

Regulatory Update

The impact of recent amendments to anti-money laundering regulations for Real Estate Developers

February 2009

Recent efforts to further crack down on money laundering and the financing of terrorism in Canada have led to increased government regulation for the real estate industry. Effective February 20, 2009 real estate developers must comply with amendments to the Proceeds of Crime (Money Laundering) and Terrorism Funding Act (the "Act"), similar to those currently in place for real estate brokers.

Money laundering is a concern for real estate developers because of the large dollar values involved in real estate transactions. Since purchasers may attempt to pay considerable down payments in cash, the real estate industry has been identified as being susceptible to money laundering, and more recently, terrorist financing. In a money laundering scheme, "dirty money" that was produced through criminal activity is transformed into "clean money" through various financial transactions, making the origin of the funds difficult to trace.

To help deter terrorists and money launderers, the Financial Transactions and Reports Analysis Centre of Canada, (FINTRAC) was created to collect, analyze and disclose financial information and intelligence on suspected money laundering and terrorist activities financing.

Definition of a Real Estate Developer

A real estate developer is defined by FINTRAC to include any individual or entity that has sold to the public, in a given year (after 2007), any of the following:

- At least five new houses or condominium units;
- At least one new commercial or industrial building;
- At least one new multi-unit residential building, each of which contains five or more residential units;
- At least two new multi-unit residential buildings that together contain five or more residential units.

Once an entity meets any of the above criteria it will be subject to the requirements each year until a formal request is made to FINTRAC indicating why the entity should no longer have to comply with the regulations.

Requirements for Real Estate Developers

To comply with the new requirements, real estate developers must ensure that they perform the following:

Report to FINTRAC: Suspicious transactions, knowledge of terrorist property and large cash transactions involving \$10,000 or more must be reported to FINTRAC.

Record keeping and ascertaining identity: Retain records and ascertain the identity of individuals or entities relating to:

- Large case transaction reports;
- Receipt of funds records;
- Client information records;
- Copies of official corporate records; and
- Copies of suspicious transaction reports.

Third party determination: Reasonable measures must be taken to determine whether an individual is acting on behalf of a third party. If a third party is involved, specific information regarding the third party and their relationship must be obtained.

Compliance regime: A compliance regime should exist that includes the following:

- Appointed compliance officer;
- Written compliance policies and procedures;
- Assessment and documentation of risks of money laundering and terrorist financing and the measures to mitigate those risks;
- Implementation and documentation of an ongoing compliance training program; and
- Documented review of the effectiveness of the program.

The new rules are designed to bring Canada's anti-money laundering regulations in-line with international standards. More than ever, there will be an increased regulatory burden on developers and reporting agencies, including banks and loan companies.

Penalties for non-compliance

Non-compliance with the Act can result in either criminal or administrative penalties. Criminal penalties for serious non-compliance may include fines as high as \$2 million and/or 5 years imprisonment. The maximum fine which can be imposed under the finalized administrative monetary penalty scheme for violations is \$500,000 (for entities) and \$100,000 (for an individual).

Conclusion

All Canadian real estate developers should assess the applicability of the new regulations to their operations and ensure that if they meet the regulatory requirements, they have the processes and controls to ensure compliance. Many of the requirements set out in the regulations may already exist in organizations, but it is essential that the real estate developers review their current policies and procedures to confirm that they can demonstrate performance of each of the required elements.

Other PwC information on anti-money laundering regulations

A PricewaterhouseCoopers real estate professional can help you better understand the implications of anti-money laundering regulations to your organization.

For more information, please contact:

Frank Magliocco
National Real Estate Leader
416 228 4228
frank.magliocco@ca.pwc.com

Lori-Ann Beausoleil
National Real Estate Advisory Leader
905 897 4507
lori-ann.beausoleil@ca.pwc.com

Steven P. Henderson
Leader, Investigations and Forensic Services
416 941 8328
Steve.p.henderson@ca.pwc.com