



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 1)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, Paul Jevtovic, 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 22 January 2015

[signed]

Paul Jevtovic
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 2015 (No. 1)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

- (a) Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*;
- (b) Schedule 2 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. Chapter 4

Item 1 For subparagraph 4.12.2(2)

Repeal the subparagraph, *substitute*:

- (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) for a customer who is a foreign listed public company subject to disclosure requirements (whether by stock exchange rules or by law or enforceable means) to ensure transparency of beneficial ownership which are the same as, or are comparable to, the requirements in Australia;

then,

- (e) paragraph 4.12.1 need not be applied.

Schedule 2 **Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

1. Chapter 63

Item 1 For paragraph 63.1

Repeal the paragraph, substitute:

63.1. 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 the purposes of subsection 51C(4) and paragraph 51E(2)(b) of that Act.

Item 2 For paragraph 63.5

Repeal the paragraph, substitute:

63.5. In this Chapter:

- (1) 'ADI' (short for authorised deposit-taking institution) has the same meaning as in the AML/CTF Act;
- (2) 'annual financial statements' means:
 - (a) if the person has an obligation under Part 2M.3 of the *Corporations Act 2001*:
 - (i) the financial report (or foreign equivalent) for the most recent financial year before the census day;
 - (b) if the person does not have an obligation under Part 2M.3 of the *Corporations Act 2001*:
 - (i) those consolidated documents which are used to calculate the EBITDA for the most recent financial year before the census day;
- (3) 'Australian Government Entity' means:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an agency or authority of:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory; or

- (c) a local governing body established by or under a law of the Commonwealth, a State or Territory, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water;
- (4) ‘authorised individual’ means a natural person who is:
 - (a) a beneficial owner;
 - (b) an officer as defined in section 9 of the *Corporations Act 2001*;
 - (c) an agent of the person;
 - (d) a nominee pursuant to subsection 8(2) of the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* who has been authorised in writing by the person to act on their behalf as a nominee; or
 - (e) an employee of the person who has been authorised in writing by the person to act on their behalf;
- (5) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;
- (6) ‘company’ has the same meaning as in the *Corporations Act 2001*;
- (7) ‘consolidated documents’ means those documents which contain financial information relating to the calculation of earnings;
- (8) ‘earnings’, in relation to a leviable entity, means:
 - (a) if the leviable entity is an ADI or a registered financial corporation – the total profit before tax, depreciation and amortisation (PBTDA), not adjusted for significant items; or
 - (b) if the leviable entity is a member of a group of leviable entities and any member of that group is an ADI or a registered financial corporation – PBTDA, not adjusted for significant items; or
 - (c) in any other case – the total earnings before tax, interest, depreciation and amortisation (EBITDA), not adjusted for significant items;

of the leviable entity, for a year ending in the previous financial year, the details of which have been recorded in accordance with the requirements for the roll maintained by the AUSTRAC CEO under section 51C of the AML/CTF Act;

Note: The above definition recognises that leviable entities may have annual accounting periods that end on a date other than 30 June in any year.

- (9) 'financial report' has the same meaning as in section 9 of the *Corporations Act 2001*;
- (10) 'foreign company' has the same meaning as in the *Corporations Act 2001*;
- (11) 'group of leviable entities' means all leviable entities that are related bodies corporate;
- (12) 'instalment of levy' means an amount of levy imposed by a determination under subsection 9(1) of the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*;
- (13) 'leviable entity', in relation to the financial year, has the same meaning as in the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*;
- (14) 'person' has the same meaning as in the AML/CTF Act;
- (15) 'previous financial year' means the financial year beginning on 1 July of the financial year immediately preceding the census day;
- (16) 'registered financial corporation' has the same meaning as 'registered entity' in the *Financial Sector (Collection of Data) Act 2001*;
- (17) 'related bodies corporate' has the same meaning as in the *Corporations Act 2001*;
- (18) 'significant items' means a revenue or an expense from ordinary activities of such size, nature or incidence that its disclosure is relevant to the Australian Accounting Standard AASB 1018 (5.4);
- (19) 'subsidiary' has the same meaning as in the *Corporations Act 2001*;
- (20) 'ultimate holding company' has the same meaning as in the *Corporations Act 2001*.

