



Australian Government

Australian Transaction Reports  
and Analysis Centre

# Guidance note 09/02

## Assessment of comparable AML/CTF laws in foreign countries

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

### 1 Introduction

- 1.1 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is designed to assist in combating money laundering and the financing of terrorism. To achieve these aims, the AML/CTF Act places certain obligations on 'reporting entities' (defined in section 5 of the Act).
- 1.2 This guidance note is intended to provide assistance to reporting entities (including those which have formed designated business groups) on what constitutes a comparable AML/CTF law in a foreign country, when a reporting entity has a permanent establishment in a foreign country at or through which it provides designated services.

### 2 Relevant AML/CTF Rules provisions

- 2.1 Chapter 8 (Part A of a standard anti-money laundering and counter-terrorism financing program) and Chapter 9 (Part A of a joint AML/CTF program) of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules), specify that when a reporting entity's permanent establishment in a foreign jurisdiction is 'regulated by anti-money laundering and counter-terrorism financing laws comparable to Australia, only minimal additional systems and controls need to be considered' with respect to the reporting entity's standard or joint AML/CTF program. Relevant 'laws' may include primary legislation such as an Act and secondary legislation such as regulations and/or rules.
- 2.2 Chapter 3 of the AML/CTF Rules (Correspondent banking due diligence) specifies that a financial institution must assess the 'existence and quality of any anti-money laundering and counter-terrorism financing regulation in the other financial institution's country of domicile' and the 'existence and quality of any anti-money laundering and counter-terrorism financing regulation in the country of domicile of any parent company of the other financial institution'.<sup>1</sup>
- 2.3 AUSTRAC does not consider that the phrases 'anti-money laundering and counter-terrorism financing laws' and 'anti-money laundering and counter-terrorism financing regulation' extend to laws or regulations other than the AML/CTF Act and AML/CTF Rules, although legislation such as the *Proceeds of Crime Act 2002* and *Criminal Code* are, in a general sense, relevant to the prevention of money laundering and terrorism financing.
- 2.4 The phrases 'anti-money laundering and counter-terrorism financing laws comparable to Australia' and 'anti-money laundering and counter-terrorism financing regulation' are not defined or considered further in the AML/CTF Rules or the

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<sup>1</sup> An Instrument, modifying section 38 of the AML/CTF Act by allowing a comparable applicable customer identification procedure to be undertaken by reporting entities in a foreign country, will be declared in the near future.

AML/CTF Act. Accordingly, under the risk-based approach, a reporting entity will need to consider the risks posed by differences in the legal frameworks and standard AML/CTF controls of foreign jurisdictions with which it deals and factor these into its AML/CTF program. Where relevant, a reporting entity should take into account information from legitimate, respected domestic and/or international bodies, both commercial and non-commercial, such as those listed in paragraph 5.4 below.

### 3 Relevant components of the AML/CTF Act

3.1 The *Replacement Explanatory Memorandum* to the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 states that the Bill was to be a:

major step in bringing Australia into line with international best practice to deter money laundering and terrorism financing that includes standards set by the Financial Action Task Force (FATF). As international businesses are obliged to take into account AML/CTF adequacy of foreign counterparts and jurisdictions, the Bill will enable Australia's financial sector to maintain international business relationships. (p.1)

3.2 FATF, in its report *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, lists the following indicators of an effective AML/CTF system:

- (a) laws that create money laundering and terrorist financing offences and provide for the freezing, seizing and confiscation of the proceeds of crime and terrorist funding;
- (b) laws, regulations or in certain circumstances other enforceable means that impose the required obligations on financial institutions;
- (c) an appropriate institutional or administrative framework, and laws that provide competent authorities with the necessary duties, powers and sanctions; and
- (d) laws and other measures that give a country the ability to provide the widest range of international co-operation (p.2).

3.3 The *Replacement Explanatory Memorandum* states that the AML/CTF Act specifies the following general obligations for reporting entities, which have been based on the FATF international standards:

- (a) **Identification and verification.** Reporting entities must verify a customer's identity before providing a customer with a designated service. Reporting entities must carry out ongoing due diligence on customers.
- (b) **Reporting.** Reporting entities must report suspicious matters, certain transactions above a threshold and international funds transfer instructions.
- (c) **Developing and maintaining an AML/CTF program.** Reporting entities must have and comply with AML/CTF programs which are designed to identify, mitigate and manage money laundering or terrorism financing risks a reporting entity may reasonably face. Members of a designated business group may enter into a joint AML/CTF program with other members of that designated business group.
- (d) **Record keeping.** Reporting entities must make and retain certain records (and other documents given to reporting entities by customers) for 7 years.
- (e) **Enforcement.** The Act establishes a civil penalty framework for non-compliance with regulatory obligations and criminal offences for actions such as producing false or misleading documents.

3.4 AUSTRAC considers that these key components will form the basis of any comparison between the overseas AML/CTF laws and those which are in place in Australia.

#### **4 The meaning of 'comparable'**

4.1 The word 'comparable' is not defined in the AML/CTF Act or Rules and as a result, the ordinary meaning should be used. The *Macquarie Dictionary Online* defines 'comparable' as being 'capable of being compared' and 'compare' as being 'similar or analogous' but not identical.

