Immediate and permanent changes to Canada's anti-money laundering laws

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Impacts to crowdfunding services, certain fintechs and payment service providers

Further to our recent article in which we put payment service providers, fintechs and crowdfunding platforms on notice about coming anti-money laundering (AML) and anti-terrorist financing (ATF) legislative changes, the federal government published the first of these changes in the *Canada Gazette* on April 27, 2022.

The changes came into force on April 5, 2022, through the enactment of the *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* (the Amendments). Below we identify the main impacts the Amendments have on the previously existing federal AML and ATF regime. All new businesses impacted by the Amendments now have to promptly register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and ensure their compliance programs, policies and procedures are updated to address these changes.

In the Regulatory Impact Analysis Statement published by the Department of Finance accompanying the Amendments, the federal government affirmed that these immediate and permanent changes will extend AML and ATF compliance obligations to approximately 1,000 businesses in the crowdfunding and payment service provider sectors. The changes were prompted and accelerated by the temporary measures taken in February 2022 to limit the flow of money to support blockades in Ottawa. In addition, the federal government has stated that these changes are also being implemented to meet recommendations of the Financial Action Task Force, which include addressing money laundering and terrorist financing risks that may arise from the development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies.

Crowdfunding platform services are now regulated as money services businesses

A central change to Canada's federal AML and ATF regime under the Amendments is the addition of crowdfunding platform services to the characterization of a money services business (MSB). An MSB is a registered reporting entity subject to oversight of FINTRAC, Canada's principal federal AML regulatory body.

Businesses engaged in "crowdfunding platform services" (CPS) are now reporting entities to FINTRAC as MSBs. The Amendments define CPS as "the provision and maintenance of a crowdfunding platform for use by other persons or entities to raise funds or virtual currency for themselves or for persons or entities specified by them". A crowdfunding platform is defined broadly as a "website or application or other software that is used to raise funds or virtual currency through donations".

As of April 5, 2022, all CPS's that either operate in Canada or foreign CPS's that direct and provide their services to persons or entities in Canada must register as MSBs (domestic or foreign, as the case may be). This registration requirement will come with compliance obligations under the federal AML and ATF regime, including reporting of suspicious and large-value transactions (fiat and virtual currency), record keeping, know-your-client obligations and developing a compliance program.

Fintechs and payment service providers – a fundamental change in regulatory obligations for merchant payment processing

In addition to the crowdfunding platform services change, perhaps even more important to Canada's financial services sector is that the Amendments have deleted the so-called merchant processing exemption from the definition of what constitutes an "electronic funds transfer" (EFT). This is a fundamental and significant change.

This deletion, coupled with FINTRAC's own recent bulletin on the topic as well as the Regulatory Impact Analysis Statement published by the Department of Finance with the Amendments, makes it clear that those who process merchant transactions now have to register with FINTRAC as MSBs, institute a compliance program, report suspicious transactions and observe other applicable AML and ATF obligations for EFTs (e.g., those related to reporting, know-your-client and record keeping).

In this connection, the Regulatory Impact Analysis Statement states that the Amendments "will extend AML/ATF Regime obligations to a broader range of payment service providers, given that a large subset of this sector is already subject to the [Proceeds of Crime (Money Laundering) and Terrorist Financing] Act and the Regulations. This includes the removal of exemptions for the payment processing of credit, debit, and prepaid products under the definition of electronic funds transfer in order to extend regulatory obligations to payment service providers engaged in the business of those activities."

It goes on to state that "[f]urther, due to this policy change, FINTRAC will revise its interpretation of existing requirements to include businesses that offer certain payment services as payment service providers covered under the Act. This would include those businesses that provide merchant services (*i.e.* the provision of settlements directly to merchants on behalf of the merchant's customers for the purchase of goods and services), as well as payment processing for utility bills, mortgage and rent, payroll, and tuition."

In turn, FINTRAC specifically stated in its own bulletin issued last week that it is retracting its position in Policy Interpretation PI-7670 issued in November 2016. This is the Policy Interpretation that clearly exempted from the MSB regime payments that are ancillary to another service and not for the sake of a funds transfer service or that are made for the settlement for the purchase of goods and services.

Immediate next steps for impacted businesses

As noted above, there is no grace period and these Amendments are now in effect. However, the Department of Finance's Regulatory Impact Analysis Statement states that FINTRAC will "focus its compliance activities on registration requirements and educating impacted sectors on their obligations under the Act and Regulations. The primary goal is to educate the entities and allow them to build a compliance program in advance of any compliance examinations by FINTRAC. This approach is intended to limit impacts on industry and avoid any unnecessary costs where possible."

FINTRAC also specifically stated in its bulletin that it understands "that there will be challenges in meeting certain obligations. FINTRAC will be reasonable in its assessment and enforcement approach, and is committed to working with reporting entities subject to the PCMLTFA and its Regulations in order to increase their awareness, understanding and compliance with their obligations."

As such, the immediate requirement is to register with FINTRAC, after which a payment service provider or a CPS can build its compliance program and observe applicable EFT obligations.

Given that the Québec regime typically follows the federal regime as it relates to the characterization of what is the business of an MSB, payment service providers and CPS's will likely need to register in Québec as well.

It has also been stated by FINTRAC and the Department of Finance that FINTRAC will be updating its guidance to address the Amendments. We will be looking for clarity in that guidance as to scope and impact on payment service providers and CPS's.

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.

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