
**ENFORCEABLE UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER OF THE
AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE**

FOR THE PURPOSES OF SECTION 197 OF THE

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006

BY

ING Bank (Australia) Ltd

ACN 000 893 292

and

ING Bank N.V., Sydney Branch

ARBN 080 178 196

Definitions

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

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 Regulations means the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008* (Cth) (as amended).

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

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by section 209 of the AML/CTF Act.

AUSTRAC CEO means the Chief Executive Officer of AUSTRAC.

AUSTRAC's Concerns means the concerns referred to in paragraphs 5 to 8 of this Enforceable Undertaking.

DBG means Designated Business Group.

Designated Service has the meaning given by section 6 of the AML/CTF Act.

Enforceable Undertaking means an undertaking accepted by the AUSTRAC CEO under subsection 197(1) of the AML/CTF Act.

External Auditor means an Authorised External Auditor appointed in accordance with clause 12 below.

IBAL means ING Bank (Australia) Ltd (ACN 000 893 292).

Sydney Branch means ING Bank N.V., Sydney Branch (ARBN 080 178 196).

Remedial Action Plan means the plan that appears at **Annexure A** which deals with the following subject matters:

- a) the AML/CTF Program;
- b) the Risk-Based Approach and ML/TF Risk;
- c) SMR and IFTI reporting; and
- d) Transaction monitoring.

Introduction

- 1 Under section 3 of the AML/CTF Act, 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 AUSTRAC CEO's functions include, amongst other matters, promoting compliance with the AML/CTF Act, AML/CTF Rules and AML/CTF Regulations.

Persons giving the Enforceable Undertaking

- 2 This Enforceable Undertaking is given to the AUSTRAC CEO by IBAL and Sydney Branch as the two reporting entities in the ING DBG.

Background

- 3 IBAL and Sydney Branch provide Designated Services of the kind set out in table 1 in subsection 6(2) of the AML/CTF Act and are reporting entities for the purposes of the AML/CTF Act.
- 4 The AML/CTF Act and the AML/CTF Rules impose obligations on reporting entities to, amongst other matters, implement appropriate risk-based systems and controls to identify, mitigate and manage the money laundering/terrorism financing risk that a reporting entity might reasonably face through its provision of Designated Services and to give certain reports to the AUSTRAC CEO.

AUSTRAC's Concerns

- 5 AUSTRAC has carried out an enforcement investigation in respect of IBAL that commenced in July 2021. This investigation was initiated after IBAL self-identified and voluntarily reported shortcomings in relation to its compliance with its anti-money laundering obligations. AUSTRAC acknowledges that IBAL and Sydney Branch have co-operated fully with that investigation and separate regulatory inquiries respectively, including by answering information requests and producing documents.
- 6 As a result of the investigation and information disclosed by IBAL and Sydney Branch with respect to that investigation and supervisory activities, AUSTRAC is concerned that IBAL and Sydney Branch need to take specified actions:
 - (a) in order to fully comply with the AML/CTF Act and the AML/CTF Rules; and
 - (b) directed towards ensuring that IBAL and Sydney Branch do not contravene the

AML/CTF Act or the AML/CTF Rules, or are unlikely to contravene the AML/CTF Act or the AML/CTF Rules, in the future.

- 7 AUSTRAC's Concerns are IBAL and Sydney Branch's compliance with their obligations in relation to:
- (a) ongoing customer due diligence under Part 2, Division 6 of the AML/CTF Act and Chapter 15 of the AML/CTF Rules; and
 - (b) the adoption and maintenance of an anti-money laundering and counter-terrorism financing program that meets the requirements of the AML/CTF Act imposed by or under sections 81 and 85 of the AML/CTF Act.
- 8 While holding these concerns, AUSTRAC also acknowledges that, since 2021, IBAL and Sydney Branch have made significant steps to improve their processes and procedures and have invested significantly in programs of work to mature the financial crime risk capability of the ING DBG. The Remedial Action Plan reflects and builds on these steps.

Acknowledgments by IBAL and Sydney Branch of AUSTRAC's Concerns

- 9 IBAL and Sydney Branch acknowledge AUSTRAC's Concerns and voluntarily offer an Enforceable Undertaking in the terms of paragraphs 11 to 23 below.
- 10 IBAL and Sydney Branch confirm that they have been offered the opportunity to seek their own legal advice in relation to their obligations under, and the effect of, this Enforceable Undertaking.

Undertakings

Remedial Action Plan

- 11 Under section 197 of the AML/CTF Act, IBAL and Sydney Branch undertake:
- (a) to complete the Remedial Action Plan, in the form approved by AUSTRAC which appears at **Annexure A**;
 - (b) to complete the implementation of the Remedial Action Plan within the timeline proposed pursuant to paragraphs 12 to 15.

