

AML/CTF programs: towards a principles-based approach

The *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* made 84 recommendations to simplify, streamline and strengthen the regime, in order to achieve greater regulatory efficiencies and outcomes, while enhancing compliance with the FATF standards.

The Report recommended that the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) should be simplified and become more principles-based, with some detail provided in the Rules and the remaining detail provided in guidance (Recommendation 2.1).

AML/CTF Act

In essence, the AML/CTF Act should set out the required outcomes, namely that reporting entities conduct an assessment of the risk that a corporate group might be used to further financial crime¹, and maintain group-wide AML/CTF controls to address that risk.²

These controls:

- require reporting entities to monitor, manage and mitigate risks identified in the risk assessment
- require reporting entities to comply with regulatory obligations
- are to be proportionate to the nature, scale and complexity of the business³
- are to be approved by senior management

The risk assessment and the controls to respond to the identified risks are to be recorded in writing.

AML/CTF Rules

The Rules will provide context to the requirements set out in the Act. The Rules will require that a reporting entity consider the size/nature of the business when deciding how to undertake its ML/TF risk assessment. The Rules will also set out obligations that the controls that are developed in response to the identified risks be: regularly reviewed and updated; communicated within the reporting entity/group; and applied across the entire group, including in foreign subsidiaries and branches.⁴ A reporting entity would be required to advise their home country regulator if foreign laws prevent compliance with the AML/CTF Act. The Rules will require the appointment of a compliance officer and specify the functions and mandate of that role.

The Rules will require reporting entities to appoint a compliance officer at management level (the UK requires a compliance officer and a money laundering reporting officer)⁵, and that the AML/CTF program be subject to independent review.⁶

¹ Refer paragraphs 6.3.1-4 of the UK FCA Handbook (<https://www.handbook.fca.org.uk/handbook/SYSC/6.pdf>). JMLSG guidance (<http://www.jmlsg.org.uk/>) expresses this obligation in the following terms:

“The ML Regulations require firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which their business is subject, taking into account:

- information on money laundering and terrorist financing made available to them by the FCA;
- risk factors, including factors relating to their customers, countries or geographic areas in which they operate, products, services, transactions and delivery channels.

In considering what steps are appropriate, firms must take into account the size and nature of its business.”

² Paragraph 6.1.1 of the UK FCA Handbook requires that “A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives ... with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.”

³ Refer JMLSG guidance, Chapter 2.3. “A firm’s policies, controls and procedures must be proportionate with regard to the size and nature of its business, and must be approved by its senior management and kept under regular review. A firm must maintain a written record of its policies, controls and procedures.”

⁴ Refer Section 6.3 of the UK FCA Handbook. “A firm must ensure the policies and procedures ... include systems and controls that: (1) enable it to identify, assess, monitor and manage money laundering risk; and (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.” (S.6.3.1)

⁵ Refer Paragraph 6.1.4 and 6.3.8 of the UK FCA Handbook

⁶ Refer Paragraphs 6.1.3 and 6.1.4 of the UK FCA Handbook.

The Rules would also require that the reporting entity's controls address requirements to:

- implement risk management practices, such as
 - transaction monitoring
 - Countering anonymity
 - Managing vulnerability caused by the use of technology
- conduct employee due diligence and training
- keep records
- monitor and manage compliance with controls
- comply with related obligations (such as targeted financial sanctions)
- report to the board on effectiveness of controls
- share information within the entire corporate group
- require sharing of information with group compliance/AML functions.⁷

While AML/CTF programs cite customer due diligence, CDD requirements should be set out separately to programs. In this setting, the Rules would provide for understanding who the customer is and the purpose of the relationship, the conduct of CDD for different classes of customers (including ECDD and OCDD), and reliance for the purposes of CDD.

Guidance in support of the AML/CTF Act and Rules

Guidance will provide context to the obligations in the Act and Rules, and will seek to explain how a reporting entity can comply with the obligations in the Act and the Rules. For example, when conducting its risk assessment, a reporting entity would be advised to take matters into account such as: national risk assessments and information provided by regulatory authorities; customer risk; geographic area risk; products or services risk; transaction risk; and channel risk.⁸ Guidance would also address:

- steps to take in the conduct of a risk assessment⁹
- factors to be included in the design of AML/CTF controls
- the purpose of employee screening and training¹⁰
- ensuring that the controls are proportional for the business
- explanation of the classes of customer
- recommended qualifications of the compliance officer
- eligibility and qualifications of the independent reviewer¹¹

Guidance issued or endorsed by the AUSTRAC CEO would be considered when assessing compliance by reporting entities – in the UK, the FCA considers whether a regulated entity has followed JMLSG guidance¹².

⁷ Refer Section 6.3 of the UK FCA Handbook

⁸ Refer Section 6.3.6-.7 of the UK FCA Handbook

⁹ Chapter 3.30 of the JMLSG guidance lists a number of sources regarding country risks, such as Transparency International Corruption Perceptions Index, and FATF assessments and mutual evaluations.

¹⁰ For example, Chapter 2.7 of the JMLSG guidance states that "Screening of relevant employees ... means an assessment of:

- the skills, knowledge and expertise of the individual to carry out their functions effectively; and
- the conduct and integrity of the individual."

