

Public Consultation Report: Interim Retail Payments Advisory Committee (RPAC)

19 – 20 May 2021

Summary

The Interim Retail Payments Advisory Committee (RPAC) held its last meeting on 19 – 20 May 2021. With the tabling of the proposed *Retail Payment Activities Act* (RPAA), the Department of Finance Canada was invited to answer RPAC members' questions on the proposed legislation during the session on 19 May. The session on 20 May was dedicated to soliciting feedback from RPAC members on future engagement topics that would be of value to stakeholders as well as the format of RPAC meetings more generally. **The Bank of Canada would like to thank all industry representatives on RPAC for their time and invaluable insights.**

Who we consulted

Participants:

- Bank of Canada
- Department of Finance Canada
- Moneris
- nanopay
- PayPal
- Paytm
- Square
- STACK
- Telpay
- Wise
- Visa
- Western Union

Method of engagement:

Virtual (Webex)

Purpose of engagement:

- To hold a Question and Answer session on the proposed RPAA;
- To solicit feedback from RPAC members on future engagement topics

What we heard

Wednesday 19 May 2021 – Question & Answer Session on the Proposed RPAA

The Department of Finance Canada answered questions on the proposed RPAA from RPAC members. Questions and answers have been edited and organized for clarity.

Opening statement from Finance Canada:

- Retail Payment Activities Act was tabled as part of Budget Implementation Act, 2021.
- With legislation before Parliament, the Department of Finance Canada is focused on supporting the Minister of Finance and briefing MPs and Senators as that process unfolds.

- The proposed RPAA has three main elements:
 - Registration – payment service providers captured in scope of the proposed RPAA would have to register with the Bank of Canada and the Bank of Canada would maintain a public registry of payment service providers;
 - Risk management – payment service providers would need to comply with end-user fund safeguarding and operational risk management requirements; and
 - National security safeguards – payment service providers would also be subject to national security requirements modelled on the framework that currently applies to federally regulated financial institutions (such as banks).
- Following Royal Assent of the proposed RPAA, the Department of Finance Canada will need to draft regulations and the Bank of Canada will also develop guidance where appropriate. Work on regulations has already started, and RPAC members have provided the Bank of Canada and the Department of Finance Canada with input that will help inform the development of regulations on end-user fund safeguarding and operational risk.
- Further consultations are required to continue to develop and implement this framework. The Department of Finance Canada greatly appreciates the feedback it has received and looks forward to further engagement

Topics raised during Q&A:

- Access to core payment systems
- Comment period for the proposed RPAA
- End-user fund safeguarding
- Provincial consultations
- Cost recovery
- Meaning of “incidental”
- The proposed RPAA and other regulatory regimes

1. Access to core payment systems

Question: *Many FinTechs or payment technology companies have supported being regulated in exchange for the ability to access the core payments system. What is the status of enabling access?*

Answer:

Department of Finance Canada

- Establishing a path for access to the core payments system is a priority.
- The RPAA is a key building block for broadening access to Payments Canada’s payment systems, such as the Real Time Rail, to payment service providers.
- During consultation on payments modernization, stakeholders requested seeing the proposed RPAA prior to providing feedback on the potential changes to the Payments Canada membership structure.
- Further consultations on the membership framework are planned in the coming months.

Question: *The Real Time Rail by Payments Canada will likely be online prior to the requirements under the proposed RPAA coming into force. Has the Department of Finance Canada considered the issues arising from this misalignment in timelines?*

Answer:

Department of Finance Canada

- We are mindful there may be a gap in timelines.
- When the Real Time Rail may be ready to launch is a question for Payments Canada.

2. Comment period for the proposed RPAA

Question: *Is there a way to provide additional comments on the legislation?*

Answer:

Department of Finance Canada

- The proposed RPAA is before Parliament and Parliament can make amendments.
- If the legislation receives Royal Assent, there will be further consultations on regulations. Details of the requirements in the proposed RPAA will be outlined in regulations.

3. End-user fund safeguarding

Question: *Can you clarify the requirements for end-user fund safeguarding? The legislation appears to place more stringent requirements than what we were expecting. Further clarity on any exemptions for when these safeguarding requirements may not apply would be helpful as well.*

Answer:

Department of Finance Canada

- The proposed RPAA provides the overall framework. The goal is to protect end user funds from the failure of a PSP and making sure funds are accessible. There is flexibility in the proposed RPAA for the regulations to prescribe how this policy goal is met.
- We understand that this will apply in real life, and we want to make sure that it works. Your feedback provided during previous RPAC meetings will be considered as we develop regulations.
- We look forward to future consultations on regulations.

