

Public Consultation Report: Retail Payments Advisory Committee (RPAC)

18 and 20 October

The Retail Payments Advisory Committee (RPAC) held its meeting on 18 and 20 October 2021. This is a summary of the discussions.

Who we consulted		
<p>Participants:</p> <ul style="list-style-type: none"> • Bank of Canada (The Bank) • Department of Finance Canada (Finance Canada) • Apaylo (regrets) • Klik2pay • EukaPay • FIRMA • Leav Inc (regrets) • 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 discuss requirements related to the registration process, annual reporting, information request, and record keeping, as noted in sections 4, 5, 21, 26, 29, 65, 101(1)(o) of the <i>Retail Payment Activities Act</i>.</p>
What we asked		
<ul style="list-style-type: none"> • Participants were asked their feedback on: <ul style="list-style-type: none"> ○ The information applicants would be required to provide at the time of registration under s. 29 of the <i>Retail Payment Activities Act</i> (RPAA); ○ Potential record keeping requirements under the RPAA; 		

- Participants' current practices regarding record keeping and lessons from other regulatory regimes;
 - A proposed approach to annual reporting and information request under the RPAA;
 - Potential time periods for when a payment service provider (PSP) may be required to submit its annual report (per s. 21 of the RPAA) and its response to an information request (per s. 65 of the RPAA).
- 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 Finance Canada at RPAC.

Geographic Scope

As a follow-up item from the September 2021 RPAC meeting, Finance Canada provided clarity on the intent of the RPAA on geographic scope (s. 4 and s. 5).

- The intent is to capture PSPs that have a place of business in Canada and to capture PSPs that do not have a place of business in Canada but direct retail payment activities at customers in Canada. The Bank will provide guidance on what it means to direct services at people in Canada and what it means to have a place of business in Canada.
- Following Finance Canada's remarks on the policy intent behind the geographic scope of the RPAA, participants stressed the importance of setting appropriate and well-defined scope of application.
- Some participants asked about capturing entities with a place of business in Canada that provide services to end users outside of Canada, and to consider how this approach compares against other legislation, such as the *Income Tax Act* or the *Bank Act*.
 - Finance Canada responded that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* is more comparable to the RPAA than the *Income Tax Act* or the *Bank Act* are.
- Participants also asked about the applicability of Canadian law to individuals outside of Canada, as well as the goal to enforce Canadian law for the benefit of foreign end users.
- Some participants cautioned that the RPAA's approach to geographic scope could potentially impede payments innovation in Canada.

Registration Process (Continued Discussion from September 2021 RPAC)

Participants were invited to comment on the steps that a PSP will need to follow to register with the Bank, the information collected by the Bank at registration, as well as the information to be published on the Bank's registry of PSPs.

[Confidentiality of information received through registration or other reporting requirements](#)

- The Bank clarified that information received from PSPs under the RPAA will be treated as confidential supervisory information (per s. 62).
- Participants requested a simple process for ensuring that information provided by PSPs is treated as confidential to avoid individually identifying information as confidential items prior to submission.

Finance Canada’s timeframe for reviewing an applicant’s registration application for national security purposes

- Participants suggested aligning with the application review timeframe of 30 days (s. 53.6(1) of the PCMLTFA) given to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
- The Bank clarified that this timeframe is to be prescribed in regulations, and policy work is currently underway.
- Finance Canada noted that it is open to feedback from stakeholders on this prescribed timeframe.

Registration information shared with FINTRAC

- Participants asked whether information shared will solely focus on what FINTRAC needs to: (i) identify whether the applicant is already a money service business and has had violations under the PCMLTFA; and (ii) identify whether the applicant should be a money service business but has not registered with FINTRAC.
- The Bank clarified that the information to be shared is codified in the RPAA (s. 31).

