Canada's anti-money laundering regime is changing: Chart your course now

Finance Alert

24 OCT 2019
By: Eric Belli-Bivar | Rachel Kurtzer (Articled Student)

On July 10, 2019, Canada's Department of Finance published amendments to the regulations (the “New Regulations”) made under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the “Act”). The New Regulations affect all five regulations made under the Act, being:

1. The Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations;

2. The Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations;

3. The Cross-Border Currency and Monetary Instruments Reporting Regulations;

4. The Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations; and

5. The Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations.
The New Regulations represent the final version of the proposed regulatory amendments originally released in June 2018. The stated objectives of the New Regulations are to (a) modernize the existing anti-money laundering and anti-terrorist financing (“AML/ATF”) regime, (b) close loop holes in Canada’s AML/ATF regime, and (c) address a number of deficiencies outlined by the Financial Action Task Force (“FATF”). The FATF is an intergovernmental body that sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. In our previous bulletin regarding AML/ATF, we discussed the deficiencies previously identified by the FATF in its Manual Evaluation Report of Canada in 2016. Further, we outlined the proposed amendments, which are addressed in the New Regulations targeting those deficiencies.

The New Regulations contain significant changes to Canada’s anti-money laundering regime (“AML”). Consequently, reporting entities (“REs”) will need to make significant changes to their current practices and procedures in order to ensure that they remain in compliance with the Act and its regulations.

Over the next few months, DLA Piper (Canada) LLP will be publishing detailed bulletins which will focus on the following AML topics:

- Reporting entities and record-keeping;
- EFTs and the single transaction rule;
- Suspicious transaction reporting;
- Prepaid payment products and accounts;
- Virtual currency; and
- Politically exposed persons.

Important implementation dates

Already in effect: New Regulations which repeal the previous client identification requirement that prohibited the use of scanned or photocopied documents came into force on June 25, 2019.

June 1, 2020: New Regulations to the Cross-Border Currency and Monetary Instruments Reporting Regulations come into force.

June 1, 2020: The 2014 legislative amendments for virtual currency dealers will be brought into force. The New Regulations will require virtual currency dealers to register as “money services businesses” and comply with other legislative obligations. The remaining virtual currency dealers’ obligations come into force on June 1, 2021.

June 1, 2021: All other regulatory amendments in the New Regulations come into force.

Amendment already in effect: Authentic identification measures

Formerly, to verify customer identity, REs could only rely on documents that were “original, valid and current.” The requirement that a document be “original” has been replaced with “authentic.” Furthermore, the prohibition on using “an electronic image of a document” has been removed, thereby allowing the use of scanned/photocopied documents. This change is meant to modernize identification measures and has been described by FINTRAC as “burden-relieving for reporting entities and facilitates customer on-boarding in an online environment as reporting entities would be able to use scans, photocopies, and electronic means of verifying identification.”

The following comparison of section 64 (1.4) of the The Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations before and after the New Regulation clearly demonstrates the change regarding identification measures.

> 64 (1.4) If a document is used to ascertain identity under subsection (1), it must be original authentic, valid and current. Other information that is used for that purpose must be valid and current and must not include an electronic image of a document.

Important highlights from the New Regulations

Electronic funds transfer (“EFT”): The New Regulations remove the language of “client” from the definition of an
EFT and instead use the language of “instructions initiated and received by the same person or entity.” Furthermore, the New Regulations add the definition of an international EFT.

Client identification: The New Regulations now allow reporting entities to rely on customer identification information that has been previously obtained by another reporting entity, subject to certain requirements being met.

Transactions deemed to be single: Currently, the 24-hour rule requires that REs treat multiple cash transactions and electronic fund transfers performed by, or on behalf of, the same client within a 24-hour period as a single transaction when they total $10,000 or more. The New Regulations now also state that the 24-hour rule applies to beneficiaries of multiple transactions, as well as extend the 24-hour rule to casino disbursement and receipts of virtual currency.

Life insurance sector: Financial entities obligations’ for loans and prepaid payment products will also apply to life insurance companies with certain exceptions.

Virtual currency: The definition of money services businesses (“MSB”) is expanded to include domestic and foreign businesses that are “dealing in virtual currency.” Virtual currency is defined as (a) a digital representation of value that can be used for payment or investment purposes that is not a fiat currency (defined as currency that is issued by a country and is designated as legal tender in that country) and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or (b) a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in (a). Accordingly, persons and entities dealing in virtual currencies will soon be subject to similar obligations as other REs and will have to implement a full compliance program and register with FINTRAC.

Suspicious transaction reports: The New Regulations change the timing for filing suspicious transaction reports and require REs to report more information in a suspicious transaction report.

Politically exposed persons (“PEP”): The requirement to determine a PEP is extended to prepaid product accounts and virtual currency transactions.

Prepaid payment product and prepaid payment product account: The New Regulations now define the terms “prepaid payment product” and a “prepaid payment product account.”

Please check back in as we continue our series of Bulletins about the important upcoming changes to Canada’s AML regime.

This article provides only general information about legal issues and developments, and is not intended to provide specific legal advice. Please see our disclaimer for more details.

AUTHORS

Eric Belli-Bivar
Partner
Toronto | T: +1 416 365 3500
eric.belli-bivar@dlapiper.com