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# ***Proposed Anti-Money Laundering/Counter-Terrorism Financing Rules to Tighten Accountability***

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## ***In brief***

The Australian Transaction Reports and Analysis Centre (AUSTRAC) has recently released its proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Rules* for comment.

The proposed Rules significantly expand the functions and duties of a responsible entity's AML/CTF Compliance Officer, creating a personal managerial obligation to ensure the entity's continuing compliance with obligations under the AML/CTF Act and Rules.

The proposed Rules also contain changes to independence requirements for any person conducting a review of a responsible entity's AML/CTF program, and some changes to customer due diligence requirements that appear to be preliminary steps towards a foreshadowed consolidation of Part B into Part A of an AML/CTF program.

Submissions on the proposed amendments to the Rules can be made to AUSTRAC until 22 May 2017.

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## ***In detail***

On 24 April 2017, AUSTRAC published its draft amendments to the Rules following recommendations made after public consultation in relation to the *Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* (the Review) in 2016.

The proposed changes affect Chapters 1, 4, 8, 9, 15, 30 and 36 of the Rules and do not require any changes to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).

### **AML/CTF Compliance Officer function and duties**

The draft Rules clarify that the function of a designated AML/CTF Compliance Officer is to undertake the handling, direction or control of AML/CTF compliance within the responsible entity.

Key responsibilities of the AML/CTF Compliance Officer may now include:

- implementing AML/CTF risk awareness training for staff members;
- implementing the employee due diligence program;

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- liaising with senior management on AML/CTF issues;
  - organising independent reviews of Part A of the AML/CTF program;
  - incorporating into the responsible entity's risk management of any information supplied by AUSTRAC or other relevant authorities on ML/TF risk;
  - implementing any AUSTRAC feedback regarding the responsible entity's risk management performance;
  - implementing any AML/CTF obligations relating to permanent establishments in a foreign country;
  - acting as contact officer for AUSTRAC;
  - contributing to the design, implementation and maintenance of internal AML/CTF compliance manuals, policies, procedure and systems;
  - updating corporate knowledge on ML/TF risks the responsible entity may reasonably face;
  - providing leadership and contributing to a culture of AML/CTF compliance within the responsible entity;
  - conducting initial due diligence on and ongoing evaluation of any third party AML/CTF compliance-related service providers;
  - ensuring the responsible entity keeps relevant records in accordance with Part 10 of the AML/CTF Act;
  - coordinating periodic internal reviews of AML/CTF compliance at branch offices or permanent establishments in a foreign country; and
  - overseeing AML/CTF compliance and/or staff training program to ensure staff awareness of any interaction between the responsible entity and *Privacy Act 1988* (Cth) obligations.

AUSTRAC intends this list to be non-exhaustive and to provide the responsible entity the discretion to implement those duties relevant to its circumstances.

### **Customer due diligence**

The proposed Rules will exempt domestic or foreign majority-owned subsidiaries of a foreign listed company from the requirement to collect and verify beneficial owner information, where the foreign listed company is already subject to disclosure requirements comparable to those in Australia.

In response to difficulties verifying customers, a new section allows for customers to 'self-attest' their identity where a responsible entity cannot obtain satisfactory evidence of identity in accordance with the normal applicable customer identification procedure, but only in circumstances of low ML/TF risk.

The responsible entity must also apply its enhanced customer due diligence program in a broader range of circumstances which involve domestic or international politically exposed persons.

### **Independent review**

As part of a reporting entity's regular review of its AML/CTF program, the proposed Rules will now require the reporting entity to be able to demonstrate the independence of the reviewer appointed to carry out the review.

### **Incorporation of information from AUSTRAC or other relevant authority**

Reporting entities must, under the proposed Rules, adopt appropriate procedures supplied by AUSTRAC or other relevant authorities on high ML/TF risks into their identification, management and mitigation of such risks. This includes information directly provided to a responsible entity as well as published information.

### **Disclosure certificates**

The proposed Rules allow for disclosure certificates to now be 'certified' by an appropriate officer of the customer in place of being signed or authenticated by a director, secretary or AML/CTF Compliance Officer. The meaning of certified has been left intentionally broad by AUSTRAC to allow responsible entities the flexibility to determine what is required based on the level of risk in the circumstances.

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## **Partnerships**

The proposed Rules expand the relationship categories in which the AML/CTF Act does not apply to include partnerships (but excluding limited partnerships) between the customer and entity providing a designated service under the AML/CTF Act.

## **Definitions**

Some definitions have been amended under the proposed Rules:

- ‘Certified copy’ now includes documents certified by foreign country equivalents;
- ‘Primary non-photographic identification document’ is now inclusive;
- ‘Primary photographic identification document’ is now inclusive;
- ‘Secondary identification document’ is now inclusive; and
- National identity cards may now contain any unique identifier of the person named instead of a signature requirement.

## ***The takeaway***

The proposed amendments to the Rules provide some helpful guidance on the function and role of an AML/CTF Compliance Officer. If implemented into your organisation’s AML/CTF program, the new duties create a personal obligation upon the AML/CTF Compliance Officer to take an active approach to identifying, mitigating and managing any ML/TF risks.

The changes support many of the recommendations made in the Review in 2016 to streamline the AML/CTF regime and reduce regulatory burden. However, they represent only a small step towards accomplishing the objectives of the Review. We anticipate that AUSTRAC will release further changes to the AML/CTF regime following public consultation in the coming period.

To have your say on the proposed amendments, you can make submissions over the next few days. If you require any assistance in formulating submissions, please get in touch

## ***Let’s talk***

For a deeper discussion of how these issues might affect your AML/CTF compliance program or your personal obligations as a AML/CTF Compliance Officer, please contact:

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