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The PCMLTFA is growing (again)—here's what you need to know

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On July 10, 2019, the Department of Finance released its amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). The amendments, which were first proposed back in June 2018, are designed to help Canada keep pace in an ever-changing money laundering (ML) and terrorist financing (TF) environment and ensure our regulations are aligned with those around the world.

While current reporting entities—including financial institutions, credit unions, casinos, money services businesses (MSBs), dealers in precious metals, real estate brokers or sales representatives, insurance companies and others—will inevitably be impacted by these changes, they're not an isolated group. In fact, many industries and businesses that previously did not fall under PCMLTFA regulations will now find themselves subjected to client identification, recordkeeping and reporting requirements—namely, virtual currency businesses, foreign money services businesses (FMSBs) and businesses that both issue and sell prepaid cards. In some cases, determining whether you fall into one of these categories may not be clear, particularly since the world of virtual currency is constantly evolving.

Even businesses well-versed in the world of PCMLTFA regulations will be wise to carefully review the new amendments and identify potential gaps in their controls, risk assessments and training programs as rules surrounding know-your-client (KYC) requirements, reporting, beneficial ownership and reporting under the 24-hour rule have changed.

Given the breadth of these changes, the government is not expecting businesses to create or overhaul their PCMLTFA frameworks overnight. Rather, the Department of Finance is

rolling out compliance deadlines in stages, with some coming into effect in June 2020 and others in June 2021. The only exception to this rule is around identity documentation—a change that comes into effect immediately. Previously, businesses were required to confirm the identity of a customer with "original, valid and current" documentation. Under the new amendments, scanned or photocopied documents are now permissible, as long as it can be determined that they are "authentic."

While the regulatory amendments are rather extensive—and reaching out to your Grant Thornton LLP advisor is probably the best plan of action to determine if, and how, they affect your business—below is a high-level overview of the businesses that are impacted by the new regulations and what the amendments could mean to you.

Which new business sectors are affected?

Virtual currency dealers

The changes: Under the new regulations, virtual currency (VC) is defined as "a digital representation of value that can be used for payment or investment purposes." To meet the criteria as a VC, a form of currency must not be a fiat currency (a government-issued currency that is not backed by a physical commodity, such as gold or silver). It also must either

- be able to be readily exchanged for funds (or be exchanged for another VC that could then be readily exchanged for funds); or
- include "a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value."

The fine print: There are two distinct exclusions to this definition. Specifically, a VC dealer does not fall under the new regulations if it

- is using a VC solely in a self-contained "closed-loop" environment where the VC is not exchangeable for funds or other VCs (such as non-exchangeable digital currencies used in video games like Clash of Clans); or
- is using a VC that can be redeemed for goods and services but not easily converted into funds (such as a retail store that accepts payment in Bitcoin).

Who's impacted: You'll be affected by these regulations if you're a person or entity "dealing in virtual currency"—which includes virtual currency exchange services (i.e., an exchange of fiat virtual currency, virtual for fiat or one virtual for another) and value transfer services (i.e., the use of virtual currency to transfer value from one person/entity to another). Until now, dealers in VC have not been considered reporting entities in Canada. If you fall into this category, you're considered a financial entity, MSB or FMSB and will have until June 1, 2020 to register with FINTRAC, implement a compliance program and begin reporting any suspicious transactions.

What it all means: Once you determine your business is a "dealer in virtual currency" (which may require an interpretation from FINTRAC, if it's not completely clear), you will then have to:

- register with FINTRAC;
- develop a compliance program (including extensive written policies and procedures that will cover all the requirements described in the regulations);
- establish a risk assessment methodology to assess the ML/TF risk of each of your clients and your business as a whole;
- implement controls to mitigate your ML/TF financing risks;
- create a reporting system to help you flag, review and report suspicious transactions; and
- develop a system to capture all necessary information surrounding transactions over $10,000 (a process that will involve obtaining detailed information about all parties affected by the transaction, including all intermediaries and beneficiaries. This will require either complete cooperation by foreign businesses in supplying information on their customers or your business implementing a system that will require your customers to submit all required information on all affected parties prior to approving their transaction).

Dates to remember:

June 1, 2020: All VC dealers must register as MSBs, start reporting suspicious transactions and have a compliance program that addresses their obligations under the PCMLTFA.

June 1, 2021: All other amendments, such as those related to large VC transactions, will come into force.

Foreign MSBs

The changes: While MSBs have always been regulated in Canada, FMSBs—or MSBs that provide services to people in Canada but don't have a place of business in Canada—were previously exempt. That's no longer the case. Under the new regulations, FMSBs that are "actively" directing services to Canadians—such as those that advertise their services in Canada—will be required to meet all Canadian regulations governing MSBs. This change is meant to level the competitive playing field with domestic MSBs.

The fine print: FMSBs that are considered to only "passively" direct services in Canada—that is to say, they don't actively advertise their services to Canadians—are not required to comply with Canadian regulations.

