Proposed amendments to Canada’s anti-money laundering regulations aim to close loop holes

Finance Alert

15 APR 2019
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Long-awaited amendments to Canada’s anti-money laundering regulations are set to come into effect this coming fall. A number of deficiencies in the regulations had been previously identified by the Financial Action Task Force (“FATF”), of which Canada is a founding member. Following on the inter-governmental agency’s fourth Mutual Evaluation Report of Canada in 2016 (“2016 FATF Report”), Canada became subject to an “enhanced follow-up process”, a measure designed for countries with significant deficiencies in their AML/ATF regimes. As such, Canada is required to report annually on its progress in addressing the identified deficiencies.

The deficiencies outlined in the 2016 FATF Report, among others, were also highlighted by the US State Department’s Bureau of International Narcotics and Law Enforcement Affairs in its Report on Money Laundering published in March of 2018 (the “2018 State Department Report”). The 2018 State Department’s report identifies Canada as a “major money laundering” regime, along with other countries such as Afghanistan, Colombia, Egypt, Haiti, Kazakhstan and Switzerland. Media reports suggest that money-laundering activities in Canada may involve billions of dollars annually.

Current legislation
Canada’s anti-money laundering and terrorist financing laws consist of two major pieces of legislation. The first is the *Criminal Code*, which makes dealing with any financial service or property for any terrorist activity, terrorist group or “listed person” (i.e. listed on a government or agency list) an offence for which there are very serious penalties.

The second piece of legislation is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (together with the regulations made thereunder, “PCMLTA”), which is directed at the detection of money laundering and terrorist financing through its registration and reporting requirements for “reporting entities” (“REs”). These include financial institutions, credit unions, life insurance companies, loan companies, securities dealers, foreign exchange dealers and money services businesses (“MSBs”). Under PCMLTA, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) collects, analyses and discloses information to help detect, prevent and deter money laundering and terrorist financing. FINTRAC is an independent federal government agency and operates at arm’s length from law enforcement agencies.

**The new regulations**

To address, at least in part, many of the deficiencies identified in the 2016 FATF Report and the 2018 State Department Report, Canada’s Department of Finance proposed new regulations under PCMLTA in June 9, 2018 (the “new regulations”), scheduled to come into force in the fall of 2019.

Among the deficiencies identified in the reports were gaps that left foreign MSBs, open-loop prepaid cards and businesses dealing in virtual currencies outside the scope of the PCMLTA. The 2016 FATF Report also found that customer due diligence requirements, which require that a RE verify the identity of its clients, understand the nature of the business relationship and conduct ongoing monitoring, were lacking.

The principle initiatives proposed by the new regulations can be summed up as follows:

- Update requirements for REs to perform customer due diligence and help bring them in line with FATF recommendations.
- Expand the PCMLTA to cover businesses dealing in virtual currencies, including virtual currency exchange services and value transfer services. Such entities would be regulated as MSBs and, accordingly, would need to implement a full compliance program, register with FINTRAC and have record keeping and reporting obligations for transactions exceeding $10,000.
- Add prepaid access products (such as prepaid credit cards) — often referred to as “open loop” products — to the same category as bank accounts. Accordingly, REs will be required to verify the identity of their clients, keep records and report suspicious transactions; corresponding to those obligations which are imposed on REs that offer bank accounts.
- Close a gap which has been exploited in the internet age, by bringing foreign MSBs that do not have a place of business in Canada, but rather interact with the Canadian public through the internet or other non-physical means, within the ambit of the PCMLTA. Foreign MSBs may include foreign exchange dealing, money transfer/remittance, cashing or selling money orders, travelers’ cheques or other similar instruments of payment. By doing this, all domestic MSBs and foreign MSBs will have the same obligations concerning customer due diligence, registration, record keeping and reporting. Additionally, the new regulations will enable FINTRAC to levy an administrative monetary penalty on foreign MSBs which, if not paid, would lead to the revocation of their FINTRAC registration, thus making them ineligible to do business in Canada. Moreover, to close one of the more obvious loop-holes in the AML regime concerning these types of businesses, financial institutions would be prohibited from opening or maintaining an account for, or having a correspondence banking relationship with, an unregistered foreign MSB.
- Accelerate the filing deadline for reporting suspicious transaction from 30 days to 3 days which would align this reporting obligation with international standards.
- Make a number of other technical, administrative and clarifying amendments.

The new regulations are long-awaited by law enforcement, and other parties who seek to uphold the integrity of the Canadian financial system.

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