



FINANCIAL SERVICES FEDERATION

16 September 2016

The AML/CFT Consultation Team,
Ministry of Justice,
SX 10088
Wellington

By email: aml@justice.govt.nz

Dear Team members,

Consultation Paper on Phase Two of the AML/CFT Act

The Financial Services Federation (“FSF”) wishes to comment on the above Consultation Paper (the “Consultation Paper”).

By way of background, the FSF is the industry body representing responsible and ethical finance and leasing providers in New Zealand. The FSF has over fifty members and affiliates providing first-class financing, leasing, and credit-related insurance products and services to over 1 million New Zealand consumers and businesses. The FSF’s affiliate members include internationally recognised legal and consulting partners. A list of the current membership is attached to this submission as Appendix “A”.

Most of the FSF’s members are directly affected by New Zealand’s AML/ CFT laws, and in particular most members are “financial institutions” for the purposes of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML/CFT Act”). As such, they have an interest in the effective and efficient operation of the AML/CFT Act in all relevant sectors of the economy, not just in financial services. That is reflected in some of the comments that follow, while others relate to proposals in the above Consultation Paper that would directly affect FSF members.

Extension of AML/CFT Regime to New Business Sectors: The FSF wishes first to comment on the proposed extension of the AML/CFT regime to new business sectors, as outlined in Part 3 of the Consultation Paper. In doing so it does not intend to address each of the specific questions asked in the Consultation Paper, as it feels they may more appropriately be left to be addressed by those who will be directly affected by these proposals, to whom many of these questions seem to have been targeted.

The FSF particularly wishes to comment on the proposed extension of the AML/CFT Act to lawyers, accountants, real estate agents and dealers in “high value goods”, but in doing so will address the last of those categories separately from the others.

Before doing so however the FSF submits that the Consultation Paper does not make it entirely clear that those entities to which the AML/CFT Act will be extended under Phase 2 will be subject to the same process, reporting, due diligence and other obligations as reporting entities under Phase 1. The following comments are based on the FSF’s assumption that that is the case.

Lawyers, accountants, real estate agents: Lawyers, accountants, real estate agents are in each case already subject to the Financial Transactions Reporting Act 1996 (“FTRA”) and as such are effectively

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already subject to a form of AML/CFT regulation. As such, the extension of the AML/CFT Act to them is an appropriate progression which has been well-signalled, and which the FSF supports.

In large part the FSF's support is based on the nature of the work that each of those occupations undertakes, but as regards lawyers and accountants the FSF's support for Phase 2 also relates in part to the operations of FSF members themselves. In undertaking customer due-diligence ("CDD") FSF members often have contact with lawyers and accountants, such as where they are trustees of trusts in respect of which FSF members may be required to undertake CDD. The experience of those FSF members has been that both the requirements of AML/CFT Act are not always well understood by some lawyers and accountants.

That can no doubt be expected to improve when those professions become subject to the AML/CFT Act, and in that way the FSF sees the implementation of Phase 2 as being likely to enhance the effectiveness of the AML/CFT Act, even in areas that are already covered by it.

As regards which specific activities of lawyers, accountants and real estate agents should be subject to AML/CFT regulation, the FSF considers that the areas proposed on pages 13, 17 and 20 respectively seem appropriate, and does not wish to comment any more specifically than that.

In respect of lawyers, the Consultation Paper also seeks feedback on the relationship between lawyers' AML/CFT reporting obligations and legal professional privilege. The FSF notes that the same issue already exists in respect of lawyers' obligations under the FTRA, which deals with legal professional privilege in section 19. The scope of that section seems appropriate to the FSF, and seems not to have caused difficulties. The FSF can see no reason why a similar approach should not be continued when Phase 2 is implemented.

Dealers in "high value goods": In respect of this part of the proposals in the Consultation Paper, the FSF can appreciate the potential connection between ML/FT and the purchase of high value items, particularly where cash is used in the transaction, and in principle would be comfortable with some extension of AML/CFT regulation to cover such items.

However the FSF submits that, in the majority of cases, such dealers are small businesses that are operated and staffed by people who do not have the same level of financial understanding as those people working in Phase 1 reporting entities or for that matter lawyers, accountants and real estate agents.

On that basis, the FSF does not believe that the regime that applies under the AML/CFT Act which requires reporting entities to undergo risk assessments, put policies and procedures in place to manage these risks, undergo regular audit of AML/CFT policies and procedures etc, should apply to dealers in "high value goods".

