

## Consultation on Changes to Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

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On June 6, 2023, the Department of Finance Canada launched a public consultation, Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime, on potential policy measures, some of which may be considered for future legislative and regulatory amendments to Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime, including to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

The following is a summary of salient potential changes to Canada's AML/ATF legal framework. The consultation paper should be reviewed for the relevant details and stakeholders can make a submission to the consultation following the instructions in the consultation paper. The consultation period ends on August 1, 2023.

### New Reporting Entities/Sectors

#### Fintechs and Financial Technologies

In light of emerging financial technologies and related financial services and products, the government is considering expanding the AML/ATF regime to fintech companies that are not currently regulated under the PCMLTFA. The consultation paper refers to fintechs as companies that provide technology-enabled financial services, such as depositing cheques, offering credit, transferring money, hosting interest paying savings accounts, and paying bills.

Additionally, the consultation takes into account other financial technologies that the consultation has identified as money laundering and terrorist financing risks, including the following of which the consultation queries whether legislative and regulatory requirements are required to address such risks:

- **Tokenized Assets** - digital representations of ownership in real-world assets, such as real estate, art, commodities, stocks, and securities, that are traded on blockchain-based platforms.
- **Privacy-Enhancing Coins** –a type of virtual asset that seeks to provide its users greater anonymity than other types of virtual assets (e.g., Bitcoin).
- **The metaverse** – generally refers to a virtual reality accessed via the internet that allows users to interact digitally, including transact with virtual currencies and digital assets.

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- **Non-Fungible Tokens (NFTs)** – unique digital assets that are not interchangeable and are generally used as collectibles rather than for payment or investment purposes.
- **Decentralized Finance** – commonly refers to the provision of financial products, services, arrangements, and activities that use distributed ledger technology to disintermediate and decentralize legacy ecosystems by eliminating the need for some traditional financial intermediaries and centralized institutions.
- **Crypto-mixers / Crypto-tumblers** – providers of online services to mix virtual currencies together from a variety of sources before transferring it to the designated receiver(s) to obfuscate the chain of transactions from sender to receiver and enhance anonymity.

## Factoring Companies

The government is considering whether the AML/ATF regime should be expanded to include factoring companies as reporting entities under the PCMLTFA. The consultation paper describes factoring companies as entities that, generally, supply short-term loans or upfront payment for the accounts receivable of another business to address their cash-flow needs and that allow a variety of payment methods such as cash, electronic funds transfers, money orders and cheques.

## White Label Automated Teller Machines

White label automated teller machines (WLATMs) are privately owned and not branded by a regulated financial institution – the financial institution branded automated teller machines are subject to the AML/ATF regime unlike the WLATMs. The consultation paper seeks to address this gap by expanding the coverage of the AML/ATF framework to include WLATMs as reporting entities (possibly as money services businesses (MSBs)).

## High-Value Goods

The consultation is considering, among other regulatory measures, expanding the AML/ATF framework to include dealers in high-value goods, such as automobiles, yachts, aircraft, art, and other luxury products, as reporting entities.

## Company Service Providers

Businesses that provide incorporation services to the public (company service providers) provide guidance to individuals forming a corporation. The consultation considers requiring company service providers to implement AML/ATF measures under the PCMLTFA (e.g., client identification and suspicious transaction reporting), as well as the expansion of the AML/ATF framework to include company service providers as reporting entities.

## **Financial Crown Corporations**

Crown corporations are government organizations that serve the public interest in a commercial environment. In practice, most Crown corporations do not have formal AML/ATF mandates, other than activities specifically captured by the PCMLTFA (e.g., related to deposit liabilities, money orders, or precious metals).

Federal Crown corporations engaged in financial activities (e.g., Bank of Canada, Business Development Bank of Canada, Canada Mortgage and Housing Corporation, Export Development Canada, and Farm Credit Canada) may face money laundering and terrorist financing risks and vulnerabilities. Currently, these financial Crown corporations voluntarily follow policies and procedures that align with the PCMLTFA to varying extents.

