

Retail Payments Advisory Committee – Registration Scope

23 & 24 September, 2021

This note is provided to support engagement on which entities will need to register with the Bank of Canada (the Bank) under the *Retail Payment Activities Act* (RPAA).

It describes the Bank's current thinking on:

- Five Payment Functions – If an entity performs any one or more of these functions, they may be subject to the RPAA.
- Incidental – If an entity performs any one or more of the five payment functions, but it is incidental to their primary business, they may not be subject to the RPAA.
- Geographic Scope – If an entity performs a payment function despite not having a place of business in Canada, they may be subject to the RPAA.

This note will be discussed at the September 2021 Retail Payments Advisory Committee (RPAC) meeting. Additional feedback is welcome from non-RPAC participants via the RPAC [email](#) address. The feedback the Bank receives will inform future work on, and decisions about, the scope of registration and the development of guidance.

The analysis contained in this note is preliminary. While reading it, you are encouraged to think about “edge cases” — scenarios and business models that do not fall neatly into the Bank's analysis. There are additional questions provided to help guide RPAC members' preparation for the meeting – they are not mandatory nor exhaustive. They are a starting point for discussion to assist the Bank in gathering information to guide its work on the registration aspect of the supervisory framework.

Based on feedback received, the Bank plans to develop and consult on supervisory guidance to clarify who will need to register with the Bank under the RPAA.

This note presents preliminary staff perspectives and do not necessarily represent the Bank's final views on the material presented. The detail provided is to enable discussion, and changes to this material are anticipated as the Bank continues its work on the supervisory framework and regulations are developed and made that will prescribe aspects of the registration process. The Department of Finance Canada will lead work to develop regulations contemplated by the RPAA. [The regulation-making process is described here.](#)

Context

An entity is in scope of the RPAA and must be register with the Bank if the following four criteria are met:

1. It is a PSP — a person or entity that **performs one or more payment functions** as a service or business activity that is **not incidental** to another service or business activity.
2. The payment function is performed in relation to an **electronic funds transfer (EFT)** made in the currency of Canada or another country or using a unit that meets prescribed criteria.
3. It meets certain **geographic scope** criteria.

4. It is **not excluded** (as defined by the RPAA) from the application of the RPAA — Please see ss. 6-11 of the RPAA, “Non-Application”, for more details.

The following sections provide preliminary analysis on some of these criteria.

Payment Functions

A person or entity must perform at least one payment function to be potentially scoped into the framework. The Bank will publish guidance to help interpret these functions. In interpreting and drafting guidance on the payment functions, the Bank will keep in mind two guiding principles:

1. **Align with the intended scope of the RPAA** to ensure the interpretations do not go beyond the purpose, scope or intent of the RPAA.
2. **Keep the interpretations as simple as possible** so they can be well understood by all stakeholders, including Bank staff when assessing PSPs at registration.

The RPAA’s five payment functions are discussed in turn, below.

- i. **The provision or maintenance of an account that, in relation to an electronic funds transfer (EFT), is held on behalf of one or more end users**

The Bank may consider a person/entity to provide or maintain an account if it stores personal OR financial information about an end user in relation to an EFT. Storing both personal and financial data is not necessary to be subject to this provision.

Personal information includes any identifiable information about an end user, such as age, name, contact information, ID numbers, income, credit records, loan records, etc.

Financial information includes information about an end user’s payment instrument (e.g., credit card number), funds (e.g., account balance), account information (e.g., account number, routing number, financial institution name), transaction history, credit rating, etc.

In addition, a PSP does not need to hold end-user funds for it to be performing this payment function.

In some cases, persons/entities may tokenize information. If the tokenized information relates to personal or financial information about an end user and it is stored by the PSP, it may be in scope.

Some examples of business activities and scenarios that could be included are:

- Payments processors (e.g., for online vendors and other commercial users)
- Digital/electronic wallets
- Neo banks/challenger banks
- Any account used to send or receive EFTs.
- Dormant or seldom-used accounts (e.g., one-time use of a PSP would be captured if the end user’s information is stored).

- ii. **The holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another person or entity**

A person/entity may be considered to hold funds on behalf of an end user if it:

- Is indebted to an end user for its funds; or

- Holds funds on behalf of an end user (custodial relationship).

