

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING RULES

Clause 191 of the revised exposure draft Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (the AML/CTF Bill) enables the Australian Transaction Reports and Analysis Centre to make AML/CTF Rules prescribing matters required or permitted by relevant provisions of the AML/CTF Bill. The Rules will be legislative instruments for the purposes of the *Legislative Instruments Act 2003* (LI Act).

The Draft Rules released with the revised exposure draft Bill consist of ten Chapters which are briefly summarised below.

Chapter 1 – Introduction and Key Terms

Chapter 2 – Customer Identification Programs The Rules in Chapter 2 are made for the purposes of the definition in clause 5 of the AML/CTF Bill of the term ‘applicable customer identification procedure’. The definition provides that the Rules may make different provision with respect to, among other things, different kinds of customers. A reporting entity must put in place a program for the identification and verification of its customers. The Chapter contains separate Rules for identification according to whether the customer is an individual, a company, a trustee, a partner in a partnership, an association, a registered co-operative or a government entity.

The Rules in relation to identification of individuals contain ‘safe harbour’ Rules (see Rules 2.2.11 and 2.2.12 for documentation based verification and Rules 2.2.13 and 2.2.14 for electronic verification). These particular Rules will apply where the reporting entity determines the relationship with a customer to be of lower to medium level money laundering or terrorist financing (ML/TF) risk. A reporting entity that carries out the minimum documentation based verification procedure or the minimum electronic verification procedure for such customers will have complied with its obligations. However the Rules do not prevent a reporting entity from meeting its obligations in another way for such customers.

Chapter 3 – Agent Identification Programs The Rules in Chapter 3 are made for the purposes of the definition in clause 5 of the AML/CTF Bill of the term ‘applicable agent identification procedure’. These Rules only apply to persons authorised by a customer to act for or on the customer’s behalf, rather than to all agents covered by the ordinary legal meaning of the term ‘agent’. The definition provides that the Rules may make different provision with respect to, among other things, different kinds of agents. Rule 3.2 deals with agent identification programs with respect to an agent of a customer who is an individual and Rule 3.3 deals with agent identification programs with respect to an agent of a customer who is a non-natural person. Rule 3.4 applies to a person who is authorised by a customer which is a non-natural person to act as its verifying officer for the purpose of the Rules.

Chapter 4 – Re-verification of identity of customers and their agents The Rules in this Chapter set out when the obligation to re-verify occurs and what the reporting entity must do to satisfy the obligation.

Chapter 5 – When an applicable customer or applicable agent identification procedure may be carried out by another person The Rules in this Chapter set out the requirements that an authorised person must comply with when that person has been authorised by a reporting entity to carry out applicable customer or applicable agent identification procedures on behalf of another person. The Rules also set out the requirements that the reporting entity must meet in authorising another person to carry out applicable customer or applicable agent identification procedures on its behalf.

Chapter 6 – Ongoing Customer Due Diligence The AML/CTF Bill requires that a reporting entity must monitor the provision of a designated service with a view to identifying, mitigating and managing the risk that the reporting entity may reasonably face that the provision of the service might (inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism. The Rules in this Chapter provide that a reporting entity must put in place risk based systems and controls to determine whether any further ‘know your customer’ information should be obtained in respect of customers and whether and in what circumstances it should be updated or verified. These Rules provide that a reporting entity’s AML/CTF program must include a transaction monitoring program containing risk based systems and controls to monitor customer transactions for the purpose of identifying any suspicious transactions. The Rules also provide that a reporting entity must include an enhanced customer due diligence program (ECDD program) in its AML/CTF program. The Rule provides when the ECDD must be applied and that it must include appropriate risk based systems and controls so that the reporting entity, when applying the ECDD program, gives consideration to certain specified matters.

Chapter 7 - Correspondent Banking Due Diligence The Rules made by this Chapter list the matters which must be assessed before a financial institution enters a correspondent banking relationship with another financial institution and provide that the first financial institution may determine the extent of its due diligence enquiries according to the correspondent banking risk. Rule 7.2 provides when ongoing due diligence enquiries of correspondent banking relationships should occur and the extent and frequency of such enquiries. Rule 7.3 requires documentation of correspondent banking relationships.

Chapter 8 – AML/CTF programs The Bill requires a reporting entity to develop and implement an AML/CTF program relating to the provision of designated services. The primary purpose of the program is to identify, manage and mitigate ML/TF risks. The Rules in this Chapter specify what the program must be designed to do and that the program must be applied to all areas of a reporting entity’s business involved in provision of the designated service including functions carried out by a third party. Rule 8.2 provides that the program must include AML/CTF risk awareness training and the matters which must be addressed in the training. Rule 8.3 requires the program to include an employee due diligence component which must include risk based systems and controls to determine whether, and to what extent, to screen prospective employees and re-screen employees who may be transferred or promoted. The reporting entity must maintain records to demonstrate its compliance with these requirements. The program must be oversighted by the reporting entity’s governing board (or chief executive officer or equivalent) and its senior management. A reporting entity must designate a person as its ‘AML Compliance Officer’ and must

also ensure that its program is regularly reviewed and has regard to feedback provided by AUSTRAC in respect of the reporting entity's management of ML/TF risks.

Rule 8.9 provides that a reporting entity must put in place appropriate risk based systems and controls applying to any permanent establishment in a foreign country at or through which it provides designated services to the extent that is reasonable and practicable having regard to local laws and circumstances. The purpose of the risk based systems and controls are to identify, manage and mitigate the ML/TF risk at the permanent establishment in the foreign country. If local law in the foreign country prohibits implementation of the systems and controls the reporting entity must report this to AUSTRAC. Where the foreign country has an AML/CTF regime comparable to Australia only minimal additional systems and controls need be considered.

The risk based systems and controls applying to the permanent establishment in the foreign country must include appropriate documentation to demonstrate to AUSTRAC that the program meets the Rule requirements, including provision for oversight by the board (or chief executive officer or equivalent) and senior management and designation of an AML/CTF compliance officer. In addition they must be subject to regular review and have regard to AUSTRAC feedback.

Chapter 9 – Reportable Details - The Rules in this Chapter set out the details that must be included in threshold transaction reports and suspicious matter reports.

Chapter 10 – Register of Providers of Designated Remittance Services – The Rules in this Chapter set out the registrable details for inclusion in the Register of Providers of Designated Remittance Services.