The consultation considers whether a formal money laundering and terrorist financing prevention and detection mandate for federal financial Crown corporations is required.

## **Bulk Cash**

All reporting entities subject to the PCMLTFA must report to the Financial Reports and Analysis Centre of Canada (FINTRAC) the receipt of cash of \$10,000 or more and conduct some due diligence measures on the client providing the cash. This requirement does not apply to businesses outside the coverage of the PCMLTFA. The consultation paper considers whether legislative amendments are necessary to mitigate vulnerabilities of large cash transactions, including whether to extend the large cash reporting requirements to all business in Canada over a certain threshold or whether to prohibit cash purchases over a certain threshold.

## **Review of Existing Reporting Entities**

### **Payment Service Providers; MSBs**

In 2022, amendments to the PCMLTFA expanded the AML/ATF regime obligations to a broader range of payment service providers (PSPs) in Canada. These amendments included the removal of exemptions for the payment processing of credit, debit, and prepaid products under the definition of electronic funds transfer to extend regulatory obligations to PSPs engaged in these activities.

PSPs subject to the PCMLTFA must register with FINTRAC as MSBs. These PSPs include a range of businesses providing payment services for goods or services or invoice payment services. In the consultation, the government is exploring whether MSBs and PSPs should be differentiated under the PCMLTFA and have separate AML/ATF regulatory requirements that account for the different risks (and

degrees of risk) in each sector.

In the consultation, the government is also considering amending the MSB registration framework to, among other matters, require FINTRAC to vet MSB applications to access their compliance readiness prior to issuing a registration and to amend the framework to address illicit and non-compliant or unregistered MSBs.

## **Accountants**

The definition of “accountant” under the PCMLTFA does not include accountants who are not formally certified under a professional body and the consultation notes there are potential gaps in this coverage, in terms of the definition and the scope of triggering activities that are regulated under the PCMLTFA. As such, the government is considering amending the definition of accountant to include uncertified accountants and expanding the scope of triggering activities to include other services provided by accountants.

## **Casinos**

With new forms of wagering (e.g., single-event sports betting) and the introduction of provincially regulated digital gaming, the government is reviewing whether the definition of casino activities under the PCMLTFA should be expanded. The government is also examining the pari-mutuel betting system, which is used in gambling on horse racing and is not currently regulated under the PCMLTFA.

## **Dealers in Precious Metals and Stones**

Dealers in precious metals and stones are subject to the PCMLTFA once they engage in the purchase or sale of precious metals, precious stones, or jewellery in the amount of \$10,000 or more (in cash or another form of currency) in a single transaction. The consultation paper queries, among other proposed changes to the AML/ATF framework for dealers in precious metals and stones, whether the \$10,000 triggering threshold should be lowered or removed to cover a broader set of transactions and entities.

## **Real Estate Sector**

### **Real Estate Sales by Owner and Auction**

Currently, the PCMLTFA does not apply to for-sale-by-owner and real estate auction companies. The government is considering expanding the coverage of the AML/ATF framework to include for-sale-by-owner companies and real estate auction platforms as reporting entities.

### **Unrepresented Parties in a Real Estate Transaction**

Currently, real estate representatives are required to take reasonable measures to identify unrepresented parties. When unable to do so, real estate representatives must keep a record of the unsuccessful measures taken to verify the identify of the unrepresented party and the transaction can proceed. There is no requirement for a real estate representative to determine whether a third-party is conducting the transaction on behalf of an unrepresented party (as they are not their client). The consultation paper queries whether real estate representatives under the PCMLTFA should identify unrepresented parties and conduct third-party determinations in real estate transactions involving unrepresented parties.

## **Building Supply and Renovation Companies**

The PCMLTFA does not currently apply to building supply or renovation companies. The consultation identifies building supply companies as companies that provide material required for large scale construction projects or small home renovations and identifies renovation companies as companies that are engaged by homeowners in the renovation of their homes and tend to be small to medium-sized companies. The consultation considers whether the government should expand the coverage of the AML/ATF framework to include building supply and renovation companies as reporting entities.

