

POLICY STATEMENT TO THE MONEY-SERVICES BUSINESSES ACT

(Money-Services Businesses Act, CQLR, c. E-12.000001)

This policy statement sets out how the *Autorité des marchés financiers* (the “Authority”) interprets and applies the provisions of the Money-Services Businesses Act, CQLR, c. E-12.000001 (the “Act”), and the related Regulations.

PART 1 - SCOPE

Any person or entity operating a money-services business for remuneration must hold a licence issued by the Authority. The Authority issues licences in respect of one or more of the money services set out in section 1 of the Act, which constitute the classes of licences.

The classes of licences are as follows:

- 1) *Currency exchange:*** Currency exchange consists in exchanging a currency, or legal tender money, for another based on an exchange rate. An exchange may consist of the sale or purchase, or both the sale and purchase, of a currency.
- 2) *Funds transfers:*** A funds transfer consists in moving cash funds from one location to another or from one person to another via a person, an entity or a network.

Where a money-services business does not carry on currency exchange activities independent of its funds transfer activities, a licence in the currency exchange class is not required to exchange currency when transferring funds.

- 3) *Issue or redemption of traveller’s cheques, money orders or bank drafts:*** A traveller’s cheque is a cheque of a fixed amount paid in advance that enables the person who purchased and signed the cheque to make a payment to a third party. Traveller’s cheques can be issued in various currencies.

Money orders are similar to traveller’s cheques in that they are prepaid negotiable instruments whereby the amount and payment to a third party are guaranteed by the issuer. However, unlike traveller’s cheques, money orders specify the name of the payee.

A bank draft, also known as a “cashier’s cheque”, is a commercial instrument whereby a person instructs another person to pay a specific sum of money on demand or on a certain date to a third party. The bank draft is made payable to the order of the payee or the bearer.

- 4) *Cheque cashing:*** Cheque cashing is the act of exchanging a cheque for cash or making an amount of cash available corresponding to the value of the cheque or to an amount negotiated between the parties.
- 5) *Operation of automated teller machines:*** The operation of automated teller machines consists in making available to the public a means of withdrawing cash funds from a machine without the intervention of a natural person.

Making available to the public a means of purchasing, with cash, virtual money from an automated distributor, without the intervention of a natural person, also constitutes the operation of automated teller machines.

The lessor of a commercial space intended as a location for an automated teller machine is considered to be operating an automated teller machine if the lessor is also responsible for keeping the machine supplied with cash, directly or through co-contracting parties.

In addition, a person or entity who is the owner or lessee of an automated teller machine and who is responsible for keeping the machine supplied with cash, directly or through co-contracting parties, is considered to be operating an automated teller machine.

REMUNERATION

Any business that offers money services for remuneration is subject to the Act, regardless of whether or not the money services offered are ancillary to other activities. Moreover, no cash threshold or minimum transaction volume is required in order for the person or entity to be considered to be operating a money-services business.

Therefore, the requirement to hold a licence does not apply to persons or entities who offer courtesy services to their customers.

TEMPORARY OR EVENT-BASED SERVICE OFFERINGS

Persons or entities who expect to provide cash services on a temporary basis or over a very short period of time must be licensed at the time they begin to offer the money services covered under the Act.

PERIPHERAL OR SUPPORT ACTIVITIES

Peripheral or support services for the operation of money services are not money services within the meaning of the Act. These activities, while essential to the operation of the money-services business, are not directly related to their operation.

The following in particular are considered to be peripheral or support activities:

- electronic switching services;
- information exchange services;
- software services used to operate the business;
- the activities referred to under the Private Security Act, CQLR, c. S-3.5.

PART 2 - LICENCES

SINGLE LICENCE – MULTIPLE CLASSES

Where a business offers several money services, it must file an application with the Authority for a licence in respect of all money services it intends to offer. The Authority will subsequently issue a single licence in respect of all authorized classes of money services.

