

16 September 2016

By email - aml@justice.govt.nz.

Ministry of Justice
National Office
Justice Centre
19 Aitken St
SX10088
Wellington

Submission on the Ministry of Justice consultation paper on phase two of the AML/CFT Act, August 2016

Our ref 796807 FRF/MCH/slc

AJ Park welcomes the opportunity to comment on the Ministry of Justice (MOJ) consultation paper on phase two of the AML/CFT Act (AML regime), August 2016.

Our submissions are confined to the follow Parts as they relate to lawyers:

- Part 3: sector-specific issues & questions
- Part 4: supervision
- Part 5: implementation period and costs
- Part 6: enhancing the AML/CFT Act.

Introduction

AJ Park supports the overarching aim and policy behind the AML regime to enhance New Zealand's efforts to detect and deter criminal activity while minimising the impact on businesses.

AJ Park is of the view that any extension of the regime to lawyers should be assessed against the following principles to ensure a sound approach. Specifically, the regime should be:

- **necessary**, in that there is risk of the sector being targeted or utilised as a conduit for criminal/terrorist activity;
- **effective**, in that the obligations of reporting, monitoring and compliance that lawyers are required to make will be effective, or will be likely to be an effective deterrent;

- **not unnecessarily complicated or costly**, in that the obligations of reporting, monitoring and compliance that lawyers are required to implement are not unduly burdensome, and their cost outweighs any real or perceived benefits;
- **ensure that legal professional privilege is protected** as has been the case to date; and
- **proportionate**, in that the objectives of the regime and its implementation are in proportion to the above considerations of necessity, effectiveness, cost and the protection of legal professional privilege.

Likely impact of the phase two AML regime on AJ Park

AJ Park is the trading name for two partnerships - the law firm AJ Park Law and the patent attorney firm AJ Park Patent Attorneys. Most partners are dually qualified as lawyers and registered patent attorneys and are members of both firms.

AJ Park Patent Attorneys conducts the business of patent attorneys including the drafting and preparation of patent specifications and applying for and obtaining patents. Our patent attorney services are provided by AJ Park Patent Attorneys.

AJ Park Law specialises in intellectual property and information technology law. We provide a full range of services within these disciplines, including trade mark protection, copyright advice, commercialisation and litigation.

All lawyer employees are employed by AJ Park Law. Some lawyers in the course of their employment by AJ Park Law do provide services to clients on behalf of AJ Park Patent Attorneys. Some patent attorneys in the course of their employment by AJ Park Patent Attorneys do provide services to clients on behalf of AJ Park Law.

The type of services provided by AJ Park do **not** involve:

- regular use of the firms trust account. Apart from taking deposits from clients in relation to the payment of fees, the predominant use would be in relation to holding funds for settlement of disputes or transactions relating to the sale/purchase of intellectual property assets;
- regular monetary transactions, in particular large financial transactions, as would be found in legal practices that provide residential conveyancing services and the sale/purchase of SMEs, mergers and acquisitions of larger entities, although we do occasionally handle the latter types of transactions;
- high volumes or values of funds being handled by the firm on behalf of its clients;
- advice on tax structuring or tax advisory schemes;
- the establishment and management of trusts or management of funds on behalf of trusts; and/or

- any related lawyer/solicitors nominee companies or investment vehicles or entities on behalf of the partnership or its employees.

Further, while AJ Park is frequently used as an address for service of correspondence, this is in the context of the New Zealand Intellectual Property Office and IP Australia's trade marks and patent registers, and some Pacific Island States.

Accordingly, we perceive there being a moderate to high cost for compliance with the AML regime, in contrast with a low risk for a specialist firm like AJ Park being targeted or utilised as a conduit for criminal/terrorist activity given the kinds of services the firm provides.

Specific comments

In response to the specific questions addressed to lawyers in the consultation paper, AJ Park comments as follows:

Part 3: sector specific issues and questions relating to lawyers

- *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?*
- *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?*

The primary purpose of the AML regime is to place obligations on New Zealand's financial institutions and casinos to detect and deter money laundering and terrorism financing by ensuring that those businesses take appropriate measures to guard against money laundering and terrorism financing.

