

# Canada plans to bring new entities under *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

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New classes of entities could soon have obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). Draft regulations (the Regulations) released by the Government of Canada on November 30, 2024 outline the government's intention to introduce anti-money laundering (AML) and anti-terrorist financing (ATF) requirements for factoring companies, cheque-cashing businesses, and financing and leasing entities, along with changes to beneficial ownership reporting and new obligations for importers and exporters.

The Regulations would enhance Canada's AML and ATF legislative framework and align the country with Financial Action Task Force (FATF) requirements ahead of its next evaluation in 2025/2026.

## What you need to know

- The Regulations would introduce obligations under the PCMLTFA for factoring companies, cheque-cashing companies, and financing and leasing entities.
- Reporting entities would be required to report material discrepancies between their records and a company's registry filings to the federal beneficial ownership registry in certain circumstances.
- Traders would have new declaration requirements when importing or exporting goods. Reporting entities would be empowered to share information with each other to detect and deter money laundering, terrorist financing, and sanctions evasion.
- The government is currently seeking feedback on the Regulations, with the consultation period closing on December 30, 2024.

## New regulated entities

The most consequential amendment introduced by the Regulations is the extension of AML/ATF obligations to factoring companies, cheque-cashing businesses and financing and leasing entities, as announced in the 2024 budget (for [more on the proposed amendments to the Budget Implementation Act, 2024, No. 1](#), read our bulletin). The changes correct one of the key deficiencies highlighted during the last FATF evaluation in 2016.

## Factoring companies

A “factor” is defined as a person or entity that is engaged in the business of factoring, with or without recourse against the assignor. Factoring companies supply liquidity to a client upfront in exchange for the cash value of a certain amount of the client’s accounts receivable, plus commission and fees.

The Regulations would prescribe factoring companies as reporting entities under the PCMLTFA, creating compliance obligations related to record-keeping, due-diligence, and transaction-reporting. Obligations specific to factoring companies would also be introduced, including requirements to (1) verify the identity of parties with which a factoring company enters into an agreement; and (2) maintain associated records.

## Cheque-cashing businesses

Cheque cashing is a financial service that offers clients the ability to cash a cheque immediately for a fee. Some cheque-cashing businesses are already registered as money services businesses (MSBs) with FINTRAC, or serve as agents of a registered MSB, as a result of other business activities. However, cheque cashing itself is not currently captured under the PCMLTFA.

Under the Regulations, persons and entities that provide cheque-cashing services would be regulated as MSBs and subject to the full suite of obligations for MSBs, including requirements to keep prescribed records, conduct due diligence, report specified transactions, and establish a compliance program. Obligations specific to cheque cashing would also be introduced, such as a new requirement to verify the identity of a client who cashes a cheque valued at \$3,000 or more and to keep associated records.

## Financing and leasing entities

Financing and leasing entities provide a range of leasing services to individuals and businesses. Leasing arrangements can be offered either directly or indirectly through a third-party intermediary.

The Regulations would prescribe financing and leasing entities as reporting entities under the PCMLTFA. As part of a risk-based approach, obligations would be targeted to exclude financing and leasing services for low-value consumer products, such as personal electronics. Financing and leasing arrangements for business purposes, as well as for consumer automobiles and goods above \$100,000, would be included.

Financing and leasing entities would be required to establish compliance programs and fulfill record-keeping, due-diligence, and transaction-reporting requirements. Obligations specific to financing and leasing entities would also be introduced, such as new identify verification requirements and requirements to maintain associated records.

## Beneficial ownership

Under the PCMLTFA, reporting entities are already required to obtain and verify corporate beneficial ownership information when verifying an entity’s identity. The Regulations would require reporting entities, when dealing with a *Canada Business Corporations Act* corporation that they determine to be high risk, to consult federal registry filings and report any material discrepancies. This requirement extends to ongoing monitoring of business relationships. Typos and non-substantial errors would not qualify.

## Imports and exports

The Regulations would implement a new requirement for traders to declare whether imported or exported goods are proceeds of crime or are related to money laundering, terrorist financing, or sanctions evasion, and to attest that the goods are in fact being imported or exported. Traders would also have new record-keeping obligations. This is intended to address misinvoicing, falsely describing goods, and phantom shipments.

For individuals entering Canada where no physical customs office is available, alternative reporting options, such as telephone, would be introduced.

## Privacy considerations

Lastly, the Regulations would implement Budget 2024 amendments to the PCMLTFA and Canada's privacy legislation to enhance the ability of reporting entities to share information with each other to detect and deter financial crime. To protect privacy, the Financial Transactions and Reports Analysis Centre of Canada and the Office of the Privacy Commissioner (OPC) would maintain oversight over the information-sharing framework.

The sharing and exchanging of information for private entities would be voluntary, but reporting entities that choose to make use of the information disclosure exception would be required to develop Codes of Practice describing, among other things, which types of personal information may be disclosed, collected or used without an individual's knowledge or consent and which entities are subject to the code. The Codes of Practice would be subject to comment by FINTRAC and approval by the OPC. Notably, given potential resource constraints, if the OPC does not notify an applicant of its decision on a proposed code within 90 days or extend the deadline, the code would be deemed approved. Codes must be re-submitted for approval when materially modified and every five years. It is not yet clear whether an addition or deletion of a participating entity would constitute a material change requiring re-approval.

## Next steps

The consultation process closes on December 30, 2024, and some of the amendments may come into force as soon as October 1, 2025.

*To discuss these issues, please contact the author(s).*

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