



## FINTRAC's Policy Interpretations on MSB vs. PSP Services

Compiled On: January 16, 2017

Notes: FINTRAC's policy positions are provided as guidance to the industry. If you have specific questions about your business model, you may contact FINTRAC directly via email at: [guidelines-lignesdirectrices@fintrac-canafe.gc.ca](mailto:guidelines-lignesdirectrices@fintrac-canafe.gc.ca).

There is no cost to contacting FINTRAC directly, however, it generally takes 4-8 weeks (in our experience) to receive a response in writing. We recommend reading and referring to [FINTRAC's existing guidance](#) (including [guidelines](#) and [policy interpretations](#)) in order to frame your question effectively.

Contact: If you have questions about this document, would like to receive a copy in Word, or need assistance with compliance, please feel free to contact us. We aim to answer all queries within 2 business days.

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Source Page: <http://www.fintrac-canafe.gc.ca/publications/fins/2-eng.asp?s=2>

Topic: Payment processing and the application of section 66.1 of the PCMLTFR

Question:

Why are payment processors not covered by the Act? What is the application of section 66.1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR)?

Answer:

1. Payment processing:

Paragraph 5(h) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) states that a person or entity is an MSB if they are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

FINTRAC has previously taken the position that persons or entities engaged in the business of:

- utility bill payments,
- tuition fees payments,



-payroll and commission payments, and  
-mortgage and rent payments,  
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, because they are not engaged in the business of doing remittance or transfers of funds.

In the same way, if the only reason a person or entity sends funds in a foreign currency is to pay the client's bills that are in a different country (or who invoice in a foreign currency), that tends to indicate the person or entity is in the payment processing business, as opposed to being engaged in the business of foreign exchange dealing.

In other words, the services of remitting and/or transferring funds or foreign exchange dealing are incidental to the payment of utility bill, tuition fees, payroll and commission, or mortgage and rent. The transfer or exchange of funds is simply a corollary of their actual service of processing the payments.

## 2. Application of section 66.1 of the PCMLTFR:

Pursuant to section 9.5 of the PCMLTFA, “Every person or entity that is referred to in section 5 and that is prescribed shall, in respect of a prescribed electronic funds transfer that occurs in the course of their financial activities,

a) include with the transfer the name, address, and account number or other reference number, if any, of the client who requested it, and any prescribed information;

b) take reasonable measures to ensure that any transfer that person or entity receives includes that information; and

c) take any prescribed measures.”

This section is also known as the “travel rule”. The travel rule applies to financial entities, MSBs and casinos. The type of transfer to which the travel rule applies is defined in subsection 66.1(2) of the PCMLTFR and clarified in subsection 66.1(3) of the PCMLTFR. Subsection 66.1(1) of the PCMLTFR states that “The prescribed persons or entities for the purpose of section 9.5 of the Act are every financial entity, money services business and casino that is required to keep a record under these Regulations in respect of an electronic funds transfer referred to in subsection (2). Subsection 66.1(2) of the PCMLTFR states that “Subject to subsection (3), the prescribed electronic funds transfers to which section 9.5 of the Act applies are those as defined in subsection 1(2), but including transfers within Canada that are SWIFT MT 103 messages.

(3) For greater certainty, subsection (2) does not apply in respect of



- (a) a transfer carried out using a credit or debit card, if the recipient has an agreement with the payment service provider permitting payment by such means for the provision of goods and services;
- (b) a transfer where the recipient withdraws cash from their account;
- (c) a transfer carried out by means of a direct deposit or a pre-authorized debit ; or
- (d) a transfer carried out using cheque imaging and presentment.”

Subsection 1(2) of the PCMLTFR defines an EFT as the transmission of instructions for the transfer of funds, other than the transfer of funds within Canada. In the case of SWIFT messages, only SWIFT MT 103 messages are included. This does not include domestic SWIFT MT 103 messages. Section 9.5 of the PCMLTFA requires entities referred to in section 5 to include certain information with prescribed electronic funds transfers when they occur in the course of their financial activities. Subsection 66.1(2) of the PCMLTFR goes on to specify that the prescribed electronic funds transfers to which section 9.5 of the Act applies are those as defined in subsection 1(2), but include transfers within Canada that are SWIFT MT 103 messages. As such, the only domestic EFTs to which the obligations set out in section 9.5 of the Act applies are SWIFT MT 103 messages.

Section 66.1 of the PCMLTFR is in the context of including information on EFT. This does not specifically carve out payment processors of being subject to Part 1 of the PCMLTFA.

Source Page: <http://www.fintrac.gc.ca/publications/FINS/2-eng.asp?s=12>

Topic: Processing payments

Question:

Should our company be registered as a money services business with FINTRAC? We will pay provide payment processing services to merchant clients to pay their suppliers. Both the merchants and suppliers will have accounts with us. Upon receipt of payment instructions from a merchant client, we will pay a specific amount owed on the merchant's behalf to the supplier's account.

Answer:

A money services business (MSB) has the obligation to register with FINTRAC and you are an MSB if you are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).



Based on the information you provided, it appears that your business will facilitate payments between Canadian businesses and their suppliers. Your business will enter into written agreements with its clients for the provision of these services and payments will be made using your business payment network. As a result, it appears that your business will be remitting and transmitting funds at the request of a client and is therefore, at this time, engaged as an MSB as per the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its associated Regulations.

