

20 April 2020

Hon Yvette D'Ath
Attorney-General and Minister for Justice
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Dear Attorney-General

Interim BCM Appointments

SCA (Qld) has considered for some time that there are some practical issues that arise when administration or management agreements between a body corporate and a body corporate management firm lapse or are being terminated and no new manager is in place. In light of the current COVID-19 restrictions, where a few buildings would have already deferred their annual general meeting, some schemes may find themselves without a manager, possibly without a fault of their own.

While we appreciate that the appointment of a body corporate manager is not mandatory under the Act and Regulations, as you are aware many buildings have become so complex in nature that a voluntary administration by the Committee would present a few difficulties and could potentially have some compliance implications.

When the previous manager can no longer lawfully act as an agent on behalf of the Body Corporate, for example if the agreement lapsed or was terminated early, the Body Corporate cannot appoint a new Body Corporate Manager without first calling and holding a General Meeting under Section 114 of the Standard Regulation Module¹.

Some Body Corporate Managers have attempted to deal with this issue practically by assisting the Body Corporate to call and hold a General Meeting to appoint them as the Body Corporate Manager and to either:

- refrain from charging the Body Corporate for holding the AGM/EGM; or
- seek ratification of any charges by the Body Corporate at the AGM/EGM.

Given, the meaning of Body Corporate Manager² in the Act, it is difficult to see how any of the activities involved in “assisting” the Body Corporate would not cause a person undertaking them to fall into the definition of a Body Corporate Manager. Additionally, Section 151 of the Act³ requires that the actual Management Agreement itself contains a provision authorising or requiring a Body Corporate Manager to operate the Body Corporate’s bank account.

The above practical approach will not deal with the proof of agency requirements that a reporting entity (including a Bank) must meet in terms of collecting evidence of the agent’s

¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_reg/bcacmmr2008616/s114.html

² http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/bcacma1997388/s14.html

³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/bcacma1997388/s151.html?context=1;query=account;mask_p_ath=au/legis/qld/consol_act/bcacma1997388

authority to open and operate a bank account on behalf of a customer (in this case the Body Corporate). We attach the AML Strata Impact Briefing Paper SCA (Qld) received from corporate partner StrataMax which outlines issues that have arisen from the recent AUSTRAC guidance announcement specifically regarding the treatment of strata titled bodies corporate under the AML/CTF Act and Rules. We direct your attention to the attachment.

Without the ability for a Body Corporate to appoint a Body Corporate Manager on an interim basis (while the AGM/EGM is being arranged) the Body Corporate has two options:

1. For authorised members of the Committee to open a bank account on behalf of the Body Corporate (assuming such authorisation can be given by Committee resolution) and deposit the sinking and admin fund balances into the Body Corporate bank account, then attempt to manage the financial responsibilities of the Body Corporate in the interim, without the sophisticated software and payment systems used by Body Corporate Managers to appropriately manage and reconcile Body Corporate finances; or
2. Do nothing for 21 days or so, until a new Body Corporate Manager has been appointed.

Either of the above exposes the Body Corporate and the individual Committee members to risk of liability.

We request consideration is given to this with a view it could still be included in the upcoming BCCM Regulation changes.

Current Adjudication Level Response

The general view is that the BCCM Office could consider applications requesting to appoint a BCM/administrator temporarily until a general meeting is held.

Whether an interim order or an expedited final order would be warranted, would depend on the circumstances. However, if the final outcome is the appointment of an administrator for, say, 1-3 months it is unlikely to be suitable as an interim (ie. if the interim order would finally determine the substantive issue it would not be interim in nature). Like all other applications for administrators, it may not be appropriate to make a final order without submissions being sought from owners, unless there was consent from all owners.

Given this is not a reliable solution to the problem, we have been liaising with Body Corporate Managers to attempt to find other ways to deal with the situation appropriately.

Potential Adjudication Solution

One potential solution which has been discussed would be a new streamlined urgent adjudication application to the Commissioner's Office for the interim appointment of a Body Corporate Manager as a limited Administrator of the Body Corporate for the purposes of opening and operating a bank account on behalf of the Body Corporate and convening a General Meeting for their proper appointment.

We would not wish for this process to create voluminous applications and countless hours of additional work on behalf of adjudicators. Therefore we have the following suggestion

on how such an application may be able to be made in the most streamlined way possible, whilst maintaining the proper level of procedural fairness and natural justice. Essentially, the process would act similarly to the process for extending the date for the holding of an Annual General Meeting.

To this end, we provide the following skeleton of the potential adjudication application for the BCCM Office:

- An Application for Interim and Final Orders, with:
 - The interim order being the short term appointment of a Body Corporate Manager (as an Administrator if necessary) to:
 - Open and operate a Bank account on behalf of the Body Corporate;
 - Call and hold a General Meeting within 3 months for (among other things) the appointment of a Body Corporate Manager; and
 - Otherwise provide administrative services to the Body Corporate, pending the appointment of a Body Corporate Manager at the General Meeting.
 - The final Order would be seeking a declaration that the interim appointment of the Body Corporate Manager (as an Administrator if necessary) was not in contravention of the ACT or Regulation Module;
- As a matter of practicality, it is very unlikely that the Final Orders will even be necessary as in almost all cases, the Body Corporate Manager will be appointed at the General Meeting before the Adjudication Application is required to proceed to submissions in relation to the Final Orders and the parties may simply withdraw or otherwise resolve the Adjudication Application.

