Cassels

Mortgage Lending Entities to be Regulated Under PCMLTFA and Other Proposed AML/ATF Changes

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Proposed draft regulations (the Regulations) amending the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the Act) were published on February 18, 2023, with a 30-day consultation period. Among other proposed changes, mortgage lending entities (e.g., lenders (persons or entities), brokers, and administrators) and armoured car companies would become subject to the anti-money laundering (AML) and anti-terrorist financing (ATF) obligations in the Act and its regulations. We previously reported on certain elements of the Regulations in our Cassels Comment, "Budget 2022 - AML/ATF Regulatory Measures."

The following is an overview of certain salient amendments proposed in the Regulations. Given the significant impact of the proposed changes, stakeholders should review the Regulations which can be accessed for comment at the following links:

- Canada Gazette, Part 1, Volume 157, Number 6: Financial Transactions and Reports Analysis Centre of Canada Assessment of Expenses Regulations;
- Canada Gazette, Part 1, Volume 157, Number 7: Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act; and
- Canada Gazette, Part 1, Volume 157, Number 6: Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and the Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations.

Mortgage Lending Entities to be Regulated

The obligations in the Act and its regulations currently apply to prescribed persons commonly referred to as reporting entities, including financial entities (e.g., banks, credit unions, and trust and loan companies) who issue mortgages. The Regulations would expand the application of the Act to capture other entities involved in the mortgage lending process including lenders who underwrite or provide loans, administrators servicing loans, and brokers responsible for mortgage origination, and would make such persons reporting entities under the Act. These persons would thus become subject to the existing identity verification, reporting, record-keeping, due diligence, and compliance requirements in the Act and oversight by the Financial Transactions Reports Analysis Centre of Canada (FINTRAC).

Relevant definitions in the Regulations include:

- ***mortgage administrator*** means a person or entity, other than a financial entity, that is engaged in the business of servicing mortgage agreements on real property or hypothec agreements on immovables on behalf of a lender.
- ***mortgage broker*** means a person or entity that is authorized under provincial legislation to act as an intermediary between a mortgage lender and a borrower.
- ***mortgage lender*** means a person or entity, other than a financial entity, that is engaged in providing loans secured by mortgages on real property or hypothecs on immovables.

All entities involved in the mortgage lending process would be required to meet the following obligations:

- Development of a compliance program;
- Apply customer due diligence measures (e.g., identity verification and beneficial ownership requirements);
- Record keeping (e.g., storing client identification records);
- Transaction reporting (e.g., submit suspicious transaction and terrorist property reports as well as other reports, such as large cash ($10,000 or more) transaction reports, to FINTRAC); and
- Follow ministerial directives and transaction restrictions when funds go to or come from certain countries.

Corresponding administrative monetary penalties would be added to the existing administrative monetary penalty regulations under the Act. The range of the penalty will depend on the harm done by the violation and the reporting entity's history of compliance. The penalty for a minor violation would range from $1 to $1,000 per violation, a serious violation would be from $1 to $100,000 per violation, and a very serious violation would be from $1 to $100,000 per violation for an individual and from $1 to $500,000 per violation for an entity.

The regulatory impact analysis statement accompanying the Regulations provides that the Department of Finance recognizes that small mortgage lending entities may be disproportionally impacted as a result of having fewer resources to ensure compliance and, while the Department of Finance cannot provide alternative compliance options as the AML/ATF obligations for mortgage lending entities must be non-discretionary to meet international standards, an eight month transition period would be provided to all mortgage lending entities to comply with the new requirements in the Regulations (once the Regulations come into force).

Armoured Car Sector

he regulatory impact analysis statement cites concerns with the transportation of currency and negotiable instruments posing a high inherent money laundering and terrorist financing risk and, as such, proposes to include the armoured car sector as reporting entities under the Act. Specifically, entities that collect

currency, money orders, traveller's cheques or other similar negotiable instruments for transport would be required to meet the following obligations:

- Development of a compliance program;
- Apply customer due diligence measures (e.g., identity verification and beneficial ownership requirements);
- Record keeping (e.g., storing client identification records);
- Transaction reporting (e.g., submit suspicious transaction and terrorist property reports as well as other reports, such as large cash ($10,000 or more) transaction reports to FINTRAC); and
- Follow ministerial directives and transaction restrictions when funds go to or from certain countries.

Cost Recovery Framework for FINTRAC Payable by Reporting Entities

The Regulations propose a cost recovery scheme pursuant to which FINTRAC will be provided with long-term funding. The regulatory impact analysis statement provides that the proposed cost recovery model would be predictable and simple to administer, account for inherent money laundering and terrorist financing risks and relative business volumes, minimize the burden of assessments against most small-sized reporting entities, and make use of information accessible to FINTRAC.

Under the cost recovery framework, the Director of FINTRAC would determine the costs incurred in the preceding fiscal year with respect to FINTRAC's administration of the Act, excluding costs incurred in connection with the production and dissemination of financial intelligence. Once this amount is determined, FINTRAC would calculate the assessment amounts payable by reporting entities on the basis of the annual asset value in Canada of federally regulated banks, trust and loan companies, and life insurance companies, and the volume of threshold transaction reports (i.e., large cash transaction reports, large virtual currency transaction reports, electronic funds transfer reports, and casino disbursement reports) submitted by all reporting entities. The framework would come into force for all reporting entities on April 1, 2024, allowing FINTRAC to commence recovering costs from the 2024–25 fiscal year, going forward.

Correspondent Banking Relationships

The amendments proposed in the Regulations would require Canadian financial entities to use public information to take reasonable measures to assess the reputation of a foreign financial entity in regard to its ability to mitigate money laundering and terrorist financing risks, and the quality of supervision to which it is subject prior to the Canadian financial entity entering into a correspondent banking relationship.

Additionally, Canadian financial entities would be required to conduct a risk assessment of their correspondent banking relationships and, based on the result of the risk assessment, conduct ongoing

monitoring of their correspondent banking relationships to keep information about the foreign financial entity up to date and assess if its transactions and activities remain consistent with the correspondent banking relationship and risk profile.

Corresponding administrative monetary penalties would be added to the existing administrative monetary penalty regulations under the Act. A failure to comply with the obligation to conduct a risk assessment and ongoing monitoring of the correspondent banking relationship would constitute a serious violation (with penalties ranging from $1 to $100,000).

As it is anticipated that the largest six Canadian banks would be disproportionately impacted given they maintain extensive correspondent banking relationships, and foreign subsidiary banks will also be impacted as a result of their correspondent banking relationship with their foreign parent bank, an eight month transition period for financial institutions to comply is proposed.
