OSLER

# Canadian Government Proposes Comprehensive Amendments to Anti-Money Laundering Legislation

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On December 21, 2011, the Canadian federal government released a consultation paper (the Consultation Paper) containing certain proposals to strengthen Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) legislative framework, which is administered through the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLA) and related regulations (collectively, AML Legislation). The full text of the Consultation Paper is available here. The deadline for submitting comments on the proposed amendments is March 1, 2012.

On November 7, 2011, the Canadian federal government had released a consultation paper proposing certain amendments to the AML Legislation. Whereas the amendments proposed in November 2011 were limited to customer identification and due diligence and were meant to mainly address Canada's rating of non-compliance with a recommendation of the Financial Action Task Force (FATF), the Consultation Paper released in December 2011 proposes a broader set of amendments. (See our Osler Update dated November 17, 2011.)

The key objectives of the Consultation Paper are stated to be the following:

- reviewing Canada's AML/ATF legislative framework in preparation for the upcoming Parliamentary review of the AML Legislation (this review is required by statute every 5 years);
- addressing the recommendations of an independent consultant included in the Report of the 10-Year Evaluation of Canada's AML/ATF regime, released in March 2011;
- responding to stakeholder concerns, raised by both the private sector and federal regime partners, particularly law enforcement and intelligence agencies;
- meeting Canada's international commitments by improving Canada's compliance with the recommendations of FATF;
- responding to the interim report of the Special Senate Committee on Anti-Terrorism, entitled *Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead*;
- responding to the final report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, entitled *Air India Flight 182: A Canadian Tragedy*; and
- responding to the 2009 Privacy Commissioner of Canada's Audit Report of the Financial Transactions and Reports Analysis Centre of Canada.

The amendments proposed by the Consultation Paper fall into the following categories:

1. strengthening customer due diligence standards;
2. closing gaps in Canada's regime;
3. improving compliance, monitoring and enforcement;
4. strengthening information sharing in the regime;
5. introducing a list of potential countermeasures; and
6. updating reporting requirements.

In respect of several proposed amendments, the government is seeking the views of industry and it is not clear whether, and how, these proposed amendments will be implemented.

**1. Strengthening Customer Due Diligence Standards**

In addition to the amendments proposed in the November 2011 consultation paper, the government is proposing additional amendments to address other issues relating to customer due diligence (CDD) raised by stakeholders.

**a. Client Identification Records for Authorized Signers for Business Accounts**

Financial entities are currently required to ascertain the identity of at least three authorized signers of a business account. A similar requirement applies to casinos. However, there is no related requirement for either financial entities or casinos to keep a record of the identity of those signers or the measures taken to ascertain their identity. To ensure that financial entities and casinos have the necessary information available to include in a suspicious transaction report, the government is considering requiring financial entities and casinos that ascertain the identity of an authorized signer to also keep a client identification record in respect of that signer.

**b. Enhancing Customer Due Diligence Exemptions for Introduced Business**

There are several situations in which one financial business may "introduce" (or refer) a client to another financial business (e.g., insurance brokers introducing their clients' business to insurance companies or banks introducing their clients to securities dealers).

Under the current AML Legislation, there are two specific "introduced business" scenarios where one reporting entity can rely on the CDD performed by another reporting entity. These exemptions limit the duplication of procedures by reporting entities. In 2008, amendments were made to the AML Legislation to allow agents or mandataries to perform certain CDD obligations on behalf of a reporting entity. This differs from the introduced business exemptions in that it allows non-reporting entities to perform the CDD obligations on behalf of a reporting entity. Unlike the introduced business exemptions, there must also be a contractual agreement in place between the parties for the agency relationship to exist.

Under the current AML Legislation, there is no explicit requirement for financial institutions to obtain from the third party the necessary information concerning certain elements of the CDD process and satisfy themselves that copies of identification data are made available from the third party upon request without delay. In addition, the AML Legislation does not set out that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

The FATF has recommended that reporting entities be required to take more responsibility for CDD in introduced business scenarios. Canada received a Non-Compliant rating with the FATF's Recommendation 9, which addresses introduced business.