We believe this can be an effective solution to the problem of not having the option of interim appointments under the BCCMA, provided there is no legislative solution incorporated in the current Regulation Review.

Further Questions

We hope we have explained the importance of this issue. If you would like to further discuss please don't hesitate to contact us:

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Sincerely



James Nickless
President



Katrin Watson
Executive Officer

Enclosed: AML Strata Briefing Paper

Briefing Paper to SCA(QLD) on the recent AUSTRAC Guidance on Customer Identification and Beneficial Ownership Requirements in Strata Title Owners Corporations

Executive Summary

1. The strata industry opens an estimated 40,000 to 50,000 bank accounts each year. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act), enforced by AUSTRAC, sets out identifications requirements for opening bank accounts.
2. AUSTRAC has clarified the [requirements](#)¹ for identifying a strata titled body corporate. This clarification has the following implications:
 - a. The previous lack of clarity surrounding the appropriate method of identification of strata titled bodies corporate meant that each of the banks was taking a different approach to the identification of body corporate clients and the relevant bank account opening procedures;
 - b. The majority of sector have not been operating in a way that is consistent with the AUSTRAC clarification. The approaches taken by banks to date has ranged from being partially similar to being completely different to the methodology required under the AUSTRAC clarification;
 - c. To comply with the requirements, banks are likely to become much more strict in their compliance and due-diligence around bank account opening for bodies corporate.
3. In most states in Australia, the body corporate will be the customer and the strata manager will be the agent of the customer for the purposes of the AML/CTF Act and Rules. This has the following implications:
 - a. The strata manager (strata management company along with it's authorised agents and employees) will need to be identified; and
 - b. Evidence of the body corporate's authorisation of the strata manager (management agreement and/or minutes appointing the manager) are required at a minimum.

¹ <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/customer-identification-and-beneficial-ownership-requirements-strata-title-owners-corporation>

4. Currently, there are many instances where bank accounts are being opened prior to the actual date of effective appointment of the strata manager by the body corporate. If additional authorisation is not provided by the bodies corporate to allow the manager to open and operate the bank accounts these instances create further breaches of the AML/CTF Act. This issue can be resolved by encouraging SCA members to adopt a “best practice” motion to better articulate the date of appointment and the date of opening the bank account.
5. If nothing changes most of 40,000-50,000 bank accounts opened each year could create breaches of the AML/CTF Act.
6. Currently, many strata managers are warranting to banks that they hold a valid instrument of appointment and are authorised to open and operate a bank account on behalf of the bodies corporate for whom they are opening the account. It is a requirement that the bank collect evidence of this. If the evidence shows that the manager did not in fact have the authority to open the account as at that date, then this could constitute misleading and deceptive conduct on behalf of the manager, which could cause the manager to be drawn in to any investigation or prosecution for breaches of the AML/CTF Act.
7. AUSTRAC is not a forgiving regulator. The Westpac prosecution is the result of Westpac having identified its own discrepancies and self-reporting those matters to AUSTRAC. Rather than simply permitting Westpac to rectify these issues, AUSTRAC is prosecuting Westpac for what is likely to be the largest fine in Australian AML history.
8. If the strata industry does not take action to rectify the above situation itself, there is some risk that when AUSTRAC implements “tranche 2” of the AML/CTF Rules, that strata managers could be categorised as Reporting Entities, which would put the customer identification (AML KYC) obligations directly onto strata managers and not just the bank. Tranche 2, in will include accountants, trust and company service providers, solicitors and real estate agents, therefore, there is already some risk that an over-inclusive definition here could accidentally capture strata managers in NSW in any event. A relevant [PwC publication](#)² provides additional information into this.

We are happy to meet with you to discuss these matters further if required.

A more detailed explanation and analysis of the AUSTRAC clarification regarding Strata Corporations and its implications is attached hereto.

² <https://www.pwc.com.au/publications/assets/tranche-two-blindsided-new-regulations-jun2017.pdf>

Understanding AUSTRAC's clarification

Before a reporting entity (e.g. a bank) provides a designated service (e.g. opening a bank account) it must check its customer's identity.

AUSTRAC have [published guidance](#)³ on how strata corporations should be identified and how the beneficial owners of strata corporations should be identified. Their guidance is as follows. Additional references are provided to AUSTRAC's [easy reference guide](#)⁴ for minimum requirements.

Customer identification

To identify a strata corporation that is registered as a company with ASIC, the Rules in relation to companies in [Part 4.3](#) should be applied. [Reference guide link](#).

To identify a strata corporation not registered as a company with ASIC, the Rules in relation to associations in [Part 4.6](#) should be applied. [Reference guide link](#).

Beneficial owner identification

To correctly identify beneficial owners, the Rules in [Part 4.12](#) should be applied. [Reference guide link](#).

