



Article Detail

Article

New Anti-Money-Laundering Regulations Regarding Real Estate Developers

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AUTHOR(s)

Barbara A. McIsaac

Patrick Veilleux

On February 20, 2008, amendments to regulations associated with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17* (the Act) were finalized and published. The Government, in its February 14th announcement of these amendments to the regulations, described them as necessary steps to bring the Canadian anti-money-laundering and anti-terrorist-financing regime into line with the revised international standards of the Financial Action Task Force.

The newly amended regulations are mostly about new requirements for real estate developers (that will be effective February 20, 2009) and additional requirements for casinos (that will be effective September 28, 2009). They affect obligations including reporting, record keeping, client identification and the implementation of a compliance regime.

As well, the new regulations contain the latest legislative amendments in a series of changes to the Act and its associated regulations. These changes stem from a consultation paper published by the Department of Finance in June of 2005 in response to new money-laundering and terrorist-financing trends and techniques. Many recommendations from the consultation paper were adopted as part of Bill C-25, which received Royal Assent on December 14, 2006. When fully in force, Bill C-25 will enhance the Act by expanding its coverage, strengthening its deterrence provisions, and broadening the range of information that FINTRAC (Financial Transactions and Reports Analysis Center of Canada), an enforcement body created by the Act, may include in its financial intelligence disclosures to law enforcement and national security agencies.

Specifically, the new regulations amend the following legislative instruments:

1. *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, S.O.R./2001-317;*
2. *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, S.O.R./2002-184;* and
3. *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations, S.O.R./2007-121.*

Background and Impact Analysis relating to Real Estate Developers

The Act creates record-keeping and reporting requirements for various persons or entities including financial entities (banks, loan companies, etc.), life insurance companies, securities dealers, money services businesses, real estate brokers and casinos. Reporting persons and entities must implement a compliance regime, keep certain records, undertake client identification procedures, and report suspicious and other prescribed transactions to FINTRAC.

FINTRAC receives analyses, assesses and discloses financial intelligence on suspected money laundering, terrorist financing, and threats to the security of Canada. It also ensures compliance by financial intermediaries and other reporting entities with their obligations under the Act and regulations.

Most record-keeping and reporting requirements are captured in Part 1 of the Act, "Record Keeping and Reporting of Suspicious Transactions."

The new regulations extend the coverage of those sections of the Act and associated regulations to include real estate developers, who are defined as:

On any given day in a calendar year, a person or entity who, in that calendar year and before that day or in any previous calendar year after 2007, has sold to the public, other than in the capacity of a real estate broker or sales representative (a) five or more new houses or condominium units; (b) one or more new commercial or industrial buildings; or (c) one or more new multi-unit residential buildings, each of which contains five or more residential units, or two or more new multi-unit residential buildings that together contain five or more residential units ("*promoteur immobilier*").¹

Under the new regulations, real estate developers will henceforth be required to meet current as well as recently introduced requirements of Part 1 of the Act: client identification, record-keeping and transaction-reporting. This mostly means identifying clients who provide funds in the context of a sale to the public, keeping records of such transactions, and reporting large cash transactions (\$10,000 or more) and suspicious transactions to FINTRAC. Real estate developers will also have to develop a compliance program.²

The Department of Finance met with representatives of the Canadian Home Builders Association to address some of their concerns regarding the implications for real estate developers, such as the requirement to put in place policies and procedures to ensure developers fulfil their requirements under the Act. As a result, the proposed regulations were modified to address those concerns. To further assist in the implementation process, FINTRAC will provide guidance to the real estate developer sector with respect to making reasonable efforts to obtain third-party information, determining ways to detect suspicious transactions and developing a compliance program.

Reporting entities that do not comply with the Act and its regulations are subject to criminal and financial penalties. A new administrative monetary penalties scheme will allow for penalties proportionate to the violation. The maximum penalty amount that can be imposed under the newly finalized administrative monetary penalty scheme for violations classified as very serious is, in the case of an entity, \$500,000 and in the case of a person, \$100,000.

Apart from record-keeping and transaction-reporting requirements for real estate developers, other key amendments to the Act and associated regulations provided for in the new regulations include the requirement for casinos to report to FINTRAC any large casino disbursements and to keep records in respect of these transactions.

McCarthy Tétrault will be closely monitoring these developments in order to offer guidance to clients who may interact with FINTRAC or other branches of the federal government.

¹ SOR/2008-21, Sections 2 and 3.

² SOR/2008-21, Section 7, which amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, S.O.R./2002-184 by adding *inter alia* Sections 39.7 and 59.5.

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