

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING LAWS - IMPACT ON BROKERS

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In relation to the anti-money laundering interview questions issued by Tone Media Group, I would suggest the following answers:-

1. What will brokers need to do to comply? Is there anything else about the proposed AML/CTF regime that you think is relevant for mortgage brokers? What impact do you think the new legislation will have on the mortgage broking industry?

This primarily depends upon the lenders for they are the prime bodies targeted by the new legislation. Effectively the lenders will need to comply with the AML/CTF rules developed by Austrac. The lenders will then seek to comply by getting their accredited brokers to complete various tasks. Failure to do so by the broker will not necessarily mean that they will be in breach of the legislation but it will most likely mean that they will invalidate their accreditation with that lender and the lender will be liable. In essence, the lenders will probably impose the following on the brokers:-

- (a) Risk Identification (including re-identification of existing customers where necessary) and risk mitigation systems and measures;
- (b) A customer due diligence program;
- (c) An AML/CTF risk awareness training program for not only the brokers but their employees;
- (d) Due diligence program to be issued by the lender in relation to their accredited agents. Accredited agents would then need to comply with a similar program associated with the hiring of their employees;
- (e) Having to occasionally be audited by the lender to ensure that the functions necessary for the lender to comply with the AML/CTF are adequately working.

The requirements issued by the lenders will be largely governed by the program to be issued by Austrac. They will mainly be designed to identify “suspicious matters”.

The rules set out at least 20+ factors that a reporting entity must take into account and they include:-

- (a) The customer’s transaction history;
- (b) The customer’s asset level and income source;
- (c) The identity or location of any beneficiary of the transaction;
- (d) Any explanation by the customer as to the purpose of or the circumstance surrounding the transaction;
- (e) Whether any element or disguise is involved in any transaction; and
- (f) The customer’s demeanour or behaviour.

A lot of these requirements could be satisfied by checking an appropriate box on a lender’s AML/CTF checklist. The broker will have to ask standardised questions, complete and execute the checklist and state that they did not have any “reasonable grounds to suspect adverse answers in relation to the above grounds”.

The identification process associated with this legislation may closely reflect the 100 point approach previously adopted in the FTR legislation. Such an approach should already be in place for Queensland matters due to recent amendments to a lender’s statutory right to compensation associated with fraud.

There is an obligation on lenders to keep reports for a certain period of time. Ultimately the lenders are responsible for retaining the documents, therefore it would be highly probable that the lenders would require any information completed by the brokers to be forwarded to the lender for safe-keeping.

2. What do you think about the proposed AML/CTF’s regime – Will it be beneficial or will it merely more paperwork for those involved?

In relation to identifying tax evasion or preventing anti-money laundering, steps have to be taken in order to identify where the funds are being received from and sent to. Inevitably this will lead to more paperwork. We would be kidding ourselves if we thought that these steps would be a definitive way to prevent tax evasion or anti-money laundering. Every long journey begins with the first step. This legislation takes us a couple of steps down the path.



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