*If you are unable to determine the identity of a beneficial owner, the Rules in [Part 4.12.9](#) for either a company (if registered with ASIC) or an association, whichever is relevant, should be applied. This allows you to identify and verify, for the purposes of complying with Part 4.12, **any** individual:*

- **who is entitled to exercise 25% or more of the voting rights; or**
- **who holds the position of senior managing official (or equivalent); or**
- **who would be entitled on dissolution to 25% or more of the property (in the case of an association).**

Committee members, even executive positions, don't meet the definition of **senior managing official** in the AML/CTF Act because decision are made by vote of the whole strata corporation and committee powers are limited. The definition is as follows.

senior managing official means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of a customer of a reporting entity or who has the capacity to affect significantly the financial standing of a customer of a reporting entity.

³ <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/customer-identification-and-beneficial-ownership-requirements-strata-title-owners-corporation>

⁴ <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/customer-identification-and-verification-easy-reference-guide>

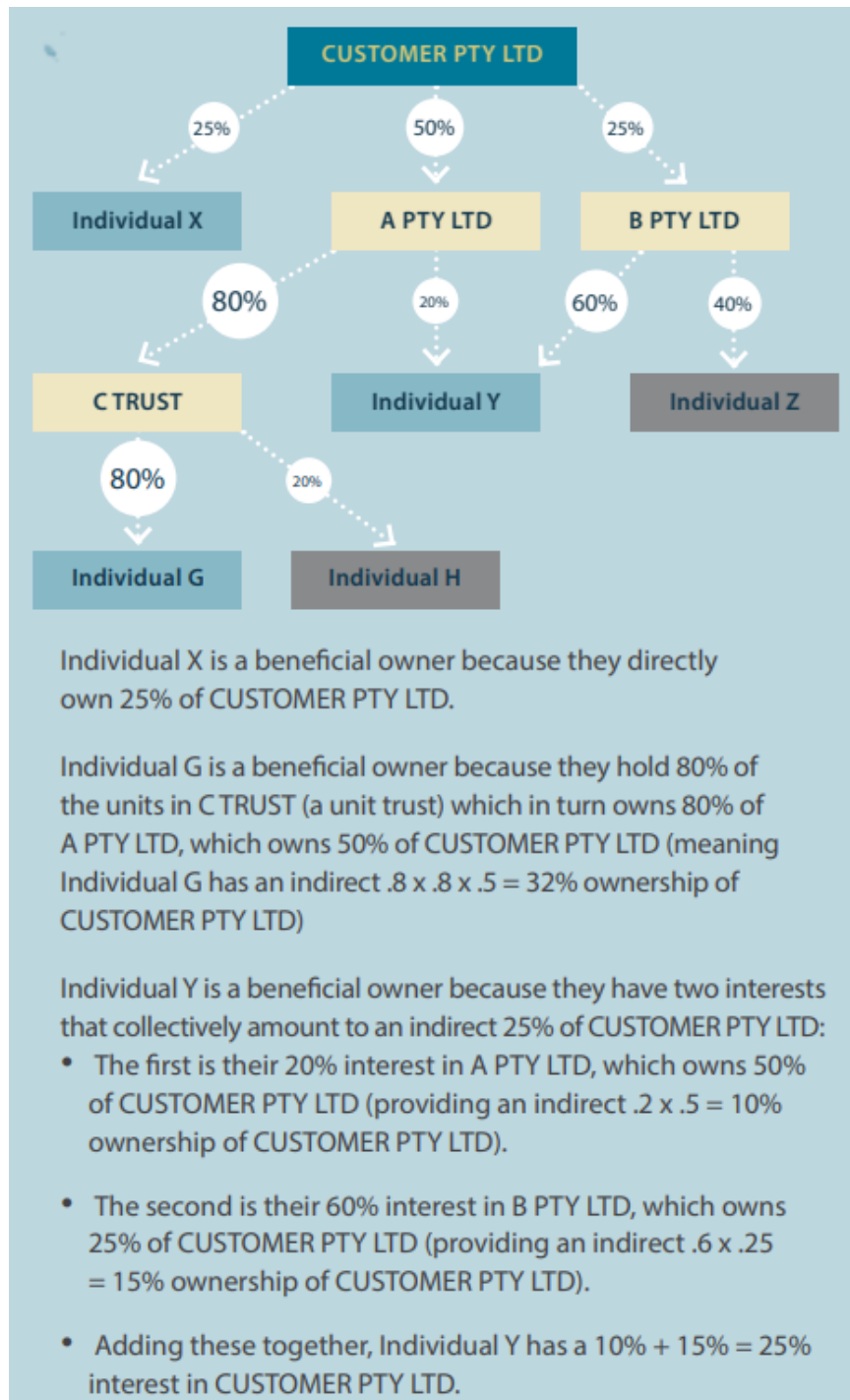
With this clarity on identifying the strata corporation it is relevant to also understand the identifications requirements with respect to the strata manager. The requirements are to collect the full name of any agent acting on behalf of the customer seeking to open a bank account and to collect evidence of the agent's authorisation. [Reference guide link](#).

