

NEW REGULATION FOR DIGITAL CURRENCY EXCHANGES IN AUSTRALIA

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Legal Briefings - By **Tony Joyner, Natasha Blycha, Edward Sinclair and Oliver Tod**

The spectres of money laundering and terrorism funding have haunted cryptocurrencies, and in particular Bitcoin, since they exploded out of relative obscurity a few years ago. Regulators around the world are now working out how to effectively regulate the trade of cryptocurrencies and how to adapt anti-money laundering rules to this new digital frontier. In this piece, Tony Joyner and Natasha Blycha consider recent changes to Australian anti-money laundering and counter terrorism financing laws.

REGULATING DIGITAL CURRENCY EXCHANGE PROVIDERS

Money laundering risks arise naturally in cryptocurrency transactions because the individual users of the technology - called distributed ledger technology, or DLT - can be difficult to track. Peer-to-peer transactions outside of the regulated financial system have, as you would expect, limited transparency. To compound this, transactions of this nature can readily cross international borders, and into jurisdictions with the least oversight.

Against this background, Australia has taken a decisive step to tackle the issue under broad new anti-money laundering and counter terrorism financing (**AML/CTF**) laws. Previously, the Australian AML/CTF rules had only applied to e-currency (that is, digital 'currency' supported by a physical thing), and did not apply to convertible digital currencies (supported by an intangible cryptographic algorithm; ie, not a physical thing). Now, the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017 (Amending Act)* amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* to extend the coverage of this regulation to include convertible digital currencies, though regulation of digital currency exchanges (**DCEs**).

These changes came into effect on 3 April 2018.

The Australian Transaction Reports and Analysis Centre (**AUSTRAC**) administers the AML/CTF Act. It has now published [guidance](#) to assist with the implementation of the amendments. From 3 April 2018, transitional arrangements will apply to existing and new DCEs. Criminal and civil consequences for providing DCE services while unregistered will apply from 14 May 2018.

SCOPE OF REGULATION

In brief, the new approach requires registration of DCEs on a new Digital Currency Exchange Register (**DCE register**). It also imposes compliance obligations on DCEs, which include:

- identifying and carrying out due diligence on customers;
- adopting and maintaining an AML/CTF program, which includes identifying, managing and lessening money laundering and terrorism financing risk;
- suspicious matter reporting;
- threshold transaction reporting for cash amounts of AUD\$10,000 or more; and
- record keeping.

For now, the registration requirements only apply to DCEs where transactions involve fiat to cryptocurrency (**fiat/crypto**) trades, and not cryptocurrency to cryptocurrency trades (**crypto/crypto**). It is also only fiat/crypto transactions that involve physical currency not less than AUD\$10,000 that will trigger transaction reporting obligations. Given that transactions on DCEs rarely involve physical currency, for now, this will not be an onerous obligation. We note the rules have provision to expand the scope of the obligations. We watch this space with interest.

REGISTRATION ON THE DCE REGISTER

Entities that wish to register a DCE must complete an application by providing:

- a national police certificate or national police history check;
- identification, and where applicable, registration details of the applicant and each of the

applicant's key personnel;

- details regarding the nature, legal form, status, and structure of the applicant's business;
- whether the applicant or any of its key personnel have been charged, prosecuted or convicted in relation to money laundering, terrorism financing, terrorism, people smuggling, fraud, a serious offence, or an offence under the AML/CTF Act or *Financial Transaction Reports Act 1988*; and
- whether the applicant or any of its key personnel have been subject of any adversely determined civil or criminal proceedings or enforcement action in relation to the management of an entity, or their commercial or professional activities.

CONDITIONS ON REGISTRATION

On registration, AUSTRAC can impose conditions on the registration of DCE provider. These conditions may relate to (without limitation):

- the value of digital currency or money exchanged;
- the volume of digital currency being exchanged (whether by reference to a particular period, a particular kind of digital currency, or otherwise);
- the kinds of digital currencies exchanged; and/or
- requiring notification of exchange of particular kinds of digital currency, changes in circumstances, or other specified events.

REPORTABLE TRANSACTION DETAILS FOR DIGITAL CURRENCY EXCHANGE PROVIDERS

Amendments have also been made to the suspicious matter and threshold transaction reporting sections of the AML/CTF Act.

As part of this, transactions of a DCE must include specific digital currency reporting identifiers.

In addition, DCEs that identify suspicious transfers or threshold transactions involving digital currency must provide the following information to AUSTRAC:

- denomination of the digital currency;
- total amount of digital currency in Australian dollars;
- a description of the digital currency, including details of the backing asset or thing;
- the IP address information of the beneficiary and/or payee, if known;
- the social media identifiers of the beneficiary and/or payee, if known;
- the unique identifiers relating to the digital currency wallet of the beneficiary and/or payee, if known; and
- the unique device identifiers of the beneficiary and/or payee relating to or arising from the transaction, if known.

In the rapidly developing world of cryptocurrency, the Australian AML/CTF regulation will likely be seen as a welcome addition by many proponents of the technology. Notwithstanding that the legislation creates new obligations in launching and operating a DCE, that regulation creates greater certainty around the government's approach, and assists in improving both public and institutional perception of the digital currency sector's legitimacy.

FURTHER LINKS

[Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017](#)

[Are you a digital currency exchange provider?](#)

[Digital currency exchange providers](#)

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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