

Second Tranche AML/CTF legislation

Proposed Amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) inserting additional designated services tables in order to comply with FATF Recommendations 12 and 16

Proposed replacement table 2 for insertion into section 6 AML/CTF Act

Table 2—Bullion, precious stones and precious jewellery		
Item	Provision of a designated service	Customer of the designated service
1	buying bullion, precious stones or precious jewellery, where the buying is in the course of carrying on a business	the person from whom the bullion, precious stones or precious jewellery is bought
2	selling bullion, precious stones or precious jewellery, where the selling is in the course of carrying on a business	the person to whom the bullion, precious stones or precious jewellery is sold

Proposed definitions for insertion into section 5 relevant to replacement table 2

precious jewellery means jewellery that consists wholly or partly of:

- (a) precious metal; or
- (b) one or more precious stones.

precious stones includes:

- (a) precious gems; and
- (b) pearls (including cultured pearls and reconstructed pearls); and
- (c) semi-precious stones;

but does not include industrial diamonds or industrial gems.

Note that section 5 of the AML/CTF Act already contains the following definition of the term “precious metal”

precious metal means:

- (a) gold; or
- (b) silver; or
- (c) platinum; or
- (d) palladium; or
- (e) iridium; or
- (f) osmium; or
- (g) rhodium; or
- (h) a metal specified in the regulations; or
- (i) any alloy or other substance containing:

- (i) gold; or
- (ii) silver; or
- (iii) platinum; or
- (iv) palladium; or
- (v) iridium; or
- (vi) osmium; or
- (vii) rhodium; or
- (viii) a metal specified in the regulations.

Proposed new table 4 for insertion into section 6 AML/CTF Act

Table 4.—Real estate

Table 4—Real estate		
Item	Provision of a designated service	Customer of the designated service
1	buying or selling land on behalf of a person, where the service is provided in the course of carrying on a business	the person
3	providing a real estate agency service to a person, where the service is provided in the course of carrying on a business	the person
4A	giving or directing tailored advice to a person in relation to the buying or selling of land, where the service is provided in the course of carrying on a business	the person
5	providing a conveyancing service to a person in relation to the purchase or sale of land, where the service is provided in the course of carrying on a business	the person

Proposed definitions for insertion into section 5 AML/CTF Act relevant to suggested new table 4

conveyancing service includes a service that, under the regulations, is taken to be incidental to a conveyancing service.

real estate agency service has the meaning given by section ...

^.. Real estate agency services

- (1) This section sets out the 2 situations in which a person provides a *real estate agency service* to another person.

Service provided to vendor

- (2) For the purposes of this Act, a person (the *agent*) provides a *real estate agency service* to another person (the *vendor*) if there is an agreement between the agent and the vendor, and:
 - (a) the agreement provides for the agent to introduce, or arrange for the introduction of, a prospective purchaser of land of the vendor (whether or not the prospective purchaser is specified in the agreement); or
 - (b) the agreement provides for the agent to negotiate with, induce, or attempt to induce, a third person (whether or not specified in the agreement) to:
 - (i) buy land of the vendor; or
 - (ii) enter into, or make or accept an offer to enter into, a contract to buy land of the vendor.

- (3) The agent begins to provide the service when the agent enters into the agreement.

Service provided to purchaser

- (4) For the purposes of this Act, a person (the **agent**) provides a **real estate agency service** to another person (the **purchaser**) if there is an agreement between the agent and the purchaser, and:
- (a) the agreement provides for the agent to introduce, or arrange for the introduction of, a prospective vendor of land (whether or not the prospective vendor is specified in the agreement); or
 - (b) the agreement provides for the agent to negotiate with, induce, or attempt to induce, a third person (whether or not specified in the agreement) to:
 - (i) sell land to the purchaser; or
 - (ii) enter into, or make or accept an offer to enter into, a contract to sell land to the purchaser.
- (5) The agent begins to provide the service when the agent enters into the agreement.