Biggest issue for our industry – Identification of Beneficial Owners

The following instances will create the most work, costs and interference to business process for strata managers:

- Schemes with 4 lots or less – Every lot owner will be a beneficial owner
- Developers for new schemes – Every developer will be a beneficial owner and are also likely to have complex ownership structures
- Small schemes – higher likelihood that 25% or more of the lots or lot entitlements will be held by one owner that will be deemed to be a beneficial owner
- Where one of the “owners” with 25% or more of the lots or lot entitlements has a complex ownership structure (company, trust, association etc)
- Schemes with 5-8 lots where 1 lot owner is a non-individual (i.e. the lot is owned by a company or trust) – The non-individual lot owner must be identified to determine who the beneficial owners are and to check they are not owning a number of lots taking their total ownership to 25% or more
- Schemes with 9-12 lots where 2 lot owners are non-individuals – One of the non-individual lot owner must be identified to determine who the beneficial owners in order to rule out that no single individual holds a total ownership to 25% or more

In order to fully understand the ramifications of this it is necessary to understand what it would take to determine the beneficial owners of a company or a trust. Here is an example drawn from the AUSTRAC beneficial owner [fact sheet](#)⁵. It shows how ownership and control must be drilled through and how ownership calculations are aggregated in order to determine which individuals have more than 25% ownership or control.



⁵ <https://www.austrac.gov.au/sites/default/files/2019-07/beneficial-ownership-fact-sheet.pdf>

The before mentioned example also provides an example of how beneficial owners of strata corporations are determined under the new clarification. For example, if a 12 lot strata corporation had 2 lot owners which were companies each of them would need to be drilled through like this example in order to aggregate the total ownership.

If trusts are involved it involves collecting and reviewing trust deeds. [Reference guide link for trusts](#). [Reference guide link for companies](#).

Key Potential impacts

- There will be considerable additional work required to be completed to comply with these rules (as clarified by AUSTRAC) as can be seen by the methodologies for identifying beneficial owners of companies, trusts and strata schemes.
- Because of the multiple ownership structures of strata titled properties and the likelihood of unit ownership being held in complex structures like companies and trusts, there will be several layers of beneficial owner due diligence to work through for many schemes (particularly small schemes and especially those 4 lots and under).
- There will be instances where the identification requirements will mean that a strata corporation will experience considerable delay or is prevented from opening a bank account due to unhelpful or deliberately disruptive lot owners or committee members. This will result in unpaid creditors and an inability to collect and deposit levies creating risks of statutory non-compliance, fines, loss, damage and third party liability which may lead to a reduction in property values
- Strata managers will feel the brunt of the considerable additional compliance burden and cost on the industry. The impact of changing managers will lead to less change in strata management, causing reduced competition and the feeling amongst lot owners of the lack of flexibility in changing strata managers.

Other associated risks

Single lot owner delaying/withholding identification

A single lot owner that is unwilling or unhelpful in being identified can delay or prevent the strata corporation from opening a bank account. Example situations:

- A lot owner is unavailable during the account opening process such as being overseas or otherwise difficult to get in contact with. An email address or mobile number may not be on file for the owner.
- A lot owner may be unwilling to assist. Many owners are unaware of what the functions of the strata corporation are and how they themselves relate to their strata corporation. Many owners view their strata corporation as a liability and a hindrance. The need to identify lot owners grants them power to frustrate

the strata corporations' ability to act. Here are some examples situations which may arise:

- The strata corporation resolves to change their strata manager. This requires the new strata manager to open a bank account. Any lot owner that did not vote in favour of the motion could refuse to be identified as part of the account opening, thus frustrating the appointment of the new manager by preventing the opening of the necessary bank account that is required to facilitate the performance of the manager's duties.
- In a general meeting, a strata corporations resolves to:
 - change strata manager;
 - perform some major rectification work; and
 - raise a large special levy to pay for the work.

In the above situation. One lot owner may vote in favour of changing manager but against the rectification work and large special levy. Despite the opposition, the motions still pass with the majority of members in favour. The outgoing manager closes the strata corporation bank account and sends a bank cheque to the incoming manager who needs to open a new bank account (which is the general industry practice). This person could withhold their identification to stop the bank account opening and thus stop the rectification work and special levy being received.

- Owners may simply be unwilling to provide the necessary documents to facilitate the beneficial ownership due diligence, such as a certified copy of their trust deed.
- There are also other complicating factors such as a beneficial owner that is a foreign resident or politically exposed person.

The delay or withholding of identification by a single person leads to a delay or inability to open a bank account for the strata corporation. The following describes the potential impacts:

- A failure or refusal by a lot owner to provide the necessary identification documents and information for a bank might create a situation where the bank has raised suspicions about the strata corporation and may not wish to open the bank account. This could have catastrophic affects in strata as the operation of a bank account is pivotal to a strata scheme's operation and compliance.
- Being unable to pay creditors when needed. For example, delays paying insurance premiums or emergency work. Not paying creditors in the appropriate timeframe may result in debt recovery action against the strata corporation and additional costs associated to that such as interest and legal fees. Failure to pay may lead to potential statutory non-compliance where essential works and services are not undertaken due to lack of funds and ability to pay, which can have further costs and liabilities to third parties and statutory authorities.

