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Anti-money laundering in Canada: British Columbia notaries

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For changes of general application that will apply to all Reporting Entity sectors as of June 1, 2021, please refer to Part 1 of the guide.

Read Part 1

Entering into business relationships

FINTRAC issued new guidance in February that will come into effect on June 1, 2021 that redefines when a B.C. notary is considered to have entered into a business relationship. This has wide-reaching implications for various obligations B.C. notaries have under the PCMLTFA and its regulations as the beginning of a "business relationship" triggers beneficial ownership determination obligations, ongoing monitoring obligations and obligations to conduct certain PEP/HIO screenings. Under the new definition, a B.C. notary enters into a business relationship with a client the second time the B.C. notary is required to verify a client's identity within a five-year period.

Know-your-client requirements

FINTRAC issued new guidance in March on when to verify the identity of persons and entities for British Columbia notaries in order to reflect the Amendments. This guidance will come into effect on June 1, 2021.

Changes from the prior guidance include

- additional client verification requirements for large virtual currency transactions (equivalent to $10,000 or more), which are subject to the 24-hour rule
- the addition of a new exception: there is no need to verify the identity of a person or entity that conducts a large virtual currency transaction if the virtual currency is received from a financial entity or a public body or a person acting on behalf of a financial entity or public body

Screening for politically exposed persons and heads of international organizations

As of June 1, 2021, British Columbia notaries will be required to conduct screenings for PEPs, HIOs, and the family members and close associates of PEPs and HIOs. In anticipation of this, as well as other changes to PEP/HIO screening under the Amendments, FINTRAC issued new guidance in May to take effect on June 1. New guidance containing obligations of general application for all REs, including B.C. notaries, is described in further detail in Part 1. Separate guidance specific to non-account-based reporting entities (including B.C. notaries) is available from FINTRAC.

In summary

- Requirements to take "reasonable measures to determine" PEP/HIO status under the new guidance
  - B.C. notaries must take reasonable measures to determine whether someone they enter into a business relationship with is a PEP, HIO, a family member of a PEP or HIO, or the close associate of a foreign PEP.
  - B.C. notaries also have the obligation to periodically determine whether they conduct business with a PEP, HIO, a family member of a PEP or HIO, or the close associate of a foreign PEP.
  - If any employees or officers detect a fact that would be reasonable grounds to suspect a business relationship with a PEP, HIO, or a family member or close associate of a PEP or HIO, the detection of such a fact also triggers an obligation to determine under the new guidance.
- Under the new guidance, once a determination has been made that a person is a foreign PEP (or a family member or close associate of a foreign PEP) or a high-risk domestic PEP or HIO (or a high-risk family member or high-risk close associate of a domestic PEP or HIO), B.C. notaries have obligations to take reasonable measures to establish the designated person's source of wealth and take enhanced risk mitigation measures.
- Transaction-specific requirements under the new PEP/HIO guidance
  - B.C. notaries receiving $100,000 in cash or an equivalent amount in virtual currency from a person have a duty to take reasonable measures to determine whether that person is a PEP, HIO, or a family member or close associate of a PEP or HIO. If the person is determined to be a foreign PEP (or family member or close associate of a

foreign PEP) or a high-risk domestic PEP or HIO (or the high-risk family member or high-risk close associate of a domestic PEP or HIO), the B.C. notary must take reasonable measures to establish the source of the funds or virtual currency used for the transaction and the source of the person's wealth, and must ensure that a member of senior management reviews the transaction.

- Recordkeeping requirements under the new PEP/HIO guidance
  - B.C. notaries must keep certain records when they determine that there is a business relationship with a PEP, HIO, or a family member or close associate of a PEP or HIO, including the office or position and the name of the organization or institution of the PEP or HIO, the date of the determination and the source of the person's wealth, if known. These records must be kept for five years after they were created.
  - B.C. notaries must keep certain records when senior management reviews a transaction involving someone determined to be a PEP, HIO, or a family member or close associate of a PEP or HIO. These records must include the office or position and the name of the organization or institution of the PEP or HIO, the date of the determination, the source of the cash or virtual currency used for the transaction (if known), the source of the person's wealth (if known), the name of the senior management member who conducted the review and the date of the review. These records must be kept for five years after they were created.

The new guidance also sets out an exception to the PEP/HIO determination requirements. If a person has already been determined to be a foreign PEP or their family member, there is no need to reassess that person's designation, as a person's foreign PEP or foreign PEP family member status continues indefinitely.

Recordkeeping requirements

As of June 1, 2021, British Columbia notaries will be subject to new recordkeeping requirements under the Amendments. In anticipation of these changes, FINTRAC issued new recordkeeping guidance in March to take effect June 1, 2021. As with prior guidance, the new FINTRAC recordkeeping guidance does not consolidate all recordkeeping requirements and additional recordkeeping requirements continue to be found in the beneficial ownership guidance, the ongoing monitoring guidance and the PEP/HIO screening guidance, among others.

Changes under the new guidance include

- new obligations to retain records of terrorist property reports, large cash transaction reports and large virtual currency reports for five years
- recordkeeping requirements for large cash transactions under the new guidance also include transactions in which another person or entity is authorized to receive funds and the other person or entity receives $10,000 or more in cash
- the modification of the information that must be kept as part of the large cash transaction record and the addition of new information to be retained. New information that must be provided in the record, per the new guidance, includes information regarding entities involved in the transaction, exchange rates used, reference numbers connected to the

transaction and details of the remittance of the cash received

- the modification of the information that must be kept as part of the transaction record for the receipt of funds in the amount of $3,000 or more in a single transaction, and the addition of new information that must be retained. New information that must be provided in the record includes the amount and type of cash or fiat currency and any applicable exchange rates, information about other individuals or entities involved in the transaction, reference numbers connected to the transaction and details
- the addition of a detailed recordkeeping requirement for large virtual currency transactions in an amount equivalent to $10,000 or more, including information about persons or entities involved in the transaction, accounts affected by the transaction, the account holder's information, and any exchange rates applicable and their source;
- records of unsuccessful reasonable measures are no longer required
- large virtual currency transaction records do not need to be kept if received from a financial entity or public body or person acting on behalf of a financial entity or public body
- a receipt of funds record does not need to be kept if the funds are received from a very large trust

Download: *British Columbia notaries* [PDF]

Read: *Anti-money laundering in Canada: A guide to the June 1, 2021 changes*