

Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024

Designated Services for Lawyers

Section 6, Table 6 – Professional Services

Designated Service 1

Assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to:

- sell real estate; or
- buy real estate; or
- otherwise transfer real estate

(other than a transfer pursuant to, or resulting from, an order of a court or tribunal);

in the course of carrying on a business. The customer is the person.

Designated Service 2

Assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to:

- sell a body corporate or legal arrangement; or
- buy a body corporate or legal arrangement; or
- otherwise transfer a body corporate or legal arrangement

(other than a transfer pursuant to, or resulting from, an order of a court or tribunal);

in the course of carrying on a business the customer is the person.

Designated Service 3

Receiving, holding and controlling (including disbursing) or managing a person's:

- money; or
- accounts; or
- securities and securities accounts; or
- virtual assets; or
- other property;

as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business (other than in a circumstance detailed below). The customer is the person.

Designated Service 4

Assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to:

- a body corporate (or proposed body corporate); or
- a legal arrangement (or proposed legal arrangement);

in the course of carrying on a business. The customer is the person.

Designated Service 5

Selling or transferring a shelf company, in the course of carrying on a business. The customer is the buyer or transferee.

Designated Service 6

Assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of:

- a body corporate (other than a corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006); or
- a legal arrangement;

in the course of carrying on a business. The customer is the person and:

if the body corporate is a company and the service is creating the company—the customers are the beneficial owners and directors of the company; or

if the legal arrangement is an express trust and the service is creating the express trust—the customers are the trustee, settlor and beneficiaries of the trust.

Designated Service 7

Acting as, or arranging for another person to act as, any of the following, on behalf of a person (the *nominator*), in the course of carrying on a business:

- a director or secretary of a company
- a power of attorney of a body corporate or legal arrangement;
- a partner in a partnership;
- a trustee of an express trust;
- a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs;

other than in a circumstance detailed below. The customer is the nominator.

Designated Service 8

Acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the *nominator*), in the course of carrying on a business. The customer is the nominator.

Designated Service 9

Providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business. The customer is the person to whom the service is provided.

Definitions & Exclusions

Definition of express trust

A trust expressly and intentionally created in writing by a settlor but does not include a testamentary trust.

Definition of legal arrangement

- a) an express trust; or
- b) a partnership; or
- c) a joint venture; or
- d) an unincorporated association; or
- e) an arrangement, including a foreign arrangement such as a fiducie, treuhand or fideicomiso, similar to an arrangement mentioned in any of the above paragraphs.

Definition of 'real estate'

- Any of the following interests in land in Australia:
 - a fee simple interest;
 - a leasehold interest;
 - a land use entitlement; or
- an interest, estate, right or entitlement in land in a foreign country that:
 - is equivalent to an interest mentioned in paragraph (a); or
 - otherwise confers ownership rights on the holder of that interest, estate; right or entitlement; or
 - an interest prescribed by the regulations.

But does not include the following:

- incorporeal hereditaments;
- the interest of a mortgagee;
- a leasehold interest under a lease for a term (excluding options for further terms) of 30 years or less;
- any other interest, estate, right or entitlement in land in a foreign country that is equivalent to an interest mentioned above;
- an interest prescribed by the regulations. Note the regulations have not been finalised.

Exclusions from Designated Service 3

For the purposes of designated service 3, the circumstances not covered are:

- where the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is payment by the person for the provision of goods or services by the business;
- where both:
 - the business does not provide any designated services other than the services referred to in designated service 3; and

- the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is for payments reasonably incidental to the provision by the business of a service that is not a designated service;
- where the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is to be received or payable under an order of a court or tribunal;
- where the service provided by the business is the receipt or disbursement of a payment mentioned below*;
- where the service is any other designated service;
- a circumstance specified in the AML/CTF Rules. Note the Rules have not been finalised.

For the purposes of this, the payments are:

- a payment to or from any of the following:
 - a government body;
 - a court or tribunal of the Commonwealth, a State, a Territory or a foreign country;
 - a public international organisation (per the meaning of section 70.1 of the Criminal Code Act 1995);
 - a person who is licensed under a law of the Commonwealth, a State or a Territory to provide insurance, including self-insured licensees; or
- a payment of a kind specified in the AML/CTF Rules. Note the Rules have not been finalised.

Exclusions from Designated Service 7

For the purposes of designated service 7, the circumstances not covered are:

- acting, or arranging for another person to act, in a fiduciary capacity pursuant to, or as a result of, an order of a court or a tribunal; or
- acting as the trustee of a regulated debtor's estate (within the meaning of Schedule 2 to the Bankruptcy Act 1966); or
- a circumstance specified in the AML/CTF Rules. Note the rules have not been finalised.