

# FINTRAC retracts merchant servicing and payment processing exemptions

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On April 27, 2022, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) issued a [notice](#) that the [recent amendments](#) to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* (the April Amendments) are now in force. The April Amendments, which we have [previously written](#) about, repeal a key portion of the definition of “electronic funds transfer” (EFTs) that excluded certain funds transfers carried out by means of a credit card, debit card, or prepaid payment product. Those types of credit, debit and prepaid payment product funds transfers are considered to be electronic funds transfers under the amended regulations, and foreign and domestic money services businesses (MSBs) now have additional verification, reporting and recordkeeping obligations in respect of such funds transfers. Financial entities and casinos do not have any additional EFT obligations, however, as the April Amendments specifically exclude such payments from these entities’ EFT obligations.

As part of this broader policy shift towards capturing a wider variety of payment services and merchant settlement activities under the ambit of the AML laws, and specifically within the MSB framework, FINTRAC also announced that it is “retracting its positions with respect to merchant servicing and payment processing (PI-7670).”

FINTRAC’s PI-7670 was first published on November 29, 2016 and set out FINTRAC’s interpretive carveout for certain payment service providers and merchant settlement providers, which it deemed not to fall under the MSB category. In PI-7670, FINTRAC stated that:

[...] FINTRAC has taken the position that persons or entities engaged in the business of any of the following, that involve the “remitting or transmitting of funds by any means or through any person, entity or electronic funds transfer network”, are not considered to be MSBs:

- Utility payments,
- Payroll and commission services,
- Mortgage and rent payment services, and
- Certain tuition payment services.

The reason for this is because they are not engaged in the business of remitting or transmitting funds for the sake of the service. The transfer of funds is simply a corollary of their actual service, which is payment processing.

Similarly, depending on the business model provided by a person or entity, FINTRAC has taken the position that those engaged in the business of providing settlements directly to merchants on behalf of the merchant's customers, for the purchase of goods and services, are not considered to be MSBs as the transfer of funds is performed only as a result of the merchant services offered.

**Accordingly, entities which previously relied on PI-7670 will need to reconsider whether they are now subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* since, effective immediately, payment service providers and merchant settlement service providers who offer at least one MSB service to the public, and who either (a) have a place of business in Canada or who (b) direct MSB services at persons or entities in Canada and provide services to clients in Canada, must register with FINTRAC and will need to swiftly implement a full AML compliance program.**

FINTRAC has updated its [Guidance](#) materials for MSBs to reflect these changes, and additional clarifying guidance materials may be forthcoming. FINTRAC also provided a new click-through [tool](#) for potential MSBs to conduct a preliminary check to determine whether FINTRAC registration may be required, although the tool simply follows the definition of MSB in the legislation and regulations and does not provide any clarifying details.

### **We're here to help**

Please contact a member of our [Financial Services Regulatory team](#) if you have any questions about the recent AML changes or would like assistance registering with FINTRAC or implementing a compliance program tailored to the new requirements.