

Wire Transfers under the AML/CFT Act

- 1 A law firm which carries out “captured activities” “in the ordinary course of business” is a “reporting entity” for the purpose of the Anti Money Laundering and Countering Financing of Terrorism Act 2009 (the “**AML/CFT Act**”) and has a number of compliance obligations.
- 2 The term “law firm” is used in this document to refer to a law firm that is a reporting entity. Not every law firm will be a reporting entity
- 3 The receipt of funds into a trust account operated by a law firm is a captured activity on the basis that the law firm is acting as trustee for the beneficial owner of such moneys. The receipt of funds for the payment of fees for professional services rendered is not a captured activity and therefore does not trigger obligations under the AML/CFT Act.

What is the issue?

- 4 There is much confusion about the nature and extent of a law firm’s obligations under the AML/CFT Act in relation to funds received into a trust account. This seems to be because the AML/CFT Act was designed for financial institutions and has been subsequently re-purposed for lawyers and other professionals. The result is that some obligations are not easily identifiable or understood.
- 5 It seems to be well understood that a law firm may be required to carry out customer due diligence if its client is the depositor or intended recipient of the funds. However, it is not altogether clear as to when a law firm may have additional reporting obligations in relation to such transactions.
- 6 The obligations in relation to wire transfers are twofold and relate to:
 - a prescribed transactions; and
 - b enhanced due diligence and identity requirements.
- 7 These obligations are distinct, unrelated and operate in parallel to each other. However, they are easily confused.

Prescribed transactions

8 What are the main obligations in relation to prescribed transactions?

- 8.1 Section 48A of the AML/CFT Act requires “reporting entities” to report “prescribed transactions” to the Financial Intelligence Unit of the New Zealand Police (“**FIU**”). These reports have become known as “prescribed transaction reports” or “PTRs” (although this is not a defined term in the AML/CFT Act).
- 8.2 Law firms are required to report on prescribed transactions by providing PTRs in electronic form to the FIU. PTRs need to be submitted within 10 working days from the date the transaction took place.

8.3 By sections 48C and 43 to 48 of the AML/CFT Act a law firm must also report to the FIU in relation to any suspicious activities related to any prescribed transactions. This contemplates that in some circumstances, a PTR and a suspicious activity report may need to be filed.

9 What is a prescribed transaction?

9.1 By section 5 of the AML/CFT Act:

prescribed transaction, in relation to a reporting entity, means a transaction conducted through the reporting entity in respect of:

- (a) *an international wire transfer of a value equal to or above the applicable threshold value; or*
- (b) *a domestic physical cash transaction of a value equal to or above the applicable threshold value.*

9.2 Generally, law firms do not deal in physical cash and, if they do, the requirements to report transactions should be easily understood. The confusion arises in the context of wire transfers.

10 What is a wire transfer?

10.1 By section 5 of the AML/CFT Act:

wire transfer:

- (a) *means a transaction carried out on behalf of a person (the originator) through a reporting entity by electronic means with a view to making an amount of money available to a beneficiary (who may also be the originator) at another reporting entity; and*
- (b) *includes a transfer or transaction, or class of transfers or transactions, declared by regulations to be a wire transfer for the purposes of this Act; but*
- (c) *excludes:*
 - (i) *transfers and settlements between financial institutions or other reporting entities if both the originator and the beneficiary are financial institutions or other reporting entities acting on their own behalf; and*
 - (ii) *credit and debit card transactions if the credit or debit card number accompanies the transaction; and*
 - (iii) *any other transfer or transaction or class of transfers or transactions declared by regulations not to be a wire transfer for the purposes of this Act.*

10.2 A law firm's trust account is of course frequently used by one person to conduct transactions by electronic means (e.g. internet banking) to make money available to another person. Accordingly, in the ordinary course of business a law firm that operates a trust account will be involved in numerous wire transfers.

11 Do PTR obligations apply to all wire transfers involving a law firm?

- 11.1 No, the obligation to file PTRs only applies to international wire transfers – and so does not apply to electronic funds transfers made between parties who are all resident within New Zealand.
- 11.2 By section 5 of the AML/CFT Act an “international wire transfer” means a wire transfer where at least one of the relevant parties to the transaction (usually a financial institution) is in New Zealand and at least one of the relevant parties to the transaction (usually a financial institution) is outside of New Zealand.
- 11.3 Furthermore, the obligation applies only to transfers equal to or above the “applicable threshold value”. By section 5 of the AML/CFT Act this means the threshold value that is prescribed in regulations.
- 11.4 By section 6 of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 (the “**Regulations**”) the following are applicable threshold values for a prescribed transaction:
- (a) the applicable threshold of a wire transfer is \$1,000:
 - (b) the applicable threshold for a domestic cash transaction is \$10,000.
- 11.5 Therefore, in relation to wire transfers, the obligations apply only to international wire transfers equal to or above \$1000 received or paid by a law firm as trustee of its trust account.