Proposed new table 5 for insertion into section 6 AML/CTF Act

Table 5. —Professional services

Table 5—Professional services		
Item	Provision of a designated service	Customer of the designated service
1	providing a service by way of the management, on behalf of a person, of accounts, physical currency or property of the person, where the service is provided in the course of carrying on a business	the person
1AA	giving or directing tailored advice to a person in relation to the management of accounts, physical currency or property of the person, where the service is provided in the course of carrying on a business	the person
1A	making arrangements or preparations, on behalf of a person, in connection with the sale or purchase of a business, where the service is provided in the course of carrying on a business	the person
1B	making arrangements or preparations, on behalf of the promoters of a new company, in connection with the formation of the new company, where the service is provided in the course of carrying on a business	the promoters of the new company
1BA	giving or directing tailored advice to promoters of a new company in relation to the formation of the new company, where the service is provided in the course of carrying on a business	the promoters of the new company
2	making arrangements or preparations, on behalf of the promoters of a new company, in connection with equity finance or debt finance for the new company, where the service is provided in the course of carrying on a business	the promoters of the new company
2A	giving or directing tailored advice to promoters of a new company in relation to equity finance or debt finance for the new company, where the service is provided in the course of carrying on a business	the promoters of the new company

Table 5—Professional services

Item	Provision of a designated service	Customer of the designated service
3	making arrangements or preparations, on behalf of a company, in connection with equity finance or debt finance for the company, where the service is provided in the course of carrying on a business	the company
4	giving or directing tailored advice to a company in relation to equity finance or debt finance for the company, where the service is provided in the course of carrying on a business	the company
5	making arrangements or preparations, on behalf of one or more persons, in connection with the creation of a trust or partnership, where the service is provided in the course of carrying on a business	the person or persons
5A	giving or directing tailored advice to one or more persons in relation to the creation of a trust or partnership, where the service is provided in the course of carrying on a business	the person or persons
6	carrying out, on behalf of a partnership, company or trust, any of the management activities, or the day-to-day operations, of the company, partnership or trust, where the service is provided in the course of carrying on a business	the company, partnership or trust
7	giving or directing tailored advice to a partnership, company or trust in relation to the management activities, or the day-to-day operations, of the company, partnership or trust, where the service is provided in the course of carrying on a business	the company, partnership or trust

Proposed definitions for insertion into section 6 AML/CTF Act relevant to suggested new table 5

tailored advice means advice (whether in the form of a recommendation, a statement of opinion or a report of either of those things) that is given or directed to a person in circumstances where:

- (a) the provider of the advice has considered one or more of the person's objectives, situation and needs; or
- (b) a reasonable person might expect the provider to have considered one or more of those matters.

Proposed new table 6 for insertion into section 6 AML/CTF Act

Table 6—Business services

Table 6—Business services		
Item	Provision of a designated service	Customer of the designated service
1	being, or acting as, a director or secretary of a company, or a partner of a partnership, where the service is provided in the course of carrying on a business	the company or partnership, as the case may be
2	making arrangements for another person to be, or act as, a director or secretary of a company, or a partner of a partnership, where the service is provided in the course of carrying on a business	the company or partnership, as the case may be
3	providing a registered office, business address, business accommodation, correspondence address or administrative address for a company, partnership or trust, where the service is provided in the course of carrying on a business	the company, partnership or trust, as the case may be
4	at the request of a person, being, or acting as, the trustee, or one of the trustees, of a trust, where the service is provided in the course of carrying on a business	the person who made the request
5	at the request of a person, making arrangements for a third person to be, or act as, the trustee, or one of the trustees, of a trust, where the service is provided in the course of carrying on a business	the person who made the request
6	being, or acting as, a nominee shareholder for a person, where the service is provided in the course of carrying on a business	the person
7	at the request of a person, making arrangements for a third person to be, or act as, a nominee shareholder for the person, where the service is provided in the course of carrying on a business	the person who made the request