Although you have asserted that your business services fall under the category of payment processing, FINTRAC's position on this matter is that, at this time, only persons or entities engaged in the business of utility payments, payroll and commission services, mortgage and rent payment services, and certain tuition payment services, 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 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. It is therefore only those businesses that engage in the specific services identified above that may be considered as offering payment processing services.

Date answered: 2015-10-06

PI Number: PI-6364

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5h)

Topic: Covered or not

Question:

I want to set up a company that only exists virtually, on the Internet, and does not have any physical branches.

The principle: A user (A) wants to transfer funds to another user (B). User A uses our Web platform and makes the payment via credit card. The money is initially routed through my corporate account, after which it is transferred to user B's account, less the commission. Users may be individuals, businesses, charities, etc. What are my obligations and what is the status of my company under the existing legislation?

Answer:



A money services business (MSB) means an individual or an entity that is engaged in the business of any of the following activities:

- foreign exchange dealing;
- remitting or transmitting funds by any means or through any individual, entity or electronic funds transfer network; or
- issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments. This does not include redeeming cheques payable to a named individual or entity.

Based on the business model you provided, according to the definition in section 5(h) of the Act, your company is a Canadian money services business. Your company therefore appears to be covered under our Act. As a result, you are required to register with FINTRAC, and you must comply with the provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

FINTRAC Interpretation Notice No. 1, provides guidance regarding the individuals or entities that are considered as money services businesses for the purposes of Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

As a Canadian money services business, you have certain legal obligations. These include registering with FINTRAC, producing statements, keeping records, verifying client identity and having a compliance program.

Date answered: 2012-10-15

PI Number: PI-5460

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN -1

Regulations: 1(2)

Act: 5(h)

Topic: Subject or not subject to the PCMLTFA

Question:

1-ABC is an online payment processing provider.

2-Our clients are global and use credit/debit cards, ACH and EFT bank transfers, money wires and cashiers cheques to use in our system. We are a combined e-wallet and buy online service. Members are able to hold a balance in their online accounts with us as well as purchase products/services from qualified merchants directly.

3-Although anyone can signup for our services, members wishing to do any purchasing or selling are required to submit valid government issued photo ID such



as a drivers license or passport as well as a recent utility bill, bank or credit card statement matching the name and address that they have registered with.

To clarify:

- Our clients are only paying for products and services online.
- We do not receive funds that we then send elsewhere on behalf of a client.

ABC is an online "e-wallet" service. Clients create accounts, verify their ID, phone and address and then fund their "wallet" in order to purchase from verified online merchants.

Example:

- 1-Client X wants to fund their wallet with \$250, so he sends us a cashiers cheque. Once his cheque has cleared, his wallet is updated and he now has \$249 online spending money that he can go shopping with. (there is a \$1 transaction fee for our services). He spends his \$250 at 3 different online merchants.
- 2-Client Y wants to fund their wallet with a larger amount, so they send a bank wire for \$15,000. Once the wire has been confirmed, off they go to do their online shopping. Does this larger amount require reporting?
- 3-Merchant Z has made \$20,000 in accumulated sales over the past 2 months.

They request this amount via a bank wire and live in Florida. Would this amount require reporting and registration with FINTRAC?

Answer:

Based on ABC activities in their website they would be considered an MSB. They meet the definition of an MSB as per the FIN link below.

As per their website: "Upon payment of the specified transaction fees, ABC agrees to provide you (the "End User") a service that enables the "End User" the right to use our services to send and receive monies as available in said account".

They advertise and provide transmission of money and have presence in Canada.

Date answered: 2009-04-17

PI Number: PI-4412

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5(h)

Topic: Payment processor



Question:

A company ("Quebec Inc.") is registered with FinTRAC as a money services business. Quebec Inc. is in the non face to face money transfer business. Quebec Inc. transfers payments from individuals or companies in amounts that are over \$1000. These payments are for the transmission of commercial or residential rents, condo fees, or other amounts relating to tenants paying their landlords or condo syndicate. Quebec Inc. has done full due diligence on the landlords but has no information on the tenants making the payments. However, all tenants will be making such payments with a credit card issued by a recognized Canadian financial institution and NOT prepaid cards. Can Quebec Inc. rely on the client identification performed by the card issuer of the credit card and be exempted from performing the ID requirement as mandated for by FinTRAC for transfers of over \$1000?

In this scenario, what happens if instead of processing payments for rent or condo fees, Quebec Inc. processes tuition fees for universities or high schools, would Quebec Inc. be exempt from the requirement of ID'ing the client?

Answer:

You are an MSB if you are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

In the scenario you have provided, Quebec Inc., an MSB registered with FINTRAC, "transfers payments from individuals or companies in amounts that are over \$1000." You have additionally indicated that, "these payments are for the transmission of commercial or residential rents, condo fees, or other amounts relating to tenants paying their landlords or condo syndicate." In a follow-up email, you have also asked whether Quebec Inc. would be exempt from identification obligations if it was processing tuition fees for universities or high schools. Based on the information you have provided, namely that Quebec Inc. is transferring payments for rent/ condo fees and other tenant payments, and the fact this seems to be Quebec Inc.'s sole activity, it appears that Quebec Inc is carrying out payment processing activities, the transfer of funds only being a corollary of this service.

