Australian Government
AUSTRAC

Outsourcing

This guidance applies to businesses that use outsourcing arrangements to help meet their anti-money laundering and counter-terrorism financing (AML/CTF) obligations.

This guidance will help you:

- comply with your AML/CTF obligations when outsourcing
- identify, mitigate and manage money laundering and terrorism financing (ML/TF) risks that could arise from outsourcing
- take steps to ensure providers tailor outsourcing arrangements to your business and its specific ML/TF risks.

This guidance uses the following words to distinguish between legal requirements and recommended actions:

- 'Must' indicates legally binding obligations
- 'May' indicates discretionary steps to achieve compliance
- 'Should' indicates good practice that is not a strict legal requirement.

> Your business remains liable for any breach of your AML/CTF obligations, even under outsourcing arrangements.
>
> You should take steps to ensure you manage any risks of outsourcing and have appropriate oversight of your providers.

Outsourcing means engaging an external provider to help you meet your AML/CTF obligations, for example:

- reporting to AUSTRAC
- developing and maintaining your AML/CTF program
- carrying out an independent review of you AML/CTF program
- carrying out applicable customer identification procedures
- employee due diligence, AML/CTF risk awareness training and transaction monitoring.

Your external provider could be a consultant or another reporting entity you work with under a reliance or designated business group arrangement.

You may choose to outsource services on an ongoing basis, or procure a product that will help your business maintain its AML/CTF controls, such as an automated system to carry out transaction monitoring.

You should read this guidance alongside AUSTRAC's core obligations guidance on how to comply and report.

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Disclaimer

AUSTRAC provides this guidance for educational purposes only and it does not constitute legal advice. The information in this guidance should be read together with, and not as a substitute for, the AML/CTF Act and Rules.

AUSTRAC does not guarantee, and accepts no legal liability whatsoever arising from, or connected to, the use or reliance of any material contained in this guidance.

For more information, refer to our Disclaimer.

Update your AML/CTF program

Your AML/CTF program must identify, mitigate and manage any ML/TF risks your business may reasonably face in providing designated services. This includes ML/TF risks that may arise from outsourcing.

Outsourcing may create ML/TF risks when a provider:

- lacks the expertise or resources to meet your AML/CTF obligations
- does not tailor its services to your business's unique ML/TF risks
- is not aware of the legal restrictions on information sharing under the AML/CTF Act and AML/CTF Rules
- is not subject to adequate performance, oversight and enforcement mechanisms.

Failure to address these risks can lead to systemic and serious non-compliance with your AML/CTF obligations.

Your AML/CTF Program should require you to do the following before outsourcing:

- Conduct due diligence on the provider to ensure they can meet your AML/CTF obligations and will tailor their services to your business's unique ML/TF risks.
- Ensure you understand any restrictions on information sharing under the AML/CTF Act and AML/CTF Rules.
- Create a legally enforceable outsourcing agreement in writing. Include performance, oversight and enforcement clauses to ensure the provider continues to meet your AML/CTF obligations.

If an external provider is developing or updating your AML/CTF program, you should complete these steps before you engage their services.

You should also document how your board or senior management will:

- be responsible for the oversight, accountability and resourcing required to identify, mitigate and manage the ML/TF risks of outsourcing
- receive reports on non-compliance and ML/TF risks arising from outsourcing arrangements on a risk basis, and
- effectively resolve non-compliance with outsourcing agreements and adapt to changing ML/TF risks.

Your AML/CTF program should document any outsourcing arrangements that carry ML/TF risk, and the controls you apply to mitigate and manage these risks.

Your board or senior management must approve any update to your AML/CTF program. They should record this approval in writing along with their reasons.

For further information, visit AML/CTF Governance.

Conduct due diligence on the provider

Before you outsource, you should check that your provider has appropriate expertise and can tailor their services to your business's unique ML/TF risks.

You should consider your provider's:

- experience in delivering the services required
- expertise or qualifications in Australia's AML/CTF regime and your industry
- ability to offer ongoing support to help you maintain AML/CTF compliance
- willingness to provide services subject to appropriate performance monitoring and enforcement controls
- suitability to be an independent reviewer of your AML/CTF program, if conducting an independent review.