Rather, the FSF suggests that applying a regime similar to that of the FTRA to these entities would have the effect of capturing the information that is required in regard to ML/FT activities being conducted through these businesses but would not be overly burdensome on the individual businesses nor for that matter on the supervising entity.

On that basis dealers in "high value goods" would be required to adequately identify their customers and report cash or suspicious transactions only. It would also allow individual businesses to consider whether as part of their business model, they would actually accept cash as a means of payment. By choosing to de-risk and implement a policy of not accepting cash, dealers in "high value goods" could avoid AML/CFT obligations entirely which would seem to the FSF to be a sensible outcome.

With regard to the options provided on pages 23 and 24 of the Consultation Paper with regard to a possible cash threshold over which customer identity verification should occur, the FSF refers to the comments in the preceding paragraphs as a more sensible way to ensure that behaviour such as that

uncovered during Operation Wigram cannot occur. It would also ensure that criminals cannot take advantage of the displacement effect described on page 23 of the Consultation Paper.

It needs to be understood that extension of the AML/CFT regime to dealers in “high value goods” as described in the Consultation Paper, will capture far more entities than were subject to the regime under Phase 1 – particularly when lawyers, accountants and real estate agents are also included. Whichever supervisory model is ultimately decided upon (as discussed in Part 4 of the Consultation Paper), the supervisory burden is going to be significantly more than double that of the present. By limiting the requirements on dealers in “high value goods” as described above, that will also considerably lessen the supervisory burden.

Finally, the FSF also makes the point that, in the experience of their members, there was considerable resistance from the public when Phase 1 was implemented and reporting entities under that regime required more information from their customers when conducting business with them. Any extension of the AML/CFT regime to other reporting entities will also encounter resistance from the public who by now are used to providing identity verification etc to banks and finance companies but not when they purchase an item of jewellery as an example.

To assist those entities who will become subject to Phase 2 of the regime, the FSF suggests that a public awareness campaign relating to the reasons why this is required should be carried out.

Specific Questions relating to Proposals in Part 5 – “Implementation period and costs”: *Question 1 on page 32: “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?”.*

The FSF understands that in order to meet New Zealand’s international obligations for AML/CFT, it would not be possible to allow for a 4 year period for full implementation such as was the case for Phase 1.

However, the FSF does not agree that all Phase 2 sectors, particularly dealers of “high value goods” are more familiar with the requirements or what it means to be regulated than others or that they could readily access the body of knowledge, expertise and guidance available to help businesses get ready.

It was the experience of FSF members – who arguably were better informed than many other reporting entities under Phase 1 because of their membership of an industry body such as the FSF – that implementation of the regime within their businesses was very burdensome, costly and time-consuming. There are only so many resources and experts that can be accessed to assist in the process and, regardless of what lead-in period is allowed for, it is human nature to leave things to the last minute.

This is all the more reason why a simplified process for dealers in “high value goods” in the way suggested above should be adopted.

Specific Questions relating to Proposals in Part 6 - “Enhancing the AML/CFT Act”: The FSF also wishes to comment on the matters raised in Part 6 of the Consultation Paper, and will do so below using the same headings as used in that part of the Consultation Paper.

Expanded reporting to the Police financial intelligence unit:

Q1 on page 33: “Should the current requirement to report suspicious transactions be expanded to reporting suspicious activities? Please tell us why or why not”.

The FSF suggests that if the current requirement to report suspicious transactions was to be expanded to the reporting of suspicious activities, more guidance needs to be provided to reporting entities as to what sort of behaviour would be expected to be reported. The FSF believes that care needs to be taken that the definition does not become so broad as to make the information reported irrelevant.

FSF members already report attempted suspicious behaviour if they detect anything during the loan application state and the transaction does not transpire because they believe section 40(1)(a) of the AML/CFT Act (“*a person conducts or seeks to conduct a transaction through a reporting entity ...*”) to require that.

The FSF also notes that on page 33 the Consultation Paper suggests that FATF recommendations require such an extension. The FSF assumes that the Consultation Paper is referring to para 20 on page 19 of the FATF Recommendations of 2012. If so, the FSF notes that the heading to that paragraph is “Reporting of suspicious transactions”. That suggests that FATF was referring only to activities that are “transactions”. The FSF is accordingly not satisfied that FATF Recommendations require such an extension of the AML/CFT Act.

