



Anti-Money Laundering and Counter-Terrorism Financing (Exemption— Commonwealth Bank of Australia and CBA Entities) Instrument 2020 (No. 17)

I, Jennifer Ermert, Acting National Manager, Legal and Policy Branch, of the Australian Transaction Reports and Analysis Centre (AUSTRAC), make the following instrument as a delegate of the AUSTRAC CEO.

Dated *3/12/20*

A handwritten signature in black ink, appearing to read 'Jennifer Ermert', written in a cursive style.

Jennifer Ermert
Acting National Manager, Legal and Enforcement Branch
AUSTRAC

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1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia and CBA Entities) Instrument 2020 (No. 17)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Cessation

This instrument ceases to have effect on:

- (1) 31 December 2022

4 Authority

This instrument is:

- (1) made under paragraph 248(1)(a) of the Act; and
- (2) subject to conditions as authorised under paragraph 248(2)(b) of the Act.

5 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) customer;
- (b) designated business group;
- (c) designated service;
- (d) person;
- (e) reporting entity.

In this instrument:

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

Rules means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

CBA means Commonwealth Bank of Australia Limited (ACN 123 123 124)

CBA Entities means reporting entities in the designated business group of which CBA is a member, including CBA

CBA India means CBA Services Private Limited, CIN: U74999KA2018FTC112232, of Brigade IRV Centre 9th and 10th Floor, Nallurhalli, Whitefield, Bengaluru, Karnataka 560066, India

CBA systems means the systems and infrastructure owned and operated by CBA

Relevant Period means the period beginning the day this Instrument commences and ending on the day this Instrument ceases.

Relevant Services means the following services to be provided by employees of CBA India to CBA Entities:

- (a) monitoring, reviewing and analysing transactions of customers of CBA Entities stored on, or accessible through, CBA systems;
- (b) processing and reviewing transaction monitoring alerts in relation to the transactions referred to in paragraph (a);
- (c) undertaking ongoing customer due diligence and enhanced customer due diligence procedures in relation to customers of CBA Entities;
- (d) escalating matters to CBA for review, including those matters that may result in the lodgement of a suspicious matter report by any of the CBA Entities in accordance with section 41 of the Act.

Suspicious Matter Material refers to any information, the disclosure of which would engage subsections 123(1) or 123(2) of the Act in relation to any of the CBA Entities.

7 Exempt provisions

During the Relevant Period, CBA Entities are exempt from the following specified provisions of the Act:

- (1) subsection 123(1); and
- (2) subsection 123(2);

subject to the conditions specified in section 8 of this Instrument.

8 Conditions

This instrument is subject to the following conditions:

- (1) This exemption only applies to the disclosure of Suspicious Matter Material in the following circumstances:
 - (a) the disclosure is only made by CBA acting on its own behalf or on behalf of other CBA Entities; and
 - (b) the disclosure is only made by CBA to employees of CBA India who are:
 - (i) employed by CBA India to provide the Relevant Services; and
 - (ii) subject to risk-based screening and re-screening processes and procedures equivalent to those in CBA's employee due diligence program adopted in compliance with Part 8.3 or Part 9.3 of Rules; and

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- (iii) subject to training requirements equivalent to CBA's AML/CTF risk awareness training program adopted in compliance with Part 8.2 or Part 9.2 of the Rules; and
- (iv) have been approved, in writing, to receive Suspicious Matter Material by CBA's designated AML/CTF Compliance Officer;
- (2) CBA must enter into an agreement with each CBA Entity (**Authorisation Agreements**), authorising CBA to act on behalf of each of the CBA Entities in relation to:
- (a) the Confidentiality Agreement specified in subsection 8(5);
 - (b) the disclosure of the CBA Entities' Suspicious Matter Material to employees of CBA India; and
 - (c) any other matter to give effect to this instrument.
- (3) The Authorisation Agreements must be entered into before entering into the Confidentiality Agreement specified in subsection 8(5);
- (4) CBA must enter into a confidentiality agreement (**Confidentiality Agreement**) with CBA India and provide the AUSTRAC CEO with a copy of the Confidentiality Agreement within 14 days of both parties signing the Confidentiality Agreement;
- (5) the Confidentiality Agreement must:
- (a) be entered into by CBA acting in its own capacity as well as agent of each of the other CBA entities;
 - (b) incorporate the obligations set out in Schedule 1; and
 - (c) be capable of enforcement by injunction or damages; and
 - (d) be entered into before any Relevant Services are provided; and
 - (e) continue in force until:
 - (i) the Relevant Services are no longer provided; and
 - (ii) CBA India is no longer in possession of Suspicious Matter Material related to the customers of CBA Entities;
- (6) the Confidentiality Agreement may be a stand-alone agreement or form part of the agreement between CBA (acting on its own behalf and on behalf of each of the other CBA Entities) and CBA India for the provision of Relevant Services to CBA Entities.
- (7) CBA, on its own behalf or on behalf of another CBA entity, must, in writing, notify the AUSTRAC CEO within 14 days of the following events occurring:
- (a) any event that may affect its compliance with this exemption;

