



THE ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006:

MORE COMPLIANCE FOR CORPORATE AUSTRALIA

The recent assent on 12 December 2006 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ("AML/CTF Act") brings in a new era of regulation and compliance regimes for the finance sector in Australia. The new regime introduced in the AML/CTF Act places significant burdens upon businesses to have adequate anti-money laundering policies and procedures.

The changes are being implemented over the next 24 months, to give businesses time to develop systems to comply with the new standards and rules before penalties apply. The legally binding rules ("Rules"), developed by the Australian Transaction Reports and Analysis Centre ("AUSTRAC") and which provide guidance as to how to comply with the Act have also been introduced.

WHAT WAS WRONG WITH THE FINANCIAL TRANSACTIONS REPORTS ACT 1988?

The previous legislative scheme was developed in an age where the majority of financial transactions were conducted over the counter at banking branches. The new legislation takes into account the extensive changes which have occurred in banking and financial services through the rise of new technology and electronic banking services.

WHAT DOES THE LEGISLATION DO?

The AML/CTF legislative regime imposes obligations on businesses and individuals which offer specific services that could be exploited to launder money or finance terrorism. Businesses include financial institutions such as mortgage managers, brokers, fund managers, bullion dealers and can include lawyers, accountants and bookmakers.

ARE YOU A REPORTING ENTITY?

Reporting entities are businesses or individuals who provide "designated services". Designated Services include:

- opening an account;
- accepting deposits;
- making a loan;
- issuing, acquiring or disposing of a bill of exchange;
- a promissory note or a letter of credit;
- issuing a debit or stored value card;
- issuing travellers cheques;
- sending and receiving electronic funds transfer instructions.

Designated services also includes transactions related to gaming operations such as accepting or making a bet.

YOUR OBLIGATIONS UNDER THE ACT IF YOU ARE A REPORTING ENTITY

REPORTING OBLIGATIONS

If you are a reporting entity you must provide a report to AUSTRAC about suspicious matters, international funds transfer instructions, and transactions which exceed the thresholds set in the legislation.

Continued on page 2...

In This Issue

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Page 1

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MAKES MORE COMPLIANCE FOR CORPORATE AUSTRALIA

“Suspicious matters” are where the reporting entity suspects on reasonable grounds that:

- the customer or their agent is not the person they claim to be;
- the purpose of the customer seeking the reporting entities services is for tax evasion;
- they are providing services preparatory to the commission of an offence;
- their services have been used for the commission of an offence;
- they have information which may be relevant to the investigation and prosecution of the customer;
- they can assist in the enforcement of the Proceeds of Crime Act.

The AML/CTF Act also requires you to keep records for a minimum of 7 years. These records include the records of the provision of services, any identification documents obtained from the customer, and your programmes on anti-money laundering.

IDENTIFICATION VERIFICATION

The Rules give detailed guidance on customer identification procedures for different kinds of customers. Customers must still be identified before the service is provided. Services which are classed as ‘low risk’ of laundering or terrorism financing may only require a drivers licence, whereas higher risk transactions require more information.

You are required to obtain from your customers the relevant identification material. This will vary depending on the nature of your customer, that is, if they are a company, trustee or individual. The Rules give a detailed outline of the information you are required to seek.

Customers who are with a business before the commencement of the Rules are subject to modified identification procedures.

When considering what information as a reporting entity you must also consider your obligations under the Privacy Act 1988 (Cth) as the Rules do not override the provisions of the Privacy Act, you must give regard to the Privacy Act in your compliance procedures.

INTERNATIONAL FUNDS TRANSFERS AND DUE DILIGENCE

Financial institutions are not required to conduct ongoing and numerous due diligence assessments on one another. This would be both impractical and a waste of resources. Under the AML/CTF Act, if you are a financial institution in a correspondent banking relationship, or deal with a financial institution which holds accounts in a foreign country, in the local currency (referred to in the finance industry as “nostro” and “vostro” accounts), then you will be required to conduct due diligence assessments of that financial institution.

