New AML/ATF measures including requirements for financing, leasing, and factoring businesses

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On November 30, 2024, the anticipated *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorism Financing Act* (the Proposed Amendments) were published, proposing key amendments to Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime. There is a 30-day consultation period to respond (December 30, 2024). The proposed amendments concerning factoring companies, financing and leasing companies, cheque-cashing businesses, and trade-based crime would come into force on October 1, 2025. Amendments concerning information sharing will come into force immediately on publication in the *Canada Gazette*, Part II.

Among other changes, the ***Proposed Amendments will expand the AML/ATF obligations*** of reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations to introduce AML/ATF requirements to new sectors, including financing, leasing, and factoring entities, and to individuals and entities providing cheque-cashing services.

The following is an overview of key measures in the Proposed Amendments.

Financing and leasing entities

Long anticipated to be brought under the AML/ATF regime, when the federal government consulted several years ago on expanding the requirements of the PCMLTFA and its obligations to include such entities, and on the heels of the announcement by the federal government in the 2024 federal budget of its intention to regulate financing and leasing entities, the Proposed Amendments will require financing and leasing entities to comply with the record keeping, reporting, identity verification, and compliance program requirements of the PCMLTFA and its regulations, in addition to sector specific obligations.

In a 2023 report, the federal government found that financing and leasing arrangements are vulnerable to money laundering as financing and leasing entities permit various payment methods such as cash, electronic funds transfers, money orders, and cheques,

offering opportunities to be used in the placement, layering and integration stages of the money laundering process.

The **proposed definition of financing or leasing entity** is "a person or entity that is engaged in the business of financing or leasing of (a) property, other than real property or immovables, for business purposes; (b) passenger vehicles in Canada; or (c) property, other than real property or immovables, that is valued at $100,000. "**Passenger vehicle** " is defined a motor vehicle designed or adapted primarily to carry no more than 10 individuals on highways and streets. Certain vehicles are exempt including utility trucks, ambulances, hearses, vehicles used for policing activities, medical responses, or emergency fire response activities.

Both direct and indirect financing and leasing arrangements are captured in the Proposed Amendments. For example, as presented in the Proposed Amendments, under a direct leasing arrangement, a vendor offers leasing as a financing option and, under an indirect leasing arrangement, a financial intermediary purchases an asset from a vendor and the lessee deals directly with the financial intermediary.

To maintain a risk-based approach to the regulation of financing and leasing entities, the PCMLTFA obligations would be scoped to exclude financing and leasing services for low-value consumer products (*e.g.*, rent-to-own furniture, personal electronics) that are assessed as posing a low risk of money laundering. Financing and leasing arrangements for business purposes, as well as consumer automobiles and goods valued above $100,000 would be included under the Proposed Amendments, as such subsectors are assessed as having a high money laundering risk.

Notably, financial entities under the PCMLTFA (*e.g.*, banks) that provide similar financing and leasing services would also be subject to the financing and leasing specific obligations for such services.

Factoring companies

The Proposed Amendments would bring factoring companies under Canada's AML/ATF Regime. The **proposed definition of factor** is "a person or entity that is engaged in the business of factoring, with or without recourse against the assignor".

Factoring companies would be required to fulfill record keeping, client due diligence, and transaction-reporting requirements, as well as establish a compliance program. Financial entities (*e.g.*, banks) would also be subject to factoring-specific obligations where they are engaged in the business of providing factoring services.

Obligations specific to factoring companies would be introduced, including new requirements to verify the identity of every party with which a factoring company enters into a factoring agreement and keep associated records. Factoring companies would also need to keep a record of payment made by the factoring company to a client for the purchase of an invoice and keep a receipt of funds record for each payment of $3,000 or more received from the payer of a factored invoice.

The Proposed Amendments would include an exemption from the requirement to verify identity and keep records for invoices paid by very large, publicly traded corporations,

given the low money laundering and terrorist financing risks associated with these companies.

Cheque-cashing businesses

Individuals and entities providing cheque-cashing services would be regulated as money services businesses (MSBs) and required to register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) as MSBs. It is anticipated that MSBs currently registered with FINTRAC would be required to update their existing registration to reference cheque-cashing services, if the MSB is providing such services.

