

# **ENFORCEABLE UNDERTAKING**

## ***ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006***

### **UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER OF AUSTRAC FOR THE PURPOSES OF**

#### **SECTION 197 OF THE AML/CTF ACT**

**BY**

**BARCLAYS BANK PLC**

#### **Definitions**

**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**AML/CTF Rules** means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* made under section 229 of the AML/CTF Act.

**AUSTRAC's Concerns** means the concerns referred to in paragraphs 8 and 9 of this enforceable undertaking.

**Cash Dealer** has the meaning given in section 3 of the FTR Act.

**Date of this enforceable undertaking** means the date on which it is accepted by AUSTRAC.

**Designated service** means a service listed in tables 1, 2 and 3 in section 6 of the AML/CTF Act.

**FTR Act** means the *Financial Transaction Reports Act 1988* (Cth).

**FTR Regulations** means the *Financial Transaction Reports Regulations 1990* (Cth).

**ML/TF Risk** has the meaning given in rule 1.2.1 of the AML/CTF Rules.

## **Introduction**

- 1 Under section 3, the objects of the AML/CTF Act include fulfilling Australia's international obligations designed to combat the laundering of money and the financing of terrorism. Under section 212 of the AML/CTF Act the Chief Executive Officer of AUSTRAC (the **AUSTRAC CEO**) is charged with, among other things, promoting compliance with the Act.

## **Person giving the enforceable undertaking**

- 2 This enforceable undertaking is given to the AUSTRAC CEO by **BARCLAYS BANK PLC in respect of its Australian branch (BarCap)** of Level 42, 225 George Street Sydney in the state of New South Wales, under section 197 of the AML/CTF Act.

## **Background**

- 3 BarCap is authorised under section 9 of the *Banking Act 1959* (Cth) to carry on banking business in Australia.
- 4 BarCap is a Cash Dealer for the purposes of the FTR Act (given its status as an ADI within the meaning of the FTR Act) and a reporting entity for the purposes of the AML/CTF Act and the AML/CTF Rules.
- 5 The FTR Act and FTR Regulations and the AML/CTF Act and AML/CTF Rules impose obligations on Cash Dealers and reporting entities respectively to, inter alia, lodge reports with the AUSTRAC CEO and to implement risk-based systems and controls to identify, mitigate and manage the ML/TF Risk posed by the provision of certain designated services.
- 6 BarCap acknowledges that it has breached provisions of the FTR Act and/or the AML/CTF Act and/or the AML/CTF Rules.

- 7 BarCap has offered this enforceable undertaking to the AUSTRAC CEO for the purposes of section 197 of the AML/CTF Act and the AUSTRAC CEO accepts it to minimise the risk of future breaches by BarCap of the AML/CTF Act and the AML/CTF Rules.

#### **AUSTRAC's Concerns**

- 8 AUSTRAC has expressed concern that BarCap has contravened and continues to contravene the AML/CTF Act, the AML/CTF Rules and the FTR Act and FTR Regulations. Further, AUSTRAC is not satisfied that the provision of designated services, by any investment bank such as BarCap, represents a medium or low ML/TF Risk.
- 9 AUSTRAC has expressed concern that, as a result of BarCap's admitted failure to comply with its reporting obligations and the other areas of alleged non-compliance identified by AUSTRAC, the global systems, policies and procedures which BarCap has in place, which are designed to identify and manage the risks associated with money laundering and terrorism funding, have not been supplemented to meet the specific Australian legislative requirements and may not allow it to comply with its reporting and other obligations under the FTR Act or under the AML/CTF Act.

#### **Acknowledgements by BarCap of AUSTRAC's Concerns**

- 10 BarCap acknowledges AUSTRAC's Concerns and has voluntarily offered an enforceable undertaking in the terms of paragraphs 15 to 21 below.
- 11 BarCap confirms that it has received legal advice in relation to its obligations under, and the effect of, this enforceable undertaking.



## **Acknowledgements – Operation of Enforceable Undertaking**

12 BarCap acknowledges that:

12.1 This enforceable undertaking has no operative force until accepted by the AUSTRAC CEO.

12.2 The date of the enforceable undertaking is the date on which it is accepted by the AUSTRAC CEO.

12.3 The AUSTRAC CEO's acceptance of this enforceable undertaking does not affect AUSTRAC's power to investigate, pursue a criminal prosecution or take civil or administrative action or seek a civil penalty order in relation to:

- a. any contravention not the subject of AUSTRAC's Concerns; or
- b. arising from future conduct occurring after the date of this enforceable undertaking whether or not the future conduct arises from the conduct described in AUSTRAC's Concerns, but excluding conduct (including reporting obligations) which is being or will be addressed by this enforceable undertaking.

