



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No. 2)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, Neil J Jensen, 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 25 March 2009

[signed]

Neil J Jensen PSM
Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No. 2)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

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

Schedule 1 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

1. After Chapter 28

insert

CHAPTER 29 Record-keeping obligations under section 107

29.1 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 paragraph 107(1)(b) of that Act.

29.2 For paragraph 107(1)(b) of the AML/CTF Act the following records are declared to be exempt:

- (1) customer-specific documents (such as account statements), correspondence and publicly-available statements, forms and documents which a reporting entity routinely provides to its customers, such as disclosure statements, financial or investment analysis or summary reports;
- (2) product or service information, which replicate information retained as a record by the reporting entity;
- (3) general correspondence with customers, such as, but not limited to, promotional materials and general correspondence relating to fees,

service charges, interest rate changes, terms and conditions, technology changes and legislative changes which are not specific to a particular customer;

- (4) overdrawn notices and accompanying correspondence;
- (5) information provided to a customer of a reporting entity on the methods by which a designated service is to be delivered;
- (6) correspondence or similar documents provided by a reporting entity to a customer which relate to, or otherwise document, product or service enquiries or comments from customers, such as customer experience records or requests for information on a product;
- (7) records of interviews or conversations with customers, such as recordings of phone conversations where instructions are received from the customer unless the information contained in such interviews or conversations relates to a reporting obligation under the AML/CTF Act.

Reporting entities should note that exemptions declared by this Chapter only affect record-keeping obligations derived from the AML/CTF Act and do not affect reporting entities' record-keeping obligations under any other legislation.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

**CHAPTER 30 Disclosure certificates obtained by reporting entities
in the course of conducting applicable customer
identification procedures**

- 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), respectively, of that Act.
- 30.2 A reporting entity may request that a customer of the type described in paragraphs 30.3 to 30.9 provide a disclosure certificate only:
- (1) to verify the information specified in these Rules; and
 - (2) if the reporting entity has considered the risk-based systems and controls in place under its AML/CTF program and has reached a conclusion that the information cannot otherwise be reasonably verified.

Companies (other than foreign companies)

- 30.3 For paragraph 4.3.18, a disclosure certificate for a domestic company must:
- (1) be signed or otherwise authenticated by a director or secretary or AML/CTF Compliance Officer or equivalent officer of the company; and
 - (2) contain the name and address of each beneficial owner of the company (if any) of a proprietary or private company.

Foreign companies

- 30.4 For paragraphs 4.3.19 and 4.3.20, a disclosure certificate for a foreign company registered in Australia must:
- (1) be signed or otherwise authenticated by a director or secretary or AML/CTF Compliance Officer or equivalent officer of the company; and
 - (2) contain 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.
- 30.5 For a foreign company not registered in Australia a disclosure certificate must be signed or otherwise authenticated by a director or secretary or AML/CTF Compliance Officer or equivalent officer of the company and contain information about:

- (1) the full name of the company; and
- (2) 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; and
 - (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).

Trusts

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

- (1) be signed or otherwise authenticated by a trustee of the trust; and
- (2) 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.

Partnerships

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

- (1) be signed or otherwise authenticated by a partner of the partnership; and
- (2) 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.

Associations

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

- (1) be signed or otherwise authenticated by a chairman or secretary or treasurer or AML/CTF Compliance Officer or equivalent officer of the association; and
- (2) 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.

Registered co-operatives

30.9 For paragraph 4.7.8, a disclosure certificate for a registered co-operative must be signed or otherwise authenticated by the chairman or secretary or treasurer or AML/CTF Compliance Officer or equivalent officer and 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.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

CHAPTER 31 Exemption of certain types of transactions relating to currency exchange transactions

- 31.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 31.2 Subject to paragraph 31.3, the AML/CTF Act does not apply to the provision of a designated service of the kind described in item 50 of table 1 in subsection 6(2) of the AML/CTF Act.
- 31.3 The exemption in paragraph 31.2 applies only if:
- (1) the designated service is provided in the course of carrying on a business of providing traveller accommodation; and
 - (2) the customer of the designated service is a registered guest at the place of the traveller accommodation; and
 - (3) the currency exchanged must not exceed
 - (a) \$500 (Australian or the foreign equivalent) per registered guest per day; and
 - (b) \$1,000 (Australian or the foreign equivalent) per room account per day; and
 - (4) any charge relating to the designated service that is imposed on the registered guest, is levied to the room account of the registered guest; and
 - (5) the provider of the designated service does not provide any other type of designated services described in subsections 6(2)-(5) of the AML/CTF Act, excepting the provision of the designated service specified in item 47 of table 1 in subsection 6(2) of the AML/CTF Act provided in accordance with the conditions of the Chapter 32 AML/CTF Rules relating to safe deposit boxes or similar facilities.
- 31.4 In this Chapter:
- (1) ‘registered guest’ means an individual who engages sleeping accommodation at the traveller accommodation, the period of which includes the time at which the designated service is provided;
 - (2) ‘traveller accommodation’ means
 - (a) backpacker; or
 - (b) bed and breakfast; or

