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**Australian Government**

**Australian Transaction Reports  
and Analysis Centre**

## **Explanatory note for consultation purposes**

Where a reporting entity (first entity):

- (1) is taken over by another reporting entity (second entity); or
- (2) transfers its shares to the second entity pursuant to a 'scheme of arrangement'; or
- (3) sells to a second entity a part of the first entity's business; or
- (4) assigns to a second entity a part of the first entity's business,

the second entity is not required to carry out the customer identification procedure in Division 4 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in relation to first entity's customers (pre-commencement and post-commencement customers). This exemption only applies if, prior to the takeover, scheme of arrangement, business disposal or business assignment, the second entity has determined the money laundering or terrorism financing (ML/TF) risk it may reasonably face in providing a designated service to the first entity's customers.

If, however, any of the following incidents comes into existence:

- (1) a suspicious matter reporting obligation arises;
- (2) the second entity suspects on reasonable grounds that the customer is not the person he or she claims to be;
- (3) significant changes have occurred in the level of ML/TF risk in relation to the second entity's provision of a designated service to the customer,

the second entity must take one or more of the actions specified below, within 14 days after the day on which the incident occurs:

- (a) carry out the applicable customer identification procedure, unless the reporting entity has previously carried out or been deemed to have carried out that procedure or a comparable procedure;
- (b) collect any KYC information in respect of the customer; or
- (c) verify, from a reliable and independent source, certain KYC information (that is appropriate to the ML/TF risk relevant to the reporting entity's provision of the designated service) that has been obtained in respect of the customer.

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## **Draft AML/CTF Rules relating to customer identification procedures in certain circumstances – takeovers, schemes of arrangement, business disposals and business assignments**

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules are made under section 229 and subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
2. Subject to conditions 3 and 4, pursuant to subsection 39(4) of the AML/CTF Act, where a reporting entity (first reporting entity):
  - (1) is subject to a takeover by another reporting entity (second reporting entity) under a takeover bid; or
  - (2) transfers its shares to another reporting entity (second reporting entity) under a scheme of arrangement; or
  - (3) disposes of, to another reporting entity (second reporting entity), a part of its business involving a provision of a type of designed service (business disposal); or
  - (4) assigns to another reporting entity (second reporting entity), a part of its business involving a provision of a type of designed service (business assignment),

Division 4 of Part 2 of that Act does not apply in relation to customers of the first reporting entity (customers) provided that, prior to the takeover, scheme of arrangement, business disposal or business assignment, the second reporting entity has determined the ML/TF risk it may reasonably face in providing a designated service to the customers.

3. The second reporting entity must, within 14 days commencing after the day on which any of the circumstances specified in paragraph 4 comes into existence, take one or more of the following specified actions:
  - (1) carry out the applicable customer identification procedure, unless the reporting entity has previously carried out or been deemed to have carried out that procedure or a comparable procedure;
  - (2) collect any KYC information in respect of the customer; or
  - (3) verify, from a reliable and independent source, certain KYC information (that is appropriate to the ML/TF risk relevant to the reporting entity's provision of the designated service) that has been obtained in respect of the customer.

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4. The following circumstances are specified:
  - (1) a suspicious matter reporting obligation arises; or
  - (2) the second reporting entity suspects on reasonable grounds that the customer is not the person who he or she claims to be; or
  - (3) significant changes have occurred in the level of ML/TF risk in relation to the second reporting entity's provision of a designated service to the customer.
  
5. In these Rules:
  - (1) the terms 'KYC information' and 'ML/TF risk' have the same respective meanings as in chapter 1 of *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*;
  - (2) 'scheme of arrangement' has the meaning in chapter 5 of the *Corporations Act 2001*;
  - (3) 'takeover bid' has the meaning given by section 9 of 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.*