British Columbia's Money Services Businesses Act receives royal assent

July 10, 2023

On May 11, 2023, British Columbia's *Money Services Businesses Act* (BC MSB Act) received royal assent. The BC MSB Act will be the province's first statute of this kind and will be administered by the British Columbia Financial Services Authority (BCFSA).

BCFSA will appoint a Superintendent of Money Services Businesses (MSBs) to spearhead this new mandate and has stated it expects to regulate 578 MSBs operating in the province. The path forward for MSBs promises to be: first, registration; second, regulation; and in turn, enforcement. Early adoption of best practices within the industry will mitigate the impact of regulation and the risk of enforcement and civil claims that inevitably follow.

The coming-into-force date has not yet been announced, but impacted businesses will be given time to prepare to register.

Federal and B.C. Government implements recommendations of the Cullen Commission

In June 2022, members of our Disputes group summarized the key recommendations of the Cullen Commission Final Report and in July 2022, we described how these recommendations may impact financial services providers upon a detailed assessment of the Cullen Commission's findings. The Cullen Commission Final Report included 101 recommendations, including a focus on British Columbia establishing an anti-money laundering (AML) Commissioner, an independent office of the legislature to lead AML strategy and efforts within the province. With the introduction and royal assent of the BC MSB Act and the appointment of the BCFSA as administrator, the Government of British Columbia has taken concrete actions to implement key recommendations of the Cullen Commission Final Report. Notably, British Columbia becomes just the second province to regulate MSBs; Quebec's *Money-Services Businesses Act* came into force on April 1, 2012.

Federally, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) regulates more than 2000 MSBs. Since 2019, the Government of Canada has taken action to ameliorate certain gaps in its existing AML and anti-terrorist

financing (ATF) regime; remaining shortfalls were highlighted by the Cullen Commission Final Report.

In Budget 2023, the Government of Canada announced further measures to address gaps in Canada's AML/ATF regime, including strengthening its investigative, enforcement, and information sharing tools, and continuing toward the implementation of a federal beneficial ownership registry. The Government of Canada states that these measures are expected to complete its response to the recommendations released as part of the Cullen Commission Final Report. In relation to its Budget 2023 commitments, in June 2023 the Department of Finance Canada published a comprehensive Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime.

Scope of the BC MSB Act

The BC MSB Act establishes a registration regime for MSBs, which are defined almost identically to MSBs pursuant to the federal *Proceeds of Crime (Money Laundering) and Anti-Terrorist Financing Act* (PCMLTFA). Under the BC MSB Act, MSBs are persons who perform a "**money service**", which includes foreign exchange dealing, remitting, or transmitting funds, and issuing or redeeming money orders, traveller's cheques, or other negotiable instruments. Notably, the definition does not explicitly include the PCMLTFA's recent additions of dealing in virtual currency and crowdfunding platform services, nor does it include anything akin to FINTRAC's 2022 policy interpretations relating to payment processing services. Regulations (once available) may expand the meaning of "money services" to include other services.

The BC MSB Act includes several exemptions, including exemptions for regulated financial institutions such as banks, insurance companies, credit unions, and trust companies. Further exemptions may be set out in the regulations (once available).

MSB registration process for the BC MSB Act

Unless an exemption applies, MSBs who carry on the business of providing "money services" in British Columbia must be registered once the regime is in force. The registration process includes an application form, the contents of which will be set out by the Superintendent. The regulations may also prescribe an application fee and a registration fee.

Despite the reference as a registration regime, in function, the BC MCB Act operates akin to a licensing regime. For example, MSBs that are not registered are prohibited from receiving any direct or indirect remuneration in relation to the provisions of money services, including commissions, fees, gains, or rewards.

The Superintendent will have broad decision-making authority to refuse or register MSB applicants. The Superintendent may refuse to register an application if, in the Superintendent's opinion, the applicant is unsuitable to be registered. The BC MSB Act enumerates a few reasons for which the Superintendent may refuse to register an application, but this list does not limit the Superintendent's authority. Enumerated reasons include that the applicant has previously been refused, suspended, or cancelled a registration or license under money services, real estate, insurance,

mortgage services or securities legislation, was disciplined by a professional body, or has been convicted of an offence. The Superintendent also has the option to impose conditions or restrictions on registration and may grant a temporary registration conditional upon an applicant meeting those conditions.

Before refusing an application, the Superintendent must provide the applicant with an opportunity to be heard respecting the matter, and, in the event the applicant is refused, must provide written reasons and advise the applicant of the right to appeal to the Financial Services Tribunal.

The BCFSA is required to maintain a public register of registered MSBs in the province.

Key requirements for BC MSBs

Registered MSBs are required to comply with the following two key categories of requirements (the majority of the details of these requirements will be contained in the regulations, once available):

1. Record-keeping requirements
2. Reporting requirements

For record-keeping requirements, the regulations will detail expectations for MSBs regarding “books, accounts and other records”.

For reporting requirements, MSBs will be required to submit a report annually respecting its activities over the fiscal year, the content of such report to be prescribed by regulation. MSBs will also be required to notify the BCFSA of certain events, including changes of any information on the MSB to register, changes with respect to the agents that are engaged by the MSB, and if the MSB has had any compliance or enforcement issues under other regulatory regimes. MSBs are also required to report on changes in control or leadership, for example, changes in the directors, officers and corporate interest holders of a corporation, or changes in the partners in a partnership. The BC MSB Act requires an active approach to these reporting requirements and mandates registered MSBs to report to BCFSA of such changes at least three months before the engagement or change takes effect, or if the MSB is not aware three months ahead, as soon as practicable.

Broad investigative and enforcement authorities

The Superintendent has broad authority to conduct investigations for compliance with the BC MSB Act, including investigations of the affairs of a person, the records, communications, negotiations, transactions, loans, borrowings and payments to, by, on behalf of or in relation to a person, the property assets, or things owned, acquired, or alienated in whole or in part by a person or an agent of a person, and the liabilities, debts, undertakings and obligations, and the financial or other conditions of or related to a person.

In terms of enforcement, the Superintendent may order the suspension, cancellation, or imposition of conditions or restrictions on registration. The Superintendent may also apply to the BC Supreme Court for an injunction restraining a person from contravening,

or requiring a person to comply with, the requirements of the BC MSB Act, its regulations or an order of the Superintendent.

The Superintendent may impose an administrative penalty of up to $100,000 for contravening a provision of the BC MSB Act or its regulations, for failing to comply with a compliance order, or for failing to comply with a condition or restriction of registration.

Next steps

The Government of British Columbia has stated it will work with the BCFSA to develop regulations and with impacted business to prepare them to register. Given the time required to develop regulations, it may still be a while before the new BC MSB Act is fully operational.

If you would like to know more about the BC MSB Act, Canada's AML regime, or financial services regulatory matters, please contact the authors or the key contacts below.

By

Ross McGowan, Cindy Y. Zhang, Matthew Connors

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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