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by email

Dear Sir / Madam

PHASE TWO OF THE AML/CFT ACT – CHAPMAN TRIPP SUBMISSION

Introduction

1 Thank you for the opportunity to provide feedback on the Ministry of Justice (*MoJ*) consultation paper on Phase Two of the AML/CFT Act (*Consultation Paper*).

2 For convenience, where relevant in this submission we have adopted the terminology used in Consultation Paper. Further, when we refer to a "lawyer" in this submission, where the context allows we are also referring to a "law firm" or "law practice", and vice versa.

Our key comments

3 In principle, we accept that, in line with the recommendations of the Financial Action Task Force (*FATF Recommendations*), MoJ has determined that the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (*Act*) should apply to certain activities of lawyers. However, it is paramount that:

3.1 the application of the Act is considered in light of legal practice specifically, across the industry spectrum (from sole practitioners to large commercial law firms such as Chapman Tripp);

3.2 the compliance burden imposed by the Act is proportionate to the risk involved, and reflects that the vast majority of legal services provided to clients should not be caught by the Act; and

3.3 there is certainty as to how the Act will apply.

4 In that regard, our key comments are that:

4.1 ***Relevant legal services:*** The legal services proposed in the Consultation Paper are too broad. In some cases (in particular the last service noted on page 13 of the Consultation Paper), they would effectively capture the entire corporate practice of a commercial law firm, and be unworkable. As such, we

have commented specifically on those services (and their descriptions) in the schedule to this submission (*Schedule*).

4.2 ***Treatment of existing customers:*** Grandfathering of existing customers (as at the effective date of Phase Two) should be permitted, as was the case for Phase One entities.

4.3 ***Requirement to conduct CDD:*** For completeness, CDD should only be required when (subject to the grandfathering provisions for existing clients) a lawyer provides a relevant legal service to a client – i.e. not at each point the lawyer accepts an instruction from, or forms a relationship with, a client.

4.4 ***Timing for conducting CDD:*** There needs to be flexibility as to when CDD is conducted, recognising that it is entirely common in the legal industry for transactions to occur (or change) at the last minute, and a lawyer's ability to accommodate those timing restraints is a key reason clients seek legal representation.

4.5 ***Third party reliance:*** There should be a specific regime for streamlined third party reliance where lawyers are referred work from other lawyers (which is an increasingly common business model).

4.6 ***Implementation period:*** The implementation period for Phase Two coming into effect should be at least two years, being the same period allowed for Phase One.

4.7 ***Legal professional privilege:*** Any legislative change which erodes a fundamental common law privilege should not be lightly undertaken and should be done to the least extent necessary. A possible way forward is to allow lawyers to report a sub-set of factual information in a suspicious transaction context, but not the grounds for the suspicion itself. This would be broadly analogous with the tax advice privilege available to accountants in the revenue context. To ensure appropriate protection for lawyers and their clients, any change must be implemented by statute or regulation, and not left to guidance by the Law Society or other professional body.

4.8 ***Suspicious activity reporting:*** Lawyers should not be required to report suspicious activities. Rather, in the context of the legal industry, the existing suspicious transactions reporting regime is sufficient.

How should AML/CFT requirements apply to the legal services sector to help ensure the Act addresses the risks specific to it?

Relevant legal services

5 We have set out our commentary on the legal services proposed on page 13 of the Consultation Paper in the Schedule. As an overriding comment, there must be clarity as to which legal services will be "caught" by the Act (including in relation to the scope of those services) to ensure that:

5.1 the legal industry has clarity as to when the Act will apply; and

5.2 the Act does not inadvertently overreach its purpose.

6 As MoJ will be aware, the Act has not enjoyed an easy path to implementation. In fact, many Phase One entities are still struggling with the intended scope and interpretation of the Act in many circumstances. This has been partly addressed by piecemeal guidance from the supervisors, class exemptions, regulatory guidance, individual exemptions and waivers. However, for the next iteration of the Act (including the introduction of Phase Two entities), it is essential that uncertainties are identified and addressed in advance.

7 For this reason, in the Schedule we also set out (where appropriate) a mark-up of the description of the services, to highlight the level of detail we consider is necessary when considering the scope of legal services to be included (those services being *Relevant Services*). Our key aim here is to ensure that the requirement to conduct CDD is not left to interpretation, creating inconsistencies within the legal industry.

