



# **Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)**

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

I, Nicole Rose, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 05 January 2018

[signed]  
Nicole Rose PSM  
Chief Executive Officer  
Australian Transaction Reports and Analysis Centre

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## Part 1—Preliminary

### 1 Name

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)*.

### 2 Commencement

This Instrument commences on the day after it is registered.

### 3 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

#### Chapter 1

##### 1 Subparagraph 1.2.1

Repeal the definition of “certified copy”, substitute:

*certified copy* means a document that has been certified as a true copy of an original document by one of the following persons:

- (1) a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in an occupation listed in Part 1 of Schedule 2 of the Statutory Declarations Regulations 1993;
- (2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described);
- (3) a person listed in Part 2 of Schedule 2 of the Statutory Declarations Regulations 1993. For the purposes of these Rules, where Part 2 uses the term ‘5 or more years of continuous service’, this should be read as ‘2 or more years of continuous service’;
- (4) an officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more years of continuous service with one or more licensees;

- (5) an officer with, or a credit representative of, a holder of an Australian credit licence, having 2 or more years of continuous service with one or more licensees;
- (6) a person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents.

*Note:* The *Statutory Declarations Regulations 1993* are accessible through the Commonwealth of Australia law website, [www.legislation.gov.au](http://www.legislation.gov.au)

## **2 Subparagraph 1.2.1**

Repeal the definition of “primary non-photographic identification document”, substitute:

***primary non-photographic identification document*** includes:

- (1) a birth certificate or birth extract issued by a State or Territory;
- (2) a citizenship certificate issued by the Commonwealth;
- (3) a citizenship certificate issued by a foreign government that, if it is written in a language that is not understood by the person carrying out the verification, is accompanied by an English translation prepared by an accredited translator;
- (4) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations that, if it is written in a language that is not understood by the person carrying out the verification, is accompanied by an English translation prepared by an accredited translator;
- (5) a concession card, as defined from time to time in the *Social Security Act 1991*, or an equivalent term which expresses the same concept in relation to concession holders.

## **3 Subparagraph 1.2.1**

Repeal the definition of “primary photographic identification document”, substitute:

***primary photographic identification document*** includes:

- (1) a licence or permit issued under a law of a State or Territory or equivalent authority of a foreign country for the purpose of driving a vehicle that contains a photograph of the person in whose name the document is issued;
- (2) a passport issued by the Commonwealth;
- (3) a passport or a similar document issued for the purpose of international travel, that:
  - (a) contains a photograph and either:

- (i) the signature of the person in whose name the document is issued; or
    - (ii) any unique identifier of the person in whose name the document is issued;
  - (b) is issued by a foreign government, the United Nations or an agency of the United Nations; and
  - (c) if it is written in a language that is not understood by the person carrying out the verification - is accompanied by an English translation prepared by an accredited translator;
- (4) a card issued under a law of a State or Territory for the purpose of proving the person's age which contains a photograph of the person in whose name the document is issued;
- (5) a national identity card issued for the purpose of identification, that:
- (a) contains a photograph and either:
    - (i) the signature of the person in whose name the document is issued; or
    - (ii) any unique identifier of the person in whose name the document is issued;
  - (b) is issued by a foreign government, the United Nations or an agency of the United Nations; and
  - (c) if it is written in a language that is not understood by the person carrying out the verification - is accompanied by an English translation prepared by an accredited translator.

#### **4 Subparagraph 1.2.1**

Repeal the definition of “secondary identification document”, substitute:

*secondary identification document* includes:

- (1) a notice that:
  - (a) was issued to an individual by the Commonwealth, a State or Territory within the preceding twelve months;
  - (b) contains the name of the individual and his or her residential address; and
  - (c) records the provision of financial benefits to the individual under a law of the Commonwealth, State or Territory (as the case may be);
- (2) a notice that:

- (a) was issued to an individual by the Australian Taxation Office within the preceding 12 months;
  - (b) contains the name of the individual and his or her residential address; and
  - (c) records a debt payable to or by the individual by or to (respectively) the Commonwealth under a Commonwealth law relating to taxation;
- (3) a notice that:
- (a) was issued to an individual by a local government body or utilities provider within the preceding three months;
  - (b) contains the name of the individual and his or her residential address; and
  - (c) records the provision of services by that local government body or utilities provider to that address or to that person.
- (4) In relation to a person under the age of 18, a notice that:
- (a) was issued to a person by a school principal within the preceding three months;
  - (b) contains the name of the person and his or her residential address; and
  - (c) records the period of time that the person attended at the school.

