



# AUCKLAND DISTRICT LAW SOCIETY INC

INDEPENDENT VOICE OF LAW

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AML/CFT Consultation Team  
Ministry of Justice  
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## **SUBMISSION ON CONSULTATION PAPER ON PHASE TWO OF THE AML/CFT ACT: IMPROVING NEW ZEALAND'S ABILITY TO TACKLE MONEY LAUNDERING AND TERRORIST FINANCING**

The Auckland District Law Society Commercial Law Committee welcomes the opportunity to comment on the Consultation Paper ("Paper").

We support the initiative of combatting money laundering and the financing of terrorism and we understand the importance of New Zealand meeting its obligations as a member of the Financial Action Task Force. However, our support for an extension of the present AML/CFT regime to lawyers is contingent on that extension being properly risk based and practical. We are not convinced that a "broad brush" approach with generic application will achieve this.

Turning to your specific questions:

### **1. *Which activities provided by member of the legal profession should be subject to AML/CFT requirements?***

In our opinion the proposed list of activities in the Paper which would be subject to AML/CFT requirements is both too wide and not sufficiently precise. The activities do not seem to be based on a risk based analysis.

By way of example, "acting as a formation agent of legal persons" would catch the on-line incorporation of a company. MBIE has developed guidelines in connection with this and there is, therefore, no perceived need to duplicate these.

In our opinion the list of "caught" activities needs to be tailored to specifically relate to situations where money comes into lawyers' trust accounts. In this context we have in mind:

- Operating nominee companies;
- Business sales and purchases;
- Trust structuring, where trust funds are received.

We are happy to work with you to further this.

## **2. How should the AML/CFT obligations apply to lawyers?**

We note the proposal in the Paper for AML/CFT compliance to require lawyers to, inter alia develop and maintain an AML/CFT risk assessment and compliance programme. We are concerned at the potential costs associated with this. AML/CFT risk assessment and compliance programmes can only be implemented at considerable cost.

Many of New Zealand's lawyers are sole practitioners and would find such costs prohibitive. In our view the emphasis should be on customer due diligence, in areas identified as having specific risks.

In relation to customer due diligence, we note that every lawyer enters into a business relationship with every client. A significant proportion of those relationships do not involve financial transactions, for instance, civil litigation, drafting of wills and resource management advice. In our opinion the definition of "*business relationship*" in the AML/CFT Act (in the context of lawyers) should not be so wide as to require customer due diligence in relation to clients for whom AML/CFT will have no practical application.

## **3. Are the proposed legislative protections for legal profession privilege in the AML/CFT Act appropriate?**

We would need to consider further how privilege would apply to the proposed extensions to AML/CFT obligations to lawyers. It is important to retain both solicitor/client privilege and litigation privilege. We would wish to consider this further once further legislative detail had been proposed.

In addition, we note the use of the word "wrongful" in section 42(1)(c) of the AML/CFT Act. It is important to ensure that the notion of "wrongful" conduct could not be interpreted, so as to cut across litigation privilege.

## **4. Who should the supervisory body be for lawyers?**

There are currently three supervisors: the Reserve Bank, the Financial Markets Authority and the Department of Internal Affairs. We note that where any of those supervisors had "responsibility" for lawyers the cost of supervision would be borne by the Government.

In connection with these supervisors we are concerned that lack of understanding of how law firms operate might result in inappropriate investigations and questions and insufficiently targeted "form filling". We are also concerned, in this context, with a potential lack of understanding of legal professional privilege and the protection of legitimate client privacy.

An alternative put forward by the Ministry is an industry specific supervisor. In this context we note that an appropriate supervisor could be the New Zealand Law Society. Of course, this pre-supposes that Society being willing to assume such a role.

Benefits associated with the New Zealand Law Society being the Supervisor include:

- the New Zealand Law Society understands how firms operate and can, therefore, target investigations;
- enhanced protection of legitimate solicitor/client privilege; and
- the ability to combine the supervisory role with the New Zealand Law Society's existing supervisory role in relation to solicitors' and trust accounts.

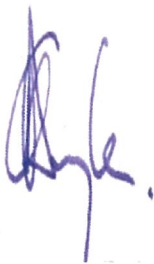
However, we see no reason why the additional costs (which would be incurred by the New Zealand Law Society) should (as they would) be borne by the lawyers themselves. We favour the New Zealand Law Society as the supervisor on the basis of recovery of agreed costs associated with that activity.

**5. *What should the implementation timetable be?***

Implementation time will depend upon the specific AML/CFT obligations finally applying to lawyers. As referred to earlier, these duties could be of particular significance to sole practitioners or small law firms.

We anticipate that a "lead in" time of 1-2 years would be appropriate.

Yours faithfully



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