The full suite of MSB obligations will apply to cheque-cashing businesses, such obligations including client identification, reporting, record keeping, and a requirement to establish a compliance program. Existing MSBs with requisite policies and procedures in place should not have to implement significant changes to reflect this proposed amendment, however, a review of such policies and procedures would be necessary, including to address the proposed new obligation specific to cheque-cashing services is proposed. MSBs providing cheque-cashing services will be required to verify the identity of clients who cash cheques valued at $3,000 or more and to keep associated records regarding the transaction.

Financial entities

As mentioned above, under the Proposed Amendments, financial entities (*e.g.*, banks) that engage in the prescribed financing, leasing, or factoring activities would be subject to the financing, leasing, and factoring specific obligations for such activities.

Penalties for non-compliance

The Proposed Amendments would introduce corresponding penalties for non-compliance by these new sectors with their AML/ATF obligations under the PCMLTFA and its regulations. The violations are categorized by degree of importance, from minor, to serious and very serious, and assign corresponding penalty ranges from a maximum of $1,000 per minor violation, to $500,000 per very serious violation committed by an entity.

For example, the proposed violations would include a very serious violation for the failure to file a suspicious transaction report to FINTRAC in the case where a factoring company, or a leasing or financial entity has reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering offence. The proposed violation penalties for certain obligations specific to each of the new sectors are classified as minor with a penalty range from $1 to $1,000 per violation.

Information sharing and new Codes of Practice

The Proposed Amendments would implement legislative amendments in the 2024 federal budget made to the PCMLTFA and the federal *Personal Information Protection*

and Electronic Documents Act, to enhance the ability of reporting entities to share information with each other to detect and deter money laundering, terrorist financing, and sanctions evasion, while maintaining privacy protections. The Proposed Amendments would prescribe an oversight role for FINTRAC and the Office of the Privacy Commissioner (OPC) in a proposed information-sharing framework for entities regulated under the PCMLTFA.

The Proposed Amendments would set out the processes on how reporting entities share information in a manner that provides for the protection of personal information. The ability to share and exchange information for private entities would be voluntary. Reporting entities that choose to make use of the information disclosure exception would be required to develop Codes of Practice explaining how the disclosure exception will be applied. The Proposed Amendments would set out what the Codes of Practice must contain, such as the type of information to be disclosed, the manner in which the information would be disclosed, and measures concerning the retention of the information.

Reporting entities would be required to provide the Codes of Practice to the OPC for approval and to FINTRAC for comment in advance of use. The OPC would have a prescribed period of 90 days (with the ability to extend the period by 15 days) to approve a Code of Practice, notify the applicant in writing of the decision, and, in the case where approval is not granted, reasons for the decision. If the OPC does not notify the applicant of its decision within the prescribed period, the Code of Practice would be deemed to be approved. FINTRAC, upon receiving Codes of Practice from reporting entities, would be able to provide comments to the entities and to the OPC, which must consider the comments in its decision.

Reporting entities would be permitted to modify their Code of Practice, recommencing the OPC approval and FINTRAC review processes if the changes are material. Lastly, reporting entities would be required to resubmit their Codes of Practice to the OPC for approval and to FINTRAC for comment every five years, regardless of whether any changes were made. Information shared under the Code would be subject to existing processes under privacy law.

Discrepancy reporting

Under the PCMLTFA, reporting entities are required to obtain and verify corporate beneficial ownership information when they verify the identity of an entity. The proposed discrepancy reporting obligation in the Proposed Amendments would expand on this provision by requiring reporting entities to report any material discrepancies (*e.g.*, missing beneficial owners, not typos or non-substantive errors) between their records and a company's registry filings with Corporations Canada. This requirement will only apply when a reporting entity determines that there is a high risk of a money laundering or terrorist financing offence, as they are currently required to do under the PCMLTFA.

Transition period

Recognizing that the proposed changes relating to discrepancy reporting, factoring companies, cheque-cashing businesses, and financing and leasing companies will

require time to implement for businesses, the Department of Finance will provide an extended period of transition time to comply with the new requirements.

The proposed regulations concerning factoring companies, financing and leasing companies, cheque-cashing businesses, and trade-based financial crime would come into force on October 1, 2025.

The Proposed Amendments related to information sharing would come into force immediately on publication in the Canada Gazette, Part II.

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