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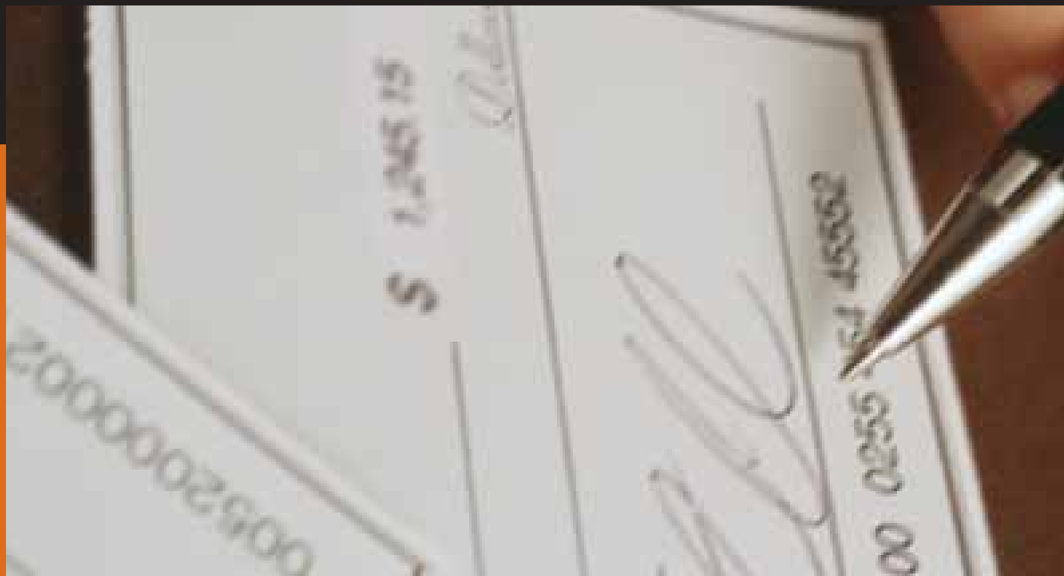

Inside:

Australian proposals to amend anti-money laundering laws

Anti-money laundering legislation: proposed reforms take up international recommendations

The Federal Government's decision to reform Australia's anti-money laundering system in line with the revised *Forty Recommendations of the Financial Action Task Force on Money Laundering* will result in significant changes to Australia's money laundering legislation, including the *Financial Transaction Reports Act 1988*. Senior Associate Anna Lenahan reports.

Changes to international anti-money laundering standards

The international standards for combating money laundering and terrorist financing are contained in the Forty Recommendations of the inter-governmental body, the Financial Action Task Force on Money Laundering (***FATF***).

In June 2003, the Forty Recommendations were significantly extended by FATF to address new, and increasingly sophisticated, money laundering and terrorist financing techniques and systems. The major changes to the Forty Recommendations include:

- expanded customer due diligence requirements for financial institutions;
- enhanced measures for dealing with higher money-laundering risks associated with correspondent banking relationships and politically exposed persons;
- enhanced transparency through measures to improve information on the beneficial ownership of legal entities such as companies, and legal arrangements such as trusts; and

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- an expanded role for particular industry sectors: the extension of anti-money laundering obligations to non-financial businesses and professions (including accountants, trust and company service providers, and lawyers).

Australia to implement the revised international standards

The Australian Government has announced its intention to implement the revised Forty Recommendations (***Revised Recommendations***) and has indicated that it will consult and work with the industry during the implementation process to design a cost-effective, anti-money laundering system that will meet international standards and, at the same time, be responsive to the needs of Australian industry.

The Government has initiated the process of public consultation by releasing a series of industry-specific issues papers, including one that is directly relevant to the financial services sector: *Anti-Money Laundering Reform: Issues Paper 1: Financial Services Sector*.

The closing date for submissions in relation to this issues paper is **Friday, 19 March 2004**.

Additional information on anti-money laundering reform, including the Revised Recommendations and the Government's consultation process, can be found at http:/www.ag.gov.au/aml.

Australia is a founding member of FATF, which now comprises more than 30 members.

Issues for the financial services sector

The following is a general overview of the issues relevant to the financial services sector, as described in *Anti-Money Laundering Reform: Issues Paper 1: Financial Services Sector*.

- Implementation of the Revised Recommendations will involve a significant review of Australia's anti-money laundering legislation (including the *Financial Transaction Reports Act 1988* (***FTR Act***)) and include some new measures intended to counter terrorist financing.