Alignment across industries essential

8 As a related matter, it is essential that there is alignment across the various Phase Two entities as to when the Act will apply, where those industries carry out the same (or substantially the same) Relevant Service. For example, it would not be an acceptable outcome if lawyers were not able to undertake conveyancing on behalf of clients without conducting CDD where, for whatever reason, conveyancers themselves were not required to do so. Similarly, the obligations on accountants and lawyers should be equally aligned. Any inconsistencies would result in a form of "industry arbitrage" and create undesirable regulatory gaps.

At what stage in a business relationship should checks, assessments and suspicious transaction reports be done?

Grandfathering should be permitted

9 As an initial comment, lawyers should be permitted to "grandfather" their existing customer base (i.e. its clients as at the date of implementation of Phase Two), as is currently provided in section 14(c) of the Act.

10 In this regard, where a person is an existing client of a lawyer, unless particular circumstances apply (e.g. the client seeks to conduct, or instructs in relation to, a transaction that is unusual for that client (or type of client) – i.e. there is a material change in the nature or purpose of the business relationship), there should be no obligation to conduct CDD. This should be the case *even where a lawyer provides a Relevant Service to an existing client.*

11 For example:

11.1 The property team of a law firm has an existing client, as at the date Phase Two of the Act comes into effect.

11.2 Three months after that date, the property team carries out a real estate transaction for that client (including the conveyancing aspects of that transaction), and the firm trust account is used by the client in respect of that transaction. The instruction is in no way unusual for that client.

In our view, the law firm should **not** be required to conduct CDD on that client, notwithstanding that the law firm has provided Relevant Services.

12 This is entirely consistent with the approach currently allowed for Phase One entities. For example, a customer of a bank who, say, had a single deposit account would be unlikely to have changed the nature and purpose of their relationship simply because they were to open a further deposit account. A bank, in those circumstances, would not be required to conduct CDD.

13 We are aware that the concept of the "nature or purpose" has its own difficulties (and to the extent that concept is sought to be refined as part of the Phase Two reforms, those changes should apply equally to lawyers). However, the alternative would be unduly burdensome (particularly in the case of full scale commercial firms).

14 If there is no grandfathering, there would be a significant compliance "hurdle" for all lawyers (but particularly law firms, who have established and large client bases) in the first year post-implementation, as they would likely need to conduct CDD on a potentially significant subset of their existing customer base. It is for this reason that section 14(c) was made available to Phase One entities who are, by their nature, more "at risk" of being used for money laundering and terrorist financing. There is no justification for taking a different approach to the legal industry.

CDD should only be required when a lawyer provides a Relevant Service to a client

15 Save for the grandfathering of existing customers, CDD should only be required when a lawyer provides a Relevant Service to a client. This means that, the pre-requisite for having a CDD obligation will be that:

15.1 the client is:

(a) a new customer of the lawyer; and

(b) the lawyer provides a Relevant Service to that client; or

15.2 the client is:

(a) an existing customer of the lawyer;

(b) the lawyer provides a Relevant Service to that client;

(c) the lawyer considers there has a been a material change in the nature or purpose of the lawyer's business relationship with the client (as a result of the client seeking that Relevant Service); **and**

(d) the lawyer considers that it has insufficient information about the client; or

15.3 the person is not a client of the lawyer, but seeks to conduct an "occasional transaction" through the lawyer.

16 This approach is consistent with section 6 of the Act, which clarifies that a reporting entity is only subject to the Act to the extent it carries out relevant activities. This is a critical boundary and it must be clear that lawyers are only subject to the Act to the extent they provide a Relevant Service to a client.

17 For completeness, we note that there should be no requirement to conduct CDD **each time** a client receives a Relevant Service – i.e. while a Relevant Service may be the initial CDD "trigger event", once the client is a "customer" of the lawyer, usual ongoing CDD obligations would apply.

There must be flexibility as to when CDD is conducted

18 As a default position, the Act currently requires CDD to be conducted before a reporting entity establishes a business relationship with a customer, unless:

18.1 it is essential not to interrupt normal business practice;

18.2 money laundering and financing of terrorism risks are effectively managed through procedures of transaction limitations and account monitoring; and

18.3 verification of identity is completed as soon as is practicable once the business relationship has been established.

19 In the context of the legal industry, more flexibility regarding the timing of CDD is required.

19.1 At the outset, the relevant CDD "trigger" should be the provision of a Relevant Service, not the establishment of a "business relationship".