Who's impacted: FSMBs that are actively directing services to Canadians. That being said, the term "actively" is somewhat of a grey area and, as such, may require guidance or interpretations from FINTRAC. Additionally, one potentially useful consideration is to review whether or not you have a banking relationship with a Canadian banking partner.

What it all means: Under the new amendments, all domestic and foreign MSBs will be required to fulfill similar obligations for the same activities. This includes, but isn't limited to,

- implementing compliance regimes to Canadian standards;
- registering with FINTRAC;
- exercising customer due diligence;
- reporting appropriate transactions to FINTRAC; and
- maintaining detailed records.

The one caveat is that only transactions performed or received by Canadian persons or entities fall under the FMSB regulations. This means any electronic fund transfers or exchanges of fiat or VCs conducted with or on behalf of a Canadian resident are captured.

The good news: Depending on the anti-money laundering/anti-terrorist financing (AML/ATF) requirements in your country of incorporation, you may be able to apply many of your existing AML policies and procedures to your Canadian operations. That being said, you still need to go through your existing policies with a fine-toothed comb, as the penalties for non-compliance in Canada are severe. If an FMSB fails to meet the requirements of the Act and its regulations, an administrative monetary penalty (AMP) may be issued. If that penalty isn't paid, the FMSB's registration can be revoked, making it ineligible to do business in Canada. Additionally, Canadian financial entities will be prohibited from opening or maintaining an account for, or having a correspondent banking relationship with, an unregistered FMSB.

Dates to remember:

The new rules surrounding FSMBs will come into force in **June 2021**.

Prepaid card issuers and sellers

The changes: In the past, there were no regulations surrounding issuers of open-loop prepaid payment products (e.g., prepaid Visa or Mastercard gift cards) or the businesses that sold them. The recent PCMLTFA amendments are changing all that. Now, anyone who issues or sells these products in values over $1,000 must develop and implement a series of controls to help them gather information about the purchasers or account holders of a prepaid product.

The fine print: The new requirements will apply to both fiat funds and VCs, but only when such products are purchased in amounts of $1,000 or more (either at one time or over a 24-hour period). The amendment will not apply to "closed-loop" products—those that can only be used at a particular merchant or group of merchants (e.g., the Starbucks app or a shopping centre gift card).

Who's impacted: The regulations affect the issuers of prepaid payment products as well as businesses that sell prepaid products (e.g., convenience stores). Under the amendments, these products will essentially be treated like bank accounts, in that all financial entities issuing prepaid payment products will be subject to the same customer due diligence requirements as those that offer bank accounts.

What it all means: Not only will prepaid card issuers have to implement the necessary policies and procedures to comply with the new regulations (e.g., register with FINTRAC, exercise customer due diligence, report suspicious transactions, etc.) but, in many cases, the sellers of these products will have to do so as well. This means a convenience store owner, for instance, may need to have the necessary processes and controls to facilitate the identification of prepaid card purchasers if they exceed the $1,000 threshold within a 24-hour period and to be able to facilitate the identification, and reporting, of suspicious behaviour.

Dates to remember:

The new rules surrounding open-loop, prepaid cards will come into force in **June 2021**.

The amendments: A closer look

The following amendments will come into effect June 2021.

Client identification

The changes: To simplify the client identification process, the new PCMLTFA regulations now allow reporting entities to leverage customer information from other Canadian reporting entities, as well as trustworthy foreign affiliates. Additionally, you may rely on an agent or mandatary—that is, a person or entity that is under a contract or mandate to offer services. This is intended to help avoid the time-consuming process of acquiring information directly from the customer.

What this means: In exchange for the added convenience, you must develop controls to ensure the identification records you receive from third parties are authentic.

You'll have to ensure all risk assessments address these changes moving forward, and your client identification record-keeping procedures include authorized persons of entities (including their name, address, telephone number, date of birth and occupation).

Corporate existence

The changes: Under the new amendments, when verifying corporate existence, a person or entity may refer to a certificate of incorporation, a record that is required for annual filing or the **most recent version** of any other record that confirms its existence as a corporation. This requirement is different from what was outlined in the proposed PCMLTFA amendments of 2018, which specified that any certificate of incorporation must be no more than one year old. It's believed that this change will help ensure that corporations exist at the time they open an account or conduct a financial transaction.

What this means: This amendment impacts your business's front-line. When your staff members receive documentation to confirm corporate existence, they must be looking at the most up-to-date documents. Not only will this change need to be reflected in your training manuals, but it will also introduce new risk factors that should be added to your risk assessment. For example, reporting entities that receive documentation that is not recent may need to treat that client as a higher risk.

Beneficial ownership

The changes: When reporting entities are required to determine the existence of an entity, they must obtain beneficial ownership information, take reasonable measures to confirm the accuracy of **new** information and maintain up-to-date information on an ongoing basis. Until recently, however, the Regulations did not explicitly state that reporting entities must take steps to confirm the accuracy of new information as it comes in or as it is updated over time. The amendments make this requirement explicit.

At the same time, the government has repealed the June 2016 amendments that require reporting entities to keep a record of any "reasonable measures" taken in cases where they were unsuccessful in meeting certain obligations. These amendments, which applied to beneficial ownership information along with other reporting scenarios, were seen as overly burdensome.

