16 September 2016

AML/CFT Consultation Team
Ministry of Justice
Level 3, Justice Centre
19 Aitken Street
DX SX10088
Wellington 6011

MINISTRY OF JUSTICE CONSULTATION PAPER ON PHASE TWO OF THE AML/CFT ACT

Thank you for the opportunity to submit on various points relating to the proposed implementation of 'Phase Two' of the AML/CFT Act described in your paper dated August 2016 (the **Consultation Paper**). Our submission is set out below.

1. OVERVIEW OF OUR SUBMISSION

We have elected not to submit on every point raised in the Consultation Paper as some of these areas are best responded to by entities in those proposed sectors. We are also conscious that as consultants and auditors in this space, it could be viewed as self-serving to comment on the scope of capture.

Dealing with a selection of those specific points on which you have encouraged submissions, an overview of our submission is as follows:

(a) **Accountants:** We support the proposal to extend the capture of the AML/CFT Act to accountants providing advisory and assurance services (for example, tax advice, bookkeeping, and auditing).

(b) **Supervision:** We support the use of the existing supervisors to cover new entities introduced under Phase 2.

(c) **Implementation period and costs:** We support a shorter implementation period of 12-18 months given our experience with entities in Phase 1.

(d) **Reliance on third parties:** We submit there are further steps that can be taken to reduce the burden of CDD across multiple reporting entities, including the use of verifying officers and confirmation certificates and the ability to add different entity types to a designated business group.

(e) **Simplified Customer Due Diligence:** We support the extension of simplified customer due diligence to the proposed entities and suggest also extending on a

similar basis to licenced intermediaries under the managing intermediaries exemptions[1].

(f) **Examining capture under the AML/CFT Act for low risk reporting entities:** We consider it is worth examining the capture of certain 'low risk' entities under the AML/CFT Act.

(g) **Domestic politically exposed persons (PEPs):** We support extending the definition of PEP to domestic PEPs in line with international recommendations.

We expand on each of the above points in the following paragraphs.

2. ACCOUNTANTS

2. 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 consider that these activities should also be subject to AML/CFT obligations, recognising that these professionals may at times be best placed to detect suspicious activity.

In addition, in our experience other reporting entities are seeking to use financial statements prepared and/or audited by accounting professionals to support enquiries into the source of funds/wealth of a customer. Where these activities are not subject to AML/CFT obligations, we consider that the reliability of such information is threatened.

A similar analysis would apply to lawyers as they are often relied on by financial entities for source of funds/wealth (e.g. in the sale and purchase of a property or distribution of estates) or the provision of eligible investor certificates under Financial Markets Conduct Act 2013.

3. SUPERVISION

1. 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.

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

In general, it would appear the sectors proposed to be added as part of Phase 2 do not naturally fit with the sectors supervised by the Reserve Bank of New Zealand or the Financial Markets Authority (**FMA**). The exception to this would be accountants with the FMA already supervising auditors in certain circumstances.

[1] Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice (No 2) 2015 (Managing Intermediaries Exemption)

Given the above, the Department of Internal Affairs (**DIA**) as the catch-all regulator would be best placed to pick up the new sectors, apart from accountants potentially for the reasons noted above. We consider the resources within the DIA dedicated to AML/CFT compliance would need to be substantially increased to deal with these new sectors.

We are strongly against the addition of any additional supervisors. In our experience as consultants and auditors, the existence of multiple regulators provides challenges through differences of interpretation and inconsistencies in approach. We believe the existence of multiple supervisors also delays the creation and release of industry-wide guidance. Over time we have seen the differences in approach and interpretation between the three supervisors lessen to some extent, although we would be hesitant to support additional supervisors being added to the mix which could create further confusion.

4. IMPLEMENTATION PERIOD AND COSTS

1. *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?*

While we will leave it to affected sectors to comment on likely costs and implementation periods required, we thought it would be worthwhile to comment on our own experience as consultants during Phase 1 of the AML/CFT Act. While there was a four-year period between the AML/CFT Act being passed and it coming fully into force, in our experience a large percentage of entities did not begin work on compliance until at earliest six months before the AML/CFT Act coming into force. We would estimate that in certain sectors up to 50% of reporting entities did little or nothing until **after** the Act came into force - we are still regularly contacted by Phase 1 entities who have not complied at all to date.