- Being unable to collect levies. Levies are issued quarterly by strata corporations. Delays to receiving levies will cause owners to go into arrears, despite the fact that the members are ready, willing and able to pay their levies. Going into arrears will trigger statutory requirement to issue arrears notices, via the strata manager, which will cost the strata corporation money. Being unable to collect levies may lead to owners being unfinancial. If the period of delay in opening a bank account causes most/all owners to become unfinancial it could lead to a situation where the strata corporation cannot act effectively, leaving the strata corporation the only option of making an application to the relevant adjudication body to appoint an administrator who can make decisions for the strata corporation without owners voting. An administrator would not be able to compel an unwilling owner/committee to identify themselves for AML. Owners may attempt to become financial and free to vote by paying levies in cash or cheques. This will avoid the issue of decision paralysis but create other risks with handling and storing potentially large amounts of cash as it cannot be deposited into a bank account.
- Failure of the strata corporation to comply with governing legislation and regulations, triggering things such as:
 - Dispute resolution applications from members to attempt to rectify the statutory non-compliance.
 - Fines from local councils and relevant statutory authorities (such as failure to comply with ACP cladding regulations and any rectification orders).
 - Loss, damage and third party liability (such as the potential claims for failing to properly maintain common property).
 - Overall reduction in property value for members of the strata corporation as potential purchasers undertaking searches of the strata corporation records will be reluctant to buy into schemes where there is evidence of statutory non-compliance, disputes and/or potential liability.

Strata manager liability, loss of contract and reduced competition

The strata manager is at risk of:

- Reduced profitability if they do not pass on the compliance costs in order to remain price competitive; or
- Reduced customer satisfaction if the lot owners and committee members blame the manager for the increased administrative burden and associated cost, which could result in the manager losing the contract to manage those schemes.

It is difficult to quantify the likely loss of schemes by managers. Given the extent of the impact it will take time for all strata lot owners to become aware of the new

requirements and accept that strata manager is not responsible for the regulatory burden.

This effect will be amplified where the manager is required to undertake bulk changes to bank accounts for reasons such as:

- a sale of the strata management business;
- changing bank account signatories,
- a change in the ADI used by the strata manager; and
- the establishment and movement of term deposits to seek the highest interest rate. Some strata corporations may criticise the lack of movement of term deposits and complain of lack of freedom in seeking better interest rates, due to the strata manager not wanting the additional compliance costs and burden of an onerous on boarding process for the product.

The Manager is also at potential risk of:

- contractual liability to the strata corporation for failing to fulfil its obligations under the agreement as the agreements provide that the manager is authorised to open and operate the bank account; and
- statutory liability for failing to comply with statutory duties in the state Acts containing civil penalty provisions.

Ultimately, this may be seen as a deterrent for strata corporations to change banks and conversely a deterrent for strata corporations to change strata managers, resulting in reduced competition in the strata management industry.

This would result in much poorer bargaining power for schemes, who may be open to exploitation and overcharging where it is not practical for them to change managers because of high costs of compliance for bank accounts.

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006 - SECT 6

Designated services

Relevant extracts:

Designated services

(1) For the purposes of this Act, the following tables define:

- (a) the provision of a [designated service](#) ; and
- (b) the [person](#) (the [customer](#)) to whom the [designated service](#) is [provided](#).

Table 1--Financial [services](#)

(2) Table 1 is as follows:

Item	Provision of a designated service	Customer of the designated service
1	in the capacity of account provider , opening an account , where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society ; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the holder of the account
2	in the capacity of account provider for a new or existing account , allowing a person to become a signatory to the account , where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society ; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the signatory

Item	Provision of a <u>designated service</u>	<u>Customer</u> of the <u>designated service</u>
3	in the capacity of <u>account provider</u> for an <u>account</u> , <u>allowing a transaction</u> to be conducted in relation to the <u>account</u> , where the <u>account provider</u> is: (a) an ADI; or (b) a bank; or (c) a <u>building society</u> ; or (d) a credit union; or (e) a <u>person</u> specified in the AML/CTF Rules	both: (a) the holder of the <u>account</u> ; and (b) each other <u>signatory</u> to the <u>account</u>

Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)

Relevant extracts:

All Strata Schemes other than Company Title will be treated as Associations under Part 4.6

Part 4.6 Applicable customer identification procedure with respect to associations

4.6.1 In so far as a reporting entity has any customer who is an incorporated or unincorporated association, an AML/CTF program must comply with the requirements specified in Part 4.6 of these Rules.

4.6.2 An AML/CTF program must include appropriate risk-based systems and controls that are designed to enable the reporting entity to be reasonably satisfied, where a customer notifies the reporting entity that it is an incorporated or unincorporated association, that:

- (1) the association exists; and
- (2) the names of any members of the governing committee (howsoever described) of the association have been provided.

