

Canadian AML Risk Report 'A Missed Opportunity'

13TH AUG 2015 | WRITTEN BY:FRAN WARBURTON & MARK TAYLOR

The Canadian government has missed a chance to truly flesh out the country's current risks of money laundering (ML) and terrorist financing (TF) to financial services and payments business, leading lawyers believe.

The **National Risk Assessment** released by the Department of Finance (DOF) is intended to help financial institutions and other reporting entities "better identify, assess and understand" emerging ML/TF threats ahead of a major review by the Financial Action Task Force (FATF) later this year.

Toronto-based anti-money laundering and counter-terrorist financing (AML/CTF) lawyer Christine Duhaime of Duhaime Law called the assessment "inaccurate".

"I have some doubts that the National Risk Assessment is about Canada, or was written by Canadians, or that any Canadian experts were consulted, because few critical money laundering and terrorist financing concerns and risks currently facing our country were mentioned," she said.

According to the report, the DOF found vulnerabilities in 27 Canadian economic sectors and financial products.

Among those with very high vulnerability ratings were corporations, domestic banks, express trusts, national full-service money service businesses (MSBs) and small independent MSBs.

Money laundering threats were also ranked from "low" to "very high", with counterfeiting and piracy, mass marketing fraud and third-party money laundering falling in the latter category.

Duhaime argued that the report is "three years late" and should have been conducted following the 2012 FATF recommendations.

She said: "Having a National Risk Assessment for Canada will be problematic as it is now inconsistent with our proceeds of crime legislation which is prescription based, and not based on risks identified.

"It's telling reporting entities what they think the risks, nationally, ought to be, but the actual legislation does not let reporting entities take a risk-based approach.

"So in a way, it does not add clarity or certainty to the laws on AML in Canada."

Payments expert Peter Aziz, a counsel at Torys law firm in Toronto, said that although it did not offer any ground-breaking revelations, reporting entities should take note of the various illegal activities categorized by threat ratings.

He told PaymentsCompliance: "The report points out typical activities such as illicit drug trafficking; however, others that are not normally thought of as major risk, such as mortgage fraud, rank surprisingly high."

He said reporting entities in the payments industry must become aware of the new risks that are growing in prominence when updating their policies and procedures.

"We can expect the report's principles to be reflected in upcoming guidance updates from the Financial Transactions and Reports Analysis Centre of Canada and the Office of the Superintendent of Financial Institutions, as risk assessment and mitigation measures are likely to remain the focus of reviews on individual businesses," Aziz added.



"A National Risk Assessment is supposed to look at actual present risks occurring in each sector, with concrete examples, which is then used to determine if nationally, there are risks or not. Instead it looked at hypotheticals from generic situations," said Toronto-based lawyer Christine Duhaime.

Financial services and payments lawyer Jacqueline Shinfield, partner at Blake, Cassels & Graydon LLP, Toronto, agreed that although important for reporting entities to consider, the report is "very general in nature" and offers nothing in addition to what is readily available through FATF and other sources.

The National Risk Assessment is a requirement of FATF, a global intergovernmental body, and necessary to meet obligations in advance of Canada's upcoming review.

Virtual currencies and open-loop prepaid cards were categorised as a "high" risk by the DOF because of their appeal to clientele seeking anonymity.

Payment card fraud, including card-not-present fraud, card counterfeiting and fraudulent card applications, was also recognised to be a threat as multiple sectors, such as financial institutions, MSBs and casinos, are suspected to be used to launder payment card-related proceeds.

Aziz called the recent emergence of fraudulent card applications “troubling”, as it is very difficult to uncover a fraudulent application when a criminal has provided all the required ID.

Duhaime listed risks associated with politically exposed persons, ML/TF concerns around the sanctions regime and proceeds of crime entering the real estate market from China as prominent threats ignored by the DOF.

She also said the paper did not mention the online specific payment methods that are of concern for terrorist financing.

“With respect to what it does say, it alleges that online casinos in Canada (which are operated by the government) are used by criminals to launder proceeds of crime and that they regularly use credit cards (which are later with illicit funds) or prepaid cards to fund multiple casino online accounts,” she said, adding that none of the information was accurate.

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Aziz said Canada is confident it will score a high rating in the FATF review this autumn, having **recently published draft regulations** to address the gaps between global standards and its current legislation.

He expects AML regulation in its final form to be published by the end of the year.

