

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

23 and 24 September 2021

The Retail Payments Advisory Committee (RPAC) held its meeting on 23 and 24 September 2021. This is a summary of the discussions.

Who we consulted		
<p>Participants:</p> <ul style="list-style-type: none"> • Bank of Canada • Department of Finance Canada • Apaylo • Klik2pay • EukaPay • FIRMA • Leav Inc • Mastercard • MOGO • Moneris • nanopay • Neo Financial • OTT Pay • Paypal • Ria Telecommunication du Canada • SparcPay • Square • Stripe • Tappy Tech • Telpay • Trendigo • Wealthsimple • Western Union • Wise 	<p>Method of engagement: Virtual (Webex)</p>	<p>Purpose of engagement: To provide an overview of the retail payments supervisory framework and discuss open issues related to registration scope and process</p>
What we asked		
<ul style="list-style-type: none"> • Participants were asked: <ul style="list-style-type: none"> ○ Whether the five payment functions outlined in the Retail Payment Activities Act (RPAA) were sufficiently clear and, if not, what type of clarifications would be helpful for stakeholders; 		

- What principles the Bank of Canada (Bank) should consider when developing a definition for payment functions that should be treated as incidental to another service or business activity;
 - The types of business activities that could be considered as incidental, and how those business activities should be categorised based on payment functions (if at all);
 - What participants' concerns may be if guidance on geographic scope of the RPAA was aligned with that of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).
- Detailed questions of what was asked can be found in the [discussion guide](#) for this event.

What we heard

This section contains comments received from participants and clarifications provided by the Bank or the Department of Finance Canada (Finance Canada) at RPAC.

Overview of Retail Payments Supervision

In response to questions from participants, the Bank and Finance Canada offered the following clarifications about the scope of the RPAA:

- The RPAA currently applies to fiat currencies, but the definition of a retail payment activity in the RPAA allows the Government flexibility to include non-fiat currencies through regulation;
- Finance Canada is committed to advancing the regulations to stand up the regime (e.g., registration, operational risk management, end-user fund safeguarding, reporting);
- Finance Canada stated that the regime is intended to be risk-based.

On the alignment of the regime's coming-into-force under the RPAA with the possible broadening of access to core payment systems in Canada:

- Coming-into-force of this regime will take a few years, which is ultimately up to the Government;
- The next step is to establish regulations pursuant to the RPAA;
- Finance Canada is preparing for consultations on payments modernization work in the near term, subject to the views of the newly elected Government.

Registration Scope

Incidental

Points below summarize the discussion on the clarity of the payment functions and the definition of "incidental".

- The Bank will consider the policy intent and wording of the RPAA in determining which entities are captured under the regime. The goal is to only capture entities that are intended to be in scope.
- Participants view clarity and fairness as the most important principles in defining "incidental," with mixed views on the principle of flexibility to accommodate edge cases. A definition that requires minimal analysis is not as important as the other principles.

- In defining “incidental”, the Bank will look at the payment flows more closely as many third parties can be involved in payment activities.

Payment business models

Discussion on the types of business models and activities the Bank should consider when defining incidental as well as clarifying the payment functions drew the following comments listed below.