Some methods you could use to verify your provider's capacity include:

- a demonstration of their services
- testimonials from other businesses similar to yours
- an explanation of how they will tailor their services to suit your business
- verification of their AML/CTF qualifications, resourcing and performance history
- confirmation that they were not involved in developing the functions or measures they are reviewing, if conducting an independent review.

You should verify that the provider's services can be adapted to meet your:

- obligations under Australia's AML/CTF framework
- business's unique ML/TF risks, designated services, customers, systems and operational practices as outlined in your AML/CTF program.

The following circumstances may indicate that a provider lacks the appropriate expertise to provide services, or has not tailored their service to your business:

- The provider is not familiar with your industry, type of business or AML/CTF obligations.
- The provider uses generic or template products that they have not tailored to your business or your obligations under Australia's AML/CTF framework.
- The provider develops their products without consulting you about your customers, designated services, delivery methods or jurisdictions you deal with.
- The provider reviews your AML/CTF program without testing any of your systems and controls, or asking your staff about your policies and procedures.

See AUSTRAC's checklists for AML/CTF advisors and regulatory technology businesses for further advice.

Understand information sharing restrictions

Before you outsource, you may want to obtain legal advice on whether outsourcing arrangements involve the sharing of restricted information.

Criminal penalties apply to unauthorised disclosures of:

- suspicious matter reporting information and information obtained under a written AUSTRAC notice under section 49 of the AML/CTF Act (tipping off)
- 'AUSTRAC information' provided to you by AUSTRAC staff.

There may also be other legal restrictions on information sharing, such as privacy laws.

For further information, see tipping off and tipping off exemptions.

Create an outsourcing agreement

You should only outsource through a written and legally binding agreement.

The agreement should:

- outline the services and performance targets you need to meet your AML/CTF obligations
- include monitoring and enforcement clauses to ensure services remain tailored to your business's evolving ML/TF risks.

Define roles and responsibilities

Your agreement should outline:

- when the agreement starts and ends
- the responsibilities that remain with you
- the responsibilities that have been outsourced to your provider
- the details of the officer in your business that oversees the agreement
- the expected service standards, including reporting arrangements and quality assurance processes
- if the provider holds any relevant data, and who owns and controls that data
- business continuity management
- review provisions, including any independent reviews
- how services comply with other legislative obligations, such as the Privacy Act.

You should ensure that the agreement aligns with your AML/CTF obligations. You may wish to obtain legal advice regarding your agreement.

Performance targets

You should include performance targets to ensure that services remain tailored to your ML/TF risks and AML/CTF obligations.

These performance targets could include:

- timeliness and quality assurance standards that align to your AML/CTF obligations
- adjusting services within specific timeframes when ML/TF risks or your circumstances change
- record-keeping requirements to comply with your record-keeping obligations
- implementing the recommendations of any independent reviews, with the milestones for review and implementation outlined in the agreement.

For example, if you outsource international funds transfer instructions (IFTI) reports, your performance targets could include:

- a requirement to submit all IFTI reports within the statutory timeframe of 10 business days from receipt or sending of the instruction
- a quality target to include all mandatory reportable details in IFTI reports
- a record-keeping target to retain all relevant records of IFTIs
- a requirement to provide you with an implementation plan within a set timeframe if the provider is going to change their IFTI systems following an independent review of your AML/CTF program.

You should ensure that the performance targets, if met, will satisfy your AML/CTF obligations.

Oversight

You should ensure you have appropriate oversight clauses in place to verify that your provider is meeting their agreed targets.

You may require that the provider:

- documents actions under the outsourcing agreement in writing and provides records to you when requested
- notifies you of any suspected non-compliance with your AML/CTF obligations and emerging ML/TF risks

- subjects themselves to ongoing due diligence and service quality checks against performance targets
- cooperates with scheduled independent reviews of outsourcing arrangements and associated ML/TF risks.

These controls will help you detect non-compliance and potential ML/TF risks.

Under your AML/CTF program, you should escalate non-compliance or ML/TF risks to your board or senior management on a risk basis for appropriate action.

