

Goodmans^{LLP} Update

Federal Government Releases Draft Retail Payments Activities Act

On April 30, as part of the 2021 federal budget, Canada's Deputy Prime Minister and Minister of Finance (the "Minister") introduced Bill C-30, *An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures*¹ (the "Bill") for first reading in Parliament. Included in the Bill is the initial draft of the *Retail Payment Activities Act* (RPAA), which sets out the first retail payments oversight framework to apply to retail payment providers in Canada. The purpose of the draft legislation is to implement the framework first announced in the federal 2017 Consultation Paper: *A New Retail Payments Oversight Framework*.²

By enacting the RPAA, the federal government aims to safeguard and streamline the movement of funds, address national security risks that may be posed by payment service providers, mitigate certain operational risks, and "foster competition and innovation in payment services by building confidence in the retail payment sector".³ The RPAA would introduce and integrate non-traditional financial services participants, including financial technology and payment technology companies (fintechs and paytechs) into the larger Canadian payments landscape. Notably, the RPAA emerges in the context of a number of regulatory and other initiatives in Canada's payments industry, including the payments modernization initiative, ongoing open-banking consultations and amendments to the *Payment Clearing and Settlement Act*.

General Application of the RPAA

The RPAA would apply to "retail payment activity" that is performed for an end user in Canada by a Canadian "payment service provider" (PSP) or by a PSP outside of Canada that "directs" retail payment activities at individuals or entities in Canada. To "direct" certain payment activities in this context may include (a) marketing or advertising to Canadians, (b) using a ".ca" domain name, or (c) being listed in the Canadian business directory.⁴

"Retail Payment Activity" is defined in the RPAA as a payment function that is performed in relation to an electronic funds transfer that is made in the currency of Canada or another country or using a unit that meets prescribed criteria.

A "Payment Function" is broadly defined as:

- the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users;
- the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity;

¹ C-30, *An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures*, 2nd Sess., 43rd Parl., 2021, (first reading 30 April 2021).

² Department of Finance Canada, "A New Retail Payments Oversight Framework" (6 October 2017), online: *Government of Canada* <<https://www.canada.ca/en/department-finance/programs/consultations/2017/new-retail-payments-oversight-framework.html>>.

³ *Supra* note 1 at cl 178.

⁴ Financial Transactions and Reports Analysis Centre of Canada, "Guidance Glossary" (4 May 2021), online: *FINTRAC* <<https://www.fintrac-canafe.gc.ca/guidance-directives/glossary-glossaire/1-eng>>.

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- the initiation of an electronic funds transfer at the request of an end user;
- the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer; or
- the provision of clearing or settlement services.

A “Payment Service Provider” or “PSP” is an individual or entity that performs payment functions as a service or business activity that is not incidental to another service or business activity. Establishing exactly what is “incidental” in this context will require some interpretation or clarification in future revisions of the RPPA or in regulations.

Exempt Activities

Numerous activities will be exempt from the RPPA's general application. Notably, the proposed legislation exempts payment functions that are performed in relation to an electronic funds transfer that is made with an instrument that is issued by a merchant — or by an issuer that is not a PSP and has an agreement with a group of merchants — and that allows the holder of the instrument to purchase goods or services only from the issuing merchant or any merchant in the group. This provision will effectively exclude the use of closed-loop gift cards from the RPPA's application. Other exempt activities include payment functions giving effect to eligible *Canada Deposit Insurance Corporation Act* contracts, cash withdrawals from an ATM, payment functions performed using a system under section 4 of the *Payment Clearing and Settlement Act* (including Interac e-Transfer), and payment functions performed exclusively between affiliates.

Exempt Entities

The RPPA exempts specific regulated financial institutions (banks, authorized foreign banks, credit society, and savings and credit union) and entities already governed by other legislation (companies governed by the *Insurance Companies Act* (Canada) or the *Trust and Loan Companies Act* (Canada), and a trust company regulated by a provincial act).

Further exemptions may be prescribed in the RPPA regulations.

Registration and Other Requirements

Persons currently acting as PSPs will be required to apply to be registered by the Bank of Canada (the “**Bank**”) within the designated transitional period and new PSPs will be required to apply to be registered by the Bank before conducting any retail payment activities. The Bank will maintain a public registry of registered PSPs, PSPs whose applications were refused, and PSPs whose applications were revoked.

At present, most PSPs are required to register as money services businesses Canada's anti-money laundering legislation (the “**PCMLTFA**”) and to comply with certain record-keeping and reporting obligations. These entities will also be required to register as PSPs under the RPPA, creating the possibility of parallel compliance requirements under the RPPA and PCMLTFA. It is generally anticipated that regulatory guidance will be published that addresses the interoperability of the RPPA and PCMLTFA.

In addition to registration requirements, the RPPA sets out disclosure requirements for PSPs, including the filing of an annual report to the Bank, and specific requirements regarding the holding and handling of end user funds. PSPs that perform retail payment activities must also implement and maintain a risk management and incident response framework that meets certain prescribed requirements.

Looking Forward

The Goodmans Financial Services Regulatory Group will continue to monitor legislative and regulatory developments and assist our clients to navigate the implications of Bill C-30. For more information related to the Bill, please contact the authors of this article or any member of our [Financial Services Regulatory Group](#).

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