19.2 Further, commercial transactions are often complex and urgent matters. It is not atypical, for example, for settlement amounts to be deposited on short notice and payment directions to be given in the final hours of a transaction closing. Indeed, clients often wish to have legal representation partly so that they can benefit from the expertise and ability of lawyers to manage difficult and urgent settlements.

19.3 While we acknowledge that the legal industry has a role in the detection and deterrence of money laundering and terrorist financing, the industry is not as "high risk" as the Phase One entities. As such, it is appropriate that, for Phase Two entities, particularly lawyers, there is more flexibility in the timing for conducting CDD, so that transactions are not hampered by last minute CDD requirements.

19.4 In particular, it should be explicitly acknowledged that, where a Relevant Service is provided unexpectedly on or around settlement of a transaction, that will be considered a circumstance where it is essential to conduct CDD following provision of the Relevant Service, in order not to interrupt normal business practice. Further, there should not be any requirement to manage money laundering and terrorist financing risks by other means during the delay (i.e. as described in paragraph 18.2 above) as that would undermine

the purpose (in this context) of allowing the delay (i.e. limiting transactions or monitoring accounts would not be feasible in these circumstances).

20 Of course, where a new client instructs a lawyer to act in respect of a transaction which will likely involve a Relevant Service, it will be in everyone's best interests for CDD to be conducted before the Relevant Service is in fact provided. However, the implementation of Phase Two must recognise that, due to the nature of the legal services industry, there needs to be more flexibility regarding the timing of CDD.

Persons on whom CDD must be conducted

- *General comment regarding beneficial ownership*

21 As a general comment, we note that there is already uncertainty in the Act regarding the persons on whom CDD must be conducted, most notably in the context of beneficial ownership. We are aware that there has been a separate consultation process on that aspect. Ideally, the results of that consultation should also be incorporated into the Act at the same time as Phase Two is implemented. Otherwise, Phase Two entities will be required to confront the same issues regarding beneficial ownership, which will simply add to the compliance costs of implementing Phase Two.

- *CDD on group companies*

22 More specific to the legal industry, there should be an exemption from the requirement to conduct CDD on a client where:

22.1 the client is an entity, which is a wholly-owned subsidiary of another client; and

22.2 the law firm has already conducted CDD on that other client.

23 The reason for this is that the CDD measures in this instance would be essentially duplicative, notwithstanding that the client (and thus the "customer") is technically a different entity. Where companies are within the same wholly-owned group, it should not be necessary to re-conduct CDD on new clients within that group.

Third party reliance

24 As an initial comment, we welcome the proposal in the Consultation Paper to expand the circumstances where third party reliance will be available for third parties conducting CDD. As MoJ will be aware, the existing reliance mechanisms (including the designated business group structure, third party reliance, and agency generally) are not always "fit for purpose". In our experience, there are many instances where reporting entities could create compliance synergies (e.g. through agency structures) but, for technical reasons, it is difficult to implement those reliance mechanisms without regulatory/supervisory relief (e.g. in the form of a waiver or exemption). These types of issues should be addressed as part of Phase Two.

25 Specifically in the context of the legal industry, the third party reliance mechanism needs to contemplate referrals. A significant proportion of legal instructions (at least in the larger law firm context) are a result of referrals. Sometimes these referrals are from domestic parties (due to other firms being conflicted, or a

particular lawyer having a specific area of expertise) but more commonly, come from international firms.

26 In these circumstances, the referred lawyer should be able to rely on the CDD previously conducted by the referring lawyer on a pure "look through" basis. In particular:

26.1 there should be no requirement for the referred lawyer to request underlying CDD information as part of the third party reliance;

26.2 the referred lawyer should not have statutory liability in respect of the CDD conducted by the referring lawyer – i.e. CDD should be deemed to have been complied with; and

26.3 to the extent applicable in the domestic context, if the referring lawyer conducted "KYC" under the Financial Transactions Reporting Act 1996 (*FTRA*), that should also be acceptable for reliance purposes (excluding circumstances where the lawyer was not required to, or was able to rely on another person to, conduct "KYC" under the FTRA).