Practical applications of exemptions and exceptions to the scope of the RPAA

- Participants indicated that payment functions and other terms are defined very broadly, and asked for further clarity, specifying examples such as third-party service providers as opposed to agents and mandataries, activities taken by financial institutions as part of a card network, and loyalty points.
- The Bank clarified that a third-party service provider would not perform retail payment activities, but rather enable a PSP to perform those retail payment activities. An agent or mandatary would be performing retail payment activities but only on behalf of the PSP for which it is an agent or mandatary.
- If a loyalty card or loyalty points can only be used in a closed network, these services or activities are likely out of scope per s. 6 of the RPAA.
- The Bank also noted that further work is required in this area and will provide guidance. Bilateral meetings with stakeholders could be helpful to better understand nuances specific to the examples participants provided.

Values, volumes, and interconnectedness – Information gathered at registration

PSPs would be required to report quantitative measures of their retail payment activities to support a risk-based approach to supervision, and enhance the Bank’s understanding of the payments ecosystem more generally in accordance with s. 2 of the RPAA.

Participants shared the following comments:

- The different measures provide different indications of risk, and therefore one measure would not be more important than the others.
- Reporting on the measures at registration would pose a challenge as historical data may not have been collected and stored in a manner that aligns with the reporting requirements. The proposed 24-month historical reporting period at registration would increase this challenge.
- After registration, system builds could be implemented, which would lessen the burden of reporting the measures on an ongoing, annual basis.
- Following registration, annual reporting would be preferred to more frequent reporting, as it would help to mitigate the burden of any manual processing necessary to report on measures.

Discussion indicated that the exact nature of some of the metrics will differ across PSPs.

- On 'number of end users', some PSPs will capture merchants in their total, while others will include customers. In some cases, a PSP might provide services to other PSPs or financial institutions, and it could be onerous to estimate the number of end users that ultimately use the PSP's services.
- Participants preferred limiting reporting to 'active' end users. However, it was also discussed that PSPs use different criteria for determining whether an end user is 'active'. For example, international money transfers may only be used a few times in a year, whereas other services may be more transactional and used more frequently by end users.
- The Bank clarified that if a particular measure was not relevant for a PSP, the PSP would not be required to report that measure.

Some participants raised concerns about reporting completely accurate measures.

- For example, if a PSP does not have an 'account-based' relationship with end users, there could be a risk of duplication in reporting the number of end users.
- One participant suggested that reporting of measures could be stratified, i.e., PSPs could report whether their metrics fall within certain ranges, rather than reporting exact figures.
- The Bank also clarified that electronic funds transfer (EFT) volumes are meant to capture the number of transactions, whereas EFT values are to capture the dollar amount of those transactions.

Participants noted that additional guidance about how to report the measures would be helpful.

Bank's registry of PSPs

Participants made suggestions on the information to be included in the registry.

- *Telephone number*: participants noted these often reach the corporate head office. A better means of communication between end users and a PSP would be via email or through real-time chat functionalities on the PSP's website.
- *List of agents or mandataries*: the Bank clarified that an updated list would need to be given within a prescribed time period (to be stated in regulations) as per s. 59. The Bank is working with FINTRAC to identify whether their list could be leveraged to gain efficiencies.

- *Maintaining the registry:* the registry is for the Bank to maintain, though it is based on information the PSPs provide per the legislative requirements.
- *Level of detail:* participants compared the Bank's registry of PSPs to the Office of the Superintendent for Financial Institutions' (OSFI's) list of regulated entities, noting that there should be a level playing field between the disclosures of PSPs versus other regulated financial institutions.
 - The Bank clarified that the information to be included on this registry is prescribed under the RPAA and subsequent regulations.
 - Participants suggested bolstering the information provided to the public regarding OSFI-regulated financial institutions.

Participants also raised views regarding the publication of Notices of Violation:

- Publishing a Notice of Violation should not be taken lightly, as reputation is paramount for many PSPs. Serious violations should be distinguished from administrative violations (e.g., failing to meet risk management requirements) versus administrative violations versus failing to submit regulatory information on time).
- There should be a degree of leniency at the onset of this regime coming into force, as both PSPs learn to adapt to these requirements and as the Bank grows more mature in its new supervisory role.

The Bank clarified its intent to have a graduated approach to the use of various compliance or supervisory tools, and share more on the Bank's supervisory framework at the March 2022 RPAC meeting.