Where a money-services business seeks to add a class of money service to, or remove a class of money service from, its licence, it must file a form provided for such purpose with the Authority. The single licence held by the money-services business will be amended accordingly.

RESPONDENT

Appointment of respondent

The respondent of a money-services business is a director, an officer or a partner of the money-services business.

Where the money-services business is not constituted under Québec law and does not have a head office or an establishment in Québec, the respondent need not be a director, an officer or a partner of the business, but must satisfy the requirements under section 5 of the Act and section 5 of the Regulation under the Money-Services

Businesses Act (CQLR, c. E-12.000001, r. 1) (the “related Regulation”) with respect to a respondent.

The respondent must be officially appointed as the respondent by the money-services business.

A document attesting such appointment must be filed along with the licence application. This document may be, in particular, a resolution of the board of directors or a resolution of shareholders, a mandate, or a proxy from the sole owner of the money-services business.

Functions of respondent

The respondent is responsible for, in particular, filing the licence application with the Authority on behalf of the money-services business.

The respondent also acts as correspondent with the Authority for all follow-up related to the application of the Act and the related Regulations.

The respondent is therefore responsible for providing all required documents and information and for replying to all requests that the Authority may address to him pertaining to the money-services business for which he is so designated as respondent.

The Authority must be able to readily contact the respondent, and the respondent must reply promptly to any request from the Authority.

Change of respondent

Where the respondent is not able to properly exercise his functions, for whatever reason, the money-services business must determine whether or not to appoint another respondent.

Generally, if the respondent is no longer able to exercise his functions on an extended basis or definitively, the Authority will expect the money-services business to appoint a new respondent and attest his appointment in an official document filed with the Authority. The money-services business must notify the Authority of any change by following the procedure explained herein under Part 4 - OBLIGATIONS OF MONEY-SERVICES BUSINESSES.

Where the respondent is temporarily not able to properly exercise his functions, but the money-services business is of the opinion that it is not necessary to appoint a new respondent, the money-services business must notify the Authority that the respondent's responsibilities are temporarily delegated to a director, officer or partner of the money-services business, who will act as a substitute respondent.

The substitute respondent must exercise the same functions and responsibilities as the respondent appointed by the money-services business.

DELIVERY OF DOCUMENTS AND INFORMATION

Legal structure

The money-services business must send a document to the Authority describing its legal structure, namely, a document evidencing its juridical form. Said document may be a copy of a registration declaration filed with the Québec enterprise registrar, a copy of the constituting act of the business or a copy of the contract of partnership, if applicable.

Person or entity who, directly or indirectly, owns or controls the money-services business

The money-services business must also provide the Authority with information about any person or entity who, directly or indirectly, owns or controls the money-services business. To identify these persons or entities, these concepts require clarification as to their scope:

1) Person or entity who owns the money-services business

For purposes of the Act, the person or entity who owns the money-services business means:

- the owner of the securities of a money-services business, whether they be shares, bonds or any other debt securities;
- the holder of the real decision-making power over the securities of a money-services business;
- the person or entity who holds securities registered in the name of an intermediary acting in particular as a nominee, trustee or mandatary.

Where a money-services business is a public company, the Authority considers, for purposes of section 6 of the Act, that only persons or entities holding 20% or more of the securities are contemplated.

However, under section 32 of the Act, the Authority may require additional information from persons or entities holding less than 20% of the securities of a money-services business.

2) Person or entity who controls the money-services business

For purposes of the Act, the person or entity who controls the money-services business means:

- the person or entity who holds a sufficient number of the voting rights attached to all outstanding voting securities of a money-services business to affect materially the control of the business;
 - If a person, acting alone or with other persons by virtue of an agreement, holds more than 20% of the voting rights, the person is deemed to hold a sufficient number of the voting rights to affect materially the control of the business.
 - Influence is material where it allows participation in decisions related to the orientations of the business.
- the person or entity who owns the securities of the money-services business enabling the holder to elect in all cases a majority of the directors of the business;
- the person or entity who holds effective control of the administration or activities of the money-services business, whether this right or power is exercised via a management contract or otherwise.