Enforcement

Your outsourcing agreement should provide your board or senior management with a range of enforcement options to take a proportionate and risk-based approach to any breaches of the agreement.

Enforcement clauses could include:

- duties on the provider to remedy any breach of performance targets
- assurances that a third party will meet any targets not met by the provider
- termination of the agreement in cases of serious or systemic non-compliance with AML/CTF obligations or the outsourcing agreement.

Final approval

You should ensure that your outsourcing agreement, and any subsequent amendments to this agreement, remain within the scope of your AML/CTF Program as approved by your board or senior management.

If your outsourcing agreement sits outside the scope of your AML/CTF Program, the agreement should be approved by the board or senior management, along with any consequential changes to your Program. You should record the approval in writing along with the board or senior management's supporting reasoning.

Ongoing monitoring and reporting

You should monitor all outsourcing arrangements to ensure that outsourcing continues to meet your AML/CTF obligations and adjusts to changing ML/TF risks.

You may decide to:

- obtain legal advice on outsourced services to verify that they meet your AML/CTF obligations
- update your provider regularly on any relevant changes to your business and follow up to ensure that they adjust controls appropriately
- complete regular quality assurance checks of outsourced services against performance targets
- report regularly to your board and senior management on any significant ML/TF risks and non-compliance.

You must also include information on outsourcing arrangements in your annual AUSTRAC compliance report. For further information, visit AUSTRAC compliance reports.

Examples of good and bad practices

The following table provides examples of good practices when using outsourcing arrangements, and examples of practices that may lead to non-compliance and increase ML/TF risks to your business.

Good practices	Bad practices and possible consequences
Developing an AML/CTF program that identifies, mitigates and manages ML/TF risks, including from outsourcing.	Your AML/CTF program does not identify, mitigate and manage ML/TF risks from outsourcing. Failing to address ML/TF risks when outsourcing is likely to lead to non-compliance and higher ML/TF risks across your business.

Good practices	Bad practices and possible consequences
Senior management has oversight of outsourcing arrangements under the AML/CTF program, and takes responsibility for dealing with non-compliance and ML/TF risks that arise.	The board or senior management do not oversee outsourcing under the AML/CTF program. The business does not prioritise and address outsourcing risks. This can lead to lack of priority for ML/TF risks and inadequate resources dedicated to managing risks.
Conducting due diligence on your provider to verify that they are capable of meeting your AML/CTF obligations.	Not completing due diligence on the provider to ensure they are capable of meeting your obligations could lead to non-compliance. Your business is liable for any breaches, and could face enforcement action from AUSTRAC.
Ensuring that the provider tailors their products to your business's ML/TF risks, designated services, customers and methods of delivery.	Using a template or 'global' products that the provider did not tailor to your business. Products and services that do not take into account your specific circumstances will not properly identify, mitigate and manage your ML/TF risks.
Ensuring you understand your legal obligations related to outsourcing and information sharing under the AML/CTF Act or other legislation. Obtaining legal advice where necessary.	Not taking appropriate steps to ensure you understand your legal obligations. This could lead to, for example, employees committing tipping off offences when disclosing suspicious matters to your provider.
Having a written and legally binding outsourcing agreement. Clear	No written agreement with the outsourcing provider, or clear

Good practices	Bad practices and possible consequences
responsibilities and performance targets are included in outsourcing arrangements to ensure you continue to meet your AML/CTF obligations.	responsibilities or performance targets in the outsourcing agreement. You may not meet important obligations due to confusion or lack of accountability. This could lead to significant non-compliance.
Including oversight and enforcement clauses in outsourcing agreements that allow you to quickly detect and escalate non-compliance to senior management for appropriate action.	Failing to include sufficient oversight or enforcement clauses in your agreement. Systemic non-compliance with your AML/CTF obligations may go undetected, and senior management cannot take appropriate action.
Proactively monitoring your outsourcing provider and their adherence to the performance agreement.	‘Set and forget’ arrangements, failing to proactively monitor your provider and their adherence to the agreement. This could lead to serious and systematic non-compliance with your AML/CTF obligations.