Item 3 For Item 16(a) in Part A of the Schedule in Chapter 63

Omit "a", substitute "an".

Item 4 For the heading preceding Item 21 in Part A of the Schedule in Chapter 63

Repeal the heading, substitute:

Earnings information and the AUSTRAC Industry Contribution

Item 5 For Item 21 in Part A of the Schedule in Chapter 63

Repeal the item, substitute:

21. The earnings of the person for a year ending in the financial year immediately preceding the census day, if the circumstances described below apply:

Note: If an earnings figure is required to be provided it may need to be updated each year as required by the AML/CTF Rules made under section 51F of the AML/CTF Act which deal with the requirement to update 'enrolment details'.

When earnings details have to be provided

- (a) that entity is not part of a group of leviable entities and has earnings equal to or greater than \$100,000,000; or
- (b) that entity is part of a group of leviable entities where the total earnings of the group of leviable entities is equal to or greater than \$100,000,000; or
- (c) that entity is a foreign company or a subsidiary of a foreign company and is not part of a group of leviable entities and the earnings of the entity derived from operations in Australia is equal to or greater than \$100,000,000; or
- (d) that entity is part of a group of leviable entities where one or more entities is a foreign company or a subsidiary of a foreign company ('foreign leviable entity') and the total earnings of all of the foreign leviable entities from operations in Australia is:
 - (i) equal to or greater than \$100,000,000;or
 - (ii) (A) less than \$100,000,000; and
 - (B) the total earnings of the foreign leviable entity or entities from operation in Australia and the total earnings of all other leviable entities in the group is equal to or greater than \$100,000,000;

comprising:

- (e) where the person is an ADI or a Registered Financial Corporation, and is not a foreign company:
 - (i) the total profit before tax, depreciation and amortisation (PBTDA), not adjusted for significant items; or
- (f) where the person is a member of a group of leviable entities and any member of that group is an ADI or a Registered Financial Corporation, and the person is not a foreign company:

- (i) the PBTDA, not adjusted for significant items; or
- (g) where the person is an ADI or a Registered Financial Corporation, and the person is a foreign company:
 - (i) the PBTDA, not adjusted for significant items derived from its operations in Australia; or
- (h) where the person is a member of a group of leviable entities and any member of that group is an ADI or a Registered Financial Corporation, and the person is a foreign company:
 - (i) the PBTDA, not adjusted for significant items derived from its operations in Australia; or
- (i) where the person is not an ADI or a Registered Financial Corporation, and is not a foreign company:
 - (i) the total earnings before tax, interest, depreciation and amortisation (EBITDA), not adjusted for significant items; or
- (j) where the person is a member of a group of leviable entities and none of the members is an ADI or a Registered Financial Corporation, and the person is not a foreign company:
 - (i) the EBITDA, not adjusted for significant items; or
- (k) where the person is not an ADI or a Registered Financial Corporation, and is a foreign company:
 - (i) the EBITDA, not adjusted for significant items derived from its operations in Australia; or
- (l) where the person is a member of a group of leviable entities and none of the members is an ADI or a Registered Financial Corporation, and the person is a foreign company:
 - (i) the EBITDA, not adjusted for significant items derived from its operations in Australia;

Item 6 For Item 1 in Part B of the Schedule in Chapter 63

Omit “date,”, substitute “day,”.

2. Chapter 65

Item 1 For paragraph 65.1

Repeal the paragraph, substitute:

- 65.1. 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 the purposes of paragraph 51G(2)(b) of that Act.

Item 2 For subparagraph 65.5.(1)(d)

Repeal the subparagraph, substitute:

- (d) a nominee pursuant to subsection 8(2) of the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* who has been authorised in writing by the person to act on their behalf as a nominee; or