

Guideline 1: Backgrounder

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June 2008

This replaces the previous version of *Guideline 1: Backgrounder* issued in March 2003. The changes made to this version are indicated by a side bar to the right of the modified text in the PDF version. The changes come into effect on June 23, 2008, except as otherwise specified.

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1 General

The objective of the Canadian legislation called the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to help detect and deter money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist activity financing offences. This includes implementation of reporting and other requirements for financial service providers and those that engage in businesses, professions or activities susceptible to being used for money laundering or terrorist financing. The Act also established the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) as the agency responsible for the collection, analysis and disclosure of information to assist in the detection, prevention and deterrence of money laundering and terrorist financing in Canada and abroad.

This guideline has been prepared by FINTRAC to provide background information about money laundering and terrorist financing, including their international nature. It also provides an outline of the Canadian legislative requirements for a compliance regime, record keeping, client identification and sending reports to FINTRAC. In addition, it offers an overview of FINTRAC's mandate and responsibilities.

This guideline uses plain language to explain common reporting situations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as well as the related Regulations. It is provided as general information only. It is not legal advice and is not intended to replace the Act and Regulations.

For more information about money laundering, terrorist financing, or other reporting requirements under the Act and Regulations, see the guidelines in this series:

- *Guideline 1: Background* explains money laundering and terrorist financing and their international nature. It also provides an outline of the legislative requirements as well as an overview of FINTRAC's mandate and responsibilities.
- *Guideline 2: Suspicious Transactions* explains how to report a suspicious transaction. It also provides guidance on how to identify a suspicious transaction, including general and industry-specific indicators that may help when conducting or evaluating transactions.
- *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* explains when and how to submit reports. There are two different versions of Guideline 3, by reporting method.
- *Guideline 4: Implementation of a Compliance Regime* explains the requirement for reporting persons and entities to implement a regime to ensure compliance with their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

- *Guideline 5: Submitting Terrorist Property Reports to FINTRAC* explains when and how to submit terrorist property reports.
- *Guideline 6: Record Keeping and Client Identification* explains the requirement for reporting persons and entities to identify their clients and keep records. There are several different versions of Guideline 6, with each one applicable to a particular sector.
- *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC* explains when and how to submit large cash transaction reports. There are two different versions of Guideline 7, by reporting method.
- *Guideline 8: Submitting Electronic Funds Transfer Reports to FINTRAC* explains when and how to submit EFT reports. There are three different versions of Guideline 8, by report type and reporting method.
- *Guideline 9: Submitting Alternative to Large Cash Transaction Reports to FINTRAC* explains when and how financial entities can choose the alternative to large cash transaction reports. This is only applicable to financial entities.

If you need more help after you read this or other guidelines, call FINTRAC's national toll-free enquiries line at 1-866-346-8722.

Throughout these guidelines, several references are provided to additional information that may be available on external Web sites. FINTRAC is not responsible for the accuracy or reliability of the information contained on those external Web sites. The links provided are based on information available at the time of publishing of this guideline.

2 Money Laundering

2.1 What is Money Laundering?

The United Nations defines money laundering as “any act or attempted act to disguise the source of money or assets derived from criminal activity.” Essentially, money laundering is the process whereby “dirty money”—produced through criminal activity— is transformed into “clean money,” the criminal origin of which is difficult to trace. There are three recognized stages in the money laundering process.

- **Placement** involves placing the proceeds of crime in the financial system.
- **Layering** involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds. This stage may involve transactions such as the buying and selling of stocks, commodities or property.
- **Integration** involves placing the laundered proceeds back in the economy to create the perception of legitimacy.

The money laundering process is continuous, with new dirty money constantly being introduced into the financial system.

Under Canadian law, a money laundering offence involves various acts committed with the intention to conceal or convert property or the proceeds of property (e.g. money) knowing or believing that these were derived from the commission of a designated offence. In this context, a designated offence means most serious offences under the *Criminal Code* or any other federal Act. It includes those relating to illegal drug trafficking, bribery, fraud, forgery, murder, robbery, counterfeit money, stock manipulation, etc. The few exceptions to what is a designated offence are for offences such as those related to tax evasion or breach of copyright.

A money laundering offence may also extend to property or proceeds derived from illegal activities that took place outside Canada.

2.2 Methods of Money Laundering

There are as many methods to launder money as the imagination allows, and the schemes being used are becoming increasingly sophisticated and complicated as technology advances. The following are some examples of common money laundering methods.

