

**ENFORCEABLE UNDERTAKING**  
***ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM***  
***FINANCING***  
***ACT 2006***

**UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER OF**  
**AUSTRAC**  
**FOR THE PURPOSES OF**  
**SECTION 197 OF THE AML/CTF ACT**

**BY**

**EASTERN & ALLIED PTY LTD ACN 130 744 802**  
**trading as HAI HA MONEY TRANSFER**

**Definitions**

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

**AML/CTF program** means an anti-money laundering and counter-terrorism financing program and has the meaning given in section 83 of the AML/CTF Act.

**AML/CTF Rules** means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* made under section 229 of the AML/CTF Act.

**AUSTRAC's Concerns** means the concerns referred to in paragraphs 7 to 10 of this enforceable undertaking.

**Cash dealer** has the meaning given in section 3 of the FTR Act.

**Date of this enforceable undertaking** means the date on which it is accepted by AUSTRAC.

**Designated service** means services at items 31 and 32 listed in table 1 in

section 6 of the AML/CTF Act.

**Employee due diligence program** has the meaning given in Part 8.3 of the AML/CTF Rules.

**FTR Act** means the *Financial Transaction Reports Act 1988 (Cth)*.

**FTR Regulations** means the *Financial Transaction Regulations 1990 (Cth)*.

**ML/TF Risk** has the meaning given in paragraph 1.2.1 of the AML/CTF Rules.

**Registrable designated remittance service** has the meaning given in section 5 of the AML/CTF Rules

### **Introduction**

- 1 Under section 3 the objects of the AML/CTF Act include fulfilling Australia's international obligations designed to combat the laundering of money and the financing of terrorism. Under section 212 of the AML/CTF Act the Chief Executive Officer of AUSTRAC (the **AUSTRAC CEO**) is charged with, among other things, promoting compliance with the Act.

### **Person giving the enforceable undertaking**

- 2 This enforceable undertaking is given to the AUSTRAC CEO by **EASTERN & ALLIED PTY LTD ACN 130 744 802 trading as HAI HA MONEY TRANSFER (Eastern & Allied)** of Sydney in the state of New South Wales, under section 197 of the AML/CTF Act.

### **Background**

- 3 Eastern & Allied provides registrable designated remittance services, is a reporting entity for the purposes of the AML/CTF Act and a cash dealer for the purposes of the FTR Act.
- 4 The FTR Act, the FTR Regulations, the AML/CTF Act and the

AML/CTF Rules impose obligations on cash dealers and reporting entities respectively to, inter alia, lodge reports with the AUSTRAC CEO and to implement risk-based systems and controls to identify, mitigate and manage the ML/TF Risk posed by the provision of certain designated services.

- 5 Eastern & Allied acknowledges that it has breached provisions of the AML/CTF Act and the AML/CTF Rules.
- 6 Eastern & Allied has offered this enforceable undertaking to the AUSTRAC CEO for the purposes of section 197 of the AML/CTF Act and the AUSTRAC CEO accepts it to minimise the risk of future breaches by Eastern & Allied of the AML/CTF Act and the AML/CTF Rules.

#### **AUSTRAC's Concerns**

- 7 AUSTRAC is concerned that Eastern & Allied has contravened and continues to contravene the AML/CTF Act and the AML/CTF Rules.
- 8 AUSTRAC is concerned that Eastern & Allied does not have an AML/CTF program with adequate risk-based controls and systems to identify, mitigate and manage the ML/TF risk it may reasonably face when providing a designated service.
- 9 In particular, AUSTRAC is concerned that Eastern & Allied has failed to undertake an employee due diligence program as required by the AML/CTF Rules and has employed a person despite there being strong evidence to suggest that such person may facilitate the commission of a money laundering and/or financing of terrorism offence under the *Criminal Code 1995*.
- 10 AUSTRAC is concerned that in the absence of adequate risk-based systems and controls, Eastern & Allied may not be able to comply fully with its obligations under the AML/CTF Act and AML/CTF Rules, including its customer identification obligations.

