

Submission to the Attorney-General's Department and AUSTRAC for the Review of Australia's Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) Regime

This submission is in response to AUSTRAC's and the Attorney-General's Department's Issues Paper *Review of the AML/CTF Regime*.¹

Australia needs to reassess its approach to implementing AML/CTF measures to be more closely aligned with goals of financial inclusion

The Financial Action Task Force (FATF) and the G20 support the use of a risk-based approach to implementing AML/CTF regulations for financial inclusion reasons and recognise that the goals of financial stability and integrity can be aligned with and pursued in tandem with the goals of financial inclusion.² Australia's AML/CTF regime would appear to be not well aligned with international best practice in this regard.

Australia's major banks have been closing the accounts of money transfer operators (MTOs) that facilitate efficient and affordable remittance transfers for people living in Australia sending money home to their relatives living in Asia and the Pacific.³ Through these actions, Australia's major banks are harming financial inclusion in the Asia and Pacific regions. In recent years, in the Pacific region, the MTOs have reduced remittance costs substantially as a result of financial liberalisation in Pacific Island states and increased transparency on the cost of alternative remittance channels. The entry of MTOs into the market has been a distinct benefit for the

¹ The authors of this submission are undertaking a research project, *The Regulation of Mobile Money*, supported by the Centre for International Finance and Regulation (CIFR, project no. E226), the United Nations Capital Development Fund and Standard Chartered Bank. CIFR is a Centre of Excellence for research and education in the financial sector which is funded by the Commonwealth and NSW Governments and supported by other consortium members (www.cifr.edu.au). All responsibility for this submission lies with the authors.

² Financial inclusion efforts are being aligned with, and pursued in tandem with, efforts directed towards financial stability, integrity and consumer protection because they are seen as complementary and because financial inclusion is now recognised as an important means for poverty alleviation and a country's broader economic development. The focus on financial inclusion is seen in many international forums: G20 Summits, the Global Policy Forum (GPF) of the Alliance for Financial Inclusion (AFI), The Better Than Cash Alliance, Financial Action Task Force, and the Basel Committee on Financial Inclusion.

³ Banks stop cheap money transfers to the Pacific <http://www.abc.net.au/news/2013-12-11/an-banks-close-off-cheap-money-transfer-options-to-the-pacific/5151066>

low-income groups living in remote regions of the Pacific who rely on remittance funds from family in Australia and New Zealand.⁴

The banks have been closing the accounts due to concerns over the MTOs not having adequate AML controls in place. Banks consider the risk of operating these accounts outweighs the benefit to the banks. MTOs consider the risk to be well-managed through considerable efforts on their part to comply with AML/CTF measures. The World Bank has supported the stance of MTOs on this issue.⁵ The improved risk management and compliance culture of the remittance industry in Australia has not, however, led to a reduced perception of risk.

The Review of the AML/CTF regime may not adequately consider this problem as the Guiding Principles and Issues Paper, which are to guide submissions to the Review, do not mention the issue of considering financial inclusion goals along with those of financial integrity and stability.

Why Australia should be concerned with implementing AML/CTF measures in accordance with financial inclusion goals

This issue has implications for Australia's national security. Australia has a strong interest in ensuring the stability of the Pacific region and remittances are a substantial source of income for many of these island nations. For Samoa and Tonga, the two most remittance-dependent Pacific island countries, total remittances are estimated to make up around a quarter of their GDP.⁶ The recent actions of banks, with respect to MTOs, have the potential to destabilise the lives and bring hardship to many Pacific Islanders who are reliant on funds being remitted from Australia. An alternative corridor needs to be found for remittances.

