



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No. 8) amending the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapters 11, 19, 23, 34 and 51 and adding Chapter 66

1. Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (AUSTRAC CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Amendments to Chapter 11

2. Section 47 of the AML/CTF Act requires reporting entities to lodge a compliance report to the AUSTRAC CEO. Chapter 11 of the AML/CTF Rules sets out the reporting periods for compliance reporting and the lodgment periods during which compliance reports must be submitted to AUSTRAC.
3. Chapter 11 specifies that the compliance reporting period is a calendar year and the lodgment period commences on the first business day in the calendar year following the reporting period and ending on 31 March of that calendar year.
4. Under the *Combating the Financing of People Smuggling and Other Measures Act 2011* (CFPSOM Act), new registration requirements from 1 November 2011 now apply to providers of designated remittance services with the three categories being:
 - **remittance network provider:** an organisation that operates a network of remittance affiliates by providing the systems and services that enables its affiliates to provide remittance services;
 - **remittance affiliate of a registered remittance network provider:** a business that provides remittance services to

customers as part of a remittance network facilitated by a remittance network provider;

- **independent remittance dealer:** a business that provides remittance services to customers using its own systems and processes, independent of a remittance network.
5. All remitters are required under the AML/CTF Act to register on the Remittance Sector Register. These developments have coincided with the obligation to lodge a 2011 compliance report for all remitter types, except for the remittance network providers who have the benefit of a statutory exemption under the CFPSOM Act.
 6. Due to the significant changes to business practice in regard to reporting entities which provide the item 31 and 32 designated services under the AML/CTF Act, AUSTRAC considers it appropriate that this administrative burden be alleviated by exempting relevant reporting entities from the obligation to submit a 2011 compliance report.

Amendments to Chapter 19

7. This amendment incorporates consequential amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*, as a result of the *Acts Interpretation Amendment Act 2011 (AIA)*, which is due to commence on 27 December 2011.
8. The AIA has amended 'section 8' to 'subsection 7(2)', and therefore the note to paragraph 19.1 of the chapter now reflects this amendment. There has been no change to the legal operation of the chapter.

Amendment to Chapter 23

9. Chapter 23 specifies that persons who carry out a 'law practice' or an 'accounting practice' are not carrying out a 'designated remittance arrangement'. This Chapter was made for the purposes of subparagraphs 10(1)(a)(v) and 10(1)(b)(v) of the AML/CTF Act.
10. Chapter 23 has the effect of excluding lawyers and accountants from the definition of a designated remittance arrangement and, therefore, from items 31 and 32 of table 1 of subsection 6(2) of the AML/CTF Act. This means that (unless they are caught by another item in table 1 of subsection 6(2) of the AML/CTF Act), entities which carry out transfers of money or property as lawyers or accountants will not be reporting entities.
11. The *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010 (CLASOC Act)* repealed subparagraphs 10(1)(a) and 10(1)(b) of the AML/CTF Act and substituted paragraph 10(1) which contains the new term 'non-financier'.

12. AUSTRAC has amended the chapter to reflect the relevant terminology inserted by the CLASOC Act. There has been no change to the legal operation of the chapter as a result of the amendments.

Chapter 34

13. This amendment incorporates consequential amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*, as a result of the *Acts Interpretation Amendment Act 2011 (AIA)*, which is due to commence on 27 December 2011.
14. The AIA has moved the definition of 'writing' from section 25 to section 2B. As a result, the reference to 'section 25' in subparagraph 34.5(3) has been amended to read 'section 2B'. There has been no change to the legal operation of the chapter as a result of the amendment.

Amendment to Chapter 51

15. Chapter 51 specifies Travelex Limited and KEB Australia under certain definitions of the AML/CTF Act to allow those reporting entities to report to AUSTRAC under the Chapter 16 (Reportable details for international funds transfer instructions (items 1 and 2 in section 46), rather than the Chapter 17 (Reportable details for international funds transfer instructions under designated remittance arrangement (items 3 and 4 in section 46) AML/CTF Rules.
16. As a result of a business restructure, 'Travelex Limited' is now 'Travelex GBP Australia Ltd' and accordingly Chapter 51 has been amended to reflect that change. There has been no change to the legal operation of the chapter as a result of the amendments.

Addition of Chapter 66

17. The *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Financial Sector Act) allows a compulsory transfer to take place whereby a failing financial institution is transferred to a sound financial institution, in order to ensure that the potential impact of the failing institution on financial markets is avoided or minimised.
18. The AML/CTF Act requires that before providing a designated service to a customer, a reporting entity must carry out an applicable customer identification procedure (ACIP) to ensure that the customer is who they claim to be.
19. Under Chapter 66, when the transferring financial institution provides certain designated services under the AML/CTF Act (reporting entity one) and is absorbed by a sound financial institution which is also a reporting entity (reporting entity two), reporting entity two must conduct a risk-assessment of reporting entity one to ensure that the ACIP as carried out by reporting entity one, can be relied upon by reporting entity two.

20. If reporting entity two's risk-assessment of reporting entity one concludes that it can rely on the ACIP conducted by reporting entity one, Chapter 66 provides reporting entity two with an exemption from conducting the ACIP on transferring customers prior to commencing to provide them with a designated service.

2. Notes on sections

Section 1

This section sets out the name of the Instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.8)*.

Section 2

This section specifies that Schedule 1 commences on the day after it is registered and Schedule 2 commences on 27 December 2011 due to the commencement of the *Acts Interpretation Amendment Act 2011*.

Section 3

This section contains the details of the amendment:

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

Schedule 1

This schedule amends Chapters 11, 23, 34 and 51 and adds Chapter 66.

