

Goodmans^{LLP} Update

FINTRAC Retracts PI-7670: Certain Merchant Servicing and Payment Processing Activities May Be MSB Activities

As we reported in our [May 4 Update](#), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* were recently amended to deem certain crowdfunding platforms and certain payment service providers to be money service businesses (MSBs) or foreign money service businesses (FMSBs), and therefore subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) regime.

In connection with these amendments, FINTRAC has retracted its position in Policy Interpretation 7670 (PI-7670), which had deemed certain payment service providers and merchant settlement providers not to be MSBs. Accordingly, persons or entities that previously relied on PI-7670 as exempting them from PCMLTFA requirements now need to reconsider whether they are subject to such requirements, and MSBs or FMSBs that engage in certain payment and merchant settlement services now need to determine whether those activities are also subject to PCMLTFA requirements.

Background

In November 2016, FINTRAC published PI-7670 wherein it took the position that persons or entities engaged in the business of any of the following, that involve the “remitting or transmitting of funds by any means or through any person, entity or electronic funds transfer network” (within the meaning of section 5(h) of the PCMLTFA), were not considered to be MSBs:

- utility payments
- payroll and commission services
- mortgage and rent payment services
- certain tuition payment services

At that time, FINTRAC’s position was that such entities were not engaged in the business of remitting or transferring funds for the sake of the service. Rather, the transfer of funds was a corollary of their actual service, which was payment processing.

FINTRAC also took the position at that time that, in certain cases, those engaged in the business of providing settlements directly to merchants on behalf of the merchants’ customers for the purchase of goods and services were not considered to be MSBs, as the transfer of funds was performed only as a result of merchant services offered.

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FINTRAC's Retraction of PI-7670

FINTRAC has retracted its position in PI-7670. Recognizing that payment services are not a prescribed service under the PCMLTFA, FINTRAC's updated position is that persons or entities that provide invoice payment services or payment services for goods and services are engaged in the business of remitting or transmitting funds, or dealing in virtual currency.

Therefore, if a person's or entity's activities include invoice payment services or payment services for goods and services, they are considered to be engaged in providing MSB services and are subject to the PCMLTFA as a MSB or FMSB (subject to additional criteria).

Invoice Payment Services

A person or entity is providing invoice payment services when they act as an intermediary between a payer and a payee to make payments to invoices, such as those pertaining to utilities, payroll and commission, mortgage and rent, or tuition.

A person or entity that solely receives payments on behalf of the payee to settle a debt, and does not further transfer the payment instructions to the original payee, does not provide invoice payment services and is not subject to PCMLTFA requirements.

Payment Services for Goods and Services

A person or entity is providing payment services for goods or services when:

- they receive payment instructions and act as an intermediary between a payer purchasing goods or services and a payee supplying goods or services;
- the payer consents to make the payment for the goods or services through them; and
- the payee has an agreement with them to have access to the transfers carried out as payment for the goods or services.

The following do not provide payment services for goods or services and are not subject to PCMLTFA requirements:

- a person or entity that solely accepts a payment for goods or services that they supplied to their own customer; and
- a person or entity that solely provides hardware (for example, a physical payment terminal), and does not offer any other associated payment services.

Looking Forward

In retracting PI-7670, FINTRAC has expanded the scope of persons and entities that are subject to the PCMLTFA.

For further information and to ensure compliance with the amended regulatory framework, please contact any member of our [Financial Services Regulatory Group](#).

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