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Consultation on proposals to limit international fund transfers (IFTs)

Submissions on behalf of The Law Association of New Zealand by the AML & CFT Committee

INTRODUCTION

1. The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with over 9,000 members. Through its specialist law committees, TLANZ contributes to legal review and policy development on issues that affect the justice system, the rule of law, and access to legal services. We thank you for opportunity to comment on the Ministry of Justice's proposals to place new limits on international fund transfers (IFTs), including the proposed ban on cash-funded IFTs of more than $5,000.

2. These submissions are made by the TLANZ AML & CFT Committee, whose members include practitioners advising on anti-money laundering and countering financing of terrorism (AML/CFT) compliance across the legal, financial and trustee/company service provider sectors. The Committee supports the overarching objective of disrupting the movement of criminal proceeds offshore and reducing cash-based harms, but has significant concerns about the proportionality, workability and exclusionary or distributional impact of the proposed $5,000 ban on cash-funded IFTs.

3. Our comments focus on those concerns and propose alternative risk-based measures that build on the Police FIU's National Risk Assessment (NRA) and the Ministerial Statutory Review's recommendations.

EXECUTIVE SUMMARY

4. The Committee does not support the proposed prohibition on international fund transfers of more than $5,000 in cash. In our view, the proposal has 4 main flaws, in that it is:

   (i) mis-targeted - because "IFTs" operate across the whole banking system, not only money remitters, and a coherent and properly consulted upon approach to restraining usage of cash (if that is the MOJ intent) is desirable.
   (ii) inconsistent - with existing $10,000 cash thresholds in the AML/CFT regime, and economically more restrictive than neighbouring nations or than the FATF requires; and
   (iii) exclusionary - likely to significantly deepen existing de-banking and financial exclusion problems, contrary to recent FATF work and publication trying to reduce the harms of exclusion.
   (iv) operationally unworkable – including for downstream reporting entities in a chain of payments such as law firms or accounting firms, which have no visibility over whether incoming funds were originally deposited in cash.

5. We suggest that MFAT, Asian Development Bank, and the World Bank would have significant concerns regarding the proposal, since it would disproportionately penalise migrant and remittance-reliant communities who lawfully send larger sums home for significant family events and emergencies, and would undermine much of the time and effort invested in recent years to improve such heavily debanked remittance channels into the Pacific and Asia.

6. We do not doubt the seriousness of the serious and organised crime group threats identified by the TSOC Ministerial Advisory Group (MAG)– but such criminals are likely to adapt quickly and displace their activity into other channels (including mule accounts, non-cash transfers, a variety of new payment or value-card options, and bitcoin or virtual assets).

7. Instead of a blunt ban, our Committee recommends a package of targeted measures, which might include: aligning any new threshold with the existing $10,000 large cash transaction threshold; introducing a specific prescribed transaction report for cash-funded IFTs above that level; focusing supervision and enforcement on high-risk remittance corridors and complicit providers; improving

payment-chain transparency so that information about cash origin is captured at source; and working with affected communities to support financial inclusion and safer remittance practices.

8. In our view, this approach would more effectively "attack the profits of organised crime" while maintaining coherence, proportionality and fairness within the AML/CFT regime. It should also avoid dramatically worsening New Zealand's already severe financial exclusion rates.

SUBMISSIONS

9. **Do you agree with the proposal to ban international fund transfers (IFTs) of more than $5,000 in cash?**

   9.1 No. The Committee does not support an outright ban on IFTs as proposed.

10. **Please tell us why you answered Yes/No**

   10.1 First, the proposal appears to be conceptually aimed at money remitters and high-risk cash corridors, but by using "international fund transfers" as defined will cut across the entire New Zealand banking system, not just one sector. In practice, most IFTs route through commercial banks even when they originate with a money remitter. To make a ban effective as proposed would require significant structural change to the wholesale banking system and to reporting and messaging standards across the banking sector. That appears to hand the largest banks almost a monopoly/oligopoly on cash handling and creates unnecessary competitive distortion in international payment channels, contrary to all the work of the Commerce Commission outlining the current anti-competitive industry structure (*Market study into personal banking services, CC Final Report of 20 August 2024)*. That level of systemic intervention has not yet been justified on the information provided or the limited consultation carried out by the TSOC MAG.

