

Anti-money laundering and anti-terrorist financing

Since changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act were instituted in 2008, reporting entity obligations have increased. Reporting entities now face additional requirements relating to reporting, record keeping, client identification and their compliance regime.

Why the concern?

In an effort to ensure that Canada remains a global leader in preventing money laundering and terrorist financing, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the Act) instituted a series of changes in 2008, bringing Canada's anti-money laundering and anti-terrorist financing regime in line with the Financial Action Task Force (FATF)¹ standards. The changes that were made resulted in increased reporting entity obligations. Reporting entities were faced with additional requirements relating to reporting, record keeping, client identification and their compliance regime. Consequently, this initiated significant changes in the policies, procedures and systems of organizations.

The amendments also changed how compliance with the Act was enforced. Prior to 2008, the Act only allowed for serious criminal penalties if the Act was contravened. The amendments gave Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) the ability to levy fines against lesser contraventions in order to take a more balanced and gradual approach to compliance. An administrative monetary penalty regime was established to determine whether violations of the Act will be considered minor, serious or very serious, with penalties imposed based on this rating.

Since 2008, the following changes have been implemented:

Attempted Suspicious Transactions

Suspicious transactions must be reported to FINTRAC whether they are merely attempted, or fully completed.

¹ FATF is an inter-governmental policy making body, comprised of over 30 countries, that has a ministerial mandate to establish international standards for combating money laundering and terrorist financing.

Anti-money laundering and anti-terrorist financing

Client Identification

A broader and more flexible set of identification requirements related to non-face-to-face transactions is now required, with two options for identification of individuals not physically present:

1. Obtain the individual's name, address and date of birth and confirm that an affiliate has verified the client's identity in person in accordance with the in-person requirements. The affiliate must be an entity listed in sections 5(a) to (g) of the Act (e.g. banks, credit unions, life insurance companies, trust companies, loan companies, securities dealers authorized under provincial registration) or a foreign affiliate that carries on activities similar to those entities. An entity is affiliated with you if you fully own it, or it fully owns you, or you are fully owned by the same entity. Where this method is used, you must record the name of the affiliate and the type and reference document it used for verification.
2. Use a combination of two of the following methods:
 - a) Referring to an independent identification product or, with the individual's permission, referring to a credit file;
 - b) Obtaining an attestation concerning an identification document for the individual from a commissioner of oaths or a guarantor;
 - c) Confirming that a cheque drawn on a deposit account with a financial entity (other than one that is exempt from identification requirements) has cleared; and
 - d) Confirming that the individual has a deposit account with a financial entity (other than one that is exempt from identification requirements).

The two methods described in bullets c and d cannot be combined.

An entity should rely on a combination of these methods only if the individual's information obtained is consistent within each method and with the information in its records. Currently, you can also use an agent to verify identification on your behalf. Under the amended regulations, you will have to enter into a written agreement or arrangement with them to do so.

The amendments also included a new exemption from the requirement to ascertain the identity of an entity that is a public body or a corporation that has a minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the Income Tax Regulations and operates in a country that is a member of the FATF.

Beneficial ownership

When identifying an entity, reasonable measures to obtain and keep a record of information relating to the entity's beneficial ownership must be taken. For a corporation, this includes the name and occupation of all directors and the name, address and occupation of all individuals who own or control 25% or more of the shares of the corporation. If the information cannot be obtained, a record must be maintained explaining why beneficial ownership could not be determined.

Politically Exposed Foreign Persons ("PEFPs")

Reasonable measures must be taken to determine if you are dealing with a PEFP when opening an account for an individual and for existing account holders based on the related level of risk. Financial entities, money services businesses and foreign exchange dealers also have to take reasonable measures to determine if an individual who is the initiator or the beneficiary of an EFT of \$100,000 or more is a PEFP.

A PEFP is defined as an individual who holds or has held certain offices or positions in or on behalf of a foreign country. Examples of individuals considered a PEFP include a head of state or government, an ambassador or an ambassador's attaché or counsellor, a member of the executive council of government or member of a legislature, a deputy minister, or a judge. The definition also includes the immediate family members of the individual.

When dealing with a PEFP, certain additional due diligence measures must be taken, including performing enhanced account monitoring.

