principles for hundreds of years, and that any bringing lawyers into the AML/CFT regime in New Zealand should accommodate and be care not to unduly erode legal professional privilege.

Lawyers should be required to understand their ML/FT risk and ensure that they have the appropriate controls in place to mitigate those risks.

It is fundamental that lawyers should identify of the individual or corporate entity with whom they do business and disclose the beneficial owner.

Lawyers should also be under an obligation to identify suspicious activity and where necessary make a STR in relation to funds being paid into the trust account.

Lawyers often prepare corporate structures, trusts, act as nominees and provide administrative services for companies on behalf of clients. There should be additional due diligence required to ensure that the trust or corporate structure has been established for an illegitimate purpose, including criminal activity and tax evasion. In this regard, lawyers should be required to adopt a risk based approach in determining their clients' source of funds/wealth.

Suspicious Transactions Reports (STR's) should be filed when the lawyer becomes aware of circumstances of setting up structures may be for criminal use to avoid AML/CTF detection. We therefore believe the current STR regime should be extended to cover suspicious activity as well as suspicious transactions.

It may also not be appropriate not to have a threshold on reporting but instead that the obligations arise to report significant cash transactions as suspicious matters and that an ordinary lawyer test would apply i.e. would an average professional in the same circumstances lodge a suspicious transaction/activity report?

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Accountants

Q1. How should AML/CFT requirements apply to the accounting sector to help ensure the Act addresses the risks specific to it? For example, which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done? Who should be responsible for doing them?

Q2. Given the level of risk associated with advisory and assurance services (for example, tax advice, bookkeeping and auditing), should these activities be subject to AML/CFT obligations even where the business is not involved in a transaction for their client?

We are of the view that the accounting profession should be included in the AML/CFT regime. The main issue for accountants is receiving money into their trust accounts and establishing trusts and corporate structures for individuals who might use those for illegitimate purposes.

We are of the view that the AML/CFT regime should also be extend to advisory services, taxation advice and auditing as such activities can reveal money laundering or other illegal activities.

Accountants should be required to understand their ML/FT risk and ensure that they have the appropriate controls in place to mitigate those risks.

It is fundamental that accountants should identify of the individual or corporate entity with whom they do business and disclose the beneficial owner.

Accountants should also be under an obligation to identify suspicious activity and where necessary make a STR in relation to funds being paid into the trust account.

Accountants often prepare corporate structures, trusts, act as nominees and provide administrative services for companies on behalf of clients. There should be additional due diligence required to ensure that the trust or corporate structure has been established for an illegitimate purpose, including criminal activity and tax evasion. In this regard, accountants should be required to adopt a risk based approach in determining their clients' source of funds/wealth.

Suspicious Transactions Reports (STR's) should be filed when the accountant becomes aware of circumstances of setting up structures may be for criminal use to avoid AML/CTF detection. We therefore believe the current STR regime should be extended to cover suspicious activity as well as suspicious transactions.

It may also not be appropriate not to have a threshold on reporting but instead that the obligations arise to report significant cash transactions as suspicious matters and that an ordinary accountant test would apply i.e. would an average professional in the same circumstances lodge a suspicious transaction/activity report?

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Real Estate and Conveyancing

Q1. How should AML/CFT requirements apply to the real estate and conveyancing sectors to help ensure the Act addresses the risks specific to them? For example, which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done? Who should be responsible for doing them?

Q2. Should businesses in the real estate sector that engage in property development have obligations under the Act? If yes, in what circumstances?

Q3. At what stage should a client of a real estate agent become a customer for the purposes of customer due diligence?

We are of the view that the real estate profession and developers should be included in the AML/CFT regime. The main issue for real estate agents are receiving money into their trust accounts for the purchase of properties.

There are many examples where real estate agents and developers have wittingly and unwittingly been used to launder money through real estate purchases and development. Often, real estate agents do not do checks on individuals, identities or that of companies and trusts whether in receiving funds domestically or internationally.

Real estate agents should be required to understand their ML/FT risk and ensure that they have the appropriate controls in place to mitigate those risks.

It is fundamental that real estate agents should identify of the individual or corporate entity with whom they do business and disclose the beneficial owner.

Real estate agents should also be under an obligation to identify suspicious activity and where necessary make a STR in relation to funds being paid into their account.

Real estate agents should also understand the source of money at the time when the deposit of the purchase is made or when any monies are deposited into a real estate agent's or developer's account.

Suspicious Transactions Reports (STR's) should be filed when they become aware of suspicious circumstances. We therefore believe the current STR regime should be extended to cover suspicious activity, as well as suspicious transactions.

It may also not be appropriate not to have a threshold on reporting but instead that the obligations arise to report significant cash transactions as suspicious matters.

A real estate agent's obligations and a developer's obligation should commence when any money is received by a purchaser or vendor and/or when they sign a legally binding contract.

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High Value Goods

Q1. Should the Act apply to all dealers of high-value goods or just particular ones?

Q2. What is the appropriate threshold for cash transactions that would trigger AML/CFT customer due diligence and reporting requirements? Please tell us why.

We are of the view that dealers in high value goods should be included in the AML/CFT regime. The main issue for dealers is that they can trade in items that can represent significant value which can be transferred easily.

As such we believe the term 'dealer in high value goods' should be interpreted beyond the limited FATF definition, and applied in its broadest terms to include auction houses, antique dealers, dealers in precious stones, jewelers, as well as other high value goods such as cars and boats.

There are many examples where dealers in high value goods have been used to launder money and pass assets on for illegitimate purposes.

Dealers in high value goods should be required to understand their ML/FT risk and ensure that they have the appropriate controls in place to mitigate those risks.

