

Emergency Measures Act – Initial Perspectives from the experts at the AML Shop

On February 14, 2022, the federal government invoked the Emergencies Act, that broadens the scope of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and sets out new obligations to financial institutions and service providers.

The regulations to achieve those means were included in the Emergency Economic Measures Order (Order) released on February 15, 2022. Our summary and interpretation of that Order is as follows:

There is an immediate order in place for financial institutions, insurance companies, trust and loan companies, money services businesses, crowdfunding platforms and/or payment service providers to continuously determine whether they are in control or possession of property by a designated person.

1. All of the following measures are in effect as of February 15, 2022.
2. The remaining sections of the Order are dependent on whether the prescribed entities have determined to be **in control or possession of property by a designated person**.

It is important to note that, the government has not published any lists of individuals or entities as “designated”. Unlike designated sanctions lists, there appears to be discretion and judgment required of the institution involved, based on the definition provided in the Order that can be summarized as:

Any individual or entity that **is currently engaged**, directly or indirectly, in a public assembly that may reasonably be expected to lead to a breach of peace, the serious disruption of movement of persons or goods, interference with functioning of critical infrastructure, or support threat or use of acts of violence.

It is important to note that, based on the advice of Finance Canada, an individual or entity ceases to be a designated person when they are no longer “engaged” in an illegal protest. Therefore, if a person is no longer involved, they are no longer subject to the measures. If all illegal protests cease, there would not be any designated persons.

To comply with the order, prescribed entities will need to first make a determination as to which assemblies are or would reasonably be expected to lead to a breach of peace. As this is a constantly evolving situation, prescribed entities may need to rely on publicly available information, such as the media, to determine which assemblies meet that criteria, and which individuals and/or organizations are alleged to have been involved. We suspect that watchlist entities may begin populating some of this information as it becomes available.

3. The requirement to make that determination is **ongoing**. This means that effective immediately, all prescribed entities will have to have a process in place to make such a determination.

There is no official consolidated list to screen against.

A possible approach to meeting this requirement, could be for the entity to collect information as to the purpose of a transaction, that presents indicators of being associated with an illegal assembly. See paragraph seven for a list of indicators we have compiled.

Finance Canada has indicated that they will not be reaching out to financial institutions for documentation to show how they went about this process, they only hope for best efforts, and they do not anticipate any penalties for missing any designated persons.

They also emphasize that to be designated, a person must be engaged in the protest at that time. So a historical donation does not qualify them as being engaged if they are not involved in a protest currently. A financial institution is entitled to rely on the statements of the individual or entity in that regard.

Finally, Finance Canada emphasized that this effort should involve a risk based approach – that they are after major donors, and an institution might very well focus on higher dollar values.

- 4. The specific language used in the Order of “possession or control of property that is owned, held or controlled by or on behalf of a designated person” is similar to the language used in the PCMLTFA to report terrorist property to FINTRAC. In the absence of further clarification, some direction may be found here as to what constitutes “property”: Reporting terrorist property to FINTRAC (fintraccanafe.gc.ca).

Once it is determined that a prescribed entity is in control or possession of property of a designated person they must take the following actions:

- 5. Register with FINTRAC immediately, if you are a crowdfunding platform, payment service provider or money service business and are not already registered and are in possession of the property of an individual or entity who is currently a designated person.

A link to the registration page can be found here: <https://www30.fintrac-canafe.gc.ca/cfcc/public/contact-fintrac/pre-registration-information/>

The government has also stated it will bring forward legislation to require these entities to register with FINTRAC permanent basis. This means that these changes are likely here to stay.

We also expect that when that happens, the requirements will be expanding beyond those included in the current Order to include other elements such as client identification, recordkeeping, and ongoing monitoring.

The timing and scope of these changes won’t be known until these regulatory changes are proposed, which we are not expecting in the current regulations that are specific to the Emergencies Act.

- 6. For newly registered entities:
 - a. Effective immediately, those newly registered with FINTRAC will also have to report the following financial transactions to FINTRAC:

Type of transaction to be reported	General description of reporting threshold (Please see additional information for full requirements)	Filing Deadlines	Link to additional information
Large cash transactions	\$10,000 or more received in a single transaction (or cumulative in a 24-hour period)	15 calendar days after the date of transaction	<u>Large Cash Transactions (fintrac-canafe.gc.ca)</u>
Large virtual currency transactions	\$10,000 or more received in a single transaction (or cumulative in a 24-hour period)	within 5 working days after the date funds were received	<u>Large virtual currency transactions (fintrac-canafe.gc.ca)</u>

Electronic Funds Transfers (EFTs)	Incoming and outgoing international transfers of \$10,000 or more	5working days from the date that the transfer instructions were sent for outgoing EFTs, or the date the transfer instructions were received for incoming EFTs	<u>Electronic funds transfers (fintrac-canafe.gc.ca)</u>
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This obligation begins immediately, so even if you are not registered or sure how to report, it is important to start collecting the information immediately.