The Centre has previously taken the position, and continues to uphold the position, that persons or entities engaged in the business of utility payment, payroll and commission services, and payment services 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 as they are not engaged in the business of remitting or transferring funds. In other words, they do not provide the services of remitting and/or transferring funds for the sake of the service. The



transfer of funds is simply a corollary of their actual service of processing these payments. Based on the foregoing, it does not appear that Quebec Inc. is, at this time, engaged as an MSB in Canada as per our Act and associated Regulations. Therefore, this entity cannot be registered with us and as a result, is not be subject to the identification obligations of the PCMLTFA and its associated Regulations.

Should Quebec Inc.'s business model change in the future to expand beyond offering payment processing services between tenants and landlords, we would appreciate you contacting us in order for us to review and reassess our interpretation to reflect these new facts.

Date answered: 2014-01-13

PI Number: PI-5679

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: Mobile App Change Card - Not Covered

Question:

We are a small Canadian company developing innovative mobile payment solutions.

Our product is a mobile App which serves as anonymous change card/ merchant loyalty card except for being on a phone. Any consumer anywhere in the world would be free to download and use our mobile App which will be posted on Google's Play market and Apple's iTunes App store. Our company does not directly deal with a consumer's funds and there is only one way a user can "load funds" onto his or her Mobile App, which is to tender an amount greater than the value of goods or services being then consumed.

We would like to receive advice and guidance from FinTrac to insure that our product when ready for commercial deployment will comply with all existing and pending regulations.

Is there a process whereby we can make confidential submissions to FinTrac to disclose in detail what we are doing and receive comment from you on potential pitfalls or areas of concern?

Answer:

Based on the information you have provided, it does not appear that your entity is, at this time, engaged as an MSB in Canada as per our Act and its associated Regulations. It seems that your entity provides a platform allowing consumers to



store change via a mobile app which they can then use to make purchases with select merchants. As such, you cannot register your entity with us.

Should your business model change in the future to expand beyond offering this platform, we would appreciate you contacting us in order for us to review and reassess our interpretation to reflect these new facts.

Date answered: 2013-11-14

PI Number: PI-5646

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: Entities engaged in the business of Payment Processing Services

Question:

We would like to know if our business needs to be registered as a Money Services Business (MSB) with FINTRAC?

Answer:

Money services businesses have the obligation to register with FINTRAC. You are an MSB if you are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

The information you provided indicates that, "Advertisers create campaigns," and, "Company ABC sets a price for that campaign." You further specify that, "money is transferred from Advertisers to Company ABC's accounts. As consumers view and interact with ads they are paid and their accounts accumulate cash. Which they can use to purchase products online. [...] Once those purchases are complete, Online vendors can then take the money out of the system with a transfer to funds from our Company ABC account to their bank accounts." Company ABC also facilitates that transfer of funds from the Advertiser's/ Vendor's account to a consumer's account when a product is purchased. The documentation provided states that, "All purchases are through the Company ABC Transaction Server and only with vendors that have uploaded and integrated our Transaction Server." Based on the information you have provided, namely that Company ABC operates a platform between consumers and advertisers/ vendors and facilitates the transfer of funds between these parties when ads are viewed and/ or featured products are



purchased, it appears that Company ABC is carrying out payment processing activities, the transfer of funds only being a corollary of this service.

The Centre has previously taken the position, and continues to uphold the position, that persons or entities engaged in the business of payment processing services 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 because they are not engaged in the business of doing such remittance or transfers of funds. In other words, they don't provide the services of remitting and/or transferring funds for the sake of the service; the transfer of funds is simply a corollary of their actual service. Given the foregoing, it does not appear that Company ABC is, at this time, engaged as an MSB in Canada as per our Act and associated regulations. Therefore, your entity cannot be registered with us.

Should your business model change in the future to expand beyond offering payment processing services between consumers and advertisers/ vendors, we would appreciate you contacting us in order for us to review and reassess our interpretation to reflect these new facts.

Date answered: 2013-08-27

PI Number: PI-5603

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: Payment Processing - Covered or not?

Question:

Our company's clients are rental property owners; our normal business is to collect cheques from their tenants, deposit the cheques to their bank accounts, and charge a fixed service fee.

One of our clients who is currently not in Canada just enquired whether she can wire a certain amount of Canadian dollars (approx. \$25,000) to our bank account as she purchased a property that is approaching the closing day. The lawyer requested certified cheque or money order; however, as the client is not in Canada now, she cannot do the certified cheque or money order herself. Therefore, she wants to wire the money needed to our bank account, then we can get a certified cheque or money order from our bank and submit it to the lawyer for her. We will charge a service fee, if this transaction proceeds.



This ONE transaction is NOT within our normal business area, but whether this ONE transaction would make our company a "money service business" so that we must register with the government?

Answer:

To be considered a Money Services Business (MSB), an individual or entity must be engaged in the business of any of the following activities in Canada:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

Based on the information you have provided, it does not appear that your entity is, at this time, engaged as an MSB in Canada as per the PCMLTFA and its associated Regulations. In fact, your business doesn't provide the services of remitting and/or transferring funds for the sake of the service. This transfer of funds is simply a corollary of your actual service of collecting and depositing rental cheques on behalf of your clients. Therefore, you cannot be registered with us and are thus not required to report the above-mentioned activity.

Should your business model change in the future to expand beyond offering these services, we would appreciate you contacting us in order for us to review and reassess our interpretation to reflect these new facts.

