



# **Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No. 1)**

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

I, John Lance Schmidt, 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 14 April 2010

[Signed]  
John Lance Schmidt  
Chief Executive Officer  
Australian Transaction Reports and Analysis Centre

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**1 Name of Instrument**

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.1)*.

**2 Commencement**

This Instrument commences on the day after it is registered.

**3 Amendment**

Schedules 1 and 2 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 Instrument 2007 (No. 1)*.**

**1.        At the end of Chapter 2, subparagraph 2.1.2(4)(d)**

*Omit*

‘;’

*Insert*

‘; or’

**2.        Insert after subparagraph 2.1.2(4)(d):**

- (e)        Subject to the requirements in paragraph 2.1.2A, be a reporting entity that provides a registrable designated remittance service, either:
  - (i)        as a money transfer service provider; or
  - (ii)       as a representative of a money transfer service provider pursuant to a representation agreement with a money transfer service provider; or

- (iii) as a sub-representative of a money transfer service provider pursuant to a sub-representation agreement with the representative of the money transfer service provider.

2.1.2A The following conditions apply to a reporting entity that elects to form or vary a designated business group with other reporting entities pursuant to subparagraph 2.1.2(4)(e):

- (1) a person who meets the criteria specified at subparagraph 2.1.2(4)(e)(i) may form or vary a designated business group with one of the following:
  - (a) a person or persons with whom they have a representation agreement; or
  - (b)
    - (i) a person with whom they have a representation agreement; and
    - (ii) a person or persons with whom the person described at subparagraph 2.1.2A(1)(b)(i) has a sub-representation agreement.
- (2) a person who meets the criteria specified at subparagraph 2.1.2(4)(e)(ii) may form or vary a designated business group with one of the following:
  - (a) the person with whom they have a representation agreement; or
  - (b)
    - (i) the person with whom they have a representation agreement; and
    - (ii) a person or persons who have a representation agreement with the person described at subparagraph 2.1.2A(2)(b)(i); or
  - (c)
    - (i) a person or persons who meet the conditions specified at subparagraph 2.1.2(4)(e)(iii); and
    - (ii) with whom they have a sub-representation agreement; or
  - (d)
    - (i) the person with whom they have a representation agreement; and

- (ii) (A) a person or persons who meet the conditions specified at subparagraph 2.1.2(4)(e)(iii); and
    - (B) with whom they have a sub-representation agreement.
- (3) a person who meets the conditions specified at subparagraph 2.1.2(4)(e)(iii) may form or vary a designated business group with one of the following:
  - (a) the person with whom they have a sub-representation agreement; or
  - (b)
    - (i) the person with whom they have a sub-representation agreement; and
    - (ii) a person or persons who have a sub-representation agreement with the same person described at subparagraph 2.1.2A(3)(a); or
  - (c)
    - (i) the person with whom they have a sub-representation agreement; and
    - (ii) the person with whom the person described at subparagraph 2.1.2A(3)(c)(i) has a representation agreement; or
  - (d)
    - (i) the person with whom they have a sub-representation agreement; and
    - (ii) the person with whom the person described at subparagraph 2.1.2A(3)(d)(i) has a representation agreement; and
    - (iii) a person or persons who have a sub-representation agreement with the same person described at subparagraph 2.1.2A(3)(d)(i).

**3. Chapter 2, subparagraph 2.1.3:**

*Omit*

Subparagraph 2.1.3

*Insert*

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;
- (8) 'money transfer service' means a service, provided under a single brand, trademark or business name through which registrable designated remittance services are carried out;
- (9) 'money transfer service provider' means a person who under a representation agreement authorises a representative to offer the money transfer service on behalf of the money transfer service provider and to engage sub-representatives for the purposes of providing the money transfer service in Australia;
- (10) 'representation agreement' means the written agreement between a money transfer service provider and a representative of the money transfer service provider that states the terms on which the representative offers the money transfer service within Australia;
- (11) 'representative of a money transfer service provider' or 'representative' means a person who offers a money transfer service in accordance with a representation agreement with the money transfer service provider;
- (12) 'sub-representation agreement' means the written agreement between a representative of a money transfer service provider and a sub-representative of a money transfer service provider that states the terms on which the sub-representative provides the money transfer service within Australia;
- (13) 'sub-representative of a money transfer service provider' or 'sub-representative' means a person who is engaged by a representative of a money transfer service provider to provide a money transfer service in accordance with a sub-representation agreement.

#### 4. Chapter 2, Form 1, Form 2, Form 3

*Omit*

Form 1, Form 2, Form 3

*Insert*

#### **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; or
- (f) Y is a reporting entity, and is a money transfer service provider as defined in Rule 2.1.3(9); or
- (g) Y is a reporting entity, and is a representative of a money transfer service provider as defined in Rule 2.1.3(11); or
- (h) Y is a reporting entity, and is a sub-representative of a money transfer service provider as defined in Rule 2.1.3(13).