The government is reviewing the current exemptions from CDD and record-keeping for scenarios involving introduced business, in order to improve the continuity of record-keeping and to clarify how responsibility for the CDD information is divided between the party introducing the business and the party receiving the business. In addition, the government is considering expanding the scope of introduced business scenarios that would qualify for an exemption from certain CDD obligations.

The government is seeking views from industry on these issues, including the following elements:

(a) examples of "introduced business" scenarios where revising CDD and/or record-keeping requirements would eliminate a duplication of effort by the reporting entities involved;
(b) current industry practices that may mitigate the risk of records being lost or destroyed in an "introduced business" scenario where the relationship between the recipient and introducer is terminated;
(c) the feasibility of a reporting entity asking for and receiving documentation about the information used to verify a client's identity from an introducer at the time of the commencement of the "introduced business" relationship; and
(d) the feasibility of a reporting entity asking for and receiving documentation about the information used to verify a

client's identity from an introducer at the time when a relationship between the reporting entity and introducer is to be terminated.

**c. Non-Face-to-Face Situations**

In 2007, the government had made amendments to the AML Legislation to allow non-face-to-face client identification. In the Consultation Paper, the government recognizes that new technologies and business models are being developed by the financial sector in respect of which the current non-face-to-face client identification requirements may have to be modified. For example, various reporting entities have identified components of the existing non-face-to-face identification requirements that limit their ability to increasingly use evolving technologies to deliver financial products and services, without requiring an individual or entity to physically submit supporting documentation (e.g., a cleared cheque). The government is seeking feedback from the industry on these issues. For example, the government would like to receive comments from financial institutions regarding the security features that have been included in electronically provided bank statements and that would assist with determining the authenticity of such a statement.

**Non-face-to-face Customer Identification Measures for Credit Card Companies**

The government proposes to review the current non-face-to-face identification requirements for credit card companies in response to concerns related to the decreased usefulness of the telecommunications directory as a reliable independent data source to ascertain a client's identity. Alternative independent data sources or methods will be considered but it is not intended that this review will provide reporting entities with access to government databases that are currently restricted under other legislation. The government is seeking views from industry on this issue, including the following elements:

(a) explanations as to why the credit card industry is unable to use the other non-face-to-face identification methods specified under the AML Legislation;
(b) explanations as to why financial institutions have not established a process to confirm directly to another financial intermediary that a client maintains a deposit account with that institution, where the client has consented to the disclosure of such information; and
(c) information on other types of third party sources currently being used by credit card companies to assess account applications and whether these sources could be considered as an alternative to the telecommunications directory.

**Record of Signing Authority**

The government proposes to review the requirement that a hand-written signature card, or electronic image of a hand written signature, must be maintained by reporting entities for record-keeping purposes when accounts are opened. The government is seeking views from industry on this issue, including:

(a) clarification as to what kind of technological information reporting entities would propose to maintain where the authority for an account holder to give instructions in respect of an account would be established by electronic means; and
(b) the ability for a reporting entity to provide another reporting entity with a copy of a client's signature card, where a client has consented to that information being shared.

**d. Politically Exposed Foreign Persons**

Politically exposed foreign persons (PEFPs) are defined in the AML Legislation as persons who are, or have been, entrusted with prominent public functions such as heads of state, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations and important political party officials. The AML Legislation requires certain reporting entities to determine whether a customer is a PEFP when they conduct

designated financial transactions or open designated accounts. Reporting entities are required to implement enhanced measures in respect of their customers who are PEFPs.

The government has identified aspects of Canada's PEFPs provisions that could be strengthened in order to assist Canada's anti-corruption work, provide reporting entities with increased tools to better know their customers and to take appropriate measures based on the risk level of those customers, and to enhance Canada's compliance with the current FATF Recommendation 6 on foreign politically exposed persons.

**Amend the Definition of "Politically Exposed Foreign Person" to Include Close Associates**

The government is considering the definition of "politically exposed foreign person" to include close associates of such a person.

"Politically exposed foreign person" is currently defined in the AML Legislation as persons holding or having held certain designated high-profile political positions, as well as the immediate family members of those persons. The proposed amendment would provide that, in circumstances in which reporting entities are required to take reasonable measures to determine if a customer is a PEFP, they would also be required to take reasonable measures to determine whether that customer is a close associate of a PEFP.