Authorised External Auditor

- 12 Under section 197 of the AML/CTF Act, IBAL and Sydney Branch undertake to appoint an individual who is:
- (a) authorised under section 164 the AML/CTF Act; and
 - (b) agreed to by the AUSTRAC CEO in writing,
- to act as an External Auditor for the purposes of this Enforceable Undertaking by 28 February 2023.
- 13 The External Auditor is to conduct an assessment referred to in the External Auditor Outcome column in the Remedial Action Plan commencing 1 July 2023.
- 14 The External Auditor will provide a final report containing findings of its assessment and recommendations to IBAL, Sydney Branch and AUSTRAC, on or before 15 December 2023.
- 15 AUSTRAC will have access to the External Auditor at any time and in any manner which it requires.

Costs

- 16 IBAL and Sydney Branch undertake that they will pay their own costs of complying with this Enforceable Undertaking.

Provision of information and documents

- 17 IBAL and Sydney Branch agree that AUSTRAC may, for the life of this Enforceable Undertaking, request any information or documents for the purpose of monitoring or assessing IBAL's and Sydney Branch's compliance with this Enforceable Undertaking. IBAL and Sydney Branch undertake to provide AUSTRAC any information or documents requested for this purpose, on a confidential basis, within 10 business days of the date on which AUSTRAC makes a written request. IBAL and Sydney Branch are not required to provide to AUSTRAC any documents subject to legal professional privilege.
- 18 Any documents or information required to be provided to the AUSTRAC CEO under this Enforceable Undertaking should be provided:
- (a) in electronic form by email to Enforcement.Mailbox@austrac.gov.au; or
 - (b) in electronic form by upload to a OneDrive folder that AUSTRAC is given access to, unless otherwise agreed by AUSTRAC in writing.

Acknowledgements – Operation of Enforceable Undertaking

- 19 IBAL and Sydney Branch acknowledge that:
- (a) the AUSTRAC CEO has accepted this Enforceable Undertaking based on (among other things) IBAL and Sydney Branch's disclosures to the AUSTRAC CEO of the material facts, matters and circumstances in relation to AUSTRAC's Concerns;
 - (b) AUSTRAC's acceptance of this Enforceable Undertaking does not affect AUSTRAC's right to take any action in relation to any contraventions of the AML/CTF Act, AML/CTF Rules and/or AML/CTF Regulations;
 - (c) 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;
 - (d) the AUSTRAC CEO may publish a copy of this Enforceable Undertaking on AUSTRAC's website in accordance with subsection 197(5) of the AML/CTF Act;
 - (e) AUSTRAC may from time to time publicly refer to this Enforceable Undertaking; and
 - (f) 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 and duration

- 20 IBAL and Sydney Branch acknowledge that this Enforceable Undertaking has no operative force until accepted by the AUSTRAC CEO.
- 21 Upon the commencement of this Enforceable Undertaking, IBAL and Sydney Branch undertake to assume the obligations set out in paragraphs 11 to 18 above.
- 22 This Enforceable Undertaking ends on the date that the AUSTRAC CEO gives IBAL and Sydney Branch written notice cancelling the Enforceable Undertaking or the date on which the AUSTRAC CEO consents to IBAL and Sydney Branch withdrawing the Enforceable Undertaking, whichever is earlier.

Reporting to AUSTRAC

23 IBAL and Sydney Branch will provide interim updates to AUSTRAC in writing, on a confidential basis on 1 May 2023, 1 August 2023 and 1 November 2023 in relation to their progress in completing the Remedial Action Plan.

EXECUTED BY

EXECUTED by ING Bank (Australia) Ltd (ACN 000 893 292) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:



Signature of director

MELANIE EVANS

Name of director (block letters)



Signature of director

JOHN LAKER

Name of director (block letters)

This 22 day of November 2022

EXECUTED BY

EXECUTED by ING Bank N.V., Sydney Branch (ARBN 080 178 196) by its Attorneys:



Signature of Authorised Person

ALAN LEE

Name of Authorised Person (block letters)

General Manager

Title of Authorised Person



Signature of Authorised Person

Guido Leitner

Name of Authorised Person (block letters)

Senior Officer Outside Australia

Title of Authorised Person

This 22 day of November 2022

ACCEPTED BY THE AUSTRAC CEO NICOLE ROSE PSM PURSUANT TO SUBSECTION 197(1) OF THE AML/CTF ACT.



Signature
Nicole Rose PSM
Chief Executive Officer, AUSTRAC

This 23 day of November 2022

Annexure A

Remedial Action Plan – ING DBG (IBAL and ING Bank N.V., Sydney Branch)

A AML/CTF Program

AML/CTF Requirement	ING Deliverable	Entity(s)	[REDACTED]	External Auditor Outcome
1) AML/CTF Program	a) Adoption of the revised Joint AML/CTF Program	IBAL and Sydney Branch	[REDACTED]	External auditor to provide view on whether the revised Joint AML/CTF Program has been adopted by IBAL and Sydney Branch
2) The Risk-Based Approach and ML/TF Risk	<p>a) Review and uplift governance and assurance controls in the Joint AML/CTF program so that they are designed to ensure an ML/TF Risk Assessment is carried out for:</p> <ul style="list-style-type: none"> i) all new designated services prior to introducing them to the market; ii) all new methods of designated services delivery prior to adopting them; and iii) all new or developing technologies used for the provision of a designated service prior to adopting them. 	IBAL and Sydney Branch	[REDACTED]	<p>External auditor provides their view on whether the governance and assurance controls in the Joint AML/CTF program are appropriately designed to ensure the ML/TF Risk assessment is carried out on all</p> <ul style="list-style-type: none"> i) new designated services prior to introducing them to the market; ii) new methods of designated services delivery prior to adopting them; and iii) new or developing technologies used for the provision of a designated service to deliver the designated services prior to adopting them.

