

# PROCEEDS OF CRIME (MONEY LAUNDERING) & TERRORIST FINANCING (AML/ATF)

## Overview

October 2015

# Proceeds of Crime (Money Laundering) and Terrorist Financing Act (“the Act”) 2008

- Designed for detecting and deterring money laundering and terrorist financing
- makes it mandatory for various individuals and entities, *including life insurance companies, agents and brokers*, to have a compliance regime in place that includes documented policies and procedures and reporting various transactions to The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

# FINTRAC

## Financial Transactions and Reports Analysis Centre of Canada

Mandate: to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control.

What it does:

- Collects, analyzes and discloses financial information and intelligence on suspected money laundering and terrorist activities financing
- Works with law enforcement and CSIS (Canadian Security Intelligence Service) to help them investigate or prosecute money launderers and terrorist activities financing
- Ensure compliance with obligations under the Act through surveys and audits

# Money Laundering

“Money laundering is the process whereby “dirty money”, produced through criminal activity, is transformed into “clean money” whose criminal origin is difficult to trace. Criminals do this by disguising the sources, changing the form, or moving funds to a place where they are less likely to attract attention.

The money earned from criminal activity (proceeds of crime) can originate from all kinds of designated offences. These include, but are not limited to illegal drug trafficking, bribery, fraud, forgery, murder, robbery, counterfeit money, stock manipulation, tax evasion and copyright infringement”.

# Money Laundering

Examples of methods used to launder money:

- **Nominees:** use of family members or friends who are trusted within a community and who will not attract attention. Facilitates concealment of the source and ownership of funds.
- **Structuring (smurfing):** ordinary and unremarkable individuals deposit cash, buy bank drafts or money orders at various institutions, usually for amounts less than the thresholds for reporting.
- **Bulk cash asset purchases:** individuals buy big ticket items like cars or real estate for cash. Often these will be registered in other names to distance the launderer.

# Terrorist Financing

Involves funds raised from legitimate sources, such as personal Donations and profits from businesses and charitable organizations, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

# The Act

## What is required?

### **Compliance Regime**

- It is a statutory requirement under the Act to have a compliance regime.

#### Requirements:

- Appointment of a compliance officer
- Development and application of written compliance policies and procedures
- Assessment and documentation of risks related to money laundering and terrorist financing
- Take measures to mitigate high risk situations
- On-going compliance training program
- Ongoing review of compliance policies and procedures to test effectiveness

# The Act

## What is required?

### **Compliance Regime requirements (cont'd)**

#### **Appointment of compliance officer:**

- Should have the authority and resources necessary to work effectively
- Depending on size of business, should report to the Board or senior management or to the owner or chief operator
- May choose to delegate certain responsibilities to other employees, but has overall responsibility for the compliance regime
- Needs to be a senior person in the business; owners of small businesses can appoint themselves
- Individual advisors are responsible for ensuring they have a compliance regime in place even if they appoint someone else outside the company as a compliance officer



# The Act

## What is required?

### **Compliance regime requirements (cont'd)**

#### **Development and application of compliance policies and procedures:**

- Scope of policies and procedures depends on a company's need, the complexity of its business and its risk of exposure to money laundering or terrorist financing
- Must be in writing, kept up-to-date and approved by a senior officer
- Should incorporate, at a minimum, the reporting, record keeping, client identification, risk assessment and risk mitigation requirements applicable to the company

# The Act

## What is required?

### **Compliance regime requirements (cont'd)**

#### **Assessment and documentation of risks:**

- a risk-based approach to assessing and documenting risks related to money laundering and terrorist activity financing by considering the following factors:
  - your products and services and the delivery channels through which you offer them;
  - the geographic locations where you conduct your activities and the geographic locations of your clients;
  - the nature and business of your clients and their relationship with you (both new and existing clients)
  - other relevant factors related to your business.

# The Act

## What is required?

### **Compliance regime requirements (cont'd)**

### **Assessment and documentation of risks (cont'd)**

- Special measures are required to be taken when the risk is high which include the development and application of written policies and procedures for:
  - keeping client identification information up to date;
  - conducting ongoing monitoring of the business relationship for the purpose of detecting transactions that are required to be reported to FINTRAC and keeping a record of the measures taken; and
  - mitigating the risks identified.

