



Australian Government

AUSTRAC

## 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

MEGA INTERNATIONAL COMMERCIAL BANK Co., LTD (formerly known  
as the International Commercial Bank of China and Chiao Tung Bank)

#### 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.

**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** means Money-Laundering/Terrorism-Financing risk.

### **Introduction**

2. Under section 3 of the AML/CTF Act, the AUSTRAC CEO is charged to fulfil Australia's international obligations designed to combat the laundering of money and the financing of terrorism.

### **PERSON GIVING THE UNDERTAKING**

This undertaking is given to the Chief Executive Officer of AUSTRAC (the AUSTRAC CEO) by Mega International Commercial Bank Co., Ltd (MEGA) (ABN 079 372 688) of 6<sup>th</sup> Floor 275-281 George Street Sydney in the state of New South Wales, under section 197 of the AML/CTF Act .

### **BACKGROUND**

1. Mega is authorised under section 9 of the *Banking Act 1959* to carry on banking business in Australia.
2. Mega is a cash dealer for the purposes of the FTR Act and a reporting entity for the purposes of the AML/CTF Act and the AML/CTF Rules.
3. The FTR Act, the FTR Regulations, the AML/CTF Act and the 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 customers in relation to the provision of certain designated services.
4. Mega acknowledges that in the period from 1 January 2003 to 30 June 2009 it has breached various provisions of the FTR Act, the AML/CTF Act and the AML/CTF Rules.
5. Mega has offered this Undertaking to the AUSTRAC CEO for the purposes of section 197 of the AML/CTF Act.

### **AUSTRAC's Concerns**

6. AUSTRAC is concerned that Mega 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 the designated services represents a medium or low ML/TF Risk.

7. AUSTRAC is concerned that, as a result of Mega's admitted failure to comply with its reporting obligations under the FTR Act and the other areas of alleged non-compliance identified by AUSTRAC, Mega may not have in place appropriate procedures to allow it to comply with its reporting obligations under the FTR Act or under the AML/CTF Act.

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

8. Mega acknowledges AUSTRAC's concerns and has voluntarily offered an enforceable undertaking in the terms of paragraphs 13 to 19 below.
9. Mega 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**

10. Mega acknowledges that:
  - 10.1 This enforceable undertaking has no operative force until accepted by the AUSTRAC CEO.
  - 10.2 The date of the enforceable undertaking is the date on which it is accepted by the AUSTRAC CEO.
  - 10.3 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.

10.4 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.

10.5 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.

10.6 AUSTRAC may from time to time publicly refer to this enforceable undertaking.

10.7 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.

10.8 It has, to the extent Mega is aware, disclosed to the AUSTRAC CEO the material facts matters and circumstances in relation to AUSTRAC's concerns.

10.9 Each of the undertakings referred to in paragraphs 16 to 19 below is separately given.

#### **COMMENCEMENT OF THE UNDERTAKING**

11. This enforceable undertaking comes into effect when:

- (i) the enforceable undertaking is executed by Mega; and
- (ii) the AUSTRAC CEO accepts the enforceable undertaking so executed.

12. Upon the commencement of this enforceable undertaking, Mega undertakes to assume the obligations set out in paragraphs 13 to 19 below.

## **UNDERTAKINGS**

13. Under subsection 197(1) of the AML/CTF Act, Mega has offered, and the AUSTRAC CEO has agreed to accept, as an alternative to pursuing criminal prosecution or taking civil actions, the undertakings as set out in paragraphs 13 to 19 inclusive.
14. Mega 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.
15. Mega will, 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 Mega's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, Mega is not required to provide AUSTRAC with any document or information that is the subject of legal professional privilege.
16. Mega will:
- i. By 1 August 2009 update the ML/TF Risk assessment undertaken by Deloitte in December 2008 in relation to the introduction of any changes to Mega's business after 15 December 2008 in regard to Mega's products, channels, customers, employees and jurisdictions.
  - ii. Develop and implement by 1 September 2009 an 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 Annexure A to

minimise Mega's risk of future breaches by Mega of the AML/CTF Act and the AML/CTF Rules.