	b) Review and uplift governance and assurance controls in the Joint AML/CTF Program so that they are designed to ensure that an ML/TF risk assessment is reviewed when circumstances trigger an immediate need.	IBAL and Sydney Branch	██████	External auditor provides their view on whether the governance and assurance controls in the Joint AML/CTF Program are appropriately designed to ensure that the ML/TF risk assessment is reviewed when circumstances trigger an immediate need.
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------	--------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

B SMR and IFTI Reporting

AML/CTF Requirement	Activity	Entity(s)	██████	External Auditor Outcome
3) Suspicious Matter Reports	<p>Review and uplift the governance and assurance controls in the Joint AML/CTF Program so that they are designed to ensure that:</p> <ul style="list-style-type: none"> a) Unusual activity reports (UARs) are reviewed to determine if a suspicion is formed. b) The suspicion is reported to AUSTRAC on time in a suspicious matter report. 	IBAL and Sydney Branch	██████	<p>External auditor's view that the governance and assurance controls in the Joint AML/CTF Program have been appropriately designed to ensure that:</p> <ul style="list-style-type: none"> a) UARs are reviewed to determine if a suspicion is formed b) The suspicion is reported on time to AUSTRAC in a suspicious mater report.

AML/CTF Requirement	Activity	Entity(s)		External Auditor Outcome
4) International Funds Transfer Instructions	<p>Review and uplift the governance and assurance controls in the Joint AML/CTF Program so that they are designed to ensure that:</p> <ul style="list-style-type: none"> a) new sources of IFTIs are identified; b) new sources of IFTIs are reported on time; and c) current sources of IFTIs continue to be reported on time. 	IBAL and Sydney Branch		<p>External auditor's view on whether the governance and assurance controls in the Joint AML/CTF Program are appropriately designed to ensure that:</p> <ul style="list-style-type: none"> a) new sources of IFTIs are identified; b) new sources of IFTIs are reported on time; and c) current IFTI data sources continue to be reported on time.

C Transaction Monitoring

AML/CTF Requirement	Activity	Entity(s)		External Auditor Outcomes
5) Transaction Monitoring	<ul style="list-style-type: none"> a) Implement monitoring processes to ensure the completeness, accuracy and currency of transaction monitoring rules in line with updates to the ML/TF Risk Assessment. 	IBAL and Sydney Branch		<p>External auditor's view that the implemented monitoring processes are appropriately designed to ensure the completeness, accuracy and currency of TM rules in line with the ML/TF risk assessment.</p>

AML/CTF Requirement	Activity	Entity(s)	[REDACTED]	External Auditor Outcomes
	<p>b)</p> <p>i) Map to IBAL's transaction monitoring program, [REDACTED] all current transaction data required to be monitored by [REDACTED].</p> <p>ii) If any transaction data identified in b)i) above is not mapped and monitored, ensure that the transaction data is mapped and monitored by [REDACTED].</p>	IBAL	[REDACTED]	<p>External auditor view that:</p> <p>i) all current transaction data required to be monitored to [REDACTED] is mapped to [REDACTED] and [REDACTED].</p> <p>ii) any transaction data that is not mapped, have been mapped and is monitored by [REDACTED].</p>

AML/CTF Requirement	Activity	Entity(s)	[REDACTED]	External Auditor Outcomes
	<p>c) Review and uplift governance and assurance controls in the Joint AML/CTF Program so that they are designed to ensure that:</p> <ul style="list-style-type: none"> i) new sources of transaction data that must be monitored by [REDACTED] are mapped to [REDACTED] ii) the transaction data that is monitored by [REDACTED] continues to be monitored by [REDACTED] 	IBAL	[REDACTED]	<p>External auditor view that the governance and assurance controls in the Joint AML/CTF Program are appropriately designed to ensure that:</p> <ul style="list-style-type: none"> i) new sources of transaction data that must be monitored by [REDACTED] are mapped to the [REDACTED]. ii) The transaction data that is monitored by the [REDACTED], continues to be monitored by [REDACTED].
	<p>d) Review and uplift the governance and assurance controls in the Joint AML/CTF Program so that they are designed to ensure the correct TMP rules are applied to the transaction data in [REDACTED].</p>	IBAL	[REDACTED]	<p>External auditor view that the governance and assurance controls in the joint AML/CTF program are appropriately designed to ensure the correct TMP rules are applied to the transaction data in [REDACTED].</p>