

Advisory

Overview of FINTRAC Obligations for Mortgage Brokers and Submortgage Brokers

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Distribution: All registrants under the Mortgage Brokers Act
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PURPOSE

The purpose of this Advisory is to provide an overview of new requirements under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”) and to help ensure Mortgage Brokers and Submortgage Brokers understand the tools available to assist with these new obligations. This Advisory is not meant as a substitute for the Financial Transactions and Reports Analysis Centre of Canada’s (“FINTRAC”) guidance.

FINTRAC is the federal agency responsible for administering the PCMLTFA. For clarity, BCFSA is B.C.’s financial services regulator, and the new federal FINTRAC requirements are separate from requirements under B.C.’s *Mortgage Brokers Act* and Regulation.

BACKGROUND INFORMATION

Money laundering and terrorist financing in the mortgage services industry poses significant risks to the public and may affect a registrant’s and/or the entire industry’s reputation. Money laundering and terrorist financing typically involves parties to a transaction attempting to disguise illicit funds by integrating them into the legitimate financial system through real estate purchases and mortgage transactions and payments.

PCMLTFA requires various reporting entities (e.g., securities dealers, financial entities, casinos, real estate licensees, etc.) to assist in the fight against money laundering. Canada’s financial intelligence unit, FINTRAC, is responsible for administering and enforcing PCMLTFA.

Starting on October 11, 2024, individuals and entities in the mortgage services industry will become reporting entities to PCMLTFA and its associated regulations. Mortgage originators, administrators, and lenders in B.C. will be required to develop an effective anti-money laundering and anti-terrorist financing compliance program. The compliance program must ensure that all due diligence, record keeping, and reporting obligations are met.

In November 2023, BCFSA released [an advisory](#) informing registrants of the upcoming FINTRAC changes.

FINTRAC’s REQUIREMENTS

As of October 11, 2024, mortgage originators, administrators, and lenders in B.C. must adhere to requirements under the PCMLTFA and its associated Regulations. Details are available on [FINTRAC’s website](#) and some key requirements are outlined below.

IMPLEMENT A COMPLIANCE PROGRAM

Mortgage brokers must establish and implement a robust compliance program, with the following key components:

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- *Appoint a Compliance Officer:* The Compliance Officer will oversee the implementation and maintenance of the compliance program, ensuring policies and procedures are developed, communicated, and followed.
- *Develop Written Policies:* Written compliance policies must be developed covering issues such as due diligence, risk assessments, transaction monitoring, and FINTRAC reporting with specific measures for high-risk scenarios, such as enhanced identity verification and risk mitigation strategies.
- *Conduct Risk Assessments:* Conduct risk assessments to identify potential money laundering or terrorist financing vulnerabilities, allowing for effective risk mitigation.
- *Provide Continuous Training:* The Compliance Officer must ensure all employees receive regular anti-money laundering and anti-terrorist financing training, updated with any new or amended FINTRAC requirements, and tailored to the mortgage broker's operations.
- *Review the Program:* Conduct a comprehensive review of the compliance program at least every two years to identify and address any weaknesses or gaps.

Detailed requirements are available in FINTRAC's [compliance program requirements](#) guidance.

KNOW YOUR CLIENT ("KYC")

PCMLTFA requires registrants to verify their clients' identity for certain activities and transactions (also sometimes referred to as a 'know your client' or 'KYC' requirements). It also requires them to take steps to identify others in the transaction if those other individuals or entities are not represented in the transaction. The fundamental principle is to always maintain a clear understanding of who the clients are in a transaction and to gather information required under the PCMLTFA. Registrants must verify the identity of any individual or entity in the following types of transactions, or when the following records are required to be kept:

- Suspicious transactions
- Large cash transactions
- Large virtual currency transactions
- Receipt of funds records
- Information records
- Mortgage loan records

Additionally, registrants must also verify the identity of a client when establishing a business relationship with them for the first time. Registrants should use the methods prescribed in [FINTRAC guidance on identity verification](#).

Registrants must regularly and periodically monitor that business relationship, guided by their risk assessments. Risk assessments, which are part of their compliance program, are used to evaluate the money laundering and terrorist financing risks in business activities. The required frequency of monitoring depends on the risk level assigned to clients in the registrant's risk assessment. When assessing the risks, registrants should consider factors such as: activity patterns and geographic locations of clients and the business relationship, product and services offered, and other relevant factors.

For clients the registrant deems high-risk, the registrant must implement enhanced ongoing monitoring alongside [additional measures](#) commensurate with the assessed level of risk.

In the case of large cash transactions or significant virtual currency transactions involving third parties, specific reporting or record-keeping requirements apply. This includes obtaining detailed information about the third party and their relationship with the individual conducting the transaction or the client.

POLITICALLY EXPOSED PERSONS ("PEPs") AND HEADS OF INTERNATIONAL ORGANIZATIONS ("HIOs")

PEPs and HIOs could be politically exposed domestic or foreign individuals, heads of international organizations, or family members or close associates of these individuals.

