



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No. 4)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, Jane Elizabeth Atkins, Acting 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 20 August 2009

[signed]

Jane Elizabeth Atkins
Acting 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. 4)*.

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. Chapter 1, subparagraph 1.2.1

For the definition of ***certified copy*** substitute:

certified copy means a document that has been certified as a true copy of an original document by one of the following persons:

- (1) a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in an occupation listed in Part 1 of Schedule 2 of the *Statutory Declarations Regulations 1993*;
- (2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described);
- (3) a person listed in Part 2 of Schedule 2 of the *Statutory Declarations Regulations 1993*. For the purposes of these Rules, where Part 2 uses the term ‘5 or more years of continuous service’, this should be read as ‘2 or more years of continuous service’;
- (4) an officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more years of continuous service with one or more licensees.

Note: The *Statutory Declarations Regulations 1993* are accessible through the Commonwealth of Australia law website, www.comlaw.gov.au

2. Chapter 1, subparagraph 1.2.1

For the definition of ***certified extract*** substitute:

certified extract means an extract that has been certified as a true copy of some of the information contained in a complete original document, by one of the persons described in paragraphs (1)-(4) of the definition of ‘certified copy’ in paragraph 1.2.1 of these Rules.

3. After Chapter 35

insert

Chapter 36 Exemption of certain designated services within a corporate structure

- 36.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 and subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 36.2 Subject to paragraph 36.5, the AML/CTF Act does not apply to a designated service that is:
- (1) of a kind described in any item of table 1 in subsection 6(2) of the AML/CTF Act; and
 - (2) provided to a customer that is related to the entity providing the service as described in paragraph 36.4.
- 36.3 Subject to paragraph 36.5, the AML/CTF Act does not apply to a designated service that is:
- (1) of a kind described in item 48 or item 49 of table 1 in subsection 6(2) of the AML/CTF Act;
 - (2) provided to a lender; and
 - (3) provided where the borrower is related to the entity providing the service as described in paragraph 36.4.
- 36.4 For the purposes of this Chapter a customer and an entity providing a designated service are related if, and only if:
- (1) the customer and the entity providing the service are related bodies corporate within the meaning of the *Corporations Act 2001*;
 - (2) the customer is controlled by the entity providing the service;
 - (3) the entity providing the service is controlled by the customer;
- or
- (4) a third entity controls both the customer and the entity providing the service.
- 36.5 The exemptions in paragraph 36.2 and paragraph 36.3 only apply if:

- (1) the customer is resident in Australia; or
- (2) if the customer is not resident in Australia, prior to providing the designated service, the entity providing the service has concluded on reasonable grounds that the money-laundering and terrorism financing risk of providing the service is the same as, or lower than, these risks would be in providing the same service to a substantially similar customer in Australia.

36.6 In this Chapter:

‘control’ has the same meaning as in the *Corporations Act 2001*.

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.

Chapter 37 Exemption from threshold transaction reporting for certain designated services

- 37.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 44(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 37.2 Section 43 of the AML/CTF Act does not apply to a designated service that involves a threshold transaction in circumstances where:
- (1) the designated service is provided by an ADI to a customer which is an ADI; or
 - (2) the designated service is provided by the Reserve Bank of Australia to a customer which is the holder of an Exchange Settlement Account; or
 - (3) the designated service is provided by the holder of an Exchange Settlement Account to a customer which is the holder of an Exchange Settlement Account; or
 - (4) the designated service is of a kind described in:
 - (a) item 51 of table 1 in subsection 6(2) in the AML/CTF Act; or
 - (b) item 53 of table 1 in subsection 6(2) in the AML/CTF Act;
- and relates wholly to a transaction between one ADI and another ADI.

37.3 In this Chapter:

- (1) ‘Exchange Settlement Account’ means an account held at the Reserve Bank of Australia which is used for the final settlement of obligations between Exchange Settlement Account holders.

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.

Chapter 38 Exemption from applicable customer identification procedures for the sale of shares for charitable purposes

- 38.1 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).
- 38.2 Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:
- (1) is a disposal of the kind described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act; and
 - (2) the disposal occurs on a prescribed financial market; and
 - (3) the value of the security does not exceed \$500; and
 - (4) the agent gives the proceeds of the disposal directly to a charitable fund or charitable institution that provides an undertaking to:
 - (a) distribute, by cheque and/or electronic funds transfer, the proceeds of the disposal of the security to a deductible gift recipient before the end of the financial year in which it receives the proceeds; and
 - (b) list on its public website within 14 business days, for a period of 12 months, the details of the distribution of the proceeds of the disposal of the security to the deductible gift recipient.
- 38.3 In this Chapter:
- (1) ‘deductible gift recipient’ has the meaning given by section 995.1 of the *Income Tax Assessment Act 1997*;
 - (2) ‘prescribed financial market’ has the meaning given by section 9 of the *Corporations Act 2001*;
 - (3) ‘charitable fund’ means a fund established in Australia for public charitable purposes pursuant to items 1.5 or 1.5B of section 50-5 of the *Income Tax Assessment Act 1997*;
 - (4) ‘charitable institution’ means an establishment, organisation or association that is instituted and operated in Australia to advance or promote a charitable purpose pursuant to item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997*.

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.

Chapter 39 Exemption from applicable customer identification procedures - premium funding loans for a general insurance policy

- 39.1 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).
- 39.2 Section 32 of the AML/CTF Act does not apply to a designated service that:
- (1) is of a kind described in item 6 of table 1 in subsection 6(2) of the AML/CTF Act and is a premium funding agreement; or
 - (2) is of a kind described in item 7 of table 1 in subsection 6(2) of the AML/CTF Act and is in relation to a loan that is a premium funding agreement.
- 39.3 This Chapter is repealed on 30 June 2011.
- 39.4 In this Chapter:
- (1) 'premium funding agreement' means an agreement under which—
 - (a) a person agrees to make a loan to the customer to be applied
 - (i) against an amount payable for premiums under a policy of insurance that is not a life policy or sinking fund policy; or
 - (ii) against an amount payable in connection with such a policy of general insurance (including, but not limited to, fees for advice or services provided in connection with such a policy and taxes payable in connection with such a policy);and
 - (b) the person obtains from the customer, as security for payment of the loan, one or more of the following:
 - (i) an assignment of the customer's interest in the policy;
 - (ii) an assignment of all amounts payable under the policy;

- (iii) a power of attorney providing at least a right to cancel the policy.

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.