

ASIAPAC BANKING GUIDE FOR NONPROFITS


*HOW TO OPEN AND MANAGE AN ORGANIZATIONAL
BANK ACCOUNT*



AUSTRALIA



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 PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law's full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

1. OPENING AN ORGANIZATIONAL BANK ACCOUNT

a. What are the requirements to open an organizational bank account?

i. Do organizations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

As a general rule, foreign legal entities cannot open a new bank account in Australia without first being registered in Australia, as the entity will need to provide its Australian Company Number (“ACN”), Australian Business Number (“ABN”) and/or Australian Registered Body Number (“ARBN”) (as applicable) in the account opening process.¹ Usually, one director will be required to be physically present in Australia for identity and document verification purposes, but certain banks may also require an identity check for all other signatories of the account.² The directors can be non-residents, but at least one of them must ordinarily reside in Australia.³

1 <https://www.commbank.com.au/business/small-business/documents.html>

2 <https://www.westpac.com.au/business-banking/bank-accounts/business-banking-setup/>; <https://www.westpac.com.au/business-banking/bank-accounts/not-for-profit-community-cheque/>; <https://www.nab.com.au/content/dam/nabrwd/documents/forms/banking/private-proprietary-company.pdf>

3 Section 201A of the *Corporations Act 2001*, <https://www.legislation.gov.au/Details/C2019C00216>

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)

In Australia, a not-for-profit or charitable organization may be registered as an incorporated association or company limited by guarantee.⁴ To open a bank account, the organization needs to obtain its not-for-profit status and become a “registered charity” by registering with the Australian Charities and Not-for-Profits Commission (“ACNC”), the regulatory authority for charities and not-for-profit organizations in Australia.⁵

There are no other specific requirements that apply only to a civil society organization (“CSO”). Similar to other businesses, a CSO is required to complete an account application/opening form, to be submitted along with relevant supporting documents. The actual documentation required by each bank may vary due to specific internal anti-money laundering (“AML”) policies and procedures. The latest and applicable documentation requirements should be clarified with the bank where the account will be opened.

In Australia, certain banks offer tailored community bank accounts, which are available only to not-for-profit organizations and community groups. To open such bank accounts, banks would typically require supporting documents such as:⁶

- Memorandum and articles of association confirming not-for-profit status;
- Minutes of a meeting of the association (or certified copy or certified extract);
- ATO income tax exception certificate; and
- ASIC certificate of registration or equivalent document from the relevant government body.

4 Australian Securities & Investments Commission, [Information Sheet 81: Registering not-for-profit or charitable organizations](#)

5 [Australian Charities and Not-for-Profits Commission \(ACNC\)](#)

6 https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/new-customer-checklist/Checklist_IncorporatedAssociation.pdf; <https://www.nab.com.au/business/business-bank-accounts/specialised-accounts/nab-community-fee-saver>; <https://www.westpac.com.au/business-banking/bank-accounts/not-for-profit-community-cheque/>

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country?

An individual duly authorized to act on behalf of the CSO (typically appointed by a resolution of the management body), usually the director, may open a bank account for the CSO. Due to due diligence requirements, the opening of a business bank account generally requires the authorized personnel to be physically present at the branch for identity check.

Australian banks adopt the “100 point identification check” on individuals who wish to open a bank account. Each director and/or authorized personnel must provide hard copies or certified copies of identification documents that add up to 100 points for verification purposes.

Examples of identification documents and their respective points include:

- Primary documents (70 points)
 - Passports
 - Birth certificate
- Secondary documents, which must have a photograph and a name (40 points)
 - Driver’s license issued by an Australian state or territory
 - Identification card issued by the Australian or any state government
- Documents, which must have name and address (35 points)
 - Document from the Credit Reference Association of Australia
 - Document from current employer or previous employer within the last two years
- Documents, which must have name (25 points)
 - Current credit card or account card from a bank, building society or credit union
 - Current telephone, water, gas or electricity bill⁷

In light of the above, it is not acceptable, under most circumstances, to sign the paperwork at an embassy or before a notary.