- **Nominees**
 This is one of the most common methods of laundering and hiding assets. A launderer uses family members, friends or associates who are trusted within the community, and who will not attract attention, to conduct transactions on their behalf. The use of nominees facilitates the concealment of the source and ownership of the funds involved.
- **Structuring or “smurfing”**
 Many inconspicuous individuals deposit cash or buy bank drafts at various institutions, or one individual carries out transactions for amounts less than the amount that must be reported to the government, and the cash is subsequently transferred to a central account. These individuals, commonly referred to as “smurfs,” normally do not attract attention as they deal in funds that are below reporting thresholds and they appear to be conducting ordinary transactions.
- **Asset purchases with bulk cash**
 Individuals purchase big-ticket items such as jewellery, cars, boats and real estate. In many cases, launderers use the assets but distance themselves from them by having them registered in a friend’s or relative’s name. The assets may also be resold to further launder the proceeds.
- **Exchange transactions**
 Individuals often use proceeds of crime to buy foreign currency that can then be transferred to offshore bank accounts anywhere in the world.
- **Currency smuggling**
 Funds are moved across borders to disguise their source and ownership, and to avoid being exposed to the law and systems that record money entering into the financial system. Funds are smuggled in various ways (such as by mail, courier and body-packing) often to countries with strict bank secrecy laws.
- **Gambling in casinos**
 Individuals bring cash to a casino and buy gambling chips. After gaming and placing just a few bets, the gambler redeems the remainder of the chips and requests a casino cheque.
- **Black-market peso exchange**
 An underground network of currency brokers with offices in North America, the Caribbean and South America allows drug traffickers to exchange pesos for U.S. dollars. The dollars stay in the United States and are bought by South American (mainly Colombian) companies, which use them to buy American goods for sale back home. You can find more information about financial investigations in the enforcement section of the U.S. Customs Web site at <http://www.customs.ustreas.gov>.

2.3 Importance of Combatting Money Laundering

The vast majority of criminals would not be in the “business” of crime if it were not for the tremendous profits to be made. There is a direct relationship between the profitability of most types of crime and their prevalence. A major objective of the battle against crime in Canada and elsewhere is, therefore, to deprive criminals of the profits from their efforts. Only by effectively laundering illegal assets can criminals use them and thereby benefit from their crimes.

The sheer magnitude of money laundering activities demonstrates the importance of implementing strong anti-money-laundering regimes in countries throughout the world. In Canada, money laundering is a multibillion-dollar problem. It is an integral element of organized criminal activity, and is the proven method by which organized crime groups seek to transform the proceeds of drug trafficking, contraband goods and people smuggling, extortion, fraud and other activities into apparently legitimately earned funds.

Laundered proceeds of crime provide seemingly legitimate financial support to drug dealers, terrorist organizations, arms dealers and other criminals to amass wealth and operate and expand their criminal empires. Investigations have revealed that those involved in money laundering attempts manipulate financial systems in Canada and abroad to foster a wide range of illicit activities. The economic and political influence of criminal organizations can potentially weaken the social fabric, collective ethical standards and, ultimately, the democratic institutions of society.

Money laundering activities have the potential to distort economic data and to cause economic growth to suffer. International Monetary Fund studies on the relationship between gross domestic product growth and money laundering in industrial countries have found evidence that significant reductions in annual gross domestic product growth rates were associated with increases in money laundering activities.

These are some of the reasons why Canada is serious in its commitment to combat money laundering. The increasingly international character of business and the often multinational nature of money laundering activities have resulted in stepped up international efforts and co-operation in the fight against money laundering.

2.4 International Efforts to Combat Money Laundering

An important objective of money laundering activities is to remove the proceeds of crime from the jurisdiction in which they were obtained to help disguise their origins. This frequently involves the international movement of those proceeds, which is facilitated by the increasingly international character of business,

financial and criminal activity. Although money laundering has become a large global phenomenon that affects all countries in varying ways and degrees, jurisdictional boundaries have made international law enforcement difficult. International co-operation and co-ordination have become essential to the deterrence, detection and prosecution of money laundering, leading to the development of many international initiatives over the past decade to address this issue.

Perhaps the most well known of these initiatives is the Financial Action Task Force (FATF), established by the G-7 countries in 1989. FATF is an intergovernmental body, comprising 32 countries and regional organizations (the European Commission and the Gulf Co-operation Council) as of 2008, and whose purpose is to develop and promote policies to combat money laundering and terrorist financing. Canada has been a member of FATF since it was established. FATF has set out 40 recommendations that outline the basic framework for anti-money-laundering efforts. These recommendations define international standards covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation. More information about FATF and its 40 recommendations can be found at <http://www.fatf-gafi.org>.

