Anti-Money Laundering And Fraud In Canada

January 17, 2019

General climate and recent developments

State of legal development

In general terms, how developed are the laws on money laundering, terrorism financing and fraud in your jurisdiction?

Canada's money laundering, terrorism financing and fraud laws are highly developed. There are long standing prohibitions against money laundering and fraud in the Criminal Code of Canada, with a large body of jurisprudence interpreting their scope. Since 9/11, Canada has been aggressive in developing its anti-terrorism laws, including anti-terrorist financing laws. The anti-money laundering and terrorism financing provisions are supported by a robust record-keeping and reporting regime, administered by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

Recent developments

Have there been any notable recent developments in relation to anti-money laundering, terrorism financing or fraud law and enforcement, including any regulatory changes, case law and convictions?

There have been recent changes to Canada's anti-money laundering regime under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). This legislation designates certain entities as 'reporting entities' and obliges them to have in place a compliance regime which meets stipulated requirements, including certain 'know your client' (KYC) obligations, record keeping, reporting, risk assessment and risk mitigation programmes.

At present, reporting entities include accountants, departments or agents of Canadian federal or provincial governments, notaries in the province of British Columbia, casinos, dealers in precious metals and stones, financial entities (eg, banks, credit unions, trust companies), life insurance companies and brokers, certain money services businesses, certain participants in the real estate sector and securities dealers.

While long-known and available for use since June 2016, changes to KYC requirements in Canada became mandatory for use in January 2018. The new KYC regime is

generally more flexible than Canada's past approach. It allows for use of a broader range of reliable and independent sources of documents and information to verify identity through the 'credit file' and the 'dual process' methods. The credit file method allows identity verification by accessing a Canadian credit bureau identification product in order to confirm the name, address and date of birth given by a client (the credit file must have been in existence for at least three years). The dual process method allows two original, valid and up-to-date documents or information from two independent and reliable sources to be used to verify name, address and date of birth. The information or documents from each source must each confirm a different combination of two of these attributes.

In February 2018 the Canadian Department of Finance issued a consultation paper with respect to a review of the PCMLTFA. A number of issues have been raised that may result in changes, including:

- expanding the list of entities that must determine whether clients are politically exposed persons or heads of international organisation;
- facilitating information sharing between financial services institutions to identify and prevent fraud, money laundering and terrorist financing;
- further modernising client identification methods;
- developing a 'sandbox' that can facilitate exemptions for start-ups where anti-money laundering requirements may unduly inhibit the development of new business;
- implementing a more defined 'name and shame' regime to identify those subject to administrative monetary penalties; and
- expanding the list of reporting entities to cover more high-risk industries (eg, white label ATMs, certain forms of gambling, non-federally regulated mortgage lenders and the financing and leasing sector).

While Canada has for many years had legislation to make dealers in virtual currency and foreign money service businesses that do business in Canada reporting entities, those provisions will not come into force until regulations defining their implementation are in effect. Regulations defining the obligations of these entities are expected to be released in 2018 so that those entities will be captured by the PCMLTFA as reporting entities, likely after some delay period to allow for implementation of the new requirements by industry participants.

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