



Transparency International Canada Inc.

September 2, 2015

Sent via Email to fsc-scf@fin.gc.ca

Ms. Lisa Pezzack
Director, Financial Systems Division
Financial Sector Policy Branch
Department of Finance
90 Elgin Street
Ottawa, Ontario K1A 0G5

Dear Ms. Pezzack:

Re: Transparency International Canada's Input into consultation regarding the Amendments of Regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2015*

On behalf of Transparency International Canada (TI Canada), thank you for the opportunity provide input into the consultation¹ regarding the Amendments of Regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2015*.

Our recommendations fall into two main areas:

- 1) Thresholds for identification of PEPs;
- 2) Dissuasive, proportionate and effective sanctions.

The following is a summary of our recommendations, with further detail provided below:

Recommendation 1: Set transaction thresholds for identification of Politically Exposed Persons at not more than \$15,000, and ensure that obliged entities have measures in place to identify multiple linked transactions, which in aggregate exceed this threshold over a short period of time.

Recommendation 2: Increase monetary penalties for AML failings up to US\$ 100,000 for "minor" failings, up to US\$ 250,000 for "serious" failings and up to US\$ 1 million for "very serious" failings.

Recommendation 3: Publish detailed guidance for obliged entities drawing on AML failings and penalties in past cases – where necessary anonymising case studies to maintain confidentiality.

Context

The issue of Illicit Financial Flows is at the forefront of the international agenda at the G8 and G20. There is increasing policy awareness surrounding the transnational dimension of corruption and the role of the financial sector in facilitating corrupt acts through money laundering.

¹ "Regulatory Impact Analysis Statement to the *Regulations Amending Certain Regulations Made under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2015*", *Canada Gazette*, Vol. 149, No. 27, July 4, 2015, <http://gazette.gc.ca/rp-pr/p1/2015/2015-07-04/html/reg2-eng.php>

Canada has long been a supporter of anti-corruption efforts at home and in the developing world. Our anti-corruption laws and anti-money laundering policies play a crucial role in preventing corruption, both domestically and transnationally.

TI Canada welcomes the proposed measures, which aim to strengthen current AML/CFT regulations, in particular the inclusion of domestic politically exposed persons (PEPs) and heads of international organizations under the definition of PEPs, as well as the concept of “reasonable measures” which strengthens the record-keeping requirements for obliged entities. We would suggest that objectives of the proposed regulatory amendments explicitly mention prevention and detection of proceeds of corruption.

The regulatory impact section of the consultation announcement recognizes the threat money laundering presents to the Canadian financial system and to the security of Canadian citizens. A recent Department of Finance risk assessment² classifies money laundering a “very high” threat for mortgage fraud. Media reports have specifically identified real estate in Vancouver as a risk sector³. Research done by the Transparency International chapter in the United Kingdom shows that, since 2004, over GBP 180 million of UK property has been brought under criminal investigation as suspected proceeds of corruption.⁴ In response to this and other reports, the UK government has recently announced⁵ policy proposals to counter money laundering in the UK real estate sector.

Internationally, the transfer of large sums of monies annually out of developing countries weakens those countries’ financial systems and economic potential while delegitimizing the state in the eyes of its people. Monies are diverted from where they are needed most, health and education, job creation and productive investment.⁶ The OECD ministers have long recognized the need to ensure that the policies and practices of their countries are consistent with their development objectives and do not damage developing countries.⁷

Our Recommendations

1) Thresholds for identification of PEPs

Recommendation 1: Set transaction thresholds for identification of Politically Exposed Persons at not more than \$15,000, and ensure that obliged entities have measures in place to identify multiple linked transactions, which in aggregate exceed this threshold over a short period of time.

As noted in the Canadian Department of Finance risk assessment⁸, launderers may use techniques such as structuring cash deposits or withdrawals and “smurfing” (doing multiple deposits of cash by various individuals and low-value monetary instruments purchased from various banks and MSBs).

² *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, <http://fin.gc.ca/pub/mltf-rpcf/mtf-rpcf-eng.pdf>

³ For example: “Chinese money launderers snap up Vancouver real estate because of lenient border laws, loose regulations”, Sam Cooper, *The Province*, August 3, 2015, <http://www.theprovince.com/travel/Chinese+money+launderers+snap+Vancouver+real+estate+because+lenient+border+laws+loose/11262931/story.html>

⁴ *Corruption On Your Doorstep: How Corrupt Capital Is Used to Buy Property in the UK*, Transparency International UK, March 2015, <http://www.transparency.org.uk/publications/15-publications/1230-corruption-on-your-doorstep/1230-corruption-on-your-doorstep>

⁵ “David Cameron vows to fight against ‘dirty money’ in UK property market”, Patrick Wintour, *The Guardian*, 28 July 2015, <http://www.theguardian.com/politics/2015/jul/28/david-cameron-fight-dirty-money-uk-property-market-corruption>

⁶ *Better Policies for Development 2014: Policy Coherence and Illicit Financial Flows*, OECD Publishing, March 2014, <http://www.oecd.org/pcd/Better-Policies-for-Development-2014.pdf>

⁷ Ibid.

