Financial Services Flash

Aird & Berlis LLP
Barristers and Solicitors

May 20, 2015

Mobile Payments – Is Your Business in Compliance With Canadian Regulations?

By Mathew Goldstein and Jami Makan*

Financial technology (also referred to as "FinTech") and mobile payments are fast-growing areas of activity in Canada right now. According to a 2014 study by the market research company GfK, 21% of Canadian shoppers reported making a mobile payment in the past six months (though compared to China at 83%, South Korea at 62% and the United States at 33%, the market in Canada clearly has room to grow).

Many Canadian companies are taking notice. PayPal's research suggests that mobile spending in Canada may hit $4.9 billion by 2016. Millennials (18- to 34-year-olds) are driving growth, and frequently use smartphones to prepay for food or drinks at restaurants, scan barcodes/Quick Response codes and pay through mobile phone applications that integrate with point-of-sale hardware.

Companies operating in this space in Canada should be aware that there is a sophisticated regulatory regime that governs many of the above-described activities. Based on concerns about money laundering, terrorist financing and other risks, federal legislation regulates all "money services businesses," imposing requirements on companies with respect to reporting, record-keeping and other compliance.

For example, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* currently define money services businesses as: "persons and entities engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments except for cheques payable to a named person or entity."

This definition is broad enough to capture a wide variety of FinTech/mobile payments services (amendments that are not yet in force broaden it even further to cover virtual currencies, as well as persons and entities that may not have places of business in Canada). For example, mobile payments or money-transfer websites or applications presumably meet the definition of "remitting funds or transmitting funds." While the words "remit" and "transmit" are not formally defined by the *Regulations* or the legislation, the word "funds" means "cash, currency or securities, or negotiable instruments or other financial instruments, in any form, that indicate a person's or an entity's title or interest in them."

The federal agency responsible for enforcement – the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) – provides interpretive guidance on its website, as well as answers to submitted questions. Several companies have anonymously posted questions regarding the services they offer, requesting whether FINTRAC would consider them to be "money services businesses." For example, an app providing loyalty incentives for consumers to store their change from in-store purchases at select merchants and redeem it later – is that a money services company? For now, FINTRAC suggests not; but that position could subsequently change. How about a company whose vouchers are purchasable in-store at select merchants and transmitted abroad to be redeemed directly for goods and services in other countries? FINTRAC's position today is that such activity constitutes a money services business and is therefore subject to regulation.

Being a money services business adds a layer of complexity to your business. Requirements include registering with FINTRAC, implementing compliance policies, identifying clients, keeping records and submitting reports to the regulator. Obligations that are not complied with can result in the assessment of penalties and other consequences.

If you have questions regarding any aspect of how money services businesses are regulated in Canada, please contact a member of the Aird & Berlis LLP Financial Services Group. Details can be found on our **Financial Services, Insolvency and Restructuring web page**, by clicking on **members**.

Click here to view our other newsletters
or visit **www.airdberlis.com**

**Jami Makan is an articling student at Aird & Berlis LLP*