

Changes to anti-money laundering and anti-terrorist financing law imposes new reporting obligations

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Bill C-25, which received Royal Assent in December 2006, was designed to strengthen Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the Act), and to bring it in line with new international standards. The Act, first implemented in 1999 to combat money laundering, was expanded in the wake of September 11th to include terrorist financing. Bill C-25 was introduced in October 2006 in response to the Financial Action Task Force's revised recommendations on combating money laundering and terrorist financing. Many of the changes introduced by Bill C-25 became effective in June 2007, while further amendments to the Act and its Regulations (the Amended Regulations) are set to take effect on June 23, 2008, December 30, 2008, February 20, 2009 and September 28, 2009.

The amendments broaden the Act's applicability, create a more robust "know your client" regime, expand record keeping and reporting obligations and implement a new monetary penalty regime. While the amendments are expected to increase the ability of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to prevent money laundering and terrorist financing, they will also impose greater regulatory burdens on financial institutions, financial intermediaries, insurance companies, security dealers (which will now include dealers of financial instruments beyond securities), foreign exchange dealers, money service businesses, British Columbia notaries and precious metals and stones dealers (Reporting Entities).

Record, registration and reporting obligations

Amendments in force but subject to enhancement

A two-pronged reporting obligation exists for Reporting Entities under the Act; the reporting of suspicious transactions and the reporting of certain prescribed transactions. Such prescribed transactions vary depending on the Reporting Entity, but generally involve large cash transactions of more than \$10,000, or the remitting or transmitting of funds through an electronic funds transfer network. In addition to these reporting requirements, the Act requires Reporting Entities to keep records of these transactions as well as information relating to the persons or companies engaged in the transaction.

As of June 23, 2008, Reporting Entities will be required to report not only suspicious transactions but also attempted suspicious transactions. Reporting Entities are advised to implement additional internal safeguards, especially if no current system exists for recording transactions that do not come to fruition.

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Amendments to be implemented on June 23, 2008

As of June 23, 2008, Reporting Entities will also be subject to additional prescribed transactions, expanding the scope of transactions requiring reporting and recording. Chief amongst these additions are the “politically exposed foreign person” designation (PEFP). Reporting Entities will be required to monitor high ranking foreign nationals and to obtain approval of senior management of the Reporting Entity before engaging in a transaction with a PEFP. The Act defines PEFPs as heads of state, members of executive council, deputy ministers, ambassadors, foreign generals, presidents of state-owned companies, heads of government agencies, leaders of political parties and judges, as well as their immediate family members. Once identified, financial entities, security dealers and money service providers will need to keep a record of the office or position of the PEFP, the date on which the determination was made that a person is a PEFP, the senior management that approved the transaction, and the expected source of funds.

Financial entities and money services businesses will be expected to determine if a person is a PEFP for each electronic funds transfer of \$100,000 or more. Life insurance companies will need to make a similar determination for every person who initiates a payment of \$100,000 or more on an immediate or deferred annuity or life insurance policy. Financial entities or securities dealers who determine that a PEFP has opened an account with their organization must:

- > take reasonable measures to establish the source of the funds that have been deposited or are expected to be deposited;
- > obtain the approval of senior management; and
- > conduct enhanced ongoing monitoring activities.

The amendments not-yet-in force also require Reporting Entities to establish policies and procedures to assess, in the course of their activities, the risk of money laundering offences or terrorist financing activities. Special measures are required where the Reporting Entity identifies activities or persons subject to high risk.

Finally, the amendments establish a registration system for persons and entities engaged in the business of foreign exchange dealings and money services businesses. Under the amendments, all persons engaged in money services businesses, foreign exchange dealing or who sell money orders to the public will be required to register with FINTRAC. The application for registration must include a list of the applicant’s agents, mandataries or branches engaged in the relevant business. FINTRAC must be notified of any changes to the information in the registration within thirty days. Registered persons must also respond to any requests for clarification by FINTRAC within thirty days, failing which FINTRAC may revoke the registration. Registration will generally be renewable every two to three years, depending on the circumstances.

Amendments to be implemented in 2009

Amendments published on February 20, 2008, are intended to bring real estate developers under the Act and introduce new requirements for the reporting of large disbursements by casinos.

Penalties

A new penalty section will be implemented on December 30, 2008. The new section creates a more robust “violation” regime under the Act, separate from the general offences section. The stated purpose of penalties to violations under this section is to encourage compliance rather than to punish. Under this regime, violations would be categorized as minor, serious or very serious and the maximum monetary penalty would be \$100,000 for a person or \$500,000 for an entity. The regime also provides a notice section by which FINTRAC would notify the Reporting Entity of a potential violation.

The new section on violations will also establish a settlement procedure through “compliance agreements”. Such agreements would set out the grounds for the violation, the administrative penalty, and any other terms to ensure compliance with the Act. Reporting Entities who enter into Compliance Agreements will be subject to reduced penalties. For greater certainty, a violation under the new regime will not be considered an offence, however the current penalty regime in which FINTRAC may fine or impose jail terms for serious breaches will remain in effect

Lawyers

The Amended Regulations will broaden the applicability of the Act to include the legal profession (the federal government had previously repealed the application of the Act to lawyers). While the new amendments make it

clear that the operative reporting portions of the Act do not apply to lawyers providing legal services, the record-keeping and client-identification portions will apply in certain circumstances.

Under the Amended Regulations, lawyers will be subject to the Act when they receive or pay funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail; or give instructions in relation to any of the foregoing. Lawyers must also keep a receipt of every amount of \$3,000 or more they receive in the course of a single transaction, unless the amount is received from a financial entity (which includes banks and credit unions) or public body. Where the funds are received from a corporation, a copy of the part of the official corporate records that contains any provision relating to the power to bind the corporation in respect of the transaction with the legal counsel must also be recorded. Lawyers who engage in these activities on behalf of their employer, such as in-house counsel, however, are exempt.

Anti-terrorism funding regulations

While not part of Bill C-25 or the Act, the Ministry of Foreign Affairs has also recently taken steps to prohibit economic activity with respect to the country of Burma. On December 13, 2007, the *Special Economic Measures (Burma) Regulations* came into force, joining sanctions already in effect against countries such as Lebanon, Iran and North Korea. These regulations should not be overlooked when considering the obligations and requirements of anti-terrorism financing legislation, and the impact such regulations may have on overseas economic activity.

For further information, please contact your Stikeman Elliott representative or any of the authors listed above.