Other international anti-money-laundering initiatives include the following:

- Egmont Group of Financial Intelligence Units
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- Asia Pacific Group on Money Laundering (APG)
- Caribbean Financial Action Task Force on Money Laundering (CFATF)
- United Nations Single Convention on Narcotic Drugs
- United Nations Convention on Psychotropic Substances
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- United Nations Convention Against Transnational Organized Crime

For more information about CFATF and APG, refer to <http://www.cfatf.org> and <http://www.apgml.org>. For more information on United Nations Conventions refer to <http://www.incb.org/incb/index.html>.

As a member of FATF, a sponsoring country of the CFATF, and a signatory to the United Nations Conventions listed above, Canada is very active in the international fight against money laundering. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is a further demonstration of Canada's commitment to fighting money laundering. See sections 4 and 5 (below) for more information about Canada's anti-money laundering efforts.

For more information on money laundering, you can also refer to the following Web sites:

- Royal Canadian Mounted Police (<http://www.rcmp-grc.gc.ca>)
- Serious Organized Crime Agency (SOCA) (<http://www.soca.gov.uk>)
- Financial Crimes Enforcement Network (<http://www.fincen.gov/>)
- United Nations Office of Drugs and Crime (<http://www.odccp.org>)
- Australian Transaction Reports and Analysis Centre (<http://www.austrac.gov.au>)
- International Money Laundering Information Network (<http://www.imolin.org/>)
- Moneylaundering.com (<http://moneylaundering.com>)

3 Terrorist Financing

3.1 What is Terrorist Financing?

Terrorist financing provides funds for terrorist activity. The main objective of terrorist activity is to intimidate a population or compel a government to do something. This is done by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by seriously interfering with or disrupting essential services, facilities or systems.

Terrorist activity is undertaken for political, religious or ideological purposes. This does not mean that an expression of political, religious or ideological beliefs alone is a terrorist activity, unless it is part of a larger conduct that meets the definition explained above.

Terrorists need financial support to carry out terrorist activities and achieve their goals. In this respect, there is little difference between terrorists and other criminals in their use of the financial system. A successful terrorist group, much like a criminal organization, is one that is able to build and maintain an effective financial infrastructure. For this, it must develop sources of funding and means of obscuring the links between those sources and the activities the funds support. It needs to find a way to make sure that the funds are available and can be used to get whatever goods or services needed to commit terrorist acts.

The fundamental aim of terrorist financing is to obtain resources to support terrorist activities. The sums needed to mount terrorist attacks are not always large and the associated transactions are not necessarily complex.

3.2 Methods of Terrorist Financing

There are two primary sources of financing for terrorist activities. The first involves getting financial support from countries, organizations or individuals. The other involves revenue-generating activities which may be linked to legal or criminal fronts. These are explained in further detail below.

Financial Support

Terrorism could be sponsored by a country or government, although this is believed to have declined in recent years. State support may be replaced by support from other sources, such as individuals with sufficient financial means.

Revenue-Generating Activities

The revenue-generating activities of terrorist groups may include criminal acts, and therefore may appear similar to other criminal organizations. Kidnapping and extortion can serve a dual purpose of providing needed financial resources while

furthering the main terrorist objective of intimidating the target population. In addition, terrorist groups may use smuggling, fraud, theft, robbery, and narcotics trafficking to generate funds.

Financing for terrorist groups may also include legitimately earned income, which might include collection of membership dues and subscriptions, sale of publications, speaking tours, cultural and social events, as well as solicitation and appeals within the community. This fundraising might be in the name of organizations with charitable or relief status, so that donors are led to believe they are giving to a legitimate good cause.

Only a few non-profit organizations or supposedly charitable organizations have been implicated in terrorist financing networks in the past, worldwide. In these cases, the organizations may in fact have carried out some of the charitable or relief work. Members or donors may have had no idea that a portion of funds raised by the charity was being diverted to terrorist activities.

This type of “legitimately earned” financing might also include donations by terrorist group members of a portion of their personal earnings.

3.3 Laundering of Terrorist-Related Funds

As explained above, the methods used by terrorist groups to generate funds from illegal sources are often very similar to those used by “traditional” criminal organizations. Like criminal organizations, they have to find ways to launder these illicit funds to be able to use them without drawing the attention of the authorities.

For this reason, transactions related to terrorist financing may look a lot like those related to money laundering. Therefore, strong, comprehensive anti-money laundering regimes are key to also tracking terrorists’ financial activities.

3.4 Importance of Combatting Terrorist Financing

Acts of terrorism pose a significant threat to the safety and security of people all around the world. Canada continues to work with other nations to confront terrorism and bring those who support, plan and carry out acts of terrorism to justice.

