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Filling the Gap: Scope of Canadian Anti-Money Laundering Laws Expanded

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The Canadian federal government has fulfilled its promise to expand Canada's anti-money laundering (AML) regime to cover crowdfunding platforms and certain payment service providers (PSPs) that previously operated outside the scope of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

In line with the government's renewed focus on strengthening Canada's AML regime, the government has approved amendments to regulations ([Amending Regulations](#)) under the PCMLTFA that largely memorialize the temporary orders made under the *Emergencies Act* (Emergency Orders) [earlier this year](#). The Amending Regulations, which came into force on April 5, 2022, have made significant changes to the regulation of financial technology companies operating in the Canadian payments industry.

Amending Regulations

The Amending Regulations expand the scope of the PCMLTFA to specifically include crowdfunding platform services, which are defined 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." These businesses, which had previously operated outside the PCMLTFA, must now satisfy extensive reporting and compliance obligations and are subject to regulatory oversight by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

In addition, the Amending Regulations repealed the part of the definition of "electronic funds transfer," which had excluded certain transactions "carried out by means of a credit or debit card or a prepaid payment product if the beneficiary has an agreement with the payment service provider that permits payment by that means for the provision of good and services." An exclusion still applies for certain financial entities and casinos, but "money services businesses" (MSBs) will now have reporting and compliance obligations regarding such credit, debit or prepaid payment card transactions.

Retraction of Prior Guidance

Although the Emergency Orders expressly imposed AML obligations on both crowdfunding platforms and entities that perform "payment functions" (i.e., PSPs), the Amending Regulations explicitly added only crowdfunding platform services as a prescribed service that, if performed, would establish such entities as MSBs subject to the PCMLTFA.

However, on April 27, 2022, FINTRAC also retracted its Policy Interpretation 7670, which contained the frequently cited "corollary" exemption from the PCMLTFA. Under this policy interpretation, entities involved in the remission or transmission of funds merely as a corollary of their actual service (e.g., payment processing) were not considered MSBs for the purposes of the PCMLTFA. These entities included PSPs engaged in the business of providing settlements directly to merchants on behalf of the merchant's customers. The retraction of this guidance means that PSPs that maintain a place of business inside Canada or direct their services to individuals or entities in Canada and that otherwise perform MSB activities are subject to the suite of AML requirements applicable to MSBs.

Impact on Crowdfunding Platforms and PSPs

As a result of these changes, both crowdfunding platforms and PSPs that perform MSB activities must now

- register with FINTRAC;
- develop and maintain a compliance program;
- carry out KYC (know your customer) requirements, including verifying the identity of persons and entities for certain activities and transactions;
- keep certain records, including records related to transactions and client identification; and
- report certain transactions to FINTRAC.

The Amending Regulations have also imposed further and more specific obligations on crowdfunding platforms. These obligations include record-keeping requirements in respect of the persons or entities to which they provide their services and the purpose for which the funds or virtual currency are being raised; and verifying the identity of any person to whom the entity provides crowdfunding services or who donates \$1,000 or more using the platform.

Uncertainty Ahead

While it's clear that crowdfunding platforms and PSPs that had previously relied upon Policy Interpretation 7670 are now subject to the PCMLTFA, the Amending Regulations and FINTRAC's corresponding policy updates have introduced uncertainty regarding the scope of the PCMLTFA in the future.

Most notably, the sections of the PCMLTFA relating to MSBs qualify its application to persons and entities "in the business" of providing certain specified MSB services.¹ Policy Interpretation 7670 provided insight with respect to FINTRAC's view regarding when an entity that provided services otherwise captured under the PCMLTFA was not truly "in the business" of providing MSB services and would not be subject to the statute's requirements. It remains to be seen whether, as a result of the recent changes, payment facilitators and other service providers in the payments chain that are not directly involved in the handling of funds will be caught by the enlarged MSB net. Careful analysis will now be required to determine the obligations of each of the participants in a payments chain. While FINTRAC has indicated that it intends to publish updated guidance in the near future, payments companies currently in the interpretive grey zone face the unhappy choice of waiting for guidance – and potentially being offside the registration requirement – or registering now, perhaps unnecessarily.

There is also a question of how the new regulations will coexist with the forthcoming *Retail Payments Activities Act* (RPAA), which has been enacted but is not currently in force as it awaits the drafting of regulations. The RPAA is intended to introduce a regulatory oversight framework to govern the retail payments ecosystem in Canada (read our [bulletin on the RPAA](#)). Once in force, the RPAA will be overseen and administered by the Bank of Canada (BoC) and is expected to impose certain obligations on PSPs (including registration with the BoC and implementation of operational risk management frameworks), some of which appear to overlap with requirements under the PCMLTFA. As a result, some uncertainty exists regarding the extent to which the Amending Regulations reflect the government's decision to transfer some of the responsibility for regulating the retail payments ecosystem from the BoC to FINTRAC, and whether this transfer is being made on a temporary or a permanent basis.

Legal advisers and payments industry participants alike must await further regulatory guidance to obtain clarity on the full scope and impact of the Amending Regulations and how the new requirements will be harmonized with other legislation that the federal government is currently developing.

¹ Under the PCMLTFA, the definition of MSB includes, among other things, any entity that is engaged "in the business" of (i) foreign exchange dealing, (ii) remitting funds or transmitting funds, (iii) issuing or redeeming negotiable instruments, or (iv) dealing in virtual currencies.

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