



Anti-Money Laundering and Counter-Terrorism Financing (Modification—Commonwealth Bank of Australia Designated Business Group) Declaration 2021 (No. 4)

I, Kathryn Miller, make the following declaration as a delegate of the AUSTRAC CEO.

Dated 4 November 2021

A handwritten signature in blue ink, appearing to read 'K. Miller', is positioned below the date.

Kathryn Miller
National Manager, Legal and Enforcement
AUSTRAC

Contents

1 Name.....	1
2 Commencement.....	1
3 Cessation.....	1
4 Authority.....	1
5 Definitions.....	1
6 Application.....	2
7 Schedules.....	2
Schedule 1—Modification	3
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	3
Schedule 2—Repeals	7
<i>Anti-Money Laundering and Counter-Terrorism Financing (Exemption— Commonwealth Bank of Australia and CBA Entities) Instrument 2020 (No. 17)</i>	7

1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Modification—Commonwealth Bank of Australia Designated Business Group) Declaration 2021 (No. 4)*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 7 and anything in the instrument not covered elsewhere by this table	The day this instrument is signed.	4 November 2021
2. Schedule 1	The day after this instrument is signed.	5 November 2021
3. Schedule 2	The day after this instrument is signed.	5 November 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Cessation

This instrument ceases to have effect on 4 November 2024.

4 Authority

This instrument is made under paragraph 248(1)(b) of the Act.

5 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) AML/CTF Rules;
- (b) designated business group;
- (c) reporting entity.

In this instrument:

Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

CBA DBG (short for Commonwealth Bank of Australia Designated Business Group) means the designated business group established by the Commonwealth Bank of Australia ACN 123 123 124 under Chapter 2 of the AML/CTF Rules.

6 Application

This instrument applies to a reporting entity that is, or becomes, a member of the CBA DBG from time to time.

7 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Modification

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 After subsection 123(7AC)

Insert:

Exception—CBA DBG

- (7AD) Subsections (1) and (2) do not apply to the disclosure of information by a reporting entity (the *first entity*) if:
- (a) the first entity is a member of the CBA DBG; and
 - (b) the information relates to the affairs of a person who is, or was, a customer of the first entity or who made inquiries referred to in subparagraph 41(1)(c)(i) of the first entity; and
 - (c) the disclosure is made to an employee of CBA India for the purpose of enabling CBA India to provide AML/CTF services to the first entity; and
 - (d) the employee is:
 - (i) employed to provide AML/CTF services; and
 - (ii) subject to training equivalent to the risk awareness training program implemented by each member of the CBA DBG in accordance with Part 9.2 of the AML/CTF Rules; and
 - (iii) subject to screening and re-screening processes and procedures equivalent to the processes and procedures under the employee due diligence program implemented by each member of the CBA DBG in accordance with Part 9.3 of the AML/CTF Rules; and
 - (iv) approved, in writing, by the Compliance Officer to access or receive the information; and
 - (e) prior to making the disclosure, the first entity entered into an agreement with CBA India to protect the confidentiality of the information; and
 - (f) the agreement satisfies the conditions specified in subsection (7AE); and
 - (g) the information is:
 - (i) handled, stored, used and disclosed in accordance with CBA's information security policies and procedures at all times; and
 - (ii) securely stored in data centres located in Australia; and
 - (iii) accessed through an encrypted connection.

Note: A reference to 'employee' also includes 'employees' (see section 23 of the *Acts Interpretation Act 1901*).

- (7AE) The following conditions are specified for the purposes of paragraph 123(7AD)(f):
- (a) the agreement must prohibit CBA India from disclosing the information, either directly or indirectly, to any person other than:
 - (i) the first entity; or

