

MSBS BEWARE: THE BRITISH COLUMBIA *MONEY SERVICES BUSINESSES ACT* IS AROUND THE CORNER

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Introduction

On April 26, 2023, the [Money Services Businesses Act](#) (the “BC MSBA”) passed third reading in the Legislative Assembly of British Columbia and is currently awaiting Royal Assent. The BC MSBA establishes a registration regime for persons who carry on the business of providing money services (“MSBs”) and designates the BC Financial Services Authority (“BCFSA”) as the provincial regulator for MSBs. The BC MSBA was introduced as a result of a recommendation from the [Final Report of the Commission of Inquiry into Money Laundering in British Columbia](#) (often referred to as the Cullen Commission report).

Unlike the MSB registration regime of the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “PCMLTFA”), which is focused primarily with on-going compliance, the BC MSBA is very much intended to prevent bad actors from entering the money services business. As such, much of the burden of the BC MSBA is weighted towards the time of initial registration, whereas by contrast, the majority of the requirements of the PCMLTFA MSB registration regime apply only once the MSB has commenced operations.

It should be noted that while the BC MSBA is similar to the Quebec *Money-Services Businesses Act* in that it is gatekeeping legislation, it differs in that it does not seem to be motivated by combatting tax evasion (which is one reason it may not include automated teller machine operators as MSBs).

Money Services and MSBs

The BC MSBA applies, with certain exceptions, to any person who carries on the business of providing “money services”.

Money services is defined in the BC MSBA as:

1. foreign exchange dealing;
2. remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network;

3. issuing or redeeming money orders, traveller's cheques or other negotiable instruments, other than cheques payable to a named person; and
4. services included by regulation.

This definition is identical to the criteria set out in paragraph 5(h) of the PCMLTFA (which is the traditional definition of money services in Canada) with the exception that the PCMLTFA also includes those dealing in virtual currencies. It remains to be seen if the services included by regulation will include dealing in virtual currencies and the various other activities that have been included in the category of money services by regulations to the PCMLTFA.

While the BC MSBA does not include a requirement that a person be engaged in a for-profit activity in order to be considered a person who carries on the business of providing money services, the use of the term "business" implies that it does not apply to uncompensated or purely incidental activities. It would be useful if the regulations or other guidance provides more clarity on this point.

The [press release](#) by the Government of British Columbia published when the BC MSBA was first introduced states that there are over 2,000 MSBs registered under the PCMLTFA, of which 578 are in British Columbia. This suggests that the BC MSBA is meant to apply only to MSBs which have a physical location in British Columbia rather than MSBs which provide services to British Columbians. However, there is no clarification of this in the BC MSBA. It is likely that future guidance published by the BCFSA will address this point.

Appointment of a Superintendent of MSBs and Maintenance of a Public Register

Pursuant to the BC MSBA, the BCFSA's board of directors is required to appoint a superintendent of Money Services Businesses (the "Superintendent").

One of the responsibilities of the Superintendent includes maintaining and making publicly available a register that contains the contact information, and any other information specified by the Superintendent, of all registrants and their agents.

Registration Requirement and Consequences for Registration Failures

MSBs are required to register themselves under the BC MSBA by submitting an application to the Superintendent. Market participants excluded from the registration requirement include insurance companies, saving institutions, trust companies, securities dealers and advisers, casinos and Canadian or provincial government entities engaged in deposit taking or money order issuing or precious metals dealing activities.

Failures to register will not render transactions void, voidable, or unenforceable, but are considered an offence. In addition to being an offence, failures to register when registration is required also denies MSBs the ability to

bring actions for remuneration in relation to money services. Remuneration is defined as any form of remuneration including any commission, fee, gain, or reward, whether the remuneration is received, or is to be received, directly or indirectly. The definition of remuneration seems to be intended to deny the MSB the ability to profit from any transactions undertaken while unregistered, while still retaining the ability to enforce payment of other amounts under an agreement (for instance, the requirement for a party to pay Canadian dollars to the MSB to receive US dollars would be enforced but the MSB would not be able to require the payment of any commission, fees or margin). This may prove difficult to implement in practice because the remuneration of the MSB is almost always built into the price of a transaction (for instance, the price at which an exchange of currency takes place will include a spread intended to compensate the MSB).

Therefore, MSBs who fail to register when required may face fines, imprisonment (for individuals acting as MSBs) and an inability to commence actions for remuneration.

The BC MSBA contemplates that registrations will be for a set term with a requirement to renew a registration if a MSB wishes to continue operating. The term for registrations is not set out in the legislation and will likely be set out in the regulations. It may be possible that the length of the term of registration will differ from MSB to MSB based on criteria set out by the Superintendent or in the regulations.

Preventing the Entry of “Bad Actors”

The gatekeeping purpose of the BC MSBA is clearly demonstrated by the Superintendent’s powers to accept or refuse registrations, to accept or refuse renewals of applications and to amend or refuse amendments to registrations. The Superintendent may refuse to register applicants if they believe the applicant, the applicant’s agent(s), the applicant’s associate(s), or the applicant’s agent’s associate(s) is insolvent or is unfit to be registered. Being unfit includes the person:

1. having been refused registration or a licence under money services, real estate, insurance, mortgage services or securities legislation in any jurisdiction;
2. having held a registration or licence that was suspended or cancelled under money services, real estate, insurance, mortgage services or securities legislation in any jurisdiction;
3. having been disciplined by a professional body; or
4. having been convicted of an offence under the laws of any jurisdiction.

It is possible that the categories of what constitutes an unfit applicant will be expanded in future regulations.

It should be noted that “associate” has a broad definition and includes directors, officers and any beneficial or registered owner of a 10% or more interest in the applicant.

Reporting Requirements

Registered MSBs (“registrants”) are required to *immediately notify* the Superintendent if a registrant has reason to believe that an offence under the BC MSBA has been committed. These offences include:

1. contravening the registration requirement;
2. representing or holding out that the person is authorized to carry on the business of providing money services when the person is not registered or exempted from the registration requirement; and
3. providing money services when the registrant’s registration has been suspended.

It is an offence to not report when required to report.

In addition to reporting requirements regarding offences, registrants are also required to provide written notice to the Superintendent in many different situations, such as when there is a change in any of the information respecting the registrant that must be included in the register, or if the registrant is insolvent or disciplined by a professional body.

Notice for certain changes, including changes in directors, officers or owners of 10% or more of the interests in the MSB, must be given to the Superintendent at least three months before the change is to take effect. If the registrant is unaware of the change before it is taken effect, then notice must be provided as soon as practicable after the registrant is aware of such change.

Transitional Provisions

The BC MSBA contains a transitional provision that provides time for MSBs to come into compliance with the BC MSBA. Once the transition provision comes into force, a person who is carrying on the business of providing money services may continue to carry on that business if they apply for registration during the transition period. Currently, it is unclear how long the transition period will be.

Conclusion

Once the BC MSBA receives Royal Assent, it will need to be proclaimed into force before it officially becomes law. It is not clear when this will take place. Market participants must also await the publication of regulations by the Ministry of Finance and guidelines from the BCFSa that would provide further guidance on matters not fully addressed in the BC MSBA, such as registration fees, the exact information to be included in a registration application, the term of registration and the full scope of the categories of activities included in the definition of money services business.

We will be providing further updates as they become available to assist British Columbia MSBs in determining the exact scope of obligations they will be subject to under the BC MSBA.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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