Date answered: 2013-11-27

PI Number: PI-5649

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: Covered or not

Question:

The service is aimed at the real estate property sector. Among other services, they enable consumers who lease property, to make one-time online and/or recurring payments via credit cards, debit cards and EFT for their monthly lease payments. The company collects these funds and then remits them to the real estate property owners/managers. For EFT payments, the funds would normally flow from the consumer's bank, to an account held by the company at his bank, and then finally settled to the property owners.



The question is whether this business model requires registration as an MSB.

Answer:

According to the activities described, namely “enable consumers who lease property, to make one-time online and/or recurring payments via credit cards, debit cards and EFT for their monthly lease payments. The company collects these funds and then remits them to the real estate property owners/managers”, these activities are not covered under our legislation, Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Therefore, unless your client chooses to include other types of activities, it has no obligation under our Law to be registered as a Money Services Business. At first glance, the company appears to do payment processing (rent collection). This activity would not qualify the entity as being engaged in the money services business.

For more information, FINTRAC Interpretation Notice, FIN 1, provides guidance regarding who is a money services business for purposes of Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

Date answered: 2011-12-21

PI Number: PI-5372

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5(h)

Topic: Commission payments considered the same as payroll

Question:

Are commission payments considered the same as payroll. A commission payment differs from regular payroll because the amount paid varies depending on the amount of commission the person earns. They want to know if they need to perform record keeping, client identification, and reporting on commission payment EFTs.

Answer:

Commission payments are considered the same as payrolls payments and not a money services business activities covered under our legislation.

It is important to ensure that the commission payments that are handled by the MSB are from employers/merchants to their employees only (and not open to the general public).

Date answered: 2010-11-26

PI Number: PI-5365



Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: 6C, 8

Topic: What kind of tuition?

Question:

I am wondering whether entities engaged in the business of tuition payments sent to private education institutions are considered to be money services businesses (MSBs)?

Answer:

FINTRAC has previously taken the position, and continues to uphold the position, that persons or entities engaged in the business of tuition payment services, 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 MSB 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.

FINTRAC has not gone further to specify to which type of education institution these tuition payments must be sent. As such, entities engaged in the business of tuition payment services to public or private education institutions are not considered to be MSBs because the transfer of funds is a corollary to their payment processing service.

Date answered: 2016-03-18

PI Number: PI-6405

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5(h)

Topic: Covered or Not

Question:

The assessment seems inconsistent with our understanding of the Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the "Act"), so I am requesting further information in writing on precisely why FINTRAC does not consider us to be engaged in the business of money services and does not believe that we fall under paragraph 5(h) of the Act.



It was our expectation that FINTRAC would conclude that our business was consistent paragraph 5(h) of the Act and that we would therefore be required to register. In our day to day servicing of clients, our activities will include:

-Foreign exchange dealing

-Remitting and transmitting funds through various entities (primarily the Y Bank of Canada) on behalf of third party clients for the purpose of tuition payments

At some point in the near future, we may also wish to allow our clients to transfer funds from their personal Canadian bank accounts in Canada to their personal bank accounts in foreign countries for the purpose of covering living expenses, entertainment, etc, while attending foreign educational institutions. Rather than waiting to register for this component, we had expected that our initial activities as enumerated above would be deemed as money services and therefore we would be registered with FINTRAC. This would therefore allow us to expand into other areas of the funds transfer and remittance business without concern as to exactly when our actions begin to constitute money services and therefore require registration at some unknown time in the future, since we would already be registered and making reports as necessary to FINTRAC.

The payment flow on most transactions will be such that funds will flow to our business accounts when we act as an intermediary between funds transmitters and recipients. As such, there may be a disconnect in the payment flow and reporting that would be available to our financial institutions, and we believe we would therefore be required to report (for example, High Value Non-SWIFT Electronic Funds Transfers) to FINTRAC directly in order to ensure FINTRAC receives full details on all involved parties. While the majority of our dealings in EFT and Foreign Exchange dealing will be initially handled through the Y Bank of Canada, it is highly likely that certain foreign exchange and EFT transactions that we carry out on behalf of our Canadian clients may in some instances be carried out on our behalf by third parties who do not report to FINTRAC (for example, a US financial institution or US foreign exchange broker). So, it seems that we should be reporting directly to FINTRAC from the beginning.

As per paragraph 11.18 of the Act, if you cannot accept our application for registration, we kindly ask that you provide a more detailed written reason as to why you do not view our activities as falling under the definition of a money services business. This will allow us to better understand your position as to what actions would redefine us as being in the business of money services.

Answer:

Based on your current business model and the services you indicated your corporation will be offering i.e. "payments of tuition fees for Canadians who are studying at Universities in the United States" we would like to inform you that your corporation is not at this time "engaged in the money services business" but rather is engaged in offering bill payments services to students. As such your business



model does not fall under the criteria of a money services business within our Act and associated regulations. The intent of our legislation was to cover money services businesses and not entities that offer bill payment services.

Date answered: 2009-04-23

PI Number: PI-4416

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 11.18, 5(h)

Topic: Payment Processing - Not covered

Question:

A federally incorporated company will partner with an overseas company which provides healthcare facilities in the Philippines. Customers living in Canada can purchase a scheme which gives access to their family members in the Philippines to accredited doctors, hospitals and other health care providers in the Philippines. Company's role is advertising and promoting the Filipino company and collecting the monthly premium on behalf of the Filipino company. The customers details are provided on line and the payment method is also chosen on line and the money is remitted by wire to the Filipino company. The Canadian company's role is limited to advertising, promoting and collecting the monthly payment for the scheme which customers purchase. The payment is a recurring payment.

