



## 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 Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) prescribing matters required or permitted by any other provision of the AML/CTF Act.

Subsection 247(3) of the AML/CTF Act allows for AML/CTF Rules that provide that the AML/CTF Act does not apply to a designated service that is provided in specified circumstances.

These draft AML/CTF Rules specify circumstances where the AML/CTF Act will not apply to all designated services under table 1 of subsection 6(2) of the Act.

The circumstances prescribed by the draft Rules are intended to cover 'corporate treasury' functions provided within corporate groups.

The provider of the designated service has been specified as a company resident in Australia.

AUSTRAC understands that a company is the vehicle adopted universally for the operation of corporate treasuries. Australian registration provides both a clear boundary and a level of traceability for compliance purposes. A company resident in Australia that performs a corporate treasury function consistent with the 'geographical link' test in subsection 6(6) of the Act is captured by Australian law.

The customer has been specified more broadly, to allow the benefit of these AML/CTF Rules to flow to foreign subsidiaries of Australian-based corporate groups consistently with the 'geographical link' requirement in subsection 6(6) of the Act. These AML/CTF Rules only apply to a situation where the customer is not resident in Australia if the reporting entity has identified the risk of providing services to the customer in that place, has adopted a program to identify, mitigate and manage that risk and the reporting entity has concluded on reasonable grounds that the relevant risk is the same as, or lower than, the risk of providing the service in Australia.

The relationship required for these AML/CTF Rules to apply is based on the *Corporations Act 2001* (Corporations Act) requirements for companies to be considered 'related bodies corporate'. However, the AML/CTF Rules have a different emphasis than the requirements in the Corporations Act.

The purpose of these AML/CTF Rules is to remove unnecessary financial and administrative burden in cases where a corporate treasury can in practical terms be said to be lending to 'itself'. Given the money laundering and/or terrorism financing (ML/TF) risks in lending to a corporate entity which is not controlled by the lender or which does not share a common owner with the lender, AUSTRAC takes the view that the benefit of these AML/CTF Rules should only be available in circumstances where ownership and control are both clearly present. It is only in these cases that the level of shared corporate responsibility is such that the ML/TF risk of the transaction is low enough to allow the benefit of these AML/CTF Rules.



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#### **Draft Anti-Money Laundering and Counter-Terrorism Financing Rules for the exemption of the provision of certain designated services within a corporate structure**

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 and subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
2. Subject to paragraph 3 and paragraph 5, the AML/CTF Act does not apply to a designated service that is:
  - (1) of a kind described in any item of table 1 in subsection 6(2) of the AML/CTF Act; and
  - (2) provided by either a:
    - (a) domestic company; or
    - (b) foreign company that is a resident of Australia; and
  - (3) provided to a customer that is a:
    - (a) domestic company; or
    - (b) foreign company.
3. The exemption in paragraph 2 only applies if the person who provides the designated service and the customer are, subject to the requirements of paragraph 4, related to each other by virtue of section 50 of the *Corporations Act 2001*.
4. In determining for the purposes of paragraph 3 whether two bodies corporate are related, the requirements set out in section 46 of the *Corporations Act 2001* for one body corporate to be a subsidiary of another shall be taken to be satisfied only if the requirements of subparagraphs 46(a)(i), 46(a)(ii) and 46(a)(iii) are all met.
5. The exemption in paragraph 2 only applies if:
  - (1) the customer is resident in Australia; or
  - (2) if the customer is not resident in Australia, the reporting entity:
    - (a) has identified the money laundering and terrorism financing risk of providing a service to the customer in the place where the customer is resident; and

- (b) has adopted a program to identify, mitigate and manage that risk<sup>1</sup>; and
- (c) the reporting entity concludes on reasonable grounds that the relevant risk is the same as or lower than the risk of providing the service in Australia.

*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.*

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<sup>1</sup> Subsection 84(2) and subsection 85(2) of the AML/CTF Act.