Cassels

Government Considers Extending AML and Terrorist Financing Rules to Finance, Lease and Factoring Companies

04/11/2018

Last February, the Department of Finance released a discussion paper intended to prompt discussion of possible changes to Canada's anti-money laundering and anti-terrorist financing regime in advance of the upcoming review of the regime by Parliament later this year. Of the many areas for discussion raised in the paper one that is important for finance, leasing and factoring companies is the possibility of extending the obligations of the regime to apply to them. If these companies became subject to the regime, it could impose significant new costs and require changes to the way that business is currently conducted.

The current regime requires that deposit-taking institutions and certain other businesses that are believed to be susceptible to money laundering and terrorist financing support the Government's efforts to both impede illicit financial transactions and act as a source of information for the Government's efforts to identify criminal activity and terrorist groups. The regime attempts to achieve these goals by requiring that these "reporting entities" obtain proper identifying information from their clients, and pay particular attention to clients that pose a higher risk of money laundering and to the aspects of their businesses that could be used for money laundering or terrorist financing and by requiring these entities to report suspicious transactions, large cash transactions and certain wire transfers to the Financial Transactions Analysis and Reports Centre of Canada (FINTRAC).

However, one of the concerns surrounding the current regime is that it fails to cover certain other types of businesses that could also be used as vehicles for money laundering or terrorist financing. With respect to finance, lease and factoring companies, the discussion paper asserts that by allowing a variety of payment methods such as cash, electronic funds transfers, money orders and cheques, their services can also be used in the placement, layering and integration stages of the money laundering process.

The discussion paper does not indicate whether all aspects of the current regime should be applied to finance, lease and factoring companies or whether only certain aspects more specifically directed at certain products should be included. For example, for life insurance companies the regime is generally directed at products with significant cash surrender options, such as single premium products and annuities. Further, there is no discussion of whether these types of companies will be required to apply for registration under the law in order to carry on business as is the case with entities that offer currency transfer and foreign exchange services.

Regardless of the form of regulation that would apply, there is no doubt that becoming regulated under the regime will have significant cost and business implications for these companies. Regulated financial

institutions consistently point to anti-money laundering and terrorist financing regulation as imposing their most costly regulatory compliance burden.

Submission are now due no later that May 18 and should be sent to the he Department of Finance. A copy of the discussion paper is available here.

If you would like further information with respect to the proposals please contact John Jason or any member of our Banking, Lending & Specialty Finance Group.

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