



Australian Government

Australian Transaction Reports
and Analysis Centre

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External Administration and AML/CTF Act obligations

Under the *Corporations Act 2001* (Corporations Act) companies in financial difficulty may be subject to external administration. The three most common types of external administration are voluntary administration, receivership (or receiver and manager), or liquidation.

When external administration is implemented, a person (or persons) is appointed to take over the control of the company from the directors. Usually all books and records must be made available to the external administrator.

External administrators derive their powers from different sources, including the Corporations Act, court orders, deeds and instruments. Depending on how the company comes to be under the power of the external administrator and the rules that apply to that administration, the administrator, liquidator or receiver may act as agent of the company. For example, administrators are taken to be agents of the company pursuant to section 437B of the Corporations Act. An agent of the company is obliged to comply with all of the same obligations that apply to the company itself.

It may also be specified in the rules that apply to the external administration that the external administrator has the capacity to continue carrying on the business of the company. In this case, the external administrator would also be obliged to comply with the company's usual obligations that arise in the course of operating its business.

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) imposes a number of obligations on entities that provide designated services and are therefore defined as reporting entities. Where a company is a reporting entity, it must continue to comply with all of its obligations even while it is under the control of an external administrator.

The key obligations include:

- adopting, maintaining and complying with the company's anti-money laundering and counter-terrorism financing program (AML/CTF program) under Part 7 of the AML/CTF Act;
- carrying out customer identification procedures under Part 2 of the AML/CTF Act;

retaining records of designated service transactions and customer identification procedures conducted under Part 10 of the AML/CTF Act;
lodging transaction reports (that is, threshold transaction reports (TTR), suspicious matter reports (SMR) and international funds transfer instruction reports (IFTI)) under Part 3 of the AML/CTF Act;
register on the Register of Providers of Designated Remittance Services under Part 6 of the AML/CTF Act before providing registrable designated remittance services;
notify the AUSTRAC CEO of any change in respect of the Nominated Contact Officer or the designated business group under paragraph 2.1.2(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*; and
submitting compliance reports under section 47 of the AML/CTF Act, even if the external administrator was not appointed as the external administrator during the period to which the compliance report relates.

It is AUSTRAC's understanding that, during external administration, these obligations that are imposed on the company under the AML/CTF Act must be carried out by the external administrator because the external administrator is the only person with the authority to act in the company's name.

However, an administrator may delegate his or her authority on a limited basis to a director of the company to act for the company in appropriate circumstances and with the administrator's written approval. A liquidator may delegate his or her authority in the same way with the liquidator's written approval or the approval of the Court.

Additionally, it is also noted that employees, who were given authority to act (for example, to lodge transaction reports) by the directors, may continue to have that authority on those matters where agreed by the external administrator.

Where AUSTRAC has provided guidance or adopted an administrative process to deal with specific issues, that guidance / process is equally applicable to companies under external administration.

Further information

AUSTRAC officers are able to provide general information relating to the *Financial Transaction Reports Act 1988* and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. Enquiries can be directed to the AUSTRAC Help Desk by:

email to 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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