

Legal Alert

4 MAY 2016

[Contact us](#)

[Visit our website](#)

The latest in anti-money laundering and counter-terrorism financing: What you need to know

Introduction

Emma Hunter, founder and Supporting Chair of Baker & McKenzie's Global AML/CTF Group and our resident AML/CTF specialist, has recently returned from speaking at the 8th Annual Association of Certified Anti-Money Laundering Specialists (**ACAMS**) Asia Pacific Anti-Money Laundering and Financial Crime Conference in Beijing.

In this alert we share:

1. firsthand insights on the upcoming compliance challenges facing reporting entities throughout Asia Pacific;
2. five key take-aways from the Attorney-General's Department Report on the Statutory Review of the *Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**); and
3. thoughts on the recent finalisation of the Privacy Impact Assessment (**PIA**) on the draft amendments to Chapter 4 of the AML/CTF Rules.

Firsthand insights from the 8th Annual ACAMS Asia-Pacific AML Conference

It is clear that many financial service providers operating throughout Asia-Pacific are struggling with basic know your customer (**KYC**) obligations and more specifically, are facing difficulties in carrying out adequate beneficial owner identification/verification. Striking a balance between regulatory expectation and internal customer due diligence (**CDD**) protocols was a hot topic throughout the ACAMS Conference. Many organisations are working with regulators and are fine-tuning existing policies and procedures to balance compliance and an ability to continue doing business in regions where beneficial ownership information is particularly difficult to obtain/verify.

Fellow speakers discussing this topic included FATF, SWIFT, the Malaysia Anti-Corruption Commission, the People's Bank of China and various banks.

Many regulators appear to support the concept of beneficial owner registers (the register recently announced by the Australian Government that will list beneficial owners of shell companies was mentioned more than once) and are continuously working to clarify regulatory expectation in relation to this often confusing area of compliance.

Other difficulties facing the industry include the financial inclusion/de-risking balancing act most notably

impacting correspondent banking relationships and the money service business (**MSB**) sector. Specific processes to mitigate and manage risks posed by trade-based money laundering, ISIS and other terrorist organisations as well as new technologies was discussed with many financial service providers seeking specific guidance on how to mitigate and manage the risk of 'loan wolf' terrorists exploiting financial services and products.

5 Take-Aways from the Attorney General's recommended reforms to Australia's AML/CTF Regime

Below are five key take-aways from the Attorney-General's 84 recommendations on reforming Australia's AML/CTF regime:

1. Offshore entities to be captured by Australia's AML/CTF regime

The report recommends enhancing the scope of the AML/CTF regime to cover offshore-based entities offering designated services to customers in Australia. The Attorney-General's recommendations in this regard range from a voluntary opt-in model to regulation of any foreign provider of designated services either offered or advertised in Australia. While it is unclear which of these regulatory models will be adopted, what is certain is that offshore entities will need to keep an eye on this space.

In addition, the report proposes that Australian entities with foreign branches and subsidiaries be required to perform a gap analysis between the AML/CTF requirements applying to them in the foreign country and the AML/CTF regime in Australia and apply the higher standard.

2. Increased regulation of remittance providers

The report comments that changes to regulation in this space need to be balanced against the risk of displacement (whereby high-risk customers, remitters and suspicious financial activities moves underground and out of AUSTRAC's regulatory oversight). In relation to remittance providers, the report recommends:

- a) that a government-industry working group be established to develop options for strengthening the regulatory oversight of remitters;
- b) that remittance network providers be explicitly required to monitor their affiliates' compliance and report to AUSTRAC on breaches and remedial action as required;
- c) that the definition of a designated remittance arrangement in the AML/CTF Act be amended to ensure that non-remittance businesses are not unintentionally regulated as remitters; and
- d) that the AUSTRAC CEO be allowed to:
 - i. deregister remitters that are not conducting remittance activities;
 - ii. ban individuals from involvement in the management of a remitter based on a demonstrated lack of suitability; and
 - iii. publish refusals and notices detailing the circumstance of a cancellation of the registration of a remitter.

3. The rise of RegTech and FinTech

In a bid to modernise and simplify the existing AML/CTF regime, the report recommends:

- a) that new and emerging regulatory technologies (**RegTech**) be used to simplify reporting entities' KYC obligations (facial recognition, voice recognition, fingerprints and retinal scanning are mentioned);
- b) that e-currencies (like Bitcoin) be added to the list of designated services, and that AUSTRAC consider adding cheque cashing facilities and stored value cards to the list of designated services (where those facilities currently fall under existing thresholds and are not captured); and
- c) that the AML/CTF regime adopt the technology neutrality principle, to ensure that future technologies can be accommodated into the regime easily and without one technology being favoured at the expense of another.

