aml

From: [redacted]@bankomb.org.nz>
Sent: Tuesday, 7 December 2021 9:30 am
To: aml
Cc: [redacted]
Subject: BOS submission on AML review
Attachments: BOS submission on AMLCFT review .pdf

Tena koe

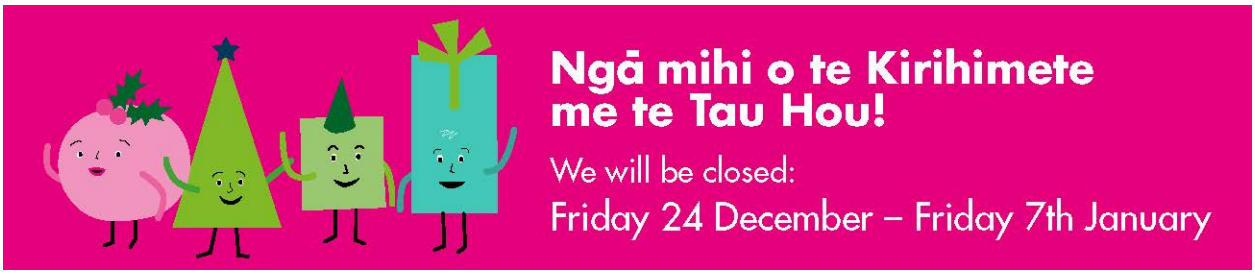
Please find attached the Banking Ombudsman Scheme's submission on AML/CFT Act review.

Kind regards,

[redacted]
Policy and Systemic Issues Manager
[redacted]
0800 805 950 [redacted]

Banking Ombudsman Scheme

We're here to help you fix your banking problems. We're free and independent.



Ministry of Justice
By email: aml@justice.govt.nz

7 December 2021

Kei te rangatira tēnā koe,

Submission on AML/CFT Act statutory review

Thank you for the opportunity to make a submission on the statutory review of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009.

About us

The Banking Ombudsman Scheme (BOS) was established in 1992 and is an approved financial dispute resolution scheme under the Financial Services Providers (Registration and Dispute Resolution) Act 2008. We provide a free and independent service for customers of our members: registered banks, their subsidiaries and related companies, and certain non-bank deposit takers that meet our membership criteria. We resolve and prevent complaints to improve banking for customers and banks.

Compliance disruption

We received 140 cases about AML processes last financial year and 87 cases since 1 July this year. Customers complain about inconvenient, intrusive, or even discriminatory processes. Some customers report their accounts have been closed after correspondence has been sent to incorrect addresses or through insecure channels.

We are sharing insights with the industry to encourage them to inform customers clearly, via secure channels, about the information required for AML/CFT purposes and why. However, we also note that account closures due to AML compliance is a prevailing theme in the complaints we receive about a bank's decision to end a banking relationship – this being the rationale for nearly a third of the more than 500 such complaints raised in the past three years.

De-risking and account closures

We have also observed the tendency to "de-risk" broadly to comply with AML obligations for complex customers. We are concerned that this approach, while lawful and within the scope of the bank's commercial judgment, could result in financial exclusion. In addition to the vulnerable groups you have identified, we have also seen this impact prisoners, migrants, and elderly people.

Reporting entities are understandably concerned with the consequences of non-compliance. We would support a reduction of requirements for low-risk natural persons where the stipulated verifications obligations reasonably cannot be met in order to ensure accessibility to banking.

While we can consider whether banks acted lawfully and followed a fair process when closing a bank account, we cannot otherwise look behind their commercial decision to end the banking relationship. Regulator guidance on acceptable de-risking policies and minimum required steps prior to exiting could serve a dual purpose:

1. To promote customer retention and mitigate against the inclination to de-risk.
2. To allow dispute resolution services greater scope to consider the rationale behind the decision to end the relationship.

Prevention focus

The Banking Ombudsman Scheme has a dual function of both resolving and preventing complaints. We believe learning from things that have gone wrong to prevent recurrence is vital to create trust and confidence and to contribute to a robust financial sector.

We have found that many consumers assume that AML was designed to identify fraud and prevent financial harm. They are therefore surprised and disappointed that the purpose of detecting and deterring – with the focus on identifying and reporting suspicious transactions as opposed to stopping them – does not align with that expectation. A move towards prevention as a purpose for AML would align with consumer expectations, however we note that the means by which harm could be prevented may not align with the current provisions of the AML Act.

Freezing assets and stop accounts

Banks' terms and conditions generally allow them to restrict access to a customer's account if the account would otherwise be operating in breach of the bank's legal obligations. It therefore seems peculiar that banks generally have greater powers in this regard to prevent financial harm than law enforcement. We support a strengthening of Police powers to combat financial harm arising under the AML Act. We have observed some tension between the bank's contractual freezing power and the provisions against "tipping off" a suspected criminal. In view of the customer experience when AML obligations are engaged, we suggest careful consideration of how such freezes will be managed and communicated.

We also note that freezing powers are not a long-term solution. The AML requires banks to end banking relationships where compliance is not achieved, and standard banking practice requires the release of funds to the customer as part of the process to end a banking relationship. This also presents friction in the balance between contractual rights and AML obligations.

We would encourage consideration of how these tensions could be addressed.

Application to scams

We note your comments that a freezing power could prevent future harm by other types of offending. You explicitly mention romance and investment scams.

As a matter of contract, banks are required to act on customer instructions, and we expect them warn customers where there are red flags of scams. A bank's terms and conditions may provide discretion to decline to act on instructions and to end a relationship – and we have seen numerous instances where such discretion has been utilised due to concern about a customer's ongoing involvement in a scam. Please see our quick guide to scams for more information about common scams and banks' obligations towards scam victims.

We find that banks are proactive in identifying and acting on red flags of scams, enabling them to assist in the prevention of financial harm from scams at an early stage. We support the application and strengthening of obligations such as this across reporting entities, which have proven to be an effective tool in combatting harm caused by scams.

Information sharing

In our view, a more effective mechanism for preventing harm from scams would be greater information sharing regarding known scam recipient accounts or entities. We understand that information sharing of this nature with reporting entities is presently not possible, as sections 5 and 46 of the AML Act only permit the sharing of information for law enforcement purposes. Loss prevention, therefore, is not a basis on which information can be shared.

We would welcome the opportunity for further engagement with the authorities and regulators about how information sharing outside the scope of the AML Act could help prevent financial harm from scams.

Conclusion

Thank you for the opportunity to comment on this review of the AML Act. We hope our insights into the complaints from bank customers arising from AML compliance are valuable for this review.

Nāku noa, nā

[redacted]
Policy and Systemic Issues Manager