While the major banks can be used for the direct remittance of funds, the cost of this direct remittance service is prohibitive for many people.⁷ The immediate result of the closure of accounts of the MTOs will be that funds initially do not get transferred at all – causing

⁴ "Remittance chase good for the pocket" <http://www.savalinews.com/2011/10/27/remittance-chase-good-for-the-pocket/>

⁵ Banks stop cheap money transfers to the Pacific <http://www.abc.net.au/news/2013-12-11/an-banks-close-off-cheap-money-transfer-options-to-the-pacific/5151066>

⁶ "Calls for Australia to use G20 presidency to cut remittance costs" <http://www.abc.net.au/news/2013-12-18/an-remittances-call/5165928>.

See also UN report estimating remittances as a percentage of GDP

(http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Inclusive%20development/Towards%20Human%20Resilience/Towards_SustainingMDGProgress_Ch4.pdf)

⁷ See <http://www.sendmoneypacific.org/> for a comparison rates for sending money to the Pacific region.

considerable hardship. The recipients of these funds are often people without regular incomes who rely on the remittance funds, from family members living in Australia, to support their everyday living expenses. The longer term implication is that the funds will be remitted through informal channels; the very channels which international organisations, such as FATF, are trying to discourage because of the inability to adequately track and monitor these informal channels and the increased exposure to money laundering and terrorist financing risks that their use entails.

At the same time as the MTOs' accounts are being closed, the major banks are expanding their own financial services networks in the Pacific region; based on the use of new payment technologies and branchless banking (for example, ANZ goMoney and Westpac In-store banking). Banks are working to encourage consumers in remote regions of the Pacific to use these new services. While these new payments products and services are a welcome development for financial inclusion, it also reflects a competition issue, or a conflict of interest on the banks' part, which may be influencing the decision to close the MTOs' accounts. Banks should not be able to use their market positions in Australia to indirectly influence the payment channels available to the Pacific.⁸

Suggested Solutions

Immediate Responses

Amend the Guiding Principles and Terms of Reference for the Review of AML/CTF regime

This submission calls for the Guiding Principles and Terms of Reference to be amended to take into specific account financial inclusion goals. Such an amendment should assist the alignment of Australia's approach to incorporating the goals of financial inclusion into AML/CTF measures with international best practice.

⁸ While it may be argued there are benefits for economic development and prosperity to be had by bringing consumers into a formal financial services arrangement rather than relying on remittance funds which may be withdrawn and consumed very quickly, this argument rests on certain "colonial-type" assumptions which are not necessarily supported by evidence.

Amend the objects of the AML/CTF Act

This submission calls for the objects of the AML/CTF Act to be amended to acknowledge that the risk-based approach is to be applied for financial inclusion reasons. This would be in addition to the current objectives of striking a balance between AML/CTF measures and the efficient conduct of business. This amendment would clarify that being consistent with international best practice includes focusing on financial inclusion.

Medium to Longer Term Solutions

AUSTRAC to provide a 'safe harbour' for entities providing accounts for MTOs

AUSTRAC could establish a benchmark by which banks could be confident the MTOs have in place sufficient AML/CTF risk management controls. AUSTRAC may be well-positioned to understand the risk profile of MTOs and, therefore, well-positioned to establish the criteria for a benchmark that would provide a 'safe harbour'. This would be cost effective for all parties concerned as it would streamline assessment procedures.

Prudential regulators to adopt a more active role in encouraging banks to use a risk-based approach

Regulators, such as the Australian Prudential Regulatory Authority (APRA), have an international obligation to encourage institutions they regulate to adopt a risk-based approach to implementing AML/CTF measures so as to promote financial inclusion.⁹ Australian regulators should work with the banking sector to identify the banks' concerns surrounding MTOs' anti-money laundering controls. A reassessment of the risk profile of the MTOs' accounts is justified because these accounts facilitate the growth of financial inclusion in Asia and the Pacific. The closing of these accounts represents the imposition of an unnecessary regulatory burden on MTOs which compromises financial inclusion.