12 What information is to be included in a PTR?

- 12.1 Details to be contained in a PTR are set out in Schedule 2 of the Regulations and include:
- a The name, business address of the law firm and the name of the law firm’s AML/CFT supervisor (DIA).
 - b Transaction details for each transaction.
 - c Transaction details in relation to originator or beneficiary (who in most cases is likely to be a client of the law firm).
 - d The client’s details.
 - e Additional details for facilities involved in the transaction.
- 12.2 The form is prescribed and does not involve the law firm making any difficult decisions.

Enhanced customer due diligence and identity requirements

13 What are the basic due diligence and identity requirements in relation to wire transfers?

- 13.1 Section 22(3) of the AML/CFT Act provides that a law firm must conduct enhanced customer due diligence (“**EDD**”) in accordance with sections 27 and 28 of the AML/CFT Act if it is an “ordering institution”, an “intermediary institution”, or a “beneficiary institution” in relation to a wire transfer.
- 13.2 Such requirements are in place to ensure transparency of the flow of funds between reporting entities. The provisions require that the identity of the originator of a wire transfer be

obtained and verified (by the ordering institution) and this information be transmitted with the payment through to the beneficiary institution. The section 27 and 28 enhanced due diligence provisions are distinct from the section 23 and 24 enhanced customer due diligence provisions which require (when triggered) a reporting entity to identify and verify the source of wealth or funds of the client.

- 13.3 It is important for law firms to note that these enhanced due diligence and identity requirements:
- a Apply to both domestic and international wire transfers but do not of themselves trigger any external reporting obligations (e.g. PTRs). The obligations require internal information gathering and record keeping. This is why these obligations are distinct from PTRs.
 - b Apply to funds which are transferred between solicitors' trust accounts and funds which are transferred to a law firm from parties who are not clients of the firm.
 - c Involve a different standard of EDD to the usual standard that must be applied in relation to trusts or clients from high risk countries. EDD pursuant to sections 27 and 28 of the AML/CFT Act is prescribed and quantitative whereas EDD in the ordinary course is qualitative. At least in theory, EDD in relation to wire transfers should be relatively easy for law firms to deal with because it is prescribed and does not involve the law firm making any difficult decisions.

14 Who is involved in a wire transfer?

- 14.1 The parties to a wire transfer are as follows:
- a The person who authorises the wire transfer by giving the instruction as the account holder. This could be the client of a law firm. This person is known as the **payer**.
 - b An **ordering institution** is a person who has been instructed by the payer to electronically transfer funds controlled by the payer to another person (known as the **payee**). In a transaction involving a law firm, the ordering institution could be:
 - i the bank used by a client of a law firm where the trust account is not being used; or
 - ii a law firm where the trust account is being used.
 - c An **intermediary institution** is a person who participates in an electronic transfer of funds but is not an ordering institution or a beneficiary institution. A law firm could, in theory, be an intermediary institution in situations where funds electronically pass through its trust account as part of a transaction not directly involving a client. However, this seems to be unlikely in the ordinary course of business.
 - d A **beneficiary institution** is a person who receives an electronic transfer of funds from an ordering institution or an intermediary institution and then makes those funds available to a payee by crediting it to an account held by the payee or paying it to the payee. In a transaction involving a law firm, the beneficiary institution could be:
 - i the bank used by a client of a law firm where the trust account is not being used; or

- ii a law firm where the trust account is being used.

14.2 It may not be helpful for law firms to exercise themselves as to whether they are an ordering, intermediary or beneficiary institution in this context. If a law firm is a party to a wire transfer by:

- a receiving funds into its trust account; and/or
- b paying funds out of its trust account

then the law firm is almost certainly going to have enhanced customer due diligence and identity requirements (and may have PTR obligations).

14.3 The transfer of funds between client ledgers within a law firm's trust account is not a transfer of funds from one reporting entity to another reporting entity and therefore does not meet the definition of wire transfer.

15 What are the specific identity requirements in relation to wire transfers?

15.1 By clause 27(1) of the AML/CFT Act, where a law firm is an ordering institution (e.g. it is transferring the funds) it must identify the originator of a wire transfer that is equal to or above the applicable threshold value (i.e. \$1000) by obtaining the following information:

- a the originator's full name; and
- b the originator's account number; and
- c any one of the originator's address, national identity number or date of birth.

15.2 In the ordinary course, if the originator is the client of the law firm then the law firm would have already obtained some or all of this information during the CDD process. If it is not possible to procure this information then, at least in relation to domestic wire transfers, section 27(2) provides a mechanism for compliance by adhering to a lower standard provided there is some way of tracing the transaction back to the originator. Whilst this is in theory helpful it should not ordinarily be necessary.

