

Новый подход к комплаенс-контролю банков в сфере ПОД/ФТ

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Аннотация

В данной статье проанализировано текущее состояние банковской сферы в области противодействия отмыванию денег, а именно процедуры комплаенс-контроля при проверке клиентов. Рассмотрен проект Банка России по созданию единой платформы для оценки клиентов банка. Отражены её положительные стороны для различных участников рынка, а также возможные негативные последствия для бизнеса.

Ключевые слова: финансовый мониторинг, банковская деятельность, банковский сектор, банки, Банк России, ПОД/ФТ.

New approach to AML/FT compliance of banks

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Abstract

The article touches upon the issue of the current state of the banking sector in the field of combating money laundering, in particular compliance during the process of verification of clients. The project of the Bank of Russia to create a single platform for assessing bank's customers is examined. The paper also reflects its positive aspects for various market participants, as well as possible negative consequences for business.

Keywords: financial monitoring, banking, banking activity, banks, the Bank of Russia, AML/FT.

Introduction

Over the past decade, combating legalization (laundering) of proceeds from crime and combating the financing of terrorism have become one of the leading areas of control activities for the entire civilized world community. Significant consequences of these threats and historical background have pushed the Russian Federation to actively fight against money laundering. This

direction covers financial and economic, law enforcement and socio-political spheres of public life. Such coverage and presence of plenty of transactions boost strengthening of financial monitoring.

The main participants and drivers of the economic activity are enterprises, physical and legal persons. They are involved in an enormous number of operations, in which large sums of money are involved, both with local and foreign firms. The next level is represented by banks, insurance and factoring companies, and all others that provide financial services to firms. These institutions have become subjects of primary financial monitoring. And there are governmental agencies that control and regulate their activities. In Russia such a supervisory body is the Central Bank that imposes various norms and rules on banks. However, quite frequently the latter don't fully understand how to comply with anti-money laundering regulations or they commit mistakes that are negatively reflected on clients' activities. That is why the Russian system needs amendments to the interaction in the banking sector.

Premises for changes

Banks perform compliance procedures, based on the Regulation of the Bank of Russia No. 375-P of 2.03.2012 "On requirements to the rules of internal control of a credit institution in order to counteract the legalization (laundering) of proceeds from crime and the financing of terrorism". According to that, AML/CFT rules are expressed in a document or a set of documents, which are developed by the credit institution itself in accordance with the Federal law, the above-mentioned regulation and other regulations of the Bank of Russia. They take into account the peculiarities of the organizational structure of the bank, the nature of products and services provided by the credit institution to customers, as well as the level of risk of laundering of proceeds from crime and terrorist financing that is present. Thus, the current legislation does not allow the regulator to be involved in the process of assessing the client's risk or undertaking the execution of certain compliance procedures. Here issues are raised related to the development and application of internal regulations and standards, which in turn are directly linked to verification of clients and further compliance. The situation is especially acute for smaller banks that don't possess necessary resources and personnel [5, 11].

Nowadays a significant number of small and medium-sized enterprises express a negative attitude towards financial institutions, banks in particular. This conclusion was obtained in the survey conducted in April 2019 as part of the RSBI (Russian Small Business Export) quarterly index. It was directed by an independent agency MAGRAM Market Research on request of "Promsvyazbank" and a Russian public association "OPORA Rossii" in order to reflect the sentiment of businesses. Owners and top managers of 2300 small and medium-sized businesses

from 23 regions participated in the survey. A similar study was conducted in the fourth quarter of 2017, which allows assessing the problem in dynamics and monitoring the main trends. [2]

The results are the following:

- 20% of the surveyed enterprises faced freezing of their accounts over the past year;
- 43% of them reported serious consequences (against 28% in 2017);
- only 19% of businessmen declared no subsequent damages;
- there was also an increase in the number of blockages longer than ten days.

According to the report, half of the blockages (51%) were due to the wrongdoing of the entrepreneurs themselves (not paying taxes on time, violation of the rules of submission of tax returns and other mistakes). Operations that were under suspicion of money laundering led to 10% of the blockages. The second main reason was the errors of regulatory authorities, which caused 16% of the locks. In 14% of cases, banks blocked accounts without any explanation provided. Exactly this percentage undermines client's trust. For small and medium-sized businesses that do not have additional reserves, blocking operations entails a real inability to fulfill obligations to counterparties. The consequences are extremely negative, including bankruptcy and criminal proceedings for non-payment of wages. [1]

The problem is that the signs, which were originally supposed to serve as guidelines for credit institutions, began to be perceived formally – this is understandable due to the fact that violation of the law on combating laundering for banks can lead to administrative liability with subsequent payment of fines and increased attention from the Bank of Russia. Consequently, banks prefer to play safe, sometimes “overplay”, in dread of strict punishments.

Introduction of a new platform

Active role in the functioning of the counteraction system belongs to the Bank of Russia. It introduced a number of documents, which served as the initial organizational-legal and practical basis for developing the apparatus of the Bank of Russia and credit organizations, with the aim of execution of countering tasks. That was done even before the adoption of the law on combating money laundering (ML) within the authoritative framework for the supervision of credit institutions (banking supervision) established by the Federal law "On the Central Bank of the Russian Federation (Bank of Russia)" in the article 57.1 [8].