3. Notes on Paragraphs

Chapter 11

Item 1

This item amends the heading to Chapter 11.

Item 2 – paragraph 11.1

This paragraph is amended to include the power (subsection 247(2) of the AML/CTF Act) under which the exemption is made.

Item 3 – paragraph 11.4

This paragraph contains the details of the exemption and specifies that it only applies to reporting entities which provide the item 31 or 32 designated services of table 1 in subsection 6(2) of the AML/CTF Act.

Item 4 – paragraph 11.4

This paragraph is renumbered as paragraph 11.5 due to the insertion of paragraph 11.4.

Chapter 23

Item 5

This item inserts a new heading to Chapter 23.

Item 6 – Paragraphs 23.1 and 23.2

Paragraph 23.1 specifies that the purpose of the amendments is in respect to the definition of ‘non-financier’ under section 5 of the AML/CTF Act.

Paragraph 23.2 specifies an ‘accounting practice’ and ‘law practice’ under the definition of ‘non-financier’.

Chapter 51

Item 7 – subparagraphs 51.2(2), 51.3(2) and 51.4(2)

Due to the change of name of ‘Travelex Limited ABN 36 004 179 953’ to ‘Travelex GBP Australia Pty Limited ABN 24 150 129 749’, the above subparagraphs have been amended to reflect the name change.

Chapter 66

Paragraph 66.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 39(4) of that Act.

Paragraph 66.2

This paragraph specifies that Division 4 of Part 2 of the AML/CTF Act (relating to customer identification procedures), does not apply to the compulsory transfer of a business under the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, subject to the conditions specified under paragraph 66.3.

Paragraph 66.3

This paragraph specifies the circumstances relevant to the exemption under paragraph 66.2. In particular, the second reporting entity must conduct an assessment of money-laundering/terrorism-financing risk in regard to the transfer of customers from the first reporting entity.

Paragraph 66.4

This paragraph specifies that the exemption period will expire 60 days after the compulsory transfer of business, unless the second reporting entity has assessed that

the money-laundering/terrorism-financing risk is low in regard to the transfer, before the expiration of that period.

Paragraph 66.5

This paragraph specifies that certain actions must be carried out by the second reporting entity if there is an increase in money-laundering/terrorism-financing risk. These relate to customer identification on the customer, or the collection of Know Your Customer information or the verification of Know Your Customer information that has been collected about that customer.

Paragraph 66.6

This paragraph specifies the circumstances which will trigger the actions under Paragraph 66.5. They relate to a suspicious matter reporting obligation under section 41 of the AML/CTF Act, or the second reporting entity suspects that the first reporting entity did not carry out customer identification on the customer, or there has been a significant increase in money-laundering/terrorism-financing risk in regard to the provision of a designated service to the customer.

Paragraph 66.7

This paragraph defines the terms ‘compulsory transfer of business’, ‘reporting entity one’, ‘reporting entity two’ and ‘transferring customer’.

Schedule 2

This amendment incorporates consequential amendments as a result of the *Acts Interpretation Amendment Act 2011*.

Chapter 19

Item 1 – Paragraph 19.1 (note)

In the paragraph ‘section 8’ has been substituted with ‘subsection 7(2)’.

Chapter 34

Item 2 - Subparagraph 34.5(3)

In the paragraph ‘section 25’ has been substituted with ‘section 2B’.

4. Legislative instruments

These AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

5. Likely impact

The Chapter 11 and Chapter 66 AML/CTF Rules will have a positive impact on any reporting entity that provides a designated service covered by those Rules. There is

only a negligible impact on reporting entities in regard to the minor changes to Chapter 19, Chapter 23, Chapter 34 and Chapter 51.

6. Assessment of benefits

Amendments to Chapter 11

As a result of the exemption, reporting entities providing the item 31 and 32 designated service will not be required to submit a compliance report for 2011 as required under section 47 of the AML/CTF Act. The administrative burden in regard to those reporting entities is therefore significantly reduced.

Amendments to Chapter 19

These amendments ensure that the AML/CTF Rules correctly reflect the changes to the *Acts Interpretations Act 1901* by the *Acts Interpretation Amendment Act 2011*.

Amendments to Chapter 23

These amendments provide certainty to industry in regard to the current legal effect of the chapter, by the use of the relevant terminology inserted into the AML/CTF Act by the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Amendments to Chapter 34

These amendments ensure that the AML/CTF Rules correctly reflect the changes to the *Acts Interpretations Act 1901* by the *Acts Interpretation Amendment Act 2011*.

Amendments to Chapter 51

These amendments reflect the change of business structure in Travelex Pty Ltd to Travelex GBP Pty Ltd, and therefore accurately set out which entity is covered by the chapter.

Chapter 66

The exemption under these AML/CTF Rules will significantly reduce the regulatory burden to industry of identifying transferring customers as a result of a compulsory transfer of business under the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

7. Consultation

In relation to the amendments to Chapter 11 and the addition of Chapter 66, AUSTRAC has consulted with the Australian Taxation Office, the Australian Customs and Border Protection Service, the Australian Federal Police, the Australian Crime Commission and the Office of the Australian Information Commissioner in relation to these AML/CTF Rules.

AUSTRAC also published Chapter 11 and Chapter 66 on its website for public consultation.

AUSTRAC did not consult industry on the amendments to Chapter 19, Chapter 23, Chapter 34 and Chapter 51 as AUSTRAC considers that these amendments are of a minor or machinery nature and do not substantially alter existing arrangements, as allowed under the section 18 of the *Legislative Instruments Act 2003*.

8. Ongoing consultation

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.