Information sharing

Q1 on page 36: Should industry regulators be able to share AML/CFT-related information with government agencies? Any proposal to allow AML/CFT-related information to be shared with government agencies, whether for revenue or other purposes, would raise serious privacy and other issues which would transcend AML/CFT and would need to be widely debated. The FSF does not think it would be appropriate to make such potentially significant changes by way of amendments to the AML/CFT Act.

Q2 on page 36: Should AML/CFT supervisors be able to share customers’ AML/CFT-related personal information with government agencies? The FSF sees this question as being essentially the same as the previous question, and its response to that question accordingly also applies here.

Q3 on page 36: 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? As above, the FSF does not presently favour legislation allowing industry regulators or supervisors to share AML/CFT-related information with government agencies.

Q4 on page 36: What restrictions should be placed on information sharing? The FSF’s response to the previous question also applies to this question.

Reliance on third parties

Further Q1 on page 36: 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? A number of FSF members rely on third parties in order to meet their AML/CFT obligations. This is particularly so in the case of point of sale finance, where AML/CFT compliance would be challenging if it were not possible to rely on third parties, and the FSF definitely thinks that these provisions are appropriate. The FSF also notes that in practice the relevant provisions of the AML/CFT Act appear to have worked well, and the FSF is not aware of any need for them to be changed.

With regard to watch list providers (Dow Jones, Accuity, Reuters, etc.) on which FSF members rely, the FSF suggests that Government entities should have an obligation to report into these so that information accessed via these services to reporting entities is up-to-date. As an example, because Government information is not currently appearing on the watch list, a convicted drug dealer did not appear when an FSF member checked their watch list and yet the information as to their conviction was publicly available through media reporting etc.

Trust and company service providers

Q1 on page 37: 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? The FSF agrees that

making this change appears to be sensible, as it is consistent with the manner in which the AML/CFT Act defines “financial institution”.

Simplified customer due diligence

Q1 on page 39: Should the simplified customer due diligence provisions be extended to the types of low-risk institutions we’ve proposed above? The FSF agrees that simplified CDD should be permissible in respect of SOEs and subsidiaries of listed companies, and supports this proposal.

Q2 on page 39: Should we consider extending the provisions to any other institutions? There are no other institutions that the FSF presently wishes to suggest are added to those on which simplified CDD is permissible.

The FSF trusts that its above responses are helpful, and would be pleased to discuss further, if that would be of assistance.



Lyn McMorran
EXECUTIVE DIRECTOR

Membership List as at 30 June 2016 Appendix A

Debt Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
<p><u>Rated</u></p> <ul style="list-style-type: none"> Asset Finance (B) Fisher & Paykel Finance (BB+) <p><u>Non-Rated</u></p> <ul style="list-style-type: none"> Mutual Credit Finance Gold Band Finance Limited 	<ul style="list-style-type: none"> BMW Financial Services Branded Financial Services Community Financial Services Go Cars Finance Ltd European Financial Services Mercedes-Benz Financial Services Motor Trade Finance Nissan Financial Services NZ Ltd Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance <p><u>Leasing Providers</u></p> <ul style="list-style-type: none"> Custom Fleet Fleet Partners NZ Ltd LeasePlan NZ Ltd ORIX NZ SG Fleet 	<ul style="list-style-type: none"> Advaro Limited Avanti Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now Future Finance Geneva Finance Home Direct Instant Finance John Deere Financial Latitude Financial Personal Finance Ltd South Pacific Loans The Warehouse Financial Services Group Thorn Group Financial Services Ltd Turners Finance Limited 	<ul style="list-style-type: none"> VEDA Advantage <p><u>Debt Collection Agencies</u></p> <ul style="list-style-type: none"> Baycorp (NZ) Consumer Credit Management Limited Dun & Bradstreet (NZ) Limited <p>52 Members</p>	<ul style="list-style-type: none"> Autosure Protecta Insurance Provident Insurance Corporation Ltd <p><u>Associate Members</u></p> <ul style="list-style-type: none"> Southsure Assurance 	<ul style="list-style-type: none"> American Express International (NZ) Ltd AML Solutions Buddle Findlay Chapman Tripp EY Finzsoft KPMG PWC SimpsonWestern

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