The Bank of Russia together with the “Association of financial technologies” (Fintech Association) are going to launch a single platform for valuation of client reliability. According to the concept, the Central Bank's program will independently determine the client's risks of ML. The

obtained analysis will be transferred to credit institutions. To do that, banks will have to connect to a single system in which customer data will be pulled [12].

The process will involve scoring companies on the basis of more than a hundred risk criteria, the majority of which are publicly available now, but dispersed in various provisions and guidelines of the Central Bank. Part of the criteria is closed, but it is very relevant for effective compliance. Mainly, it will be formed based on the company's participation in suspicious transactions that bear tax, credit, reputational, behavioral, sectoral and other risks.

The algorithm will be run using a risk-based approach (RBA), the core function of which is assessment of the risk vulnerability. Noticeably, it should be adequate to the nature and scope of activities of the organization. The use of RBA has a number of advantages:

- allows to decrease the load of the financial entity, due to switch of resources to operations bearing higher risks;
- encompasses assessment of the client's current and future risk tolerance, providing both current and prospective assessment of the compliance with regulatory requirements;
- allows for timely response to the first signs of problems and undertaking necessary corrective measures.

The platform will operate and assess legal persons on the principle of "traffic lights". Companies will be scored on a scale from 0 to 10. Those who gain less than three points will fall into the "green" category (their operations will be monitored in a current operation state, without increased attention). The scope in between three and seven is the "yellow" channel, which means that banks will conduct the second compliance procedure – a more careful analysis of customer data and take actions if necessary). Getting more than seven points means falling into the "red" section, operations of such clients are of the highest risk and will be tracked online [12].

One of the most vital issues is that for effective and proportionate work of system it is necessary to develop and accurately register the mechanism of rehabilitation of clients from "red" zone. In addition, it should become apparent and quite clear for clients not only how to exit it, but ways of getting into it.

Data access

The main underlying principle of the compliance policies of a credit institution is the concept "Know your customer" (KYC). Its essence is that it needs to have a better understanding of its customer's business: core activities and non-core as well, primary markets, categories of clients and suppliers, volumes of operations and money flows. After identification procedures banks start verification, searching for a broader scope of facts. To do that, they not only collect constituent

documents and financial statements, but also conduct surveys about the nature and features of the business, as well as periodic in-person meetings (if it is a large corporate customer).

So, banks are entrusted with the function of scanning questionable transactions of customers. To do this, they can request documents from the client in respect of a questionable transaction, and the client is obliged to provide these documents. However, in practice, it is impossible to force the client to hand in the necessary documents – the bank does not have any effective mechanism of enforcement, but the client can simply close the account at any time. Using the right to close the bank account (paragraph 1 of article 859 of the Civil code), the client circumvents the requirements of law № 115-FZ and does not provide credit institutions with information about specific transactions. Concealment of this information may indicate the illegality of transactions, including the legalization of proceeds from crime and the financing of terrorism. [3]

Considering other sources of information, nowadays banks do not possess the same complete volume of data about clients, as the Central Bank does. Now it has access to information of payment systems, credit and non-credit organizations, executive authorities, law enforcement agencies and Rosfinmonitoring. Consequently, the latter has a wide range of opportunities to enrich financial institutions with peculiarities that are currently not available.

Pros and cons

First of all, launching the platform should expand the overall industry expertise and improve the quality of customer experience. If program's data will be considered as the one that does not require further proof, it will become easier for banks to carry out checking. In addition, the platform will optimize costs of financial institutions that are related to data processing, use of external information systems, as well as working with customer claims. This will reduce tensions between banks and customers.

However, there are obstacles from the point of view of understanding business and customer needs. Now each bank has its own subjective norms of assessment and internal control, based on the study of primary documents of customers. In the future, the Central Bank's criteria for inclusion an organization in the list of the doubtful ones may not coincide with the point of view of a bank. The reason is that different financial institutions have different target customers and credited enterprises. So, banks may become less flexible and they may include well-known companies into the zone of increased risk [7].

From the point of view of project developers, there should be a detailed investigation relating information, because introduction of the platform will definitely raise many questions. For example, access to the system, integration opportunities and possibilities of data transmission and processing. The new product should not be “raw” and should not negatively affect bank-client

interrelation. Thus, it can be concluded that for the Bank of Russia it will be expensive and difficult process.

It should also be noted that the current legislation does not allow the regulator to be involved in the process of assessing the client's risk or to undertake the execution of certain compliance procedures. Therefore, the introduction of the platform will require amendments to the anti-laundering law (115-FZ) and the law "On banks and banking activities" [9].