My question is whether the business falls under the definition of Money Services Businesses and whether the Canadian company needs to register with FINTRAC.

Answer:

Money services businesses have the obligation to register with FINTRAC. The company is an Money Services Businesses if it is engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

The Centre has previously taken the position, and continues to uphold the position, that persons or entities engaged in the business of payment processing services 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 Money Services Businesses because they are not engaged in the business of doing such



remittance or transfers of funds. In other words, they don't provide the services of remitting and/or transferring funds for the sake of the service. The transfer of funds is simply a corollary of their actual service of advertising and promoting.

You have indicated, "A federally incorporated company will partner with an overseas company which provides healthcare facilities in the Philippines. Customers living in Canada can purchase a scheme which gives access to their family members in the Philippines to accredited doctors, hospitals and other health care providers in the Philippines. [...] The customers details are provided on line and the payment method is also chosen on line and the money is remitted by wire to the Filipino company." You have additionally pointed out that, "The Canadian company's role is limited to advertising, promoting and collecting the monthly payment for the scheme which customers purchase. The payment is a recurring payment."

Based on the information you have provided, it does not appear that your client is, at this time, engaged as an Money Services Businesses in Canada as per our Act and associated regulations. Therefore, your client cannot be registered with us.

Date answered: 2014-02-20

PI Number: PI-6099

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: "Pay-out" service covered

Question:

Our company will offer "pay-out" service to clients ("merchants"). The merchants can instruct our company to pay its international customers or suppliers ("end recipients"). To offer this service, our company will establish local bank accounts in various countries (including Canada) and will, at the request of the merchants, pay the end recipients through domestic transfers. As a result, should our company be registered as a money services business (MSB) with FINTRAC?

Answer:

MSBs have the obligation to register with FINTRAC and you are an MSB if you are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).



In addition, because your company is international, it must also have a “real and substantial connection” with Canada to be considered an MSB. The criteria considered to establish a real and substantial connection include if the business:

- is incorporated in Canada;
- has agents in Canada;
- has physical locations in Canada;
- maintains a bank account in Canada; or
- maintains a server in Canada for the purposes of carrying out MSB activities.

Based on the information provided, it appears that as a result of its “pay-out” service, your company will offer remitting or transmitting services to your merchant clients to facilitate payment to the end recipients. Additionally, your company will maintain a bank account in Canada, thus establishing a real and substantial connection. As such, it appears as though your company will be engaged as an MSB in Canada, as per the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its associated Regulations.

To further clarify, you asked whether your company would be considered an MSB as a result of the following summarized scenarios:

- Pay-out service provided to merchants outside of Canada to pay end recipients in Canada
- Pay-out service provided to merchants in Canada with end recipients outside of Canada
- Pay-out service provided to merchants in Canada with end recipients in Canada
- =Pay-out service provided to merchants outside Canada to pay end recipients outside Canada

Your company would be considered to be engaged as an MSB in Canada in all of these scenarios, with the exception of number 4, which has no connection with Canada.

You have also asked whether the requirements would differ if the summarized scenarios above were offered by a Canadian incorporated subsidiary of your company. If this were the case, the Canadian incorporated entity would be required to register with FINTRAC and identify your company as an owner.

Date answered: 2015-11-09

PI Number: PI-6369

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5h)



Topic: Cash cards company - Covered

Question:

Based on the following business model, does our company need to be registered as an Money Services Businesses with FINTRAC?

COMPANY OVERVIEW:

Company ABC with experience-derived knowledge and a proven track record encompassing 25+ years in the debit/prepaid/cash-card/e-wallet and communications field in Canada and internationally, is the continuation of its successful business model; established since 1986, where the first cash-card concept originated; with its business-to-business focus and revolutionary-disruptive technology has evolved to become a new, or optional e-Currency concept, allowing for the creation of a unique closed-loop Universal Payment System. The Company developed and owns its e-currency technology and associated intellectual property.

In January 2012, Company ABC, building off the legacy of its history, was established as a unique Independent e-Currency Network of its kind, and licensor of its business model, offering significantly greater value and opportunity (as a closed loop issuer, processor and acquirer), to neglected, underserved markets, particularly persons with no bank accounts and merchants with low, or no credit that are not accepted by credit or debit company for payment acceptance at their stores. Our system, similar to that of Interac, is 100% PIN based, therefore eliminating, or reducing the fraud possibility.

BUSINESS MODEL:

Company ABC Closed Loop cards operate within a system where the Issuer, Processor and Acquirer are the same. Think of Company ABC like a "Shopping Mall" with affiliated retailers, where its network cards can be redeemed and used to pay for goods and services, similar to an Interac Debit Card, at any location within its Mall.

Answer:

Money services businesses have the obligation to register with FINTRAC. You are an Money Services Businesses if you are engaged in the business of any of the following activities:

- Foreign exchange dealing;
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).



Your website advises that, "Company ABC's flagship products are composed of a series of unique and innovative, cash cards (prefunded debit cards, virtual electronic accounts, e-wallets, or e-purses, as well as secured credit cards)", and that "sending money to someone is quick and easy" by means of "a reload, or funding transaction, or a card to card transfer to the recipient's card." The recipient can then "get his/her money by simply conducting a Cash Back / Payout transaction at an authorized establishment, or at ATMs displaying our logo."

Based on the aforementioned, it appears that Company ABC is engaged in the activity of remitting or transmitting funds. Therefore, at this time, Company ABC is engaged as an Money Services Businesses in Canada as per the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its associated Regulations.