## **Chapter 4**

### **5 Subparagraph 4.12.2**

Repeal the subparagraph, substitute:

4.12.2 The requirements of paragraph 4.12.1 may be modified:

- (1) for a customer who is an individual, the reporting entity may assume that the customer and the beneficial owner are one and the same, unless the reporting entity has reasonable grounds to consider otherwise;
- (2) for a customer who is:
  - (a) a company which is verified under the simplified company verification procedure under paragraph 4.3.8 of these Rules;
  - (b) a trust which is verified under the simplified trustee verification procedure under paragraph 4.4.8 of these Rules;

- (c) an Australian Government Entity; or
- (d) a foreign listed public company, or a majority-owned subsidiary of such a company, subject to disclosure requirements (whether by stock exchange rules or through law or enforceable means) that ensure transparency of beneficial ownership;

then,

- (e) paragraph 4.12.1 need not be applied.

## **6 At the end of Part 4.14**

Add:

### **Part 4.15 Procedure to follow where a customer cannot provide satisfactory evidence of identity**

*Reporting entities may only rely on Part 4.15 in limited and exceptional cases where a person does not possess, and is unable to obtain, the necessary information or evidence of identity. This may include: individuals whose birth was not registered, people who are homeless, undocumented arrivals in Australia, people living in remote areas, people who are transgender or intersex, people affected by natural disasters, people with limited access to identity documents (for example because they were raised in institutional or foster care), people with limited participation in society, and young people or those over 18 who have not established a 'social footprint' in the community.*

4.15.1 If a reporting entity is unable to establish the identity of a customer using the applicable customer identification requirements specified in Chapter 4 of the AML/CTF Rules because the customer does not possess, and is unable to obtain, the necessary information or evidence of identity, then it may use alternative identity proofing processes, in accordance with its risk-based systems and controls, to do so.

*Note: Alternative identify proofing processes could include, but are not limited to, acceptance of multiple types of secondary identification documents where normally a primary identification document would be required.*

- 4.15.2 If a reporting entity is unable to establish the identity of a customer in accordance with paragraph 4.15.1, then it may accept a self-attestation from the customer certifying that the information provided in relation to their identity is true and correct.
- 4.15.3 A reporting entity must apply appropriate levels of ongoing customer due diligence in order to identify, mitigate and manage any ML/TF risk associated with customer identities established using self-attestation.
- 4.15.4 A reporting entity must not rely on a self-attestation if it knows or has reason to believe that it is incorrect or misleading.

*Note: Customers and reporting entities seeking to rely on self-attestation to establish identity should be aware that criminal or civil penalties may apply under Part 12 of the AML/CTF Act for providing false or misleading information, producing false or misleading documents, and for providing or receiving a designated service using a false customer name.*

## Chapter 8

### 7 Part 8.1—Part A of a standard anti-money laundering and counter-terrorism financing (AML/CTF) program

Repeal the Part, substitute:

#### **Part 8.1 Part A of a standard anti-money laundering and counter-terrorism financing (AML/CTF) program**

- 8.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to section 229 and (in relation to these Rules in Parts 8.1 to 8.7 and 8.9) for the purposes of paragraphs 36(1)(b) and 84(2)(c) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Part 7 of the AML/CTF Act obliges a reporting entity to adopt and maintain an AML/CTF program relating to the provision of designated services. A standard AML/CTF program is a program that applies to a particular reporting entity. Standard AML/CTF programs are divided into Parts A and B.
- 8.1.2 The primary purpose of Part A of a standard AML/CTF program is to identify, manage and mitigate money laundering or terrorism financing (ML/TF) risk a reporting entity may reasonably face in relation to the provision by the reporting entity of designated services at or through a permanent establishment in Australia. These Rules set out the requirements with which Part A of a standard AML/CTF program must comply.