Business relationships with terrorist groups could expose financial institutions or financial intermediaries to significant reputational and operational risk, as well as legal repercussions. The risk is even more serious if the terrorist group is subsequently shown to have benefited from the lack of effective monitoring or wilful blindness of a particular institution or intermediary that enabled them to carry out terrorist activities.

3.5 International Efforts to Combat Terrorist Financing

In 2001, the United Nations called on member states to freeze the assets of all groups or individuals involved in terrorist activities and to prohibit the provision and collection of funds for terrorist activities. That same year, the G-7 Finance Ministers and Central Bank Governors met and released an action plan to combat the financing of terrorism. Shortly after, the Financial Action Task Force (FATF), of which Canada is a member, also issued *Special Recommendations on Terrorist Financing* that its members should apply to combat terrorist financing.

To be successful, the fight against terrorism has to be conducted on many fronts. Canada is committed to working with its international partners in confronting and stamping out terrorism around the world.

The Government of Canada's Anti-Terrorism Plan has four objectives:

- stop terrorists from getting into Canada and protect Canadians from terrorist acts;
- bring forward tools to identify, prosecute, convict and punish terrorists;
- prevent the Canada-U.S. border from being held hostage by terrorists and impacting upon the Canadian economy; and
- work with the international community to bring terrorists to justice and address the root causes of such hatred.

The measures flowing from this plan target people and activities that pose a threat to the security and well-being of Canadians or others throughout the world. This is a fight against terrorism, and not against any one community, group or faith.

For more information about international efforts to combat terrorism and terrorist activities, refer to the following Web sites:

- <http://www.fatf-gafi.org>
- <http://www.cfatf.org/eng>
- <http://www.un.org/terrorism>
- <http://www.apgml.org>
- <http://www.treas.gov/offices/enforcement>
- <http://egmontgroup.org>

For more information about Canada's anti-terrorism efforts, see subsection 4.2.

4 Canada's Legislation to Combat Money Laundering and Terrorist Financing

4.1 Anti-Money Laundering

Money laundering became an offence in Canada several years ago, under amendments to the *Criminal Code*. These amendments also gave law enforcement the ability to search, seize and restrain property believed to be proceeds of crime.

The criminalization of the laundering of proceeds of crime (money laundering) led to many other legislative changes, such as amendments to the *Customs Act* and the *Excise Act*, among others. The first components of Canada's anti-money laundering regime consisted of certain record keeping and client identification requirements to assist in the detection and deterrence of money laundering. Although there were no reporting requirements at that time, information about any suspicious transactions could be provided voluntarily to law enforcement.

In 2000, the *Proceeds of Crime (Money Laundering) Act* was introduced as part of these measures to create an anti-money laundering regime. In 2001, the first reporting requirement came into effect for suspicious transactions. These measures were subsequently enhanced and additional components were introduced. That same year, the scope of the *Proceeds of Crime (Money Laundering) Act* was expanded to include terrorist financing (see information about the *Anti-terrorism Act* in subsection 4.2). This resulted in the former *Proceeds of Crime (Money Laundering) Act* becoming the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

Over the course of 2002 and 2003, other requirements under the PCMLTFA and related Regulations were phased-in, such as record keeping, client identification and other reporting obligations. In 2006, amendments to the PCMLTFA introduced changes such as the establishment of a money services businesses registry, the authority to levy administrative monetary penalties and the addition of new reporting sectors, among others. They also included measures to strengthen reporting, record keeping, client identification and compliance regime requirements. These changes are being phased-in over the course of 2007 to 2009. They are explained in more detail in section 5 below.

4.2 Anti-Terrorism

The Government of Canada has taken steps to combat terrorist activities at home and abroad. These steps include signing and ratifying United Nations (UN) Conventions, such as the *International Convention for the Suppression of the Financing of Terrorism*, and implementing related UN resolutions through

Regulations. They also include introducing tough new anti-terrorism measures in legislation called the *Anti-terrorism Act*.

United Nations Suppression of Terrorism Regulations

In 2001, Canada passed the *United Nations Suppression of Terrorism Regulations* under the *United Nations Act*. These provide for a list of individuals or entities believed to be involved in or associated with terrorist activity. They make it an offence for anyone in Canada, or any Canadian outside Canada, to provide or collect funds if they know these would be for use by anyone on the list.

These Regulations also make it an offence for anyone in Canada, or any Canadian outside Canada, to deal in any way with property if they know it is owned or controlled by anyone on the list. This includes any financial service or transaction relating to such property. It also includes making property available to anyone on the list.