Date answered: 2014-03-06

PI Number: PI-6113

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5(h)

Topic: Bitcoin - Covered

Question:

Company ABC is a convenient and easy option for the small business, entrepreneur or professional to collect and receive payments directly to their bank accounts from their customers through electronic funds transfer (EFT) as an online bill payee.

Our services can only be used by businesses to receive payment for invoices.

Company ABC's clients will have to provide the following during the signup process:

Full legal name of the company

Business number or incorporation number

Existing banking information including a banking reference

Type of industry and expected monthly volumes

Contact details of at least one director

All companies using NoCheque need to have been in business for at least 3 years

Assuming a law firm is our client, the process will be as follows:

LawCo will go to CompanyABC.com and sign-up with the information provided above.



Company ABC will issue a pre-fix, let's assume 'lawco' and the law firm will add their account number to the prefix. Let's assume LawCo's internal customer number is 123456.

LawCo will send an invoice to their clients and one of the payment options will be Company ABC. LawCo's client can log on to their individual bank and select Company ABC as a payee. In the account number section they will enter 'lawco123456' and make payment. Similar to a utility or bill payment. Company ABC will receive payment and transfer the funds to LawCo subject to a per transaction fee of \$1.50. In addition Company ABC will provide a file that integrates with LawCo's accounting system to make account reconciliation easier.

Answer:

Money services businesses have the obligation to register with FINTRAC. You are an Money Services Businesses if you are engaged in the business of any of the following activities:

Foreign exchange dealing;

Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or

Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

Based on the information you provided, namely that "Company ABC is a convenient and easy option for the small business, entrepreneur or professional to collect and receive payments directly to their bank accounts from their customers through electronic funds transfer (EFT) as an online bill payee", it appears that your entity is, at this time, engaged as a money services business in Canada, as per our Act and associated regulations. I am providing you with a link to the FINTRAC Interpretation Notice, FIN 1, which provides guidance regarding who is a money services business for purposes of Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

As an Money Services Businesses in Canada, you have legal obligations under Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act. This includes registering your business with us, reporting to us, keeping records, identifying your clients, and having a compliance regime. Our publication, Your Money Services Business in Canada: What you need to know, gives a short summary of your obligations and responsibilities. All of these are described in greater detail on our Web site. It is important that you understand these obligations and meet them to be in full compliance with this law.

Date answered: 2014-03-04

PI Number: PI-6110

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses



Guidance: FIN-1  
Regulations: 1(2)  
Act: 5(h)

Topic: EFTs - Covered or not?

Question:

Here are two business scenarios. I would like a determination as to whether we would need to be registered as an MSB with FINTRAC.

The more general scenario is the “MSB type of business” whereby the entity in question is in the business of providing online payment services as an intermediary for its customers (which are other online businesses ... retailers, charities, etc.) whose own customers may be other businesses or consumers. It has been my understanding that FINTRAC's position is that electronic funds transfers do not include certain popular payment methods such as online credit and debit card payments.

The second scenario is a corollary of the first in that the entity in question is not “in the business of” providing online payment services (rather, the online payment services are ancillary to its core online business). Its core business is consumer electronics. On its website it offers certain services that, if purchased, would be carried out by several third party vendors, which services can be added to the consumer electronics purchases (e.g., repair/service/warranty plans). The entity will allow its online customers to pay for the third party pre-paid service plans through the same online process the consumers would use to pay for the entity's own consumer electronics (payment by credit or debit card). The entity does not hold itself out to the public as providing online payment services, and the arrangement in question is a particular contractual arrangement with several other businesses (the third parties whose services are offered in conjunction with the entity's own products online). The contractual arrangement would be a “billing service provider agreement.” The entity, further to the billing service provider agreement, would then remit payment to these third parties for the amounts owing to them for their prepaid service plans (less a small service fee).

Answer:

Money services businesses (MSB) have the obligation to register with FINTRAC. You are an MSB if you are engaged in the business of any of the following activities:

Foreign exchange dealing;  
Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or  
Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).



In your email, you have presented two different business scenarios and would like a determination as to whether either would need to be registered as an MSB with FINTRAC. Please see my response to each scenario hereunder:

#### First Scenario

In the first scenario you provided, the entity in question is in the business of providing online payment services for its customers, who may be online businesses or retailers. From the information you have provided, it is my understanding that this entity would be transferring funds for its customers, who may choose to do so using different methods including debit and credit. If this is the case, this entity would be remitting and transmitting funds on behalf of its customers, whether they choose to do so via their debit card or their credit card. As such, this entity would be engaged as an MSB in Canada as per the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its associated Regulations.

I am providing you with a link to the FINTRAC Interpretation Notice, FIN 1, which provides guidance regarding who is a money services business for purposes of Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

As an MSB in Canada, this entity has legal obligations under the PCMLTFA. This includes registering with us, reporting to us, keeping records, identifying its clients, and having a compliance regime. Our publication, *Your Money Services Business in Canada: What you need to know*, gives a short summary of these obligations and responsibilities. All of these are described in greater detail on our Web site. It is important that you understand these obligations and meet them to be in full compliance with this law.

