Department of Finance Launches Consultations on the Canadian Payments Act

May 30, 2018

On May 25, 2018, the Canadian Department of Finance ("Department") launched consultations to seek input from stakeholders on whether the 2015 changes to the *Canadian Payments Act* ("Act") with respect to the governance of Payments Canada have been effective in achieving the intended public policy objectives of efficiency, safety and soundness, and user interests.

As required under the Act, the Department indicates that the launch of this review follows through on a commitment to review the Act three years after the changes were made. The Department has issued a consultation paper entitled “Consultation on the Review of the *Canadian Payments Act*” ("Consultation Paper").

Feedback is also being sought on how best to adapt Payments Canada's membership structure to ensure access to its systems is open and risk-based in light of developments in the payments ecosystem, Payments Canada’s modernization initiatives and the government’s proposed retail payment oversight framework ("PSP Framework"). It is indicated that feedback will help determine whether further improvements are needed. Accordingly, the Department has posed a series of questions as set out below.

Discussion

Payments Canada Governance

The Department notes that changes to the Act that came into force in 2015 sought to ensure that Canada's core payments clearing and settlement infrastructure continued to be operated for the benefit of Canadians and Canadian businesses. Amendments introduced greater independent decision-making to Payments Canada's board of directors and strengthened its accountability to the government and to the public.

The Department is seeking views on the effectiveness of the 2015 amendments to the Act. Specifically, the Department seeks feedback on the following questions:

1. Have the 2015 changes to Payments Canada's governance been successful in better enabling the organization to achieve its public policy mandate to promote

the efficiency, safety, and soundness of its systems while taking into account the interests of users?
2. Are there aspects of Payments Canada's governance structure that could be improved to better allow Payments Canada to carry out its mandate and serve its public policy objectives?

Membership

In addition, in light of the objective for open, risk-based access, the Department is seeking views on the merits of an "associate membership" framework under the Act which would tie in with the PSP Framework. Under the PSP Framework, retail payment service providers ("PSPs") would be subject to various rules and obligations when performing certain payment functions. For more details, please see the BLG Bulletin "Regulation of Payment Service Providers in Canada: Proposal for a New Retail Payments Regulatory Regime". The PSP Framework marks an adoption of a functional approach to regulation and, as a result, will capture non-traditional PSPs.

The Department proposes that the "associate membership" framework would render PSPs, once regulated under the PSP Framework, eligible to participate in exchange and settlement of payment items on the real time rail ("RTR") system. Currently, under the Act, non-traditional PSPs are not eligible to be Payments Canada members. The Department seeks feedback on the following questions:

1. Should the Government create an associate membership class to facilitate access to the RTR? Should alternate approaches be considered?
2. Should registration and regulation under the proposed retail payments oversight framework be a pre-condition for associate membership?
3. How could Payments Canada's governance structure be adapted to allow for appropriate reflection of associate member views into Payments Canada's decision-making process? In what ways could this be designed?

Lynx and Systematically Important Financial Market Intermediaries

Finally, the Department indicates that consideration is being given as to whether financial market intermediaries ("FMIs") that are designated as systemically important, should be eligible for direct access to Lynx for the purpose of effecting settlement, thereby allowing the operator of these systems to directly send and receive Lynx payments rather than relying on the Bank of Canada ("Bank") (Lynx will replace the Large Value Transfer System ("LVTS") and feature fully collateralized real-time gross settlement of large value payments, removing the need for residual guarantees from the Bank). Like the LVTS, Lynx is expected to be designated as a systemically important payment system and will be designed to comply with the Bank's standards for Systemically Important Payment Systems. Given the nature of these arrangements and the fact that designated FMIs are overseen by the Bank and must meet stringent risk management standards, the Department indicates that risk exposure to Lynx and Lynx participants would be limited. With respect to Lynx, the Department seeks feedback on the following question:

1. What are your views on whether and how to broaden membership so that systems that are designated by the Bank of Canada as systemically important financial market infrastructures can directly access Lynx?

Next Steps

The Department seeks feedback from stakeholders by July 24, 2018. It indicates that the government will produce a report to be tabled in both Houses of Parliament based on feedback from stakeholders in this consultation.

For assistance with an assessment of the topics covered in the consultation process or in preparing responses to the Consultation Paper, please do not hesitate to contact any of the authors or a member of BLG's Financial Services Regulatory Group.

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