

Goodmans^{LLP} Update

Amendments to Anti-Money Laundering Regulations Impose New Obligations for Certain Crowdfunding Platforms and Payment Service Providers

Recent amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* (collectively, the “**Amended Regulations**”) are now in force.

Notably, certain crowdfunding platforms and certain payment service providers (PSPs) are now considered to be money service businesses (MSBs) or foreign money service businesses (FMSBs), and will be subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) regime. This means such entities must register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), develop and maintain a compliance program, and report certain transactions to FINTRAC.

Background

On February 14, 2022, in response to the illegal blockades taking place across Canada, which were in part funded through crowdfunding platforms and payment service providers (PSPs), the Government of Canada declared a public order emergency, invoking the *Emergencies Act* for the first time in Canadian history. In addition to the *Emergencies Act*, the Government of Canada enacted an *Emergency Economic Measures Order* and related *Emergency Measures Regulations*.

While the emergency measures were operative, new obligations were imposed on PSPs, including crowdfunding sites and financial services providers. One such obligation required crowdfunding platforms and PSPs to report to FINTRAC financial transactions involving a “designated person”. They were also required to comply with certain sections of the PCMLTFA applicable to MSBs. These measures were regarded as necessary since crowdfunding platforms and some PSPs lacked oversight and were not at the time subject to the PCMLTFA regime.

These emergency measures were revoked on February 23, 2022.

The Amended Regulations

The stated objective of the Amended Regulations is to “contribute to the safety and security of Canadians by taking measures to mitigate the money laundering and terrorist financing risks posed by crowdfunding platforms and payment service providers.” The amendments came into force on April 5, 2022.

Crowdfunding Platforms

Certain crowdfunding platforms are now subject to record keeping, identity verification, and suspicious transactions reporting to FINTRAC.

The newly added definitions of “crowdfunding platform” and “crowdfunding platform services” appearing in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* are specifically tied to donations:

- *Crowdfunding platform* is defined as a “website or an application or other software that is used to raise funds or virtual currency through donations.”

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- *Crowdfunding platform services* are defined as “the provision and maintenance of a crowdfunding platform for use by other persons or entities to raise funds or virtual currency for themselves or for persons or entities specified by them.”

Obligations imposed on crowdfunding platforms are those that already apply to MSBs generally, with some additions to reflect the unique nature of their activities. For example, crowdfunding platforms are required to keep records in respect of:

- the person or entity to whom they are providing services
- the purpose for which the funds (or virtual currency) are being raised
- who the funds or virtual currency are being raised for

They are also required to identify any person or entity that makes a donation using such platform in an amount of Cdn1,000 or more.

Payment Service Providers and Amendments to Definition of EFT

Changes made to the definition of “electronic funds transfer” (EFT) impact several PSPs that were not previously subject to the PCMLTFA regime.

Before the amendments, the definition of EFT expressly excluded instructions for a transfer of funds “that is carried out by means of a credit or debit card or a prepaid payment product if the beneficiary has an agreement with the payment service provider that permits payment by that means for the provision of goods and services”. This exclusion has now been removed, which means that regulatory obligations now apply to payment service providers engaged in these activities.

Any EFT sent by MSBs for payment processing activities will now be subject to:

- record keeping for EFTs over Cdn1,000
- reporting for cross-border EFTs over Cdn1,000 in a single transaction
- client identification for EFTs over Cdn1,000
- a politically exposed person (PEP) determination for cross-border transfers of over Cdn100,000
- travel rules for cross-border EFTs over Cdn1,000 or domestic EFTs sent by the Automated Clearing Settlement System

Looking Forward

These changes significantly expand the scope of Canadian anti-money laundering legislation and the entities that are now subject to it. Recognizing that difficulties may arise in satisfying these obligations, FINTRAC stated it will be reasonable in its enforcement while reporting entities familiarize themselves with the new amendments.

For further information about the Amended Regulations or how to ensure compliance with the new regulatory framework, please contact any member of our [Financial Services Regulatory Group](#).

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