

Ministry of Finance
BRIEFING DOCUMENT

To: Honourable Carole James
Minister of Finance
and Deputy Premier

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TITLE: Money Services Businesses Consultation – Summary

PURPOSE:

(X) FOR INFORMATION

COMMENTS: A summary of the submissions received from the public and stakeholders during the money services businesses consultation from March 6, to April 30.

DATE PREPARED: June 8, 2020

TITLE: Money Services Businesses Consultation – Summary

ISSUE: Summary of the submissions received during the money services businesses consultation

BACKGROUND:

From March 6 through April 30, the Ministry of Finance held a public consultation on potentially establishing a regulatory framework for money service businesses (MSBs).

BC received 8 submissions. Because of the low number of submissions (likely due to the COVID-19 pandemic) staff held additional conference calls with various stakeholders after the consultation deadline. This is expected to continue throughout the policy development process.

DISCUSSION:

A variety of stakeholders submitted feedback and were contacted during and after the consultation. Stakeholder comments centered around 4 major themes:

1. Regulatory Burden and Overlap;
2. Unregistered MSBs;
3. De-risking; and
4. White-Label ATMs.

The following is the feedback received from stakeholders grouped according to theme.

1. Regulatory Burden and Overlap

- The Canadian MSB Association (CMSBA) and other medium-sized BC-based MSBs are generally not opposed to BC adopting a licensing regime similar to Quebec's; however, they had some concerns that a BC licensing regime may increase regulatory burdens on existing MSBs.
- There is some concern that a provincial regime may reduce the number of MSBs operating in BC by driving them out of B.C. However at least one MSB felt that this would be offset with a more competitive and trusted industry that will benefit consumers and support anti-money laundering (AML) efforts.
- The Money Services Round Table (TMSRT), a U.S.-based industry group for larger money service businesses including Western Union Financial Services, MoneyGram

and Amex, as well as the Electronics Transactions Association (ETA) and PayPal Canada expressed concern that MSBs are already comprehensively regulated federally by FINTRAC.

- FINTRAC provided us with 7 “lessons learned” from experiences working with Quebec’s regime intended to address overlap:
 1. Align a provincial MSB definition with FINTRAC’s definition to reduce confusion/complexity.
 2. Have similar timelines for same business processes (ex. licensing renewals).
 3. Align eligibility criteria (ex. criminal/police records).
 4. Licensing costs – FINTRAC does not charge fees (keep this in mind).
 5. Have an MOU for sharing information (the existing FINTRAC-FSA MOU would need to be expanded to include MSBs).
 6. Registry should be similar and publicly available/searchable.
 7. Avoid duplication of compliance activities/timing.
- FINTRAC reports that it and the Quebec regime are working well together so far with no stakeholder complaints/confusion.
- FINTRAC notes that duplication of registration would not be burdensome, but compliance duplication would be.
- The CMSBA and medium sized money service businesses thought Financial Services Authority (FSA) should be the provincial regulator because it has experience regulating financial services entities.

2. Unregistered MSBs

- CSMBAs’ and mid-sized BC-MSBs’ main concerns were with unlicensed (with FINTRAC) MSBs operating without any oversight and skirting existing laws/regulations – although they have some skepticism that further regulation will solve this issue.
- They support any local specialized unit that could effectively investigate, prosecute and shut down unlicensed MSBs.
- They also suggest having a dedicated “whistle-blowing information outlet” for reporting unregistered MSBs while protecting the reporting individual’s anonymity.
- CMSBA asserts that newly registered MSBs may operate for two years (or more) before being identified as noncompliant, i.e. before FINTRAC conducts its first examination and they note that Quebec’s Act has resolved this issue (this assertion is likely based on information gathered by the Quebec regulatory authority examining newly registered MSBs sooner).

- The CMSBA strongly encourages future provincial legislation to establish a way to confirm evidence of MSB regulatory compliance as soon as it becomes registered.
- Revenue Quebec sent a Quebec *Money Services Businesses Act* (QMSBA) implementation report with the following notes:
 - QMSBA's impact on involvement of criminals in MSBs is most likely small. QMSBA obligations such as identification requirements/record keeping do not act as a disincentive to money laundering.
 - They have evidence that suspect MSBs keep operating using nominees or the principal-agent model.
 - The "good moral" principle (a provision in the QMSBA) is difficult to apply and can be challenged by MSBs.
 - Issuing a license by the Quebec regulatory authority (now Revenue Quebec) may even facilitate ML/tax evasion by giving the suspect MSBs the appearance of legitimacy.
 - Resources needed to investigate violations of QMSBA are disproportionate for the results that have been obtained thus far.
 - Ignorance of the law is an issue (e.g. language barriers).
 - Police make little use of QMSBA in their interventions. More police investigative powers are needed, e.g. search, seizure, and forfeiture.

