

## Avoiding dirty hands – what real estate agents will need to know about the AML/CFT Act

Jan Etwell

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The Ministry of Justice has released a Consultation Paper *Improving New Zealand's ability to tackle money laundering and terrorist financing* on phase two of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act). Changes are proposed to the AML/CFT Act which will introduce a new level of compliance for real estate agents to assist in preventing anti-money laundering and terrorist financing in New Zealand.

A copy of the Consultation Paper can be found [here](#).

### Real estate agents are 'at risk' of having dirty hands

The Consultation Paper has identified the real estate industry as an attractive place to hide and invest ill-gotten gains. Money can be laundered through the real estate industry in a number of ways including through:

- Purchasing expensive or large amounts of property using funds from illicit activities
- Purchasing property for the use of illicit activities (ie drug-offending operations or cannabis cultivation)
- Disguising the origin of funds by making a deposit on a property through a real estate agent, and then requesting a refund of the deposit before finalising the purchase
- Selling property under shell companies, front companies, trusts and other company structures to distance ownership from criminal activity.

New Zealand's stable economy and strong property market also makes it a target for the investment of criminal proceeds by trans-national criminal groups.

### New anti-money laundering and terrorist financing requirements for real estate agents

Real estate agents who receive funds to settle real estate transactions are currently required to comply with some AML/CFT obligations under the Financial Transactions Reporting Act 1996. Currently these obligations include:

- Identity verification
- Record-keeping
- The reporting of suspicious transactions.

In addition, the Real Estate Agents Act 2008 imposes audit requirements for real estate agents who hold settlement funds in trust accounts pending settlement. However, such obligations only apply in limited circumstances and are not currently subject to strict oversight.

The introduction of phase two of the AML/CFT Act is intended to 'raise the bar' and make real estate agents subject to more robust AML/CFT requirements. It is likely that, following the introduction of phase two, real estate agents, their businesses and their associated companies will be required to:

- Carry out a detailed risk assessment of the money laundering and financing of terrorism risks that could be expected in the course of selling real estate
- Develop an individual AML/CFT programme that includes detailed procedures to detect, deter, manage and mitigate money laundering and the financing of terrorism.

A flow-on effect of these requirements will be an increase in administrative tasks for real estate agents and companies including:

- The appointment of a Compliance Officer to administer and maintain the AML/CFT programme
- The development and reporting of regular AML/CFT compliance reports and documentation to the relevant authorities and the real estate company's board

- More intensive customer due diligence processes including customer identification and verification of identity
- Stricter auditing and monitoring of monies held in real estate trust accounts.

## Harsh penalties for non-compliance

Real estate agents should be aware that the penalties for non-compliance with the AML/CFT Act will be serious. Sanctions for non-compliance will include formal warnings for minor breaches, or fines and prison terms for serious breaches. Individuals will be sentenced for up to two years imprisonment and fined up to \$300,000. Body corporates will be fined up to \$5m. The potential reputational impact on individual agents and their agencies - and on the real estate profession - is equally obvious.

## Our view

The Government intends to pass the Bill by July 2017.

Real estate agents should begin to carefully consider how the new AML/CFT requirements will impact on their everyday business practices and procedures. The Prime Minister has indicated that the transition period for the Act is likely to be very short as the Government is seeking to enforce the regime 'as quickly and as practically' as they can. Real estate agents should therefore be prepared to enhance or replace their existing processes. This will ensure they meet their new obligations under the AML/CFT Act as soon as the changes come into force.

## What next?

Concerned parties should register their point of view on the proposed amendments to the AML/CFT Act. This will help influence the details of the new regime and its eventual impact on the everyday procedures in the real estate sector. In particular, the Government seeks submissions on:

- The timing of the application of the Act – at what stage should a client of a real estate agent become a 'customer' for the purposes of customer due diligence? For example, is it when the real estate agent accepts a deposit? When the agent accepts any instructions from the client? Or is it when a written sale and purchase agreement has been signed?
- At what stage in the business relationship, between a client and real estate agent, should checks, assessments and suspicious transaction reports be conducted?
- Who should be responsible for undertaking the above checks, assessments and reports?

Submissions to the Ministry of Justice are due by **5pm, Friday 16 September 2016**. You can:

- Give your feedback online at [consultations.justice.govt.nz](http://consultations.justice.govt.nz)
- Email a submission to [aml@justice.govt.nz](mailto:aml@justice.govt.nz)
- Post a written submission to AML/CFT consultation team, Ministry of Justice, SX10088, Wellington, New Zealand.

### Auckland

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555  
F: +64 9 358 2055

### Wellington

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242  
F: +64 4 499 4141

### Christchurch

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747  
F: +64 3 379 5659