



HEAD OFFICE CIRCULAR

TO: Managing General Agents, Associate General Agents, Brokers, General Agents, Independent Financial Advisors and National Accounts

SUBJECT: Anti-Money Laundering and Anti-Terrorist Financing: Changes effective June 23, 2008

In November 2006, we distributed a Head Office Circular (HOC 2006-26) regarding advisor responsibilities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the Act). That circular outlined the requirements of the Act, what Empire Life was doing to meet those requirements and what advisors should be doing to meet the requirements.

Amendments to the Act will take effect June 23, 2008. We've attached a summary of the changes applicable to life insurance provided by the Financial Transactions and Reports Analysis Centre (FINTRAC). All life insurance companies, life brokers and independent life agents and agencies are subject to the Act and its amendments. Empire Life has been working diligently over the past six months to ensure our processes and procedures meet the new requirements. We have also made changes to our applications to comply with the new requirements.

FINTRAC has the primary responsibility to ensure reporting entities such as life insurance companies, life brokers and independent life agents and agencies, comply with the Act and its requirements. It also has the authority to inquire into your business and examine your records to ensure compliance with the Act. You may already have been contacted by FINTRAC via a survey or direct audit to review your compliance regime in regards to the legislation.

There are many excellent resources available to understand the Act and the amendments and to assist you in implementing a compliance regime.

- The Guidance Manual to Combat Money Laundering and Terrorist Financing was created by the CLHIA, LIMRA and FINTRAC to assist life insurance agents and brokers in complying with their legal obligations under the Act. It is a straightforward and easy to read document. It can be found at www.clhia.ca/advisor.
- The FINTRAC Web site (<http://www.fintrac.gc.ca/>) provides a significant amount of current legislation.
- For a more detailed look at the Act, you can see it in its entirety on the Department of Justice Canada Web site (canada.justice.gc.ca).

Many industry associations such as Advocis and the Independent Financial Brokers also offer advisors support both on their Web sites and through member meetings. We encourage advisors to look to these organizations to keep current on any compliance issues.

Should you have any questions regarding your responsibilities under the Act, we encourage you to go to any of the above listed resources. If you would like more detail on how Empire Life is handling our obligations, please feel free to contact our Compliance area at comcom@empire.ca.

REFERENCE: **Sheila Kingston**, Director, Individual New Business, Life and Health
Mary Treier, Director, Investment and Inforce Services



SUMMARY OF CHANGES FOR LIFE INSURANCE

Final details about amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as well as new regulations were recently published. These include upcoming changes that will affect record keeping, client identification and reporting obligations.

This is a summary of the changes applicable to life insurance companies, life insurance brokers and independent life insurance agents. The changes will take effect on June 23, 2008, except as otherwise specified. More information about each change will be available in updates to FINTRAC's guidelines available on FINTRAC's Web site throughout the fall of 2007 and the winter of 2008.

1. CHANGES AFFECTING REPORTING

1.1 Suspicious transaction reports

When you submit a suspicious transaction report to FINTRAC, you will have to keep a copy of it.

Currently, the requirement for you to report a suspicious transaction applies only when the financial transaction was completed. Once the changes come into effect, the requirement will also apply to attempted transactions.

In addition, when you have to report a suspicious transaction to FINTRAC, you will also have to take reasonable measures before the transaction is reported, to identify the individual who conducted the transaction. This will not apply in the following circumstances:

- if you had already identified the individual as required; or
- if you believe that doing so would inform the individual that you are submitting a suspicious transaction report.

2. CHANGES AFFECTING RECORD KEEPING AND CLIENT IDENTIFICATION

Currently, as part of the large cash transaction record, you do not have to keep information that is readily available in other records that you have to keep under these rules. As of June 30, 2007, this will also apply to any other record you have to keep under these rules. In other words, if you keep information in one record, you will not have to keep the same information in any other record.

The following changes will come into effect on June 23, 2008.

2.1 General exemptions

Reporting, record keeping and client identification requirements will not apply when you deal in reinsurance.

Exemptions applicable to record keeping and client identification

Currently, you do not have to identify individuals in the following situations:

- the purchase of an immediate or deferred annuity that is paid for entirely with funds that are directly transferred from a registered pension plan or from a pension plan that is required to be registered under the *Pension Benefits Standards Act, 1985*, or similar provincial legislation;
- the purchase of a registered annuity policy or a registered retirement income fund;
- the purchase of an immediate or deferred annuity that is paid for entirely with the proceeds of a group life insurance policy;
- a transaction that is part of a reverse mortgage or of a structured settlement; or
- the opening of a registered plan account, including a locked-in retirement plan account, a registered retirement savings plan account and a group registered retirement savings plan account.

Once the changes come into effect, you will not have to identify entities in those situations either, nor will you have any record keeping requirements associated to those cases.

In addition, currently, you do not have to identify any individual or entity at the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province. Once the changes come into effect, you will not have to keep any records concerning those accounts either.