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- (ii) if the first entity is permitted to disclose the information to another person under this section—that person;
 - (b) the agreement must require CBA India to:
 - (i) keep the information confidential at all times; and
 - (ii) use the information only in connection with the provision of AML/CTF services; and
 - (iii) treat the information in accordance with the requirements in paragraph (7AD)(g); and
 - (iv) put in place adequate safeguards to protect the information from unauthorised use or access; and
 - (v) if CBA India receives a request to disclose the information to another person, government or other body of any kind (however described or constituted) under a law of a foreign country—notify CBA and the first entity within 48 hours of receiving the request;
 - (c) the agreement must continue in force until:
 - (i) CBA India ceases to provide AML/CTF services to the first entity; and
 - (ii) CBA India is not in possession of the information;
 - (d) the agreement must provide that, upon expiry or termination of the agreement, CBA India must:
 - (i) delete all electronic copies of the information; and
 - (ii) return or destroy any physical copies of the information; within 30 business days upon request by the first entity;
 - (e) the agreement is capable of enforcement by injunction or damages;
 - (f) the agreement is governed by the laws of the State or Territory in which the registered office of the first entity is located;
 - (g) the agreement must be given to the AUSTRAC CEO within 14 days of both parties signing the agreement.
- (7AF) The Compliance Officer must, in writing, notify the AUSTRAC CEO within 5 business days of becoming aware of one or more of the following events occurring:
- (a) any event that may affect the ability of a member of the CBA DBG to satisfy one or more of the requirements in subsection (7AD);
 - (b) any event that may affect the ability of CBA India to comply with one or more of the conditions of an agreement entered into for the purposes of paragraph (7AD)(e);
 - (c) the expiry or termination of an agreement;
 - (d) CBA India receiving a request (however described) to disclose the information to another person, government or body of any kind (however described or constituted) under a law of a foreign country;
 - (e) CBA India ceases to provide AML/CTF services to a member of the CBA DBG;
 - (f) CBA India has deleted, returned or destroyed the information in accordance with a request made by a member of the CBA DBG.

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- (7AG) The board and senior management of CBA must:
- (a) monitor each member of the CBA DBG that relies on the exception in subsection (7AD) for compliance with the requirements under that subsection; and
 - (b) monitor CBA India for compliance with the conditions of any agreement entered into for the purposes of paragraph (7AD)(e); and
 - (c) take active steps to remedy non-compliance.
- (7AH) CBA must:
- (a) if subsection (7AD) applies to a member of the CBA DBG—undertake an annual independent review of the member’s compliance with the requirements under that subsection; and
 - (b) undertake an annual independent review of CBA India’s compliance with the conditions of any agreement entered into for the purposes of paragraph (7AD)(e); and
 - (c) provide the AUSTRAC CEO with a copy of the results of an independent review within 14 business days of being presented to the CBA Board Audit Committee.
- (7AI) To avoid doubt, CBA may, as agent of another member of the CBA DBG, do any of the following things on behalf of that member:
- (a) if the requirements in subsection (7AD) apply to the member—disclose information relating to the member’s customers to CBA India;
 - (b) enter into an agreement with CBA India for the purposes of paragraph (7AD)(e);
 - (c) exercise the rights and obligations of the member under the agreement;
 - (d) any other thing that is necessary for the member to comply with subsection (7AD).

2 Subsection 123(12)

Repeal the subsection, insert:

(12) In this Act:

AML/CTF services (short for anti-money laundering and counter-terrorism financing services) means the following services provided by CBA India to a member of the CBA DBG:

- (a) monitor, review or analyse transactions made by the member’s customers that are stored on, or accessible through, a computer system or digital infrastructure owned or operated by the reporting entity;
- (b) process and review transaction monitoring alerts in relation to the transactions mentioned in paragraph (a);
- (c) undertake ongoing customer due diligence or enhanced customer due diligence measures in relation to the member’s customers;
- (d) escalate matters to the member’s AML/CTF Compliance Officer, including matters that may result in the lodgement of a report under subsection 41(2).

CBA means the Commonwealth Bank of Australia ACN 123 123 124.

CBA DBG (short for Commonwealth Bank of Australia Designated Business Group) means the designated business group established by CBA under Chapter 2 of the AML/CTF Rules.

CBA India means CBA Services Private Limited (CIN 74999KA2018FTC112232), WeWork, Level 4, NXT Tower 1, Embassy Manyata Tech Park, Thanisandra, Bangalore 560045.

Note: CBA India is not a member of the CBA DBG.

Compliance Officer means the AML/CTF Compliance Officer appointed by CBA under Part 9.5 of the AML/CTF Rules.

corporate group means a group of 2 or more bodies corporate that are related to each other under section 50 of the *Corporations Act 2001*.

registered office has the same meaning as in the *Corporations Act 2001*.

Schedule 2—Repeals

Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia and CBA Entities) Instrument 2020 (No. 17)

1 The whole of the instrument

Repeal the instrument.

Important Notice to the person named in this instrument

1. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents. If any of the information submitted by the applicant or its representatives is found to be false or misleading, the modification may be revoked and action initiated against the applicant.
2. The person granted the modification may request the AUSTRAC CEO to revoke or vary it at any time.
3. Any request to vary this modification must be submitted to the AUSTRAC CEO or an approved delegate no later than 90 days before the date the change is requested to commence.