

## 2022 federal budget: legislative agenda reinforced with timely amendments to AML laws and other financial services regulatory developments

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In its recently-released [Annual Budget](#) (the Budget), the government of Canada announced a number of measures expected to impact the financial services industry, including key changes to financial sector legislation and anti-money laundering legislation; a review of the digitalization of money; accelerated development of a publicly accessible beneficial ownership registry; and further consultations with stakeholders in respect of credit card fees. While the Budget suggests changes to anti-money laundering legislation are forthcoming, two days before the Budget was presented, the government enacted certain changes to Canada's anti-money laundering laws, which are effective as of the registration date of April 5, 2022.

### Complaints handling

The Budget proposes to introduce legislative amendments to the *Bank Act* and the *Financial Consumer Agency of Canada Act* which will provide for a unified non-profit external complaints handling body for banks. Additional targeted measures are expected to further support this anticipated unified complaints handling system.

This announcement follows the Financial Consumer Agency of Canada's consultations on its proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks in the fall of 2021, and the publication of the final [guideline](#), which will come into effect on June 30, 2022, along with the federal financial consumer protection framework. We have [written about](#) the federal financial consumer protection framework previously.

### Digitalization of money

The Budget announced the government's intention to initiate a legislative review of the digitalization of money together with other measures intended to bolster and maintain financial sector stability and security. While the scope of this initiative is still taking shape, the first phase will target the security and stability risks posed by digital currencies including cryptocurrencies and stablecoins, and will explore the potential for a central bank digital currency in Canada.

## Anti-money laundering

In the wake of temporary changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations (the Regulations) made earlier this year under the *Emergency Act*, the Budget has placed renewed attention on Canada's AML regime. Proposed measures under the Budget include additional funding for the Financial Transactions and Reports Analysis Centre (FINTRAC) to support implementation of new requirements for crowdfunding platforms and payment service providers, as well as FINTRAC's supervision of federally regulated financial institutions, among other operational priorities. The Budget also earmarks funding to develop and design a new Canada Financial Crimes Agency and commits to accelerating the development of a searchable beneficial ownership registry by two years, which will support AML/ATF efforts, and which will now be accessible before the end of 2023. Further legislative and regulatory changes are also expected to the PCMLTFA and its Regulations to manage emerging threats and enhance the ability of authorities to detect and deter money laundering, terrorist financing, and other financial crimes.

To that end, the first of these regulatory changes, *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* came into force on April 5, 2022 (the April Amendments). The April Amendments broaden the scope of the PCMLTFA to capture "crowdfunding platform services", which 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". Any crowdfunding platform offering these services must register with FINTRAC as a money services business (MSB) or foreign MSB, and implement a full AML compliance program in accordance with the PCMLTFA.

Additionally, under the April Amendments, any MSB or foreign MSB offering crowdfunding platform services also will be required to keep an information record in respect of any persons or entities to whom crowdfunding platform services are offered; a record of the purposes for which the funds or virtual currency are being raised; and, if the person or entity for which the funds or virtual currency are being raised is different from the person or entity to whom the services are being provided, the MSB or foreign MSB must keep a record of their name and take reasonable measures to obtain their address, the nature of their principal business or their occupation and their date of birth (if applicable). MSBs and foreign MSBs offering crowdfunding services must also verify the identity of any individual or entity to whom crowdfunding platform services are offered, as well as any individual or entity that donates an amount of \$1,000 or more in funds or virtual currency.

Of note, however, is that while the emergency orders from earlier this year temporarily swept a broad swath of payment service providers under the ambit of the PCMLTFA – and while the Budget explicitly promised to extend Canada's anti-money laundering regime to payment service providers – the April Amendments only apply to crowdfunding platforms and do not prescribe any additional requirements for payment service providers (other than those payment service providers who also fall under the definition of an MSB or foreign MSB). Further amendments to the PCMLTFA intended to address payment service providers are likely forthcoming, although no such amendments have been published to date.

In addition to these changes affecting crowdfunding platforms, the April Amendments also repeal part of the definition of "electronic funds transfer" under the Regulations. Prior to the April Amendments, the definition of "electronic funds transfer" explicitly excluded any "transmission of instructions for the transfer of funds 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 good and services." The April Amendments repeal this exclusion under the definition of "electronic

funds transfer", and instead carve out electronic funds transfers carried out by means of certain credit, debit, and prepaid payment product transactions from the reporting, verification, and recordkeeping obligations of financial entities and casinos.

This means that all MSBs and foreign MSBs have recordkeeping, client identification, and reporting obligations with respect to certain debit, credit, and prepaid payment product transactions that were previously excluded from the definition of "electronic funds transfer." Accordingly, MSBs and foreign MSBs will need to revisit all recordkeeping, reporting and client verification policies for electronic funds transfers in light of the April Amendments in order to meet obligations pertaining to international electronic funds transfers carried out by means of a credit or debit card, or a prepaid payment product where the beneficiary has an agreement with the payment service provider that permits payment by that means for the provision of goods and services.

While the April Amendments came into effect when they were registered on April 5, MSBs affected by the changes will be expected to comply with the April Amendments once they are published in the Gazette on April 27. This means that MSBs have a short lead-in window to assess their compliance programs and prepare for the additional registration, reporting, recordkeeping and identification obligations.

## Reducing credit card transaction fees

The Budget commits to lowering the cost of credit card fees in a way that benefits small businesses and protects consumers' existing reward points. Consultations will continue with stakeholders on solutions to lower the cost of processing credit card transactions for merchants, although it is unclear what measures would be taken in respect of reward programs, which have to date been the subject of provincial, and not federal, regulation.

## Financial sector legislative measures

The Budget proposes to amend the *Bank Act*, *Insurance Companies Act*, *Trust and Loan Companies Act*, and *Canada Deposit Insurance Corporation Act*. Targeted amendments of these statutes will:

- facilitate access to capital for property and casualty insurance companies;
- streamline approval requirements for financial sector transactions;
- adjust time-limited permissions of investment regimes (which may mean a tightening of the investment approval regime);
- update proxy solicitation provisions for certain financial institutions; and
- strengthen the governance of the Canada Deposit Insurance Corporation.

## Next Steps

Other than the April Amendments, which as noted were actually passed before the Budget, it remains to be seen which of the above government priorities will result in legislative changes. We will continue to monitor any further legislative and regulatory developments on this topic.