3. De-risking by banks and credit unions

- The CMSBA and several BC-based MSBs reported that the most significant trend and challenge for MSBs is accessing the banking system, which impacts their ability to provide affordable and convenient products and services.
- It is extremely difficult/practically impossible for MSBs to obtain a banking relationship with Canadian banks or BC credit unions because MSBs exceed these institutions risk tolerance and/or they see MSBs as a competitor.
- Existing MSB banking relationships may be very restrictive in nature/are costly, and there is always a concern that a bank will close the accounts and exit the banking relationship.
- They suggest that the BC Government should enact legislation to require BC credit unions to minimize de-risking.
- Banks/credit unions should be required to provide reasons for rejecting MSBs and MSBs should have redress/appeal process if they are unable to obtain an account with a BC financial institution.

- CMSBA suggested that BC financial institutions should be required to remove federally/provincially registered MSBs from their “high-risk” AML category if they have no history of non-compliance.
- The Money Services Round Table (large U.S.-based MSBs) stated that it was unclear how a provincial MSB regime would provide any benefits regarding de-risking.

4. White-Label ATMs

- Ministry staff have held conference calls with the ATM Industry Association (ATMIA), Interac, Finance Canada, the RCMP and Revenue Quebec regarding “White label” ATMs (WLATMs).

ATM Industry Association (ATMIA)

- In the U.S., sponsor banks are required for WLATMs to operate and they must have a direct relationship with the WLATMs and track their activities.
- ATMIA assert that WLATMs are an inefficient way to launder money due to the small withdrawal amounts and a transparent record of all transactions being available (including loading cash & withdrawals).
- During the consultation: ATMIA asserted that ATM records cannot be falsified/are time stamped by a third-party, and cash loaded into a WLATM will ultimately be in/taken out of a bank account.
- Interac’s rules are substantial: like opening a new bank account (same KYC requirements), transaction data is auto-downloaded to a 3rd-party.
- Quebec’s WLATM regime is onerous w/ criminal checks/licensing costs.

Interac

- Interac is the leading ATM network in Canada. Some smaller networks exist which are run by credit unions & VISA/MC.
- Interac is subject to federal oversight, including Financial Consumer Agency of Canada and the Bank of Canada.
- Interac conducts annual compliance exercises with audits and reports from an independent auditor to identify gaps/develop corrective action plans. They have not found significant issues.
- Interac and the Quebec regime look at similar outcomes/risks.
- Interac feels their rules are effective regarding ATMs; they collaborate with law enforcement.

Finance Canada

- Finance Canada has always viewed WLATMs as high risk for money laundering.
- Canada is unique in that the Competition Bureau deemed banks could not have a monopoly on ATMs; while in other jurisdictions ATMs need to be bank-owned/have a relationship with a bank.
- Finance Canada had negotiations with Interac and convinced Interac to create a voluntary code in the early 2010s; however, the department staff remains concerned despite the code being established.
- Interac created a special unit to work with RCMP, who has reported challenges with info sharing with Interac.

RCMP

- The RCMP consider WLATMS as vulnerable to money laundering because there is little/no oversight.
- RCMP works with Interac on a case-by-case basis, but this is reactive, not proactive.
- There is also a public safety issue, as WLATMs are often in public areas.
- Banks will only report suspicious transactions to FINTRAC, and in the RCMP's view this is easily avoidable by owners of WLATMs.
- RCMP is aware of money laundering activities with WLATM through specific cases, and intelligence research.
- Investigations are challenging and a regulatory regime would help to identify violations/act as a deterrent.

Revenue Quebec

- Quebec and Montreal in particular had increasing drugs related criminal activities by organized crime groups and associated money laundering as well as a coinciding proliferation of WLATMs in Montreal bars and restaurants. This coincidence led Quebec to review the situation and ultimately regulate WLATMs.
- WLATM regulatory authority moved from the AMF to Revenue Quebec partly due to the AMF's lack of inspectors.
- Revenue Quebec suggested that it would be possible for BC to have a "lighter touch" regulatory regime for WLATMs.
- They told us that it is unclear if the regime is working, although it certainly makes it more difficult to launder money; however, WLATM regulation does pose volume problem with sprawling investigations with complex corporate structures.