



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory note for consultation

Under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) the AUSTRAC CEO may make rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Chapter 2 of the Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) provides the definition of ‘designated business group’. These draft Rules amend the Chapter 2 definition to allow reporting entities that are either a representative or sub-representative of a money transfer service provider, and who provide a registrable designated remittance service through that provider, to form a designated business group.



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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 definition of ‘designated business group’ in section 5 of that Act.
2. Chapter 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* is amended as follows:
 - (1) at the end of subparagraph 2.1.2(4)(d), omit ‘.’ and insert ‘; or’;
 - (2) insert after subparagraph 2.1.2(4)(d):
 - ‘(e) Subject to the requirements in paragraph 2.1.3, be a person who provides a registrable designated remittance service; either:
 - (i) as a representative of a money transfer service provider pursuant to a representation agreement with a money transfer service provider; or
 - (ii) 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.’
 - (3) omit subparagraph 2.1.3
 - (4) insert after subparagraph 2.1.2(4)(e):

‘2.1.3 The following conditions apply to entities electing to form a designated business group pursuant to subparagraph 2.1.2(e):

 - (1) a person who meets the criteria specified at subparagraph 2.1.2(4)(e)(i) may form a designated business group only with a person or persons:
 - (a) who meet the conditions specified at subparagraph 2.1.2(4)(e)(ii); and

- (b) with whom they have a sub-representation agreement.
- (2) a person who meets the conditions specified at subparagraph 2.1.2(4)(e)(ii) may form a designated business group only with:
- (a) the person with whom they have a sub-representation agreement; and/or
 - (b) any other person or persons who:
 - (i) meet the conditions specified at subparagraph 2.1.2(4)(e)(ii); and
 - (ii) have a sub-representation agreement with the same person specified at subparagraph 2.1.2(4)(e)(i).

2.2 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 to the public 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 to the public 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.

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 2.2(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 2.2(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 representative of a money transfer service provider as defined in Rule 2.2.11; or
- (g) Y is a reporting entity, and is a sub-representative of a money transfer service provider as defined in Rule 2.2.13

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.