#### *The risk-based approach and ML/TF risk*

- 8.1.3 Some of the requirements specified in these Rules may be complied with by a reporting entity putting in place appropriate risk-based systems or controls. When determining and putting in place appropriate risk-based systems or controls, the reporting entity must have regard to the nature, size and

complexity of its business and the type of ML/TF risk that it might reasonably face.

8.1.4 For the purposes of these Rules, in identifying its ML/TF risk a reporting entity must consider the risk posed by the following factors:

- (1) its customer types, including any politically exposed persons;
- (2) the types of designated services it provides;
- (3) the methods by which it delivers designated services; and
- (4) the foreign jurisdictions with which it deals.

8.1.5 Part A must be designed to enable the reporting entity to:

- (1) understand the nature and purpose of the business relationship with its customer types, including, as appropriate, the collection of information relevant to that understanding; and
- (2) understand the control structure of non-individual customers;
- (3) identify significant changes in ML/TF risk for the purposes of its Part A and Part B programs, including:
  - (a) risks identified by consideration of the factors in paragraph 8.1.4; and
  - (b) risks arising from changes in the nature of the business relationship, control structure, or beneficial ownership of its customers; and
- (4) recognise such changes in ML/TF risk for the purposes of the requirements of its Part A and Part B programs; and
- (5) identify, mitigate and manage any ML/TF risk arising from:
  - (a) all new designated services prior to introducing them to the market;
  - (b) all new methods of designated service delivery prior to adopting them;
  - (c) all new or developing technologies used for the provision of a designated service prior to adopting them; and
  - (d) changes arising in the nature of the business relationship, control structure or beneficial ownership of its customers.

8.1.6 Part A must include a requirement that, in determining what is an appropriate risk-based procedure for inclusion in Part B of the reporting entity's standard

AML/CTF program, the reporting entity must have regard to ML/TF risk relevant to the provision of the designated service.

*Application*

- 8.1.7 Unless otherwise provided in the AML/CTF Act or these Rules, a reporting entity must apply Part A to all areas of its business that are involved in the provision of a designated service, including in relation to any function carried out by a third party.

**8 Part 8.6—Independent review**

Repeal the Part, substitute:

**Part 8.6 Independent review**

- 8.6.1 Part A must be subject to regular independent review.
- 8.6.2 The frequency of the review should take into account the nature, size and complexity of a reporting entity's business, and the type and level of ML/TF risk it might face.
- 8.6.3 While the review may be carried out by either an internal or external party, the person appointed to conduct the review must not have been involved in undertaking any of the functions or measures being reviewed, including:
- (1) the design, implementation, or maintenance of Part A of a reporting entity's AML/CTF program; or
  - (2) the development of a reporting entity's risk assessment or related internal controls.
- 8.6.4 The reporting entity must be able to demonstrate the independence of the reviewer.
- 8.6.5 The purpose of the review should be to:
- (1) assess the effectiveness of the Part A program having regard to the ML/TF risk of the reporting entity;
  - (2) assess whether the Part A program complies with these Rules;
  - (3) assess whether the Part A program has been effectively implemented; and
  - (4) assess whether the reporting entity has complied with its Part A program.
- 8.6.6 The results of the review, including any report prepared, must be provided to senior management and, where applicable, the governing board of the reporting entity.

## 9 Part 8.7—AUSTRAC feedback

Repeal the Part, substitute:

### **Part 8.7 Incorporation of feedback and guidance on ML/TF risks from AUSTRAC**

8.7.1 In developing and updating Part A of an AML/CTF program, a reporting entity must take into account:

- (1) any applicable guidance material disseminated or published by AUSTRAC; and
- (2) any feedback provided by AUSTRAC in respect of the reporting entity or the industry it operates in,

that is relevant to the identification, mitigation, and management of ML/TF risk arising from the provision of a designated service by that entity.

## Chapter 9

### **10 Part 9.1—Part A of a joint anti-money laundering and counter-terrorism financing (AML/CTF) program**

Repeal the Part, substitute:

#### **Part 9.1 Part A of a joint anti-money laundering and counter-terrorism financing (AML/CTF) program**

9.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to section 229 and (in relation to these Rules in Parts 9.1 to 9.7 and 9.9) for the purposes of paragraphs 36(1)(b) and 85(2)(c) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Part 7 of the AML/CTF Act obliges a reporting entity to adopt and maintain an AML/CTF program relating to the provision of designated services. A joint AML/CTF program is a program that applies to each reporting entity that from time to time belongs to a designated business group. Joint AML/CTF programs are divided into Parts A and B.