### **Acknowledgements by Eastern & Allied of AUSTRAC's Concerns**

- 11 Eastern & Allied acknowledges AUSTRAC's Concerns, and voluntarily offers an enforceable undertaking in the terms of paragraphs 17 to 19 below.
- 12 Eastern & Allied confirms that it has received legal advice in relation to its obligations under, and the effect of, this enforceable undertaking.

### **Acknowledgements – Operation of Enforceable Undertaking**

- 13 Eastern & Allied acknowledges that:
  - i. This enforceable undertaking has no operative force until accepted by the AUSTRAC CEO.
  - ii. The date of the enforceable undertaking is the date on which it is accepted by the AUSTRAC CEO.
  - iii. The AUSTRAC CEO's acceptance of this enforceable undertaking does not affect AUSTRAC's power to investigate, pursue a criminal prosecution or take civil or administrative action or seek a civil penalty order in relation to:
    - a. any contravention not the subject of AUSTRAC's Concerns; or
    - b. arising from future conduct occurring after the date of this enforceable undertaking whether or not the future conduct arises from the conduct described in AUSTRAC's Concerns, but excluding conduct (including reporting obligations) which is being or will be addressed by this enforceable undertaking.
  - iv. This enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in AUSTRAC's Concerns or arising from future conduct.

- v. The AUSTRAC CEO may publish a copy of this enforceable undertaking on AUSTRAC's internet site in accordance with subsection 197(5) of the AML/CTF Act.
- vi. AUSTRAC may issue a media release on execution of this enforceable undertaking referring to its terms and to AUSTRAC's Concerns that led to its execution. AUSTRAC will give Eastern & Allied prior notice of any media release it plans to issue.
- vii. AUSTRAC may from time to time publicly refer to this enforceable undertaking.
- viii. Eastern & Allied has disclosed to the AUSTRAC CEO the material facts, matters and circumstances in relation to AUSTRAC's Concerns.
- ix. If any part of this enforceable undertaking is held invalid that part shall be severed from this enforceable undertaking and the remainder of this enforceable undertaking will continue to be valid and enforceable.

### **Commencement of the Enforceable Undertaking**

- 14 This enforceable undertaking comes into effect when:
- i. the enforceable undertaking is executed by Eastern & Allied ; and
  - ii. the AUSTRAC CEO accepts the enforceable undertaking so executed.
- 15 Upon the commencement of this enforceable undertaking, Eastern & Allied undertakes to assume the obligations set out in paragraphs 17 to 19 below.

### **Undertakings**

- 16 Under subsection 197(1) of the AML/CTF Act, Eastern & Allied has offered, and the AUSTRAC CEO has agreed to accept, as an

alternative to pursuing civil action in relation to AUSTRAC's Concerns, the undertakings as set out in paragraphs 17 to 19 inclusive.

- 17 Eastern & Allied undertakes that it will pay the costs of its compliance with this enforceable undertaking including the remuneration and costs associated with the engagement of any independent expert.
- 18 Eastern & Allied will, until the date on which this enforceable undertaking ends pursuant to paragraph 21 below and, within a reasonable period of time after receiving a request from AUSTRAC, provide all documents and information requested by AUSTRAC from time to time for the purpose of assessing Eastern & Allied's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, Eastern & Allied is not required to provide AUSTRAC with any document or information that is the subject of legal professional privilege.
- 19 Eastern & Allied will by the dates set out below or such later date as agreed to by AUSTRAC in writing:
  - i. by 4 pm on 2 December 2009 provide AUSTRAC with written confirmation of the matters set out in correspondence from Eastern & Allied dated 19 November 2009 that:
    - a. effective from 19 November 2009  

[redacted]

has been removed from  
from [redacted] position as Business Manager of Hai Ha Money Transfer;
    - b. [redacted] ongoing role at Hai Ha Money Transfer is limited to responsibilities that do not require to deal, either directly or indirectly, with customers and transactions or to manage staff, including the provision of instructions to staff in dealing with customers or transactions;

