

Banks grapple with new Emergencies Act powers to curb the flow of funds to support blockades

JAMES BRADSHAW > BANKING REPORTER

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A person pours fuel in a truck in front of Parliament Hill as truckers and their supporters continue to protest against COVID-19 vaccine mandates in Ottawa, on Feb. 15, 2022.

PATRICK DOYLE/REUTERS

Canada's largest banks held a flurry of meetings and calls on Tuesday as they tried to grasp how far the federal government expects them to go in wielding emergency powers to cut off financial support for blockades that have disrupted Ottawa and major border crossings.

After Prime Minister Justin Trudeau invoked the Emergencies Act on Monday, senior bankers spent Tuesday awaiting details on the extent and legal ramifications of temporary powers the government expects them to use to monitor and halt transactions that would channel money to demonstrators.

For many bankers, two urgent questions were top of mind: how aggressively banks should target those suspected of soliciting funds to support the blockades, and how the government will assure the banks they have enough legal protection to freeze customers' accounts without risking costly repercussions.

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Late on Tuesday, the government published an order detailing the emergency measures. It directs financial institutions including banks, credit unions and

insurance companies to “cease dealing” in property, facilitating transactions or providing financial services to people participating in a series of prohibited acts related to the blockades.

The institutions covered by the order also include a broad swath of the financial sector, from securities dealers to payment providers and crowdfunding platforms. Each company must “determine on a continuing basis” whether they are holding property or funds by someone participating in activities prohibited under the emergency measures. They must then disclose those customers’ funds or transactions to the RCMP or CSIS, as outlined outlined on Monday by Finance Minister Chrystia Freeland.

The banks will have to balance Ottawa’s desire to choke off funding that has helped prolong the blockades against the interests of customers who may be connected to those demonstrations in a variety of ways.

The banks did not ask Ottawa to expand their powers, according to five banking industry sources familiar with the financial sector’s discussions with government. The temporary powers were imposed by the government, which expects financial institutions to make best efforts to target and disrupt the flow of funds.

The Globe and Mail is not identifying the sources because they were not authorized to speak about private discussions between banks and the government.

What is Canada’s federal Emergencies Act? A summary of the law’s powers and uses

Spokespeople for the major banks declined to comment or referred questions to the Canadian Bankers Association, which also declined to comment while awaiting further guidance from government.

Demonstrators demanding an end to pandemic restrictions have used trucks and

other vehicles to block streets in downtown Ottawa and cut off major border crossings. As the protests drag on, the federal government and business leaders have become increasingly alarmed about the potential harm to economic activity, individual businesses and Canada's reputation with trading partners.

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On Tuesday, government officials worked on the final details of orders that will give banks greater authority to freeze personal and business accounts without obtaining a court order if they are suspected of being used to further the blockades. The measures will also require crowdfunding platforms and digital payments providers handling funds connected to demonstrators to register with the the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and report large or suspicious transfers.

As the country's largest banks awaited more details, they put teams of legal, anti-money-laundering and corporate security staff to work preparing to adjust sophisticated systems already used to monitor and flag suspicious transactions

across millions of accounts, three sources said. Government lawyers also consulted banks' legal counsel on the wording of provisions designed to give financial institutions immunity against being sued for freezing accounts suspected of having ties to the blockades, one source said.

The federal order published Tuesday night says that “no civil proceedings” can be brought against a financial institution for following the order.

Using extraordinary powers to freeze bank accounts and halt transactions raises an array of issues for banks that the government had yet to answer on Tuesday: They include how to notify account holders, how to treat joint accounts and whether clients whose funds are frozen have any right to have the decision reviewed.

When applying emergency powers, banks are likely to focus on specific organizations suspected of co-ordinating the blockades and accounts receiving donations in large amounts, two sources said. Accounts belonging to individual donors are not expected to be a key focus of the financial crackdown.

“Any account affiliated with a ‘freedom convoy’ non-profit could be frozen, personal accounts maybe of some of the organizers, or some of the people leading illegal activities,” Mark Blumberg, a lawyer at Blumberg Segal LLP who specializes in non-profit and charity law, said in an interview. “But I don’t think in the cards at the moment is to freeze the accounts of tens of thousands of people who donated to the occupation.”



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Candice Selby, a Canadian living in New Zealand, donated US\$4,000 to support the protesters' demands that all COVID-19 restrictions be lifted – the largest donation she has ever made – and her husband also donated. “I feel very strongly about this,” she said in an e-mail. Ms. Selby called the threat to freeze bank accounts “outrageous” and “desperate,” but she said she has no concerns about her funds being frozen.

“I donated in good faith to a peaceful protest,” she said.

A decision by Toronto-Dominion Bank to freeze about \$1.4-million donated for protesters before the government announced the emergency measures illustrates the challenges banks face. TD filed an application on Monday asking an Ontario court to take control of the funds, which were donated through the GoFundMe platform and e-mail money transfers and deposited in two personal accounts at TD, and to decide what to do with them.

In court filings, lawyers for TD said the bank “is unable to determine the appropriate recipients of the deposited funds ... or to determine whether certain donors seeking refunds of their donations are entitled to receive refunds and in

what amount.”

With a report from Tom Cardoso

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