4. Correspondent banking

The report recommends:

- a) that the AML/CTF regime be streamlined so that the correspondent banking obligations are commensurate with FATF standards (including a one-step process for conducting due diligence assessments on respondent financial institutions);
- b) that financial institutions be required to consider the quality of ML/TF supervision conducted in the country of the respondent institution as part of the due diligence assessment; and
- c) the AML/CTF Act be amended to:
 - i. broaden the definition of correspondent banking so that it is consistent with FATF standards;
 - ii. require financial institutions to undertake specific due diligence in relation to payable-through accounts consistent with FATF standards; and
 - iii. prohibit financial institutions from entering into a corresponding banking relationship with an institution that is capable of entering into such a relationship with a shell bank.

5. Tranche two

Finally, the report recommends that designated non-financial businesses and professions (**DNFBPs**) (for example casinos, real estate agents, dealers in precious metals, lawyers and notaries) be regulated.

FATF highlighted the lack of regulation of DNFBPs as an area of concern in its Mutual Evaluation Publication on Australia (published in April 2015) so this recommendation is not a surprise. Regulation of DNFBPs has always been proposed as the second tranche of the AML/CTF Act, but was put on hold during the global financial crisis. The report discusses options for regulation ranging from applying the existing regime to these sectors, partially applying the existing regime to these sectors or establishing self-regulation of the sector by relevant industry bodies.

It is worth noting that the Attorney-General's report is only comprised of recommendations to Parliament, and while the report will guide the Government's regulatory priorities in the space moving forward (particularly given AUSTRAC has endorsed all 84 recommendations), the recommendations are not binding.

Finalisation of the PIA on AUSTRAC's Chapter 4 amendments

The PIA examining the implications under Australian privacy law of the proposed amendments to Chapter 4 of the Anti-Money Laundering and Counter-Terrorism Financing Rules (**Rules**) was finalised on 28 April 2016.

This brings the Chapter 4 amendment allowing reporting entities the discretion to collect KYC information 'about' a customer, rather than 'from' a customer, one significant step closer to becoming law. Other amendments in Chapter 4 that were caught up in the PIA review (clarifying the simplified verification procedures) are also closer to finalisation.

Conclusion and next steps

If you are uncertain about any of the above matters, or have a question about Emma's global AML/CTF insights, the Attorney-General's report, or the PIA, please do not hesitate to get in touch with a member of our team.

Supplementary information

Click [here](#) to view the Attorney-General's full report.

Follow us



For more information

Sydney



Astrid Raetze
Partner
astrid.raetze
@bakermckenzie.com



Emma Hunter
Senior Associate
emma.hunter
@bakermckenzie.com

Melbourne



Stephen Watts
Partner
stephen.watts
@bakermckenzie.com



Brisbane

Level 8, 175 Eagle Street
Brisbane QLD 4000 Australia
Tel: +61 7 3069 6200

Melbourne

Level 19, 181 William Street
Melbourne VIC 3000 Australia
Tel: +61 3 9617 4200

Sydney

Level 27, AMP Centre,
50 Bridge Street
Sydney NSW 2000

This email is sent by Baker & McKenzie (ABN 32 266 778 912), an Australian partnership and member of Baker & McKenzie International, a Swiss Verein. This communication has been prepared for the general information of clients and professional associates of Baker & McKenzie. You should not rely on the contents. It is not legal advice and should not be regarded as a substitute for legal advice.

The contents may contain copyright. Personal information contained in communications with Baker & McKenzie is subject to our [Privacy Policy](#) and the obligations of the Privacy Act. Emails sent to Baker & McKenzie are subject to automated email filtering. Should you receive this email in error, please telephone us on +61 2 9225 0200 or email our [Helpdesk](#).

Before you send email to Baker & McKenzie, please be aware that your communications with us through this message will not create a lawyer-client relationship with us. Do not send us any information that you or anyone else considers to be confidential or secret unless we have first agreed to be your lawyers in that matter. Any information you send us before we agree to be your lawyers cannot be protected from disclosure.

Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Thank you.

[UNSUBSCRIBE THIS COMMUNICATION](#)

[UNSUBSCRIBE ALL](#)