What this means: With the addition of the expectation to monitor beneficial ownership on an ongoing basis, you'll have to implement controls that enable you to regularly confirm this information for all your entity clients. Note, too, that as each client's beneficial ownership information changes, your risk assessment of that client will need to be updated and refreshed. Additionally, now that it's no longer necessary to report on unsuccessfully met obligations, you'll have to update your compliance program accordingly and remove such processes from your training documentation.

Politically-exposed person (PEP) determinations

The changes: Previously, a PEP determination was reserved for individuals that fell into one of four categories: a politically-exposed foreign person; a politically-exposed domestic person; head of an international organization; or a family member or close associate of these three categories. A determination was required when someone in one of these groups sent or received an international EFT of $100,000 or more.

Under the new amendments, a PEP determination will now be required for:

- a person who makes a payment of $100,000 or more to a prepaid payment product
- a person who requests a transfer of $100,000 or more in virtual currency
- a person who receives $100,000 or more in virtual currency

What this means: With the addition of three more determination scenarios, your policies and procedures will need to be updated.

Source of wealth for PEPs

The changes: Previously, reporting entities such as financial institutions, MSBs, securities dealers and insurance companies were required to establish the source of funds to be deposited, received or expected to be deposited or received by a PEP. The new amendments require reporting entities to also take reasonable measures to determine the source of the politically-exposed person's wealth.

What this means: This change will largely impact the training materials that your business uses. For instance, your staff will need to know they must now check for source of wealth when performing a PEP determination (i.e., the source from which the entire body of assets are accumulated or obtained) in addition to the "source of funds" information they've been previously collecting (e.g., income earned, credit, business transactions, etc.).

Electronic funds transfer (EFT)

The changes: There are a significant number of changes to EFT recordkeeping and reporting requirements—too many to list here. That said, below are two of the highlights:

- Businesses that send or receive a wire transfer, or that are intermediaries in a transaction, will be required to identify, keep records of and include information about the transaction. That said, intermediaries will no longer have an obligation to report an EFT. Instead, only reporting entities sending EFTs and those receiving reportable EFTs will need to file a report. **Important note:** Previously, entities initiating a transaction were exempt from submitting an EFT report if originator information was provided to their banks (the travel rule). This is no longer the case.
- MSBs and FSMBs, along with other financial entities, are now required to verify the identity of a beneficiary of EFTs of $1,000 or more (in addition to the identity of the initiator or remitter).

What this means: Previously, ML/TF regulations didn't require intermediaries of a transaction to collect information. Now, any business that acts as an intermediary will have to implement appropriate controls to track and retain the data required. As part of this process, you'll also have to update your risk assessment methodology and front-line training processes accordingly.

The 24-hour rule

The changes: The amendments regarding the 24-hour period clarify what we already knew: that multiple transactions performed by an individual within a 24-hour period are considered a single transaction for reporting purposes when they total $10,000 or more. Understanding this, the amendments emphasize that only one report needs to be submitted to FINTRAC to capture all reportable transactions within a 24-hour period (including any transactions of $10,000 or more, conductor and/or beneficiary information, and VC transactions).

What this means: This change will again require an update of your training manuals, as well as your policies and procedures so your employees know to submit a single large cash transaction or large virtual currency transaction report (LVCTR) for transactions falling under the 24-hour rule (as opposed to individual reports for each set of transactions of $10,000 or more).

Suspicious transaction reporting (STR)

The changes: Previously, reporting entities had 30 days to file a suspicious transaction report with FINTRAC. Under the new amendments, that's changed to "as soon as practicable" —which is essentially the amount of time it takes to establish reasonable grounds to suspect that a transaction is related to the commission, or attempted commission, of a ML or TF offence. Reporting entities must now also include additional information in their reports—such as ownership details of an entity—which will make the reporting process more onerous. And the Terrorist Property Reporting timeline now states that reports must be submitted "immediately" (versus the proposed amendments, which stated "without delay").

What this means: The removal of the set amount of time permitted for submitting STRs allows more interpretation as to what is considered "as soon as practicable." We suggest that once you've established reasonable grounds to suspect, you work towards submitting the STR within three business days as a form of best practice. This will require slight adjustments to your training materials, as well as your existing controls, to ensure that all STRs are submitted as expected. FINTRAC will expect STRs to be submitted promptly and will have to provide guidance on what this new timeline means.

Get started today

While you don't have to implement or revise your PCMLTFA framework immediately, the earlier you get started, the better. If you're a newly-regulated business, such as a VC business, issuer of a prepaid card or FMSB, Grant Thornton can help with the development of your compliance program—including writing your policies and procedures, designing your training programs and creating a risk assessment. If you're a business that's already regulated, we can help update your compliance programs, including your training programs, to allow you to comply with the new regulations.

If you have questions about the PCMLTFA amendments—or if you'd like to get started on a compliance program—please don't hesitate to contact your Grant Thornton advisor.

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