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:

*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.*

## Schedule 2

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

### 1. After Chapter 43

*insert*

#### Chapter 44                    **Removing a Person's Name and Registrable Details from the Register of Providers of Designated Remittance Services**

- 44.1 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 75(4)(b) of that Act.
- 44.2 If the AUSTRAC CEO is of the opinion that the consequences of keeping a person's name and registrable details on the Register of Providers of Designated Remittance Services (Register) constitute an unacceptable money laundering or terrorism financing risk, the AUSTRAC CEO may remove the person's name and registrable details from the Register.
- 44.3 For the purposes of paragraph 44.2 and without limiting the matters that may be considered, the following must be considered by the AUSTRAC CEO when forming an opinion:
- (1) If the person is an individual, whether:
    - (a) the person has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
    - (b) a representative of the person has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
    - (c) a civil penalty order under the AML/CTF Act was made in relation to the person;
    - (d) a civil penalty order under the AML/CTF Act was made in relation to a representative of the person;
  - (2) If the person is a body corporate, whether:

- (a) the person has been charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (b) a representative of the person has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (c) a civil penalty order under the AML/CTF Act was made in relation to the person;
  - (d) a civil penalty order under the AML/CTF Act was made in relation to a representative of the person;
- (3) If the person is a trust, whether:
- (a) a trustee has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (b) a representative of the person has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (c) a civil penalty order under the AML/CTF Act was made in relation to a trustee;
  - (d) a civil penalty order under the AML/CTF Act was made in relation to a representative of the person;
- (4) If the person is a partnership, whether:
- (a) a partner has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (b) a representative of the person has been arrested, charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, an offence under the AML/CTF Act, or an offence under the FTR Act;
  - (c) a civil penalty order under the AML/CTF Act was made in relation to a partner;
  - (d) a civil penalty order under the AML/CTF Act was made in relation to a representative of the person.

- 44.4 (1) If the AUSTRAC CEO removes a person's name and registrable details from the Register, the AUSTRAC CEO must within 7 days give the person written notice of the removal.
- (2) The notice must:
- (a) set out the grounds on which the opinion of the AUSTRAC CEO was formed; and
  - (b) include a statement that the person may make written submissions in response to the notice within 28 days of the date of the notice; and
  - (c) include a statement that any written submissions in response to the notice may be discussed by the AUSTRAC CEO with other persons as mentioned in sub-paragraph 44.4(3)(b).
- (3) If a submission is made in response to the notice, the AUSTRAC CEO:
- (a) must have regard to the submission; and
  - (b) may discuss any matter contained in the submission with any persons the AUSTRAC CEO considers appropriate for the purpose of assessing the truth of the matter.
- 44.5 If a person who, pursuant to paragraph 44.2, has had their name and registrable details removed from the Register, applies to the AUSTRAC CEO to have their name and registrable details entered on the Register, the application must contain evidence to satisfy the AUSTRAC CEO that the provision of registrable designated remittance services by the person will not constitute an unacceptable money laundering or terrorism financing risk.
- 44.6 A reference in this Chapter to a person or a representative who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence.
- 44.7 In this Chapter:
- (1) 'person' has the same meaning as in section 5 of the AML/CTF Act;
  - (2) 'representative' means:
    - (a) in the case of a body corporate; an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy;

- (b) in the case of an individual, trust or partnership; an employee or agent of the individual, trust or partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual, trust or partnership.

*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 45 Debt Collection

- 45.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 45.2 For subsection 247(4), each class of provision of the AML/CTF Act contained in the following table is specified as not applying to a designated service provided in the circumstances as set out in paragraph 45.3 below:

<b>Class of Provision</b>	<b>Application</b>
Part 2, Division 2	Whole division
Part 2, Division 3	Whole division
Part 2, Division 4	Whole division
Part 2, Division 5	Whole division
Part 2, Division 6	Whole division
Part 2, Division 7	Sections 37, 38
Part 3, Division 3	Section 43 only
Part 3, Division 4	Section 45 only
Part 3, Division 5	Whole division
Part 3, Division 6	Section 50 only
Part 5	Whole Part
Part 6	Whole Part
Part 7	Whole Part
Part 10	Sections 104, 105, 106, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 only

- 45.3 The exemption in paragraph 45.2 only applies when a person, in the capacity of a debt collector, provides any of the following designated services as described in table 1 of subsection 6(2) of the AML/CTF Act:

- (a) item 6;

- (b) item 7;
- (c) item 8;
- (d) item 31;
- (e) item 32;
- (f) item 51;
- (g) item 53.

45.4 In this Chapter:

- (1) 'debt' means an amount of money owed, including an alleged debt, where:
  - (a) the customer is in default under the terms and conditions of the account; or
  - (b) the customer is in default under the terms and conditions of the account and the provider of money (account provider) has declined the provision of further credit to the customer under the account; or
  - (c) the account provider has terminated, cancelled, written off or charged off debt, by reason of the customer's default or continuing default in repaying the money;
- (2) 'alleged debt' means a debt where the debt collector has reasonable grounds for believing that the debt remains due, payable and owing by the debtor;
- (3) 'debt collector' means a person who collects debt in the course of carrying on a business of collecting debt.

*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.*