The Bank for International Settlements Basel Committee on Banking Supervision (BCBS) recently issued a set of guidelines describing how banks should include risks related to money

⁹ *The Financial Action Task Force (FATF) Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion (2011)* (prepared in response to the G20 Principles for Innovative Financial Inclusion issued in 2010, and in conjunction with the World Bank and the Asia-Pacific Group on Money Laundering) supports countries and institutions in designing AML/CTF measures to comply with the *FATF Recommendations* (international standards on combatting money laundering and the financing of terrorism) and incorporates the idea of the dual goals of financial inclusion and financial integrity. This guidance note was updated in February 2013 to incorporate the updated *FATF Recommendations*, which were revised in 2012 to emphasise the use of a Risk-Based Approach (RBA) as the underlying principle for all AML/CTF systems.

laundering and financing of terrorism within their overall risk management framework.¹⁰ These guidelines incorporate the *FATF Guidance on Anti-Money Laundering and Terrorist Financing and Financial Inclusion*, February 2013. In particular, in paragraph 33 of the BCBS guidelines it is noted:

"It is important that the customer acceptance policy is not so restrictive that it results in a denial of access by the general public to banking services, especially for people who are financially or socially disadvantaged".

While the BCBS guidelines make this point in the context of supporting the use of simplified Consumer Due Diligence (CDD) for low risk customers,¹¹ it is still valid for those considered high risk customers if those customers represent people who are financially or socially disadvantaged. The banks have an obligation to work with these customers (in this case the MTOs) more closely to understand and be comfortable with their AML/CTF risk measures in the interests of financial inclusion.

AUSTRAC publication of data

AUSTRAC should publish the data it collects on the transactions being processed by the remittance industry. This would improve the transparency and understanding of the risk profile of the remittance industry. While AUSTRAC information is highly sensitive, consideration could be given to how remittance data could be extracted and published for public information purposes. The approach could be similar to the data published by the Reserve Bank of Australia (RBA) from its payments statistics collections and much of the data published by APRA which facilitates research and policy debate.¹²

We recognise the publication of data has not been one of AUSTRAC's roles. However, in the interest of increasing transparency so as to improve the understanding of Australia's remittance

¹⁰BIS, BSBC guidelines: *Sound management of risks related to money laundering and financing of terrorism*, January 2014, <https://www.bis.org/publ/bcbs275.pdf>

¹¹ For example a low risk customer may be defined as one which maintains a low balance in their account and use it for conducting routine retail banking transactions.

¹² <http://www.rba.gov.au/payments-system/resources/statistics/>

industry, the publication of data has considerable merit. The management of the database could, if necessary, be outsourced to an independent entity.

Conclusion: Regulators should continue to work to raise the profile of the remittance industry

The current problem for MTOs in Australia and the Pacific facing account closures by banks is perhaps one of a perception of risk rather than actual risk. This perception of risk is perpetuated by a tendency to view remittance providers as alternative payments providers rather than providers of viable and efficient payments channels upon which many people rely for their livelihoods. The Federal Minister for Justice, Michael Keenan, recently stated in January 2014, in relation to the outcomes of the Australian Crime Commission-led Eligo National Task Force:

"The international money transfer business is a legitimate industry, and one which is now better protected against serious and organised crime."¹³

Australian regulators (including the RBA, APRA and AUSTRAC) have an interest in raising the profile of the remittance industry and recognising the important role it plays for Australia and its relationship with the Pacific Islands and Asia. The Review of the AML/CTF regime would be strengthened and improved by taking into consideration the suggestions in this submission.

We thank the Attorney-General's Department and AUSTRAC for the opportunity to put forward this submission. Please contact Ms Louise Malady by email, l.malady@unsw.edu.au, if you would like to discuss this submission.

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¹³ "Joint task force nets more than half a billion in drugs, assets and cash"
<http://www.ministerjustice.gov.au/Mediareleases/Pages/2014/First%20Quarter/23January2014-Jointtaskforcenetsmorethanhalfabillionindrugsassetsandcash.aspx>.