The Rules also prevent financial institutions entering into a correspondent banking relationship with a “shell” bank. Where they trade with foreign banks, they must ensure that they operate a business banking service at a registered office in that country.

The Rules and AML/CTF Act target the moving of money offshore and the use of offshore accounts by strict reporting and investigation requirements. These requirements place the onus on lenders to ensure money moved offshore is deposited into a valid account at a recognised financial institution.

There is also an on-going customer due diligence obligation for reporting entities. If you are a reporting entity you are required to identify, mitigate and manage the risks associated with money laundering towards your customers.

E X P E R T I S E



KEY DATES AND IMPLEMENTATION

The following table contains the deadlines by which you must comply with the different parts of the legislation and Rules. AUSTRAC has advised that in the 12 month period after implementation it will focus on education rather than enforcement with major penalties only imposed where businesses are not taking reasonable steps to be compliant.

DATE	OBLIGATIONS	WHAT YOU MUST DO
13 December 2006	Reports on Cross-border movements of physical currency Electronic Funds Transfer Instructions Countermeasures Record-keeping requirements for transactions, funds and exemptions	<ul style="list-style-type: none"> • Keep records of all transactions • Implement appropriate electronic transfer instructions • Provide reports on the movement of physical currency and bearer bonds in and out of Australia
27 March 2007	Rules: • Correspondent Banking relationship definition	<ul style="list-style-type: none"> • Start to conduct due diligence assessments on Foreign Banks who trade in Australia with you
13 April 2007	Rules: • AML/CTF programmes • Customer Identification procedures • Business group definition	<ul style="list-style-type: none"> • Start following the customer identification procedures as set out in the rules - this will vary according to the type of customer you are dealing with - company or individual • Formulate your AML/CTF Programme • If you form a business group register it with AUSTRAC
12 June 2007	Record keeping requirements about due diligence assessments and correspondent banking relationships AML/CTF Compliance Reports	<ul style="list-style-type: none"> • Be able to start providing AML/CTF Compliance reports • Keep records and due diligence assessments must be made if you are dealing with a foreign Bank that trades in the local currency
12 December 2007	Identification Procedures Records of Identification procedures Records about AML/CTF Programmes	<ul style="list-style-type: none"> • Have the requisite identification procedures in place • Have your compliance programmes in place • Provide reports about the identification procedures • Provide reports on your AML/CTF Programme to AUSTRAC
12 December 2008	Reporting obligations on suspect matters, threshold, international funds transfer Ongoing customer due diligence	<ul style="list-style-type: none"> • Start to provide reports on transactions which are “suspicious” to AUSTRAC • Conduct ongoing customer due diligence assessments - modify and assess risks of anti-money laundering on customers

WHAT WILL YOU NEED TO DO?

The major focus of the AML/CTF Act and Rules is a risk-based approach to compliance. As a reporting entity you will be required to develop a programme that seeks to identify, mitigate and manage the risks which are associated with money laundering.

The legislation also allows businesses and companies to form groups, which can then determine their mode of compliance. A business group can be comprised of at least two individuals or two companies. Members of a business group cannot also be members of another business group, they can only be members of one business group.

The advantage of this system is that it allows reporting entities to have a uniform compliance programme that applies to all members when they supply designated services. Thus, as reporting entities, you can ally with other reporting entities and create a compliance programme that suits your particular needs.

The Rules and legislation change the regulation of money laundering from a prescriptive regime to a risk based regime and extend to a broader range of businesses and individuals. Despite being flexible in nature, the new system requires reporting entities to continually review procedures and transactions to prevent money laundering. Reporting entities need to familiarise themselves with the Rules and legislation to avoid AUSTRAC enforcing penalties for non-compliance.

For more information on the AML/CTF Act and Rules visit the website www.austrac.gov.au or contact: Richard Williams, Banking Partner, Melbourne, Nicholas Diacos, Banking Partner, Sydney or Craig Green, Banking Partner, Brisbane.

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