*Note: Particular information in paragraphs a., b. and c. of subclause 19i. have been deleted pursuant to the requirement in paragraph 197(5)(c) of the AML/CTF Act*

- c. effective from 19 November 2009  
ongoing role at Hai Ha Money Transfer is limited to the areas of Banking & Finance, Accounting, Administration and Marketing;
- ii. by 31 December 2009 undertake a revised ML/TF risk assessment in relation to Eastern & Allied's business;
- iii. by 31 December 2009 review and modify its systems and controls to identify, mitigate and manage its ML/TF risk in order to implement an AML/CTF program with risk-based systems and controls that complies with all of the requirements in the AML/CTF Act and AML/CTF Rules and which is consistent with the guidance in AUSTRAC Guidance Note *Risk Management and AML/CTF Programs* as at the date of this undertaking;
- iv. by 31 January 2010, submit to the AUSTRAC CEO a written report of each of the matters set out in sub-paragraphs a. to d. below. The report must be prepared by a person independent of Eastern & Allied and its officers. The person's engagement must be approved in writing by the AUSTRAC CEO or his delegate. This report will set out the following:
  - a. the adequacy of Eastern & Allied's revised ML/TF risk assessment in relation to Eastern & Allied's business in regard to Eastern & Allied's customer types, the types of designated services it provides, the methods by which it delivers designated services and the foreign jurisdictions to and from which it may send or receive payments on behalf of its customers;
  - b. the adequacy of Eastern & Allied's risk based systems and controls to properly identify, mitigate and manage its ML/TF risk;
  - c. the adequacy of Eastern & Allied's systems to enable Eastern & Allied to comply with all of its

reporting obligations under Part 3 of the  
AML/CTF Act;

- d. the adequacy of Eastern & Allied's practices, policies and procedures to ensure compliance with the obligations to identify and verify the identity of its customers contained in Part 2 of the AML/CTF Act and the applicable AML/CTF Rules; and
- v. to the extent that the report identifies deficiencies, the report must make recommendations (**Remedial Recommendations**) on how to rectify those deficiencies and set out reasonable timeframes for the rectification of those deficiencies; and
- vi. by 31 January 2010, submit to the AUSTRAC CEO a plan (**Remedial Action Plan**) setting out the action it proposes to take to address the Remedial Recommendations and specifying the time in which this action will be taken. If the AUSTRAC CEO requires any reasonable modifications to the Remedial Action Plan, including to the time specified, Eastern & Allied must modify the Remedial Action Plan accordingly; and
- vii. implement the Remedial Action Plan within the time specified.

#### **Provision of documents to AUSTRAC**

- 20 The address for providing AUSTRAC with any document which this enforceable undertaking requires to be provided to AUSTRAC is:

Australian Transaction Reports and Analysis Centre  
PO Box 5516

West Chatswood NSW 1515

#### **End date**

- 21 This enforceable undertaking ends on 31 December 2010.



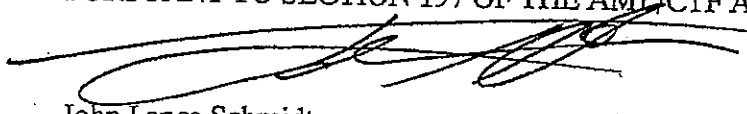
**EXECUTED BY**

Eastern & Allied Pty Ltd pursuant to section 197 of the AML/CTF Act

*Note: This section has been deleted pursuant to the requirement  
in paragraph 197(5)(c) of the AML/CTF Act*

This 3 day of December 2009

ACCEPTED BY THE AUSTRAC CEO, JOHN LANCE SCHMIDT  
PURSUANT TO SECTION 197 OF THE AML/CTF ACT.



John Lance Schmidt

Chief Executive Officer

This 8th day of DECEMBER 2009