In addition, these Regulations require that Canadian financial institutions determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of anyone on the list. Each Canadian financial institution must report monthly to their principal supervisory or regulatory body (for example, the Office of the Superintendent of Financial Institutions) concerning possession or control of any property described above. These financial institutions include banks, credit unions, caisses populaires, and trust and loan companies. They also include insurance companies, fraternal benefit societies, and entities that deal with securities.

Furthermore, these Regulations require anyone in Canada, as well as Canadians outside Canada, to disclose to the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) the existence of any property in their possession or control that they **believe** is owned or controlled by or on behalf of anyone on the list. This includes information about any transaction or proposed transaction relating to that property. Information is to be provided to them, without delay, as follows:

- RCMP, Anti-Terrorist Financing Team, unclassified fax: (613) 949-3113
- CSIS Financing Unit, unclassified fax: (613) 231-0266

Effective June 23, 2008, in addition to the disclosure to the RCMP and CSIS, the reporting persons and entities subject to the PCMLTFA also have to report such property to FINTRAC. More information about this is included in section 5.

The Department of Justice Canada laws Web site (<http://laws.justice.gc.ca>) offers more information about the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*. The Office of the Superintendent of Financial Institutions (OSFI) Web site (<http://www.osfi-bsif.gc.ca>) offers guidance

regarding an individual or entity whose name is the same or resembles the name of a listed person.

Anti-terrorism Act

In 2001, Canada's *Anti-terrorism Act* (ATA) created measures to deter, disable, identify, prosecute, convict and punish terrorist groups. It provides new investigative tools for law enforcement and national security agencies. It also ensures that Canadian values of respect and fairness are preserved and the root causes of hatred are addressed through stronger laws against hate crimes and propaganda. The package also includes rigorous safeguards to ensure that the fundamental rights and freedoms of Canadians are upheld.

The ATA brings significant additions to the *Criminal Code* to include offences relating to terrorist activities and the financing of terrorism. These changes make it a crime to do any of the following:

- knowingly collect or provide funds, either directly or indirectly, to carry out terrorist activities;
- knowingly participate in, contribute to or facilitate the activities of a terrorist group;
- instruct anyone to carry out a terrorist activity on behalf of a terrorist group; or
- knowingly harbour or conceal a terrorist.

These *Criminal Code* changes also include a requirement similar to the one described under the heading *United Nations Suppression of Terrorism Regulations* above. These changes to the *Criminal Code* require anyone in Canada, as well as Canadians outside Canada, to disclose to the RCMP and CSIS the existence of any property in their possession or control that they **know** is owned or controlled by or on behalf of a terrorist group. This includes information about any transaction or proposed transaction relating to that property. Information is to be provided to them, without delay, as follows:

- RCMP, Anti-Terrorist Financing Team, unclassified fax: (613) 949-3113
- CSIS Financing Unit, unclassified fax: (613) 231-0266

A terrorist group includes anyone that has as one of their purposes or activities facilitating or carrying out any terrorist activity. This can be an individual, a group, a trust, a partnership or a fund. It can also be an unincorporated association or organization. A list of terrorist groups is published in the *Regulations Establishing a List of Entities* made under the *Criminal Code*. More information about this is available from the following Web sites:

- by searching "currently listed entities" on the Public Safety Canada's Web site (<http://www.ps-sp.gc.ca>); or

- by referring to the “Terrorism Financing” link on the Office of the Superintendent of Financial Institutions’ Web site (<http://www.osfi-bsif.gc.ca>).

Many other legislative changes were included in the ATA. Among these are measures to revoke or deny an organization’s charitable status if it is believed to support terrorist groups. The ATA also expanded the anti-money laundering legislation to include terrorist financing in its objectives (as explained in subsection 4.1) so the former *Proceeds of Crime (Money Laundering) Act* became the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). In 2002, a new reporting requirement for terrorist property came into effect under the PCMLTFA. More information about this is included in section 5.

For more information about this, terrorist-related offences or other Government of Canada efforts to combat terrorism and terrorist activities, refer to the following Web sites:

- <http://laws.justice.gc.ca>
- by searching “terrorism” on the Foreign Affairs and International Trade Canada’s Web site (<http://www.dfait-maeci.gc.ca>)

5 Canada's Legislation: *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

5.1 Objectives of the Act

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* has three key objectives:

- to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate investigations and prosecution of the related offences;
- to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while protecting individual privacy; and
- to help fulfill Canada's international commitments to fight multinational crime.