12.4 This enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in AUSTRAC's Concerns or arising from future conduct.

12.5 The AUSTRAC CEO may publish a copy of this enforceable undertaking on AUSTRAC's internet site in accordance with subsection 197(5) of the AML/CTF Act.

12.6 AUSTRAC may issue a media release on execution of this enforceable undertaking referring to its terms and to AUSTRAC's Concerns that led to its execution.

- 12.7 AUSTRAC may from time to time publicly refer to this enforceable undertaking.
- 12.8 BarCap is continuing to investigate AUSTRAC's Concerns. BarCap has disclosed to the AUSTRAC CEO the material facts, matters and circumstances that BarCap's investigations to date have revealed in relation to AUSTRAC's Concerns.
- 12.9 If any part of this enforceable undertaking is held invalid that part shall be severed from this enforceable undertaking and the remainder of this enforceable undertaking will continue to be valid and enforceable.

#### **Commencement of the Enforceable Undertaking**

- 13 This enforceable undertaking comes into effect when:
- i. the enforceable undertaking is executed by BarCap; and
  - ii. the AUSTRAC CEO accepts the enforceable undertaking so executed.
- 14 Upon the commencement of this enforceable undertaking, BarCap undertakes to assume the obligations set out in paragraphs 16 to 21 below.

#### **Undertakings**

- 15 Under subsection 197(1) of the AML/CTF Act, BarCap has offered, and the AUSTRAC CEO has agreed to accept, as an alternative to pursuing criminal prosecution in relation to AUSTRAC's Concerns, referring AUSTRAC's Concerns to the Australian Federal Police and/or the Director of Public Prosecutions for further investigation and criminal prosecution or taking civil actions in relation to AUSTRAC's Concerns, the undertakings as set out in paragraphs 16 to 21 inclusive.

- 16 BarCap undertakes that it will pay the costs of its compliance with this enforceable undertaking including the remuneration and costs associated with the engagement of any independent expert.
- 17 BarCap will, until the date on which this enforceable undertaking comes to an end pursuant to paragraph 23 below and, within a reasonable period of time after receiving a request from AUSTRAC, provide all documents and information requested by AUSTRAC from time to time for the purpose of assessing BarCap's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, BarCap is not required to provide AUSTRAC with any document or information that is the subject of legal professional privilege.
- 18 BarCap will, to the extent it has not done so already, by the dates set out below or such later date as agreed to by AUSTRAC in writing:
- i. by 4 August 2009, undertake a ML/TF Risk assessment in relation to BarCap's Australian business in regard to BarCap's customer types, the types of designated services it provides, the methods by which it delivers designated services and the foreign jurisdictions with which it deals;
  - ii. by 1 October 2009, review and supplement where necessary its existing global policies and procedures which identify and mitigate ML/TF Risk in order to develop and implement an Australian Anti-Money Laundering and Counter-Terrorism Financing program (**AML/CTF Program**) with risk based systems and controls in accordance with the requirements set out in the AML/CTF Act, the applicable AML/CTF Rules, consistent with the guidance in AUSTRAC Guidance Note *Risk Management and AML/CTF Programs* as at the date of this enforceable undertaking and **Annexure A**;
  - iii. maintain, update as necessary and implement (as updated) the AML/CTF Program;



- iv. by 1 September 2009, review, supplement where necessary and implement (as supplemented) its existing systems to ensure that BarCap complies with the obligations in Part 10 of the AML/CTF Act relating to the making and maintaining (as applicable) of records of designated services, customer identification procedures and BarCap's AML/CTF Program;
- v. by 15 October 2009, review, supplement where necessary and implement (as supplemented) its existing systems to enable BarCap to comply with all of its reporting obligations under either:
  - a. Part 3 of the AML/CTF Act; or
  - b. where BarCap elects to comply with the equivalent obligation under Part II of the FTR Act, with that equivalent obligation;
- vi. in respect of account transactions since 1 July 2002, undertake the following reviews relating to transactions and submit any reports required to have been submitted to the AUSTRAC CEO and which have not been previously submitted as set out below:
  - a. in relation to significant cash transactions (as required to be reported under subsection 7(1) of the FTR Act):
    - i. prepare (in consultation with an independent expert) by 30 July 2009, a proposed process (including proposed timeframes) for reviewing relevant procedures and any other relevant matters for the purposes of appropriately verifying whether significant cash transactions have occurred;
    - ii. promptly thereafter provide a description of the process, as approved by the independent expert, to AUSTRAC; and
    - iii. conduct the review process (which may be done in whole or part by engaging the independent expert to do so) in accordance with the approved process including the relevant timelines specified in that process, and either report the relevant transactions or, if no such transactions are identified, prepare a report to AUSTRAC confirming this.