## **Title Insurers and Mortgage Insurers**

Title insurers and mortgage insurers that are indirectly involved in a portion of real estate transactions are not currently subject to the AML/ATF framework. The consultation considers expanding the coverage of the AML/ATF framework to include title insurers and mortgage insurers as reporting entities.

## **Third Party Money Laundering**

The consultation refers to third party money laundering as the laundering of proceeds of crime as a service and for a fee, and where the launderer is generally not involved in the commission of the predicate offence (i.e., not involved in the money laundering or terrorist financing). A third-party money launder (TPML) uses their expertise to convert money or other property, or to otherwise, among other actions, conceal the source, ownership or control of the property. The consultation notes that TPMLs can be regulated persons or belong to a regulated profession, or otherwise provide a specialized area of business services.

Under the *Criminal Code* it is an offence to deal with property or proceeds of property with the intent to convert or conceal the property, and knowing, believing or being reckless to the fact that the property was obtained through the commission of a designated offence in Canada or an act or omission outside of Canada, that if it had occurred in Canada, would have constituted a designated offence.

The consultation paper seeks feedback on whether reforms are required under the *Criminal Code* to address TPML, such as altering the requirement to establish a nexus between the predicate offence and the

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laundering or focusing only on particular typologies of money laundering. The consultation paper observes that, while TMPLs may not be involved in the commission of the predicate offence, they are generally aware that the subject property is not legitimate, and it has been demonstrated in court proceedings that TMPLs have been willfully blind to the fact that the subject property was proceeds of a predicate offence.

## Phishing and Spoofing

As reflected in recent headlines, fraudulent schemes are on the rise and have become a concern in recent years. While the *Criminal Code* contains offences that address this fraudulent conduct (e.g., credit card theft and unauthorized uses of a computer) referred to as “phishing” and “spoofing”, the consultation paper queries whether additional criminal offences relating to these activities are required, particularly where perpetrators try to obtain personal information from individuals through telephone, text, or online means to defraud individuals.

## Other Criminal Code Measures

The consultation paper seeks feedback on a number of other proposed approaches to address money laundering and terrorist financing risks under the criminal justice legal framework, including:

- **Sentencing for laundering** – currently, the penalty for laundering proceeds of crime is a maximum of 10 years' imprisonment on indictment, and up to two years' imprisonment on summary conviction. The government is considering sentencing reforms for more effective deterrence of money laundering.
- **Access to subscriber information** – acknowledging difficulties for law enforcement in obtaining access to information about subscribers (such as name, address, IP address, and phone number), the government is seeking views on whether the *Criminal Code* should be amended to provide for subscriber information to be more readily available to law enforcement and whether other legislative solutions are required to address the difficulties in obtaining such information.
- **Electronic devices** - addressing the issues electronic devices (e.g., mobile phones) pose where law enforcement is investigating serious offences and requires access to mobile devices (e.g., privacy issues), the consultation paper queries whether the *Criminal Code* should be amended to explicitly provide for the power to search an electronic device pursuant to a warrant and whether any solicitor-client privilege considerations must be taken into account.
- **Blockchain records** – in relation to challenges posed by digital assets, the government is seeking feedback on whether amendments to the *Criminal Code* are required to enable the seizure and restraint of digital assets and whether any other measures are required, including considering whether blockchain data may be used as evidence in proceedings.
- **Keeping bank accounts open** – Financial institutions may close an account upon becoming aware

that the account holder is subject to an investigation. As this may potentially disrupt the investigation, the consultation paper proposes a “keep open” regime, such that the account suspected of involvement in money laundering would remain at the request of law enforcement.

## Canada Financial Crimes Agency

As previously announced, the government is creating a new enforcement agency, the Canada Financial Crimes Agency (CFCA). The CFCA will be the lead enforcement agency in financial crimes. The consultation seeks views on the mandate of the CFCA as to whether the mandate should include combatting fraud, combatting sanctions evasion, and combatting fiscal crimes (e.g., tax evasion). Other crimes may be considered to be included in the CFCA’s mandate such as markets-based offences and corruption.

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