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16 May 2006

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2006

Business Council of Australia

Dear Minister

ANTI-MONEY LAUNDERING – IMPACT ON CORPORATE TREASURIES

It has been drawn to the attention of the Business Council that the draft Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 and draft AML/CTF Rules appear to apply to the activities of corporate treasuries, including transactions carried out entirely within a corporate group structure. We are concerned that this imposes an unnecessary compliance burden on those corporations operating corporate treasuries.

Our understanding of the Bill is that many of the services provided by corporate treasuries to related companies are likely to be deemed "designated services" for the purposes of the Bill. Activities that corporate treasuries may provide within the corporate group, and which appear to be covered by the Bill, include:

a. activities in relation to accounts and deposits (items 1-5);
b. the making of loans in the course of carrying on a business (item 6);
c. as a lender, allowing a borrower to conduct a transaction in relation to the loan where the loan is made in the course of carrying on a business (item 7);
d. on behalf of a person, acquiring or disposing of securities, derivatives, foreign exchange contracts, bills of exchange, promissory notes or letters of credit (items 34-35);
e. issuing or selling securities or derivatives in the course of carrying on a business (item 36);
f. (in the capacity of issuer or seller of a security or derivative) redeeming, buying-back or cancelling a security or derivative, in the course of carrying on a business (item 37); and
g. buying and/or selling bullion, in the course of carrying on a business (items 62, 63).

As a consequence, corporate treasuries will be "reporting entities" for the purposes of the proposed Act and will therefore attract a range of obligations, including obligations to:

a. verify the identity of their customers;

b. develop, maintain and comply with an anti-money laundering and counter-terrorism financing program which, of itself, requires a reporting entity to undertake the following:

   i. a customer due diligence program – which includes collecting and updating "know your customer" information, assigning risk classifications for customers and conducting transaction monitoring;
   ii. an enhanced customer due diligence program;
   iii. a risk identification and mitigation program;
   iv. a money laundering and terrorist financing risk awareness training program;
   v. an employee due diligence program;
   vi. a third party due diligence program;
   vii. a compliance program;
   viii. conducting independent reviews of the AML/CTF Program; and
   ix. compliance with the requirement under the draft AML/CTF Rules on a reporting entity to ensure that the Board and senior management of the reporting entity approve and have ongoing oversight over the AML/CTF Program.

c. report suspicious matters, "threshold" transactions and international funds transfer instructions to the Australian Transactions Reports and Analysis Centre;

d. include information about the originator of funds transfer instructions;

e. conduct due diligence in relation to correspondent banking relationships; and

f. retain appropriate records.

These are significant regulatory compliance obligations for transactions that will frequently occur within a single corporate group, between elements of that group that have close and ongoing relationships, and are therefore low risk transactions.

Under the draft Bill there are no specific exemptions or reductions of compliance obligations for transactions that occur within a corporate group. What exemptions are available under the Bill, covering “continuous relationships”, appear to have only limited impact in reducing the compliance costs for corporations operating internal treasuries.

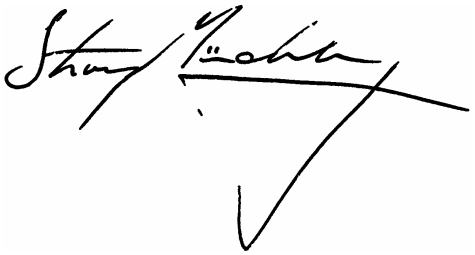
At a time when the Federal Government is actively seeking ways of reducing the regulatory compliance costs on business and removing unnecessary ‘red tape’, we would urge you to consider changes to the Bill that would remove or reduce the obligations on the operations of corporate treasuries. While only a small number of corporations operate their own treasuries, the compliance costs to those corporations will be significant for very little benefit.

Our preferred approach would be to change the Bill to provide a related company exemption. Specifically, the Bill should be changed so that activities listed as “designated services” under clause 6 would not be included as such if the customer of the service is a related company of the provider of the service. This would free corporate treasuries of the compliance obligations arising from being deemed a

"reporting entity". We accept that such an exemption would not apply where the corporate treasury provides services to non-related companies and other persons outside the corporate group.

We would be happy to discuss this matter with you further and look forward to your reply.

Yours sincerely



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