The above speaks to the relationship between the person/entity and its end users with respect to the end-user funds. Some examples of business activities that could be captured under this payment function are:

- Reloadable cards that could be used essentially like a debit card; and
- Electronic accounts which permit end users to view balances and initiate EFTs, where funds can be kept.

iii. The initiation of an EFT at the request of an end user

A person/entity may be considered to initiate a payment if it:

- Enables an end user (payer) to make an EFT (i.e., to issue a payment instruction); or
- Enables an end user (payee) to request for payment via an EFT.

Initiation could occur when the payer uses their payment instrument/information to confirm that they will agree to the payment at the payment device (e.g., terminal/interface) requested by the payee.

- For card not present transactions (e.g., online, over the telephone), initiation could occur when the payer instructs its PSP to withdraw funds from its account by providing and confirming their payment information to the payee that has requested payment.
 - For online payments, this may not include persons/entities that redirect from their personal or commercial webpage to a different PSP for the purposes of making the payment (i.e., the person/entity is only providing the link to the PSP's payment platform)
- For point-of-sale (POS) transactions, a person or entity performs the initiation function if it provides the payment terminal/interface that permits that permits a payer to request that funds be transferred to the account of the payee.
- To clarify, for any particular transaction there is only one business that performs initiation.

Some examples of business activities and scenarios that could be included are:

- Payments processors
- Credit cards
- Prepaid cards
- Acquirers
- POS, tablet POS, web terminal, or mobile processing services to merchants
- E-commerce platforms
- Billing payment platforms
- Recurring payments platforms

iv. The authorization of an EFT or the transmission, reception or facilitation of an instruction in relation to an EFT

A person/entity may be considered to authorize EFTs if it:

- Verifies the origin or authenticity of an EFT; or
- Verifies end-user information for the purposes of making an EFT (e.g., identity, whether the end user has sufficient funds, etc.)

A person/entity may be considered to transmit, receive, or facilitate an instruction in relation to an EFT if it:

- Enables payment instructions to be sent (e.g., provides the infrastructure over which payment instructions can be sent);

- Enables payment instructions to be received; or
- Enables payment instructions to be transferred (facilitated).
- To clarify, more than one PSP may perform this payment function in relation to a single transaction.

Note that a person/entity may not need to originate a payment instruction for it to transmit a payment instruction.

Some examples of business activities and scenarios that could be included are:

- Payments processors
- Credit cards
- Prepaid cards
- Acquirers
- Digital/electronic wallets
- POS, tablet POS, web terminal, or mobile processing services to merchants
- E-commerce platforms
- Billing payment platforms
- Recurring payments platforms

v. The provision of clearing or settlement services

A person/entity may be considered to provide clearing or settlement services if it:

- Enables the process of **clearing**; or
- Enables **settlement**.

Clearing is the process of transmitting, reconciling and, in some cases, confirming transactions prior to settlement, potentially including the netting of transactions and the establishment of final positions for settlement.¹

Settlement is the discharge of an obligation in accordance with the terms of the underlying contract.²

Some examples of business activities and scenarios that could be included are:

- Credit cards network
- Debit cards network
- Prepaid cards network

- 1) Is there information the Bank could provide in guidance to better clarify the payment functions?
- 2) Are there "edge case" business models where it is unclear if they are performing one of the payment functions? If so, please describe the business model and what is unclear.
- 3) Are there any services or business activities that you think should be captured under a particular payment function, but did not see mentioned in this document?
- 4) Is there any information that you think the Bank should collect at registration that would make it easier to determine if an entity is performing a payment function? If so, what information?

¹ Source: [BIS](#)

² Source: [BIS](#)

Incidental Activities

The RPAA excludes entities from needing to register with the Bank even if they perform one of the five payment functions, if the payment function is performed “incidental to another service or business activity.”

The Bank has heard from stakeholders in previous engagement opportunities, that the meaning of “incidental” requires clarity, particularly to address edge cases that fall outside the Bank’s standard analysis.