**Require Life Insurance Companies to Determine if Persons are PEFPs when Opening Designated Accounts**

The government is giving consideration to requiring life insurance companies and life insurance brokers and agents to take reasonable measures to determine if persons are PEFPs when opening an investment or loan account for a client, or in respect of existing clients who have investment or loan accounts. Where such persons are determined to be PEFPs, life insurance companies and life insurance brokers and agents would be required to implement all relevant PEFP obligations.

**Requirement to Assess all Account-holders**

The government is considering amending the AML Legislation to clearly provide that reporting entities would be required to assess whether "all" existing account-holders are PEFPs, where such a determination has not already been made. Currently, financial entities and securities dealers are required to take reasonable measures, based on the level of risk they have assessed, to determine whether persons who are existing account holders are PEFPs. The effect of these provisions is that, where customers have been identified as low risk, reporting entities are not required to determine whether those customers are PEFPs.

**e. Lower Risk Situations**

Currently, reporting entities are exempted from conducting customer identification and due diligence measures when they conduct certain transactions or interact with certain types of clients deemed to be at low risk of money laundering or terrorist financing. These exemptions exist primarily in respect of products that are well regulated and structured in such a way to make money laundering difficult or clients who are well-regulated and subject to stringent legislative disclosure obligations.

Under existing requirements, reporting entities are not required to keep records when conducting transactions with public bodies or corporations with a minimum of $75 million net assets whose shares are traded on a Canadian or other designated stock exchange. Listed corporations are considered to be at lower risk for money laundering and terrorist financing as they are subject to stringent disclosure obligations outside of the AML Legislation. The government is considering extending this exemption to all listed corporations without regard to the amount of net assets.

**f. Ongoing Due Diligence**

Reporting entities have the obligation to confirm the existence of a corporation for which they open an account or conduct a financial transaction. Currently, the existence of a corporation is confirmed by referring to a corporation's certificate of corporate status or any other record that confirms its existence as a corporation (such as its published annual report or a letter or notice of assessment from a government). However, the AML Legislation does not specify how current these documents must be in order to qualify as proof of the existence of a corporation. The government is considering amending the AML Legislation to specify that any document that is used as proof of the existence of a corporation must be no more than one year old.

**g. Identification of Third Parties**

The AML Legislation requires reporting entities to take reasonable measures to collect third party information where a required client information record is created, or where a client conducts large cash transactions or opens an account. The Consultation Paper states that the existing legislative requirement for third party determination is often misunderstood by reporting entities because of conflicting understandings of the term "third party." For the purposes of the AML Legislation, it is intended that third parties are those who provide instructions, whereas many reporting entities have interpreted third parties as being those who carry out those instructions. The government is considering amending the provisions that establish the third party determination requirements to replace the term "third party" with "instructing party."

The government is seeking industry views on whether this change in terminology will provide clearer guidance as to what is required.

**2. Closing the Gaps**

**a. Eliminating the Electronic Funds Transfers Threshold**

Reporting entities are currently required to report to the Financial Transactions Reports Analysis Centre of Canada (FINTRAC) any electronic funds transfer (EFT) of $10,000 or more entering or leaving Canada. The government believes that the $10,000 threshold for reporting EFTs may not be optimal. For example, while money laundering frequently involves large sums of money, cases of terrorist financing may involve smaller amounts of money. The government is considering eliminating the threshold at or above which international EFTs must be reported to FINTRAC. This would require financial entities, casinos and money services businesses (MSB) to report all EFTs entering or leaving Canada. The government is seeking views on this issue, including the following elements:

(a) operational impacts for reporting entities associated with eliminating the threshold;
(b) given existing CDD thresholds and other relevant factors, the implications of applying different thresholds for different types of transactions or reporting entities (e.g., a higher threshold for MSBs than for financial entities as per the U.S. model); and
(c) examples of any current industry practices, trends, or requirements in other jurisdictions where operations would be relevant to the discussion of an eliminated threshold.

