

Canadian Anti-Money Laundering Legislations Target Proceeds of Crime and Terrorist Financing

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Anti-Money Laundering and Anti-Terrorist Financing Legislations

Criminals often make the funds gained from their illegal activities appear legitimate by money laundering. In contrast, terrorist financing provides funds for terrorist activities, which may involve funds raised from legitimate and/or criminal sources. Canadian anti-money laundering legislations focus on detecting, deterring, investigating and prosecuting money laundering and terrorist financing activities. In Canada, legislations applicable to money laundering and terrorist financing include the following: (1) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”)¹; (2) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*²; (3) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*³; (4) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*⁴ and (5) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations*⁵.

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”) is an arm’s length financial intelligence unit. It reports to the Minister of Finance and it is independent from the police and law enforcement agencies. FINTRAC’s responsibilities include: (1) receiving financial transaction reports and voluntary information; (2) safeguarding personal information under its control; (3) ensuring reporting entities comply with the law; (4) maintaining a registry of money services businesses; (5) producing financial intelligence concerning investigations of money laundering, terrorist activity financing and threats to Canadian security; (6) researching and analyzing data from various information sources that show trends and patterns in money laundering and terrorist activity financing; and (7) raising public awareness and understanding of money laundering and terrorist activity financing.⁶

Reporting Requirements

Who Must Report Suspicious Transactions?

The Act requires reporting of suspicious transactions by the following reporting entities: (1) financial entities, e.g. banks; (2) life insurance companies, brokers and agents; (3) securities dealers; (4) money services businesses, e.g. foreign exchange dealing operations; (5) government departments; (6) accountants and accounting firms; (7) real estate brokers or sales representatives; (8) real estate developers; (9) casinos; (10) dealers in precious metals and stones; and (11) British Columbia notaries.⁷

What is a Suspicious Transaction?

A suspicious transaction is one for which there are reasonable grounds to suspect that the transaction is related to a money laundering offence or a terrorist activity financing offence. The transaction can be either completed or attempted. “Reasonable grounds to suspect” is determined based on what is reasonable under the circumstances, including the normal practices in the industry.⁸

¹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

² *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317

³ *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184

⁴ *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292

⁵ *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations*, SOR/2007-121

⁶ Financial Transactions and Reports Analysis Centre of Canada, 2017. Retrieved from <http://www.fintrac-canafe.gc.ca/fintrac-canafe/1-eng.asp>

⁷ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 3; *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317, s. 2.1

⁸ *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317, s. 12.1

Money Laundering and Terrorist Activity Financing Offences

Money laundering involves the acts committed to conceal or convert property or proceeds of a criminal offence. The criminal offence may have taken place in or outside Canada. Terrorist activity financing offence includes knowingly collecting or providing property, e.g. funds, either directly or indirectly, to carry out terrorist crimes. It includes inviting others to provide property for such purpose. Moreover, it includes the use or possession of property to facilitate or carry out terrorist activities.

Record Keeping Requirements

Reporting entities must keep records in a way in which they can be provided to FINTRAC within 30 days upon request. The records may be requested by law enforcement agencies or through a court order. Reporting entities must keep records, including the following:

- (1) Reports of suspicious transactions;
- (2) Large cash transactions;
- (3) Trust records;
- (4) Foreign currency exchange transactions;
- (5) Records of transactions exceeding \$3,000; and
- (6) Electronic funds transfer exceeding \$1,000.⁹

Ascertaining Identity

The FINTRAC guideline details the methods that all reporting entities should use to ascertain the identity of individual clients. A reporting entity can use one of the following methods to ascertain their client's identity: (1) the identification method; (2) the credit file method; or (3) the dual process method.

Identification Method

The identification method requires the examination of a valid, current original photo identification document issued by the government with the client's name and identifier number. The reporting entity should examine the original document in person, not by virtual methods, e.g. video conference. Photocopy or scanned copy should not be accepted. Acceptable documents include Canadian passports and driver's licences. Equivalent photo identification documents from other countries are acceptable.

Credit File Method

The credit file method involves obtaining a copy of the credit file containing the name, address and date of birth of the client directly from a Canadian credit reporting agency. The Canadian credit file must have been in existence for at least 3 years.

