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Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

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July 16, 2019

On July 10, 2019, the [final version of the regulations](#) (the Regulations) amending certain regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) were released in the Canada Gazette. Draft amending regulations were initially released in June 2018. A number of changes between the draft version and the final Regulations have been made to address concerns raised by stakeholders in feedback provided to the Department of Finance and FINTRAC.

The amendments come into force using a staged approach, to allow reporting entities time to make necessary changes for compliance. The identification verification amendments referenced below are now in effect as of June 25, 2019. Amendments applying to dealers in virtual currencies, foreign money services businesses, cross-border currency and monetary instruments reporting, administrative monetary penalties, and suspicious transaction reports will come into force on June 1, 2020. The remaining amendments will come into force on June 1, 2021.

The amendments will require reporting entities to update their policies and procedures to ensure compliance with the Regulations and will add new requirements of foreign money service businesses and dealers in virtual currency.

An overview of certain significant amendments in the Regulations follows.

Prepaid Payment Products

Prepaid payment products issued by financial entities will now be subject to the PCMLTFA regime. Financial entities that issue prepaid products will be subject to the identity verification, record-keeping, and reporting requirements of the PCMLTFA, similar to the requirements that apply when a bank account is opened.

The prepaid payment product amendments do not apply to certain prepaid payment products, including prepaid products that are issued for single use as part of a retail rebate program, prepaid products that enable a person or entity to access a credit or debit account, prepaid products issued for use with a particular merchant, and prepaid products that can only be funded or reloaded by a public body or that can only be funded or reloaded by a non-profit agency or registered charity for the purposes of humanitarian aid relief.

Virtual Currencies

“Virtual currency” is defined in the Regulations as “(a) a digital representation of value that can be used for payment or investment purposes that is not a fiat currency 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 paragraph (a).”

All persons and entities “dealing in virtual currencies” (e.g., virtual currency exchange services, digital wallet providers, and value transfer services) will be required to implement a full compliance program and register with FINTRAC. In addition to other prescribed records for certain virtual currency transactions, reporting entities that receive C\$10,000 or more in virtual currency from a person or entity in a single transaction will have record keeping, identity verification and reporting obligations (unless the amount is received from another financial entity or a public body or from a person who is acting on behalf of a client that is a financial entity or public body).

Foreign Money Services Businesses

The Regulations extend the application of the PCMLTFA to foreign money services businesses (MSBs). Foreign MSBs are defined as persons and entities that do not have a place of business in Canada and are engaged in the business of providing at least one of the following services that is directed (e.g. targeted, advertised, having a Canadian domain name) at persons or entities in Canada, and that provide those services to their clients in Canada: (i) foreign exchange dealing; (ii) remitting funds or transmitting funds by

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any means or through any person, entity or electronic funds transfer network; (iii) issuing or redeeming money orders, traveler's cheques or other similar negotiable instruments except for cheques payable to a named person or entity; (iv) dealing in virtual currencies; or (v) any prescribed service.

Foreign MSBs are subject to substantially similar obligations as domestic MSBs (e.g., compliance program, registering with FINTRAC, record-keeping and reporting requirements), however, there are additional obligations of foreign MSBs, such as obligations in respect of reporting international electronic fund transfers.

Domestic and foreign businesses dealing in virtual currency will now be included as MSBs.

Identity Verification

Currently, the documents that reporting entities are permitted to use to verify identities must be "original, valid and current" and must not include a scanned or photocopied document. This prohibition has been repealed in the Regulation, and the requirement for an original document has been amended to instead require an "**authentic**, valid and current document" (emphasis added). This is a welcome change in light of the realities of the technological environment that reporting entities are now operating in, allowing reporting entities to use electronic means for identity verification.

The Regulations change the single and dual source methods of identification, including (i) permitting the use of a prepaid product account for the dual process method and (ii) for the credit file method, requiring the credit file information to be derived from more than one source.

Suspicious Transaction Reports

The timing for the reporting of a suspicious transaction to FINTRAC has been changed to "as soon as practicable" after the person or entity has taken measures that enable them to establish that there are reasonable grounds to suspect that a transaction or attempted transaction is related to the commission of a money laundering offence or a terrorist financing offence. This is a welcome change, as the draft regulations proposed a three-day filing requirement. The current requirement is to report within 30 days after the day on which the person or entity or any of their employees or officers detects a fact respecting a financial transaction or an attempted financial transaction that constitutes reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence or a terrorist activity financing offence.

Record-Keeping Requirements

The record-keeping requirements under the PCMLTFA have been expanded to require reporting entities to collect additional information in respect of certain types of records (e.g., large cash transaction records). The Regulations also modify the record-keeping (and reporting) obligations to remove burdensome requirements such as the requirement to include "every other known detail" in respect of a transaction.

Electronic Funds Transfer

There are numerous amendments in respect of the electronic funds transfer (EFT) reporting requirements, including (i) reporting entities that are intermediaries in a transaction or that receive an EFT are now required to keep records of the transaction; (ii) the travel rule (requiring certain reporting entities to include prescribed information in respect of international EFTs) has been changed to require the information to be included in an international EFT to be the beneficiary's name and address and, if applicable, account or other referenced number; (iii) requiring reporting entities subject to the travel rule to develop and apply risk-based policies and procedures to determine where, despite reasonable measures, an EFT received by the reporting entity does not include prescribed information; and (iv) expanding the record keeping requirement in respect of EFTs to include EFTs that are initiated not only at the request of a client, but at the request of a person or entity.

Politically Exposed Persons

The amendments require reporting entities to take reasonable measures to determine the sources of a politically exposed person's wealth. Additionally, in determining whether a person is a politically exposed person, reporting entities will have additional requirements to make the determination in respect of prepaid products and virtual currency.

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Life Insurance Companies

Life insurance companies that make loans or issue prepaid payment products will be subject to the requirements of other financial entities, other than in respect of (i) loans made by the insurer to a policy holder if the insured person has a terminal illness that significantly reduces their life expectancy and the loan is secured by the value of an insurance policy; (ii) loans made by the insurer to the policy holder for the sole purpose of funding the life insurance policy; and (iii) advance payments to which the policy holder is entitled.

For more information on this topic, please contact Suhuyini Abudulai or any member of our Banking, Lending & Specialty Finance Group.

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