⁸ *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, <http://fin.gc.ca/pub/mltf-rpcf/mtf-rpcf-eng.pdf>

The applicable transaction thresholds for PEP identification in Canada are high relative to comparable thresholds in other jurisdictions. For example, in countries which set a transaction-based threshold for enhanced due diligence, the thresholds tend to fall in the range of US\$ 10,000 to US\$ 15,000.⁹

While we recognize the importance of not imposing unnecessary compliance burdens on businesses, in particular small businesses, the compliance costs of the proposed amendments (already estimated at below \$600,000 across all businesses) need to be weighed against the risk of damage to the integrity and reputation of Canada's business sector.

2) Dissuasive, proportionate and effective sanctions

Recommendation 2: Increase monetary penalties for AML failings up to US\$ 100,000 for "minor" failings, up to US\$ 250,000 for "serious" failings and up to US\$ 1 million for "very serious" failings.

FATF Recommendation 35¹⁰ calls for "effective, proportionate and dissuasive sanctions" to be applicable to both legal and natural persons that fail to comply with AML/CFT requirements.

As can be seen in the schedule¹¹ concerning administrative monetary penalties, following the proposed amendments a number of significant compliance failings will continue to be classified by Canadian authorities as "minor", carrying a penalty¹² of not more than \$1,000 per violation.

The failings considered minor include:

- 1) Failure of a financial entity to take reasonable measures within the prescribed period to determine whether a person for whom the financial entity opens an account is a politically exposed foreign person;
- 2) Failure of a financial entity to take reasonable measures within the prescribed period to determine whether a person who is an existing account holder is a politically exposed foreign person;
- 3) Failure of a real estate broker or sales representative that represents a party to a prescribed transaction to ascertain the identity or confirm the existence of parties that are not represented by a real estate broker or sales representative.

According to information available on the FINTRAC website¹³, a total of 61 administrative monetary penalties have been imposed by FINTRAC since December 2008, for a total of \$2.1 million. Only three violations listed on the site were in relation to a failure to identify a PEP and were imposed in a single sector - credit unions/caisses populaires. These penalties need to be seen in the context of the 30,000 Suspicious Transaction reports received by FINTRAC on average every year.¹⁴

Additionally, recent media reports¹⁵ refer to 72 failures of money laundering controls at Canadian banks between 2009 and 2014, citing a document produced by the Office of Superintendent of Financial Institutions and released under the Canadian *Access to Information Act*.

⁹ *Know Your Customer: Quick Reference Guide*, Price Waterhouse Coopers UK, January 2013, https://www.pwc.com/en_GX/gx/financial-services/assets/pwc-kyc-anti-money-laundering-guide-2013.pdf. See for example Paraguay and Taiwan.

¹⁰ *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferations: FATF recommendations*, Financial Action Task Force, February 2012, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

¹¹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations (SOR/2007-292)*, Justice Laws Website, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2007-292/page-3.html#h-9>

¹² *Administrative monetary penalties*, Financial Transactions and Reports Analysis Centre of Canada website, via <http://www.fintrac-canafe.gc.ca/pen/2-eng.asp>

¹³ *Public Notice of Administrative Monetary Policies*, Financial Transactions and Reports Analysis Centre of Canada website, <http://www.fintrac-canafe.gc.ca/pen/4-eng.asp#s1>

¹⁴ "Trends in Canadian Suspicious Transaction Reporting", April 2011, Financial Transactions and Reports Analysis Centre of Canada website <http://www.fintrac-canafe.gc.ca/publications/typologies/2011-03-eng.asp#s1-1>

¹⁵ "Canadian Banks' Money-Laundering Controls Failed", *Wall Street Journal*, August 6th 2015, accessed via [wsj.com/articles/canadian-banks-money-laundering-controls-failed-1438904411](http://www.wsj.com/articles/canadian-banks-money-laundering-controls-failed-1438904411)

Recommendation 3: Publish detailed guidance for obliged entities drawing on AML failings and penalties in past cases – where necessary anonymising case studies to maintain confidentiality.

In light of the upcoming FATF on-site visit¹⁶ to Canada as part of the 4th round of Mutual Evaluations, it is important to add that the updated FATF methodology includes effectiveness ratings, in which effective, proportionate and dissuasive sanctions play a key role.

We would be happy to meet in person to discuss these recommendations, and would also be available to meet the FATF evaluators during the on-site visit, as set out in the FATF evaluation procedures¹⁷ which include the possibility of the assessment team meeting civil society organizations.

Kind regards,



Peter Dent
Chair and President
Transparency International Canada

¹⁶ To be carried out in October/November 2015 according to information on the FATF website <http://www.fatf-gafi.org/countries/a-c/canada/>

¹⁷ *Procedures for the FATF 4th Round of AML/CFT Mutual Evaluations*, Financial Action Task Force, October 2014, <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>