



## NOTICE TO APPOINT AN EXTERNAL AUDITOR TO CONDUCT A COMPLIANCE AUDIT

### SUBSECTION 162(2) OF THE *ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006*

**TO:** Bell Potter Capital Limited (**BP Capital**)  
ACN: 085797735  
Level 29/101 Collins Street  
Melbourne VIC 3000

Attention: The Proper Officer

1. I, Jack Haldane, Acting National Manager, Regulatory Operations of the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), as delegate of the Chief Executive Officer of AUSTRAC (**the AUSTRAC CEO**), have reasonable grounds to suspect that BP Capital is a reporting entity that has contravened and/or is contravening sections 36, 41, 51F, 81 and 82 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**).
2. Acting under subsection 162(2) of the AML/CTF Act, as delegate of the AUSTRAC CEO, I require that:

**Within 30 days of the date of this notice, BP Capital must:**

3. Identify three individuals BP Capital considers appropriate to conduct the audit AUSTRAC is requiring (**Nominated Individuals**).
  - a) In the event that BP Capital has appointed an independent auditor for example, for the purposes of an independent review in accordance with Part 9.6 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (**AML/CTF Rules**), BP Capital may, instead of identifying three or more individuals for AUSTRAC's consideration, nominate that independent auditor only.
  - b) If item [3.a] applies, AUSTRAC may authorise that independent auditor as an external auditor for the purposes of section 162 of the AML/CTF Act. However, if AUSTRAC finds the independent auditor unsuitable for the purpose of this notice, BP Capital must still identify and provide, in accordance with items [2], [3] and [4] of this notice, the details of three or more individuals for AUSTRAC's consideration within 30 days of being notified by AUSTRAC that it does not consider BP Capital's nominated independent auditor to be suitable.

4. Have each of the Nominated Individuals complete or provide to BP Capital, the following documents in support of their application to be authorised as an external auditor:
  - a) Completed 'Capability statement' (refer to **Annexure A**);
  - b) Signed statutory declaration (refer to **Annexure B**);
  - c) Resume of the Nominated Individual, which is to provide an overview of the Nominated Individual's employment and education history and any other information considered by the Nominated Individual to be relevant to the application; and
  - d) An initial work proposal from each Nominated Individual which outlines:
    - i. The proposed methodology including what sampling, interviews and data collection the Nominated Individual proposes to undertake;
    - ii. What expertise and resources the Nominated Individual has to undertake the audit. For example, will the Nominated Individual need to outsource or arrange for contractors to undertake aspects of the audit;
    - iii. What assurance the Nominated Individual will undertake in relation to the audit; and
    - iv. Anything else the Nominated Individual believes is appropriate to include in the work proposal.
5. Submit the documents listed at items [4.A] to [4.D] above for each Nominated Individual, by email to [leeann.king@austrac.gov.au](mailto:leeann.king@austrac.gov.au) and [susan.mcheim@austrac.gov.au](mailto:susan.mcheim@austrac.gov.au). BP Capital should include with these documents its order of preference among the Nominated Individuals for appointment as external auditor for the purpose of this notice.
6. The AUSTRAC CEO will consider the applications of the Nominated Individuals (or the independent auditor referred to in item [3.A], if applicable) and whether they are appropriate to conduct the external audit, and may authorise one of the Nominated Individuals to undertake the external audit. BP Capital will be notified in writing of the AUSTRAC CEO's decision.

**Within 14 days of the date AUSTRAC has authorised a Nominated Individual under section 164 of the AML/CTF Act, BP Capital must:**

7. Engage the agreed Nominated Individual as the external auditor to conduct an audit covering the matters specified below including giving a written report (**the audit report**) to BP Capital.

**Within 180 days of the external auditor being engaged, BP Capital must:**

8. Provide AUSTRAC with a copy of the final audit report setting out the auditor's findings.

**The matters to be covered by the audit**

9. The audit must cover the matters set out in the Schedule to this notice.

**The form of the audit report:**

10. The audit report must be in a form that:
- a) Accords with any Australian standard applicable to that kind of audit report, or which in the opinion of the external auditor accords with the closest applicable Australian standard; and
  - b) Accords with the format and style in which the external auditor would prepare a report suitable to annex to an expert witness affidavit the external auditor would make in Federal Court of Australia proceedings.

**Details to be included in the audit report:**

11. The audit report must contain details of:
- a) Any provisions of the AML/CTF Act and/or the AML/CTF Rules which the external auditor concludes BP Capital has not complied with or is not complying with;
  - b) The facts on which the auditor has relied to conclude any provisions identified in [11.A] have not been or are not being complied with;
  - c) Any measures which the external auditor believes BP Capital should implement to ensure that it complies with the AML/CTF Act and the AML/CTF Rules; and
  - d) The capacity of BP Capital to implement the measures set out in [11.C].

