



Australian Government

**Australian Transaction Reports
and Analysis Centre**

Explanatory Statement – Amendment of the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapter 2 and adding Chapters 44 and 45 of the AML/CTF Rules

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Amendment of Chapter 2 of the AML/CTF Rules

Chapter 2 of the AML/CTF Rules provides the definition of ‘designated business group’ (DBG) for the purposes of section 5 of the AML/CTF Act. The amendment of the Chapter 2 definition allows reporting entities that are a money transfer service provider, a representative or sub-representative of a money transfer service provider, and who provide a registrable designated remittance service through the money transfer service provider’s money transfer service, to form designated business groups.

Designated business groups enable associated business entities to share customer identity information, have a joint AML/CTF program, allow a member of the DBG to lodge group compliance reports and allow a member to discharge various record-keeping obligations under the Act.

Chapter 44 ‘Removing a person’s name and registrable details from the Register of Providers of Designated Remittance Services’

Section 75 of the AML/CTF Act allows for the creation of a Register of Providers of Designated Remittance Services (Register), which is managed by the AUSTRAC CEO. Subsection 75(4) provides that AML/CTF Rules may be made for:

- (a) the correction of entries in the Register of Providers of Designated Remittance Services; and/or

- (b) any other matter relating to the administration or operation of the Register of Providers of Designated Remittance Services

These AML/CTF Rules allow the AUSTRAC CEO to remove a person's name and registrable details from the Register, if the AUSTRAC CEO considers that having the person's name and registrable details on the Register would constitute an unacceptable money laundering or terrorism financing risk. They apply to individuals, body corporates, trusts and partnerships and their representatives.

The Rules also apply to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence. This means that when a person or a representative is charged before a court with an offence mentioned in these Rules and the court is satisfied, in respect of that charge that the charge is proved, but does not proceed to convicting the person, the person is deemed to have been convicted of the offence.

If a person applies for registration after being removed from the Register, that person must provide evidence to satisfy the AUSTRAC CEO that the provision of registrable designated remittance services by the person will not constitute an unacceptable money laundering or terrorism financing risk.

Subsection 74(1) of the AML/CTF Act prohibits a person from providing a registrable designated remittance service if the person's name and registrable details are not entered on the Register.

Chapter 45 'Debt Collection'

Subsection 247(4) of the AML/CTF Act allows exemption from a specified provision of the AML/CTF Act in relation to a designated service that is provided in circumstances specified in the AML/CTF Rules.

These AML/CTF Rules exempt from specified provisions of the Act, those persons who in the capacity of a debt collector, provide certain designated services. Due to the nature of debt collection, it is considered an unnecessary financial and administrative burden for debt collectors to comply with all the requirements of the AML/CTF Act. These AML/CTF Rules do not remove the obligation on debt collectors to make suspicious matter reports under section 41 of the Act.

These AML/CTF Rules do not expressly exempt a reporting entity from a provision of the AML/CTF Act, if the reporting entity is not caught by that provision.

2. Notes on sections

Section 1

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.1)*.

Section 2

This section specifies that the Instrument commences on the day after it is registered.

Section 3

This section contains the Schedules which amend the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* as follows:

Schedule 1

This schedule amends Chapter 2 of the AML/CTF Rules by broadening the definition of ‘designated business group’, with the new provisions being contained at subparagraphs 2.1.2(e) and 2.1.2A. The AML/CTF Rules also insert definitions of ‘money transfer service’ (subparagraph 2.1.3(8)), ‘money transfer service provider’ (subparagraph 2.1.3(9)), ‘representation agreement’ (subparagraph 2.1.3(10)), ‘representative of a money transfer service provider’ (subparagraph 2.1.3(11)), ‘sub-representation agreement’ (subparagraph 2.1.3(12)) and ‘sub-representative of a money transfer service provider’ (subparagraph 2.1.3(13)). The relevant Forms are also amended.