- (c) hotel; or
- (d) motel; or
- (e) resort; or
- (f) serviced apartment.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

CHAPTER 32 Exemption of certain types of transactions relating to safe deposit boxes or similar facilities

- 32.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 32.2 Subject to paragraph 32.3, the AML/CTF Act does not apply to a designated service of the kind described in item 47 of table 1 in subsection 6(2) of the AML/CTF Act.
- 32.3 The exemption in paragraph 32.2 applies only if:
- (1) the designated service is provided in the course of carrying on a business of providing traveller accommodation; and
 - (2) the customer of the designated service is a registered guest at the place of the traveller accommodation; and
 - (3) the designated service is provided through the provision of a safe deposit box or similar facility located either:
 - (a) in the room of the registered guest and controlled by the registered guest; or
 - (b) outside the room of the registered guest but within the place of the traveller accommodation and controlled by the provider of the traveller accommodation.
- 32.4 In this Chapter:
- (1) ‘registered guest’ means an individual who engages sleeping accommodation at the traveller accommodation, the period of which includes, or is within 1 day of, the time at which the designated service is provided;
 - (2) ‘traveller accommodation’ means
 - (a) backpacker; or
 - (b) bed and breakfast; or
 - (c) hotel; or
 - (d) motel; or
 - (e) resort; or
 - (f) serviced apartment.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

CHAPTER 33 Applicable customer identification procedure for purchases and sales of bullion valued at less than \$5,000

33.1 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 subsection 39(4) of that Act.

33.2 Subject to paragraph 33.3 below, Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:

- (1) is of a kind described in items 1 or 2 of table 2 in subsection 6(3) of the AML/CTF Act; and
- (2) the retail value of the bullion is less than \$5,000 (Australian or the foreign equivalent).

33.3 The exemption in paragraph 33.2 does not apply where a reporting entity determines in accordance with its appropriate risk-based systems and controls that:

- (1) further KYC information should be collected about a customer for ongoing customer due diligence purposes; or
- (2) KYC information should be updated or verified about a customer for ongoing customer due diligence purposes.

33.4 In this Chapter:

- (1) ‘KYC information’ has the meaning given by Chapter 1 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

CHAPTER 34 **Affixing of notices about cross-border movement reporting obligations**

34.1 These Rules are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for paragraphs 61(1)(b) and 61(2)(b) of that Act.

34.2 For section 61(1)(b), a written notice must be in the following form:

- (1) a self-standing sign; or
- (2) a digital/electronic sign; or
- (3) a sign in any other material form.

34.3 For section 61(1)(b), a written notice must contain the following content, with or without the inclusion of any other words:

Australian Government

Australian Transaction Reports and Analysis Centre

Are you carrying funds into or out of Australia?

By law you must now:

If asked by a Customs or police officer, report travellers cheques, cheques, money orders or any other bearer negotiable instrument of any amount

Always report AUD\$10,000 cash or more (or foreign currency equivalent)

Please note there is no limit to the funds you can carry in and out of Australia

34.4 For the purposes of section 61(2)(b), a written notice may be affixed at:

- (1) any port, airport, wharf, or boarding station that is appointed (and, if applicable, the limits of which are fixed) under section 15 of the *Customs Act 1901*; and
- (2) a place to which section 234AA of the *Customs Act 1901* applies that is not a place, or a part of a place, referred to in paragraph 34.4(1).

34.5 In this Chapter:

- (1) 'self-standing sign' includes portable or temporary signage (however described);

- (2) 'digital/electronic sign' includes a monitor or screen (however described) on which electronic images and/or words are capable of being displayed;
- (3) the definition of 'writing' in section 25 of the *Acts Interpretation Act 1901* applies to the form of the written notice.

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 National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.