GOVERNMENT RESPONSE

INTRODUCTION

The Government of Canada is pleased to respond to the twenty-fourth Report of the House of Commons Standing Committee on Finance entitled *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, tabled in the House of Commons on November 8, 2018.

The Government of Canada appreciates the work of the Committee and welcomes its analysis, views and recommendations, which we recognize are based on consultations with stakeholders and experts in the field of anti-money laundering and anti-terrorist financing (AML/ATF). The Government shares the Committee's commitment to better understand money laundering and terrorist financing in order to combat it effectively.

CANADA'S FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

Canada has a stable and open economy, an accessible and advanced financial system, and strong democratic institutions. Those seeking to launder proceeds of crime or, raise, transfer and use funds for terrorism purposes, try to exploit some of these strengths. Canada takes a comprehensive and coordinated approach to combating money laundering and terrorist financing to promote the integrity of the financial system and the safety and security of Canadians.

Canada's Regime is comprised of legislation and regulations, federal departments and agencies, including regulators and supervisors, law enforcement agencies, and reporting entities. Canada's AML/ATF legal framework is comprised of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its Regulations, which are an essential component of Canada's broader AML/ATF Regime. The Regime involves 13 federal departments and agencies with authorities provided by the PCMLTFA or other Acts, eight of which receive dedicated funding totalling approximately $70 million annually. In addition to the federal response, provincial and municipal law enforcement bodies and provincial regulators (including those with a role in the oversight of the financial sector) are also involved in combating these illicit activities. Within the private sector, there are almost 31,000 Canadian financial institutions and designated non-financial businesses and professions (DNFBPs) with reporting obligations under the PCMLTFA, known as reporting entities, that play a critical frontline role in efforts to prevent and detect money laundering and terrorist financing.

To support the five-year review by the Committee of the PCMLTFA, the Department of Finance published a discussion paper entitled "Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime" on February 7, 2018. Themes included: closing legislative and regulatory gaps; enhancing information sharing; intelligence and enforcement; framework modernization and supervision. The measures described in this paper focused on improving the PCMLTFA and addressing gaps noted in the 2016 Financial Action Task Force Mutual Evaluation

Report. From February-May 2018, 60 unique submissions were received from a diverse range of stakeholders, including financial entities, life insurance companies, securities dealers, money services businesses, lawyers, industry associations, real estate agents and individual Canadians. On balance, the discussion paper was generally well received, and stakeholders signaled their support for key actions set out in the paper.

The Government is committed to a strong and comprehensive Regime that is at the forefront of the global fight against money laundering and terrorist financing. The Government recognizes that measures to enhance Canada's AML/ATF legislative framework should strike the appropriate balance among sometimes-conflicting objectives of providing actionable intelligence to law enforcement agencies and protecting the privacy and *Charter* rights of Canadians. Careful and deliberate use of financial intelligence supports the effectiveness of the Regime to improve the safety and security of Canadians, while respecting their privacy and constitutional protections. Yet, it is important to not place an undue burden on reporting entities, which are on the front lines of the fight against money laundering and terrorist financing. Similarly, risk-based approaches should continue to be incorporated where appropriate to maximize the effectiveness of efforts.

RECOMMENDATIONS

After carefully reviewing the Committee's Report, the Government has chosen to respond to the recommendations by chapter.

CHAPTER 1: LEGISLATIVE AND REGULATORY GAPS

The Government of Canada substantively agrees with the direction of all the Committee's recommendations in Chapter 1 (Recommendations 1-13).

With respect to Recommendation 1, the creation of a pan-Canadian beneficial ownership registry for all legal persons and entities including trusts, the Government has already taken steps to strengthen beneficial ownership transparency under federal corporate law by requiring corporations to hold information on beneficial ownership in corporate records. Changes to the *Canada Business Corporations Act* were announced in Budget 2018 included in *Bill C-86, Budget Implementation Act 2*, which received Royal Assent on December 14, 2018. This step represents the first of two phases of work to improve the transparency and availability of beneficial ownership information in Canada as set out in the Agreement to Strengthen Beneficial Ownership Transparency announced by federal, provincial and territorial Finance Ministers in December 2017. A second phase of work with provinces and territories is also underway to assess options to improve access to the beneficial ownership information for law enforcement agencies, including the possible use of a registry.

In respect to Recommendations 2 and 3, changes related to new legal requirements were implemented in June 2017 in relation to politically exposed persons in Canada and heads of international organizations. Politically exposed persons in Canada (domestic PEPs) are people

who hold, or have held, important public functions in Canada, including heads of state, senior politicians, senior government and judicial officials at all levels of government, senior military leaders, senior executives of state-owned corporations, and important political party officials. Reporting entities are required to take enhanced measures if a domestic PEP is assessed by the reporting entity as presenting a high risk of money laundering or terrorist financing. The Government acknowledges that operational adjustments may be appropriate to ensure that the implementation is measured and effective. Emphasizing the risk-based approach, FINTRAC published a FAQ in relation to politically exposed persons in Canada on its website. Moving forward, the Department of Finance, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), and Office of the Superintendent of Financial Institutions (OSFI) will continue to monitor how compliance with these obligations evolves over time and provide further regulatory clarification and guidance as needed.

