

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

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On February 15, 2020, the Department of Finance issued proposed amendments (the Draft Amendments) to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). The Draft Amendments further amend the regulatory amendments released in 2019, of which we previously reported in our e-lert “Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.” The PCMLTFA applies to designated financial and non-financial entities referred to as “reporting entities.” Among other changes, the Draft Amendments expand the application of certain obligations under the PCMLTFA to reporting entities that are referred to in the Draft Amendments as “designated non-financial businesses and professions.”

### Background

The changes proposed in the Draft Amendments relate to the following recent developments:

- **B.C. casinos and real estate sector.** The reports commissioned by the Government of British Columbia relating to (a) allegations of money laundering in British Columbia casinos; and (b) a review of the British Columbia real estate sector. The reports identified large-scale, transactional money laundering in British Columbia casinos and the British Columbia real estate sector. The Draft Amendments are stated to be designed to address the recommendations contained in these reports.
- **Parliamentary review of the PCMLTFA.** A report published in November 2018 by a committee of Parliament, following a statutory review of the PCMLTFA by the committee. The report made recommendations to strengthen Canada’s anti-money laundering and anti-terrorist financing regime, including a recommendation that all reporting entities, including designated non-financial businesses and professions, be required to identify beneficial ownership.
- **FATF and guidance on virtual assets.** The Financial Action Task Force (FATF) finalized and adopted guidance on virtual assets in June 2019. Due to timing of the release, the last set of amendments to the PCMLTFA released in 2019 did not fully address the FATF standards. The Draft Amendments will, *inter alia*, align virtual currency obligations under the PCMLTFA with the FATF standards.

### New Obligations for Designated Non-Financial Businesses and

## Professionals

- **PEP/HIO determination.** Currently, under the PCMLTFA, financial entities, securities dealers, money service businesses, and life insurance companies have obligations relating to politically exposed persons (PEPs), heads of international organizations (HIOs), and prescribed family members or close associates of a PEP or HIO.

The Draft Amendments expand the PEP/HIO determination under the PCMLTFA to require each of the following reporting entities (designated non-financial businesses and professions) to take reasonable measures during certain transactions or activities to determine if a client is a foreign or domestic PEP, an HIO, or a prescribed family member or close associate of one of these persons: accountants and accounting firms, British Columbia notaries, casinos, departments and agents or mandataries of Her Majesty in right of Canada or of a province, dealers in precious metals and stones, and real estate brokers, sales representatives and developers. Activities that will trigger this determination include when an account is opened, or a business relationship is established, on a periodic basis, or when these designated non-financial businesses and professions have actual information that “constitutes reasonable grounds to suspect” a person is a PEP, HIO, or a family member or close associate of the PEP or HIO.

Additionally, under the Draft Amendments, foreign and domestic money services businesses would also be required to make such a determination when the money services business is in a business relationship with a person.

- **Beneficial ownership determination.** Currently, under the PCMLTFA, financial entities, securities dealers, money service businesses, and life insurance companies have obligations to collect beneficial ownership information from corporations or other entities (i.e., determine the identity of the natural person who ultimately controls a corporation or other entity).

The Draft Amendments will require designated non-financial businesses and professions to collect beneficial ownership when they are required under the PCMLTFA to verify the identity of an entity. Designated non-financial businesses and professions will be required to, among other obligations, obtain beneficial ownership information, take reasonable measures to confirm the accuracy of the information obtained, and keep records of the information.

- **Real estate developers, brokers and sales representatives.** The Draft Amendments will require real estate developers, brokers and sales representatives to enter into a business relationship with a client after a single transaction or activity that triggers the PCMLTFA client identification requirements. Currently, under the PCMLTFA, real estate developers, brokers and sales representatives establish a business relationship with a client when they conduct two or more

transactions or activities that trigger client identification.

- **Casinos.** FATF standards require casinos to make certain determinations when their customers engage in financial transactions of \$3,000 or more. To align with the FATF standards, the Draft Amendments will require casinos to verify the identity of individuals when they receive \$3,000 or more in a single transaction.
- **Virtual currencies and the “travel rule”.** The travel rule requires certain reporting entities to include prescribed client information in respect of electronic funds transfers. An FATF recommendation requires FATF member countries to apply the travel rule to virtual currency transfers. As such, the Draft Amendments would extend the travel rule to virtual currency transfers.

## Cross-border Movement of Currency

The application of the provisions of the PCMLTFA regarding cross-border movement of cash or monetary instruments is not limited to specified reporting entities but, rather, these provisions apply to all natural persons and entities. The PCMLTFA requires natural persons and entities to provide information (through declaration forms) when crossing the Canadian border with \$10,000 or more of cash or other monetary instruments.

The Draft Amendments introduce new fields to existing declaration forms, to clarify the intent behind some of the existing fields. It is intended that in practice, while this change will expand the fields in the declaration form, it will not change the nature of the information being collected. For example, the “ultimate origin” on the declaration form will be changed to require the name and permanent address of the person or entity that is the ultimate origin and, in the case of an entity, the nature of their principal business.

## Other Changes

The Draft Amendments also make technical changes to the PCMLTFA, repealing or replacing obsolete references, improving the organization of the PCMLTFA for easier access and review, and updating schedules in certain regulations made under the PCMLTFA.