27 We would envisage the referring lawyer:

27.1 in the case of a domestic referral, confirming to the referred lawyer that the referring lawyer has conducted CDD to the standard required of it by the Act (or the FTRA, as appropriate); and

27.2 in the case of an international referral:

(a) for lawyers who are resident (or carrying on business in) a country with sufficient anti-money laundering and countering financing of terrorism systems and measures in place and who are supervised or regulated form AML/CFT purposes, no confirmation being required; and

(b) in all other circumstances, confirmation from the referring lawyer that CDD has been conducted and that, if requested, copies of all CDD information will be made available to the referred lawyer, on request.

28 Absent those requirements, the effectiveness of the reliance regime is undermined. For example, it would be unrealistic to expect lawyers to seek indemnities from each other in order to accept a referral. This approach is commonly seen in the agency context and, as MoJ may be aware, the current liability regime applicable to agency is often a key limitation on the usability of that model.

Implementation period

29 At a minimum, the implementation period needs to be the same as for Phase One – two years. Phase One affected financial institutions who were (at least for the large part) already accustomed to a form of customer "on-boarding", and generally operated in environments where existing systems and processes could be used or reconfigured / adapted.

30 In the context of the legal industry, while lawyers do have close interactions with their clients (and thus, theoretically, there are existing channels through which to request CDD information), it will be a fundamental shift in the way we do business.

31 In particular:

31.1 It is becoming more and more common not to meet clients in person, and to act in respect of offshore clients (with whom it is not practical to meet in person). This is not "sinister" of itself, but merely a reflection of modern commerce.

31.2 As such, new processes will need to be developed and implemented to allow CDD to be conducted via electronic means (i.e. it is not a case, at least in the large law firm context, of scheduling an ad hoc "catch up" with a client where they bring in their passport for identification and verification purposes). In our experience, designing and implementing those processes are extremely time-intensive.

31.3 Law firms may well need to hire specific AML/CFT personnel to manage and oversee CDD processes. Given the relative "youth" of the Act, there is limited expertise in the New Zealand market for persons who are suitable for that role (with many of the larger financial institutions recruiting people with overseas AML experience (mostly from the UK or Australia), or directly from the supervisors themselves). As such, a short implementation period would mean that many industry members will be unlikely to be able to adequately prepare for "day one" compliance.

31.4 Similarly, to the extent politically exposed person checking is required, lawyers will likely need to outsource that (and potentially other CDD procedures, e.g. utilising verification databases). Again, this takes time and it is not reasonable to expect (or require) that these critical design and "due diligence" phases be rushed.

31.5 Lastly, the Act is not easy to apply in practice. From our experience, and we anticipate that MoJ will also be familiar with this, while many concepts in the Act appear simple, they are often difficult to apply and can cause anomalous outcomes which need testing with a supervisor and, in many cases, an exemption. While a key theme of our submission is the need for clarity, we anticipate that, despite best efforts there will still be issues that need a fair amount of thought and consideration – which is inevitable when a piece of legislation is largely "generic", yet applies to a vast range of entities.

31.6 In that regard, it is important that regulations and any guidance is issued ahead of, or at least at the start of, the implementation period. It would be an equally undesirable outcome if there is additional regulatory detail and/or guidance being issued close to the date when Phase Two comes into effect.

As such, it is important that, once the bill for introducing Phase Two is passed, there is a considerable lead in time (and certainly no less than was afforded to Phase One

entities) to allow Phase Two entities to determine and understand the scope of their obligations.

Legal professional privilege

32 As an overriding comment, the abrogation of legal professional privilege is not something that can be done lightly. As such, to the extent MoJ determines that there should be any exception to privilege in the context of suspicious transaction reporting (*STR*), that exception must be implemented via statute or regulation. For example, it would not be appropriate for privilege to be "redefined" via a guidance note, amendment to practicing rules or any other form of industry guidance. Any change must be effected by force of law.

33 Regarding the scope of the current protection for legal professional privilege in the Act:

33.1 We recognise that, in order for the STR regime to function effectively, and for lawyers to play a meaningful role in the detection and deterrence of money laundering and terrorist financing, it may be necessary to tailor the concept of a "privileged communication" in the context of the Act, to allow lawyers to report a sub-set of what would otherwise be privileged information.

33.2 However, any exception must not erode the core principle of privilege.

33.3 One option may be to allow lawyers to disclose limited details only, e.g.:

(a) the name of the relevant client;

(b) the date of the suspicious transaction; and

(c) the amount of the transaction,

but **not** to detail the grounds for forming that suspicion. This would allow lawyers to make suspicious transaction reports where necessary (which we appreciate is valuable information for the FIU), while not eroding the fundamental concept of legal professional privilege.