**b. Prepaid Access**

Prepaid access encompasses a range of payment technologies, from prepaid cards (such as retail gift cards, or open-loop prepaid cards that could be used to withdraw thousands of dollars from automated teller machines (ATMs) worldwide) to mobile payment devices. There have been increased calls by law enforcement and others to address the potential money laundering and terrorist financing risks posed by prepaid access. For example, Canada's Special Senate Committee on Anti-Terrorism recommended that the government examine whether to define prepaid access as monetary instruments under the Cross-border Currency and Monetary Instruments Reporting Regulations. This would result in an obligation for individuals to report the importation or exportation of $10,000 or more in prepaid

access products. The FATF has also noted the lack of CDD requirements for prepaid access products. The Royal Canadian Mounted Police has acknowledged that gift cards represent a serious money laundering option, especially in the absence of any money laundering control at retail locations and has noted that there is nothing in force at the financial institution level that requires them to implement policies and procedures addressing new technologies when face to face identification is not possible.

Across the border, the United States has recently taken action on prepaid access. In July 2011, the Financial Crimes Enforcement Network passed a final rule requiring providers of certain types of prepaid access to perform CDD, keep customer information and transaction records, have an anti-money laundering program, and report suspicious activities and large cash transactions. In October 2011, the Financial Crimes Enforcement Network formally sought input on making certain prepaid access devices subject to cross-border reporting requirements.

The Canadian government is examining two potential ways to mitigate the possible money laundering and terrorist financing risks posed by prepaid access.

First, the government proposes to review CDD requirements to determine whether to extend these measures to prepaid access devices. The government is seeking views on this potential course of action, including the following elements:

(a) types of prepaid access devices that should or should not be covered (including the rationale for including or excluding them);
(b) who among the several parties involved in providing a prepaid card (e.g., financial institution, payment network, program operator, retailer) should bear the responsibility for the various CDD requirements; and
(c) operational impacts for reporting entities associated with potential CDD requirements.

Second, the government is examining the issue of expanding the definition of monetary instrument for the purpose of cross-border currency reporting under the Cross-Border Currency and Monetary Instruments Reporting Regulations to include prepaid access. The government is seeking views on this issue, including the following elements:

(a) types of prepaid access that should or should not be defined as a monetary instrument (including the rationale for including or excluding them);
(b) potential obstacles that would prevent, and potential solutions that would allow, border services officers to identify and determine the value of prepaid access products (e.g., ability to recognize or read prepaid cards at the border); and
(c) privacy considerations.

**c. Customer Due Diligence and Record-Keeping Requirements for Life Insurance Companies and Life Insurance Agents and Brokers**

In the Consultation Paper, the government notes that the current requirements imposed on life insurance companies and life insurance brokers and agents related to customer identification may fail to adequately address the money laundering risks of the financial products that are now commonly provided in this industry. For example, there is no legislative requirement for life insurance companies, brokers and agents to perform customer identification requirements with respect to loans they offer. These requirements are legislated for other reporting entities. As well, varying practices exist across insurance companies with respect to whether the existing CDD requirements apply to insurance-based investment products, such as segregated funds. Further, the government suggests that certain life insurance annuities and policies that are currently exempt from client identification requirements are at risk of being abused by criminals and should be subject to these requirements under the AML Legislation.

The government is considering amending the AML Legislation to expand the client identification and record-keeping requirements applicable to life insurance companies and life insurance brokers and agents beyond the specified purchase of annuities and life insurance policies. Client identification and record-keeping requirements would apply to

transactions and account openings for investment and loan products offered by life insurance companies, agents and brokers that are not currently captured under the AML Legislation. The requirements would be comparable to those currently imposed by the AML Legislation on other financial entities and securities dealers. The exemptions for income tax purposes and the $10,000 threshold would be eliminated.

**d. Large Cash Transaction Reports**

Reporting entities are required to report to FINTRAC whenever they receive $10,000 or more in cash. The government notes that these requirements should be revisited to address existing gaps.

**Extending Large Cash Transactions Reporting Obligations in the Life Insurance Sector**

The government is considering amending the AML Legislation to limit the exemptions for large cash transaction reporting by life insurance companies and life insurance agents and brokers to only those transactions where the origin of funds may be easily identified and determined to be of low risk for money laundering, specifically those identified in paragraphs 62(2)(c) to (f) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation. The purpose of this proposed amendment is to close the gap resulting from the exemptions provided to life insurance companies and life insurance agents and brokers where the origin of funds to purchase specified financial products is unknown and, as such, there is a risk that they will be used for criminal purposes.

