Opinion

It's time to strengthen Canada's anti-money laundering, anti-terrorist financing regime

Filling the gaps in money laundering and terrorist financing legislation is an important policy objective. It is equally important to promote a more efficient and cost-effective compliance regime for dealers and other reporting entities under the legislation and regulations.

Ian C.W. Russell

Money laundering & terrorism

As part of the five-year statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) the Department of Finance has put forward suggested reforms and the House of Commons Standing Committee on Finance has engaged in a full assessment of the legislation and its regulations though public consultations. The reform efforts aim to improve the effectiveness of Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime by improving compliance, monitoring and enforcement, without placing an undue burden on reporting entities, such as financial entities, life insurance companies, securities dealers and money services businesses.

Reforms focus on closing the gaps in the regime by (1) expanding scrutiny of politically exposed persons (PEPs) and beneficial owners of a corporation to designated non-financial businesses and professions (DNFBPs), and (2) expanding reporting entities to include other sectors vulnerable to money laundering, such as unregulated mortgage lenders and financing and leasing companies. PEPs, as individuals entrusted with a prominent public function, and due to their position of influence, may be more vulnerable to corruption and money laundering. It is recognized lawyers are often involved in transactions that involve PEPs, but the solicitor-client privilege leaves few options to include the legal profession in Canada's AML/ATF framework. Thorough and complete reporting of beneficial ownership, and beneficial owners identified as PEPs, is important to safeguard against money laundering and terrorist financing, as well as tax evasion and tax avoidance.

Financing entities, including investment dealers, follow an extensive and onerous process to verify client identity to ensure they do not present unacceptable financial crime risk. They are also required to have in place real time risk mitigation measures to prevent suspicious transactions, and due diligence processes when dealing with a PEP. They keep detailed records and submit mandatory reports to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), and are subject to an audit process by FINTRAC and other regulatory authorities.

The Investment Industry Association of Canada (IIAC) has focused on three areas for reforms. First, the federal and provincial/territorial finance ministers have agreed to greater transparency and consistency of beneficial ownership information. Sorting out the precise beneficial ownership details for AML reporting can be a complex and time-consuming exercise for reporting entities. The IIAC has argued that a high priority should be placed on creating a central registry of beneficial ownership information that would be accessible to reporting entities as well as the public. The U.K. Register of People with Significant Control provides a good example for Canada to model. Canadian governments should

Finance Minister Bill Morneau, pictured, in Ottawa. Ian Russell says the IIAC's recommendations are straightforward and have precedent. All the more reason for governments to move expeditiously. *The Hill Times photograph by Andrew Meade*

move expeditiously to put such a registry in place.

Second, reporting entities must report suspicious transaction reports to FINTRAC. Some of these are deemed to be suspicious, and some are not. However, there is no feedback from FINTRAC on these transactions. Information on the status of these transactions would provide helpful background information to reporting entities in identifying suspicious transactions and would not abridge the privacy rules. FINTRAC should also carry out ongoing consultations with the securities regulators to ensure the AML-related reporting requirements in the securities rulebooks are congruent with FINTRAC requirements to avoid duplication and overlap in rules and procedures.

Finally, subsection 62(2) of the PCMLTFA provides certain exceptions from record-keeping requirements and identity verification of authorized officers, if the account is opened by a Canadian regulated financial entity, very large corporation listed on a stock exchange, or public body. However, such exceptions do not pertain to foreign regulated entities subject to a comparable regulatory regime in their home jurisdiction. For example, for entities regulated by the Securities and Exchange Commission in the U.S., Canadian dealers could verify identity by confirming and documenting the entities registration status and rely on regulatory review by the home jurisdiction. The lack of an exception discourages foreign institutions from dealing in the Canadian marketplace. We have recommended the legislation should provide a reporting exemption for foreign institutions that are registered with securities authorities in certain jurisdictions, notably the United Kingdom and United States.

Clearly, filling the gaps in money laundering and terrorist financing legislation is an important policy objective. It is equally important to promote a more efficient and cost-effective compliance regime for dealers and other reporting entities under the legislation and regulations. Our recommendations are straightforward and have precedent. All the more reason for governments to move expeditiously.

Ian C.W. Russell is president and CEO of the Investment Industry Association of Canada and past-chair of the International Council of Securities Associations.

The Hill Times

Senate amendments to Bill C-49 hurt railway service, limit Canada's rail safety potential

Our goal is to move all goods as safely and efficiently as possible. The Senate's amendments undermine both objectives. Parliament must move forward with the original version of Bill C-49 in the interest of Canada's shippers and the economy.

Gérald Gauthier

Railway safety

With railways investing an average of 20 per cent of their own revenues back into their networks each year, rail is one of Canada's most capital-intensive industries. In 2018 alone, Canada's two Class 1 railways expect to spend more than $4.5-billion on capital expenditures in North America to ensure operations remain safe and efficient.

High levels of private investment are a major reason why Canada has one of the safest and most cost-effective rail systems in the world. Over the last decade, the safety record—the number of accidents relative to workload—among Canada's freight railways has improved by close to 40 per cent. In addition, rail carriers provide efficient service at rates that are among the lowest in the industrialized world. Canada's railways move a tonne of goods one kilometre for roughly three cents. Competitive rates enable shippers to access global supply chains and support the success of the Canadian economy.

The passage of the original version of Bill C-49, the Transportation Modernization Act, would have further enhanced rail safety and service. While our industry had concerns with this version of the legislation, its passage would have ensured the regulatory stability necessary to support continued investment by Canada's railways in improving the rail network. Rejecting the original version jeopardizes this capacity to invest. In terms of safety, the bill would have given railway companies limited, random access to data from locomotive voice and video recorders (LVVR) to proactively prevent incidents. This is critical because, like every industry, we would rather prevent an incident than explain one.

The adoption of LVVR technology is the most important step that the federal government can take to materially improve rail safety in Canada. To maximize the safety benefits of this technology, railways must be permitted to use this data as part of a safety management system. This critical information would help prevent serious injuries and save lives. Bill C-49 included appropriate limits on railway access to LVVR data to ensure employee privacy is protected. Canada's railways support these constraints, and we remain committed to implementing LVVR technology in a way that is respectful of our industry's employees.

The recently passed Senate amendments to Bill C-49 negatively impact service and limit Canada's rail safety potential. There is no basis for these changes. In terms of service, adding more layers to an already highly regulated sector discourages private investment and, as a result, produces adverse results for railways, their customers and the economy they serve. Conversely, regulatory freedom enables railways to provide low-cost service while generating the revenues needed to reinvest in their respective networks, and increase capacity to meet customers' needs and the government's goals for growing trade. Shippers, meanwhile, gain access to a safe, world-class railway system and lower freight rates that allow them to compete globally.

Our goal is to move all goods as safely and efficiently as possible. The Senate's amendments undermine both objectives. Parliament must move forward with the original version of Bill C-49 in the interest of Canada's shippers and the economy.

Gérald Gauthier is acting president of the Railway Association of Canada.

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