33.4 In this regard, we see a broad analogy with the tax privilege provisions in the Tax Administration Act 1994 which, in certain circumstances, allow disclosure of "tax contextual" information, without requiring disclosure of the relevant advice itself.

33.5 More generally, any definition of "privileged communication" adopted should be aligned (subject to any exceptions for STR purposes) with the Evidence Act 2006.

34 Lastly, if any changes are made to the scope of the exception for legal professional privilege, the Act will need to include a tailored form of suspicious transaction report, to reflect the constraints of privilege. In particular, that form should not require the full suite of data which is compulsory in other contexts (as this would otherwise

compel lawyers to take an "all or nothing" approach, which would be unworkable in practice).

Suspicious activity reporting

35 We do not consider it appropriate for lawyers to be subject to suspicious activity reporting obligations. In our view, and noting our comments on legal professional privilege above, the obligation to "second guess" our clients' activities would undermine the sanctity of the lawyer / client relationship. We appreciate that, in the context of other financial institutions it may be appropriate, in some circumstances, to extend suspicious transaction reporting to encompass an *attempted* transaction. However, we do not consider that appropriate in the context of the legal industry.

Supervisory model

36 We believe that a single supervisor, appropriately resourced to supervise the full range of reporting entities, is the ideal model – similar to AUSTRAC in Australia. Having a single dedicated agency would:

36.1 create significant compliance efficiencies;

36.2 allow for consistent messaging, guidance and approaches to exemptions; and

36.3 streamline the exemption application process.

37 However, we acknowledge that this model requires a significant amount of resource (including the recruitment of personnel who have, collectively, experience across the entire range of reporting entities subject to the Act) and would itself require a significant lead in period. But to the extent achievable, we favour this approach.

38 Looking to the alternatives, we have doubts about the "multiple agencies with self-regulatory bodies" approach. We anticipate that this has too much potential for inconsistency and, in many instances, will require industry bodies to take on a role for which they will need significant levels of preparation and new resource (both in terms of funding and human resource). As such, we would favour the existing multi-agency supervisory approach over a multiple agency approach / self-regulatory approach.

39 Assuming the multi-agency supervisory approach is continued into Phase Two, it would seem to us that the most appropriate entity to supervise lawyers would be the Department of Internal Affairs. For self-apparent reasons, it would not be appropriate for the Financial Markets Authority or the Reserve Bank of New Zealand to supervise lawyers.

40 Lastly, in terms of the current operation of the multi-agency supervisory approach, we recommend that an initial priority be providing additional resource to, or streamlining the process for, the exemption process. Currently, a by-product of the multi-agency supervisory approach is that exemption applications can take upwards of two years to be processed. This is not a sustainable position, and while we appreciate it may not be feasible to restructure the supervisory model for the Act in the short term, this is something that should be addressed as a priority.

General

41 We are happy to discuss our submissions further with you, if required.

Yours faithfully

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SCHEDULE

COMMENTS TO PROPOSED LEGAL SERVICES

#	Proposed legal service (see page 13 of Consultation Paper	Our proposal	Commentary
1	Acting as a formation agent of legal persons or arrangements	Acting as a formation agent of legal persons or arrangements, other than where that occurs as a natural incidence to an existing instruction	We agree that, where a lawyer is asked to act as a formation agent "out of the blue", that should warrant CDD checks. However, it is entirely common for lawyers to incorporate companies on behalf of clients in respect of "business as usual" corporate transactions, and often with little notice, e.g. where a purchaser decides it will purchase an entity using a special purpose vehicle. This is also common practice in the securities markets and financing contexts. It would be impractical and unduly disruptive to require CDD in these circumstances. Rather, it should only be required where a lawyer acts as such an agent *outside* the usual course of a transaction or instruction.
2	Arranging for a person to act as a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements	Retain, but clarify that "arranging" will **not** including "referring"	We believe this is an appropriate "trigger event" for conducting CDD (subject to our overriding comments in paragraphs 9 to 17 above). However, there should be certainty that "arranging" in this context will not include where a lawyer refers a client to a third party who may be able to arrange (or indeed perform) those functions. For example, the Act should not apply where a lawyer suggests that a client (who is establishing a managed fund) get in touch with, say, a corporate trustee company in respect of a potential trusteeship.
3	Providing a registered office, a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or	Providing a registered office~~, a business address, a correspondence address, or an administrative address~~ for a company, a partnership, or any other legal person or	It is common practice for law firms to provide their own contact details as a correspondence, business and/or administrative address in the normal course of business. For example (and these are merely some of many instances), it is

