

ACAMS

Auckland Branch of the Australasian Chapter of
the Association of Certified Anti-Money Laundering Specialists
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The Anti-Money Laundering and Countering Financing of Terrorism Bill



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An AML soundtrack?

Well, I went home with the waitress,
the way I always do.
How was I to know,
she was with the Russians, too?

I was gambling in Havana.
I took a little risk.
Send lawyers, guns and money,
Dad, get me out of this.

I'm the innocent bystander.
Somehow I got stuck,
between the rock and the hard place.
And I'm down on my luck...

Now I'm hiding in Honduras.
I'm a desperate man.
Send lawyers, guns and money.
The shit has hit the fan.

Send lawyers, guns and money...

Warren Zevon
Lawyers, Guns & Money
1978, AMG/Elektra Records

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What We'll Cover

- Some context: timeline and pressures leading to reform
- Overview of AML/CFT Bill's scope
- Some thorny issues
 - CDD (incl. beneficial ownership)
 - PEPs & new technologies
 - Risk based approach
 - strict/absolute criminal liability
 - liability for 'senior managers'
 - a lack of civil and criminal immunity provisions
- Time frame from here, and making a submission

Timeline and context

How did we get here?

- FATF membership (and 40+9 recommendations)
- FATF country review in 2003 (critical of NZ, as FTRA not fully compliant)
- Ministry of Justice – 3x discussion papers, but overall 2003 – 2009, little has changed
- Scattered AML laws: Crimes Act, FTRA, Misuse of Drugs Act, Terrorism Suppression Act
- Oct 2008, consultation draft of legislation
- 2009, FATF visit New Zealand again, new POCA goes through Parliament
- June 2009, AML/CFT Bill introduced into House (tranche one)

Timeline and context (II)

What are the real drivers?

- International peer pressure (FATF mutual evaluation revisited NZ's compliance in 2009, report due October may not be pretty)
- Desire not to be the weakest link in financial chain
- Growing awareness of Pacific issues (Vanuatu) and domestic issues (Methamphetamine proceeds)
- HAVE to play legal 'catch-up' ...
- BUT – try not to kill the industry with cost while doing so.

Overview of Bill's scope

- Bill will ultimately replace the Financial Transactions Reporting Act 1996 (FTRA)
- Initially targets finance sector and casino businesses (new definition of “reporting entity”) - tranche one
- Will apply to other businesses and government bodies in time (eg. lawyers, accountants, real estate agents, Racing Board) - tranche two onwards
- Based on FATF recommendations, similar, but not identical to Australian model

Overview of Bill's scope (II)

- Key obligations include
 - Enhanced and ongoing CDD
 - Risk assessment and auditing
 - AML compliance programme and officer
 - New civil liability regime
 - New strict/absolute criminal liability
 - PEPs
 - STRs
 - Cross-border controls and enhanced reporting
 - Beneficial ownership
 - Transaction monitoring obligations

Some thorny issues

- CDD (incl. beneficial ownership)
 - customer due diligence
 - enhanced and ongoing CDD
 - beneficial ownership – trusts, and trust accounts
- PEPs and new technologies
 - domestic and foreign PEPs
 - how to verify information?
 - “new technologies”?

Some thorny issues (II)

- Diluting the ‘risk based approach’?
 - “A reporting entity must, according to the level of risk involved, ...”
(*Risk Based Approach*)
 - ... and according to “any other [information/circumstances/ verification/requirements] of the Regulations or Codes of Practice”
(*more prescriptive - when eventually set?*)
- Purpose statement (s3) and additional objective:
To achieve all this at minimum cost via an AML/CFT framework that is appropriate to NZ’s financial system, compatible with overseas frameworks (espec. Australia), and incorporates a risk based approach. ... *easy, then?*

Some thorny issues (III)