Conclusion

Combating money laundering and terrorism financing requires active involvement of all market participants. For effective functioning of the system the country should have a proper regulation mechanism. In current Russian realities banks are guided by their own internal control rules. Thus, introduction of the platform is going to be a step towards greater uniformity of practice. It will make easier for the bank to take a decision regarding the client's reliability. It is vitally important not to allow the new platform become the next update of the today's formal blockage system without proper explanations. The new approach should significantly reduce unjustified refusals to conduct operations and relieve pressure on micro and small businesses, which should assist boosting of the economy.

Список использованных источников

1. Банки против бизнеса: как применяются нормы о противодействии отмыванию средств // Интернет-издание Право.ru [электронный ресурс] – URL: <https://pravo.ru/story/201558/> (дата обращения 18.10.2019).
2. Блокировка счетов привела к остановке операций половины компаний МСП // Информационный портал РБК [электронный ресурс] – URL: <https://www.rbc.ru/economics/17/05/2019/5cdda1b39a7947267df714ab> (дата обращения 18.10.2019).
3. Гражданский кодекс Российской Федерации. Статья 859. Расторжение договора банковского счета.
4. Лебедева М. Проблемы организации финансового мониторинга в российских коммерческих банках и инструменты их оптимизации / М. Лебедева, Л. Молова // Вестник Ленинградского государственного университета им. А.С. Пушкина. – 2014. – № 3.
5. Положение Банка России от 2.03.2012 г. № 375-П «О требованиях к правилам внутреннего контроля кредитной организации в целях противодействия легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма».

6. Предприниматели получили «черную метку» // Информационный портал Коммерсантъ [электронный ресурс] – URL: <https://www.kommersant.ru/doc/3429976> (дата обращения 17.10.2019).

7. У реабилитации зависло обновление // Информационный портал Коммерсантъ [электронный ресурс] – URL: <https://www.kommersant.ru/doc/3591657> (дата обращения 17.10.2019).

8. Федеральный закон № 86-ФЗ от 10.07.2002 «О Центральном банке Российской Федерации (Банке России)».

9. Федеральный закон № 115-ФЗ «О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма».

10. Федеральный закон №134-ФЗ от 28.06.2013 «О внесении изменений в отдельные законодательные акты Российской Федерации в части противодействия незаконным финансовым операциям».

11. Филиппов Е. Проблемы реализации ПОД/ФТ коммерческими банками / Е.В. Филиппов // Молодой ученый. — 2019. — №10. — С. 130-133.

12. ЦБ представил платформу для проверки юрлиц «по принципу светофора» // Информационный портал New Retail [электронный ресурс] – URL: https://new-retail.ru/novosti/retail/tsb_predstavil_platformu_dlya_proverki_yurlits_po_printsipu_svetofora6758/ (дата обращения 17.10.2019).

References

1. Banki protiv biznesa: kak primenyayutsya normy o protivodeistvii otmyvaniyu sredstv // Internet-izdanie Pravo.ru

<https://pravo.ru/story/201558/>

2. Blokirovka schetov privela k ostanovke operatsii poloviny kompanii MSP // Informatsionnyi portal RBK

<https://www.rbc.ru/economics/17/05/2019/5cdda1b39a7947267df714ab>

3. Grazhdanskiy kodeks Rossiiskoi Federatsii. Stat'ya 859. Rastorzhenie dogovora bankovskogo scheta.

4. Lebedeva M., Molova L. Problemy organizatsii finansovogo monitoringa v rossiiskikh kommercheskikh bankakh i instrumenty ikh optimizatsii // Vestnik Leningradskogo gosudarstvennogo universiteta im. A.S. Pushkina, 2014, No. 3.

5. Polozhenie Banka Rossii ot 2.03.2012 g. № 375-P «O trebovaniyakh k pravilam vnutrennego kontrolya kreditnoi organizatsii v tselyakh protivodeistviya legalizatsii (otmyvaniyu) dokhodov, poluchennykh prestupnym putem, i finansirovaniyu terrorizma».

6. Predprinimateli poluchili «chernuyu metku» // Informatsionnyi portal Kommersant (2017)

<https://www.kommersant.ru/doc/3429976>

7. U rehabilitatsii zavislo obnovlenie // Informatsionnyi portal Kommersant" (2018)

<https://www.kommersant.ru/doc/3591657>

8. Federal'nyi zakon № 86-FZ ot 10.07.2002 «O Tsentral'nom banke Rossiiskoi Federatsii (Banke Rossii)».

9. Federal'nyi zakon № 115-FZ «O protivodeistvii legalizatsii (otmyvaniyu) dokhodov, poluchennykh prestupnym putem, i finansirovaniyu terrorizma».

10. Federal'nyi zakon №134-FZ ot 28.06.2013 «O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v chasti protivodeistviya nezakonnym finansovym operatsiyam».

11. Filippov E. V. Problemy realizatsii POD/FT kommercheskimi bankami // Molodoi uchenyi, 2019, No. 10, pp. 130-133.

12. TsB predstavil platformu dlya proverki yurlits «po printsipu svetofora» // Informatsionnyi portal New Retail (2019)

https://new-retail.ru/novosti/retail/tsb_prestavil_platformu_dlya_proverki_yurlits_po_printsipu_svetofora6758/