# The Act

## What is required?

### **Compliance regime requirements (cont'd)**

#### **On-going compliance training program:**

- Program must be in writing and be maintained
- Must be delivered to all employees who are responsible for implementing or overseeing the compliance regime
- Periodic training is required to ensure adherence to policies and procedures

# The Act

## What is required?

### **Compliance regime requirements (cont'd)**

#### **Review of policies and procedures:**

- Mandatory
- To monitor the effectiveness of the compliance regime and evaluate the need to modify if necessary
- To be done as often as necessary, but must be carried out at least every two years.
- Must be conducted by either internal or external auditors
- Results to be documented

# The Act

## What is required?

### Suspicious Transaction Reporting (STR)

- You must submit a suspicious transaction report if you have reasonable grounds to suspect that the transaction or an attempted transaction is related to money laundering or terrorist financing
  - This must be reported **within 30 days** from determining that you have reasonable grounds
  - You are not permitted to tell the client that you have made a report
  - Failure to report can carry up to a maximum \$2 million fine and 5 years imprisonment

# The Act

## What is required?

### Suspicious Transaction Reporting (STR) (cont'd)

- no minimum dollar threshold for reporting suspicious transactions
- transaction has to occur in the course of your business activities as a life company, agent or broker
- Attempted, as well as completed, suspicious transactions must be reported
  - Before reporting, if you have not already done so, You must ascertain the identity of someone who performs, or attempts to perform, a suspicious transaction provided that, in doing so, it will not cause the person to be informed you are filing a STR.
  - Provide FINTRAC with as much information as you can.

# The Act

## What is required?

### **Suspicious Transaction Reporting (STR) (cont'd)**

Considerations for determining if a transaction is suspicious:

- Knowledge of customer
- Knowledge of customer's business and industry



# The Act

## What is required?

### **Suspicious Transaction Reporting (STR) (cont'd)**

Sample indicators of suspicious transactions:

- Client admits to or makes statements about involvement in criminal activities.
- Client requests an insurance product that has no discernible purpose and is reluctant to divulge reason for investment.
- Client cancels investment or insurance soon after purchase.
- Client shows more interest in the cancellation or surrender than in the long-term results of investments.
- Client makes payments in cash, with postal money orders or with similar means of payment.

# The Act

## What is required?

### Examples of Possible Reporting Situations

- Policyowner requests an immediate surrender of a segregated fund contract that was held for less than 1 year. The owner indicates that the fees and losses do not matter and to wire the money to an overseas account.
- After a thorough life insurance needs analysis, the client insists on buying twice the needed amount for greater financial security. He seems more interested in the cancellation and surrender features than in the long-term coverage.
- In purchasing an investment policy, the client appears to be very conversant with money laundering and is quick to volunteer that the funds are “clean”.

# The Act

## What is required?

### **Large Cash Transaction Reporting (LCTR)**

Empire Life does not accept cash so this is not applicable in the context of submitting a transaction to us. If you choose to accept cash from a client you do have obligations to fulfill under the Act.

#### Requirements:

- You must report cash amounts of \$10,000 or more received in the course of a single transaction.
- You must report two or more cash amounts of less than \$10,000 (that total \$10,000 or more) received within 24 hours of each other from the same individual or entity.
- Must be reported within 15 days of transaction.

# The Act

## What is required?

### **Terrorist Property Reporting**

- Legal obligation is to report if you have property in your possession or control that you know is owned or controlled by or on behalf of a terrorist or terrorist group. You also must disclose to the RCMP and CSIS under the Criminal Code of Canada.

**Property:** any type of real or personal property, including a deed or instrument giving title or right to property, money or goods

# The Act

## What is required?

### **Client Information Records**

- required to keep certain client information records.
- Empire Life has designed its forms to make it easy to obtain the information required.

Client information record includes:

- Client's name
- Client's address
- Nature of the client's principal business or occupation
- Date of birth
- Purpose for purchasing the policy

# The Act

## What is required?

### Client Identification Requirements

- In order to meet our own requirements under the Act and to assist advisors in meeting their requirements, Empire Life requires the completion of the Verification of Owner and Third Party Determination sections of our applications.
- Verification of identity of Owner: viewing and recording details of the Owner's birth certificate, driver's licence, passport or provincial health card (except in Manitoba, Ontario and PEI) or other similar document.
- Require the expiry date of the verification document
- Verification of identity must be done within **30 DAYS**

# The Act

## What is required?

### **Client Identification Requirements (cont'd)**

- if you have doubts about the information collected concerning an individual's previous identification, you will have to identify them again.
- For corporations you must obtain
  - confirmation of existence
  - the name and occupations of all Directors of the corporation
  - the name, address and occupation of all Beneficial Owners having 25% or more interest in the corporation (or other entity)
  - information establishing the ownership, control and structure of the corporation