- The proposed reforms to Australian legislation will build on existing measures to produce a regulatory regime that will more effectively detect suspicious transactions and allow timely monitoring and tracking of transactions.

- In general, financial services businesses will be subject to the anti-money laundering reporting obligations and will need to consider their anti-money laundering reporting obligations. Businesses that provide services and sell products to retail customers will need to consider the implications of the more thorough measures intended to more effectively detect suspicious activity. Business engaged in handling the flow of funds through the financial system will need to consider how the monitoring and tracking obligations will affect their information-handling and reporting to the regulator.

- In the context of the proposed reforms to the Australian legislation, the issues for consideration by the financial services sector are identified under four main themes:

  - *Coverage: which businesses and financial instruments are subject to anti-money laundering reporting requirements?*

    Coverage of the financial services sector will be determined by an activities-based definition rather than the listing approach characterising the 'cash dealer' definition in the existing *FTR Act*. Anti-money laundering reporting obligations will apply to 'financial products' and to persons who provide, deal in or handle a 'financial product'. This will mean that reporting systems will have to be capable of providing reports on a range of financial products, not limited to cash transactions.

    'Financial product' will be broadly defined and closely parallel the definition in the *Corporations Act* (although a number of the more specific exemptions relating to financial services regulation for investor-protection and market-integrity purposes that do not accord with anti-money laundering objectives will not apply).

  - *Detecting suspicious activity: the concept of ongoing customer due diligence and the measures needed to support it*

    Revised customer due diligence requirements will extend to non-cash banking products, non-account customers and previously non-*FTR Act* banking products and facilities.

    In addition to initial customer due diligence, there will be a need for ongoing customer due diligence that will expand the extent of customer scrutiny and introduce additional ongoing monitoring and record-maintenance requirements. In addition to this enhanced customer due diligence, there will

also be specific situations where financial sector businesses will be required to exercise a higher level of due diligence, including, for example, in business relationships involving politically exposed persons, and transactions with countries that do not adequately apply the international standards.

Financial institutions will need to exercise greater scrutiny on foreign counterparts before entering correspondent banking-relationships (and should not enter into or continue correspondent banking-relationships with shell banks). They will not only need to satisfy themselves that they are suitably diligent with their customer banks but that their customer bank is also performing effective due diligence on its own customers.

- *Record-keeping and tracking: measures designed to allow investigators and enforcement agencies ready access to information*

The new standards will require collection and retention of additional customer due diligence information relevant to ongoing due diligence measures. The format requirements for records will be developed in consultation with industry, with the objective of having consistent industry-wide data formats.

The Revised Recommendations require that wire or fund transfers must contain completed ordering customer information, and that this information must be maintained through the signal chain or routing of the instruction through the messaging system. The new requirements will place particular obligations on financial institutions, depending on their role in processing the payment instruction.

Record-keeping obligations will need to be reviewed to ensure that information can be made available within three days of a request by an anti-money laundering regulator or nominated agency.

- *Oversight & compliance: measures designed to allow the system to operate effectively and consistently*

The Government wants to explore the options for a risk-based, industry-partnership approach to anti-money laundering regulations. A risk-based approach will require a business to consider the money laundering risk of each customer (eg customers deemed a higher money-laundering risk would need to provide additional information to that normally required). Likewise, compliance reporting may well be more strategically targeted, based on the assessment of risk particular to a product or sector, such as monetary instruments or funds transfers to or from countries with inadequate anti-money laundering regulation.

Under a risk-based industry partnership approach to anti-money laundering regulation, industry bodies would have primary responsibility for developing guidance to assist their membership to implement appropriate detection systems and for monitoring effectiveness. Industry bodies would design appropriate procedures for their members and the anti-money laundering regulator would be responsible for setting principles and guidelines and approving anti-money laundering programs.

Systematic and institution-wide anti-money laundering programs will need to be in place to facilitate a whole-of-organisation, anti-money laundering culture. The programs will involve internal policies, procedures, operational controls and compliance management systems, staff training programs, and procedures both for screening staff and for independent audits. There will be also be an expanded role for industry associations in designing programs for their sectors.

With the broader focus of the Revised Recommendations, consideration should be given to expanding the reporting base under any new Australian anti-money laundering legislation to include suspicious activity not confined to financial transactions.

Financial institutions dealing with third parties will need to satisfy themselves that third parties (including intermediaries) who process business or perform customer due diligence on their behalf are subject to supervision or regulation and have adequate customer due diligence systems.

A financial institution's anti-money laundering system should be consistently applied across all of its areas and operations (ie including the operations of overseas branches and subsidiaries).

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