These relationships are shown in diagrammatic form below (it is noted that these diagrams are not part of the Chapter 2 amendments and are for explanatory purposes only):

Explanatory Diagrams

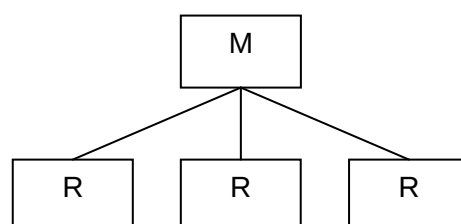
M is a Money Transfer Service Provider

R is a Representative of a Money Transfer Service provider

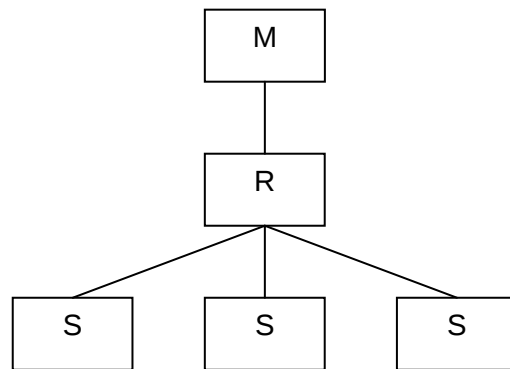
S is a Sub-representative of a Money Transfer Service Provider (who is contracted by a Representative)

Line indicates a contractual relationship

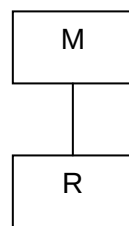
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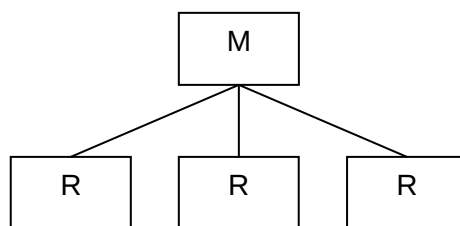
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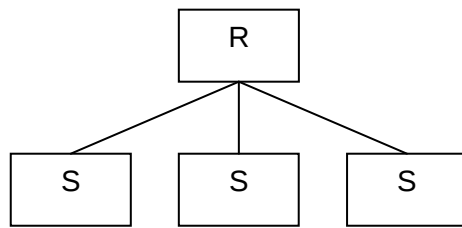
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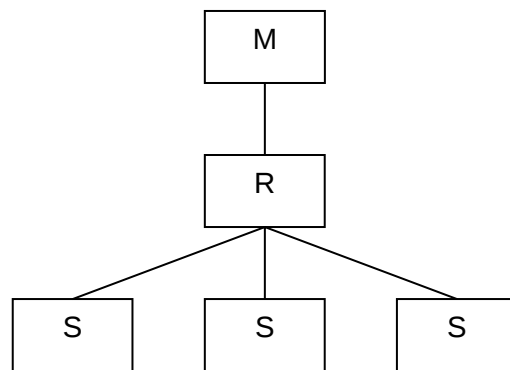
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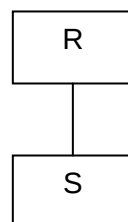
2.1.2A(2)(c)



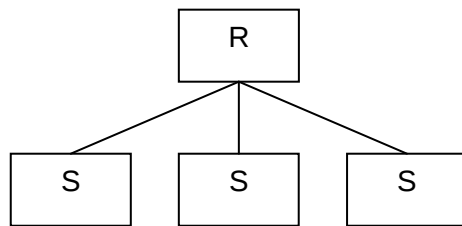
2.1.2A(2)(d)



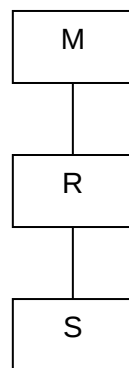
2.1.2A(3)(a)



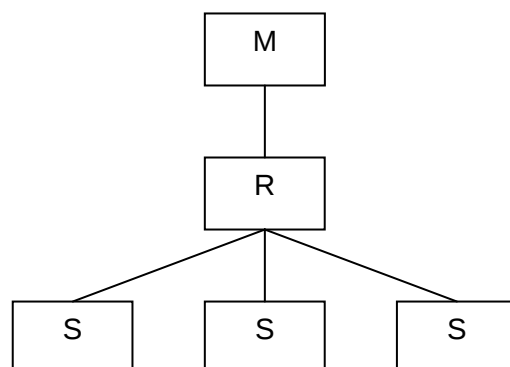
2.1.2A(3)(b)



2.1.2A(3)(c)



2.1.2A(3)(d)



Schedule 2

This schedule adds Chapters 44 and 45.

3. Notes on paragraphs

Chapter 44 ‘Removing a person’s name and registrable details from the Register of Providers of Designated Remittance Services’

Paragraph 44.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of paragraph 75(4)(b) of that Act.