Also note that this new reporting requirement is **not limited to for transactions related to designated persons**. The regulations only state that if the requirement to register with FINTRAC has been met, the above transactions must be reported.

Generally, if a reporting entity has an internet connection, these reports must be filed electronically using FINTRAC's webforms.

We are expecting further clarity for newly registered entities who have requested access to FINTRAC's webforms but do not yet have access. There are manual forms available for paper reporting here:

Reporting forms (fintrac-canafe.gc.ca)

- b. Effective immediately, those newly registered with FINTRAC will also have to report suspicious transactions related to designated persons to FINTRAC.

Learn more about reporting suspicious transactions here: Suspicious transactions (fintraccanafe.gc.ca)

We have a YouTube video on completing STRs here: <https://www.youtube.com/watch?v=yJE72EfBynY>.

7. For entities that are already regulated by the PCMLTFA, by making these assemblies illegal, even without the additional measures in the Order, funding related to these assemblies are considered the proceeds of crime under the PCMLTFA. So, the existing obligations to identify, investigate, and report by reporting entities covered under those regulations apply in addition to any measures in the Order. Practically, following indicators could be used to identify suspicious activity related to illegal assemblies:

- Law enforcement or other government sources inquire, serve judicially authorized requests, or report relevant information about affiliates or those involved in illegal activities;
- Transfers are requested to individuals or organizations, that have been clearly identified in the media or in court proceedings as being part of illegal blockades or occupations (e.g. <https://lnkd.in/dfPaTYAy>);
- Transfers are requested by individuals who state that they are going to support illegal blockades, or occupations;
- Transfers are requested to organizations that have been identified in the media or in court proceedings as providing funds to illegal blockades or occupations, such as crowd funding platforms, and the transfer is not clearly for another cause;
- Accounts with recent increases in e-mail money transfers, remote deposits, and/or wires (in and out), with round-dollar transaction amounts;

- Newly-opened “community” or “in trust” account with a large volume of incoming transactions; or,
- Newly-opened accounts with names referencing “freedom”, “convoy”, “truckers” or “protest”

Remember, according to Finance Canada, these indicators are only relevant to a designated person designation if the individual or entity is currently engaged in an illegal protest.

8. In addition to the requirements related to the PCMLTFA, the Order specifies these entities have a duty to cease dealings with designated persons, or on behalf of or at the direction of designated persons. The order covers all property that is owned, held, or controlled, directly or indirectly, and includes:
 - Facilitating transactions;
 - Making available such property;
 - Dealing in any property; or
 - Providing financial services

The purpose of the order is to prevent funds from reaching illegal blockades and occupations, but compels any prescribed entity to prevent any dealings with currently designated persons. This would suggest, that to comply with the order, all prescribed entities must temporarily cease to provide services, suspend and/or freeze accounts of any designated person, and do not require a court order to do so.

According to Finance Canada, this includes all deposit and credit accounts (including joint accounts). It also applies to all electronic transactions, except those pursuant to a court order, including child support.

Also according to Finance Canada, a financial institution may unfreeze the assets of a person once they are longer a designated person – so not currently involved in an illegal protest – and they can rely on the statement from that individual for that purpose.

The government had stated that the measures would be “geographically specific and only targeted to where they are needed” to quell the protests. We do not see any specific geographical or other limitations to the measures included in the regulations, other than the general definition of illegal assemblies previously provided.

9. Finally, once an entity has made a determined they are in control or possession of property it believes is owned, held, or controlled by a currently designated person, a disclosure must be made to the Commissioner of the RCMP, or the Director of CSIS, that includes any information about a transaction or proposed transaction in respect of that property.

Again, the language used in the measure is similar to that used in the existing disclosure requirements regarding terrorist property, related guidance may be useful in better understanding those requirements, and can be found here: [Reporting terrorist property to FINTRAC \(fintraccanafe.gc.ca\)](#)

The AML Shop will be staying on top of the regulatory changes and publishing updates to help our readers navigate the changing environment. Follow us on LinkedIn to get the latest updates <https://ca.linkedin.com/company/the-aml-shop>