The specific measures include the following:

- **Compliance regime, record keeping, client identification and reporting**
Reporting persons and entities (see subsection 5.2 below) have to implement a compliance regime, keep certain records and ascertain client identification. They have to report suspicious transactions and terrorist property to FINTRAC. They also have to report certain other financial transactions to FINTRAC (see subsection 5.3 below).
- **Cross-border reporting**
The import or export of currency or monetary instruments of or over \$10,000 has to be declared to the Canada Border Services Agency (formerly known as Canada Customs and Revenue Agency). This came into effect in early 2003.
- **Creation of FINTRAC**
FINTRAC is an independent agency, at arm's length from law enforcement agencies, responsible for collecting, analyzing and, in appropriate circumstances, disclosing certain limited information to law enforcement agencies. FINTRAC is required to ensure that personal information under its control is protected from unauthorized disclosure, and is subject to the *Privacy Act*. For more information about FINTRAC, refer to section 6 (below).

These measures contribute to maintaining the integrity of Canada's financial infrastructure. They also represent sound business practices for reporting persons and entities to help them minimize their risk of being exposed to money laundering or terrorist financing and their negative consequences. Canada's regime is consistent with FATF's initiative to establish international standards aimed at improving national legal systems, enhancing the role of financial systems and strengthening international co-operation in the fight against money laundering and terrorist financing. The measures help detect and deter organized criminal activities as well as terrorist activities in Canada and help ensure Canada is not used to facilitate money laundering or terrorist financing.

A link to the relevant legislation can be found on the Act page of FINTRAC's Web site at <http://www.fintrac-canafe.gc.ca>. A link to the Regulations can also be found on the Regulations page of FINTRAC's Web site at <http://www.fintrac-canafe.gc.ca>.

5.2 Who has to Report to FINTRAC?

The following persons and entities have to report suspicious transactions, terrorist property and certain other transactions to FINTRAC:

- financial entities (such as banks, credit unions, caisses populaires, trust and loan companies and agents of the Crown that accept deposit liabilities);
- life insurance companies, brokers and agents;
- securities dealers, portfolio managers and investment counsellors;
- money services businesses and foreign exchange dealers (including alternative remittance systems, such as Hawala, Hundi, Chitti, etc.). Effective June 23, 2008, the definition of money services businesses includes foreign exchange dealing);
- agents of the Crown for money orders;
- accountants and accounting firms (when carrying out certain activities on behalf of their clients);
- real estate brokers or sales representatives (when carrying out certain activities on behalf of their clients);
- casinos (including those authorized to do business in Canada, with a slot machine or roulette or card games, but excluding certain temporary charity casinos);
- effective December 30, 2008, dealers in precious metals and stones;
- effective December 30, 2008, public notaries and notary corporations of British Columbia; and
- effective February 20, 2009, real estate developers.

For purposes of suspicious transaction reporting, reporting persons include employees of the persons or entities described above.

5.3 What has to be Reported to FINTRAC?

Since 2001, reporting requirements have been phased in and will continue to be until September 2009. Guidelines have been created and are updated periodically to explain these reporting requirements in more detail. New guidelines will be created as new requirements become effective. More information on sending reports to FINTRAC can be found on the Publications page of FINTRAC's Web site (<http://www.fintrac-canafe.gc.ca>).

Suspicious Transactions

Since 2001, reporting persons and entities (see subsection 5.2) have to report transactions if there are reasonable grounds to suspect that the transactions are related to the commission of a money laundering offence. Since 2002, they also have to report transactions if there are reasonable grounds to suspect that the transactions are related to the commission of a terrorist activity financing offence. Effective June 23, 2008, they also have to report transactions related to an attempted commission of a money laundering offence or to an attempted commission of terrorist activity financing offence. For more information on suspicious transactions, see *Guideline 2: Suspicious Transactions*. For more information on the reporting of suspicious transactions, see *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC*.

This does not prevent persons and entities from reporting suspicions of money laundering or terrorist financing directly to law enforcement, and FINTRAC encourages financial institutions and financial intermediaries to maintain established relationships with law enforcement.

Terrorist Property

Since 2002, reporting persons and entities have to report to FINTRAC if they have property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group within the meaning of the *Criminal Code*. Effective June 23, 2008, these same reporting persons and entities also have to report to FINTRAC if they have property in their possession or control that they believe is owned or controlled by or on behalf of a person listed under the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*. As explained in subsection 4.2, this information also has to be disclosed to the RCMP and CSIS. For more information on the reporting of terrorist property, see *Guideline 5: Submitting Terrorist Property Reports to FINTRAC*.