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- (b) the conditions described in subparagraphs 8(5)(e)(i) and (ii) have been satisfied.
- (8) CBA's compliance with the conditions set out in subparagraphs 8(1) to 8(7) and subparagraph 8(9) of this exemption must be subject to the ongoing oversight of the CBA's board and senior management.
- (9) CBA must, as part of its regular independent review of its Part A AML/CTF program, also undertake an audit of CBA's compliance with the conditions set out in subparagraphs 8(1) to 8(8) of this exemption.

Schedule 1—Confidentiality Agreement

1 Obligations

- (1) CBA India must:
 - (a) keep Suspicious Matter Material confidential at all times;
 - (b) not store any record of Suspicious Matter Material unless it is on the CBA systems;
 - (c) ensure that the Suspicious Matter Material is used only for the purposes of providing the Relevant Services to CBA Entities; and
 - (d) put in place reasonable safeguards to protect any personal information contained in Suspicious Matter Material.
- (2) CBA India must not disclose Suspicious Matter Material, either directly or indirectly, to any person other than:
 - (a) CBA India employees approved by the CBA AML/CTF Compliance Officer to access Suspicious Matter Material; or
 - (b) CBA (acting on its own behalf or on behalf of each of the other CBA entities); or
 - (c) a lawyer engaged by or on behalf of CBA for legal services directly related to matters relevant to the Suspicious Matter Material; or
 - (d) the AUSTRAC CEO; or
 - (e) a member of staff of AUSTRAC.
- (3) CBA India must not disclose to any person other than those persons mentioned in subsection 1(2):
 - (a) that any of the CBA Entities formed an applicable suspicion mentioned in subsection 41(1) of the Act; or
 - (b) that any of the CBA Entities have, communicated information to the AUSTRAC CEO under subsection 41(2) of the Act; or
 - (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that:
 - (i) any of the CBA Entities had formed the suspicion under subsection 1(3)(a); or
 - (ii) any of the CBA Entities had communicated the information to the AUSTRAC CEO under subsection 1(3)(b).

2 Interpretation

Note: A number of expressions used in this Schedule are defined in section 5 of the Act, including the following:

- (a) designated business group.
- (b) personal information.

CBA means Commonwealth Bank of Australia Limited (ACN 123 123 124)

CBA Entities means reporting entities in the designated business group of which CBA is a member, including CBA

CBA India means CBA Services Private Limited,
CIN: U74999KA2018FTC112232, of Brigade IRV Centre 9th and 10th Floor,
Nallurhalli, Whitefield, Bengaluru, Karnataka 560066, India

CBA systems means the systems and infrastructure owned and operated by CBA

Relevant Services means the following services to be provided by employees of CBA India to CBA Entities:

- (a) monitoring, reviewing and analysing transactions of customers of CBA Entities stored on, or accessible through, CBA systems;
- (b) processing and reviewing transaction monitoring alerts in relation to the transactions referred to in paragraph (a);
- (c) undertaking ongoing customer due diligence and enhanced customer due diligence procedures in relation to customers of CBA Entities;
- (d) escalating matters to CBA for review, including those matters that may result in the lodgement of a suspicious matter report by CBA Entities in accordance with section 41 of the Act.

Suspicious Matter Material refers to any information, the disclosure of which would engage subsections 123(1) or 123(2) of the Act in relation to any of the CBA Entities.

Important Notice to the person named in this instrument

1. Under subsection 248(3) of the Act, a person granted an exemption subject to one or more conditions must comply with the conditions specified in the instrument. Failure to comply with subsection 248(3) is a civil penalty provision and may result in any or all of the following:
 - the exemption ceasing to apply to the person during any period in which the person does not comply with the relevant condition/s;
 - the exemption being revoked;
 - the AUSTRAC CEO applying to the Federal Court of Australia for a civil penalty order requiring the person to pay a pecuniary penalty in respect of the breach.
2. This exemption is specific to, or is based on an assessment of the:
 - information or documents provided by, or on behalf of, the person to AUSTRAC in support of the exemption application; and
 - facts and circumstances relevant to the exemption application, including the nature and type of business activities the person undertakes at the time of the application.
3. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents. If any of the information submitted by the applicant or its representatives is found to be false or misleading, the exemption may be revoked and action initiated against the applicant.
4. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.
5. Any request to vary or extend this exemption must be submitted to the AUSTRAC CEO or an approved delegate no later than 90 days before the date the change is requested to commence.
6. This exemption does not preclude the person from making communications or disclosures that are otherwise permitted by law.