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New Obligations for Financial Entities Under Anti-Money Laundering and Anti-Terrorism Legislation in Canada

Banks and others in the financial services sector in Canada have new reporting, record keeping and client identification obligations under recently introduced regulations to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act"). The objective of the Act is to detect and deter money laundering and the financing of terrorist activities. To help financial entities understand the obligations they face under the new legislation, we have summarized the regulations.

Scope

- For the purposes of the legislation, "financial entity" means:
- a bank to which the *Bank Act* applies (i.e., a Schedule I or II bank);
- a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act;
- an association that is regulated by the *Cooperative Credit Associations Act*;
- a company to which the *Trust and Loan Companies Act* applies;
- a trust company or loan company regulated by a provincial Act; and
- an "authorized foreign bank" within the meaning of section 2 of the *Bank Act* in respect of its business in Canada.

It also includes a department or agent of Her Majesty in right of Canada or of a province which is accepting deposits or processing money orders.

Reporting Requirements

Where there are reasonable grounds to suspect that a financial transaction is related to a terrorist activity financing offence or a money laundering offence, a financial entity must report the suspicious transaction to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). Financial entities must also make a report to FINTRAC if they know that they are in possession or control of property that is owned or controlled by a terrorist or a terrorist group, or if they have knowledge of a proposed transaction that involves terrorist assets. Starting January 31, 2003, financial entities must make a report to FINTRAC if they receive from a client $10,000 or more in cash in the course of a single transaction, unless the cash is received from a financial entity or a public body. "Cash" means hard currency, such as bank notes or coins. Lastly, effective March 31, 2003, financial entities must report the sending out of Canada or receipt from outside Canada, at the request of a client, of an electronic funds transfer of $10,000 or more in the course of a single transaction.

Record Retention

Financial entities are required to keep certain records, including records of transactions that involve $10,000 or more in cash, account opening records, copies of client statements, and normal records created in the course of business, such as deposit slips, account operating agreements, debit and credit memos, and client credit files.

A financial entity must retain the account opening record that shows the signature of the individual who is authorized to give instructions for the account, unless the account is in the name of a financial entity or another financial entity.

If a financial entity opens an account in respect of a corporation, the financial entity must retain a copy of the official corporate records that relate to the power to bind the corporation regarding the account held with the financial entity.

Trust companies have additional record keeping requirements concerning trusts for which they act as trustee.

Client Identification

As of June 12, 2002, financial entities must take steps to identify every person who is authorized to give instructions for an account. The identity of a client must be verified before any transaction other than the initial deposit is carried out on an account. Moreover, financial entities must identify every person who requests an electronic funds transfer of $10,000 or more or who conducts a foreign currency exchange transaction of $3,000 or more with the financial entity, unless the person has signed a signature card or is otherwise authorized to act with respect to an account with the financial entity. Generally, there are three ways a financial entity can verify the identity of a client.

Where the client is an individual who is physically present when the account is opened, the individual's identity must be verified by reference to their birth certificate, driver's licence, passport, provincial health insurance card (unless the card is from Ontario, Manitoba and PEI), or any similar document. The financial entity must look at the original document and not a copy.

Where the client is an individual who is not physically present when the account is opened, the individual's identity can be verified by confirming that a cheque drawn by the individual on an account of a financial entity has been cleared.

Where the client is a corporation or other entity, the financial entity must confirm the existence of the corporation or entity. Where the client is a corporation, the financial entity must review a copy of the corporation's certificate of corporate status or such other record that ascertains its existence. Where the client is an entity other than a corporation, the financial entity must review the articles of association or other similar record that ascertains its existence (such as a partnership agreement or trust indenture).

Money Services Businesses

Financial entities also have similar reporting, record retention and client identification obligations when acting as a "money services business" with persons or entities that are <u>not</u> account holders. A "money services business" means a person or entity who is engaged in the business of (i) remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network, or (ii) issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments.

Third Party Determinations

Whenever a financial entity is required to keep a record in connection with a large cash transaction or the opening of a new account, they will also be required to determine whether a third party is the beneficial owner of the account. The financial entity must record certain information in circumstances where they suspect an individual is acting on behalf of a third party.

Implementing a Compliance Regime

Reporting persons and entities such as financial entities must implement a compliance regime, which consists of organizational policies, procedures, and employee training. FINTRAC has the power to examine compliance regimes and records. McMillan Binch LLP would be delighted to help any financial entity establish such a programme.

Serious Penalties

Failure to comply with the new legislative requirements could lead to criminal charges. The penalties for failure to comply vary depending on the offence, with a maximum penalty of up to five years imprisonment and/or a fine of $2,000,000 for a conviction for failing to report a suspicious transaction or failing to make a terrorist property report.

Finally, it should also be noted that additional anti-money laundering regulations and guidelines will be introduced in the future. In particular, regulations regarding cross border movements of currency and monetary instruments are expected to come into force shortly.

For more specific information about any of these requirements, please contact your McMillan Binch LLP lawyer or one of the lawyers listed below:

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The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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