**Expand the Application of Large Cash Transaction Obligations**

The government is giving consideration to amending the AML Legislation to provide that reporting entities would be required to record and report large cash transactions of $10,000 or more, even where the cash would be received on behalf of the reporting entity by an agent or affiliated entity. This amendment would ensure that the chosen delivery channel does not lead to an unintentional exemption for reporting entities from their obligations to submit large cash transaction reports.

**e. Dealers in Precious Metals and Stones and Accountants**

Dealers in precious metals and stones (DPMS) and accountants are currently subject to the AML Legislation when they provide services or undertake activities that are specified in the AML Legislation. Although various activities are exempted from the reporting requirements in the AML Legislation, the government believes that certain activities performed by DPMS and accountants currently trigger reporting requirements beyond the original policy intent.

The government is considering excluding from reporting requirements activities undertaken by the DPMS sector related to the sale or purchase of metals and stones that are used in the manufacturing process and excluding from reporting requirements activities undertaken by accountants when providing trustee in bankruptcy services.

**f. Clarifying the 24-Hour Rule**

Reporting entities are currently required to file various reports for certain transactions performed by, or disbursements received by, individuals and entities. The AML Legislation sets out these single transactions to include both individual transactions above $10,000 as well as multiple transactions each under $10,000 but totaling $10,000 or greater undertaken by an individual within a 24-hour period. The government believes that there are deficiencies with the current descriptions of a single transaction under the AML Legislation, which limit the transactions that must be reported to FINTRAC, contrary to the objectives of the AML Legislation.

The government is considering amending the description of “single transaction” in the AML Legislation to include all transactions, regardless of their amount, conducted on behalf of the same person or entity within a 24-hour period where the combination of those transactions would total at least $10,000. The purpose of this proposed amendment is to provide greater certainty for reporting entities with respect to reporting multiple transactions.

### 3. Improving Compliance, Monitoring and Enforcement

#### a. Money Services Business Registration

MSBs have been required to register with FINTRAC since June 2008. In order to apply to register, an MSB must provide identifying information and specified business-related details. Once the initial registration has been accepted, the MSB's registration must be renewed approximately every two years, on a date specified by regulations. In order to simplify the MSB renewal process and provide flexibility as to when within a 2-year period an MSB must renew its application, the government is considering amending the AML Legislation to reduce the type of information requested from MSBs applying to register with FINTRAC and revoking the requirements in the AML Legislation specifying the timing of MSB registration renewal.

The government is also considering amending the AML Legislation to ensure that individuals who have been convicted under certain repealed acts are also excluded from registering as MSBs. These acts would include the *PCMLA*, the *Narcotic Control Act*, and Parts III and IV of the *Food and Drug Act*. The AML Legislation does not allow individuals convicted under specified legislation to register as an MSB. However, current provisions do not reference convictions under repealed, older versions of relevant legislation.

#### b. Updating the Compliance Program

The government is considering amending the AML Legislation to provide FINTRAC with an additional tool to ensure that FINTRAC receives the reports that entities are required to submit under the AML Legislation.

Reporting entities may be subject to an administrative monetary penalty for failure to comply with a reporting obligation under the AML Legislation (for example, failure to submit a suspicious transaction report, a large cash transaction report, an EFT report or a terrorist property report). Currently, proceedings to address non-compliance with a reporting requirement would typically cease upon payment of the penalty. The proposed change would enable FINTRAC to direct a reporting entity to file a missing report that is required under the AML Legislation and that they have failed to report, even where an initial penalty has been imposed. Where the reporting entity subsequently fails to comply with the request for the report to be filed, FINTRAC would be entitled to impose additional penalties until such time as the reporting entity complies with FINTRAC's request by filing the report.

#### c. Requiring the Documentation of Reasonable Measures

Reporting entities may be required to take reasonable measures to obtain particular information or to make a specific determination when performing due diligence. The government is considering requiring reporting entities to document and keep a record of any "reasonable measures" they are required to take under the AML Legislation.