Anti-money laundering and anti-terrorist financing

Risk assessment

You are required to assess and document the risk related to money laundering and terrorist activity financing in your business. This assessment must be tailored and should consider factors such as clients and business relationships, products, delivery channels and geographic areas where business is conducted, as well as other relevant factors. When your risk assessment determines that the risk is high for money laundering or terrorist financing, you are required to take reasonable measures to:

- Conduct ongoing monitoring of those financial transactions that pose a high risk, to detect suspicious transactions.
- Keep client identification up to date. Update beneficial information at least every two years.

Independent review

You are required to perform and document a review of the policies and procedures, risk assessment and training program implemented as part of your compliance regime. Reviews must be completed every two years by either an internal or external auditor. Findings and updates to compliance policies and procedures, including status of their implementation, must be reported to one of the entity's senior officers within 30 days after the review.

Written policies and procedures

Your compliance program must include written policies and procedures and must be kept up to date. Several factors could trigger the need to update your policies and procedures such as changes in legislation, non-compliance issues or new services or products.

Correspondent banking

Before establishing a correspondent banking relationship, financial entities must determine that a foreign institution is not a shell bank and must obtain the approval of its senior management to enter into a correspondent banking relationship or arrangement.

A correspondent banking relationship is one created by an agreement or arrangement between a foreign financial institution and a bank, a credit union, a caisse populaire or a trust company whereby the bank, credit union, caisse

populaire or trust company provides services, such as international electronic funds transfers, cash management and cheque clearing to the foreign financial institution.

If it is determined that the foreign institution is a shell bank, the financial entity cannot enter into a correspondent banking relationship.

The requirements relating to correspondent banking came into effect on June 23, 2007.

Other

Other changes to legislative requirements include:

- Registration requirements for money services businesses
- Changes to reporting requirements for electronic fund transfers and large cash transactions
- Changes to record keeping requirements
- Changes relating to credit card transaction
- Other changes relating to the opening of an account
- Changes relating to foreign subsidiaries or branches

What should organizations be doing?

Following the changes in 2008, organizations should have appropriately updated their policies, procedures and systems. In addition, it's important to ensure that all staff are thoroughly trained and familiar with any new processes.

The necessary controls and monitoring systems must also be put into place to ensure and demonstrate compliance as well as to detect potential problems.

How can PwC help?

PricewaterhouseCoopers' (PwC) multi disciplinary team, including regulatory, controls and technology experts, offer a customized range of services, tailored to meet the needs of your organization, and can assist you in meeting the requirements of the money laundering legislation. Our extensive regulatory compliance experience has helped many clients to achieve compliance with anti-money laundering and anti-terrorist financing (AML/ATF) regulatory requirements.

Who to call

Brenda Eprile
National Risk Leader
416 869 2349
brenda.j.eprile@ca.pwc.com

Western Canada

Brett Kimak
780 441 6882
brett.kimak@ca.pwc.com

Eastern Canada

Michael Anaka
902 491 7442
michael.t.anaka@ca.pwc.com

Quebec

Pierre Taillefer
514 205 5313
pierre.taillefer@ca.pwc.com

Ontario

Dorothy Sanford
416 869 2353
dorothy.a.sanford@ca.pwc.com

Michael Chau
416 814 5707
michael.chau@ca.pwc.com

Nadine Kloetzel
416 941 8415
nadine.kloetzel@ca.pwc.com

Robin Taylor
416 869 8683
robin.taylor@ca.pwc.com

PwC service offerings include:

- Regulatory/best practice compliance reviews
- Development of compliance programs including policies, procedures, advice on new regulations, compliance monitoring and “independent testing”
- Know Your Client (KYC) program development/deployment
- KYC customer file due diligence and quality assurance reviews
- Internal training and communication
- Methods and procedures for identifying, tracking and reporting suspicious transactions
- Investigations and assistance with responses to regulatory enforcement
- Remediation projects – project management, resources, benchmarking to industry practice
- Analysis of money laundering and terrorist financing risks based on customer type/products offered/locations
- Business process and control assessment (account opening, operational monitoring, compliance monitoring, analytic processes)
- AML/ATF internal audit programs
- Conducting or supporting AML/ATF internal audits
- Report on specified procedures for compliance with anti-money laundering requirements

We have helped major Canadian financial institutions with these issues and we can help you.