Paragraph 44.2

This paragraph provides that the AUSTRAC CEO may remove from the Register of Providers of Designated Remittance Services (Register), the name and registrable details of a person when the AUSTRAC CEO forms the opinion that having that person’s name and registrable details on the Register would constitute an unacceptable money laundering or terrorism financing risk.

Paragraph 44.3

This paragraph specifies the matters that must be considered by the AUSTRAC CEO when forming an opinion. The paragraph does not limit the matters that the AUSTRAC CEO may consider. They apply to individuals, body corporates, trusts and partnerships and their representatives.

Paragraph 44.4

This paragraph specifies that the AUSTRAC CEO must, within seven days, provide a written notice of a removal to a person whose name and registrable details have been removed from the Register. It also provides that the person removed from the Register may make written submissions in response to the notice and specifies that the AUSTRAC CEO must have regard to the submission and may discuss any matter in the submission with relevant persons.

Paragraph 44.5

This paragraph specifies that if a person whose name and registrable details have been removed from the Register makes an application to have their name and registrable details entered onto the Register, they must provide evidence to satisfy the AUSTRAC CEO that the provision of registrable designated remittance services by the person will not constitute an unacceptable money laundering or terrorism financing risk.

Paragraph 44.6

This paragraph specifies that for the purposes of these AML/CTF Rules, when a person or a representative is charged before a court with an offence mentioned in these Rules and the court is satisfied that the charge is proved, but does not convict that person, the person is deemed to have been convicted of the offence under section 19B of the *Crimes Act 1914* or a corresponding State, Territory or foreign country law.

Paragraph 44.7

This paragraph defines ‘person’ and ‘representative’. ‘Person’ has the same definition as that contained in section 5 of the AML/CTF Act.

Chapter 45 ‘Debt Collection’

Paragraph 45.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 247(4) of that Act.

Paragraph 45.2

This paragraph contains a Table setting out those provisions of the AML/CTF Act that do not apply to reporting entities providing the designated services listed in paragraph 45.3.

Paragraph 45.3

This paragraph specifies that a person acting in the capacity of a debt collector and providing one of the listed designated services, is exempt from the provisions of the AML/CTF listed in paragraph 45.2.

Paragraph 45.4

This paragraph defines ‘debt’, ‘alleged debt’ and ‘debt collector’.

4. Legislative instruments

These AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

5. Likely impact

Amendment of Chapter 2

These AML/CTF Rules will reduce the regulatory burden on those reporting entities which can form DBGs.

Chapter 44

These AML/CTF Rules will have an impact upon those persons whose names and registrable details are removed from the Register as persons must not provide a registrable designated remittance service unless their name and registrable details are entered on the Register. However, it is anticipated that the number of reporting entities who are considered a money laundering or terrorism financing risk by the AUSTRAC CEO will be small.

Chapter 45

These AML/CTF Rules will have a beneficial impact on relevant reporting entities as they will reduce their compliance costs under the AML/CTF Act.

6. Assessment of benefits

Amendment of Chapter 2

These AML/CTF Rules will be beneficial to relevant reporting entities as they will be able to take advantage of the efficiencies which result from being able to form a designated business group. By being able to form a DBG, associated business entities will be able to share customer identity information, have a joint AML/CTF program, allow a member of the DBG to lodge group compliance reports and allow a member to discharge various record-keeping obligations under the Act.

Chapter 44

These AML/CTF Rules will allow the AUSTRAC CEO to reduce money laundering and terrorism financing risk in accordance with the objectives of the AML/CTF Act, by removing from the Register those remitters that through their own actions, or because of the actions of their representatives, present an unacceptable money laundering or terrorism financing risk.

Chapter 45

These AML/CTF Rules will exempt relevant reporting entities from certain provisions of the AML/CTF Act in specified circumstances and therefore will reduce compliance costs for those entities which provide the relevant designated services.

7. Consultation

AUSTRAC has consulted with the Office of the Privacy Commissioner, the Australian Customs Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission, in relation to these AML/CTF Rules. In regard to Chapter 44, AUSTRAC also consulted the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Consumer and Competition Commission, large corporate remitters such as Western Union and Moneygram, and approximately 80 sole person remitters.

AUSTRAC also published a draft of each of these AML/CTF Rules on its website for public comment.

8. Ongoing consultation

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.