#### d. Updating Reporting Forms

The AML Legislation prescribes the specific information that reporting entities are required to provide for various reporting and registration purposes. The government believes that the current framework narrowly defines the information that is required to be included on the form templates provided to reporting entities and limits the government's ability to customize the forms to the specific or unique needs of individual industries. The government is considering amending the AML Legislation to provide the Minister of Finance with the authority to update the information requirements contained in reporting and registration forms that reporting entities are required to use when registering or submitting reports to FINTRAC. This would allow these forms to be updated in a timelier manner, to better reflect the needs of both FINTRAC and reporting entities.

**e. Cross-Border Currency Reporting**

Under the current requirements of the AML Legislation, individuals or entities are required to report to a Canada Border Services Agency (CBSA) officer the importation or exportation of currency or monetary instruments over $10,000. The AML Legislation currently requires individuals who have completed a cross-border currency report to respond truthfully to questions posed by a CBSA officer with respect to the information contained in the report. CBSA officers have indicated that it would be beneficial for them to also be provided with the authority to pose questions to individuals related to their compliance with the obligations of the AML Legislation, even when a report has not been completed. This would assist CBSA officers in performing their duties and responsibilities as specified under the AML Legislation. The government is considering amending the AML Legislation to provide the authority to CBSA officers to question passengers arriving in or departing from Canada with respect to their responsibilities under the AML Legislation and to compel passengers to answer these questions truthfully.

**4. Strengthening Information Sharing in the Regime**

**a. Expanding Designated Information**

The government is considering expanding the current list of designated information that FINTRAC can disclose to law enforcement and intelligence agencies to also include:

(a) an individual's gender and occupation;
(b) the grounds for suspicion developed by international partner Financial Intelligence Units;
(c) information contained in the narrative section of cross-border seizure reports;
(d) a description of the actions taken by reporting entities when making a suspicious transaction report; and
(e) information setting out the "reasonable grounds to suspect" that FINTRAC has determined would enable it to make a disclosure.

The stated objective of expanding the information available in FINTRAC disclosures is to enhance the critical identifiers and investigative links that law enforcement and intelligence agencies can use to further money laundering and terrorist financing investigations while respecting the privacy and Charter rights of Canadians.

**b. Expanding Information in Intelligence Products**

The government is considering allowing FINTRAC to identify foreign individuals and entities in the intelligence products it provides to law enforcement, government institutions, or a foreign agency that has similar powers and duties, in those cases where the identification of the individual or entity would be important to the context of the financial intelligence.

**c. Information Sharing to Detect and Deter the Funding of Terrorism Through Registered Charities**

The AML Legislation does not contain provisions that permit the CBSA to share information with the Charities Directorate of the Canada Revenue Agency (CRA). The government is considering amending the AML Legislation to allow the CBSA to disclose to the CRA Charities Directorate cross-border seizure reports related to forfeited currency or monetary instruments suspected to be linked to the activities of a charity. The proposed amendment would allow the CBSA to proactively disclose directly to the CRA information obtained at the border that could assist with the determination of a charity's registration status.

The government is also proposing to review the provision that enables FINTRAC to disclose to the CRA information related to registered charities in order to facilitate its ability to provide proactive disclosures. The proposed amendment would seek to clarify the conditions under which FINTRAC would disclose to the CRA activities of a charity in order to facilitate its ability to provide proactive disclosures.

**d. Disclosures to Support Border Services**

FINTRAC is currently required to disclose information to the CBSA when, in addition to a suspicion of money laundering or terrorist activity financing, it also determines that the information would be relevant to supporting the CBSA in performing its specified responsibilities related to administering immigration and customs programs. The CBSA has identified situations where FINTRAC disclosures could provide more information that would improve the efficiency of its investigations related to border services that support the government's national security priorities.

The government is considering amending the AML Legislation to require FINTRAC to disclose information relevant to a money laundering or terrorist financing offence to the CBSA where it would also be relevant to an offence related to illegal exportations.

The government is also considering amending the AML Legislation to require FINTRAC to disclose designated information to the CBSA where there would be reasonable grounds to suspect that it would be relevant for the purpose of managing the access of people and goods to and from Canada that pose a threat to national security.

