Canadian AML Laws Amended to Include Businesses Dealing in Virtual Currencies and Foreign MSBs

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Much-awaited amendments to Canadian federal anti-money laundering legislation will now specifically capture non-Canadian money service businesses (MSBs), including those dealing in virtual currencies. Scheduled to come into force on June 1, 2020 (with certain changes effective June 1, 2021), these amendments (the Amendments) are accompanied by corresponding changes to the related regulations that will operationalize MSB registration requirements and ongoing compliance obligations applicable to all regulated entities engaging in "virtual currency exchange transactions".

Notably, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA or the Act) has been amended to specifically require that a person or entity "dealing in virtual currencies" register as an MSB under the Act. As currently drafted and applied, businesses dealing in virtual currencies are only required to register if they otherwise meet the criteria of "money service businesses" under the Act. This new specifically prescribed category will help address some regulatory ambiguities and level the playing field among those engaging in similar types of virtual currency trading or exchange services.

Significantly, the Act and the amended regulations also capture "foreign money services businesses" (foreign MSBs), defined as persons and entities that (a) do not have a place of business in Canada, (b) are engaged in providing at least one of the regulated types of MSB services, and (c) provide those services to their customers in Canada. Under the amended Act and regulations, foreign MSBs will be subject to the same registration and ongoing compliance program requirements, including customer due diligence, reporting and record-keeping, as Canadian MSBs Currently, a foreign business qualifying as an MSB is only subject to registration if it carries on a registrable activity and has a real and substantial connection to Canada.

While these amendments expand the reach of the PCMLTFA, they also take a somewhat more modern, industry-centric and pragmatic approach to compliance requirements, including client identification/diligence and record keeping requirements. As an example, the requirement that documents used to verify customer identity be "original, valid and current" has been replaced with a requirement to use an "authentic, valid, and current" document.

The PCMLTFA amendments also come at a time when provincial securities regulators in Canada have concluded an initial round of industry consultations and are considering whether and how best to regulate virtual currency businesses within the conventional securities and derivatives regulatory framework, including through dealer, adviser and fund manager registration, prospectus/product qualification rules and exchange and other platform recognition requirements (see our blog post here for a more detailed discussion of that consultation process). The existence of a federally regulated alternative framework to govern virtual currency exchanges and similar business that are not clearly subject to securities or

derivatives legislation may also be a welcome development to provide some measure of regulatory certainty for industry participants.

Background

Amendments to the PCMLTFA were originally proposed under the *Economic Action Plan 2014 Act, No. 1* and the *Budget Implementation Act, 2017, No. 1* to, among other things, expand the application of the Act as it applies to MSBs and foreign MSBs, and to include the business of dealing in virtual currencies among regulated activities. Proposed regulations amending the PCMLTFA were also published on June 9, 2018.

Following a public consultation period, final amendments to the PCMLTFA were published on June 21, 2019 as part of Subdivision C the *Budget Implementation Act, 2019, No. 1* and revised regulations were published on July 10, 2019 (the Revised Regulations). The Revised Regulations define a "virtual currency" as:

- a digital representation of value that can be used for payment or investment purposes that is not a fiat currency (i.e. not issued by a country and not designated as a legal tender in that country) and that can be readily exchanged for funds, or for another virtual currency that can be readily exchanged for funds; or
- a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in (1).

Compliance Obligations for Virtual Currency Business and Other PCMLTFA Regulated Entities

The Regulatory Impact Analysis Statement (RIAS) that accompanies the Revised Regulations notes the competing policy objectives of mitigating the vulnerabilities of virtual currency to money laundering and terrorist activity financing, while not excessively impeding innovation. Accordingly, the Amendments and the Revised Regulations do not target virtual currencies themselves, but the persons or entities engaged in the business of dealing in virtual currencies. These "dealing in" activities are not specifically defined but are stated in the RIAS to include virtual currency exchange services and value transfer services. Persons and entities that are "dealing in virtual currency" will include financial entities or domestic or foreign MSBs.

As required of all MSBs, in addition to registration, persons and entities dealing in virtual currencies will need to implement a full compliance program. Foreign MSBs will be required to comply with the same obligations for these activities (e.g., register with FINTRAC[1], exercise customer due diligence, report transactions and keep records). Furthermore, a foreign (registered) MSB found to be non-compliant with the requirements of the Act and its regulations could be issued an administrative monetary penalty (AMP). The foreign MSB's failure to pay an AMP could lead to the revocation of its registration, making it ineligible to do business in Canada.

Record-Keeping and Reporting Requirements

All reporting entities listed in section 5 of the Act that receive C$10,000 or more in virtual currency will have record-keeping and reporting obligations. This applies to both domestic and foreign MSBs.

The Amendments include definitions of a "large virtual currency transaction record", "virtual currency exchange transaction", and a "virtual currency exchange transaction ticket". They impose a general obligation on all reporting entities to report the receipt of C$10,000 of virtual currency, similar to large cash transactions.

All reporting entities must also keep a large virtual currency transaction record in respect of every amount of C$10,000 or more in virtual currency that it receives from a person or entity in a single transaction, unless the amount is received from another financial entity or a public body or from a person who is acting on behalf of a client that is a financial entity or public body. Similar to large cash transactions, the receipt of amounts that total C$10,000 or more and are made through two or more transactions within 24 consecutive hours are deemed to be a single transaction if made by or on behalf of the same person, or for the same beneficiary.

Identity Verification Requirements

Reporting entities must verify the identity of a person or entity from which they receive an amount in virtual currency in respect of which they are required to keep a large virtual currency transaction record or any other transaction record, as applicable, in accordance with the Act and the Regulations.

Finally, subject to certain exemptions[2], a financial entity, or a domestic or foreign MSB must verify an entity's identity, obtain information on the ownership, control and structure of the entity and the names of all directors of an entity, as well as take reasonable measures to determine whether a person who requests that it transfer virtual currency in an amount of C$100,000 or more or a beneficiary for whom it receives virtual currency in an amount of C$100,000 or more is a politically exposed foreign person, politically exposed domestic person or a head of an international organization, a family member of one of those persons or a person who is closely associated with a politically exposed foreign person.

The amendments to the PCMLTFA and corresponding regulations will be brought into force generally on June 1, 2020, although some will not be effective until June 1, 2021. The full text of amendments to the PCMLTFA are linked above and full text of the amendments to the regulations can be found here.
