



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No. 1)

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 16 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. 1)*.

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 27

insert

CHAPTER 28 Applicable customer identification procedures in certain circumstances – assignment, conveyance, sale or transfer of businesses

- 28.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 28.2. Subject to paragraphs 28.4 and 28.5, Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that is provided in the circumstances specified in paragraph 28.3.
- 28.3. The specified circumstances for the purposes of paragraph 28.2 are that:
- (1) reporting entity one has assigned, conveyed, sold or transferred the whole or a part of its business to reporting entity two;
 - (2) the designated service is provided to a transferring customer; and
 - (3) prior to the assignment, conveyance, sale or transfer, reporting entity two has reasonably determined:

- (a) the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
- (b) that it has in place appropriate risk-based systems and controls to identify, manage and mitigate the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
- (c) based on the assessed ML/TF risk and its risk-based systems and controls, it is reasonable for it to either:
 - (i) rely upon the applicable customer identification procedure of reporting entity one as an appropriate means to identify and verify the identification of a transferring customer; or
 - (ii) treat a transferring customer who was a pre-commencement customer of reporting entity one as if the customer was a pre-commencement customer of reporting entity two.

28.4. Reporting entity two must, within 14 days after any of the circumstances specified in paragraph 28.5 comes into existence, take one or more of the actions specified below:

- (1) carry out the applicable customer identification procedure, unless reporting entity two has previously carried out that procedure or a comparable procedure; or
- (2) collect any KYC information in respect of the customer; or
- (3) verify, from a reliable and independent source, KYC information that has been obtained in respect of the customer, as is appropriate to the ML/TF risk relevant to the provision of the designated service by reporting entity two;

for the purpose of enabling reporting entity two to be reasonably satisfied that the customer is the person that he or she claims to be.

28.5. For the purposes of paragraph 28.4 the following circumstances are specified:

- (1) a suspicious matter reporting obligation arises in relation to a transferring customer; or
- (2) reporting entity two reasonably suspects that reporting entity one did not carry out the applicable customer identification procedure when required; or
- (3) a significant increase has occurred in the level of ML/TF risk as assessed under the AML/CTF program of reporting entity two, in relation to the provision of a designated service by reporting entity two to a transferring customer.

28.6. In this Chapter:

- (1) 'reporting entity one' means the reporting entity that assigns, conveys, sells or transfers a whole or a part of the business;
- (2) 'reporting entity two' means the reporting entity to which reporting entity one assigns, conveys, sells or transfers a whole or a part of the business;
- (3) 'transferring customer' means a customer who is a customer of reporting entity two in relation to a designated service solely because of the assignment, conveyance, sale or transfer of the whole or a part of the business from reporting entity one.

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.