**Submission of audit reports:**

12. The audit report is to be submitted to [leeann.king@austrac.gov.au](mailto:leeann.king@austrac.gov.au) and [susan.mcheim@austrac.gov.au](mailto:susan.mcheim@austrac.gov.au).


**Consequences of not complying with a subsection 162(2) requirement in this notice:**

13. Under section 162(7) a person commits an offence if:
- a) The person is subject to a requirement under section 162(2); and
  - b) The person engages in conduct; and
  - c) The person's conduct breaches the requirement.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

14. Section 162(8), which is a civil penalty provision, states that a reporting entity must comply with a requirement under section 162(2).

Dated 16 February, 2022.



**Jack Haldane**  
**Acting National Manager, Regulatory Operations**  
**AUSTRAC**

## Schedule

### Definitions

The following definitions apply to this schedule.

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

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

**BP Capital** means Bell Potter Capital Limited.

**Part A Program** means Part A of an AML/CTF program as defined in subsection 85(2) of the AML/CTF Act.

**Relevant period** means 1 January 2018 to the date of this notice.

### Matters to be covered by the audit

#### **AML/CTF Program**

1. Whether each version of BP Capital's Part A Program in operation during the Relevant period complied with the requirements of paragraphs 9.1.3, 9.1.4 and 9.1.5 of the AML/CTF Rules.
2. Whether each version of BP Capital's Part A Program met the requirements of subparagraphs 9.9.1(1), 9.9.1(2) and 9.9.1(3) of the AML/CTF Rules during the Relevant period.
3. Whether each version of BP Capital's Part A Program met the requirements of paragraphs 15.2, 15.4 to 15.7 and 15.8 to 15.11 of the AML/CTF Rules during the Relevant period.

#### **Compliance with enrolment obligations**

4. Whether BP Capital failed to comply with the requirements of section 51F of the AML/CTF Act at any time during the Relevant period, and if so the cause, nature and scope (including timing) of each failure to comply.

#### **Compliance with SMR reporting**

5. Whether BP Capital failed to comply with the requirements of subsections 41(2) and 41(3) of the AML/CTF Act at any time during the Relevant period, and if so the cause, nature and scope (including timing) of each failure to comply.

#### **Compliance with AML/CTF Program**

6. Whether BP Capital has failed to comply with section 82 of the AML/CTF Act for the period 1 July 2021 to the date of this notice.

#### **Compliance with ongoing customer due diligence**

7. Whether BP Capital has failed to comply with section 36 of the AML/CTF Act for the period 1 July 2021 to the date of this notice.

## Annexure A



**Australian Government**  
**Australian Transaction Reports  
and Analysis Centre**

**Application for the authorisation of an individual as an external auditor pursuant to subsection 164(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)**

***CAPABILITY STATEMENT BY THE INDIVIDUAL***

Please complete this form (**responses must be typed**), which provides space for addressing all selection criteria.

1. Full name	
2. Employer's name	
3. Postal address	
4. Phone number(s)	
5. Email	
6. Location(s) at which work could be performed	
7. Area of expertise	
8. Tertiary qualifications and or other professional qualifications relevant to conducting audits under the AML/CTF Act	
9. Experience specific to conducting audits under the AML/CTF Act and, in particular, sections 161 and 162 of the AML/CTF Act	
10. Specific experience in conducting audits, risk assessments, developing and implementing AML/CTF programs or other compliance activity in relation to obligations under the AML/CTF Act	
11. Any other experience in the AML/CTF field	
12. Membership of Certified Practicing Accountants Australia	Yes <input type="checkbox"/> No <input type="checkbox"/>
13. Membership of the Institute of Chartered Accountants in Australia	Yes <input type="checkbox"/> No <input type="checkbox"/>
14. Membership of the Institute of Public Accountants	Yes <input type="checkbox"/> No <input type="checkbox"/>
15. Membership of the Governance Risk Compliance Institute	Yes <input type="checkbox"/> No <input type="checkbox"/>
16. Membership of an Association of Anti-Money Laundering Specialists	Yes <input type="checkbox"/> No <input type="checkbox"/>
17. Australian legal practitioner with current practising certificate	Yes <input type="checkbox"/> No <input type="checkbox"/>
18. Certified as an Anti-Money Laundering Specialist	Yes <input type="checkbox"/> No <input type="checkbox"/>
19. Details of membership of any other relevant associations	

20. Do you undertake to advise, in writing, the AUSTRAC CEO of any change to your name, contact details, or any criminal convictions within seven days of becoming aware of any such change?	Yes <input type="checkbox"/> No <input type="checkbox"/>
21. Do you declare that you are a fit and proper person to provide audit services under the AML/CTF Act	Yes <input type="checkbox"/> No <input type="checkbox"/>
22. Referee contact details	Name: Position/Title: Address: Phone: Email:

**Privacy notice**

AUSTRAC ensures the protection of any personal information provided to it, as required by the *Privacy Act 1988*.

