

Keeping the criminals out

Money trail must be clean



By Grant Harris and Deeanah Winders*

As part of an increasing global initiative to combat money laundering and the financing of terrorism, lawyers, conveyancers and trustee companies throughout New Zealand are now legally required to conduct Customer Due Diligence (CDD) checks in order to Know Your Client (KYC).

The Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) is an unavoidable regulatory requirement that will apply to accountants from 1 October 2018, real estate agents from 1 January 2019 and dealers in high-value goods and the New Zealand Racing Board from 1 August 2019.

Given that banks, casinos, financial institutions and some trust and company service providers have been subject to these laws since 2013, it is likely you will have had exposure to, if not already be familiar with, the CDD requirements detailed below.

What is money laundering?

Money laundering is the process of making illegally gained proceeds from crime look like they come from a legitimate source. Illegal activities and crimes may include tax evasion, drug dealing, human trafficking, fraud, theft and immigration offences, to name a few.

Money launderers disguise their funds to avoid detection so that they may keep their profits. They do this by buying, selling and channelling funds through things such as property, expensive goods and financial services. They then spend the “clean” money or use it to fund criminal activity.

Criminal organisations and people who finance terrorism target businesses and countries they believe have weak systems and controls that they can exploit.

Why has AML/CFT been introduced in New Zealand?

As part of the Government’s public information campaign “Keep Our Money Clean” Justice Minister Andrew Little stated “Money launderers undermine our country’s financial and justice systems, and leave us vulnerable to trans-national crime. If the world loses confidence in us, our ability to protect our financial channels, our hard-won international financial and trade reputation will be at risk.”

By way of example, in 2009 a New Zealand-registered shell company made international headlines when an aircraft it owned and leased out was forced down while travelling over Thai airspace. When investigated in Bangkok it was found to contain 35 tonnes of North Korean weaponry, including rocket-propelled grenades, missile and rocket launchers, missile tubes, surface-to-air missile launchers, spare parts and other heavy weapons to an estimated value of US\$18m. Subsequently, New Zealand was exposed as a prime target for money launderers through the use of our weak company and anti-money laundering laws.

Consequently, the New Zealand government implemented a robust regulatory framework to meet international standards on compliance, tax-transparency and co-operation with countries around the world.

Part of this framework included the introduction of AML/CFT laws that require lawyers, accountants, real estate agents and banks to put systems and processes in place to prevent criminals from trying to exploit them, and ensure they can identify their customers, know their addresses and, in some cases, know the sources of their customers’ funds.

Interestingly, some countries such as the United Kingdom, have had similar laws in place for more than a decade.

What does this mean in practice?

Existing long-term clients of businesses will find that there will be little impact on them unless there is a “material change” in their business relationship – for example, due to them having more funds than normal or entering into a different type of financial transaction.

For those who are impacted by the new AML/CFT requirements, businesses you deal with will need to obtain (and/or reconfirm) the following from you:

- Your full name
- Your date of birth
- Your address (or registered office if you are operating a company)
- Your company identifier or registration number; and
- Any information prescribed by regulations.

If you are not the client they will also need to understand





your relationship to the client. For example, if you are associated with a company, limited partnership, trust or other legal entity, they will also need to obtain the above information from all persons associated with that entity.

In addition to the above, businesses must also obtain:

- Information on the nature and purpose of the proposed business relationship between you and themselves; and
- Sufficient information to determine whether you should be subject to Enhanced CDD (EDD). This means you'll be asked additional questions, which may include (but not be limited to), your source of funds and/or source of wealth.

Each business must consider each client they work with subjectively.

AML/CFT laws operate from a subjective risk-based approach, which means that you may find the way in which businesses carry out and meet their reporting obligations may vary. For example, the types of acceptable identification and the way that they are certified may slightly differ.

If you have any questions or concerns about the way CDD or EDD is being conducted, you can speak with their dedicated compliance officer or trained staff who help carry out and meet their reporting obligations.

Given the wide reach of AML/CFT in New Zealand, it would be good practice to have the necessary documents and information at the ready to prevent delays in your financial transactions.

What happens if you don't comply?

Simply put, if you do not provide a business requesting the information the AML/CFT laws specify, they will not be able to do

business with you.

It is important to understand that businesses are not asking information about you because they think you are laundering money. They are legally required to do this to help the police to combat criminals from laundering money through illegal activities.

Further information

The Government has recently launched the "Keep Our Money Clean" campaign to raise awareness about the problem of money laundering by domestic and foreign criminals here in New Zealand (www.keepourmoneyclean.govt.nz).

"The Keep Our Money Clean campaign is about keeping our international corruption-free reputation and making sure Kiwi businesses are informed and prepared," says Andrew Little.

"New Zealanders are rightly proud that our country is free from corruption. To keep it that way we need all Kiwi businesses to be vigilant so criminals with dirty money won't do us any harm.

"Money launderers undermine our country's financial and justice systems, and leave us vulnerable to trans-national crime. If the world loses confidence in us, our ability to protect our financial channels, our hard-won international financial and trade reputation will be at risk.

"The Government has prepared 'Keep our Money Clean' information packs for law practices, accounting business agents and real estate agents so that customers can understand the anti-money laundering requirements those businesses are required to uphold.

"Some customers will be asked for extra information, such as identification, when they're conducting business. That's how we'll keep our country safe together," says Andrew Little. ■



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