The information that the money-services business must provide with regard to the persons or entities who, directly or indirectly, own or control the business may be restricted to Canada.

The money-services business must, under section 25 of the Act, notify the Authority without delay of any change related to these persons or entities.

The money-services business may also send an advance notice regarding this type of change. Such advance notice may help the money-services business to learn more quickly whether such changes may affect the validity of its licence.

Corporate structure

The money-services business must, under section 6 of the Act, provide the names of the subsidiaries of the money-services business, and the names of the parent company and its subsidiaries. The Authority considers that such information may be restricted to Canada.

The money-services business must provide the Authority with an organizational chart outlining its corporate structure.

Mandatory

The money-services business is required to provide a list of all its mandataries, their officers responsible for the money services and their establishments where the money services are offered. A security clearance report must be issued for each of these persons or entities.

For purposes of the Act, a mandatory is a person who, by virtue of an agreement, conducts one or more money services on behalf of a money-services business. The mandatory acts for and on behalf of the money-services business for specific or general purposes.

The mandatory is not required to hold an operating licence in respect of the money services it offers on behalf of the money-services business.

The money-services business remains responsible for compliance with the legislation and must implement adequate measures to ensure that its mandataries comply with the requirements of the Act and the related Regulations.

Financial institutions

Under section 29 of the Act, money-services businesses must maintain and update certain records and registers, including a register of accounts and bank reconciliation reports, and these records and registers must be maintained in such a manner so as to allow auditing. To comply with this obligation, a money-services business that files a licence application must hold a bank account at a financial institution. This bank account must be opened in the name of the person or entity who files the licence application.

The Act requires that the money-services business provide a list of the financial institutions with which it deals.

The financial institutions referred to are those that provide banking or financial services to the money-services business.

The money-services business must specifically indicate the name and address of the branches of the financial institutions with which it deals. It must also disclose the identification number and the name of the holder of each bank account used as part of its activities.

Lenders who are not financial institutions

For purposes of the Act, the money-services business must provide the list of its lenders, other than the financial institutions referred to above, and, if applicable, the names of their officers, directors or partners.

These lenders are persons who enter into a contract for the loan of money or property with a money-services business.

Holders of publicly issued debentures and bonds are not considered to be lenders for purposes of the Act.

Employees whose functions are related to the money services offered

For purposes of the Act, a security clearance report is issued for employees of the money-services business whose functions are related to the money services offered.

The expression “employee whose functions are related to the money services offered” means, in particular, any person employed by the money-services business who:

- is involved in any of the steps of a money-services transaction;
- gathers personal information on money-services customers;
- identifies or verifies the identity of money-services customers;
- has access to currencies, traveller’s cheques, money orders, bank drafts or cheques;
- supervises the activities of the money-services business or of another employee whose functions are related to the money services offered;

- has access to the safety deposit boxes or other storage facility of the money-services business;
- has access to the accounts of the business held at the financial institutions with which the business deals;
- deals with the lenders and co-contracting parties of the money-services business;
- participates in accounting activities or administrative tasks related to the keeping of the records and registers prescribed by the Act and the related Regulations.

Employees whose functions are related to the operation of automated teller machines

A money-services business applying for a licence only for the class relating to the operation of automated teller machines must provide only a list of employees whose functions are related to the operation of automated teller machines.

The expression “employee whose functions are related to the operation of automated teller machines” means, in particular, any person employed by the money-services business who:

- as part of his functions, keeps the machine supplied with cash;
- has access to the content and functions of an automated teller machine;
- participates in accounting activities or administrative tasks;
- helps prepare the records and registers prescribed by the Act and its Regulations.

PART 3 - SECURITY CLEARANCE REPORT

Under the Act, the Sûreté du Québec must send the Authority a security clearance report for all officers, directors, partners, branch managers, all persons or entities who, directly or indirectly, own or control the money-services business and the employees of a money-services business whose functions are related to the money services offered.