Collection and verification of information

4.6.3 An AML/CTF program must include a procedure for the reporting entity to collect, at a minimum, the following KYC information about an incorporated or unincorporated association:

- (1) if the customer notifies the reporting entity that it is an incorporated association:
 - (a) the full name of the association;
 - (b) the full address of the association's principal place of administration or registered office (if any) or the residential address of the association's public officer or (if there is no such person) the association's president, secretary or treasurer;
 - (c) any unique identifying number issued to the association upon its incorporation by the State, Territory or overseas body responsible for the incorporation of the association; and
 - (d) the full name of the chairman, secretary and treasurer or equivalent officer in each case of the association; and

- (2) if the person notifies the reporting entity that he or she is a customer in his or her capacity as a member of an unincorporated association:
 - (a) the full name of the association;
 - (b) the full address of the association's principal place of administration (if any);
 - (c) the full name of the chairman, secretary and treasurer or equivalent officer in each case of the association; and
 - (d) in respect of the member – the information required to be collected about an individual under the applicable customer identification procedure with respect to individuals set out in an AML/CTF program.

4.6.4 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether, in addition to the KYC information referred to in paragraph 4.6.3, any other KYC information will be collected in respect of an association.

4.6.5 An AML/CTF program must include a procedure for the reporting entity to at a minimum:

- (1) if the customer is an incorporated association - verify from information provided by ASIC or by the State, Territory or overseas body responsible for the incorporation of the association or from the rules or constitution of the association or from a certified copy or certified extract of the rules or constitution of the association or from reliable and independent documents relating to the association or from reliable and independent electronic data:
 - (a) the full name of the incorporated association; and
 - (b) any unique identifying number issued to the incorporated association upon its incorporation; and
- (2) if the customer notifies the reporting entity that he or she is a customer in his or her capacity as a member of an unincorporated association:
 - (a) verify the full name (if any) of the association from the rules or constitution of the association or from a certified copy or certified extract of the rules or constitution of the association or from reliable and independent documents relating to the association or from reliable and independent electronic data; and
 - (b) verify information about the member in accordance with the applicable customer identification procedure with respect to individuals set out in an AML/CTF program.

4.6.6 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether and to what extent, in

addition to the KYC information referred to in paragraph 4.6.5, any other KYC information collected in respect of the association should be verified.

Methods of verification

4.6.7 Subject to paragraph 4.6.8, an AML/CTF program must require that the verification of information about an association be based on:

- (1) the constitution or rules of the association or a certified copy or certified extract of the constitution or rules of the association;
- (2) the minutes of meeting of the association or a certified copy or certified extract of minutes of meeting of the association;
- (3) in the case of an incorporated association, information provided by ASIC or by the State, Territory or overseas body responsible for the incorporation of the association;
- (4) reliable and independent documents relating to the association;
- (5) reliable and independent electronic data; or
- (6) a combination of (1)–(5) above.

4.6.8 For the purposes of subparagraph 4.6.7(4), 'reliable and independent documents relating to the association' includes a disclosure certificate that verifies information about an association where:

- (1) the verification is for the purposes of a procedure of the kind described in paragraph 4.6.6 of these Rules; and
- (2) the information to be verified is not otherwise reasonably available from the sources described in paragraph 4.6.7.

Responding to discrepancies

4.6.9 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to respond to any discrepancy that arises in the course of verifying information about an association so that the reporting entity can determine whether it is reasonably satisfied about the matters referred to in subparagraphs 4.6.2(1) and (2).

Company Title Strata Schemes will be treated as Companies under Part 4.3

Part 4.3 Applicable customer identification procedure with respect to companies

4.3.1 In so far as a reporting entity has any customer who is a domestic or a foreign company, an AML/CTF program must comply with the requirements specified in Part 4.3 of these Rules.

4.3.2 An AML/CTF program must include appropriate risk-based systems and controls that are designed to enable the reporting entity to be reasonably satisfied, where a customer is a company, that:

- (1) the company exists; and
- (2) in respect to beneficial owners, the reporting entity has complied with the requirements specified in Part 4.12 of these Rules.

Existence of the company - collection of minimum information

4.3.3 An AML/CTF program must include a procedure for the reporting entity to collect, at a minimum, the following KYC information about a company:

- (1) in the case of a domestic company:
 - (a) the full name of the company as registered by ASIC;
 - (b) the full address of the company's registered office;
 - (c) the full address of the company's principal place of business, if any;
 - (d) the ACN issued to the company;
 - (e) whether the company is registered by ASIC as a proprietary or public company; and
 - (f) if the company is registered as a proprietary company, the name of each director of the company;
- (2) in the case of a registered foreign company:
 - (a) the full name of the company as registered by ASIC;
 - (b) the full address of the company's registered office in Australia;
 - (c) the full address of the company's principal place of business in Australia (if any) or the full name and address of the company's local agent in Australia, if any;
 - (d) the ARBN issued to the company;
 - (e) the country in which the company was formed, incorporated or registered;
 - (f) whether the company is registered by the relevant foreign registration body and if so whether it is registered as a private or public company or some other type of company; and
 - (g) if the company is registered as a private company by the relevant foreign registration body - the name of each director of the company;

- (3) in the case of an unregistered foreign company:
 - (a) the full name of the company;
 - (b) the country in which the company was formed, incorporated or registered;
 - (c) whether the company is registered by the relevant foreign registration body and if so:
 - (i) any identification number issued to the company by the relevant foreign registration body upon the company's formation, incorporation or registration;
 - (ii) the full address of the company in its country of formation, incorporation or registration as registered by the relevant foreign registration body; and
 - (iii) whether it is registered as a private or public company or some other type of company by the relevant foreign registration body;
 - (d) if the company is registered as a private company by the relevant foreign registration body - the name of each director of the company; and
 - (e) if the company is not registered by the relevant foreign registration body, the full address of the principal place of business of the company in its country of formation or incorporation.

