# Anti-Money Laundering and Counter-Terrorism Financing Act (Exemption – Evolution Trustees Limited) Instrument 2024 (No. 10)

I, Daniel Mossop, National Manager, Reform Policy and Mutual Evaluation, and delegate of the AUSTRAC CEO, make the following exemption instrument.

Dated: 4 June 2024

Daniel Mossop
National Manager, Reform Policy and Mutual Evaluation
AUSTRAC

# Contents

## 1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Evolution Trustees Limited) Instrument 2024 (No. 10)* (**Instrument**).

## 2 Commencement

This Instrument commences on the day after it is signed.

## 3 Cessation

This Instrument ceases to have effect on 4 June 2026.

## 4 Authority

This Instrument is:

(a) made under subsection 248(1)(a) of the Act; and
(b) subject to conditions made under subsection 248(2)(b) of the Act.

## 5 Definitions

Note: A number of expressions used in this instrument are defined in the definitions section of the AML/CTF Act, including the following:
(a) customer;
(b) person.

In this instrument:

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

***ASIC Regulatory Guide 49*** means ASIC Regulatory Guide 49 published by the Australian Securities and Investments Commission in November 2015.

***Employee Equity Plan*** means one or more of the plans described in Schedule 1 of this Instrument administered by Evolution Trustees.

***Evolution Trustees*** means Evolution Trustees Limited (ABN 29 611 839 519).

***Participant(s)*** means the directors or employees of the company participating in the Employee Equity Plan.

***Security sales facilities*** means:

- arranging and acting in respect of purchases, transfers and sales of securities for participants in Employee Equity Plans;
- offering custodial services associated with the purchases, transfers and sales undertaken in respect of Employee Equity Plans; and
- providing general information and explanations to Participants as to the way the Employee Equity Plans operate and how to participate.

## 6 Application

This Instrument applies to Evolution Trustees in respect of the provision of designated services described in items 46 and 54 of Table 1 in subsection 6(2) of the Act.

## 7 Exempt provisions

Evolution Trustees is exempt from Divisions 2 to 7 of Part 2 (excluding section 39) of the Act with respect to the operation of security sales facilities for Employee Equity Plans.

## 8 Conditions

(1) This section specifies conditions that apply to the exemption.

(2) The Employee Equity Plan must:

(a) be one or more of the types of securities sales facilities listed in Schedule 1 to this instrument; and

(b) operate in accordance with ASIC Regulatory Guide 49.

(3) The company that offers an Employee Equity Plan must be either an Australian unlisted company or a company listed on the Australian Stock Exchange.

(4) For each Employee Equity Plan where the company is an Australian unlisted company, Evolution Trustees must obtain an assurance in writing from the relevant company's board of management that the relevant company has, in relation to each Participant:

(i) collected the following information: the Participant's full name, date of birth, residential address and a government-issued identification number; and

(ii) using a government-issued identification document, verified the participant's full name, government-issued identification number and either the participant's date of birth or residential address.

(5) Evolution Trustees must notify the AUSTRAC CEO in writing within 14 days of any event that may affect their compliance with this exemption.

# Schedule 1—Categories of Employee Equity Plans

| Type of plan | Description | Trust or Name on Register | Vesting Conditions | Cash Movements |
|---|---|---|---|---|
| Gift | Client will gift participant securities to the value of $1,000. | Either – trust is more typical. | 3 years. Employee can receive earlier if leaves employment (although then no longer has capacity to enjoy further benefits). | None – as gift |
| Contribution plan (usually deferred plan, but also Exempt an option) | Client will allow employee to purchase securities - usually from pre tax contributions for a deferred plan. Client may offer a matching component. There is usually a cap on employee contributions of between 30 - 50% - although some clients allow 100% salary deduction. | Will be Trust if contributions are more than $1000. | Vesting conditions apply to both the matching component (usually 2 or more years) and the contributed component (usually 12 months). The contributed component all vest earlier if the employee leaves, but the matched component will be forfeited. It does mean that unless the employee leaves, they are unable to sell securities received based on contributions until after 12 months after the date of contribution. | Contributions are made monthly out of salary. |
| Loan plans (not commonly used) | The client generally offers an interest free loan to the employee which is repaid through dividends. If the employee leaves the loan becomes repayable - it is either recourse or non-recourse beyond the proceeds of the sale of the securities. | Either. | Minimum 3 years. If an employee leaves earlier, the securities vest but the employee must pay out the loan. | Loans are repaid either from the sale of the securities and proceeds are paid to the employee net of the loan balance. An employee can pay through own funds but funds must be through bank cheque in Australian dollars. No personal cheques, cash or EFT is permitted. |
| Performance rights | These are zero priced options. Usually for relatively senior executives and potentially of high value. | Name on register and Trust. | Will have vesting conditions - often of 3 years a more (and also with stringent performance hurdles determining the number of rights which may be exercised. Forfeited if leave earlier. | As they are zero priced options no cash is payable. |
| Deferred share grants | Client makes grants of shares for nil | Trust. | Will have vesting conditions - at least 2 | No cash is involved. |

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| | consideration. Usually as a long term incentive to more senior management. The distinction with a performance right is that the employee has immediate entitlement to dividends. | | years. Forfeited if leave earlier. | |
| Options | Less common now due to accounting treatment. | Name on register and Trust. | Will always have an exercise period - at least 2 years and possibly longer. May have performance hurdles also. Will generally lapse if employee leaves before exercisable. | Exercise price can be funded through a cashless exercise where the broker sells shares and remits proceeds net of exercise price to employee. If the employee pays the funds then it must do so through a bank cheque in AU dollars or through a 'broker' cheque. No personal cheques, cash of EFT is permitted. |

**Important Notice to the person named in this Instrument**

1. Under section 248(3) of the AML/CTF Act, a person granted an exemption subject to one or more conditions must comply with the conditions specified in the Instrument. Failure to comply with section 248(3) is a civil penalty provision and may result in any or all of the following:

   - the exemption ceasing to apply to the person during any period in which the person does not comply with the relevant condition/s;
   - the exemption being revoked;
   - the AUSTRAC CEO applying to the Federal Court of Australia for a civil penalty order requiring the person to pay a pecuniary penalty in respect of the breach.

2. Under sections 136 and 137 of the AML/CTF 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 exemption may be revoked and action initiated against the applicant.

3. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.

4. Any request to vary or extend the operation of this exemption must be submitted to the AUSTRAC CEO or an approved delegate no later than 8 weeks before the date the change is requested to commence.