AUSTRAC collects personal information to fulfil its functions under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* the *Financial Transaction Reports Act 1988* and the *Financial Management and Accountability Act 1997 (FMA Act)*. AUSTRAC’s collection of personal information is authorised by those Acts and the *Privacy Act 1988*. AUSTRAC discloses personal information to the agencies and entities covered by Part 11 of the AML/CTF Act, and to authorised overseas recipients, and to persons and bodies authorised to receive it under the FMA Act.

AUSTRAC will only disclose personal information about you where it is:

- in accordance with the law;
- in accordance with your consent; or
- to third parties engaged by AUSTRAC for the purposes of assessing your application to be authorised as an external auditor under the AML/CTF Act. These third parties will be required to ensure the protection of any personal information provided to them, as required by the *Privacy Act 1988*.

AUSTRAC’s Privacy Policy contains additional information regarding AUSTRAC’s Privacy practices and is available at [http://www.austrac.gov.au/privacy\\_policy.html](http://www.austrac.gov.au/privacy_policy.html).

If you do not provide the information requested on this form, AUSTRAC may not be able to process your application.

**Please note:** The decision on engagement of an authorised external auditor is not made by AUSTRAC. The appointment of the authorised external auditor is the sole responsibility of the reporting entity and AUSTRAC is not a party to the contractual relationship between the authorised external auditor and the reporting entity. As such, AUSTRAC accepts no liability for any breach of the contractual terms and conditions between the authorised external auditor and the reporting entity.

## Annexure B

### STATUTORY DECLARATION

*Statutory Declarations Act 1959*

I, [Name, address and occupation of person making the declaration] make the following declaration under the *Statutory Declarations Act 1959*:

1. I declare that all details and information in my application to be authorised as an external auditor under subsection 164(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) are true and accurate to the best of my knowledge.
2. I agree to comply with the conditions set out in the notification of authorisation as an external auditor, if so authorised.
3. I consent to be authorised as an external auditor by the AUSTRAC Chief Executive Officer (AUSTRAC CEO) (or a delegate of the AUSTRAC CEO) under subsection 164(1) of the AML/CTF Act.
4. I agree to make a conflict of interest declaration to the AUSTRAC CEO or a delegate of the AUSTRAC CEO (in a form provided by AUSTRAC) prior to any appointment as an external auditor under the AML/CTF Act; and that I will notify the AUSTRAC CEO, or a delegate of the AUSTRAC CEO, within seven days of becoming aware of any conflict of interest between myself and the applicable reporting entity, should a conflict of interest arise while I am appointed as an external auditor to undertake a particular audit concerning that reporting entity.
5. I have not acted improperly or sought in any way to obtain a special advantage from an AUSTRAC staff member in connection with the preparation of my application.
6. I will not take any improper commercial advantage of being authorised by the AUSTRAC CEO under subsection 164(1) of the AML/CTF Act.
7. I have answered the following questions truthfully:
  - 1) Have you, in the last five years, declared bankrupt or had bankruptcy proceedings brought against you?  
Yes  No
  - 2) Have you, in the last five years, been a director of any business that has failed e.g. gone into liquidation, voluntary administration or receivership?  
Yes  No
  - 3) Have you, in the last five years, been convicted of an offence against a Commonwealth, State or Territory law resulting in a custodial sentence?  
Yes  No
  - 4) Have you, in the last five years, been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty?  
Yes  No

- 5) Have you been disqualified or disbarred by any other Australian regulator or professional accreditation body. This includes the loss of any entitlement to practise as a professional accredited by an appropriate body in any of the relevant professional fields.

Yes  No

8. If I have answered 'Yes' to any of the questions set out in paragraph 7 above, I understand that AUSTRAC may seek further details from me.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

*[Signature of person making the declaration]*

*Declared at [place] on [day] of [month] [year]*

Before me,

*[Signature of person before whom the declaration is made]*

*[Full name, qualification and address of person before whom the declaration is made (in printed letters)]*

**Note 1:** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years—see section 11 of the *Statutory Declarations Act 1959*.

**Note 2:** Chapter 2 of the Criminal Code applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*.

For the latest information on Australian Government law concerning the *Statutory Declarations Act 1959* and *Statutory Declarations Regulations 1993*, please go to [www.comlaw.gov.au](http://www.comlaw.gov.au). This material is licensed for reuse under a Creative Commons CC BY-NC-SA 3.0 licence.