Bank of Canada

- As discussed in previous RPAC meetings, the Bank is aware that there are a number of cases in which end-user fund safeguarding would be unlikely to apply.
- An example of this is when the payment of funds to the recipient has already occurred before funds are received from the sender, or when there is an advance of funds to merchants in the context of payment processors.
- Having such cases be subject to end-user fund safeguarding requirements would not be aligned with the intent of safeguarding and is unlikely to be in scope.
- Further clarity on this would be provided in regulations or guidance.

Additional comments from participants:

- Safeguarding of end-user funds appear to be more complicated than hoped, with the absence of allowing for safeguarding of end-user funds through the operation of law.

4. Provincial consultations

Question: *What is the status of Department of Finance Canada's discussions with the provinces on RPAA?*

Answer:

Department of Finance Canada

- This has been a collaborative effort, with ongoing consultations with provinces and territories over the years, with bilateral discussions, sworn-in sessions, and opportunity to review.
- We have taken their comments on board and we are seeing broad support for the legislation.

5. Cost recovery

Question: *Could you explain how the fees for cost recovery purposes will be calculated?*

Answer:

Department of Finance Canada

- As RPAA is a new framework, with the level of supervisory intensity unknown, it is too early to provide details of the cost recovery approach. Details will be in regulations, and we will consult on this further.
- Key principles that will be applied include: transparency, simplicity, predictability, and fairness.
- We consider it important that these fees are proportional to risk and a payment service provider's ability to pay.
- Additionally, we are also mindful that FINTRAC will be moving to a cost recovery model.

Question: *The Budget estimates an annual run cost of \$38 million with revenue collected of \$32 million. Can you explain how these amounts and how the costs will be apportioned?*

Answer:

Department of Finance Canada

- Numbers in the budget are estimates only, based on the best knowledge that we have at this time, so the actual costs will vary.
- This is a new mandate for the Bank and it is too early to say how the costs are going to be allocated. We are going to consult further.
- Our goal is to strike a balance between recovering fees and the ability to pay from the industry.

Bank of Canada

- Overall, the fees fall into two categories.
 - An *application fee* at registration to cover the costs that the Bank will bear to assess whether an applicant is a payment service provider in scope and, if so, to register the entity; and

- An *annual assessment fee* that will cover ongoing run costs, which will be divided amongst all the registered payment service providers, currently estimated at between 1500 and 2000 entities.
- The exact method to calculate the assessment fee to divide the annual run cost amongst the number of registered payment service providers will be provided in regulations and guidance.

6. Meaning of “incidental”

Question: *The definition of a payment service provider in the proposed RPAA is “an individual or entity that performs payment functions as a service or business activity that is not incidental to another service or business activity.” Could you explain the thinking behind the “incidental” concept?*

Answer:

Department of Finance Canada

- The intent of the proposed RPAA is to capture entities that provide payment services as a core business.
- This definition, in particular the wording around “incidental”, was drafted to avoid inadvertently capturing entities who might be providing payment functions but in an ancillary way.
- For example, an internet service provider whose infrastructure is used to transmit a transaction but is not providing any other payment services as a core business activity or service.

Question: *Would a Human Resources company offering payroll management as a service be captured? What about companies that are more marketplaces or platforms that offer an experience for the user but also do payment processing?*

Department of Finance Canada

- We can’t comment on specific businesses or examples.
- The Bank of Canada would ultimately determine whether an entity is captured in the framework on a case-by-case basis.

Bank of Canada

- The example of a company facilitating payroll services could be captured, since part of their business is making payments.
- Having said that, the Bank will need to assess on a case-by-case basis.
- The intent of the regime is to keep entities out of scope if being a part of the payments chain is incidental to their main business.

Additional comments from participants:

- Instead of leaving it to a case-by-case determination, adopting a principles-based or rules-based approach may be best when determining whether an entity falls in or out of scope of the regime because it is performing payment functions that are “incidental” to its core business. There is likely to be a growing number of entities that could potentially fit this definition, and therefore a case-by-case determination could become overwhelming or cumbersome.
- Greater clarity is needed on how the proposed RPAA would apply to a payment service provider, if that payment service provider performs both retail and non-retail payment activities.

7. The proposed RPAA and other regulatory regimes

Question: *Financial institutions often impose restrictions and rules on payment technology companies that go far beyond what the regulators (for example, FINTRAC) are imposing on these financial institutions to monitor. How will the proposed RPAA prevent this from happening going forward?*

Answer:

Department of Finance Canada

- We are aware of this issue, which impacts other entities in the financial sector, such as money service businesses, and not just payment services providers.
- The proposed legislation does not address this issue specifically, but we are hoping that having payment service providers be subject to a regulatory framework, with the Bank of Canada as the regulator, will give some level of comfort to partners of payment service providers.
- This is an issue that we are monitoring, beyond retail payments.