Other Financial Transactions

Depending on the type of activities they are involved in, these same reporting persons and entities have to report the following financial transactions:

- since 2002, the sending or receiving of international electronic funds transfers of \$10,000 or more through the SWIFT network. For more

- information, see *Guideline 8B: Submitting SWIFT Electronic Funds Transfer Reports to FINTRAC* ;
- since 2003, cash transactions involving amounts of \$10,000 or more. For more information, see *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*;
 - since 2003, other international electronic funds transfers of \$10,000 or more (through non-SWIFT networks). For more information, see *Guideline 8A: Submitting Non-SWIFT Electronic Funds Transfer Reports to FINTRAC Electronically*; and
 - effective September 28, 2009, disbursements of \$10,000 or more made by casinos. A new guideline will provide further information about this.

5.4 Other Information about Reporting to FINTRAC

Reporting persons and entities are protected from criminal and civil legal proceedings for reporting suspicious or attempted suspicious transaction in good faith to FINTRAC, as required. The same applies to reporting terrorist property and other financial transactions.

In addition to the reporting requirements, reporting persons and entities are also required to keep certain records after conducting specified transactions. This includes specific requirements about identifying individuals with whom a reporting person or entity conducts a transaction. For more information about record keeping and client identification requirements, see *Guideline 6: Record Keeping and Client Identification*.

Failure to comply with reporting, record keeping or client identification requirements can lead to criminal charges against a reporting person or entity. There are some penalties that could apply in cases of failure to comply. More information about these can be found in the different guidelines related to these requirements as well as in the Penalties for non-compliance section of FINTRAC's Web site.

5.5 Voluntary Information

Subsection 5.3 above explains reports that have to be sent to FINTRAC. In addition to those reports, anybody can voluntarily provide information about suspicions of money laundering or terrorist financing to FINTRAC. Anyone who does this is protected from criminal and civil legal proceedings when they do so in good faith.

To find out how to provide information voluntarily to FINTRAC about suspicions of money laundering or of the financing of terrorist activities, refer to FINTRAC's Web site at <http://www.fintrac-canafe.gc.ca/reporting-declaration/VOL/1-eng.asp>.

5.6 New initiatives

As explained in subsection 4.1, amendments made in 2006 to the PCMLTFA introduced changes to enhance the Canadian regime. Some of these changes are briefly described below.

Money services businesses registry

Effective June 23, 2008, the new money services businesses registry comes into effect. As of that date, all money services businesses in Canada have to be registered with FINTRAC. As part of the registration process, they have to supply information about themselves and their activities. They also have to keep the information provided up-to-date and advise FINTRAC of changes. Registration is valid for a two-year period and has to be renewed before it expires.

Administrative monetary penalties

Effective December 30, 2008, a new administrative monetary penalty (AMP) regime comes into effect. This is in addition to the existing criminal sanctions that already exist. However, for any given non-compliance situation, a reporting person or entity cannot be subject to both an administrative monetary penalty and a criminal sanction.

The AMP regime is intended to assist FINTRAC in ensuring compliance with the PCMLTFA and related Regulations. The AMP regime provides a broader spectrum of compliance tools to FINTRAC by setting set out specific violations and classification of those violations as minor, serious or very serious. Although FINTRAC will continue to take a cooperative approach to compliance, it will now be able to levy penalties proportionate to non-compliance issues. Where appropriate, FINTRAC still has the ability to refer to cases of non-compliance to law enforcement for investigation and possible criminal charges.

New sectors

Effective December 30, 2008, two new sectors will be subject to the PCMLTFA and Regulations. These are the dealers in precious metals and stones, and public notaries and notary corporations of British Columbia. Another sector composed of real estate developers will be added on February 20, 2009. The individuals and entities included in these new sectors will have record keeping and client identification requirements. They will also have reporting requirements.

6 The Financial Transactions and Reports Analysis Centre of Canada

6.1 What is FINTRAC?

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is an independent government agency. It operates at arm's length from law enforcement agencies, and collects, analyzes and discloses information to help detect, prevent and deter money laundering and the financing of terrorist activities in Canada and abroad.

6.2 FINTRAC's Analysis

FINTRAC receives and analyzes reports from reporting persons and entities (see subsection 5.2 above). It can also receive and analyze information from various other sources, such as similar agencies in other countries, law enforcement agencies, or government institutions and agencies. In addition, FINTRAC can receive and analyze any information about suspicions of money laundering or of the financing of terrorist activities that is provided voluntarily.

FINTRAC also receives and analyzes information that is provided to the Canada Border Services Agency by exporters and importers of currency and monetary instruments. As explained in subsection 5.1 above, this came into effect in early 2003.