⁷ <https://www.health.nsw.gov.au/art/Documents/100-point-id-check.pdf>

v. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

An individual duly authorized to act on behalf of the CSO to set up a bank account may make such an application. The process of setting up a bank account, including the onboarding and document verification process, normally takes up to several weeks. The length of time required will vary between banks and be determined on a case-by-case basis.

It should also be noted that, generally, banks have the sole and absolute discretion in deciding whether to accept an account opening application and may decline account opening requests without providing any reasons.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organizations' banking activities?

In Australia, banks have anti-money laundering and counter-terrorism financing (“AML/CTF”) obligations in respect of all customers. CSOs will be treated in the same way as any other customer. Banks in Australia need to comply with AML/CTF laws, which include the *AML/CTF Act 2006*, the *AML/CTF Rules Instrument 2007* and the *AML/CTF (Prescribed Foreign Countries) Regulations 2018*.⁸

Customer due diligence is a part of a risk-based AML program that banks in Australia employ to comply with the *AML/CTF Act 2006*.⁹ Customer due diligence essentially means the collection and identification of information to verify a customer's identity and the assessment of the level of criminal risk the customer presents.¹⁰

⁸ Comply Advantage, [AML In Australia: What You Need To Know](#); Australian Transaction Reports and Analysis Centre (“AUSTRAC”), [Who and what we regulate](#)

⁹ Comply Advantage, [AML In Australia: What You Need To Know](#)

¹⁰ Comply Advantage, [What is Customer Due Diligence \(CDD\)?](#)

Taking the National Australia Bank as an example, for customers other than personal customers, the following information may be required for customer due diligence purposes:

- Legal name of the organization
- Registered address
- ABN / ACN
- The nature of your business
- Details of relevant parties (directors, trustees, partners, etc.)
- Beneficial owners, including their full name, residential address and date of birth
- Sources of wealth, including business profits, matured investments, sale of assets – also includes sources of wealth for beneficial owners
- Sources of funds – the origin of the funds being invested, deposited or transferred, in particular when it involves cash deposits (examples may include business income/earnings or commission payments)¹¹

CSOs will be required to provide all relevant documentation and evidence to allow the bank to satisfy its AML/CTF obligations and may be unable to open a bank account or process certain transactions until these requirements have been satisfied.

b. Which internal principles or official (central bank) “suspicious transaction” monitoring criteria are in place affecting the civil society organizations? Is it publicly available?

If a bank’s monitoring program identifies suspicious customer transactions or behavior, the bank must apply its enhanced customer due diligence (“ECDD”) and submit a suspicious matter report (“SMR”) to the Australian Transaction Reports and Analysis Centre (“AUSTRAC”).¹² ECDD involves (a) carrying out extra checks on a customer’s identification; (b) collecting additional information to clarify or update the information of a CSO, identify a CSO’s source of wealth and funds and clarify the nature of a CSO’s ongoing business; (c) doing additional verification; (d) analyzing a CSO’s information and monitoring transactions in a more detailed manner; and (e) involving senior

11 National Australia Bank, [Customer due diligence](#)

12 AUSTRAC, [Suspicious transactions identified by your transaction monitoring systems](#)

management of a bank to decide on its services to a CSO.¹³

Identifying a higher money laundering and terrorism financing risk does not necessarily mean that a bank will terminate its services to the relevant CSOs, but the bank may continue to apply enhanced customer due diligence and ongoing customer due diligence, place restrictions on the account to prevent further transactions, and eventually terminate its services with the CSOs. The bank will also continue to monitor for new accounts that could be related to the closed accounts.¹⁴

Additionally, each bank in Australia is required to apply an appropriate risk-based transaction monitoring program to identify suspicious behaviors and transactions.¹⁵ The banks do not make their specific criteria available publicly, but they will generally include processes to identify suspicious customer transactions, including:

- unusually large transactions;
- complex transactions;
- splitting of transactions to avoid threshold transaction reports (“TTR”) reporting obligations (i.e., “structuring” transactions to avoid the TTR reporting threshold, which is currently AUD\$10,000 or more for each individual cash transaction);¹⁶ and
- unexpected patterns of transactions that do not seem to have a legitimate purpose.