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Registrants are required to take reasonable measures to determine whether a client is a PEP when they receive \$100,000 or more in cash or virtual currency. This must occur when:

- Entering into a business relationship (within 30 days)
- Conducting periodic monitoring of existing business relationships
- Detecting a fact about existing business relationships (within 30 days of detection)

Upon confirming that an individual is a PEP or HIO, registrants must take [reasonable measures](#) to establish the [source of the funds or source of virtual currency](#) used in a transaction or expected to be deposited into an account, as well as the source of the individual's wealth. Mortgage brokers must keep all PEP and HIO related records for at least five years from the date they were created or obtained.

In cases where there is a high risk of money laundering or terrorist financing occurring, registrants must implement enhanced measures to mitigate the risks posed by the PEP or HIO.

For more information on PEPs and HIOs, please refer to FINTRAC's guidance:

- [Politically exposed persons and heads of international organizations guidance](#)
- [Politically exposed persons and heads of international organizations guidance for non-account-based reporting entity sectors](#)

REPORTING REQUIREMENTS

Registrants must report to FINTRAC in certain scenarios, including the following:

Suspicious Transaction Report (“STR”)

Registrants are required to monitor for suspicious activities related to money laundering or terrorist financing and promptly report any suspicious transactions or attempted transactions to FINTRAC. For guidance on determining reasonable grounds for suspicion and submitting an STR, refer to FINTRAC's guidance: [Reporting Suspicious Transactions to FINTRAC](#).

Terrorist Property Report (“TPR”)

When registrants know that they control or hold property on behalf of a terrorist or terrorist group, they must immediately cease working with the terrorist or terrorist group and submit a Terrorist Property Report to FINTRAC.

TPRs are distinct because they do not require an actual transaction to occur; the mere existence of terrorist-linked property triggers reporting obligations to the Royal Canadian Mounted Police (“RCMP”), the Canadian Security Intelligence Service (“CSIS”), and FINTRAC.

Find additional guidance via this FINTRAC link: [Reporting Terrorist Property](#).

Large Cash Transaction Report (“LCTR”)

Registrants must file a LCTR when they receive \$10,000 or more in cash during a single transaction from an individual or entity. The report must be submitted to FINTRAC within 15 calendar days after the registrant receives the cash.

Importantly, registrants must adhere to the 24-hour rule, which involves aggregating multiple transactions of the same type that total \$10,000 or more within a consecutive 24-hour window. This rule applies even if the transactions are authorized for receipt by another individual or entity on the registrants' behalf.

There are certain exceptions to reporting large cash transactions. Please refer to this FINTRAC guidance on [Reporting Large Cash Transactions](#).

Large Virtual Currency Transaction Report

Registrants must submit a Large Virtual Currency Transaction Report when they receive virtual currency equivalent to \$10,000 or more in a single transaction. Virtual currency is a digital representation of value or cryptographic key that enables access to a digital representation of value. It can be used for various financial activities, including mortgage payments or property investments.

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Registrants must submit a Large Virtual Currency Transaction Report to FINTRAC within five working days after receiving the virtual currency. The 24-hour rule also applies to the large virtual currency transaction report.

Certain exceptions exist for reporting large virtual currency transactions. Please refer to [FINTRAC's Guidance on Reporting Large Virtual Currency Transactions](#), for more information.

RECORD-KEEPING REQUIREMENTS

Highlights of the key records that registrants must keep according to FINTRAC's record-keeping requirements include the following:

- Copies of every report sent to FINTRAC
- Large cash and virtual currency transaction records
- Receipt of funds records
- Information records for mortgage transactions
- Mortgage loan records
- Corporate records
- Beneficial ownership records
- Politically exposed persons records
- Client ID
- Records relating to business relationship and ongoing monitoring
- Third party determination records

Registrants must keep all records for at least five years from the date they were created or obtained.

FINTRAC conducts compliance examinations to assess reporting entities' adherence to record-keeping and reporting requirements. It is essential to maintain accurate and complete records to facilitate compliance with regulatory obligations.

At present, FINTRAC does not have specific guidelines tailored to record-keeping obligations for the mortgage services industry. For future updates and more information regarding record-keeping requirements applicable to the mortgage services industry, please visit FINTRAC's website.

ADMINISTRATIVE PENALTIES

FINTRAC has the authority to issue administrative monetary penalties to reporting entities for non-compliance with regulations. Penalties are categorized based on the seriousness of the violation and the entity's compliance history, ranging from minor to very serious infractions:

- Minor violation: \$1 to \$1000 per violation
- Serious violation: \$1 to \$100,000 per violation
- Very serious violation: \$1 to \$100,000 per violation for an individual and from \$1 to \$500,000 per violation for an entity.

CONSIDERATIONS FOR MORTGAGE BROKERS AND SUBMORTGAGE BROKERS

Mortgage brokers and submortgage brokers registered in B.C. should carefully review the requirements under PCMLTFA to ensure they understand their scope and application. Failure to comply with PCMLTFA requirements may constitute conducting business in a manner prejudicial to the public interest within the meaning of section 8(1)(i) of the *Mortgage Brokers Act*. If unsure, it is important to seek legal advice prior to the requirements coming into effect on October 11, 2024.

ADDITIONAL INFORMATION

FINTRAC has published [guidance and resources](#) to help mortgage brokers, administrators, and lenders understand their new obligations and how to comply with them.

Additional resources include:

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- [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act \(justice.gc.ca\)](https://www.justice.gc.ca)
- [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Suspicious Transaction Reporting Regulations \(justice.gc.ca\)](https://www.justice.gc.ca)

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