



MEMO

To: Board of Directors
From: Company Secretary
Subject: **AML/CTF ACT**

I refer to the recent advices from a stockbroker and comment on the Anti-Money Laundering & Counter-Terrorism Financing Act as requested in an attempt to clarify things (see email exchanges below).

The AML/CTF Act was introduced to regulate *some* fund-raising transactions. In relation to the issuing and buying/selling of shares it applies *only* to businesses which provide designated services covering:

- carrying on a business of buying and selling shares; and
- shares not issued for the company itself; and
- it is not an exempt financial operator issue.

Only a business satisfying all three criteria must comply with the AML/CTF Act regime, such as customer due diligence, identification, verification, record keeping and suspicious transactions reporting.

The Act specifically does not apply to a company issuing or facilitating trading in shares in itself, including new capital raising transactions.

So, it would appear from my investigations that the AML/CTF Act does not cover us as a manufacturing company making an occasional new share issue or allowing a share transfer to occur. Therefore, we do not have any obligation to check/report on the financial bona fides (source of funds used, etc) of the purchaser of shares in our company.

Email Exchanges re Act

The following is my recent exchange of emails with the stockbroker on the AML/CTF Act (note – most recent email is first, initial email is last):

From: _____ [mailto:_____@stockbroker.com.au]
Sent: Wednesday, 15 September 2010 4:41 PM
To: bill@companysecretary.com.au
Cc: _____
Subject: RE: XYZ shares

Bill,

We only need to comply with the provisions of the Act if we are giving advice and with XYZ buying and selling we're not giving advice. It sounds then as if we're all off the hook but I'll suggest there should



be a protocol anyway for new shareholders; if only to demonstrate over-compliance should the question ever be asked.

I suggest that the broker guidelines be adopted for setting up a new account, which means ID the shareholder as to name, address and date of birth (ie copy of drivers licence) and TFN.

For a super fund or trust, ID is required for one trustee.

In addition for super fund or trust, copies of 3 pages of the deed showing name page, page that names the trustees and signature page.

Perhaps the company might also want new shareholders to sign a form indicating that they understand the nature of the investment that they are getting into, that it can be illiquid, that its value can be volatile and capital is in no way guaranteed. It should read to protect directors from people who may not be known to us.

The Board should endorse this (or otherwise). I'll fit in with whatever protocol is communicated to me.

The Corps Act exemption won't apply as in the case of the lady that I refer to, the company has introduced her to us - not vice versa - and I think it likely in the future that the majority of new shareholders are likely to come from direct or indirect exposure to the company, not us.

I'm taking the better safe than sorry approach but am suggesting that if there is a responsibility with this stuff, it will lie with XYZ in registering the shareholder, not with us.

Cheers

From: Company Secretarial Services [mailto:bill@companysecretary.com.au]

Sent: Wednesday, 15 September 2010 11:42 AM

To: _____

Cc: _____

Subject: RE: XYZ shares

Interesting..... we have had new shareholders come on the register in various ways over time (eg, _____ has bought some), but I don't know whether that was before or after AMLCTF Act started, nor do I know whether such people were 'introduced' by your firm.

Personally, I don't have a problem in the lady/superfund becoming a shareholder (how many shares?) and accepting the commercial risks (although we might as well get the trustee ID & relevant TD pages, if available) – but guess that's up to the XYZ board?

As for our compliance with the AMCLTF Act, frankly I have no idea and no-one has ever suggested any such need in the past. Should we get legal advice on this in any case?

Another point is, aren't we relying on a Corps Act exemption under s.708(10) when your firm introduces someone – or must we rely on the 12/20 rule in this case (assuming she's not sophisticated or professional)?

Any further thoughts appreciated – and (subject to _____) I'll ask the board to consider at next week's meeting.

Bill Lyne
Company Secretary
Ph: 04 1887 4175

From: _____ [mailto:_____@stockbroker.com.au]

Sent: Wednesday, 15 September 2010 9:45 AM

To: bill@companysecretary.com.au

Cc: _____

Subject: XYZ shares

Hi Bill,

This to you in your capacity as company secretary of XYZ Ltd.

You'll be aware that we have an informal role in market making in XYZ shares, effectively being the contact point for any shareholders wishing to buy or sell shares.



The transfer instrument is an off market transfer form signed by both parties and to the best of my knowledge, no new shareholders have been introduced since AMLCTF Act came into effect..

We recently had an enquiry from a lady who is not an existing shareholder who is interested in buying shares for her super fund.

My question is; does the company need to comply with the AMLCTF Act before registering a new shareholder?

So...do you require ID for a trustee of the super fund and a copy of the relevant pages of the trust deed before you can register a new shareholder or do we just complete the registration details on the off market transfer per their instructions and take the "all care and no responsibility" approach.

Can you please confirm.

Thanks

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.