¹¹ Refer Section 6.3.7 of the UK FCA Handbook

¹² Refer Section 6.3.5 of the UK FCA Handbook

s 22(1)(b)(ii)

From: s 22(1)(b)
Sent: Friday, 7 December 2018 11:40 AM
To: s 22(1)(b)(ii)
Cc: s 22(1)(b)(ii)
Subject: FW: Canada's implementation of FATF Recommendation 18 [SEC=UNCLASSIFIED]

Importance: High

Security Classification: UNCLASSIFIED

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I am in the Policy team in AUSTRAC's Melbourne office. We are currently working on implementation of the recommendations of the Report of the Statutory review of our legislation, which also made reference to the findings of the 2015 Mutual Evaluation of Australia. s 47C

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In contrast, Canada's Mutual Evaluation report (<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>) notes (referring to Criterion 18.3) that "Under newly amended s.9.7(4) of the PCMLTFA, when local laws would prohibit a foreign branch or foreign subsidiary from implementing policies that are consistent with Canadian AML/ATF requirements, the RE must advise FINTRAC and their principal regulator."

s 47C

Thank you again for your willingness to assist.

Kind regards

s
2018

s 22(1)(b) | Senior Policy Officer

Legal and Policy

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E: s 22(1)(b)(ii)

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From: s 22(1)(b)(ii)
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s 22(1)(b)(ii)

s 22(1)(b)(ii)

Team Leader

s 22(1)(b)(ii)

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I have copied him into this email. You can also reach him on [REDACTED] s 22(1)(b)(ii) . I will hand it over to you guys now, but please don't hesitate to get in touch if I can be of any further help.

Many thanks [REDACTED] s 22(1)(b) for agreeing to help us out with this. Your assistance is very much appreciated.

Cheers,

[REDACTED] s 22(1)(b)(ii)
[REDACTED]
[REDACTED]

Australian Transaction Reports
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Website www.austrac.gov.au

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s 22(1)(b)(ii)

From: s 22(1)(b)(ii) (FINTRAC/CANAFE) <s 22(1)(b)(ii)>
Sent: Friday, 11 January 2019 4:44 AM
To: s 22(1)(b)
Cc: s 22(1)(b)(ii) (FINTRAC/CANAFE); s 22(1)(b)(ii)
Subject: FW: Canada's implementation of FATF Recommendation 18 [SEC=UNCLASSIFIED] [EXTERNAL]

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1. MER

In terms of **Technical Compliance with Recommendation 18: Internal Controls and Foreign Branches and Subsidiaries**, the MER states: *Overall, significant changes have been introduced since the 2008 MER and none had been captured in the 1st or 6th follow reports as they have been introduced in June 2014 under Economic Action Plan 2014, Vol. 1, and will come into force in June 2015. (...)*

Criterion 18.3

Newer Developments

- PCMLTFA, 9.7: Financial entities, securities dealers and life insurance companies must develop AML/ATF policies for their foreign branches and foreign subsidiaries that are consistent with Canadian requirements. They must ensure these foreign branches and subsidiaries implement these policies, except where prohibited by local laws.
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– These measures were introduced in Economic Action Plan 2014 Act, No. 1, and **came into effect in June 2015.**

2. Guidance that was published in June 2017

FINTRAC developed specific guidance on foreign entities and affiliates:

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s 33

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Furthermore, we expect financial entities, life insurance companies or securities dealers to consider the risk related to foreign branches or affiliates as part of their risk assessment exercise. You can find it mentioned in the “other relevant factors” section (business model factor) as part of the business based risk assessment:

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3. What we are seeing or doing currently

FINTRAC:

s 33
[Redacted]

[Redacted]

Office of the superintendent of the financial institutions (Bank regulator):

s 33
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Hopefully this helps.

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s 47C
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Thank you again for your willingness to assist.
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s 22(1)(b) | Senior Policy Officer

Legal and Policy

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s 22(1)(b)(ii)

Team Leader

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s 22(1)(b)(ii)

Telephone | s 22(1)(b)(ii)

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Risk Assessments

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Security Classification: UNCLASSIFIED

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Dear s 22(1)(b),
Happy New Year!
Thankyou for your comprehensive and helpful response.
Kind regards

s 22(1)(b)

s 22(1)(b) | Specialist, Policy

Legal and Policy

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**Australian Transaction Reports
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AUSTRAC is committed to creating and maintaining a safe and healthy workplace for all its workers (as defined under the *Work Health and Safety Act 2011* i.e. includes, but not limited to, employees, contractors, sub-contractors, trainees and volunteers). To ensure Visitors are aware of AUSTRAC's safety and emergency procedures you must read and agree to the below prior to signing for and receiving an AUSTRAC pass.

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Emergency procedures	In the event of an emergency, please follow the instructions on the back of your identification or visitor tag
First aid	First aid officers are located in each AUSTRAC office. For assistance contact your host, the Security Reception Desk or see the AUSTRAC intranet.
Defibrillator locations	Defibrillators are located in the Sydney and Melbourne AUSTRAC offices. For assistance contact, your host, the Security Reception Desk or a First Aid Officer.
Accident and incident reporting	If you are injured or exposed to a dangerous incident (i.e. an incident that poses a serious risk to you or any other workers' health or safety) you must complete an Incident and Accident Report Form. Forms are available from the Security Reception Desk, Health and Safety Representatives or AUSTRAC's intranet. Completed forms must be submitted to the Occupational Health and Safety Coordinators. If required, your host can assist you to complete the form.
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Contacts	For assistance in relation to Work Health and Safety, please contact the Work Health and Safety Coordinators on s 22(1) [redacted] or s 22(1)(b)(ii) [redacted] (b)(ii)
Signature	By signing the front of this form, I acknowledge that I have read and understand the health and safety advice and requirements noted above and that whilst working within AUSTRAC I understand my worker obligations. In the event of incurring an injury, I undertake to complete an Incident Notification Form.