4.3.4 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether, in addition to the KYC information referred to in paragraph 4.3.3, any other KYC information relating to the company's existence will be collected in respect of a company.

Existence of company – verification of information

4.3.5 An AML/CTF program must include a procedure for the reporting entity to verify, at a minimum, the following information about a company:

- (1) in the case of a domestic company:
 - (a) the full name of the company as registered by ASIC;
 - (b) whether the company is registered by ASIC as a proprietary or public company; and
 - (c) the ACN issued to the company;
- (2) in the case of a registered foreign company:
 - (a) the full name of the company as registered by ASIC;

- (b) whether the company is registered by the relevant foreign registration body and if so whether it is registered as a private or public company; and
 - (c) the ARBN issued to the company;
 - (3) in the case of an unregistered foreign company:
 - (a) the full name of the company; and
 - (b) whether the company is registered by the relevant foreign registration body and if so:
 - (i) any identification number issued to the company by the relevant foreign registration body upon the company's formation, incorporation or registration; and
 - (ii) whether the company is registered as a private or public company.
- 4.3.6 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether, in addition to the KYC information referred to in paragraph 4.3.5, any other KYC information referred to in paragraph 4.3.3 or other KYC information relating to the company's existence collected in respect of the company, should be verified.
- 4.3.7 In determining whether, and what, additional information will be collected and/or verified in respect of a company pursuant to paragraphs 4.3.4 and/or 4.3.6, the reporting entity must have regard to ML/TF risk relevant to the provision of the designated service.
- 4.3.8 If an AML/CTF program includes the simplified company verification procedure described below with respect to a company that is:
- (1) a domestic listed public company;
 - (2) a majority owned subsidiary of a domestic listed public company; or
 - (3) licensed and subject to the regulatory oversight of a Commonwealth, State or Territory statutory regulator in relation to its activities as a company;

an AML/CTF program is taken to comply with the requirements of paragraphs 4.3.5, 4.3.6 and 4.3.7 of these Rules in so far as those customers are concerned.

Simplified Company Verification Procedure

The reporting entity must confirm that the company is:

- (1) a domestic listed public company;
- (2) a majority owned subsidiary of a domestic listed public company; or

- (3) licensed and subject to the regulatory oversight of a Commonwealth, State or Territory statutory regulator in relation to its activities as a company;

by obtaining one or a combination of the following:

- (4) a search of the relevant domestic stock exchange;
- (5) a public document issued by the relevant company;
- (6) a search of the relevant ASIC database;
- (7) a search of the licence or other records of the relevant regulator.

- 4.3.9 (1) An AML/CTF program may include appropriate risk-based systems and controls for the reporting entity to determine whether and in what manner to verify the existence of a foreign company by confirming that the foreign company is a foreign listed public company.
- (2) If an AML/CTF program includes systems and controls of that kind, the AML/CTF program must include a requirement that, in determining whether and in what manner to verify the existence of a foreign listed public company in accordance with those systems and controls, the reporting entity must have regard to ML/TF risk relevant to the provision of the designated service, including the location of the foreign stock or equivalent exchange (if any).
- (3) If an AML/CTF program includes systems and controls of that kind, an AML/CTF program is taken to comply with the requirements of paragraphs 4.3.5, 4.3.6 and 4.3.7 of these Rules in so far as those customers are concerned.

Methods of verification

4.3.10 Subject to paragraph 4.3.11, an AML/CTF program must require that the verification of information about a company be based as far as possible on:

- (1) reliable and independent documentation;
- (2) reliable and independent electronic data; or
- (3) a combination of (1) and (2) above.

4.3.11 For the purposes of subparagraph 4.3.10(1), 'reliable and independent documentation' includes a disclosure certificate that verifies information about the beneficial owners of a company if a reporting entity is permitted to obtain a disclosure certificate as described in Chapter 30.

4.3.12 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether to rely on a disclosure certificate to verify information about a foreign company where such information is not otherwise reasonably available.

4.3.13 An AML/CTF program must include a requirement that, in determining whether to rely on a disclosure certificate to verify information in relation to a foreign company in accordance with the requirements of paragraph 4.3.12 above, the reporting entity must have regard to ML/TF risk relevant to the provision of the designated service, including the jurisdiction of incorporation of the foreign company as well as the jurisdiction of the primary operations of the foreign company and the location of the foreign stock or equivalent exchange (if any).

Responding to discrepancies

4.3.14 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to respond to any discrepancy that arises in the course of verifying information about a company, so that the reporting entity can determine whether it is reasonably satisfied about the matters referred to in subparagraphs 4.3.2(1) and (2).

