aml

From: [redacted]@gslegal.co.nz>
Sent: Thursday, 2 December 2021 5:52 pm
To: aml
Subject: Submission - AML/CFT feedback

Whom it may concern,

I received a request dated 7 October 2021 for feedback on the AML/CFT Act. That feedback follows.

In my experience, although the Act purports to create a risk based approach to identifying ML/FT, it places overly prescriptive obligations on reporting entities.

Reporting entities are required to prepare a risk assessment and compliance programme, regularly review those, and train staff.

They are required to identify their clients and complete a risk assessment of each transaction, and document that, regardless of whether or not there is any risk of ML/FT.

The response to this is no doubt that Government believes without identifying a client and carrying out a risk assessment, a reporting entity will not know if there is risk.

I do not agree with this.

I think it is relatively easy (at least in our practice) a lot of the time (in our practice, likely more than 95% of the time) to know that a client is not engaged in ML/FT without completing the requirements under the Act and prescribed by DIA. Despite this, we are required to carry out the requirements every time we are engaged.

The increased compliance requirements on our firm (4 directors, fewer than 20 employees) has been a significant burden. Staff are exhausted by the ongoing compliance. Clients are exhausted by the ongoing compliance. We are left to either further annoy clients by charging them for this work, or swallowing the cost ourselves. The cost is significant. This is compounded where we know, well before we are required to certify identification documents and turn our minds to the nature of a client's transaction, that there is no risk of ML/FT.

It would have been far better, and ironically, I believe far more effective, if the scheme provided:

1. Guidance for each reporting entity industry identifying high risk areas;
2. No requirement on each entity to write its own compliance programme and risk assessment (this being covered by the guidance);
3. No requirement to onboard/identify each client, unless it was considered there was a risk of ML/FT (just because somebody is buying land, using a lawyer's trust account, or undertaking any other captured activity, it does not mean there is a risk of ML/FT);
4. For genuine reliance on reporting entities to adopt a risk based approach, and leaving them to determine where they believed there was ML/FT to put a positive obligation on them to file a suspicious activity report.

In the end, it seems to me, the Act is designed to capture suspicious activity. It is only the suspicious activities that matter to the FIU. Instead, reporting entities are required to write compliance programmes, obtain certified copies of identification and confirmation of addresses for each transaction, capture all of that information, face liability where they get any of that wrong – all where there is likely very little risk of the activity the Act is designed to stop.

I do not think there has been enough, if any, consideration of the burden on small businesses and their staff complying with these requirements, and it is difficult to keep staff encouraged to continue with compliance, where

the reality is there is very little risk of the activity it is supposed to be designed to stop. In the meantime, we now face liability where, even with the best intention, we get compliance wrong.

Unfortunately, I doubt my views will lead to any real change, but here's hoping. I look forward to your feedback.

Regards,

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