9.1.2 The primary purpose of Part A of a joint AML/CTF program is to identify, manage and mitigate ML/TF risk faced by each reporting entity (in a designated business group) in relation to the provision by the reporting entity of designated services at or through a permanent establishment in Australia. These Rules set out the requirements with which Part A of a joint AML/CTF program must comply.

*The risk-based approach and ML/TF risk*

9.1.3 Some of the requirements specified in these Rules may be complied with by putting in place appropriate risk-based systems and controls. In determining

and putting in place appropriate risk-based systems and controls, Part A must have regard to the following factors in relation to each reporting entity in the designated business group:

- (1) the nature, size and complexity of business; and
- (2) the type of ML/TF risk that might be reasonably faced.

9.1.4 For the purposes of these Rules, in identifying the ML/TF risk, Part A must take account of the risk posed by the following factors in relation to each reporting entity in the designated business group:

- (1) the customer types, including any politically exposed persons;
- (2) the types of designated services provided;
- (3) the methods by which designated services are delivered; and
- (4) the foreign jurisdictions dealt with.

9.1.5 Part A must be designed to enable the group to:

- (1) understand the nature and purpose of the business relationship with its customer types, including, as appropriate, the collection of information relevant to that understanding; and
- (2) understand the control structure of non-individual customers;
- (3) identify significant changes in ML/TF risk for the purposes of the group's Part A and Part B programs, including:
  - (a) risks identified by consideration of the factors in paragraph 9.1.4; and
  - (b) risks arising from changes in the nature of the business relationship, control structure or beneficial ownership of its customers; and
- (4) such changes in ML/TF risk to be recognised for the purposes of the requirements of the group's Part A and Part B programs; and
- (5) identify, mitigate and manage any ML/TF risk arising from:
  - (a) all new designated services prior to introducing them to the market;
  - (b) all new methods of designated service delivery prior to adopting them;
  - (c) all new or developing technologies used for the provision of a designated service prior to adopting them; and

- (d) changes arising in the nature of the business relationship, control structure or beneficial ownership of its customers.

9.1.6 Part A must include a requirement that, in determining what is an appropriate risk-based procedure for inclusion in Part B of the reporting entity's joint AML/CTF program, the reporting entity must have regard to ML/TF risk relevant to the provision of the designated service.

*Application*

9.1.7 Unless otherwise provided in the AML/CTF Act or these Rules, each reporting entity in the designated business group must apply Part A to all areas of its business that are involved in the provision of a designated service, including in relation to any function carried out by a third party.

## **11 Part 9.6—Independent review**

Repeal the Part, substitute:

### **Part 9.6 Independent review**

9.6.1 Part A must be subject to regular independent review.

9.6.2 The frequency of the review should take into account the nature, size and complexity of each reporting entity's business, and the type and level of ML/TF risk it might face.

9.6.3 While the review may be carried out by either an internal or external party, the person appointed to conduct the review must not have been involved in undertaking any of the functions or measures being reviewed, including:

- (1) the design, implementation, or maintenance of Part A of the joint AML/CTF program; or
- (2) the development of any of the reporting entities' risk assessments or related internal controls.

9.6.4 The designated business group must be able to demonstrate the independence of the reviewer.

9.6.5 The purpose of the review should be to:

- (1) assess the effectiveness of the Part A program having regard to the ML/TF risk of each reporting entity in the designated business group;
- (2) assess whether the Part A program complies with these Rules;
- (3) assess whether the Part A program has been effectively implemented; and

- (4) assess whether each reporting entity in the designated business group has complied with its Part A program.

9.6.6 The result of the review, including any report prepared, must be provided to senior management and, where applicable the governing board of each reporting entity in the designated business group.