#	Proposed legal service (see page 13 of Consultation Paper	Our proposal	Commentary
	arrangement	arrangement	entirely usual to direct all enquiries to a law firm: • when making exemption applications on behalf of clients, or otherwise liaising with regulators; • applying for consent under the Overseas Investment Act 2005 on behalf of offshore clients; and • acting as the solicitor on record in a litigation context. It would be unduly burdensome to introduce "business as usual" processes into the suite of "Relevant Services", particularly those that, in the vast majority of cases, carry no risk of money laundering or terrorist financing.
4	Managing client funds, accounts, securities or other assets	~~Managing~~ Holding client funds (excluding any legal retainers or fees), accounts, securities or other assets	"Managing" is too broad a concept in this context. We appreciate that this is the language used in the FATF Recommendations, but MoJ should take the opportunity to clarify the application of this aspect. It would be unfortunate if the reference to "managing" caused uncertainty as to whether, for example, advising clients on payments direction documentation, escrow arrangements or other ancillary commercial arrangements would trigger a CDD obligation (all of these types of advice are a usual incidence of a client relationship and not a money laundering consideration on any level). Further, retainer amounts should be excluded, consistent with MoJ's comment that transactions solely for the purposes of paying professional fees or invoices should be excluded (with which we agree).
5	Preparing for or carrying out real estate transactions on behalf of a customer	Providing conveyancing services as part of the sale or purchase of real estate~~Preparing for or carrying out real estate transactions~~ on behalf of a customer	The proposal in the Consultation Paper is too broad. We agree that, where lawyers are involved in the buying and selling of real estate from a conveyancing perspective, they can play a useful role in the detection and deterrence of money

#	Proposed legal service (see page 13 of Consultation Paper	Our proposal	Commentary
			laundering. However, "preparing for" real estate transactions could cover the vast majority of a commercial merger and acquisition (*M&A*) and property practice (including the advisory aspects of those practices, i.e. transaction structuring / applicable regulatory regimes, etc.). "Carrying out" real estate transactions is more appropriate, but given it is the conveyancing of property that is relevant (any trust account transactions being covered by item 4 above), we suggest clarifying that the service is in fact limited to the conveyance of property. In addition, the relevance service in this context should be limited to a transaction which is ***solely or predominately*** a real estate transaction. For example, in the context of a broader commercial transaction, it would not be uncommon for a particular parcel of real estate to be transferred to a purchaser (e.g. where there is a sale of a substantial business involving multiple assets of which real estate is one). Put another way, the conveying of real estate as part of a broader transaction should **not** trigger the Act's requirements, absent the transaction otherwise falling within any other limbs of the definition of a "Relevant Service".
6	Preparing for or carrying out transactions for customers related to creating, operating or managing companies	~~Preparing for or carrying out transactions for customers related to creating, o~~Operating or managing companies on behalf of clients	The proposal in the Consultation Paper is extremely broad, and effectively describes a corporate legal practice. Acknowledging that company (or similar) structures are now present in virtually every commercial transaction, it would require lawyers to conduct CDD for almost every transaction sought to be conducted by a client, or in respect of every piece of commercial advice sought by a client. For example, this service would include anything from an M&A transaction, to advice regarding corporate governance policies, to research for offshore entities regarding New Zealand's financial services regulatory regime, to drafting shareholders'

#	Proposed legal service (see page 13 of Consultation Paper	Our proposal	Commentary
			agreements. We acknowledge that the FATF Recommendations include a similar (albeit differently worded) obligation. However, that is no reason to introduce unnecessary uncertainty into Phase Two of the Act. Instead, this service should be limited to operating or managing companies on behalf of clients (the "creation" of companies already being addressed by item 1 above). Where a lawyer is taking on the operational or managerial role on behalf of a client, there is a risk that the underlying client is using that lawyer (or the appearance of a profession generally) as a money laundering or terrorist financing tool. Anything broader would capture too many low-risk, "business as usual" activities to justify inclusion. This is an appropriate interpretation of the FATF Recommendation, and more reasonably calibrates the likelihood of money laundering and terrorist financing risk to the compliance requirements of the Act.