Recommendations 4 and 5 speak to specific measures that would address gaps in the Regime that relate to lawyers in regards to AML/ATF following Canada (Attorney General) *v*. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401. The Government recognizes that the legal profession represents a high AML/ATF risk to the Regime, and continues to work towards bringing the legal profession into the framework in a constitutionally compliant way. To note, the Federation of Law Societies Canada have recently revised their model rules, including the no cash rule, as well as client identification and record keeping. The Government will continue to engage with the Federation of Law Societies Canada towards greater inclusion of the legal profession in the Regime.

The Government agrees with the direction of Recommendations 6, 12 and 13, which address the supervision of self-regulated professions, the examination of security dealers by security regulators, and the training of security regulators. However, the Government notes there are considerations that must be taken into account with respect to self-regulated professions and security regulators, such as constraints in our AML/ATF Regime framework, in order to respect the *Charter of Rights and Freedoms* and privacy rights, as well as federal/provincial/territorial jurisdictional issues.

As proposals outlined in the Department of Finance discussion paper, the Government is currently reviewing Recommendations 7 to 11 (amending the PCMLTFA to include armoured cars, white label ATMs, designated non-financial businesses and professions, real estate brokers, sales representatives and developers to mortgage insurers, land registry and title insurance companies, companies selling luxury items; making structuring of transactions a criminal offence).

CHAPTER 2: THE EXCHANGE OF INFORMATION AND PRIVACY RIGHTS OF CANADIANS

The Government of Canada substantively agrees with the direction of all the Committee's recommendations in Chapter 2 (Recommendations 14-19).

The Government will need to undertake further review and analysis of some of the provisions mentioned in Recommendation 14, which suggested the examination of the U.S. Government's "third agency rule" for information sharing. In the Canadian context, there are no "third agency" restrictions related to FINTRAC disclosures. Once disclosed, disclosure recipients may share information under their own authorities. Restrictions for other private-sector entities and agencies exist in various privacy statutes such as *Personal Information Protection and Electronic Documents Act* (PIPEDA), and/or the *Criminal Code*.

The Government is reviewing Recommendation 15, which calls for expanding FINTRAC's mandate to allow for greater focus on building actionable intelligence on money laundering and terrorist financing, longer data retention, two-way information sharing, the ability to request more information from specific reporting entities, and the ability to release aggregated data. There will be a need to balance anti-money laundering and anti-terrorist financing objectives with the *Charter* and privacy rights of Canadians in terms of implementing changes to the statute and regulations. The current legislation allows FINTRAC to receive financial information for criminal law purposes without prior judicial authorization. To support the reasonableness of the law, FINTRAC was created as an independent, arm's length agency from its disclosure recipients whose mandate explicitly includes ensuring against unauthorized disclosure. Its role is to analyze private information which it receives from various sources and to disclose information to law enforcement only upon meeting certain legal thresholds. In other words, law enforcement and intelligence agencies cannot merely compel access to FINTRAC's database or its analysis of specific cases. Without prior judicial authorization, the information that is permitted to pass to law enforcement is restricted.

In response to Recommendations 16-18, which call for a round table partnership with industry leaders, an emulation of the U.K.'s model of a Joint Money Laundering Intelligence Taskforce, and legislation that would allow information that is limited to AML/ATF subject matter to be shared between federally regulated financial institutions, the Government is reviewing the Recommendations to enhance public-private and private-private information sharing options. Building on recent success of Project PROTECT, a private sector led project with FINTRAC to combat human trafficking, the Government will continue to explore mechanisms and models to enhance information sharing in the AML/ATF Regime, including between the public and private sector. As highlighted in the experience of other countries, the Government recognizes that enhanced information sharing between private sector and government institutions, as well as between themselves, can facilitate more targeted disruption of illicit activities related to money laundering/terrorist financing (ML/TF), ultimately contributing to the effectiveness of an AML/ATF regime.

In terms of Recommendation 19, which would ensure that the most vulnerable Canadians are not being denied a bank account due to lack of adequate identification, policies for access to basic banking are already in place in the *Bank Act* and the PCMLTFA. Policies, such as the *Access to Basic Banking Services Regulations*, help ensure that the most vulnerable Canadians are not being denied a bank account due to lack of adequate identification.

CHAPTER 3: STRENGTHENING INTELLIGENCE CAPACITY AND ENFORCEMENT

The Government of Canada substantively agrees with the direction of all of the Committee's recommendations in Chapter 3 (Recommendations 20-24).

The Government is currently reviewing Recommendations 20 and 23, which suggest bringing forward *Criminal Code* and *Privacy Act* amendments in order to facilitate money laundering investigations and enable geographic targeting orders, as also outlined in the departmental discussion paper.

