

PRACTICAL CHANGES TO THE AML/CTF RULES WILL BENEFIT AFFECTED BUSINESSES

15 January 2018 | Australia

Legal Briefings - By **Tony Coburn, Kate Weinstock and Lisa Whiting**

Businesses that are reporting entities will welcome a number of practical changes that are included in a set of amendments to AML/CTF Rules that were registered with immediate effect by AUSTRAC last Thursday, 11 January 2018.

In particular, there are some changes to the rules for identification of customers, customer due diligence, ongoing risk assessments and independent review that will be of special interest to anyone engaged in designing effective compliance with AML CTF requirements.

To take advantage of some of the benefits of the Rule changes, or to ensure that there is no conflict between the new rules and the requirements of an existing AML CTF Program, it may be necessary or desirable to adjust the contents of some AML CTF Programs.

All of these relevant changes result from the registration by AUSTRAC of the '*Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)*' (**Instrument**). This Instrument implements a number of the recommendations made in Part 19 of the '*Report on the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and Associated Rules and Regulations*', tabled in Parliament by the Minister for Justice on 29 April 2016 (**AML CTF Review Report**).

The Instrument amends the *Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007 (No.1)* in the following ways:

DOCUMENTS FOR IDENTIFYING CUSTOMERS

From a practical point of view, under previous rules businesses with an overseas customer often had to rely on either notarised identity documents for the customer, or certification by an Australian consular official. This was clunky and often functioned as a hurdle to dealings with those customers. This has been modified.

The definition of “certified copy” has been amended to allow for certification by: *“a person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents”*.

In addition, the definitions of *primary non-photographic identification document*, *primary photographic identification document*, and *secondary identification document* have been made inclusive and now include national identity cards issued by foreign countries that include unique identifiers rather than signatures (such as biometric identifiers) in the definition of ‘primary photographic identification document’.

We expect that these modifications will better enable reporting entities to meet their AML/CTF obligations more quickly and confidently.

DISCLOSURE CERTIFICATES

Amendments to Chapter 30 allow reporting entities to accept disclosure certificates that are certified by an appropriate officer of the customer (using a risk-based approach). Unsurprisingly, the amendments also expressly clarify that a reporting entity must not rely on a disclosure certificate if it knows or has reason to believe that the information provided in the certificate is incorrect or otherwise unreliable.

CUSTOMER DUE DILIGENCE

Paragraph 4.12.2 of the Rules is amended to expand the exemptions for identification of beneficial ownership to include majority-owned subsidiaries of foreign publicly-listed companies that are already subject to disclosure requirements (whether by stock exchange rules or through law or enforceable means). The amendments also remove the existing requirement for reporting entities to ensure that the foreign disclosure requirements are “the same as, or comparable to, the requirements in Australia”.

The amendments add a new Part 4.15, which sets out procedures for reporting entities to follow in certain limited and exceptional circumstances where a customer is unable to provide satisfactory evidence of their identity. The provisions draw on relevant sections of the National Identity Proofing Guidelines, as prepared by the Attorney-General’s Department. The proposed amendments are in response to a finding in the AML CTF Review Report that “reporting entities are struggling to verify customers’ identities in some circumstances,” and this has been identified as an ongoing issue since the commencement of the AML/CTF Act in 2006. The amendments will also assist the government in meeting its G20 commitment to reduce financial exclusion. We note that since the draft release of the amendments, AUSTRAC has added a note emphasising that the procedure is only to be used “in limited and exceptional cases”.

RISK ASSESSMENTS

Amendments are made to Parts 8.1 and 9.1 to make the ‘identification, mitigation, and management’ of money laundering and terrorism financing (ML/TF) risk a general requirement in respect of new designated services, new methods of delivering designated services, new technologies, and changes arising in the nature of the business relationship, control structure, and beneficial ownership of the customer.

The amendments to Parts 8.7 and 9.7 require reporting entities to incorporate guidance on ML/TF risks provided or disseminated by AUSTRAC in the development or updating of Part A of their AML/CTF Programs.

INDEPENDENCE OF REVIEWERS

Amendments are also made to Parts 8.6 and 9.6 to guarantee the independence of the reviewer of AML/CTF programs. These amendments are significantly less dramatic than those originally proposed by AUSTRAC. In an exposure draft rule (that preceded the registration of the Instrument), AUSTRAC attempted to define “independence”. We considered that in practice this was likely to have created unnecessary complexity, and we consider that the scope of the Instrument now seems more workable.

CHAPTER 36 EXEMPTION OF CERTAIN DESIGNATED SERVICES WITHIN A CORPORATE STRUCTURE

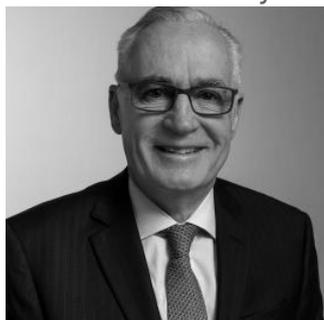
Chapter 36 of the AML CTF Rules exempts designated services that are provided by a business that is related to its customer. Where justified by the level of ML/TF risk, this exemption is now extended to certain partnerships in which the relevant business is a partner. Chapter 36 does not provide an exemption for the involvement of a business in a ‘limited partnership’, presumably because this type of partnership is often used as an investment vehicle that is an alternative to a ‘partner’ taking up securities or interests in a fund, rather than as a trading entity in which each partner is an active participant in the business of the partnership.

Registration of the Instrument is part of a broad project to implement the recommendations of the AML CTF Review Report and we can expect to see many further legislative and non-legislative reforms throughout 2017 and beyond.

Please contact us if you have any questions about this summary, Australia’s AML/CTF regime, or specific changes to AML CTF Programs that may be needed.

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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