- Furthermore, under the RPAA, PSPs will have the right to ask for an independent review of the Bank's Notice of Violation issued, which will confirm, modify, or reject the Notice of Violation before being made public.
- A violation would not become publicly known until all Bank proceedings have ended. Once the PSP receives the decision from the independent review, the PSP may appeal that decision via Federal Court.

Record Keeping

Participants discussed the triggers for record retention (i.e., the trigger for the start, or end, of a document retention period) that could be relevant to the materials that could be considered 'records' under the RPAA.

- Participants expressed a preference for a single record-retention trigger to be applied across all records, as this would provide operational simplicity.
- Only the document that was effective, or in place, at the relevant time should be retained. For example, PSPs should not be required to retain drafts of policies or procedures that were never implemented.

Generally, participants preferred the triggers of 'from approval' and 'from creation'.

- The point of 'approval' and the point of 'creation' can be interpreted similarly. For example, where approval is required for a document, it could be considered that the document is not 'created' until that approval is given.
- Not all documents are formally approved.
- For living documents that are continuously updated (e.g., logs and ledgers), 'creation' would refer to the time that a new entry was recorded into the document.
- Clarity should be provided about how a policy that had been in place for the duration of the retention period, and then was superseded, should be treated.

Participants highlighted the potential intersection between privacy laws and record retention requirements, if a record contains personal information.

Some participants indicated that records are encrypted. Participants had different practices regarding deletion of records following the retention period.

Participants requested that it be made clear what materials should be retained as a record, noting that this clarity could be provided through regulations or guidance.

Annual Reporting

The discussion focussed on the Bank's plan to collect structured, high-level information about a PSP via the annual report requirement (as per s. 21), and using the information request power (s. 65) to follow up on specific documentations and records.

Format of information collected under annual reporting

- Relying solely on structured information – e.g., yes/no boxes or drop-down menus – may not allow PSPs to clarify their responses, and thus the option to add supporting text to a response could be helpful.
- The Bank clarified that work is underway to identify where free-form text boxes may be appropriate.

Timing and deadlines

- Submitting previous calendar year information (e.g., 1 January 2022 – 31 December 2022 inclusive) by end of March of the next calendar year (e.g., by 31 March 2023) is logical and a 90-day period for reporting is feasible. Some participants noted that the 31 March deadline could mean PSPs are required to submit their annual report (as per s. 21 of the RPAA) during a busy time for submitting other regulatory reports or filings (e.g., public company annual filings), but that this was not insurmountable.
- Additionally, operational challenges associated with submitting this annual report may be amplified if the submission deadline was shortened (e.g., to end of February of the next calendar year).

On the use of an API for PSPs to automatically provide data to the Bank

- The Bank noted that APIs are most commonly used where regulators require high volumes of data to be reported on a frequent (e.g., daily) basis; it is anticipated that the volume of

quantitative data that PSPs will need to report to the Bank will be relatively low, and not as frequent.

Information Request

The discussion focused on the potential prescribed period for responding to information requests. Views from participants are as follows:

- There would be operational challenges in meeting an information request within 5 days and that a prescribed time period of 15 or 30 days would be more reasonable.
- Retrieving information from different parts of the company, particularly if the PSP has a global presence, would require more time. Some participants also noted that employees of a PSP may be working in different time zones as well as remotely, and that certain information requested by the Bank may require the PSP to contact its commercial partners in different jurisdictions.
- It may be more important for the Bank to receive accurate and helpful information, rather than have a PSP solely focus on meeting a short time frame to meet an information request.

The Bank clarified that a PSP would be able to submit the requested regulatory information anytime within the prescribed period (e.g., before the 15- or 30-day time period is due).

What happens next

- The Bank will continue to provide advice to Finance Canada as they work to develop regulations in relation to the various subjects presented at this meeting (e.g., record keeping, annual reporting, information requests, registration process).
- At the next meeting on 16-17 November 2021, RPAC will discuss a preliminary approach to the registration application fee (s. 29(2)) and assessment fees (part 6 of the RPAA) under the RPAA. Recall that there is a legislation requirement to recover the Bank's costs incurred in connection with the administration of the RPAA (s. 99(1)).