- iii. Maintain and continue to implement an AML/CTF Program.
- iv. Develop and implement by 1 September 2009 a system to ensure that Mega complies with the obligations in Part 10 of the AML/CTF Act to make and maintain records of designated services, customer identification procedures and Mega's AML/CTF Program.
- v. Develop and implement by 1 December 2009 a system to enable Mega to comply with its reporting obligations under Part 3 of the AML/CTF Act and Part II of the FTR Act.
- vi. Undertake a comprehensive review of all account transactions by Mega since 1 January 2002 and submit to the AUSTRAC CEO by 1 September 2009 any:
  - a. Significant Cash Transaction Report under subsection 7(1) of the FTR Act ;
  - b. Suspicious Transaction Report under subsections 16(1) or 16(1A) of the FTR Act ;
  - c. International Funds Transfer Report under subsection 17 B of the FTR Act and regulation 11AA of the FTR Regulations;required to have been submitted to the AUSTRAC CEO and which has not been previously submitted under Part II of the FTR Act.
- vii. Develop and implement policies, practices and procedures to ensure compliance with the obligations to verify customers contained in Part 2 of the AML/CTF Act and the applicable AML/CTF Rules.



- viii. Undertake by 1 October 2009 a comprehensive review of all account transactions by Mega since 12 December 2007 and comply by 1 December 2009 with the requirements of Part 2 Divisions 4 and 5 of the AML/CTF ACT.
- ix. Develop and implement policies, practices and procedures to ensure compliance with the restrictions contained in Part 8 of the AML/CTF Act and the applicable AML/CTF Rules in relation to correspondence banking relationships.
- x. Submit to the AUSTRAC CEO by 30 November 2009 a written report of each of the matters set out in paragraphs 16(i) to (ix) above. The report must be prepared by a person independent of Mega and its officers. The person's engagement must be approved in writing by AUSTRAC.
- xi. Submit to the AUSTRAC CEO on 30 November 2010 and 30 November 2011 respectively a written report of Mega's compliance with the obligations contained in the AML/CTF Act and the AML/CTF Rules and to the extent applicable, the FTR Act. The report must be prepared by a person independent of Mega and its officers. The person's terms of engagement must be approved in writing by AUSTRAC.
- xii. To the extent that the reports referred to paragraphs 16 (x) and 16(xi) identify deficiencies, the independent expert must make recommendations on how to rectify those deficiencies and set out reasonable timeframes for the rectification of those deficiencies.
- xiii. Mega must consider the recommendations made by the 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. Mega 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, Mega must implement the Remedial Action Plan as modified.
- xv. Mega must implement the Remedial Action Plan within the time specified.

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

- 17. To the extent applicable, Mega will establish policies, practices and procedures designed to ensure compliance with the reporting obligations contained in Part 3 of the AML/CTF Act and the applicable AML/CTF Rules (reporting procedures).
- 18. Mega will ensure that all relevant employees are trained in the reporting procedures referred to in paragraph 17 above.
- 19. The enforceable undertakings referred to in paragraphs 17 and 18 above must be completed no later than the date upon which Mega commences to report under Division 2, 3 or 4 of Part 3 of the AML/CTF Act or 12 March 2010, whichever is the earlier.

**Provision of documents to AUSTRAC**

- 20. 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

**EXECUTED BY**

Mega and by its authorised officers pursuant to section 197 of the AML/CTF Act

This 29<sup>th</sup> day of June 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 30<sup>th</sup> day of June 2009

## **ANNEXURE A**

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

Mega will design establish and implement an AML/CTF Program which complies with the following requirements:

1. Design and implement risk- based systems and controls to
  - a. identify significant changes in ML/TF Risk across Mega's business
  - b. 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. Design and implement an appropriate ML/TF risk awareness employee training program.
3. Design and implement an appropriate employee due diligence program.
4. Establish and implement appropriate procedures for:
  - a. ongoing oversight by Mega senior management of the Mega AML/CTF Program;
  - b. the appointment within Australia of a designated AML/CTF Compliance Officer;
  - c. an annual external independent review of Mega's AML/CTF Program.
5. Design and implement appropriate risk based systems and controls to identify verify and collect information regarding the identity of customers.
6. Design and implement an appropriate transaction monitoring program.
7. Design and implement an enhanced due diligence program.