

New Retail Payments System Framework Regulating Payment Service Providers

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In the summer of 2017, the Department of Finance released a consultation paper, "[A New Retail Payments Oversight Framework](#)", proposing a new federal oversight framework for retail payments in Canada. The rapid pace of technological advancement and innovation has evolved retail payments in Canada, introducing innovative products provided by non-traditional payment service providers ("PSPs") who are not subject to the same regulatory requirements as regulated financial entities. In an attempt to level the playing field, and regulate entities by what they do rather than who they are, the framework will create a federal regulatory regime for PSPs.

Scope of framework

The consultation paper does not specify which PSPs will be subject to the framework, but the Department of Finance has identified five core functions performed by PSPs in the context of electronic funds transfers ("EFTs") ordered by an end-user, such that a PSP that performs any of these functions would be subject to the framework.

The following five core functions provided by a PSP will trigger the application of the proposed regulatory regime:

- *Provision and Maintenance of a Payment Account*: Provides and maintains an account held in the name of one or more end-users for the purpose of making EFTs;
- *Payment Initiation*: Enables the initiation of a payment at the request of an end-user;
- *Authorization and Transmission*: Provides service to approve a transaction and/or enables the transmission of payment messages;
- *Holding of Funds*: Enables end-users to hold funds in an account held with a PSP until it is withdrawn by the end-user or transferred to a third party through an EFT; and
- *Clearing and Settlement*: Enables the process of exchanging and reconciling the payment items (clearing) that result in the transfer of funds and/or adjustment of financial positions (settlement).

The proposed oversight will cover credit card transactions, online payments, debit transactions, peer-to-peer money transfers, pre-authorized payments, and pay deposits.

The Department of Finance has excluded certain types of transactions on the basis that these transactions pose limited risk to end-users. The exclusions include the following:

- Transactions made entirely in cash.
- ATM transactions for cash withdrawals or cash deposits.
- Closed-loop card transactions (e.g. store specific cards).
- Clearing and settlement transactions made through systems designated under the *Payment Clearing and Settlement Act*.
- Transactions between entities of the same corporate group, if no intermediary outside of the group is involved in the transaction.
- Transactions related to securities asset servicing (e.g. dividends distribution, redemption or sale) and derivatives.
- Transactions conducted via an agent authorized to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee, if the funds held by the agent on behalf of the payer or payee is kept in a trust (e.g. real estate agent or lawyer).

Additionally, the proposed framework will apply only to fiat currency, though the Department of Finance will continue to monitor the use of virtual currencies in retail payments and propose amendments to the framework as warranted.

Measures and requirements

The following measures are proposed in the consultation paper:

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- *End-user fund safeguarding*: PSPs that hold end-user funds overnight or longer would be subject to certain fund safeguarding requirements, including holding the funds in a trust account and keeping records.
- *Operational standards*: To mitigate operational risks (e.g. a system not working or not protecting data that is being transmitted), PSPs must comply with a set of principles related to establishing security and operational objectives and policies.
- *Disclosures*: PSPs would be required to provide end-users with information on key characteristics of the service or product (e.g. charges, fees, functions, limitations and security guidelines) in a clear, non-misleading and timely manner.
- *Dispute resolution*: PSPs would be required to implement a dispute resolution mechanism to address consumer complaints.
- *Liability*: Payment authorizing PSPs would be required to refund end-users for losses resulting from unauthorized transactions or errors.
- *Registration*: PSPs would be required to register with a designated federal retail payments regulator. The registration scheme would also promote compliance with Canada's anti-money laundering and anti-terrorist financing legislative regime.
- *Personal information*: PSPs would be required to comply with privacy legislation (e.g. *Personal Information Protection and Electronic Documents Act*).

Advisory service for small PSPs

The consultation paper proposes an advisory service for small PSPs launching a new product, process or service. As these new entrants to the market may have limited resources, the advisory service would assist them in understanding and navigating the legal landscape.

Once the consultation process has ended, it is anticipated that the framework will be implemented in federal legislation.

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