



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No. 3)

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 June 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. 3)*.

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 Amendment Instrument 2007 (No. 5)*.

Schedules 2, 3 and 4 amend 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 Amendment Instrument 2007 (No. 5)***

Schedule 3, item 1, subparagraph 19.3(1)(aa)

Omit
operates;

Insert
operates, if known;

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

Chapter 1, subparagraph 1.2.1

Omit

In the Rules in chapters 3 to 10 inclusive:

Insert

In these Rules:

accredited translator means:

- (1) a person currently accredited by the National Accreditation Authority for Translators and Interpreters Ltd. (NAATI) at the level of Professional Translator, or above, to translate from a language other than English into English; or
- (2) a person who currently holds an accreditation that is consistent with the standard specified in (1).

Chapter 19, subparagraph 19.3(1)(aa)

Omit
operates;

Insert
operates, if known;

Schedule 3 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

Chapter 2

Repeal the Chapter

Insert

Chapter 2

Part 2.1 Definition of ‘*designated business group*’

2.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of the definition of ‘designated business group’ in section 5 of the AML/CTF Act.

2.1.2 For the purposes of the definition of ‘designated business group’ in section 5 of the AML/CTF Act:

- (1) an election will be made in accordance with the AML/CTF Rules if it is made on the approved election form and provided to AUSTRAC by the Nominated Contact Officer;

- (2) a 'designated business group' is established when the approved form is provided to the AUSTRAC CEO by the Nominated Contact Officer or on such later date as is specified on that form; and
- (3) the members of a designated business group must, by their Nominated Contact Officer, notify the AUSTRAC CEO, in writing, in the approved form, of any of the following:
 - (a) a withdrawal of a member from the designated business group; or
 - (b) an election of a new member; or
 - (c) the termination of the designated business group; or
 - (d) any other change in the details previously notified to the AUSTRAC CEO in respect of the Nominated Contact Officer or the designated business group;

no later than 14 business days from the date on which the withdrawal, election of the new member, termination or change takes effect.

- (4) each member of the designated business group must be:
 - (a) related to each other member of the group within the meaning of section 50 of the *Corporations Act 2001*; and either
 - (i) a reporting entity; or
 - (ii) a company in a foreign country which if it were resident in Australia would be a reporting entity; or
 - (b) providing a designated service pursuant to a joint venture agreement, to which each member of the group is a party; or
 - (c) able to satisfy the following conditions:
 - be
 - (i) an accounting practice; or
 - (ii) a person, other than an individual, which the accounting practice in (i) controls; or
 - (iii) an accounting practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the group is a party; or
 - (iv) a person that provides or assists in the provision of a designated service to the customers of the accounting practice;

and either:

- (v) a reporting entity; or
- (vi) an entity in a foreign country which, if it were resident in Australia would be a reporting entity; or

(d) able to satisfy the following conditions:

be

- (i) a law practice; or
- (ii) a person, other than an individual, which the law practice in (i) controls; or
- (iii) a law practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the group is a party; or
- (iv) a person that provides or assists in the provision of a designated service to the customers of the law practice;

and either:

- (v) a reporting entity; or
- (vi) an entity in a foreign country which, if it were resident in Australia would be a reporting entity.

2.1.3 In this Chapter:

- (1) 'approved election form' means Form 1 attached to these Rules;
- (2) 'approved form' for the purposes of sub-rule 2.1.2(2) means Form 2 attached to these Rules;
- (3) 'approved form' for the purposes of sub-rule 2.1.2(3) means Form 3 attached to these Rules;
- (4) 'company' has the same meaning as in the *Corporations Act 2001*;
- (5) 'Nominated Contact Officer' means the holder from time to time of one of the following positions:
 - (a) an 'officer' as defined in the *Corporations Act 2001*, of a member of a designated business group; or
 - (b) the AML/CTF Compliance Officer of a member of a designated business group,

where that officer or compliance officer has been appointed by the designated business group to hold the position of the Nominated Contact Officer;

- (6) 'accounting practice' means a business carried on by either of the following:
 - (a) an accountant (however described) that supplies professional accounting services; or
 - (b) a partnership or company that uses accountants (however described) to supply professional accounting services;
- (7) 'law practice' means a business carried on by either of the following:
 - (a) a legal practitioner (however described) that supplies professional legal services; or
 - (b) a partnership or company that uses legal practitioners (however described) to supply professional legal services.