## **12 Part 9.7—AUSTRAC feedback**

Repeal the Part, substitute:

### **Part 9.7 Incorporation of feedback and guidance on ML/TF risks from AUSTRAC**

9.7.1 In developing and updating Part A of a joint AML/CTF program, a reporting entity must take into account:

- (1) any applicable guidance material disseminated or published by AUSTRAC; and
- (2) any feedback provided by AUSTRAC in respect of the reporting entity or the industry it operates in,

that is relevant to the identification, mitigation, and management of ML/TF risk arising from the provision of a designated service by that entity.

## **Chapter 30**

### **13 Chapter 30—Disclosure certificates**

Repeal the Chapter, substitute:

## **CHAPTER 30 Disclosure certificates**

- 30.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for subparagraphs 91(1)(d)(ii), 91(2)(d)(ii) and 91(3)(d)(ii) of that Act, to specify requirements for paragraphs 84(3)(b), 85(3)(b) and 86(1)(c) of that Act. To avoid doubt, disclosure certificates may be used for the purposes of subsection 36(1) of the AML/CTF Act and to the extent necessary to enable that use, these Rules are also made for paragraph 36(1)(b) of the AML/CTF Act.
- 30.2 Part B of a standard, joint or special anti-money laundering and counter-terrorism financing program, may provide that a reporting entity may request that a customer of the type specified in paragraphs 30.6 to 30.12 provide a disclosure certificate, but only in the following circumstances:

- (1) the reporting entity has determined that the information cannot otherwise be reasonably obtained or verified;
  - (2) the information to be provided or verified is reasonably required under the AML/CTF program applying to the reporting entity;
  - (3) the reporting entity has applied the relevant procedures and requirements in its AML/CTF program, but has been unable to obtain or verify the information; and
  - (4) the information is one or more of the items of information specified in paragraphs 30.6 to 30.12.
- 30.3 Reporting entities may accept disclosure certificates that are certified by an appropriate officer of the customer for the purposes of paragraphs 30.6 to 30.12.
- 30.4 An ‘appropriate officer’ in regard to the customer is determined by the reporting entity in accordance with its risk-based systems and controls.
- 30.5 A reporting entity must not rely on a disclosure certificate if it knows or has reason to believe that the information contained in the certificate is incorrect or unreliable.

#### *Domestic Companies*

- 30.6 For paragraph 4.3.11, a disclosure certificate for a domestic company must contain:
- (1) the full name and full residential address of each beneficial owner of the company;
  - (2) the full name of the appropriate officer;
  - (3) a certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate and complete; to the best of their knowledge and belief; and
  - (4) the date of certification by the appropriate officer.

#### *Foreign companies*

- 30.7 For paragraphs 4.3.12 and 4.3.13, a disclosure certificate for a foreign company registered in Australia must contain:
- (1) the full name of the company;
  - (2) information about whether the company is registered by the relevant foreign registration body and if so, whether it is registered as a private or public company or some other type of company;
  - (3) the full name and full residential address of each beneficial owner;

- (4) the full name of the appropriate officer;
- (5) certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete, to the best of their knowledge and belief; and
- (6) the date of certification by the appropriate officer.

30.8 For a foreign company not registered in Australia a disclosure certificate must contain:

- (1) the full name of the company;
- (2) information about whether the company is registered by the relevant foreign registration body and if so:
  - (a) any identification number issued to the company by the relevant foreign registration body upon the company's formation, incorporation or registration;
  - (b) whether it is registered as a private or public company or some other type of company by the relevant foreign registration body;
  - (c) the jurisdiction of incorporation of the foreign company as well as the jurisdiction of the primary operations of the foreign company and the location of the foreign stock or equivalent exchange (if any); and
  - (d) contain the full name and full residential address of each beneficial owner;
- (3) the full name of the appropriate officer;
- (4) certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete, to the best of their knowledge and belief; and
- (5) the date of certification by the appropriate officer.

#### *Trusts*

30.9 For paragraph 4.4.16, a disclosure certificate for a trust must:

- (1) verify KYC information about a trust, where the verification is for the purposes of a procedure of a kind described in paragraph 4.4.6 or 4.4.11, if the KYC information to be verified is not otherwise reasonably available from the sources described in paragraph 4.4.15;
- (2) contain the full name and full residential address of each beneficial owner;

- (3) contain the full name of the appropriate officer;
- (4) contain certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate and complete; to the best of their knowledge and belief; and
- (5) contain the date of certification by the appropriate officer.

