Coming changes to Canada's anti-money laundering laws

April 18, 2022

Putting payment service providers, fintechs and crowdfunding platforms on notice

The Government of Canada's declaration of a public order emergency in February 2022 went away as quickly as the measures were enacted.[1] However, the choice of statutory language used by the Government in the *Emergency Economic Measures Order* (Order) and related *Emergency Measures Regulations* (Regulations) under the *Emergencies Act*, along with remarks at that time by the Deputy Prime Minister and Minister of Finance, left interested observers wondering whether fundamental changes to the application of Canada's main federal anti-money laundering/anti-terrorist financing (AML/ATF) laws were afoot.

As matters have developed, despite the revocation of the public order emergency, some of these measures will now likely find a permanent place in Canada's laws.

The 2022 federal budget, tabled on April 7, (Budget) announced that new regulations will be enacted to extend AML/ATF obligations to payment service providers (PSPs) and crowdfunding platforms, as well as legislative changes to strengthen the main federal AML/ATF and related laws, which includes the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Act) and the *Criminal Code*. Further, the government will conduct a comprehensive review of the AML/ATF regime to bring forth legislative proposals to address any identified gaps in the regime.

Supplementing these commitments are a proposed infusion of $89.9 million over five years to support Canada's main AML/ATF agency, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the acceleration of the initiative to implement a publicly accessible beneficial ownership registry for federal companies in Canada.

We will not know the full impact of these changes on fintechs and crowdfunding platforms, or the outcome of the federal government's pronouncement for an overall review and strengthening of the AML/ATF regime, until draft legislation and/or

regulations are published for public review. Until that time, we may surmise direction from the temporary public emergencies measures enacted in February.

The Order (prior to being revoked) required certain PSPs (which invariably will pick up some fintechs), as well as crowdfunding platforms, to register with FINTRAC if they were in possession or control of property that is owned, held or controlled by or on behalf of a designated person under the Regulations.

Although registration with FINTRAC itself is not usually an onerous step for businesses to take, being registered means entities reporting to FINTRAC must meet a wide range of compliance obligations prescribed under the Act and its associated regulations. The regulatory burden includes building, instituting and overseeing a compliance program subject to biennial audits and FINTRAC examinations, which must also address all relevant ongoing regulatory requirements including, but not limited to, client identification, transaction reporting, and record keeping procedures.

In addition, since the Order drew directly from the payment functions that will be subject to the upcoming retail payments oversight framework (RPOF) under the new *Retail Payment Activities Act*, it is entirely possible that PSPs under the RPOF will also automatically be subject to FINTRAC obligations.

For more information on this topic, Canada's AML/ATF laws or other financial services regulatory matters, please feel free to contact any of the authors below.

[1] The Government of Canada declared a public order emergency and enacted an *Emergency Economic Measures Order* (Order) and related *Emergency Measures Regulations* (Regulations) under the *Emergencies Act*, effective on February 14, 2021. These measures applied across Canada and targeted the financing of the truck convoy and blockades. The measures were revoked by proclamation on February 23, 2022. The Order and Regulations are no longer in force.

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