4.2 These definitions suggest that a reporting entity, in assessing whether comparable AML/CTF laws exist in a foreign country, should base its assessment on identifying 'similarities' between the foreign and Australian AML/CTF laws. As noted in paragraph 3.3 above, these similarities in broad terms encompass identification and verification, reporting, AML/CTF programs, record keeping and enforcement.

4.3 In making such an assessment, there is no obligation on a reporting entity to ensure that their analysis is limited to the five components. In accordance with its risk-based systems and procedures, a reporting entity may consider other factors to be of relevance when making their assessment.

4.4 The foreign AML/CTF laws being considered may impose higher standards than those specified in the Australian legislation and AUSTRAC would consider these AML/CTF laws to be comparable.

#### **5 Importance of implementation of comparable AML/CTF laws**

5.1 Although a foreign country may have AML/CTF legislation which appears comparable to the Australian AML/CTF laws, whether those laws have been effectively implemented in that country is an important consideration of whether they are, in fact, comparable.

5.2 Such an assessment will require an analysis of whether there are structural elements in the foreign country which may hamper the effective implementation of the AML/CTF laws, even though the laws may apparently be in place. FATF has provided guidance on the structural elements a reporting entity may consider:

- (a) the respect of principles such as transparency and good governance;
- (b) a proper culture of AML/CTF compliance shared and reinforced by government, financial institutions, designated non-financial businesses and professions; industry trade groups and self-regulatory organisations;
- (c) appropriate measures to prevent and combat corruption, including laws and other relevant measures, the jurisdiction's participation in regional or international anti-corruption initiatives and the impact of these measures on the jurisdiction's AML/CTF implementation;
- (d) a reasonably efficient court system that ensures that judicial decisions are properly enforced;
- (e) high ethical and professional requirements for police officers, prosecutors, judges etc and measures and mechanisms to ensure that these are observed; and
- (f) a system for ensuring the ethical and professional behaviour on the part of professionals such as accountants and auditors and lawyers.

*(Methodology for Assessing Compliance, pp.2-3)*

- 5.3 The following more detailed indicators have also been identified by FATF and these may be taken into account by a reporting entity:
- (a) political environment;
  - (b) legal environment;
  - (c) economic structure;
  - (d) cultural factors;
  - (e) sources, location and concentration of criminal activity;
  - (f) size, composition, ownership and geographical spread of financial services industry;
  - (g) corporate governance arrangements;
  - (h) nature of payment systems and prevalence of cash-based transactions;
  - (i) types of products and services offered by financial services industry;
  - (j) types of offences;
  - (k) amounts of illicit money generated domestically;
  - (l) main channels or instruments used for money laundering or financing of terrorism;
  - (m) sectors of the legal economy affected; and
  - (n) underground areas in the economy.

*(Guidance on the risk-based approach, p.15)*

- 5.4 In addition to the above indicators, there is a wide variety of domestic and international resources available to assist reporting entities in determining the money laundering/terrorism financing risk of foreign jurisdictions. The following organisations, both domestic and international, publish material which may assist reporting entities in gaining further information on jurisdictions that may or may not have comparable AML/CTF laws to Australia:

- (a) Australian Department of Foreign Affairs and Trade  
[www.dfat.gov.au](http://www.dfat.gov.au)
- (b) Office of the Comptroller of the Currency  
<http://www.occ.treas.gov>
- (c) Financial Action Task Force  
[www.fatf-gafi.org](http://www.fatf-gafi.org)
- (d) Financial Crimes Enforcement Network (FinCen)  
<http://www.fincen.gov>
- (e) The Egmont Group  
[www.egmontgroup.org](http://www.egmontgroup.org)
- (f) International Monetary Fund  
[www.imf.org](http://www.imf.org)
- (g) Joint Money Laundering Steering Group (JMLSG)  
[www.jmlsg.org.uk](http://www.jmlsg.org.uk)
- (h) Organisation for Economic Co-operation and Development  
[www.oecd.org](http://www.oecd.org)
- (i) The Wolfsberg Group  
[www.wolfsberg-principles.com](http://www.wolfsberg-principles.com)
- (j) The World Bank  
[www.worldbank.org](http://www.worldbank.org)

- (k) British Bankers Association  
[www.bba.org.uk](http://www.bba.org.uk)
- (l) Asia/Pacific Group on Money Laundering  
[www.apgml.org](http://www.apgml.org)
- (m) Financial Services Authority  
[www.fsa.gov.uk](http://www.fsa.gov.uk)
- (n) Financial Transactions and Reports Analysis Centre  
[www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)

5.5 Reporting entities may also consider the weight which should be given to membership of the FATF and the Egmont Group of financial intelligence units, as well as any assessments conducted by FATF, FATF-style regional bodies,<sup>2</sup> the IMF and the World Bank, when assessing the money laundering/terrorism financing risk of a foreign country.

### Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication. AUSTRAC recommends that independent professional advice be sought.

The information contained herein is current as at the date of this document.

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>2</sup>These comprise the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, the Financial Action Task Force on Money Laundering in South America and the Middle East and North Africa Financial Action Task Force.