#### Second Scenario

The second scenario you described involves an entity that is in the business of selling electronics online. On its website, it offers certain services that can be combined with the electronics such as warranties, servicing plans, etc. These services are ultimately carried out by third party vendors and consumers have the option of directly adding these services to the purchase of their electronics. Therefore, customers have the option to pay for the third party pre-paid service plans through the same online process they use to pay for the electronics. The entity would then remit payment to these third party vendors for their prepaid service plans (less a small service fee). Based on this information, it does not appear that this entity would be engaged as an MSB in Canada as per the PCMLTFA and its associated Regulations. In fact, this entity doesn't seem to provide the services of remitting and/or transferring funds for the sake of the service. This transfer of funds is simply a corollary of its actual service of selling electronics. Therefore, this entity cannot be registered with us.

Date answered: 2013-01-24



PI Number: PI-5489

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN 1

Regulations: 1(2)

Act: 5(h)

Topic: Covered or not?

Question:

Attached is our form agreement for direct selling companies (each a "Payor") using our ABC software platform. Our position is that each pay portal belongs to the Payor pursuant to a software license from XYZ Inc. The Payor uses the pay portals to communicate with payees. XYZ Inc. only accepts instructions from the Payor. Below I will demonstrate that:

- 1-XYZ Inc. has no privity of contract with payees;
- 2-XYZ Inc. has privity of contract with, and acts as agent for, the Payor; and
- 3-the Payor has de facto control of the funds in the pay portals.

1-The online contract signed by payees (MLM salespeople) is between the payee and the Payor.

2-XYZ Inc. has privity of contract with, and acts as agent for, the Payor. Paragraph 6 in Part I of Schedule "A" (page 12) provides that we hold funds in pay portals as agent for the Payor and not the payee. This paragraph further provides that the Payor can recall its funds at any time. This demonstrates that we are taking instructions from the Payor. The exact language is:

"XYZ Inc. shall act as Customer's agent with respect to all Customer funds held by XYZ Inc. and designated for distribution to Authorized Users through the Application Service. All Customer funds so designated shall be held in pooled accounts ("Pooled Accounts") for Customer and other users of the Services, and segregated from XYZ Inc.'s operating accounts until such funds are either returned to Customer at its request, transferred to an Authorized User's bank account or cashed out to another integrated third party network. Pooled Accounts shall be designated "for the benefit of" Customer and other users of the Services where reasonably practicable, as determined by XYZ Inc. in its sole discretion."

3-The Payor has de facto control of the funds in the pay portals. The Payor receives instructions from the payee and separately authorizes XYZ Inc. to carry out those instructions. See Schedule "C", paragraph 9 (page 16), which provides:

"Customer authorizes XYZ Inc. to configure the Application Service to fulfil all Authorized User instructions for the completion of bank transfers, or cash out



transactions with integrated third party networks, until further notice from Customer.”

In conclusion, As the party in between the software license provider and the payee, the Payor uses pay portals to communicate with its payees and it uses the licensed software more generally to provide payment instructions to XYZ Inc. XYZ Inc. instructions always come from the Payor, the party with whom we have a contractual relationship. The Payor has the exclusive ability to fund its pay portals. Pay portals cannot be payee-funded. When a payee enters his or her bank account information and clicks "cash out to bank account", this instruction is given to the Payor, not XYZ Inc. The Payor authorizes XYZ Inc., the software provider, to carry out those instructions.

Nearly all of our revenues come from the ABC service, and a FINTRAC mandate to KYC payees would probably put us out of business. On a more positive note, an affirmative letter that ABC is not subject to FINTRAC's regulation and EFT reporting requirements would greatly ease our administrative burdens going forward.

Answer:

Below is a summary of the information provided re: XYZ Inc.:

- XYZ Inc. is an online MSB that offers “Wallet” accounts for its customers, where the customers can send EFTs through their online accounts.
- One of the products XYZ Inc. offers is the ABC Pay Portal.
- ABC Pay Portal is a global payment solution designed so a client can send payments to multiple recipients.

In the case before us, XYZ Inc. is used by companies to pay out the commissions of its sales representatives. XYZ Inc. creates virtual accounts for all of the sales representatives in its system:

- The Payor registers ABC Pay Portal accounts for the Payees by uploading basic payee information into the system, such as their name, internal ID number, address and email address
- The Payor uploads payment information identifying the recipients and the amounts to be paid into each recipient's account via the ABC system. The Payee's Pay Portal is automatically credited with this amount. The funds used for the payments are debited from the Payor's pre-funded ABC Loading Account
- Payees access their Pay Portals online or by using their mobile device to transfer their payments to their bank accounts (or to an attached prepaid card, if applicable), managing their own banking information. They also have the option to automatically sweep incoming ABC payments to the bank account(s) and/or ABC prepaid card of their choice
- In addition to transferring the funds out of their Paylution account, it is possible for Payees to integrate their online shopping cart with Paylution to enable them to use



the funds in their Pay Portal to make new purchases from the company (“Spendback”)

XYZ Inc. indicated that:

- The Payor funds are held in a pooled account, and segregated from XYZ Inc.'s operating accounts until such funds are either returned to the Payor at its request, transferred to a Payee's bank account or cashed out to another integrated third party network
- The Payor uses pay portals to communicate with its Payees and it uses the licensed software more generally to provide payment instructions to XYZ Inc. XYZ Inc. instructions always come from the Payor
- The Payor receives instructions from the Payee and separately authorizes XYZ Inc. to carry out those instructions
- Pay portals cannot be Payee-funded. When a Payee enters his or her bank account information and clicks "cash out to bank account", this instruction is given to the Payor, not to XYZ Inc.
- The Payor can set an “opt-in” or “opt-out” function for auto-cash out

Based on this information, is ABC Pay Portal, as described in XYZ Inc.'s business model, subject to the PCMLTFA and its associated Regulations?