#### *Partnerships*

30.10 For paragraph 4.5.8, a disclosure certificate for a partnership must:

- (1) verify KYC information about a partnership, where the verification is for the purposes of a procedure of a kind described in paragraph 4.5.6, if the KYC information to be verified is not otherwise reasonably available from the sources described in paragraph 4.5.7;
- (2) contain the full name and full residential address of each beneficial owner;
- (3) contain the full name of the appropriate officer;
- (4) contain certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete, to the best of their knowledge and belief; and
- (5) contain the date of certification by the appropriate officer.

#### *Associations*

30.11 For paragraph 4.6.8, a disclosure certificate for an incorporated or unincorporated association must:

- (1) verify KYC information about an association, where the verification is for the purposes of a procedure of a kind described in paragraph 4.6.6, if the KYC information to be verified is not otherwise reasonably available from the sources described in paragraph 4.6.7;
- (2) contain the full name and full residential address of each beneficial owner;
- (3) contain the full name of the appropriate officer;
- (4) contain certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete; to the best of their knowledge and belief; and
- (5) contain the date of certification by the appropriate officer.

#### *Registered co-operatives*

- 30.12 For paragraph 4.7.8, a disclosure certificate for a registered co-operative must:
- (1) verify KYC information about a registered co-operative, where the verification is for the purposes of a procedure of a kind described in paragraph 4.7.6, if the KYC information to be verified is not otherwise reasonably available from the sources described in paragraph 4.7.7;
  - (2) contain the full name and full residential address of each beneficial owner;
  - (3) contain the full name of the appropriate officer;
  - (4) contain certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete, to the best of their knowledge and belief; and
  - (5) contain the date of certification by the appropriate officer.

*Note: Reporting entities seeking to rely on a disclosure certificate to verify information should be aware that criminal or civil penalties may apply under Part 12 of the AML/CTF Act for providing false or misleading information, producing false or misleading documents, and for receiving a designated service using a false customer name.*

*Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.*

## **Chapter 36**

### **14 Chapter 36— Exemption of certain designated services within a corporate structure**

Repeal the Chapter, substitute:

## **CHAPTER 36 Exemption of certain designated services within a corporate structure**

- 36.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 and subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 36.2 Subject to paragraph 36.6, the AML/CTF Act does not apply to a designated service that is:

- (1) of a kind described in any item of table 1 in subsection 6(2) of the AML/CTF Act; and
  - (2) provided to a customer that is related to the entity providing the service as described in paragraph 36.4.
- 36.3 Subject to paragraph 36.6, the AML/CTF Act does not apply to a designated service that is:
  - (1) of a kind described in item 48 or item 49 of table 1 in subsection 6(2) of the AML/CTF Act;
  - (2) provided to a lender; and
  - (3) provided where the borrower is related to the entity providing the service as described in paragraph 36.4.
- 36.4 For the purposes of this Chapter a customer and an entity providing a designated service are related if, and only if:
  - (1) the customer and the entity providing the service are related bodies corporate within the meaning of the *Corporations Act 2001*;
  - (2) the customer is controlled by the entity providing the service;
  - (3) the entity providing the service is controlled by the customer;
  - (4) a third entity controls both the customer and the entity providing the service; or
  - (5) the customer and the entity providing the service is a partnership.
- 36.5 Subparagraph 36.4(5) does not apply if the partnership is a limited partnership within the meaning of paragraph (b) of the definition of ‘limited partnership’ for the purpose of the *Income Tax Assessment Act 1997*.
- 36.6 The exemptions in paragraph 36.2 and paragraph 36.3 only apply if:
  - (1) the customer is resident in Australia; or
  - (2) if the customer is not resident in Australia, prior to providing the designated service, the entity providing the service has concluded on reasonable grounds that the money-laundering and terrorism financing risk of providing the service is the same as, or lower than, these risks would be in providing the same service to a substantially similar customer in Australia.
- 36.7 In this Chapter:

‘control’ has the same meaning as in the *Corporations Act 2001*.

*Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.*