- b. in relation to suspicious transactions (as required to be reported under subsections 16(1) or 16(1A) of the FTR Act):
  - i. prepare (in consultation with an independent expert) by 6 August 2009, a proposed process (including proposed timeframes) for reviewing relevant procedures, filters and settings applicable to BarCap's transaction monitoring systems, and any other relevant matters (including, to the extent necessary, any transactions escalated for review by that transaction monitoring system) for the purposes of appropriately verifying whether any such transactions have occurred, and the reporting of any such transactions;
  - ii. promptly thereafter provide a description of the process, as approved by the independent expert, to AUSTRAC; and
  - iii. conduct the review process (which may be done in whole or part by engaging the independent expert to do so) in accordance with the approved process, including the relevant timelines specified in that process, and either report all relevant information held by BarCap and required to be reported to the AUSTRAC CEO in relation to the relevant transactions or, if no such transactions were identified, prepare a report to AUSTRAC confirming this.
- c. in relation to international funds transfers (as required to be reported under subsection 17B of the FTR Act and regulation 11AA of the FTR Regulations):
  - i. in respect of outbound transactions, by 1 November 2009, conduct a comprehensive review of account transactions report all relevant information held by BarCap and required to be reported to the AUSTRAC CEO in relation to the relevant transactions or, if no such transactions were identified, prepare a report to AUSTRAC confirming this;
  - ii. in respect of inbound transactions:



1. prepare (in consultation with an independent expert) by 30 July 2009, a proposed process (including proposed timeframes) for retrieving and conducting a comprehensive review of all account transaction data in order to determine whether any such transactions have occurred and identify relevant transactions, and the reporting of any such transactions;
2. promptly thereafter provide a description of the process, as approved by the independent expert, to AUSTRAC; and
3. conduct the review process (which may be done in whole or part by engaging the independent expert to do so) in accordance with approved process including the relevant timelines specified in that process, and either report all relevant information held by BarCap and required to be reported to the AUSTRAC CEO in relation to the relevant transactions or, if no such transactions were identified, prepare a report to AUSTRAC confirming this.

The engagement of independent experts for the purpose of this clause must be approved in writing by AUSTRAC;

- vii. by 1 October 2009, review, supplement where necessary and implement (as supplemented) its existing global policies, practices and procedures to ensure compliance with the obligations to carry out customer identification procedures as required by Part 2 of the AML/CTF Act and the applicable AML/CTF Rules;
- viii. by 1 November 2009, undertake a comprehensive review of all new customers and new signatories since 12 December 2007 and take all

reasonable steps to comply by 15 December 2009 with the requirements of Part 2 Divisions 4 and 5 of the AML/CTF ACT in relation to those new customers and new signatories, and to the extent that appropriate information has not been obtained for those new customers and signatories. BarCap must report the results of this review and the re-identification process to AUSTRAC and undertake any reasonable action AUSTRAC requires BarCap to take as a result of this review in respect of customers and signatories who remain insufficiently identified for the purposes of the AML/CTF Act;

- ix. by 1 October 2009, review, supplement where necessary and implement (as supplemented) its existing global policies, practices and procedures to ensure compliance with the requirements contained in Part 8 of the AML/CTF Act and the applicable AML/CTF Rules in relation to correspondent banking relationships;
- x. submit to the AUSTRAC CEO by 1 February 2010, a written report of each of the matters set out in paragraphs 18(i) to 18(ix) above. The report must be prepared by a person independent of BarCap and its officers and may be the same person who is engaged for the purposes of paragraph 18(vi) above. The person's engagement must be approved in writing by AUSTRAC. This report will set out the following:
  - a. confirmation that a ML/TF Risk Assessment has been carried out;
  - b. confirmation that an Australian AML/CTF Program has been developed and implemented;
  - c. confirmation that global policies, procedures and systems which BarCap is required to revise, supplement where necessary and implement (as supplemented) under this enforceable undertaking have been revised, supplemented and implemented; and
  - d. an assessment as to whether the review of account transactions and customer identification has been undertaken and the required reports submitted.