At this stage, the Bank is still developing its concept of “incidental” and is not ready to provide a definition. However, the Bank would like to confirm with stakeholders that it is targeting the right objectives, to be:

- Clear — the definition should allow PSPs to make a reasonable self-assessment to determine if their activities are incidental or not
- Fair — the definition should not create exemptions which result in different treatment for entities performing similar functions owing to differences in their structure or business model
- Simple — the definition should avoid, in most circumstances, significant analysis, by both the Bank and potential PSPs, to decide if an activity is incidental
- Flexible — the definition should preserve some flexibility to allow determination for unanticipated edge cases or evolving business practices
- Legally enforceable – the definition should be legally defensible, i.e., stand-up to court scrutiny. Owing to the technical nature of this issue, the Bank will not be consulting with stakeholders on this specific goal and will rely on its own legal counsel.

Which approach the Bank uses would be evaluated against how effectively it achieves the objectives.

The Bank has been considering key examples of what kinds of activities are incidental. The Bank has not distilled these examples into principles or a definition of incidental. They represent some of the cases the Bank has been exploring.

- **Telecommunications companies or internet service providers** — These entities provide the general online infrastructure that is necessary for end users to make or receive payments, but this is general use infrastructure and EFTs are not their line of business.
- **Cloud computing providers** — A server is typically necessary to perform payment functions but payment functions that occur on such servers are incidental to the business of the cloud service provider.
- **Companies specializing in Application Programming Interfaces (APIs)** — These entities provide APIs designed for managing payments, e.g., to enable retailers to process payments online.
- **Online casinos** — These entities enable gamblers to play and wager on casino games online.
- **Law or accounting firms** — These entities may maintain trust accounts (i.e., special bank accounts) to receive and hold money on behalf of clients or third parties.

There are many edge cases the Bank has not considered or for which more information is required. Stakeholders are encouraged to submit these edge cases to the Bank via email.

- 5) Are these the objectives the Bank should be pursuing in defining incidental? Are there additional objectives? Are certain objectives more important than others?
- 6) What edge cases should the Bank consider in developing a definition of “incidental to another service or business activity.”
- 7) What are your views on these edge cases? Should the Bank consider them incidental or not? Why or why not?
- 8) Are there additional considerations the Bank should incorporate when developing guidance on the topic of “incidental”?

Geographic Scope

The approach to geographic scope in the RPAA is comparable to what exists for money service businesses (MSBs) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which is overseen by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). PSPs will be subject to the requirements, even if they are not physically present in Canada, if they are directing and providing payment services to end users in Canada. PSPs with a physical presence in Canada will be subject to the requirements with respect to their end users both inside and outside Canada.

The following table outlines how this geographic scope would work in practice:

| Location of PSP | Location of end user(s) | Would the PSP be subject to the framework? |
|-----------------|-------------------------|---|
| In Canada | In Canada | Yes |
| In Canada | Outside Canada | Yes |
| Outside Canada | In Canada | Yes, if the PSP <i>directs</i> retail payment activities to end users in Canada |
| Outside Canada | Outside Canada | No |

FINTRAC has published [guidance](#) to help explain its interpretation of the geographic scope. The Bank intends to align its approach closely with FINTRAC’s and will create guidance on the matter in the future. The following information contains excerpts from FINTRAC’s guidance.

FINTRAC considers a person or entity to be **directing services** [in the case of the RPAA, retail payment activities] at persons or entities in Canada if at least one of the following is true:

- The business's marketing or advertising is directed at persons or entities located in Canada;
- The business operates a ".ca" domain name; or
- The business is listed in a Canadian business directory.

If none of these apply to the person or entity, FINTRAC may still consider them to be directing services at persons or entities in Canada, taking into consideration various factors, including but not limited to:

- The business described their services as being offered in Canada.
- The business offers products or services in Canadian dollars.
- The business makes customer service support available to clients in Canada.
- The business seeks feedback from their clients in Canada.
- The business has another business in Canada that promote its services to clients in Canada.

FINTRAC considers clients to be **in Canada** if they have a connection or residential ties with Canada. Specifically, the client is deemed to be in Canada when:

- the client's address is in Canada,
- the document or information used to verify the client's identity is issued by a Canadian province or territory, or by the federal government; or
- the client's banking, credit card or payment processing service is based in Canada.

9) Are there differences between a PSP and an MSB that the Bank should consider while developing its own guidance on geographic scope?

10) What would you recommend that the Bank consider when developing guidance on PSPs that are providing direct services at persons or entities in Canada or for end users in Canada?

11) Is there information that the Bank could provide in its guidance to better clarify geographic scope?