FINTRAC relies on financial analysts and analytical technologies to produce high-quality analyses and assessments about suspicions of money laundering or terrorist financing. It participates in extensive research and international fora on the topics. In addition, FINTRAC uses a strategic approach to communicate information to stakeholders and to develop productive relationships with reporting entities, law enforcement and international agencies. FINTRAC is committed to being a centre of excellence on matters related to money laundering and terrorist financing.

6.3 Protection of Privacy

There are numerous safeguards to protect the privacy of individuals about whom information is sent to FINTRAC, including the following:

- the independence of FINTRAC from law enforcement and other agencies to which FINTRAC is authorized to disclose information;
- criminal penalties for any unauthorized use or disclosure of the personal information under FINTRAC's control;
- the requirement for police to get a court order to obtain further information from FINTRAC; and
- the application of the *Privacy Act* to FINTRAC.

6.4 Disclosure by FINTRAC

As explained above, FINTRAC is required to ensure that personal information under its control is protected from unauthorized disclosure. Information may only be disclosed to the appropriate law enforcement authorities when FINTRAC determines that there are reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence.

When FINTRAC has made this determination, it discloses only designated information to law enforcement agencies. Designated information is limited to key identifying information, such as name and address, date of birth and citizenship. It also includes certain information about the transaction, such as the name and address of the place of business where it occurred, the date of the transaction, amount and type of currency or value of the funds, account number (if any), etc.

To obtain further information from FINTRAC, police must first get a court order.

When FINTRAC has made the determination relating to money laundering or terrorist financing, it also, under specified circumstances, discloses designated information to the following agencies and departments:

- Canada Revenue Agency (CRA) when FINTRAC also determines that the information is relevant to a tax or duty evasion offence. Since June 2007, a disclosure can also be made to CRA when FINTRAC has reasonable grounds to suspect that the information is relevant to determining the registered charity eligibility under the *Income Tax Act* of a person or an entity who is suspected to have applied for that status or when a registered charity is non-compliant with the registration requirement under that *Act*;
- Canada Border Services Agency (CBSA) when FINTRAC also determines that the information is relevant to a tax or duty evasion offence. Since June 2007, a disclosure can also be made to CBSA when FINTRAC determines that the information is relevant to one of the following:
 - to determining whether a person is inadmissible under sections 34 to 42 of the *Immigration and Refugee Protection Act*; or
 - the commission of an offence by helping someone to come into Canada without required documentation, without their consent, by disembarking them at sea, or by knowingly misleading them during the immigration process as per sections 117 to 119, 126 or 127 of the *Immigration and Refugee Protection Act*; or
 - to investigating or prosecuting an offence of smuggling or attempting to smuggle goods subject to duties or an offence related to imported goods that are prohibited, controlled or regulated under the *Customs Act* or under any other Federal Act;
- Since June 2007, to the Communications Security Establishment (CSE), when FINTRAC also determines that the information is relevant to CSE's mandate (that is the acquisition and use of the information to provide foreign

intelligence in accordance with the Canadian government's priorities) under the *National Defence Act*; and

- Foreign agencies with mandates similar to FINTRAC's and with which FINTRAC has entered into agreements to exchange information. Under such agreements, FINTRAC may provide designated information when it has reasonable grounds to suspect the information would be relevant to a money laundering or terrorist financing investigation or prosecution.

If FINTRAC determines that there are reasonable grounds to suspect that the information under its control would be relevant to threats to the security of Canada, designated information is disclosed to the Canadian Security Intelligence Service (CSIS). To obtain further information from FINTRAC, CSIS must first get a court order.

6.5 Other Responsibilities of FINTRAC

FINTRAC's mandate includes enhancing public awareness and understanding of matters related to money laundering. FINTRAC may issue periodic reports indicating in general terms the usefulness of the aggregate data it receives, without commenting specifically on individual cases or reports.

FINTRAC also has responsibility for ensuring compliance with the compliance regime, reporting, record-keeping and client identification requirements. *Guideline 4: Implementation of a Compliance Regime* contains more information about this.

7 Comments?

These guidelines will be reviewed on a periodic basis. If you have any comments or suggestions to help improve them, please send your comments to the mailing address provided below, or by email to guidelines-lignesdirectrices@fintrac-canafe.gc.ca.

8 How to Contact FINTRAC

For further information on FINTRAC and its activities, and the guidelines, please go to FINTRAC's Web site (<http://www.fintrac-canafe.gc.ca>) or contact FINTRAC:

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234 Laurier Avenue West, 24th floor
Ottawa, Ontario
Canada K1P 1H7

Toll-free: 1-866-346-8722