**e. Disclosures of Information by FINTRAC**

The AML Legislation currently requires that FINTRAC disclose information to an appropriate police force where there are reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering or terrorist financing offence. It is possible that information collected by FINTRAC could also assist with investigations where an individual's life is in danger.

The government is considering allowing FINTRAC to disclose information to a police force that would assist with an investigation for the purpose of preventing the death of, or imminent physical injury to, an individual.

**5. Countermeasures**

Certain amendments to the AML Legislation were introduced as part of *Budget* 2010. These amendments introduced two new authorities for the Minister of Finance:

(a) the authority to issue directives that require reporting entities to take countermeasures in respect of transactions originating from or destined to designated foreign jurisdictions and foreign entities; and
(b) the authority to recommend that the Governor-in-Council issue regulations limiting or prohibiting reporting entities from entering into transactions originating from or destined to designated foreign jurisdictions and foreign entities.

The two new authorities for the Minister have not yet been brought into force. The new Ministerial authorities would be brought into force in conjunction with the regulatory amendments detailed in the Consultation Paper. In order to clarify the application of the Minister's new authorities, the government proposes to implement regulations that will provide greater detail and certainty to reporting entities and other stakeholders as to how the use of these powers will be undertaken. These regulatory amendments would:

(a) prescribe a list of specific countermeasures that the Minister, when issuing a directive, can require reporting entities to take in respect of a designated foreign jurisdiction or foreign entity;
(b) define the term "foreign entity," in order to provide further guidance to reporting persons and entities as to the types of entities that may form the subject of a directive or a regulation limiting or prohibiting business; and
(c) update the existing AML Legislation to allow for administrative monetary penalties to be issued to reporting entities that are in violation of a directive or a regulation.

## 6. Other Proposals

### a. Broadening the Requirement to Report Suspicious Transactions

The government is considering broadening the requirement to report suspicious transactions to encompass activities conducted for the purpose of a financial transaction.

The legislation currently requires reporting entities to report suspicious transactions. A suspicious transaction is any financial transaction that occurs or is attempted in the course of a reporting entity's activities that gives rise to a suspicion of money laundering or terrorist financing. Under this proposal, the AML Legislation would be amended to set out that a suspicious transaction is any financial transaction that occurs or is attempted, including an activity undertaken for the purpose of a financial transaction, in the course of a reporting entity's activities that gives rise to a suspicion of money laundering or terrorist financing. This would clarify that reporting entities would be required to submit a suspicious transaction report if, for example, an account application was considered suspicious.

### b. Submitting Reports to FINTRAC

The government is considering requiring the CBSA to submit cross-border currency reports to FINTRAC both physically and electronically. The legislation currently requires the CBSA to submit to FINTRAC complete and incomplete cross-border currency reports they receive from individuals. Though it is not a legislative requirement, in practice, the CBSA has been providing FINTRAC with both the paper copies of these reports and the electronic transmission of the information included in these reports. This facilitates FINTRAC's data collection by providing reportable information in a format that may be searched. This proposal would formalize this existing operational arrangement.

### c. Amending the Threshold for Non-compliance Disclosures

The government is considering replacing the term "is evidence of" with "would be relevant to" in order to clarify the threshold that would enable FINTRAC to disclose compliance-related information to law enforcement by more broadly referencing information that it suspects on reasonable grounds would be relevant to investigating or prosecuting specified compliance-related offences. The government believes that the existing threshold for disclosing compliance information to law enforcement is inconsistent with the scope of FINTRAC's mandate; it is not responsible for investigating or prosecuting contraventions of the provisions of the AML Legislation. As a result, while FINTRAC may make a determination on the relevance of information it collects to investigating and prosecuting certain offences, it is unable to determine whether that information could be used as evidence.

### d. Amending Obligations Related to Client Credit Files

The government is considering amending CDD and record-keeping requirements to clarify that financial entities are required to create a client credit file when they enter into a credit arrangement with a client, and to repeal the obligation for MSBs to maintain a client credit file. This amendment would clarify that financial entities are required to both create, and keep records of, a client credit file when entering into a credit arrangement with a client. As well, this amendment would recognize that MSBs do not conduct credit arrangements and, therefore, should be excluded from this record-keeping requirement.