- The Bank noted that an entity storing tokenized information, without being able to detokenize it, could still meet the definition of holding personal or financial information in the context of maintaining an account.
- Participants noted that online marketplace or e-commerce platform could be storing information for payment purposes or outsource that function to a distinct payment service provider (PSP) it is connected to. They may also store funds for exclusive use on their platform.
- The Bank clarified that storing information about one or more end users, including one time uses, might influence the determination of whether a PSP would be captured under the first payment function. Participants noted they may store information of these end users for other regulatory purposes (e.g., to meet its obligations under the PCMLTFA) rather than for the purpose of those end users to access “an account” stored at the PSP.
- Participants asked whether PSPs will be required to establish a formal contractual relationship with its end users and also raised that certain risk management requirements should consider the nature of a PSP’s relationship with its end users.
- Real estate brokers – while payment functions are arguably being performed, participants questioned whether capturing these entities was in line with the spirit of the regime.
- Payroll companies – there are different operational structures associated with companies that deal with or facilitate payroll (e.g., instructions only being transmitted to move funds held at bank accounts, having funds held by a PSP until the payee can access those funds in an account, facilitating funds to be remitted back as taxes).
- Gym memberships and recurring payments – a gym could hold tokenised information of a client but not able to access their financial information (which exempts the gym from being subject to PCI compliance).
- Issuers of commercial paper—the Bank should consider whether these companies would be captured by the RPAA.
- Participants shared their insights on digital wallets.
 - Mobile applications can store a payments card, scan a QR code of the merchandise to be purchased, and have payments be initiated and authenticated for that purchase. The mobile application (and thus the PSP offering this service) could directly connect with the acquirer, who would then validate the payment.
 - PSPs may rely on another payment processor (the entity providing the payment terminal) to connect with the acquirer.
 - In some cases, a payments card is not involved.
- Participants also noted:
 - It would be helpful to align the Bank’s interpretation of initiating an electronic funds transfer with that of the PCMLTFA.

- An entity's compliance with PCI rules could serve as an indicator of whether the entity is a PSP.
- Multiple parties may be performing an authentication of an electronic funds transfer, e.g., identity, the charged amount, and the amount of funds available.
- Operational risk management requirements could apply differently to each entity in a payment transaction, and it would be helpful to have clarity on whether certain entities could be expected to meet more stringent requirements.

Geographic Scope

Some members raised concerns related to the adoption of FINTRAC's geographic scope guidance;

- There is a difference between what anti-money laundering law intends to achieve through geographic scope and what is intended under a risk management focussed regime such as the RPAA;
- There would be less confusion if the law applied to end users based on the jurisdiction in which they live or where they pay taxes;
- The geographic scope applied for the regime under the RPAA could conflict with other jurisdictions' regimes for similar payment institutions.

Registration Process

A brief walkthrough of the registration process raised two questions among participants:

- How would the Bank consider registration with FINTRAC or violations under FINTRAC's requirement when determining the registration of an applicant?
 - In relation to this question, participants also noted that:
 - Not all violations of FINTRAC's requirements should be considered for refusing registration of an applicant;
 - Not being able to register with the Bank would likely impact a PSP more negatively than not being able to register as a money service business (MSB) under FINTRAC's regime;
 - A window to discuss FINTRAC registration issues, as opposed to an automatic decision by the Bank is preferred.
- How will the Bank register all PSPs in scope and how long would this take?

See the What happens next section below for the Bank's responses.

- The decision to refuse or revoke an applicant's or a PSP's registration will not be taken lightly. Further clarity on this part of the registration process will be provided in the future through supervisory guidance.
- The RPAA includes a transition process and the Bank's implementation plan anticipates a transition to accommodate the large number of applicants.

What happens next

- The Bank will review the insights provided by participants on the registration scope. This insight will also feed into the Bank's on-going work to develop supervisory guidance on this topic. On registration scope topics where the RPAA includes the possibility of prescribing regulations, the Bank will provide advice to the Finance Canada.
- If needed, the Bank may reach out to specific participants with technical questions in relation to payment functions and how a unique business activity or model could or should not be scoped into one or more of the payment functions.
- As participants were not able to have a complete discussion on all topics related to the registration process, particularly on the information to be collected as part of an applicant's registration application form, the remainder of this discussion will continue at the October 2021 RPAC meeting on 18 and 20 October 2021.
 - The October 2021 RPAC meeting will cover topics of registration process, annual reporting, information request, and record keeping.
- The Bank invites RPAC participants to raise questions or concerns that would be helpful to discuss at a future RPAC meeting. Views or suggestions can be sent to the [RPAC email address](#).