Dual Process Method

The dual process method requires obtaining any two of the following original, valid and current documents from independent and reliable sources, e.g. government or financial entities, that contain: (1) the client's name and date of birth; (2) the client's name and address; or (3) the client's name and confirmation that the client possesses a deposit, credit card or loan account with a Canadian financial entity.¹⁰

Politically Exposed Person ("PEP") & Head of International Organization ("HIO")

A politically exposed person ("PEP") and a head of international organization ("HIO") are individuals who are, or have been, entrusted with prominent public functions. PEPs and HIOs together with their family members and close associates, can be vulnerable in carrying out, or being used for, money laundering and terrorist financing offences. Reporting entities must take reasonable measures to determine whether an individual is a PEP or HIO. Once the client is determined to be a PEP or HIO, the reporting entity must determine whether the individual poses high risk for committing money laundering and terrorist financing

⁹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 6

¹⁰ Financial Transactions and Reports Analysis Centre of Canada, 2017. Retrieved from <http://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.asp>

activities. For all high-risk PEPs and HIOs, their family members and close associates, the reporting entity is obligated to keep records, establish source of funds, and obtain the approval of senior management to keep the accounts open.¹¹

Compliance Regime

Reporting entities must implement a compliance regime, which consists of the following:

- (1) The appointment of a compliance officer;
- (2) The development and application of compliance policies and procedures;
- (3) An assessment and the documentation of risks related to money laundering and terrorist financing, and the mitigation of these risks;
- (4) The maintenance of an ongoing compliance training program; and
- (5) A review of the effectiveness of the compliance program.¹²

Disclosure, Search and Seizure

Disclosure

When FINTRAC determines that there are reasonable grounds to suspect that the personal information under its control would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence, the designated information would be disclosed to the law enforcement agencies. Designated information includes key identifying information, e.g. name, address, date of birth, citizenship, the name and address of the place of business and the date of transaction. If the law enforcement agencies would like to obtain information besides the designated information, they must get a court order.

FINTRAC can disclose designated information to the Canada Revenue Agency (“CRA”), the Canada Border Services Agency (“CBSA”), Canadian Security Intelligence Service (“CSIS”) and other government agencies, if it determines that the information is relevant to criminal offences, e.g. tax evasion, duty evasion, smuggling and threats to national security.¹³

Search

Officers, e.g. RCMP officers, can search an individual, his or her baggage or mail if the officer suspects on reasonable grounds that the person is carrying, importing or exporting funds exceeding the prescribed amount and did not report the funds to an officer.¹⁴

Seizure

Upon notice to the relevant individual, importer or exporter, officers can seize and forfeit the unreported funds which exceed the prescribed amount, if they have reasonable grounds to suspect that the funds are proceeds of crime or for use in the financing of terrorist activities.¹⁵

Violations and Offences – Administrative and Criminal Penalties

Non-compliance with the Act may lead to administrative or criminal penalties. However, both administrative and criminal penalties cannot be issued for the same act of non-compliance.

Administrative Penalties

In the event that an entity fails to comply with the Act or the regulations, the administrative penalty ranges from \$1 to \$100,000 for “serious” violations, e.g. having a correspondent banking relationship with a shell bank, failure to implement special measures for high risk individuals; or \$1 to \$500,000 for “very serious” violations, e.g. failure to comply with ministerial directive and failure to ensure that a foreign subsidiary complies with a ministerial directive.


¹¹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 9.3

¹² Financial Transactions and Reports Analysis Centre of Canada, 2017. Retrieved from <http://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/Guide4/4-eng.asp>

¹³ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 55(3)

¹⁴ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, ss. 15-17

¹⁵ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, ss. 18-23



Criminal Penalties

FINTRAC may report non-compliance to law enforcement. Upon conviction, criminal penalties may include the following:

- (1) Failure to report suspicious transactions: a fine not exceeding \$2 million and/or imprisonment of a term not more than 5 years;
- (2) Failure to report a large cash transaction or an electronic funds transfer: a fine not exceeding \$500,000 for the first offence, \$1 million for subsequent offences; and
- (3) Failure to comply with record keeping requirements: a fine not exceeding \$500,000 and/or imprisonment of a term not more than 5 years.¹⁶

For more information, please call Barbara Hendrickson or Janny Cho at BAX Securities Law 416.601.1004.

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¹⁶ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, ss. 74-79