- xi. submit to the AUSTRAC CEO on 30 November 2010 and 30 November 2011 respectively a written report of BarCap's compliance with the obligations contained in the AML/CTF Act and the AML/CTF Rules and to the extent applicable, the FTR Act setting out the general obligations in these Acts and whether procedures exist and are implemented to comply with these obligations. The report must be prepared by a person independent of BarCap and its officers. The person's engagement must be approved in writing by AUSTRAC;
- xii. to the extent that the reports referred to paragraphs 18 (x) and 18(xi) identify deficiencies, an independent expert must make recommendations on how to rectify those deficiencies and set out reasonable timeframes for the rectification of those deficiencies;
- xiii. BarCap must consider the recommendations made by an independent expert to rectify those deficiencies and then provide to AUSTRAC a plan (**Remedial Action Plan**) setting out the action it proposes to take to rectify those deficiencies and specifying the reasonable time in which this action will be taken;
- xiv. BarCap must provide this Remedial Action Plan to AUSTRAC within 30 days of the date that the report was received by AUSTRAC. If AUSTRAC requires any reasonable modifications to the Remedial Action Plan, BarCap must implement the Remedial Action Plan as modified; and
- xv. BarCap must implement the Remedial Action Plan within the time specified.



### **Reporting obligations under the AML/CTF Act**

- 19 BarCap will review, supplement where necessary and implement (as supplemented) its existing global policies, practices and procedures to ensure compliance with all reporting obligations contained in Part 3 of the AML/CTF Act and the applicable AML/CTF Rules (**reporting procedures**) on and from 12 March 2010. For the avoidance of doubt, BarCap may report in respect of relevant transactions and matters as provided for under Part II of the FTR Act (and as contemplated under paragraph 18(v)) until that date.
- 20 BarCap will ensure that all relevant employees are trained in the reporting procedures referred to in paragraph 19 above.
- 21 The enforceable undertakings referred to in paragraphs 19 and 20 above must be \_\_\_\_\_  
completed by 12 March 2010.

### **Provision of documents to AUSTRAC**

- 22 The address for providing AUSTRAC with any document which this enforceable undertaking requires to be provided to AUSTRAC is:

Australian Transaction Reports and Analysis Centre  
PO Box 5516, West Chatswood  
Sydney NSW 1515

### **End date**

- 23 This enforceable undertaking comes to an end on the date which is the later of 30 December 2011 or the final implementation of the Remedial Action Plan referred to in paragraph 18(xv) above.

**EXECUTED BY**

BarCap pursuant to section 197 of the AML/CTF Act

This first day of July 2009

ACCEPTED BY THE AUSTRAC CEO, NEIL JAMES JENSEN PURSUANT TO  
SECTION 197 OF THE AML/CTF ACT.



NEIL JAMES JENSEN (PSM)  
Chief Executive Officer

This 1<sup>st</sup> day of July 2009

**ANNEXURE A**  
**ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM**  
**FINANCING PROGRAM (AML/CTF PROGRAM)**

BarCap's AML/CTF Program must comply with the following requirements:

- 1 The AML/CTF Program must include a Part A:
  - a. the primary purpose of which is to mitigate and manage ML/TF Risk it may reasonably face in relation to its provision of designated services across BarCap's business to the extent the AML/CTF Act applies, having regard to BarCap's customer types, the types of designated services it provides, the methods by which it delivers designated services and the foreign jurisdictions with which it deals;
  - b. designed to identify and recognise significant changes in ML/TF Risk for the purposes of its Part A and Part B programs and their requirements across BarCap's business to the extent the AML/CTF Act applies; and
  - c. to assess the ML/TF Risk posed by new designated services, new methods of delivering, or new technologies in relation to the delivery of, designated services.
- 2 It must contain an appropriate ML/TF Risk awareness employee training program having regard to the requirements of the AML/CTF Rules.
- 3 It must contain an appropriate employee due diligence program having regard to the requirements of the AML/CTF Rules.
- 4 Part A of the AML/CTF Program must, to the extent BarCap has not done so already:
  - a. be subject to ongoing oversight by BarCap Australia senior management;
  - b. provide for the appointment within Australia of a designated AML/CTF Compliance Officer; and
  - c. be subject to an annual independent review.
- 5 It must contain a Part B with appropriate applicable customer identification procedures having regard to the requirements of the AML/CTF Act and Rules.
- 6 It must contain an appropriate transaction monitoring program having regard to the requirements of the AML/CTF Rules.
- 7 It must contain an enhanced due diligence program having regard to the requirements of the AML/CTF Rules.