   10.2 Second, the proposed $5,000 cap on cash IFTs is not aligned with the existing $10,000 cash threshold used elsewhere in the AML/CFT regime, particularly the large cash transaction reporting threshold to the FIU via goAML and the cash limits relevant to high-value dealers. Either threshold could be defended in principle, but a continual trend to applying materially different thresholds to domestic cash deposits versus cash transfers offshore (and other parts of the AML/CFT regime such at $6000 for casinos, currency exchange at $1000) risks confusion for reporting entities and customers. The Police NRA identifies consistency and clarity of AML settings as important to effective control and sector compliance. Various ad-hoc dollar thresholds added and amended at will is not helping overall coherence of the law.

   10.3 Third, from a practical AML/CFT perspective, when New Zealand law firms receive funds into their trust accounts from a bank or foreign exchange/remittance provider, they typically do not know (and cannot know within existing system constraints) whether those funds originated as a cash deposit or via non-cash means. The current banking system does not provide that level of transparency to downstream reporting entities. There is no obvious way for a trust account operator to determine whether a particular inbound credit is caught by a ban on "cash IFTs", nor when an STR or PTR obligation would be triggered on that basis. Money remitters can easily work around the ban and, in doing so, rely on the lack of visibility of others in the payments chain. Shifting liability to other reporting entities to divine whether a foreign transfer was originally funded in cash would be unworkable in practice, and inconsistent with the NRA's emphasis on proportionate, risk-based measures that are – *importantly* - operationally realistic.

10.4 Fourth, the proposal risks blurring the line between structural measures (changing what the system allows) and operational measures (how reporting entities detect and report suspicious or high-risk activity). While the MAG report correctly identifies that cash is a critical enabler of the criminal economy and that hardening the environment against large, anonymous cash movements is desirable, it does not address the many legitimate and important economic needs that families and small businesses still have for cash. For instance:

- where the MAG report opines on the dangers of cash like this "it enables a range of offending, from the sale of illicit drugs, firearms and stolen property, crime associated with migrant exploitation and tax evasion…";
- The other side of the coin could equally say that cash/IFTs enable SME businesses and families to avoid the excessive card and forex transaction fees charged by the banks, and that includes the growing minority that have been unfairly debanked as our largest banks become less constrained and bolder in removing whole sectors from their transactional service offering.

10.5 Overall, since the MAG has not considered the other side of the coin at all, we do not necessarily support a blunt prohibition on legitimate cash-funded transfers above an arbitrary amount. That is particularly where existing tools (PTRs, SARs, targeted enforcement) are still being scaled up and targeted enforcement of those money remitters who skirt the rules has already been high profile and effective.

10.6 Finally, and perhaps of over-riding concern, there are equity and access-to-finance concerns, especially for those communities already facing financial exclusion. The proposal would penalise law-abiding immigrant communities that remit funds home for weddings, funerals and other major life events, or legitimate needs ranging from school fees to business goods importation of half a shipping container of product. That is often through cash-based remitters because clients have limited experience with, or trust in, the commercial banking sector. A strict $5,000 cap on cash-funded IFTs will disproportionately affect Polynesian, Asian and Indian communities, among others. Without clear evidence that this specific channel is the primary driver of serious and organised crime profits – when compared with other high-value, non-cash channels identified in the NRA (e.g. fraud, online scams, mule accounts, and cryptocurrency-enabled transfers), the MAG proposal should not be rushed into law.

10.7 For these reasons, the Committee considers the proposal in its current form to be mis-targeted, operationally difficult to implement, and potentially regressive in its social impact.

11. **What do you think the impacts of implementing this proposal would be?**

11.1 As described above, in summary the proposal could have the following impacts:

- There will be displacement rather than genuine risk reduction. Criminals and sophisticated organised crime affiliates will adapt quickly, moving further into mule accounts, structured non-cash transfers, virtual assets, and other higher-risk channels.

- The AML/CFT system will incur greater complexity and incoherence, raising reporting entities' costs while serious criminal actors find route around the new restriction.

- Significant adverse impacts on migrant and remittance-reliant communities. Communities that rely on remitting larger amounts home will face unnecessary distress and barriers, especially where they are unbanked, under-banked, or have low trust in

mainstream banks and digital means. As with other remitter 'crackdown' proposals in the past, we can expect an increase in structuring or splitting transfers into multiple smaller tranches, using informal hawala-type systems, or carrying bulk cash across borders, all of which make the real laundering harder to supervise and more dangerous from a personal security and overall harm-reduction perspective.