In addition, under the Act, the Sûreté du Québec must send to the Authority a security clearance report for all mandataries and their officers who are responsible for the money services, as well as for all lenders of the money-services business who are not financial institutions.

The security clearance report must state whether or not the person concerned has previous convictions and is of good moral character.

An indication as to previous convictions or good moral character is an important factor that could influence whether a licence for a money-services business is issued, suspended or revoked.

A new security clearance report must be issued where the Authority is notified of a change in information, in accordance with section 27 of the Act, and this change affects a previously issued security clearance report. The procedure is explained below under Part 4 - OBLIGATIONS OF MONEY-SERVICES BUSINESSES.

PART 4 - OBLIGATIONS OF MONEY-SERVICES BUSINESSES

GENERAL OBLIGATIONS

Notice of change

Under section 25 of the Act, the money-services business must notify the Authority without delay of any change likely to affect the validity of its licence or give the Authority cause to act under any of sections 11 to 17 of the Act.

The money-services business must also notify the Authority in writing of any change in the information that it has filed with the Authority, including any change in its licence application, no later than 15 days following the end of the month in which such change took place, as prescribed in the related Regulation.

For any change in the list of persons whose functions are related to the money services offered, the list of financial institutions and the list of lenders, the money-services business must also notify the Authority of such change no later than 15 days following the end of the month in which such change took place, as prescribed in the related Regulation.

For any change in employees whose functions are not related to the money services offered, the money-services business must notify the Authority of the change no later than March 31 of each year, as prescribed in the related Regulation.

Where a change under sections 25 and 26 of the Act takes place and a new security clearance report must be issued, the money-services business is required to pay the charges specified in the Regulation respecting fees and tariffs under the Money-Services Businesses Act (CQLR, c. E-12.000001, r. 2).

New employees or new mandataries

Where a money-services business hires a new employee or a new mandatary whose functions are related to the money services offered, the Authority must be notified thereof and a security clearance report must be issued with respect to this employee or mandatary.

During the period preceding the issuance of the security clearance report, the new employee or the new mandatary may carry out such functions on the condition that the money-services business provide adequate training and supervision.

VERIFICATION OF IDENTITY OF CUSTOMERS AND CO-CONTRACTING PARTIES

Customers

All customers of a money-services business, other than customers of automated teller machines, must be identified before a money service can be provided to them.

The money-services business must also verify the identity of customers where they conduct transactions that exceed the limits set out in the related Regulation.

If the money-services business is unable to identify the customer or verify the customer's identity, it must refuse to provide a money service under the Act.

In the case where off-site money services are provided, the money-services business must also be able to identify the customer and verify his identity as prescribed under the related Regulation.

An off-site transaction is a money-services transaction that is not physically conducted on the premises of a money-services business or of any of its mandataries. For example, it may be conducted on the Internet or by telephone.

Co-contracting parties

In addition, the money-services business must verify the identity of the co-contracting parties with which it enters into an agreement related to its money-services activities. Regulatory obligations regarding the identification of co-contracting parties are based on sound commercial practices in connection with normal contractual agreements.

The money-services business must be able to provide the Authority with the identity of the co-contracting parties upon request.

A co-contracting party related to money-services activities is deemed by the Authority to be a person or entity who:

- transports securities for the money-services business;
- leases or sells automated teller machines or connects them to a network;
- provides security in an establishment of the money-services business;
- provides professional services (legal, notarial, accounting etc.).

RECORDS AND REGISTERS

Money-services businesses must be able, upon request, to provide the records and registers prescribed under the Act and the related Regulation.

In certain cases, the information pertaining to the records and registers may be held by an outside services supplier and need not be entered by the money-services business.

However, in such cases, the money-services business is responsible for ensuring that it is able to obtain such information promptly for the purpose of meeting its legal and regulatory requirements.