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.

Form 1

FORM FOR SUB-PARAGRAPH 2.1.2(1) OF THE RULES: ELECTION TO BE A MEMBER OF A DESIGNATED BUSINESS GROUP

For the purposes of the Anti-Money Laundering and Counter-Terrorism Financing Rules made pursuant to section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and of the definition of ‘designated business group’ in section 5 of the AML/CTF Act:

I, [name and role/title of Y], hereby elect on behalf of Y, to be a member of [name of Designated Business Group]. I hereby confirm that:

- (a) Y Pty Ltd, is a reporting entity related to each member of [name of Designated Business Group] within the meaning of section 50 of the *Corporations Act 2001*; or
- (b) Y Pty Ltd, is providing a designated service pursuant to a joint venture agreement to which each member of [name of Designated Business Group] is a party; or
- (c) Y Pty Ltd, is a foreign company which, if it were resident in Australia would be a reporting entity, and is, within the meaning of section 50 of the *Corporations Act 2001*, related to [name of related company] which is a member of [name of Designated Business Group] and which is a reporting entity; or
- (d) Y is a reporting entity or is an entity in a foreign country, which if it were resident in Australia would be a reporting entity, and is:
 - (i) an accounting practice as defined in Rule 2.1.3(6); or
 - (ii) a person, other than an individual, which the accounting practice in (i) controls; or
 - (iii) an accounting practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the [name of Designated Business Group] group is a party; or
 - (iv) a person that provides or assists in the provision of a designated service to the customers of the accounting practice; or
- (e) Y is a reporting entity or is an entity in a foreign country, which if it were resident in Australia would be a reporting entity, and is:
 - (i) a law practice as defined in Rule 2.1.3(7); or

- (ii) a person, other than an individual, which the law practice in (i) controls; or
- (iii) a law practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the [name of Designated Business Group] group is a party; or
- (iv) a person that provides or assists in the provision of a designated service to the customers of the law practice.

DATE:

Form 2

FORM FOR SUB-PARAGRAPH 2.1.2(2) OF THE RULES: FORMATION OF A DESIGNATED BUSINESS GROUP

For the purposes of the Anti-Money Laundering and Counter-Terrorism Financing Rules made pursuant to section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and of the definition of ‘designated business group’ in section 5 of the AML/CTF Act:

I, [name and role/title of X], notify AUSTRAC that [role/title of X] is the Nominated Contact Officer of [name of Designated Business Group]. I currently hold that position. My contact details are:

Address:

Phone number:

Fax number:

Email address:

I [name] as the Nominated Contact Officer of [name of Designated Business Group] hereby notify AUSTRAC of the establishment of [name of Designated Business Group].

The following have elected to be members of [name of Designated Business Group]:

[name of member]

[name of member]

DATE:

Form 3

FORM FOR SUB-PARAGRAPH 2.1.2(3) OF THE RULES: VARIATIONS

For the purposes of the Anti-Money Laundering and Counter-Terrorism Financing Rules made pursuant to section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and of the definition of 'designated business group' in section 5 of the AML/CTF Act:

I, [Nominated Contact Officer of X], being the Nominated Contact Officer of [name of Designated Business Group] hereby advise the AUSTRAC CEO of the following variations to [name of Designated Business Group]:

- (a) [withdrawal detail];
- (b) [election detail];
- (c) [termination];
- (d) [any other change]

Election forms are attached.

DATE:

Schedule 4

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

1. After Chapter 34

insert

CHAPTER 35 Exemption from applicable customer identification procedures for correspondent banking relationships

- 35.1 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).
- 35.2 Division 4 of Part 2 of the AML/CTF Act does not apply to a reporting entity which is a financial institution providing a designated service that:
- (1) is either:
 - (a) of a kind described in item 2 of table 1 in subsection 6(2) of the AML/CTF Act; or
 - (b) of a kind described in item 3 of table 1 in subsection 6(2) of the AML/CTF Act; and
 - (2) relates to a correspondent banking relationship; and
 - (3) occurs in one of the circumstances set out in section 100 of the AML/CTF Act; and
 - (4) relates to signatories to the account who are employees of the other financial institution.

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.