13 AUSTRAC, [Enhanced customer due diligence \(ECDD\) program](#)

14 AUSTRAC, [Suspicious transactions identified by your transaction monitoring systems](#); Section 36 of the *AML/CTF Act* – Ongoing customer due diligence; Parts 15.4 to 15.7 of Chapter 15 of the *AML/CTF Rules* – Transaction monitoring program

15 AUSTRAC, [Transaction monitoring](#)

16 AUSTRAC, [Threshold transaction reports \(TTRs\)](#)

c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

i. If yes, is the list of jurisdictions publicly available?

As part of the AML/CTF program and reporting obligations, banks in Australia will carefully monitor customers from any of the high-risk countries and regions, and transactions to or from these places.¹⁷

Countries and regions may be considered high-risk if they are one or more of the following:

- [High-risk and non-cooperative jurisdictions according to the Financial Action Task Force \(FATF\)](#)
- Prescribed foreign countries: Iran and North Korea (the Democratic People's Republic of Korea or DPRK) – the only two prescribed foreign countries in the *Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulations 2018*.
- Countries, regions, people or entities subject to sanctions: The Department of Foreign Affairs and Trade (DFAT) has [a consolidated list of sanctions](#).
- Known tax havens¹⁸

ii. What would be the procedures the bank would follow in this case for their CSO clients?

When dealing with high-risk countries and regions, the banks apply enhanced customer due diligence procedures, take the risk into account when monitoring transactions and make suspicious matter reports to AUSTRAC.¹⁹ The procedures would not be specific to CSOs.

17 AUSTRAC, [High-risk countries, regions and groups](#)

18 Ibid

19 Ibid

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

Banks may disclose their customers' personal information to the government, regulatory agencies, bodies or corporations, statutory bodies, courts of law, tribunals or regulators as required by law or to assist with law enforcement activities. For example, the Australian Securities & Investments Commission ("ASIC") has the power to require banks to provide information and answer questions for surveillance and investigations of suspected breaches of law. All banks must also comply with the reporting requirements as required by the relevant AML/CTF legislation.

Depending on the place of incorporation, banks may also have obligations to exchange their customers' financial information with other jurisdictions under the Foreign Account Tax Compliance Act or the Common Reporting Standard.

However, there is no specific regulatory authority in Australia that banks would have to report CSO clients' information due to its status as a CSO per se.

b. What obligations do banks have to protect the privacy of clients' information?

Banks in Australia are required under the [Privacy Act 1988 \(Cth\)](#) and the [Australian Privacy Principles](#) to promote and protect the privacy of individuals. Banks may be required to disclose certain information if they are legally required to do so and may share certain information with consent. Examples of where banks may be required or authorized by law to disclose personal information include where a warrant, order or notice issued by a court so requires, where the banks are subject to a statutory requirement to report certain matters to an agency or enforcement body (e.g., specific financial transactions) or where a law specifically authorizes it to disclose the personal information (e.g., to disclose matters to a trustee conducting a

bankruptcy investigation).

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

Other than those discussed above, there are no specific reporting obligations that apply to CSO banking.

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

Australia imposes autonomous sanctions on Russia in response to the Russian threat to the sovereignty and territorial integrity of Ukraine. Under the sanctions regime, it is prohibited to deal with financial instruments issued by, or provide loans or credit to:

- specified publicly-owned or controlled Russian banks;
- specified Russian companies predominantly engaged in activities relating to military equipment or services;
- specified publicly-owned or controlled Russian companies involved in the sale or transport of crude oil or petroleum products; and
- majority owned subsidiaries or entities acting as agents for any of the above.²⁰

Schedules 1 and 2 of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014* lists over 1,000 designated and declared persons and 150 designated entities, including major Russian banks such as Sberbank, VTB Bank and Gazprombank.²¹

²⁰ As specified in the Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015); The Department of Foreign Affairs and Trade (DFAT), [Russia sanctions regime](#)

²¹ Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014; <https://www.legislation.gov.au/Details/F2023C00569>



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