The Centre has previously taken the position that persons or entities engaged in the business of payroll services and payments services 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 because they are not engaged in the business of doing such remittance or transfers of funds.

In other words, they don't provide the services of remitting and/or transferring funds for the sake of the service. The transfer of funds is simply a corollary of their actual service: in XYZ Inc.'s case, paying commissions on behalf of another entity. Commission payments are considered the same as payroll payments.

Based on the information provided by XYZ Inc. and described above, ABC Pay Portal is a product to transfer payroll products into the Payees' bank accounts or to a pre-paid card. It is transferring funds as a corollary to a commission payment service. In this case, XYZ Inc. could be considered the “administrator” of the commission payments with options available to the payees receiving the commission. At this time and based on this information, XYZ Inc., with respect to ABC Pay Portal, is not subject to the PCMLTFA and its associated Regulations.

Date answered: 2012-09-27

PI Number: PI-5459

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses



Guidance: FIN-1, 6C  
Regulations: 1(2)  
Act: 5(h)

Topic: Covered or not

Question:

654 Cash intends to initially enter the market offering digital money transfer using our technology platform. That platform performs the following functions:

- Creation of an eWallet (customer account, etc.)
- Load/re-load eWallet – money is transferred electronically from the client's bank account into the eWallet
- Money Transfer – the client identifies target recipient, the system generates a unique and secure PIN. The client then provides the PIN to the recipient via SMS, email or phone. The recipient visits a 654 Cash Agent who accesses the 654 Cash system, validates the PIN and provides cash to the recipient.

Our distribution channels are intended to be as follows:

- Online – via internet marketing activities such as SEO/SEM
- Mobile Application – under development, but all of the online functions can be completed from most smartphones, tablets, etc.
- Licensees & Associates – through a distribution agreement with another company, licensees and associates will promote the product and will drive their clients to the website. Unique ID's will be used to track and compensate licensee and associate activities
- Fulfillment: In-country agents will be recruited either directly by the company or via referrals from individuals, clients, licensees or associates. In country cash dispensing agents will be provided with means to electronically and securely validate a PIN and will be compensated (commission) for acting as cashing agent.

As we continue to develop the platform, we intend to also offer bill payment (both domestic and international) as well as merchant payment opportunities (i.e. purchase a gift card/vouchers for a family member in another country).

Answer:

It would appear that 654 Cash remits funds and transmits funds by any means or through any individual, entity or electronic funds transfer network, and appears to be engaged in foreign exchange dealing. 654 Cash is a money service business in Canada, as defined in paragraph 5(h) of the Act. It would thus appear that 654 Cash is covered by the Act and must therefore register with FINTRAC and comply with the obligations set out in the Act.

Date answered: 2012-03-22



PI Number: PI-5397

Activity Sector(s): Money services businesses

Obligation(s): Money services businesses

Guidance: FIN-1

Regulations: 1(2)

Act: 5(h)

Topic: Covered or not

Question:

Would this activity be covered under the legislation..

Example:

- A ticket company has a contract with the charitable entity to sell tickets for a charitable event (for example dinner galas).
- Individuals who want to buy tickets to charitable events purchase the ticket through the ticket company.
- The ticket company is unable to process the payments because it is in a different currency.
- The ticket company signs an agreement with an entity, whereby the ticket company provides the payment processing information to the entity so that the entity can process the payments.
- The entity processes the transactions from the individuals and then gives the payment to the ticket company. Both a FX transaction and EFT would occur at this stage.
- The ticket company then gives the charitable entity the funds.
- In this example, the ticket company, the charities, and the individuals are in most cases all located outside of Canada.

Is this considered payment processing or EFTs and FX? Please let me know what you think and what obligations if any they have for KYC.

The entity said they would be able to get KYC info on the ticket company and limited documentation on the charities, but only transaction information for the individuals. They want to know what are their obligations before signing a contract with the ticket company.

Answer:

At first glance the entity does mostly payment processing (activity that would not qualify the entity as being engaged in the money services business).

However, the entity also does foreign exchange - therefore because of that component (i.e. fx) the entity is engaged in the money services business and would need to register as a MSB.



Date answered: 2008-12-17  
PI Number: PI-4472  
Activity Sector(s): Money services businesses  
Obligation(s): Money services businesses  
Guidance: FIN-1  
Regulations: 1(2)  
Act: 5(h)

Topic: Covered or not

Question:

A company has two business divisions:

1-Gift Card - Internet use only prepaid cards (or in-house value cards). No cash value and not convertible backwards.

2-Cheque Payment services for Merchants. We manage payouts for affiliates on behalf of internet merchants and pay via cheque (in exchange for service fees). Are they required to register with FINTRAC?

Answer:

Based on the information you provided, it would seem that this entity is not engaged in the money services business.

However, we would suggest that you may want to enquire a bit more in the activities indicated in point #2 "manage payouts for affiliates" - just in case the list of merchants/affiliates is actually more than just cheque payment services for a line of business or part of the business, and is a disguised money services business.

Date answered: 2008-12-17  
PI Number: PI-4471  
Activity Sector(s): Money services businesses  
Obligation(s): Money services businesses  
Guidance: FIN-1  
Regulations: 1(2)  
Act: 5(h)