Cassels

Canada Uses AML Regime to Prevent Sanctions Evasion

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The Government of Canada has recently amended its anti-money laundering legislation to combat sanctions evasion. The *Fall Economic Statement Implementation Act* (the Act) amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to expand the role of FINTRAC[1] to include detecting, preventing, and deterring sanctions evasion.

Reporting Requirement for Sanctions Evasion

Reporting entities under the Act (which include banks, credit unions, insurance, trust and loan companies, and certain money services businesses) have longstanding obligations to report transactions to FINTRAC where there are reasonable grounds to suspect that they are related to money laundering and terrorist activity financing offences.

However, the Act now requires reporting entities to report to FINTRAC "*any transaction in respect of which there are reasonable grounds to suspect that the transaction is related to the commission or the attempted commission of a sanctions evasion offence.*"[2] A "sanctions evasion offence" is defined as "an offence arising from the contravention of a restriction or prohibition established by an order or a regulation made under the *United Nations Act*, the *Special Economic Measures Act,* or the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.?"

Reporting entities must submit a suspicious transaction report (STR) "*as soon as practicable*" after having taken measures that establish reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a sanctions evasions offence.[3] Reporting entities are required to include information on the ownership, control, and structure of entities involved in the relevant transaction(s), such as the owners, directors, officers and individuals with signing authority of each entity, as well as any information about related persons or other entities involved.

Characteristics of Sanctions Evasion

The *Special Bulletin on Financial Activity Associated with Suspected Sanctions Evasion*, describes the following commonly used techniques to evade sanctions:

- **Intermediaries.** The use of non-sanctioned financial institutions in other countries, and in particular,

the use of regional financial and trade hubs such as the United Arab Emirates, Türkiye, China, Hong Kong, and the nine countries of the Commonwealth of Independent States (CIS) and neighbouring countries that maintain commercial links with sanctioned jurisdictions.

- **Evasion of Import and Export Controls.** The circumvention of prohibitions against the import and export of restricted goods and technology including by routing goods through other jurisdictions, falsifying customs documents or using prohibited shipping channels or "dark" ships.
- **Opaque Corporate Structures.** The circumvention of sanctions often involves the use of opaque or complicated corporate structures to conceal the beneficial ownership of a business.
- **Non-Resident Banking.** The use of financial institutions in jurisdictions other than the one in which the company is registered to conceal the origin or destination of payments.
- **Proxies and Enablers.** Sanctioned entities may transfer legal ownership to non-sanctioned entities and individuals (including family members) or use professional service providers (such as lawyers or accountants); and
- **Virtual Currencies and Alternative Financial Channels.** The use of cryptocurrency and other alternative payment methods, especially those with minimal regulatory oversight, conceal the source of proceeds gained through sanctions evasion.

Takeaway

The Act significantly expands the reporting obligations and scope of due diligence for reporting entities under the PCMLTFA. Businesses should be aware that these new requirements will place greater demands on their sanctions compliance policies and procedures. Companies should be prepared to face increased due diligence inquiries from their financial institutions regarding sanctions related matters.

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[1] Financial Transactions and Reports Analysis Centre of Canada.

[2] Act, subsection 7(c).

[3] Reporting Suspicious Transactions to FINTRAC.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.