AJ Park is aware of the obligations imposed under New Zealand's Financial Transactions Reporting Act 1996 (FTR Act) requiring lawyers to carry out due diligence and report suspicious transactions.

We support the current approach under the FTR Act. However, we do not support the extension of the regime to 'suspicious activities'. We understand that the NZLS has provided detailed submissions to MOJ on this issue. AJ Park supports the position taken by the NZLS.

We also understand that the New Zealand Law Society (NZLS) perceives that there is a risk to legal professional privilege posed by the implementation of phase two of the AML regime, and that the NZLS has provided detailed submissions to MOJ on this issue. AJ Park supports the position taken by the NZLS.

AJ Park also believes that it would be essential and best practice for supervisor or industry guidance to be published on the relationship between the AML regimes requirements and legal professional privilege.

Part 4: supervision as it relates to lawyers

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

Given the scope of its services, AJ Park has no day-to-day involvement or relationships with any of the existing sector supervisors.

As a law firm we have a supervisor in the form of the NZLS which currently conducts trust account audits and requires regular monthly and quarterly reporting on various issues.

It appears that there would be some synergies in 'Alternative 2', adopting the UK approach of using multiple agencies with self-regulatory bodies where AML/CFT supervision is carried out by a single government agency or by many agencies, combined with self-regulation by professional bodies that have been designated as AML/CFT supervisors. In the New Zealand context we presume the NZLS would be well placed to play such a role in the legal sector.

At the current time we are not in a position to provide any detailed comments on this issue or support one alternative model over the other.

We understand that the New Zealand Law Society (NZLS) is providing detailed submissions to MOJ on this issue.

Part 5: implementation period and costs as it relates to lawyers and our business

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

Implementing any process and compliance changes into the business can be time consuming and costly. Without more detail, it is difficult to foresee what lead-in period would be required.

AJ Park will likely need to seek external advice to ensure all obligations are identified and correctly embedded within the firm's policies and processes. We would expect a practical and pragmatic time frame for implementation and compliance with phase two, and anything less than a six month lead-in time would prove problematic. Especially, when compliance will be required to slot into existing programs of work and there will be adjustments to client on-boarding forms and procedures, internal education and training requirements.

Part 6: enhancing the AML/CFT Act

- *Should the requirement to report suspicious transactions be extended to reporting suspicious activities? Please tell us why/why not?*

The extension of the AML regime to situations where there are 'suspicious activities', is considerably broader than 'suspicious transactions'. The consultation paper carries insufficient guidance on what might constitute 'suspicious activities' and in particular what would constitute an 'attempted transaction'. Further, the suggestion that it would include 'activities that haven't yet taken place, businesses not yet formed or incorporated, and accounts or facilities not yet opened' is alarmingly broad.

Extending the AML regime in the manner proposed is likely to have the greatest impact on AJ Park and lawyers as a profession by increasing the level of reporting, monitoring and compliance that firms are required to make. Such an extension could also have an impact on legal professional privilege given the broader definition.

We understand that the New Zealand Law Society (NZLS) is opposed to this extension of the AML regime and has provided detailed submissions to MOJ on this issue. AJ Park supports the position taken by the NZLS.

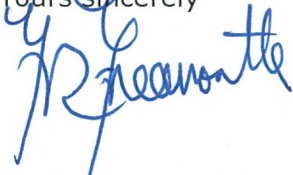
Conclusion

AJ Park intends to continue to monitor the MOJ's development of the legal framework for implementing phase two of the AML regime.

Given the complexity and substantial impact of this process, AJ Park requests that prior to the introduction of any draft bill an exposure draft of the bill be circulated at an early stage for consultation and feedback to be provided.

AJ Park may consider providing further submissions once the policy options have been made publically available and more is known about the form in which phase two is proposed to be implemented.

Yours sincerely



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