Question: *The RPAA establishes the Bank of Canada as a quasi-prudential regulator for payment service providers. In the future, will the Bank take over the prudential supervision mandate that the Office of the Superintendent for Financial Institutions currently has?*

Answer:

Department of Finance Canada

- The purpose of this proposed legislation is not to change the existing roles and mandates of existing authorities.

Bank of Canada

- The standards that will be imposed on payment service providers under the proposed RPAA will be no more restrictive than what OSFI imposes upon the federally regulated financial institutions.
- The proposed legislation sets a path forward for a new regulatory mandate over payment service providers *within* the existing regulatory framework more broadly in Canada.

Additional comments from participants:

- The impacts of RPAA on industry are not yet well understood, especially how it will work with other regulatory frameworks. Further consultation and an overabundance of communication would be appreciated to better understand the various degrees of complexities.

Feedback on the Plan to Renew RPAC Membership

After the RPAA receives Royal Assent, the Bank of Canada will renew RPAC membership and post a public call for interest to join the second RPAC term. The submission forms will be posted on the Bank of Canada's webpage. Membership selection is anticipated for late August, with inaugural meeting of RPAC's second term held in Fall 2021.

Feedback provided by members:

- Smaller PSPs may not have the resources to attend and participate in all RPAC meetings

- Working groups or sub-committees may reduce the time commitment for RPAC members
- Participation by industry associations may help support the perspective of smaller payment service providers
- Industry associations can also bring a broader perspective about the payments ecosystem

Thursday 20 May 2021 – Topics for Future Engagement

Members were asked to identify topics which would benefit from further engagement or clarification. Their feedback is captured below. The Bank of Canada will use this information to inform its plans for future engagement sessions.

Topic	Issues for further clarification/engagement
Registration requirements (including scope) and process	How a payment service provider would know it needs to register
	The registration process and how the Bank of Canada would coordinate with other authorities such as FINTRAC and the Minister of Finance
	What the definitions of five payment functions mean in practice
	What would be an entity that performs payment functions that are “incidental” to another service or business activity
	Clarifying how the non-application section of the proposed RPAA (e.g., Section 7) would work in practice
Operational risk management	How the operational risk management requirements would be aligned with what other jurisdictions require for similar entities
	Whether there may be a minimum standard for all payment service providers, and if these would align with the requirements set in the broader financial system (e.g., those set by payment system operators or payment networks)
	How the operational risk management requirements would be applicable to payment service providers of varying sizes
	How existing operational risk management standards may be leveraged
	How the operational risk management requirements would reflect the global nature of certain payment service providers (in part to avoid creating a Canada-only solution where possible)
End-user fund safeguarding	What is the range of safeguarding options that would be permitted, including what would be allowed under Section 20(1)(b) of the proposed RPAA
	How safeguarding obligations would apply to payment processors (e.g., the treatment of reserve accounts)

	When safeguarding obligations would begin and be extinguished
	To what degree segregation of end-user funds would be required
Submitting regulatory information	Overall approach to requesting regulatory information (e.g., whether the Bank of Canada would adopt a “trust-and-verify” model) What the threshold may be for providing regulatory information
Risk-based approach	How the Bank would determine if, and which, payment service provider should be subject to more stringent standards
	How the Bank would determine which payment service providers pose a greater risk to the ecosystem, and how that “ecosystem” will be defined
Compliance tools, monetary penalties, naming of non-compliant PSPs	The interaction between the framework under the proposed RPAA and the framework under the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i> (PCMLTFA)
	How violations under the PCMLTFA could affect a payment service provider’s registration status under the proposed RPAA
Cost Recovery	How fees would be calculated
	Factors influencing the assessment fee calculation

What happens next

Once the proposed RPAA receives Royal Assent, the Bank of Canada plans to make a public call for interest, posted on its webpage, for industry stakeholders to join the second RPAC term. Submissions to be a member of RPAC would be reviewed over the summer months so that the first meeting of the second RPAC term could be held in Fall 2021.

The Bank of Canada will digest the feedback received during this RPAC meeting to inform its future engagement plans, including both the forward agenda for the second RPAC term and avenues for engagement beyond RPAC. RPAC members have raised that the intersection between access to payment systems and the supervisory framework under the proposed RPAA is an important topic, and the Department of Finance Canada is leading this work with further consultations being planned in the coming months.

The Bank of Canada looks forward to further conversations with various stakeholders as it continues to provide advice to the Department of Finance Canada on the development of regulations and design its supervisory framework.