Confronting money laundering and terrorist financing: Standing Committee report summary

February 11, 2019

The Standing Committee on Finance (the Committee), in its recently published report, "*Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*" (the Report), asserts that Canada's anti-money laundering and terrorist financing initiatives need to be reformed. The Committee made 32 recommendations, most of which can be grouped into the categories of information gathering, increased regulatory scope, and enforcement.

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is the regulatory body responsible for facilitating the detection and prevention of money laundering and terrorist financing. It oversees compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

Every five years the Committee reviews the PCMLTFA. This year's report noted that Canada's anti-money laundering policies are lax compared to the United Kingdom (UK) and the United States (US). This bulletin summarizes the overarching themes of the Report, emphasizing (i) beneficial ownership, (ii) exchange of information and privacy rights, and (iii) virtual currency.

(i) Beneficial ownership and gaps in information gathering

The Report suggests that more information is required to supplement gaps in the regulatory regime. Particularly, the Committee calls attention to the lack of information collected on beneficial owners (those who own or control, directly or indirectly, a minimum 25 percent share of an entity), and the need to involve sectors that are not yet subject to the reporting requirements under FINTRAC.

The Committee recommends that the federal government work with the provinces and territories to create a pan-Canadian "beneficial ownership registry," to collect information on such individuals and entities that are currently flying below the regulatory regime's radar. Under this proposal, beneficial owners of trusts and foreign companies who own property in Canada would also be required to register.

Information gathered through this proposed registry would be available only to certain agencies, such as FINTRAC, the Canada Revenue Agency, and the Canadian Border Services Agency, and would not be publicly available.

The Department of Finance recognized the challenges around beneficial ownership – balancing the need for corporate transparency with the lack of "official documents" produced by private companies – in its December 2017 review of the Anti-Money Laundering and Anti-Terrorist Financing Regime. (See our summary of that review here). That recognition has been reflected in proposed regulatory changes, notably in Bill C-86, (the *Budget Implementation Act, 2018, No.2*). The Committee echoes that legislative proposal, and recommends amending corporate statutes to ensure that corporations hold accurate and current information on beneficial owners. These changes have already received a

commitment from the federal and provincial Minsters of Finance, and are expected to be in force by July 1, 2019.

Additionally, the Committee has called for a clearer and more unified definition of politically exposed person (PEP). The Committee recognizes the definition of PEP is overly broad and, therefore, creates ambiguity and inconsistencies.

To ensure the completeness of proposed beneficial ownership and PEP information, the Report recommends that all reporting entities collect such information. This prospective thoroughness is further magnified by the Committee's suggestion that additional sectors be subject to PCMLTFA reporting requirements. This would include "no name" automated teller machines, mortgage insurers, land registries, title insurance companies, armoured cars and dealers of luxury goods. The Committee suggests the legal profession be included in this regime, but because of solicitor-client privilege, it is unclear whether this is constitutionally viable.

(ii) Exchange of information and privacy rights

Another noteworthy development from this Report is the call for greater unification to improve information sharing between government entities, with, and within, the private sector. This requires a delicate balance between information sharing and ensuring conformity with privacy rights. To give greater effect to anti-money laundering initiatives, the Committee suggests the government amend the *Criminal Code* and *Privacy Act* to better facilitate money laundering investigations.

As between government entities, the Committee recommends reviewing the US's "third agency rule," which, in effect, permits government agencies to share information with one another as long as the recipient department or agency does not itself share this information with another department or agency. Although this may limit the ripple effect of information disbursement, it could also suppress the very communication the Committee intends to facilitate.

While FINTRAC publishes information in the form of studies and trends, the Report calls for more targeted information sharing and effective two-way communication. Reporting entities view FINTRAC as a black box; it gathers and holds information but little is communicated back to the entities. Communicating feedback, best practices, and long-term trends will help unify efforts to prevent money laundering and terrorist financing.

Increased communication would allow FINTRAC to build a reportable case database and clarify suspicious activities before referring conduct to law enforcement. Nevertheless, the Report recognizes that oversight is necessary. FINTRAC should be notified of any information sharing between private entities, and this information should only be used with the intention of identifying terrorist financing or money laundering.

(iii) Virtual currency

The current cryptocurrency regulatory framework, or rather lack thereof, presents challenges to ensuring that crypto assets are not being used as pawns for criminal activity. The proposed regulations suggest that crypto-exchanges be regulated as Money Service Businesses (MSBs),[1] therefore any person or entities dealing in virtual currencies would be required to implement a full compliance program and register with FINTRAC. Additionally, reporting entities that receive CAN$10,000 or more in virtual currency will have to record and report such transactions. This recommendation is consistent with regulatory initiatives of other jurisdictions like the US. If the proposed regulations, published by the Department of Finance on June 9, 2018 come into force, the Canadian crypto-industry will face greater oversight.

(iv) Conclusion

If implemented, these recommendations have the potential to significantly expand Canada's anti-money laundering and terrorist financing regime. Entities in already regulated industries and those the Report proposes to include in this regime should be attentive to further developments.

For more information, please contact Tracy Molino.

---

1 According to the Financial Transactions and Reports Analysis Centre of Canada MSBs include companies that offer foreign exchange dealing, money transferring, and cashing or selling money orders or travelers' cheques to the public.

Your Key Contacts

Tracy Molino
Counsel, Toronto
D +1 416 862 3417
tracy.molino@dentons.com