- Increased operational uncertainty for law firms and other DNFBPs. Law firms operating trust accounts, and other DNFBPs, are already left scratching their heads by the complexity of the IFT and PTR rules – while most of the MOJ Statutory Review 2022 recommendations to simplify that area of law remain unaddressed. Firms will be placed in an impossible position: they may receive funds that have already passed through one or more financial institutions without any visibility as to whether those funds were originally deposited in cash. Fear of an inadvertent criminal offence, or law changes making them responsible for policing historic "cash origin", will create legal uncertainty, inconsistent practice, and potentially over-reporting to the FIU without commensurate benefit.

- Regulatory inconsistency and confusion with multiple different reporting threshold risks creating confusion about when PTRs, SARs and internal controls should be triggered- counter to the NRA's desire for coherent, risk-based system design easily communicated to front-line staff and customers.

- Likelihood of further wholesale de-risking by banks (while eating up a new competitive advantage in their costly IFT channel services). Banks may respond conservatively by further de-risking entire customer segments and products associated with cash-intensive remittances, especially where they perceive supervisory expectations as unclear.

11.2 Overall, while well-intentioned, this MAG proposal appears knee-jerk and likely to impose real costs and social harms on legitimate users of the financial system (while producing only modest additional constraint on serious criminal activity).

12. **If you don't agree with the proposal, what other suggestions do you have that might address the risks in this sector?**

12.1 Rather than an outright ban on cash-funded IFTs above $5,000, the Committee suggests a package of more targeted, risk-based measures that build on the NRA and the MAG and MOJ Statutory Review work:

(i) *Align thresholds and focus on enhanced reporting, not prohibition.*
- Align any new cash-related IFT threshold with the existing $10,000 large cash transaction threshold to preserve coherence across the regime.
- Introduce a specific category of prescribed transaction reporting (PTR) for cash-funded IFTs above that threshold, with fields capturing origin of funds, sending channel (bank vs remitter), and destination country. This strengthens the FIU's visibility of genuinely risky transactions while allowing legitimate ones to proceed.

(ii) *Tighten supervision and expectations for high-risk remittance corridors.*
- Use the NRA's sectoral findings to focus supervisory attention on MVTS/money remitters and virtual asset service providers that offer high-risk corridors, including those linked to drug importation and transnational organised crime.

- Encourage sector-specific guidance on identifying and managing high-risk cash customers and mule accounts, drawing on case studies described in the MAG report and NRA.

(iii) *Improve payment-chain transparency instead of shifting liability downstream.*

- If the Government wishes to distinguish between cash-funded and non-cash transfers, this information would need to be systematically captured and transmitted at the point of origin (e.g. via payment messages from the remitter or bank) rather than left for downstream entities (such as law firms) to infer.
- Any reform should work with, or build on, existing payment messaging standards and confirmation-of-payee initiatives flagged in the NRA rather than creating entirely new obligations.

(iv) *Strengthen enforcement against complicit providers and professional facilitators.*

- Continue to prioritise enforcement activity against complicit remitters, professional facilitators and third-party account holders (mules) who knowingly enable offshore movement of criminal proceeds, drawing on the typologies and case studies highlighted in the NRA and MAG report. This will more directly "attack the profits of organised crime.".

(v) *Community engagement and financial inclusion.*

- Work with affected communities, including Pacific, Asian and Indian diaspora groups, to co-design guidance and education on safer remittance channels, fraud awareness, and the benefits of using regulated institutions.
- Ensure that any reforms do not unintentionally reduce financial inclusion for migrants and lower-income families, consistent with a balanced, harm-focused approach to AML/CFT risk.

CONCLUSION

13. In summary, the Committee supports the overarching objective of hardening New Zealand's financial system against the offshore movement of criminal proceeds, particularly from drug and fraud offending. However, it considers that this objective is better achieved through coherent thresholds, enhanced reporting and supervision, improved transparency along the payment chain, and targeted enforcement against genuinely high-risk actors, rather than by a blunt prohibition on cash-funded IFTs over $5,000.

14. Should any aspect of this submission require further clarification, we would be pleased to discuss our views in more detail. Please contact Moira McFarland, Committee Executive, at moira.mcfarland@tlanz.nz to arrange a meeting or to address any queries.

Ngā mihi,

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