Dealers in high value goods should be required to undertake due diligence of clients at the time of purchase and in some circumstances, even at the time of enquiry.

Dealers should be under an obligation to review the client's circumstances and clarify the source of money at the time of purchase the goods or when they receive deposits into their accounts.

Dealers in high value goods should also be under an obligation to identify suspicious activity and where necessary make a STR in relation to funds being paid into their account.

There should also be obligations on high value dealers to lodge STR's if suspicions are raised when enquiries are made about the purchase of goods or the transfer of goods internationally.

Dealers' in high value goods obligation should commence a threshold of \$10,000, this would limit the impact whilst addressing the real risks for this sector.

Suspicious Transactions Reports (STR's) should be filed when they become or red flags that indicate the transaction may represent the proceeds of criminal activity. We therefore believe the current STR regime should be extended to cover suspicious activity as well as suspicious transactions.

It may also not be appropriate not to have a threshold on reporting but instead that the obligation arises to report significant cash transactions as suspicious matters.

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Gambling Sector

Q1. How should AML/CFT requirements apply to the gambling sector to help ensure the Act addresses the risks specific to it? For example, which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done? Who should be responsible for doing them?

Q2. Should there be a threshold that would trigger AML/CFT customer due diligence and reporting requirements for cash transactions related to gambling and betting activities with customers who don't have an account with you? If so, what would be an appropriate threshold? Please tell us why.

The AML regime should apply to all sections of the gambling sector to address the specific risks of organised crime. This is potentially an area with the growth of casinos and sports gambling in New Zealand where organised crime can launder funds.

There are numerous issues in relation to casinos and sports betting that are now electronically based.

Any amount gambled exceeding \$10,000 should be reported to the FIU so that profiles can be built up as to the extent of funds being used or gambled by any one individual. The question is how do you require casinos to monitor their clients on the one hand whilst conducting their business on the other?

It is important to have a threshold of at least \$10,000 in the gambling sector so that staff can understand what is required to be reported.

Casino should be obligated to report not only on gambling but also attempts of individuals to gamble and transfers of large amounts of money into casino chips or large domestic/international deposits into the individual Casino bank commonly known as "the cage".

Supervision

Q1. Do you think any of our existing sector supervisors (the Reserve Bank, the Financial Markets Authority and the Department of Internal Affairs) are appropriate agencies for the supervision of Phase Two businesses? If not, what other agencies do you think should be considered? Please tell us why.

Q2. Are there other advantages or disadvantages to the options in addition to those outlined above?

We are of the view that the existing supervision structure in New Zealand for the current reporting entities as it provides industry sector focus that could be lost if you move to a single regulator.

With regard Phase Two consideration should be given to avoiding more (or too much) fragmentation of supervisory responsibility whilst ensuring that supervision is industry specific and proportionate.

It is important that any supervisory model is resourced correctly having regards to the increase of work in this area. This will be a particular issue when Phase Two reporting entities are introduced.

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Implementation

Q1. What is the necessary lead-in period for businesses in your sector to implement measures they will need to put in place to meet their AML/CFT obligations?

Q2. Where possible, please tell us how you calculated how long it will take to develop and put in place AML/CFT requirements.

Suspicious activity

Q1. Should the current requirement to report suspicious transactions be expanded to reporting suspicious activities? Please tell us why or why not.

We are of the view that the regime should be extended to include suspicious activity or matters. A focus on only transactions will limit the type and nature of reports and thereby limit the intelligence and information being received by law enforcement and other agencies.

Indicators of criminal activity or the potential criminal origins of funds or assets is not always transaction based.

We believe there should be a more general requirement to report suspicious activity (including transactions) regardless of the circumstances or its origin.

Information

Q1. Should industry regulators be able to share AML/CFT-related information with government agencies?

Q2. Should AML/CFT supervisors be able to share customers' AML/CFT-related personal information with government agencies?

Q3. What are the appropriate circumstances under which the FIU can share financial intelligence with government agencies (such as the sector supervisors, industry regulators, intelligence agencies, IRD and Customs) and reporting entities? What protections should apply?

Q4. What restrictions should be placed on information sharing?

The use of information and intelligence is vital to an effective AML/CFT regime for New Zealand, we support information sharing – subject to appropriate safeguards.

We will leave it to other 'better placed respondents to provide more detailed responses.

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Third Parties

Q1. Are the existing provisions that allow reporting entities to rely on third parties to meet their AML/CFT obligations sufficient and appropriate? If not, what changes should be made?

It is important that the provisions reflect the changing environment that reporting entities find themselves in. The use of technology and the development of innovative solutions that can support compliance is increasing. The New Zealand AML/CFT regime should accommodate the development and adoption of new technologies and solutions.

Company Service providers

Q1. Should the scope of the provision requiring persons providing trust and company services to comply with the AML/CFT Act be extended to activities carried out in the ordinary course of business, rather than just when they're the only or principal part of a business.?

We are of the view that company services providers should be fully included in the AML/CFT regime.

Conclusion

We commend New Zealand for taking a proactive position and deciding to review its AML/CFT regime at this time, as well as the proactive and innovating thinking that is reflected in the consultation paper.

This consultation, we feel, has created an opportunity for New Zealand to refine its regime and create an AML/CFT regime that balances compliance with the ML/FT risk within business particular business sectors and delivers sustainable, proportionate, and pragmatic regulatory and business responses to the money laundering and financing of terrorism challenges faced by New Zealand.

We thank you for the opportunity to provide you with our submissions and look forward to the draft legislation.

Yours faithfully



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Director - AML Accelerate