16 By clause 27(5) of the AML/CFT Act, where a law firm is a beneficiary institution (e.g. it is receiving the funds) it must take a risk-based approach and consider whether a wire transfer received without the relevant information specified above constitutes a suspicious activity. This could happen quite frequently in practice given that many law firms publish their trust account details.

17 The practical approach that many law firms are taking is to set up systems to collect and hold the relevant information in relation to any funds received and sent from the trust account.

Case Study 1

18 A New Zealand law firm acts for an overseas vendor in relation to the sale of her New Zealand property. The property is sold and sale proceeds are paid by the purchaser's solicitor into the law firm's trust account. The law firm is instructed by its client to transfer the \$1,200,000 sale proceeds into his overseas account with HSBC Singapore. What obligations does the law firm have?

- 19 The law firm is a beneficiary institution in relation to this transaction. This is because the law firm is receiving funds which will be made available to the vendor.
- 20 Please note that in some circumstances, such as where the funds are held in the law firm's trust account for a period of time and/or when the onward payment is by way of separate instruction from the client, this onward payment could actually constitute a second wire transfer. For this second wire transfer, the law firm then becomes an ordering institution (with corresponding PTR obligations if the wire transfer is an international wire transfer).

Prescribed transaction obligations

- 21 The transfer of the sale proceeds to the client's account with HSBC Singapore is a prescribed transaction because it is an international wire transfer equal to or above \$1,000.
- 22 The law firm must submit a PTR in relation to this electronic transfer to the FIU of the New Zealand Police via its goAML web form.
- 23 The information that the law firm must include in the PTR is contained in Schedule 2 of the Regulations and includes:
- a The name of the law firm;
 - b The business address of the law firm;
 - c The name of the law firm's AML/CFT supervisor (DIA);
 - d The branch or location where the transaction took place in New Zealand;
 - e The date and time of the transaction;
 - f The mode of the transaction (i.e. wire transfer);
 - g The type of funds (e.g. cash deposit, deposit from electronic funds);
 - h The amount in New Zealand dollars;
 - i The amount in foreign currency (if applicable);
 - j The exchange rate (if applicable);
 - k The unique transaction reference number (as available);
 - l The internet protocol address of the law firm (originator);
 - m The name of the originator of the international wire transfer;
 - n The account number for the originator (purchaser) of the international wire transfer;
 - o The country where the originator (purchaser) account is held or the originator is;
 - p Any other details of the location of the originator (purchaser) account or the originator, as available;
 - q Any other identifying information regarding the originator (purchaser) of the international wire transfer.

Enhanced CDD Requirements

- 24 Enhanced customer due diligence must be conducted in relation to the transfer of the sale proceeds to the clients account with HSBC Singapore because it is a wire transfer equal to or above \$1,000.
- 25 Because the law firm is a beneficiary institution in relation to the wire transfer, pursuant to section 27(5) of the AML/CFT Act must:
- a Check that the wire transfer is accompanied by the following information:
 - i The originator's full name;
 - ii The originator's account number; and
 - iii One of the following:
 - A The originator's address;
 - B The originator's national identity number;
 - C The originator's customer identification number;
 - D The originator's place and date of birth; and
 - b If the wire transfer does not accompany the above information, consider whether the wire transfer constitutes a suspicious activity.

Case Study 2

- 26 A New Zealand law firm acts for a New Zealand resident vendor in relation to the sale of her New Zealand property. The property is sold and sale proceeds are paid by the purchaser into the law firm's trust account. The law firm is instructed by its client to transfer the \$1,200,000 sale proceeds into her New Zealand bank account. What obligations does the law firm have?
- 27 The law firm is a beneficiary institution in relation to this transaction. This is because the law firm is receiving funds which will be made available to the vendor.
- 28 Please note that in some circumstances, such as where the funds are held in the law firm's trust account for a period of time and/or when the onward payment is by way of separate instruction from the client, this onward payment could actually constitute a second wire transfer. For this second wire transfer, the law firm then becomes an ordering institution (with corresponding PTR obligations if the wire transfer is an international wire transfer).

Prescribed transaction obligations

- 29 The transfer of the sale proceeds to the client's New Zealand bank account is not a prescribed transaction because it is not an international wire transfer equal to or above \$1,000. As such, the law firm has no obligation to submit a PTR with the FIU of the New Zealand Police.