Recommendations 21 and 22 look to expand FINTRAC oversight to ensure casino entities are trained in AML and establish information sharing regime through FINTRAC and provincial gaming authorities. In response, the requirement to have a training program and reporting requirements for AML/ATF is already in place for all reporting entities. As reporting entities, casino operator entities have requirements to train employees and establish compliance programs. A comprehensive and effective compliance program is required to meet obligations under the PCMLTFA and associated Regulations. During a FINTRAC examination, reporting entities must demonstrate that the required documentation is in place, and that employees, agents, and all others authorized are well trained and can effectively implement all the elements of the compliance program. Moving forward, FINTRAC will seek to deepen engagement and clarify expectations and responsibilities within the casino sector.

The Government is reviewing Recommendation 24, which calls for giving holders of bearer shares a fixed period of time to convert them into registered instruments before they are deemed void, and will continue policy development work to this end. Bill C-25, which amended the *Canada Business Corporations Act* (CBCA) and the *Canada Cooperatives Act* to prohibit the issuance of new bearer shares, received Royal Assent on May 1, 2018. While the CBCA has required that shares be in registered form since 1975, with these additional amendments, the issuance of options and rights in bearer form is prohibited, and corporations which are presented with bearer instruments are required to convert them into registered form.

CHAPTER 4: MODERNIZING THE REGIME

The Government of Canada substantively agrees with the direction of the majority of Committee's recommendations in Chapter 4 (Recommendations 25-32).

Recommendations 25, 26, 29 and 32, which speak to the regulation of crypto-exchanges, crypto-wallets, and prepaid cards, and the streamlining of the reporting structure of Suspicious Transaction Reports (STRs), are being substantively addressed through proposed regulatory amendments to the PCMLTFA, which were pre-published in the *Canada Gazette* in June 2018. The proposed amendments address risks associated with dealers in virtual currencies (VCs). Businesses that provide VC-related financial services, such as exchange and value transfer services, will be deemed financial entities or money services businesses (MSBs). As required of current MSBs, businesses dealing in VC will need to implement a full compliance program,

identify their clients, keep records, report certain financial transactions, and register with FINTRAC. With respect to "crypto wallets", it should be noted that the proposed regulations are function-based and would ensure that businesses that provide associated financial services, such as value transfer or exchange services in/out of their clients' wallets, would be subject to the same AML/ATF regulations as MSBs. The proposed amendments also address prepaid cards. Prepaid payment products (e.g., prepaid credit cards) would be treated as bank accounts for the purposes of the Regulations. Therefore, reporting entities issuing prepaid payment products would be subject to the same customer due diligence requirements as those imposed on these reporting entities who offer bank accounts (e.g., verifying the identity of their clients, keeping records, and reporting suspicious transactions related to a prepaid payment product account). The amendment would not apply to issuers of products restricted to use at a particular merchant or group of merchants, such as a shopping-centre gift card. The reporting structure of STRs is also being updated through regulatory amendments to increase ease of use by reporting entities.

The Government will review Recommendation 27, which proposes to establish formal licensing mechanisms for crypto-exchanges. However, all MSBs must register with FINTRAC and have obligations to FINTRAC as reporting entities.

The Government will review Recommendation 28, which would prohibit nominee shareholders and subject nominees to anti-money laundering obligations. This measure will be considered within forward policy development work.

The Government has identified challenges to adopting Recommendation 30 (changing the structure of FINTRAC's STRs to resemble the Suspicious Activity Reports (SARs) used in the United Kingdom and the United States) and Recommendation 31 (enhance the direct reporting system of casinos to FINTRAC through STRs to include suspicious activities). Though these approaches are applied in the United States, they have not been adopted in Canada as they do not reflect Canadian legal requirements, which balance the goals of Canada's AML/ATF Regime and *Charter* and privacy considerations. Whereas STRs are more narrow in scope to reflect completed or attempted ML/TF transactions, SARs are more broad-based. In the Canadian constitutional context, a number of safeguards exist to strike an appropriate balance between privacy rights anti-money laundering and anti-terrorist financing objectives. The system to report Suspicious Transaction Reports has been carefully developed with this balance in mind. Furthermore, a legal threshold of "reasonable grounds to suspect" must be met before FINTRAC can share information with the RCMP and other disclosure recipients because they contain confidential private information that law enforcement would otherwise require a search warrant to obtain. The Government will continue to review how the Regime can be improved without jeopardizing this balance.

Regarding Recommendation 31, recent legislative changes have clarified that the provinces, who have the authority under the *Criminal Code* to manage and conduct legal casinos in Canada, are responsible for reporting to FINTRAC. In practice, depending on the operating model adopted in a given province, this obligation can be passed on by the province to the

private sector operator of the casino. These changes were implemented to address previous challenges related to duplication and confusion on which entities bear these obligations.

CONCLUSION

This Government Response describes concrete actions, policies and programs, both in place or underway, that address many of the Committee's recommendations. The Government substantively agrees with the direction of the majority of the Committee's recommendations, which are well-aligned with the Government's current direction on anti-money laundering and anti-terrorist financing. Officials are working to address the Committee's recommendations by developing forward policy and technical measures that could help shape or inform the Government's longer-term approaches to anti-money laundering and anti-terrorist financing through coordinated horizontal action among the federal government departments and agencies that are part of Canada's AML/ATF Regime.