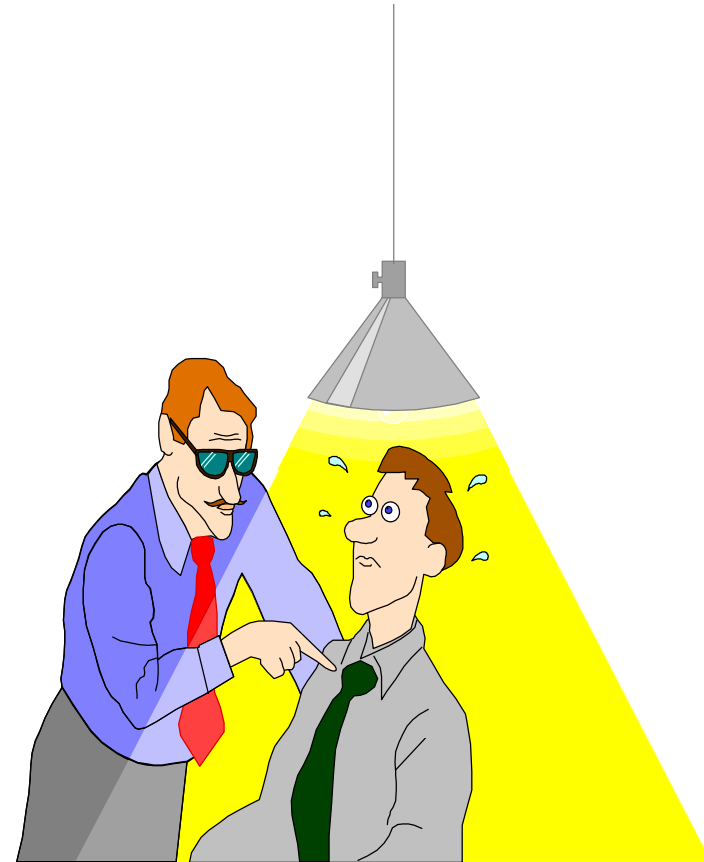
- Strict/absolute criminal liability
 - new, low level, criminal enforcement
 - relates to strict/absolute matters such as programme implementation
 - unnecessary?
- Liability for senior managers
 - ‘senior managers’ now captured personally
 - criminal liability for failure by organisation
 - definition of ‘senior manager’ quite broad

Some thorny issues (IV)

- A lack of civil and criminal immunity provisions
 - financial institutions expected to be the front line
 - yet they are placed between the “rock and a hard place”
 - balancing risk of criminal prosecution against civil liability
 - unlike UK, no safe harbour from criminal prosecution if authorities advised of concerns
 - no immunity from civil suit either, if steps taken to comply with act (other than STR obligations)
 - are new immunity provisions required?

Enforcement approaches

- Powers to require any person to:
 - supply records, documents or information
 - share intelligence with other agencies
 - require information in any manner/ format (e.g. evidence in person)
- Can search premises with a warrant and, if reasonable belief of an offence, seize evidence (take copies of documents and clone computers)
- Can make 'on site inspections'
- Seek mandatory 'performance injunctions and 'restraining injunctions'.



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Time frame going forward

- 6 August 2009, submissions to Select Committee close
- Select Committee will hear oral submissions over several weeks
- 15 September, Select Committee reports back to Parliament
- Second & Third readings in Parliament during October (and FATF mutual evaluation report released)
- October 2009, likely enactment of tranche one legislation
- Late 2010, likely date for tranche two legislation to be introduced
- 2011, likely effective date for new regime for tranche one

Making a submission

- This is the most significant piece of legislation for financial sector businesses in decades
- The Select Committee is the last opportunity to have a major influence on the legislation
- Some issues and level of detail has only just been crystallised, despite four years of generic consultation
- Politicians on the Committee may be interested in clear, well presented, submissions regarding issues which will be of practical effect
- Limited time, and opportunity for change, but worth targeted submissions if you have the time

Questions/contacts

- Questions? Comments?
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