

# Goodmans<sup>LLP</sup> Update

## Virtual Currency Dealers Must Register as MSBs by June 1, 2020: Important Changes to Canada's Anti-Money Laundering Regime

Not all deadlines have been paused by the COVID-19 pandemic. Entities dealing in virtual currencies (defined below) must register as a money services business (MSB) with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) by **June 1, 2020** and comply with a variety of new requirements, including implementing a compliance program and reporting suspicious transactions.<sup>1</sup>

The new requirements flow from several important changes to the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “**Act**”), which will come into force on June 1, 2020 and June 1, 2021 (the “**Amendments**”). The breadth of activities that may be caught by the Amendments is wide, and non-compliance can result in significant monetary penalties.

### Background to the Amendments

The Amendments were first proposed in 2015 to update and strengthen Canada's anti-money laundering and anti-terrorist financing regime and achieve other related objectives.<sup>2</sup> The proposed Amendments were refined between 2015 and 2020, and expanded in recognition of the need to regulate novel risks arising out of emergent technologies including, in particular, virtual (non-fiat) currency. Beginning June 2020, the Amendments will implement a national framework addressing the use of cryptocurrencies and other digital currencies, thereby increasing Canada's level of compliance with international anti-money laundering and anti-terrorist financing standards.<sup>3</sup>

### Entities “Dealing in Virtual Currencies” Must Register as MSBs by June 1, 2020

#### *Which Companies Must Register as a MSB*

At present, the Act does not regulate the use of virtual currency directly and does not require businesses dealing in virtual currency to register as a MSB (unless the business otherwise qualifies as a MSB). Starting June 1, 2020, however, the definition of “MSB” will be expanded to specifically include those entities “dealing in virtual currencies.” Accordingly, such entities will be required to register as MSBs by June 1, 2020, and will thereafter be subject to obligations similar to those of existing reporting entities.

The phrase “dealing in” is not specifically defined by the Amendments, but the definition of “virtual currencies” appears sufficiently broad to capture most virtual currency exchange services, virtual currency transfer services and custodial wallet providers, among a variety of other business models. The term “virtual currency” is defined as:

- a. a digital representation of value that can be used for payment or investment purposes that is not a

<sup>1</sup> See our July 16, 2019 Update, *Cryptocurrency Exchanges to Fall Under Canadian Financial Reporting Regime*.

<sup>2</sup> See our July 20, 2015 Update, *Canadian Federal Government Proposes Amendments to Anti-Money Laundering Regulations*.

<sup>3</sup> Canada's stated objective is increased compliance with the *Recommendations of the Financial Action Task Force*.

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The authors would like to thank Clara Ryu, Student-at-Law, and Anita Susac, Research Librarian, for their assistance in writing this Update.

fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or

- b. a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in paragraph (a).

Businesses that use or are involved with virtual currency, even indirectly, should carefully consider this definition and whether it may apply to them.

## *What Is Required to Register as a MSB?*

To register as an MSB, an entity must first:

- develop and apply written compliance policies and procedures that are kept up to date and approved by a senior officer;
- appoint a compliance officer responsible for implementing and overseeing the compliance program;
- apply and document a risk assessment, including mitigation measures and strategies;
- develop and maintain a written training program for employees, agents, and others authorized to act on its behalf; and
- review its compliance program every two years to test its effectiveness.

At present, it is difficult to predict how long it will take to successfully register as a MSB or whether FINTRAC will extend the June 1, 2020 deadline in light of the COVID-19 pandemic. Entities dealing in virtual currency, if they have not already done so, should consider beginning the registration process *immediately*. Failure to comply with the MSB registration requirements may lead to significant administrative monetary penalties.<sup>4</sup>

## *Other Obligations Beginning June 1, 2021*

In addition to the new registration obligations, certain other Amendments are scheduled to take effect on June 1, 2021 that will apply to MSBs dealing in virtual currency. Specifically, MSBs will be required to:

- report suspicious transactions;
- conduct know-your-client verification in respect of the exchange of any amount of virtual currency for fiat currency, fiat currency for virtual currency or one virtual currency for another;<sup>5</sup>
- maintain a “large virtual currency transaction record” for every CAD \$10,000 or more in virtual currency received in a “single transaction” (which can include multiple smaller transactions that occur within 24 hours); and
- determine whether a person who requests a transfer of CAD \$100,000 or more in virtual currency (or is a beneficiary of virtual currency of CAD \$100,000 or more) is a politically exposed person.<sup>6</sup>

These requirements have the potential to create significant compliance costs for regulated entities. Businesses that deal in virtual currency should plan ahead.

## *More Amendments Forthcoming*

The Department of Finance continues to refine the Act. On February 15, 2020, [draft amending regulations](#) were released that would, if

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<sup>4</sup> Up to \$100,000 for each “serious” violation.

<sup>5</sup> This is referred to as a “virtual currency exchange transaction ticket”, and must set out, among other things, the number of every account that is affected by the transaction, the type of account and the name of each account holder. In the case of a transaction of \$1,000 or more, an entity must also collect the name and address of the person or entity that requests the exchange, the nature of their principal business or their occupation and, in the case of a person, their date of birth.

<sup>6</sup> The terms “politically exposed domestic person” and “politically exposed foreign person” are defined in the Act.

enacted, further amend the Amendments. These new amendments propose to, among other things, import the long-standing “travel rule”<sup>7</sup> on businesses dealing in virtual currency. Application of the travel rule to virtual currencies, which are international by nature, is likely to be technologically complex.

Regulated entities must remain vigilant as further updates are likely to be proposed to the Act in the future.<sup>8</sup>

## Implications – the E-Sports Example

The Amendments may also have far-reaching ramifications that, while perhaps not immediately apparent, may require certain industries to rethink both longstanding and modern business models. This includes traditional and non-traditional financial institutions, as well as burgeoning industries like e-sports and online gaming.<sup>9</sup>

The Amendments limit the definition of virtual currency to “value” that can be “readily exchanged” for fiat currency or other virtual currency. From the e-sports perspective, this definition appears to exclude circumstances where, for example, users exchange fiat currency for virtual items that exist solely within the game’s self-contained universe (even if these items could theoretically be resold in real life). However, it is not difficult to imagine a scenario where an online game permits users to purchase or obtain in-game currency, items or skins that can be later exchanged or traded for fiat currency in a manner that obfuscates the original source of funds. E-sports and online gaming businesses should carefully consider the Act when developing new platforms involving exchanges of funds.

## What Comes Next?

The Amendments are relevant to a variety of sectors and industries in addition to those businesses dealing in virtual currency, including traditional and non-traditional financial institutions. Other Amendments will be the subject of future Updates.

All Updates are available at [www.goodmans.ca](http://www.goodmans.ca). This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our White Collar Risk Management & Investigations and Banking & Finance Groups.

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<sup>7</sup> The travel rule requires the exchange of originator/beneficiary information by entities transferring funds across borders.

<sup>8</sup> The Regulatory Impact Statement for the 2020 amendments begins: The Canadian Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regime must continually be updated to remain responsive to emerging risks and evolving international standards.

<sup>9</sup> Several commentators have pointed out the potential dangers and risks of money-laundering through online games. See Anton Moiseienko & Kayla Izenman, “Gaming the System: Money Laundering Through Online Games” (2019) 39:9 RUSI Newsbrief ([available online](#)), and Jean-Loup Richet, “Laundering Money Online: a review of cybercriminals’ methods” (2013) Tools and Resources for Anti-Corruption Knowledge, *United Nations Office on Drugs and Crime* ([available online](#)).