# The Act

## What is required?

### **Client Identification Requirements (cont'd)**

- For charitable organizations you must determine if the entity is a registered charity with the CRA or if it solicits donations from the public (if not registered with the CRA).
- For “not for profit” organizations you must determine whether it is a charity or not.
- For Trusts, you must obtain the names and addresses of all trustees, all known beneficiaries and settlors of the Trust. A copy of the trust deed or statement can confirm this.
- For non-corporate entities you must take reasonable measures to confirm the entity’s beneficial ownership. May rely on information provided by client (e.g. articles of incorporation, annual returns, shareholder agreements)



# The Act

## What is required?

### **Client Identification Requirements (cont'd)**

#### Non-corporate entities (cont'd)

- A written statement from the person who has signed the application for the entity is reasonable to confirm accuracy of information.
- If not able to confirm the information provided
- take reasonable measures to ascertain the identity of the most senior managing officer, and
- treat that entity as high risk

# The Act

## What is required?

### **On-going Monitoring of Client Business Relationship**

- A business relationship is created when you conduct two or more transactions within a 5 year period and, on at least one of these transactions, you have to ascertain the identity of the individual or confirm the existence of a corporation or other entity
- Once created, ongoing monitoring of the business relationship must be done on a periodic basis

# The Act

## What is required?

### **On-going Monitoring of Client Business Relationship**

- Based on risk assessment for purpose of
  - Reporting suspicious transactions
  - Keeping client information up to date
  - Reassessing level of risk
  - Determining whether transactions or activities are consistent with information obtained
- Frequency depends on the level of risk. Relationships identified as high risk must be monitored more frequently than others.
- You must update the information for clients on whom you have filed a suspicious transaction report in a manner that does not tip off the client

# Third Party Determination

Whenever a Client Information Record is required you also have to make a third party determination. Empire Life has included a section in its application that collects the required information to make a third party determination.

- If someone other than the Owner is contributing the funds or has, or will have, an ownership interest in the policy, the answer is YES.
- An ownership interest is not just who owns the funds being deposited, but also who gives instructions as to what is done with the funds.

# Third Party Determination

## Record Keeping

When a transaction is being made on behalf of a third party, the following records are required to be kept:

- If the third party is an individual, the third party's name, address, date of birth and nature of principal business or occupation
- If the third party is an entity, the third party's name, address and nature of principal business. If the entity is incorporated also need incorporation number and place of incorporation
- In all scenarios, the nature of the relationship between the third party and the individual or entity making the transaction

If unable to determine that the transaction is in fact being made on behalf of a third party, but there are reasonable grounds to believe it is, you must keep a record indicating if the client has indicated the transaction is not being conducted on behalf of a third party and the details as to why you suspect it is.

# Politically Exposed Foreign Persons

## PEFPs

PEFP: an individual (including an immediate family member of the individual) who holds or has held one of the following positions for a foreign country:

- Head of state or government
- Member of executive council of government or member of legislature
- deputy minister (or equivalent)
- ambassador or attaché or counsellor
- Military general (or higher rank)
- President of state-owned company or bank
- Head of government agency
- Judge
- Leader or president of a political party in legislature

# Politically Exposed Foreign Persons

## PEFPs

- Required for deposits of \$100,000 or more into a newly opened or in-force non-registered life or investment policy.
- Must be done within 14 days of the transaction occurring.
- Once you have determined that an individual is a PEFP you do not have to do it again.
- If an individual is a PEFP, the Act requires you to take reasonable measures to determine source of funds.
- The source of funds section of the Empire Life application is to be answered for all deposits of \$100,000 or more.

# Reporting to FINTRAC

Information to be provided:

- Information about the reporting entity
- Information about transaction and its disposition
- Information about individual conducting transaction
- Your reasons for suspicion
- Whether you have taken action

FINTRAC requires that reports be filed electronically through their website ([www.fintrac.gc.ca](http://www.fintrac.gc.ca)) if you are capable of doing so.

However, there is also a paper reporting form available. You should retain a copy of any report on file.



# Questions???

This presentation is to provide you with an overview of your obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

For more information and greater detail, there are a number of resources available to you, including

- [www.fintrac.gc.ca](http://www.fintrac.gc.ca) provides valuable information including Guidelines on all aspects of your responsibilities for complying with the Act and Regulation
- Advisor organisations such as Advocis and Independent Financial Brokers (IFB)