

19 March 2021

Department of Internal Affairs | Te Tari Taiwhenua
Wellington

Attention: Louise Cavanagh, Manager Service Design | AML Group | Regulatory Services

By email: louise.cavanagh@dia.govt.nz

Re: AML/CFT draft Electronic Identity Verification Guideline

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the consultation draft *AML/CFT Electronic Identity Verification Guideline: for Part 3 – Amended Identity Verification Code of Practice 2013 (draft guideline)*, which is intended to replace the existing Identity Verification Code of Practice (**IVCOP**).

The Law Society’s representatives on the DIA Industry Advisory Group have reviewed the draft guideline and make the following comments from the perspective of practising lawyers.

Feedback on draft Guideline

We are not aware of any law firms that rely on Electronic Identity Verification (**EIV**) using a single independent source (probably because RealMe is the only source approved by DIA). Some rely on EIV using two reliable and independent matching sources (for example, driver licence and passport), but this is flawed because of the need to link the customer to the sources provided. The additional methods suggested in the draft guideline for linking the customer to the sources provided are not very practical for lawyers and are more appropriate for banks or other financial account providers.

Most law firms carry out identity verification “in person”. However, identity verification and witnessing are increasingly also carried out by audio-visual link (**AVL**) and are currently permitted by the immediate modification orders promulgated in response to the COVID-19 pandemic. See for example the following Orders:

- [Epidemic Preparedness \(Wills Act 2007—Signing and Witnessing of Wills\) Immediate Modification Order 2020](#)
- [Epidemic Preparedness \(Oaths and Declarations Act 1957\) Immediate Modification Order 2020](#)
- [Epidemic Preparedness \(Protection of Personal and Property Rights Act 1988—Enduring Powers of Attorney\) Immediate Modification Order 2020](#)

Land Information New Zealand (**LINZ**) has also published the [Authority and Identity Requirements and Electronic Signing of Documents Interim Guideline 2020](#), which sets out requirements for remote verification of client identity.

The Law Society recommends that the draft guideline be amended to include identity verification by AVL as an option. This should apply at all times, subject to the risk-based approach to customer due

diligence as prescribed by the law. More broadly, flexibility to verify identity by AVL should be permanently enabled by legislation. There is sometimes confusion in the market about IVCOP, EIV, and electronic verifying/signing of documents. The Law Society considers there should be a consistent approach for verifying identity as between the regulatory compliance frameworks for AML/CFT, LINZ, the Overseas Investment Office and Immigration New Zealand.

The Law Society considers the IVCOP is impractical and the burden it places on lawyers is disproportionate to the risk of money laundering posed by lawyers. The IVCOP is more appropriate for financial institutions and lawyers (and some other Designated Non-Financial Businesses and Professions) should have their own code of practice. In many cases the risk of money laundering can be adequately managed by lawyers receiving electronic copies of identity documents – rather than by verifying identity documents face to face or through one of the complex EIV methods.

The Law Society recommends that sector specific guidance should be issued by DIA and the Law Society, which is not modelled on businesses with a completely different customer, product/service offering, and AML/CFT risk profile. This could increase engagement and compliance within the legal profession. The IVCOP is not mandatory (it is a safe harbour) and law firms could then reasonably have regard to their risk assessment and take the view in their compliance programme that, in certain circumstances, they will not require strict adherence.

Such circumstances might include where the client is:

- personally known to a partner of the firm; and
- a New Zealand resident; and
- a New Zealand citizen; or
- a director and not a beneficial owner of a client entity who is a New Zealand resident and New Zealand citizen.

The wire transfer rules apply when funds are being transferred into law firm trust accounts, so relaxing IVCOP requirements in this way should not materially increase the AML/CFT risk in the legal profession.

We hope these comments are helpful, and welcome further discussion if that would assist. Contact can be made in the first instance via the Law Society's Property Law Section Manager, Kim Bull (Kim.Bull@lawsociety.org.nz / 0275 511 559).

Yours faithfully



Jacqueline Lethbridge
NZLS Vice-President