Part 4.12 Collection and Verification of Beneficial Owner information

4.12.1 An AML/CTF program must include appropriate systems and controls for the reporting entity to determine the beneficial owner of each customer and carry out the following, either before the provision of a designated service to the customer or as soon as practicable after the designated service has been provided:

- (1) collect, (including from the customer, where applicable) and take reasonable measures to verify:
 - (a) each beneficial owner's full name, and
 - (b) the beneficial owner's date of birth; or
 - (c) the beneficial owner's full residential address.

4.12.2 The requirements of paragraph 4.12.1 may be modified:

- (1) for a customer who is an individual, the reporting entity may assume that the customer and the beneficial owner are one and the same, unless the reporting entity has reasonable grounds to consider otherwise;
- (2) for a customer who is:
 - (a) a company which is verified under the simplified company verification procedure under paragraph 4.3.8 of these Rules;
 - (b) a trust which is verified under the simplified trustee verification procedure under paragraph 4.4.8 of these Rules;
 - (c) an Australian Government Entity; or

- (d) a foreign listed public company, or a majority-owned subsidiary of such a company, subject to disclosure requirements (whether by stock exchange rules or through law or enforceable means) that ensure transparency of beneficial ownership;

then,

- (e) paragraph 4.12.1 need not be applied.

Note: The terms 'foreign company', 'listed public company' and 'foreign listed public company' are defined in Chapter 1 of the AML/CTF Rules.

4.12.3 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to determine whether, in addition to the information referred to in paragraph 4.12.1 above, any other information will be collected and verified about any beneficial owner.

Note: Reporting entities should consider the requirements in the Privacy Act 1988 relating to the collection and handling of information about beneficial owners.

Verification

4.12.4 An AML/CTF program must require that the verification of information collected about each beneficial owner of a customer be based on:

- (1) reliable and independent documentation;
- (2) reliable and independent electronic data; or
- (3) a combination of (1) and (2) above.

Safe harbour procedure where ML/TF risk of the beneficial owner is medium or lower

4.12.5 Paragraph 4.12.7 sets out one procedure for documentation-based verification (subparagraphs 4.12.7(2) and (3)) and electronic verification (subparagraph 4.12.7(4)) which a reporting entity may include in its AML/CTF program to comply with its obligations under paragraph 4.12.1 of these Rules where the customer and the beneficial owner of the customer is of medium or lower ML/TF risk. Paragraph 4.12.7 does not preclude a reporting entity from meeting the verification requirements of paragraph 4.12.1 of these Rules in another way where the beneficial owners of the customer are of medium or lower ML/TF risk.

4.12.6 Paragraph 4.12.7 is not applicable if any beneficial owner is a foreign politically exposed person.

4.12.7 An AML/CTF program that requires the reporting entity to do the following will be taken to meet the requirements of paragraph 4.12.1 of these Rules in respect of the beneficial owners of a customer, where a reporting entity determines that the relationship with that customer and the beneficial owner is of medium or lower risk:

- (1) collect the information described in paragraph 4.12.1 in regard to each beneficial owner;

Documentation-based safe harbour procedure

- (2) verify each beneficial owner's full name and either the beneficial owner's full residential address or date of birth, or both, from:
 - (a) an original or certified copy of a primary photographic identification document; or
 - (b) both:
 - (i) an original or certified copy of a primary non-photographic identification document; and
 - (ii) an original or certified copy of a secondary identification document; and
- (3) verify the document produced by the customer in regard to each beneficial owner has not expired (other than in the case of a passport issued by the Commonwealth that expired within the preceding two years);

Electronic-based safe harbour procedure

- (4) verify each beneficial owner's full name and either the beneficial owner's full residential address or date of birth, or both, using reliable and independent electronic data from at least two separate data sources.

Responding to discrepancies

4.12.8 An AML/CTF program must include appropriate risk-based systems and controls for the reporting entity to respond to any discrepancy that arises in the course of verifying information collected about each beneficial owner so that the reporting entity can determine that it is reasonably satisfied that each beneficial owner is the person that the customer claims they are.

Procedure to follow where unable to determine the identity of the beneficial owner

4.12.9 If the reporting entity is unable to ascertain a beneficial owner, the reporting entity must identify and take reasonable measures to verify:

- (1) for a company (other than a company which is verified under the simplified company verification procedure under paragraph 4.3.8 of these Rules) or a partnership, any individual who:
 - (a) is entitled (either directly or indirectly) to exercise 25% or more of the voting rights, including a power of veto, or
 - (b) holds the position of senior managing official (or equivalent);
- (2) for a trust (other than a trust which is verified under the simplified trustee verification procedure under paragraph 4.4.8 of these Rules), any individual who holds the power to appoint or remove the trustees of the trust;
- (3) for an association or a registered co-operative, any individual who:
 - (a) is entitled (either directly or indirectly) to exercise 25% or more of the voting rights including a power of veto, or
 - (b) would be entitled on dissolution to 25% or more of the property of the association or registered co-operative, or
 - (c) holds the position of senior managing official (or equivalent).

Note: In addition to the verification procedures set out in Part 4.12, a reporting entity may be able to use a disclosure certificate. Details regarding disclosure certificates are set out in Chapter 30 of the AML/CTF Rules.