



Recent Amendments to Canada's AML/ATF Regulations

*The Federation of Law Societies of Canada and Government of Canada Working Group on
Money Laundering and Terrorist Financing*

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Canada



Overview of Regulatory Amendments

- **Background**
- **General Scope of Amendments**
- **Detailed Summary of Key Measures**
- **Considerations for FLSC Model Rules**



Background

Canada's Legislative Framework

- ***Proceeds of Crime (Money Laundering) and Terrorist Financing Act***
- **Associated Regulations**
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*
 - *Cross-Border Currency and Monetary Instruments Reporting Regulations*
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations*
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*



Background

Recent Regulatory Packages

- “**Package 2**”
 - Registration Date: June 25, 2019 (SOR/2019-240)
 - Published to Part II of *Canada Gazette* on July 10, 2019
 - Coming Into Force Dates: June 25, 2019, June 1, 2020, and June 1, 2021
- “**Package 3**”
 - Registration Date: May 20, 2020 (SOR/2020-112)
 - Published to Part II of *Canada Gazette* on June 10, 2020
 - Coming Into Force Dates: June 1, 2020, and June 1, 2021

Scope of Amendments

- **New reporting entities (REs)**
 - Businesses dealing in virtual currencies are classified as Money Services Businesses (MSBs)
 - Foreign MSBs, that operate in Canada without a physical place of business, are subject to Canadian regulation
- **New products for existing REs**
 - Loan accounts offered by the life insurance sector
 - Prepaid cards issued by financial institutions treated as accounts
- **Updated records**
 - Definitions and information (e.g., exchange rates, telephone number, transaction information)

Scope of Amendments (continued)

- **Verifying identity (ID)**
 - Facilitate online and non-face-to-face interactions
 - Simplified due diligence for low-risk entities
 - Third party reliance to verify ID
 - Clarify measures and sources to verify ID
 - Business relationships and ongoing monitoring
 - Enhanced beneficial ownership (BO) requirements
 - Politically exposed persons (PEP) and heads of international organizations (HIO) obligations

Scope of Amendments (continued)

- **Reporting financial transactions**
 - Virtual currency transactions
 - Timing for Suspicious Transaction Reports (STR)
 - Comprehensive amendments for Electronic Funds Transfers (EFT)
 - Updated reporting schedules
 - Enhanced “24-hour Rule”
- **Technical amendments**
 - Renumbering provisions and structural changes
 - Updated text to reflect drafting conventions
 - Deleted description of violations

Key Measures – Verifying ID

- **Facilitating non-face-to-face interactions**
 - Introduced the term “authentic” (replacing “original”), updated measures (e.g., credit file, dual source)
- **Simplified due diligence for low-risk entities**
 - Clients must be financial entities (foreign/domestic), publicly traded, or public service bodies, etc.
 - REs must document grounds for risk assessment, any changes to the risk level require ID
- **Third party reliance**
 - Have written agreements in place and obtain ID information from other REs, foreign affiliates
 - Ability to rely on measures previously taken by other REs, agents or affiliates, under certain circumstances

Key Measures – Verifying ID (continued)

- **Beneficial Ownership (BO)**
 - Addition of widely held or publicly traded trusts
 - Reasonable measures to ensure BO information is accurate and up to date
 - Requirements now apply to designated non-financial businesses or professions (DNFBPs) when opening an account or establishing a business relationship
- **Politically Exposed Persons (PEP), Heads of International Organizations (HIO)**
 - Requirements now apply to all DNFBPs when opening an account or establishing a business relationship, if there are reasonable grounds to suspect, or if the client conducts a \$100,000 VC transfer or cash transaction
 - Source of wealth (KYC)



Key Measures – Reporting

- **EFT Reporting**

- SWIFT update, P2P platforms, changing the “first in, last out” reporting requirements

- **Travel Rule**

- Beneficiary’s name and address also be included in an international EFT and if applicable, the account number or equivalent

- **Updated reporting schedules**

- Online transaction identifiers (IP address, devices, public key encryption, transaction ID)
- BO information
- Consistent approach across all reporting forms



Key Measures – Reporting (continued)

- **Enhanced the 24-hour Rule**
 - Know that the transaction is for the same beneficiary
 - Extended to casino disbursements and virtual currency transactions
- **New Transaction Report**
 - Large Virtual Currency Transaction Report
- **Cash transactions**
 - Requirements apply where agents receive cash on an RE's behalf
- **Timing for STR**
 - Changed from 30 days to 'as soon as practicable'



Considerations for Future Amendments to FLSC Model Rules

- **Compliance Program**
 - Consider adding a formal requirement for a lawyer or a legal firm to institute a formal AML/ATF compliance program. This includes:
 1. Appointing a Chief Compliance Officer (CAMLO);
 2. Develop and apply internal written AML/ATF compliance policies and procedures;
 3. Develop and deliver internal AML/ATF training;
 4. Conduct a risk assessment of compliance program (including assessing the risk of their clients); and
 5. Conduct an internal/external review of their compliance program every 2 years.
 - Could also consider putting in place enhanced measures for high-risk clients (e.g., more frequent monitoring of client relationship)



Considerations for Future Amendments to FLSC Model Rules

- **Ongoing Monitoring**

- Consider introducing a requirement to keep client information up to date. While the Model Rule provisions state that clients should not be re-identified unless the lawyer has doubts to the accuracy of the information, there is no explicit link between client identification and ongoing monitoring

- **Verifying ID**

- Consider updating measures to verify ID, facilitating non-face-to-face interactions. This includes clarifying independent and reliable sources of information (COVID-19 has highlighted the need for this)
- Consider adding Model Rule requirements on third party determination. Current Model Rules seem to rely on the third party determination that was done when clients were originally retained, not based on transactions or interactions



Considerations for Future Amendments to FLSC Model Rules

- **PEP/HIO**

- Consider introducing requirements to take reasonable measures to determine whether a client who conducts a transaction of \$100,000 or more, or when they establish a business relationship, is a PEP, HIO or a family member of, or person who is closely associated
- Consider introducing the concept of “source of wealth” as a broader KYC measure to complement the “source of funds” requirement. This would also help with ongoing monitoring efforts

- **Other Considerations**

- Are there other measures that could be relevant to the FLSC and its Model Rules?