Given this, we are in support of a shorter implementation period of 12-18 months' maximum.

5. ENHANCING THE AML/CFT ACT

<u>Proposal: Reliance on Third Parties</u>

1. *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?*

In practice we have found that few entities are utilising s33 of the AML/CFT Act for third party reliance given the complexity around the conditions associated with the use of the section (timing, that the client must also be a customer of the third party, that CDD needs to have been completed to at least the standard required by this Act and regulations and how that applies to foreign institutions, etc.) and that, in essence, it also requires a form of agency agreement. As such, s34 of the AML/CFT Act allows entities to better manage these agency relationships on their own terms.

We would like to see some further steps to allow reporting entities to rely on other reporting entities to reduce the burden of customer due diligence across multiple reporting entities. We find some examples in other jurisdictions:

Use of a verifying officer

The Australian AML/CTF Rules in paragraph 4.11.9 provide for agents of non-natural customers to be identified by the customer's verifying officer. In our experience, Australian entities dealing with New Zealand reporting entities are already seeking to use this. Further, many New Zealand reporting entities appear reluctant to provide personal details and identification documents of staff.

Confirmation certificates

In the United Kingdom, Part 5.6 of Part I of the Guidance for the UK Financial Sector issued by the Joint Money Laundering Steering Group provides a framework for reliance on other entities including the form of confirmation certificates. This appears to be a similar approach to that proposed in s33 of the AML/CFT Act but in a more defined framework which would provide more certainty to those reporting entities seeking to utilise it.

Additional entities to be added to designated business group (**DBG**)

In our experience, the use of a DBG is a practical way for related entities to undertake CDD on behalf of each other. The current definition of DBG, however, limits this to companies that are related to each other member of the group within the meaning of section 2(3) of the Companies Act 1993[2].

We would see benefit in including the ability to have other entity types able to be added to a DBG, such as a limited partnership (where, for example, the general partner is related to the other entities in the DBG) or a trading trust.

Proposal: Simplified Customer Due Diligence

1. *Should the simplified customer due diligence provisions be extended to the types of low-risk institutions we've proposed above? If not, why?*

2. *Should we consider extending the provisions to any other institutions?*

We strongly support the extension of simplified CDD to the low risk institutions proposed in the Consultation Paper. Currently, when analysing beneficial ownership of a customer, hitting an entity in the ownership chain which is subject to simplified CDD practically brings the investigation into beneficial ownership to an end. We are aware of confusion in the marketplace as to whether entities are still required to verify effective controllers in this scenario.

In addition to the institutions mentioned in the consultation paper, we consider a similar extension be provided to subsidiaries of licenced intermediaries under the managing intermediaries exemptions who also enjoy the benefit of simplified CDD. This would provide a consistent approach across the different institutions.

[2] Excluding Government entities, parties to a joint venture agreement and sub-agents of a money remitter.

6. EXAMINING CAPTURE UNDER THE ACT FOR LOW RISK REPORTING ENTITIES

There are areas of the Act where the capture of low risk entities could be re-examined. Although the Consultation Paper does not strictly address this point, we consider that it fits into the theme of re-examining areas of the Act where efficiencies can be gained.

One area for consideration is whether there should be a limit set for lending before the activity is captured by the Act. There are already precedents for setting transaction limits for capture including currency exchange, money remittance, and cash transactions at a casino.

Lending is already considered a low risk sector and there are sub-sectors of the non-bank, non-deposit taking lender (NBNDTL) sector which specialise in low level lending of $500-$1000 per time (e.g. 'pay day lenders') with the amount repayable often within very short periods. The Ministry of Justice and DIA (as the sector supervisor) may wish to consider whether the supervision of these entities is still justified at these transaction levels.

7. DOMESTIC PEPS

While not specifically requested for comment, the amendments to the AML/CFT Act as part of Phase 2 would be a natural time to extend the definition of PEP to include domestic PEPs in line with Recommendation 12 of the FATF 40 Recommendations.

Once again, many thanks for the opportunity to submit. We would be very happy to discuss this submission with you.

Yours faithfully

Martin Dilly **CAMS Audit**
Director
T: 09 520 1144
M: 021 577 822
E: martin@amlsolutions.co.nz