

EXPLANATORY STATEMENT

Select Legislative Instrument No. 35, 2014

Issued by the authority of the Minister for Justice

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

*Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation
2014*

Section 252 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part 9 of the Act allows regulations to be made which prohibit or regulate the entering into of transactions with residents of prescribed foreign countries.

The Regulation implements recommendations from the Financial Action Task Force (the inter-governmental organisation of which Australia is a member) for all member jurisdictions to apply effective countermeasures in order to protect their financial sectors from the ongoing and substantial money laundering and terrorism financing risks emanating from Iran.

The Regulation also assists Australia to continue to meet its international obligations in implementing the financial provisions and prohibitions contained in United Nations Security Council Resolutions (UNSCRs) against Iran; in particular, UNSCRs 1803 and 1929, which call upon States to require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in Iran or subject to Iran's jurisdiction.

The Regulation contains two key elements:

- A prohibition – on high risk transactions of AUD20,000 or more, where a party to a transaction is physically in Iran, or is a company incorporated in Iran. High risk transactions have been identified as issuing or dealing with bills of exchange, promissory notes and letters of credit, as well as international funds transfers and remittances.
- An exemption scheme – which provides that the Secretary of the Department of Foreign Affairs and Trade may exempt all transactions of a particular business from the prohibition, or individual transactions on a case-by-case basis. Under the scheme, applications are deemed to be granted after a period of four weeks if no response is provided. Automatic exemptions also apply for transactions involving the Commonwealth, a State or a Territory, and the head of mission or member of the diplomatic staff of either the Iranian Embassy in Australia or the Australian Embassy in Iran.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny Act) 2011*.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Regulation commenced on the day after it was registered on the Federal Register of Legislative Instruments.

Details of the *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 April 2014.

Section 3 – Authority

This section provides that the Regulation is made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Section 4 – Schedule

This section provides that the instrument specified in the Schedule is to be repealed.

Section 5 – Definitions

This section defines key terms used in the Regulation.

Section 6 – Declaration of prescribed foreign country

This section specifies Iran as a prescribed foreign country for the purposes of section 102(2)(b)(iii) of the Act. The listing of Iran as a prescribed foreign country allows Australia to implement countermeasures via regulations.

Section 7 – Prohibition of transactions

This section outlines the prohibition requirements.

A transaction is prohibited if:

- it is a transaction involving the provision of one or more specified designated services by a reporting entity; and
- the reporting entity is aware, or ought reasonably to be aware, at the time of the transaction, that a party to the transaction is an individual who is physically present in Iran, or a corporation incorporated in Iran; and
- the value of the money or property involved in the transaction is not less than AUD20,000; and
- none of the parties to the transaction is the Commonwealth, a State or a Territory, or the head of mission or member of the diplomatic staff of either the Iranian Embassy in Australia or the Australian Embassy in Iran.

The maximum penalty applicable under any countermeasure regulation is 50 penalty units. Section 252 of the Act, which allows the Regulation to be made, also limits the penalty that may be

prescribed. The offences and penalties are set at the maximum allowable limit. This penalty is low considering the intentions of countermeasure regulations.

Sections 8 and 9 – Transaction and personal exemptions

These sections introduce exemptions to the prohibition.

A person may apply to the Secretary of the Foreign Affairs Department for an exemption from the prohibition in section 7. An exemption may be granted if the Secretary considers that it is appropriate to do so given the objects of the Act, and the transaction is:

- necessary for the provision of a basis expense;
- legally or contractually required to satisfy a judgement or agreement made before 1 March 2012 (the day the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008* came into force);
- is a significant trade transaction that, if not completed, would have an adverse effect on Australia's relationship with Iran or the viability of an Australian business; or
- a humanitarian transaction related to the provision of aid or humanitarian services.

A transaction exemption applies to a specific transaction or a series of related transactions, while a personal exemption applies to all transactions to or from Iran by the exempt person for the life of the exemption.

Applications for transaction exemptions will be automatically granted if no response is provided within 28 days of an application being made. During this 28 day period, the Secretary may provide the person with written notice that the application is still being considered. If no further response is received from the Secretary within 56 days of the application being made, the application is deemed to be granted.

The exemption scheme will be administered by the Department that deals with external affairs, currently the Department of Foreign Affairs and Trade, on the basis that the scheme overlaps with its existing role in administering the sanctions regime for Iran. The Department that deals with external affairs is also best placed to assess the significant trade exemption criteria.

Schedule 1 - Repeal

This section specifies that the whole of the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008* are to be repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014* implements recommendations from the Financial Action Task Force for all jurisdictions to apply effective countermeasures in order to protect their financial sectors from the ongoing and substantial money laundering and terrorism financing risks emanating from Iran. The measures are designed to prevent criminal elements from exploiting the weaknesses in Iran's anti-money laundering and counter terrorism financing (AML/CTF) regime and the deficiencies in its implementation.

The Regulation also assists Australia to meet its international obligations in implementing the financial provisions and prohibitions contained in United Nations Security Council Resolutions (UNSCRs) against Iran; in particular, UNSCRs 1803 and 1929, which call upon States to require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in Iran or subject to Iran's jurisdiction.

The Regulation contains two key elements:

- A prohibition – on high risk transactions of AUD20,000 or more, where a party to a transaction is physically in Iran, or is a company incorporated in Iran.
- An exemption scheme – which provides that the Secretary of the Department of Foreign Affairs and Trade may exempt all transactions of a particular business from the prohibition, or individual transactions on a case-by-case basis. Under the scheme, applications are deemed to be granted after a period of four weeks if no response is provided. Automatic exemptions also apply for transactions involving the Commonwealth, a State or a Territory, and the head of mission or member of the diplomatic staff of either the Iranian Embassy in Australia or the Australian Embassy in Iran.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Michael Keenan MP
Minister for Justice