



Australian Government

**Australian Transaction Reports
and Analysis Centre**

Explanatory note for consultation

These draft AML/CTF Rules were previously issued for public consultation in early 2008 titled 'Draft AML/CTF Rules relating to customer identification procedures - takeovers, schemes of arrangement, business disposals and business assignments.' As a result of that consultation, the draft Rules have been amended and issued for a further period of public consultation.

If a business restructure results in a customer of one reporting entity ceasing to be a customer of that entity and becoming a customer of another reporting entity, then, under section 32 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), the second reporting entity must conduct an applicable customer identification procedure on that customer before providing them with a designated service.

Such business restructures may result in the en masse transfer of customers from one reporting entity to another. When this mass transfer occurs, the customer identification requirements of the AML/CTF Act could have a significant business impact on the second reporting entity, as well as causing significant inconvenience to the customers, as they may have to be identified for the first time (if they were previously pre-commencement customers) or re-identified (if they were post-commencement customers before the transfer took place).

All of this may occur in circumstances where no material change has occurred in the money laundering and terrorism financing (ML/TF) risk posed by the customers or the provision of the designated services.

These draft Rules exempt the second reporting entity from carrying out the applicable customer identification procedure on transferring customers, but only if it has assessed the ML/TF risk it may face in providing a designated service to those customers, established whether an applicable customer identification procedure has been conducted, and considered whether it is reasonable for the second reporting entity to rely upon that procedure.

The Rules also allow the second reporting entity to treat pre-commencement customers of the first reporting entity as if they were its pre-commencement customers, but only if the second reporting entity has properly considered the ML/TF risk and has appropriate policies and procedures in place regarding that risk. As is appropriate in a risk-based system, the primary entity making this determination is the second reporting entity.

The Rules specify certain circumstances where the second reporting entity should re-identify, collecting 'know your customer' (KYC) information or verify KYC details of a customer. These are specified because the provisions in the AML/CTF Act and the AML/CTF Rules which would ordinarily trigger these activities are not applicable as the transfer has removed those triggers within sections 29 and 38 of the AML/CTF Act.



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Draft AML/CTF Rules relating to applicable customer identification procedures in certain circumstances – assignment, conveyance, sale or transfer of businesses

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).
2. Subject to paragraphs 4 and 5, Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that is provided in the circumstances specified in paragraph 3.
3. The specified circumstances for the purposes of paragraph 2 are that:
 - (1) reporting entity one has assigned, conveyed, sold or transferred a part of its business to reporting entity two;
 - (2) the designated service is provided to a transferring customer; and
 - (3) prior to the assignment, conveyance, sale or transfer, reporting entity two has reasonably determined:
 - (a) the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
 - (b) that it has in place appropriate risk-based systems and controls to identify, manage and mitigate the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
 - (c) based on the assessed ML/TF risk and its risk-based systems and controls, it is reasonable for it to either:
 - (i) rely upon reporting entity one's applicable customer identification procedure as an appropriate means to identify and verify the identification of a transferring customer; or
 - (ii) treat a transferring customer who was a pre-commencement customer of reporting entity one as if the customer was a pre-commencement customer of reporting entity two.
4. Reporting entity two must, within 14 days after any of the circumstances specified in paragraph 5 comes into existence, take one or more of the actions specified below:
 - (1) carry out the applicable customer identification procedure, unless reporting entity two has previously 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, KYC information that has been obtained in respect of the customer, and that it is appropriate to the ML/TF risk relevant to reporting entity two's provision of the designated service;

for the purpose of enabling reporting entity two to be reasonably satisfied that the customer is the person that he or she claims to be.

5. For the purposes of paragraph 4 the following circumstances are specified:

- (1) a suspicious matter reporting obligation arises in relation to a transferring customer; or
- (2) reporting entity two reasonably suspects that reporting entity one did not carry out the applicable customer identification procedure when required; or
- (3) a significant increase has occurred in the level of ML/TF risk as assessed under reporting entity two's AML/CTF program, in relation to reporting entity two's provision of a designated service to a transferring customer.

6. In these Rules:

- (1) 'reporting entity one' means the reporting entity that assigns, conveys, sells or transfers a part of the business;
- (2) 'reporting entity two' means the reporting entity to which reporting entity one assigns, conveys, sells or transfers a part of the business;
- (3) 'transferring customer' means a customer who is a customer of reporting entity two in relation to a designated service solely because of the assignment, conveyance, sale or transfer of business from reporting entity one.

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.