Enhanced customer due diligence

- 30 Enhanced customer due diligence must be conducted in relation to the transfer of the sale proceeds to the client's New Zealand bank account because it is a wire transfer equal to or above \$1,000.
- 31 Because the law firm is a beneficiary institution in relation to the wire transfer, pursuant to section 27(5) of the AML/CFT Act must:
- a Check that the wire transfer is accompanied by the following information:
 - i The originator's full name;
 - ii The originator's account number; and
 - iii One of the following:
 - A The originator's address;
 - B The originator's national identity number;
 - C The originator's customer identification number;
 - D The originator's place and date of birth; and
 - b If the wire transfer does not accompany the above information, consider whether the wire transfer constitutes a suspicious activity.

Case Study 3

- 32 A New Zealand law firm receives \$10,000 from an international client as a retainer to be held in the law firm's trust account and then used to meet subsequent disbursements incurred by the client (for example, court filing fees).
- 33 This is a captured activity. The law firm is the beneficiary institution in relation to an international wire transfer.

Prescribed transaction obligations

- 34 The receipt of \$10,000 is a prescribed transaction because it is an international wire transfer equal to or above \$1,000.
- 35 The law firm must submit a PTR in relation to this electronic transfer to the FIU of the New Zealand Police via its goAML web form.
- 36 The information that the law firm must include in the PTR is contained in Schedule 2 of the Regulations and includes:
- a The name of the law firm;
 - b The business address of the law firm;
 - c The name of the law firm's AML/CFT supervisor (DIA);
 - d The branch or location where the transaction took place in New Zealand;
 - e The date and time of the transaction;

- f The mode of the transaction (i.e. wire transfer);
- g The type of funds (e.g. cash deposit, deposit from electronic funds);
- h The amount in New Zealand dollars;
- i The amount in foreign currency (if applicable);
- j The exchange rate (if applicable);
- k The unique transaction reference number (as available);
- l The internet protocol address of the law firm (originator);
- m The name of the originator of the international wire transfer;
- n The account number for the originator of the international wire transfer;
- o The country where the originator account is held or the originator is;
- p Any other details of the location of the originator account or the originator, as available;
- q Any other identifying information regarding the originator of the international wire transfer.

Enhanced customer due diligence obligations

- 37 Because the law firm is a beneficiary institution in relation to the wire transfer, pursuant to section 27(5) of the AML/CFT Act it must:
- a Check that the wire transfer is accompanied by the following information:
 - i The originator's full name;
 - ii The originator's account number; and
 - iii One of the following:
 - A The originator's address;
 - B The originator's national identity number;
 - C The originator's customer identification number;
 - D The originator's place and date of birth; and
 - b If the wire transfer does not accompany the above information, consider whether the wire transfer constitutes a suspicious activity.

Case Study 4

- 38 A law firm transfers \$5,000 held in its trust account to Australia to pay for client disbursements incurred in Australia.
- 39 This is a captured activity. The law firm is an ordering institution in relation to an international wire transfer.

Prescribed transaction obligations

- 40 The receipt of \$5,000 is a prescribed transaction because it is an international wire transfer equal to or above \$1,000.
- 41 The law firm must submit a PTR in relation to this electronic transfer to the FIU of the New Zealand Police via its goAML web form.
- 42 The information that the law firm must include in the PTR is contained in Schedule 2 of the Regulations and includes:
- a The name of the law firm;
 - b The business address of the law firm;
 - c The name of the law firm's AML/CFT supervisor (DIA);
 - d The branch or location where the transaction took place in New Zealand;
 - e The date and time of the transaction;
 - f The mode of the transaction (i.e. wire transfer);
 - g The type of funds (e.g. cash deposit, deposit from electronic funds);
 - h The amount in New Zealand dollars;
 - i The amount in foreign currency (if applicable);
 - j The exchange rate (if applicable);
 - k The unique transaction reference number (as available);
 - l The internet protocol address of the law firm (originator);
 - m The name of the beneficiary of the international wire transfer;
 - n The account number for the beneficiary of the international wire transfer;
 - o The country where the beneficiary account is held or the beneficiary is;
 - p Any other details of the location of the beneficiary account or the beneficiary, as available;
 - q Any other identifying information regarding the beneficiary of the international wire transfer.

Enhanced customer due diligence obligations

- 43 The information that the law firm must obtain is contained in section 27(1) of the AML/CFT Act and includes:
- a The originator's full name;
 - b The originator's account number:

- c One of the following:
 - i The originator's address;
 - ii The originator's national identity number;
 - iii The originator's customer identification number;
 - iv The originator's place and date of birth.

Case Study 5

- 44 A law firm transfers \$5,000 to Australia to pay for client disbursements incurred in Australia but the client has not yet transferred \$5,000 into the law firm's trust account.
- 45 The law firm does not meet the definition of Ordering Institution of an international wire transfer. Rather, in relation to this payment to the beneficiary in Australia, the law firm is the originator and acting on its own behalf.
- 46 No PTR or enhanced customer due diligence obligations arise.