

ANTI-MONEY LAUNDERING COUNTER-TERRORISM FINANCING UPDATE: GLOBAL TRENDS AND A NEW RESOURCE FOR REPORTING ENTITIES

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Legal Briefings - By **Tony Coburn, Henrietta Thomas** and **Nicola Greenberg**

2017 is shaping up to be a year of continued activity in Australia's *Anti-Money Laundering Counter Terrorism Financing (AML/CTF)* space.

In our last update, we addressed areas of potential change to the legislation. This update focusses on two useful tools for reporting entities assessing current obligations, and looking ahead to forecast changes.

AUSTRAC RELEASES FURTHER GUIDANCE ON ITS EXPECTATIONS IN RELATION TO AML/CTF COMPLIANCE

Reporting entities often encounter difficulties interpreting the scope of AML/CTF obligations under the Australian legislation's 'risk based approach.' While this approach provides flexibility to account for a wide range of business sizes and types, it can also lead to uncertainty regarding what is required to comply. AUSTRAC has released a new publication, *Insights from Compliance Assessments* which provides further detail and clarifies good business practice in the AML/CTF space. This publication is broken up into key issues for AML/CTF compliance. In particular, conducting risk assessments, applying the risk-based approach and outsourcing and automating processes. Each section outlines both best practice, and areas for improvement based on AUSTRAC's compliance assessment processes. This is a very useful tool for entities looking to further understand what a compliant AML/CTF program looks like in practice.

INTERNATIONAL AML/CTF DEVELOPMENTS: LOOKING DOWN THE ROAD AHEAD IN AUSTRALIA

It can be challenging to foresee the next steps in the evolution of AML/CTF regulatory environment but there is much to learn from the *Financial Action Task Force (FATF)* Plenary meeting held in Paris in February 2017. The FATF Plenary is FATF's decision making body, and meets three times per year.

The key points from this meeting are consistent with the trends we have seen in AML/CTF regulation in Australia in the past year.

1. **Focus on terrorism financing:** Delegates discussed how FATF could ensure all countries in the FATF Global Network are effectively implementing appropriate Counter Terrorism Financing (CTF) methods. This is consistent with AUSTRAC's actions in 2016, including the release of the Regional Terrorism Financing Risk Assessment, which assessed the Terrorism Financing risk of a number of Southeast Asian countries and an overall Asia Pacific regional assessment. FATF also emphasised the importance of international cooperation, and considered obstacles to information sharing within the private sector. FATF will continue to develop CTF projects, with a particular focus on combatting the funding methods of ISIL/Da'esh'. Final reports on these projects are to be published later in 2017.

Key takeaway: Entities should be considering both ML *and* TF risk when drafting their programs, paying particular attention to jurisdictional risk assessment tools created by AUSTRAC and other relevant international AML/CTF regulators.

2. **Improving transparency and beneficial ownership identification:** FATF continues to focus on the best way to improve transparency and identification of beneficial ownership information, and is currently undertaking a programme of work on beneficial ownership. This includes a research project to identify challenges in establishing beneficial ownership, including mechanisms used to hide and obscure beneficial ownership of corporate vehicles.

Key takeaway: ML/TF risk assessments should identify common means of hiding beneficial ownership such as use of professional intermediaries and complex corporate structures, and AML/CTF programs should include mechanisms for managing the relevant ML/TF risk.

3. **Identifying high risk jurisdictions- Brazil:** FATF conducted a mutual evaluation report of Brazil in 2010, which identified serious deficiencies in its AML/CTF prevention programs. In February and October 2016, FATF expressed concern that Brazil had failed to address these deficiencies, and called for further action. In the Plenary meeting, FATF recognised that Brazil had taken significant steps to improve its regime, however significant deficiencies remain.

Key takeaway: Entities who have regular dealings with Brazilian clients or corporates should be aware of the risks associated with this jurisdiction.

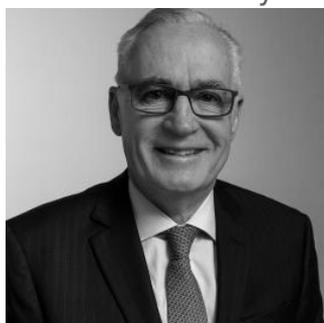
4. **Engagement with Fintech and Regtech:** FATF held a roundtable with FinTech and RegTech representatives in Paris to discuss risks and vulnerabilities of new payment products and services. FATF has a focus on building partnerships with the FinTech and RegTech communities to ensure that FATF can develop standards, guidance and best practice based on new technologies and ML/TF risk areas. During the roundtable, the parties discussed distributed ledger technologies, new payment methods, digital currencies and the ways that technology can support ongoing regulatory obligations. FATF will continue to engage with this community in order to develop best-practice standards. This approach is consistent with AUSTRAC's introduction of a new online contact form to ensure it better engages with FinTech and other start-ups.

Key takeaway: The scope of AML/CTF regulation is not confined to traditional financial services. Entities offering FinTech style products should be aware that they have obligations under the AML/CTF regime, and conduct thorough risk assessments of their organisation, customers, products, channels and jurisdiction of offer.

We consider that the outcomes of the FATF Plenary meeting reflect the global focus on terrorism financing, information sharing and engaging with new financial service risk areas. Please contact us if you have any questions about this summary, or Australia's AML/CTF regime.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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