PO Box 911 151
Victoria Street West
Auckland 1142

29 March 2018

AML/CFT Exemptions Team
Policy Group
Ministry of Justice
Wellington

Email: international.crime@justice.govt.nz

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Act 2009 Class Exemptions – Category 1: Bodies Corporate ("BC") and Body Corporate Managers ("BCM")

Submissions on amendment to Class Exemption

By way of introduction, we are a not-for-profit Incorporated Society with branches in Wellington and Auckland, and members in many cities and towns around New Zealand. Robert Boyd-Bell is the co-President and David Watt is co-Treasurer of BCCG. David is also a member of Strata Community Association (NZ) "*SCA(NZ)"* and is on their Executive Board, and a member of their *Education and Professional Standards* and *Finance* Committees.

BCCG specialises in education for Chairs and Committee Members of bodies corporate (as formed under Unit titles Act 2010 "UTA") and is fortunate to have a high level of support from body corporate managers and lawyers across New Zealand. BCCG is recognised as a valuable link in the education processes for BC and has entered an Agreement with SCA(NZ) for co-operation in the production of courses and educational materials for BC Chairs and Committees. Our membership includes 235 BC (14,005 titles), 30 BCM and 9 Law Firms.

BCCG is concerned, not only on behalf of all BC but in particular its members, that adoption of the proposed changes to this exemption will create a large measure of confusion in how BC are managed by BCM, and that additional costs and complexity will be added to both BCM and hence BC affairs.

Consultation questions

1. **Whether commercial body corporate managers ought to be able to rely on the exemption in light of the heightened risk of money laundering occurring in commercial property projects.**

   As the background papers advise that there will be no changes to the Clause 1 exemption to Bodies Corporate on behalf of our BC members we support that continuance.

   Given that continuance, it is then clear that the word *commercial* as used above is being used to describe either:

   a. The body corporate manager, or

   b. The type of property being managed.

Body Corporate Managers being commercially driven (they provide services to BC for which they charge fees in anticipation of making a profit) they are in effect all *commercial*. So the terminology being used is very unclear.

We support the analysis and submission made by Pidgeon Law that there should be no distinction between commercial and residential *body corporate managers*, and that all body corporate managers should be able to rely on the exemption, provided they comply with the UTA and all other relevant legislation as is the case under the current exemption notice.

So that leaves the application of *commercial* intended above to be solely related to the *type of property being managed.*

While there may be an increased risk of money laundering in *commercial property projects*, we agree with Pidgeon Law that this would be more likely to occur during the construction phase, rather than the operation of the body corporate.

The body corporate is formed on the registration of the Unit Title Plan with LINZ. At which time the regime dealing with cost sharing, raising levies and handling funds set out in the UTA immediately applies to the BC. Operating Rules are also filed with LINZ at that time. The regime in the Act including Operating Rules apply to all BC, even those used for commercial developments provided they are formed under UTA.

The activities of individual property owners within a BC are subject to the UTA, and BC Operating Rules and there is no legal opportunity for extraneous cash flows to be processed through the BC books.

The property buying and selling activities of individual owners are outside the control of both the BC and the BCM, and are not visible to BC or BCM except as required under sub-part 14 of the Act (Disclosure requirements) or as a result of a change of ownership filed with LINZ.

Owners could not use their BC to launder money unless ALL THE OWNERS are in on the activity, as even one dissenting owner should be enough to prevent this activity from occurring. There would be other legal provisions to address that type of illegal activity.

The BC sets annual budgets, or may have remedial projects for the body corporate which are costed, and then levied accordingly. The BC receives the money and applies it in accordance with the budgeted expenditure. It would be highly unusual for money to be paid into a BCM's trust account and then be refunded due to being say an over-payment of a levy.

If the target for money laundering activity is the construction phase (and we have no information on this aspect), then that could really only apply prior to the settlement of sale contracts for the individual units. Once sales of units are made (and especially after the ss154 - 156 process in the UTA has been completed) then there is no opportunity for money laundering within the BC or BCM as all payments and income are dictated by owners through the BC money handling processes in the UTA and Operating rules.

The main opportunity would be during the development or construction phase through potential buyers making the payment of deposits or holding fees for units in the new developments for which either the sale is subsequently cancelled and the deposit refunded, or else the contract is "flicked on" during the development phase. This re-sale of contracts activity generally adds value to the value of the contract but more importantly gives a receipt from a property transaction. Hence the opportunity for money laundering.

This is a developer issue, neither a BC nor a BCM issue.

We refer to the following extract from page 20 of the MoJ Document August 2016 on Phase Two of *Improving New Zealand's ability to tackle money laundering and terrorist financing* in which MoJ recognises that the main risks are associated with the purchase and sale of property.

> NOTE: we do not propose including leasing and property management services provided by real estate agents. This is because the main risks related to the real estate sector are associated with the purchase and sale of property.

Education could be given to BCM's alerting them to the criminal charges which can be laid under ss 243(2) and 243(3) of the Crimes Act 1961, so that if there is unusual conduct by an owner in terms of payment of funds into the body corporate, they would be wise to notify the authorities to prevent being implicated in the commission of a crime. BCCG proposes to include such information in its educational materials.

2. **The Ministry is considering the impact that the exemption may have on Phase 2 entities captured by the legislation from July 2018; specifically, lawyers and accountants. The Ministry understands these professionals perform body corporate management activities from time to time. The Ministry suggests allowing lawyers and accountants to rely on the exemption but only when undertaking these specific activities. The effect would be that lawyers and accountants will still be subject to their other obligations under the Act.**

   We support the Pidgeon Law submission.

3. **Whether the reasons provided at paragraphs 5(b) to (g) in the <u>Ministerial class exemption</u> are still relevant and appropriate**

   We support the Pidgeon Law submission.

If you have any questions on the above, or wish to discuss any aspect of the matters under consultation please feel free to contact us at any time.

Signed by David Watt on behalf of:

Robert Boyd-Bell / David Watt
Co-President BCCG / Co-Treasurer BCCG
027 473 5199 *021 280 7240*