Similarly, currently, if you have to keep a client information record for a public body or a very large corporation, you do not have to identify any individual or entity in that regard. Once the changes come into effect, you will not have to keep the record either. In addition, this exemption will also apply if the entity is a subsidiary of a public body or a very large corporation, as long as the subsidiary's financial statements are consolidated with the ones of the public body or corporation.

Currently, you do not have to identify individuals when you open the following types of accounts:

- employee profit sharing plan accounts and deferred profit sharing plan accounts, unless the accounts were funded in whole or in part by contributions by an individual or entity other than the employer; or

- dividend reinvestment plan accounts sponsored by a corporation for its investors, unless the accounts were funded in whole or in part by a source other than the corporation.

Once the changes come into effect, that exemption will no longer apply. However, you will not have to identify individual members who contribute to a group plan if their contributions are made either by payroll deductions or by the plan's sponsor, as long as the plan sponsor is a corporation or an entity that you have identified. In any other case, you will have to identify individuals when they make contributions to the plan.

2.2 Client identification

Doubts about information collected

Currently, if you have identified an individual before, you do not have to do so again if you recognize the individual. Once the changes come into effect, if you have doubts about the information collected concerning an individual's previous identification, you will have to identify that individual again.

Individuals not physically present

Currently, if you have to identify an individual who is not physically present at the time a client information record is created, you can do so by confirming information about a financial entity account or a cleared cheque. You can also use an agent to verify identification on your behalf (see the heading below about use of an agent or mandatary).

Once the changes come into effect, you will have to use one or the other of the following options to confirm the identity of an individual who is not present, unless you use an agent or mandatary:

Option 1

Obtain the individual's name, address and date of birth and confirm that one of the following has identified them by referring to an identification document:

- a financial entity, life insurance company or securities dealer affiliated with you;
- an entity affiliated with you and whose activities outside Canada are similar to those of a financial entity, life insurance company or securities dealer; or
- another member of a central cooperative credit society (within the meaning of the *Cooperative Credit Association Act*), of which you also are a member.

If you use this option, you will also have to verify that the individual's name, address and date of birth kept in the records of that other entity correspond with the information provided to you.

In this context, an entity is affiliated with you if you fully own it or it fully owns you, or you are both fully owned by the same entity.

Option 2

Use a combination of **two** of the following methods:

- referring to an independent identification product or, with the individual's permission, referring to a credit file;
- obtaining an attestation concerning an identification document for the individual from a commissioner of oaths or a guarantor;
- confirming that a cheque drawn on a deposit account with a financial entity (other than one that is exempt from identification requirements) has cleared; and
- confirming that the individual has a deposit account with a financial entity (other than one that is exempt from identification requirements).

The two methods in the first bullet involving an identification product and a credit file cannot be combined, nor can the methods involving a cleared cheque and the confirmation of a deposit account described in the last two bullets.

You should rely on a combination of these methods only if the individual's information obtained is consistent within each method and with the information in your records.

Identification information in records

When you have to identify an individual in connection to a record you create or a transaction the individual carries out, you will have to include information about how the individual was identified in the record you are required to keep. This already applies to client information records and large cash transaction records, but once the changes come into effect, it will apply to any record you have to keep and for which you have to identify the client.

Use of an agent or mandatary

If you rely on agents or mandataries to identify any of your clients, you will have to enter into a written agreement or arrangement with them to do so. You will also have to obtain from the agent or mandatary the customer information that was obtained according to the agreement or arrangement.

This will only be acceptable when the agent or mandatary identifies an individual using an original identification document.

2.3 Beneficial ownership

When you have to confirm the existence of an entity, you will have to take reasonable measures to obtain, and if obtained, keep a record of the following information about the entity's beneficial ownership:

- If the entity is a corporation:
 - the name and occupation of all directors of the corporation; and
 - the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of the shares of the corporation;
- If the entity is an entity other than a corporation:
 - the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of it.

If this information cannot be obtained, you will have to keep a record explaining why beneficial ownership could not be determined.

If you have to confirm the existence of an entity that is a not-for-profit organization, you will also have to determine and keep a record about the following:

- whether or not that entity is a registered charity for income tax purposes; or
- if that entity is not a registered charity, whether or not it solicits charitable financial donations from the public.

2.4 Politically exposed foreign persons

A politically exposed foreign person will be defined as an individual who holds or has held one of the following offices or positions in or on behalf of a foreign country:

- a head of state or government;
- a member of the executive council of government or member of a legislature;
- a deputy minister (or equivalent);
- an ambassador or an ambassador's attaché or counsellor;
- a military general (or higher rank);
- a president of a state-owned company or bank;
- a head of a government agency;
- a judge; or
- a leader or president of a political party in a legislature.

A politically exposed foreign person will also include the following immediate family members of the individual described above:

- spouse or common-law partner;
- mother or father;
- child;

- brother, sister, half brother or half sister; or
- spouse's or common-law partner's mother or father.

Determination

Once the changes come into effect, you will have to take reasonable measures to determine if an individual who makes a lump-sum payment of \$100,000 or more for an immediate or deferred annuity or a life insurance policy, for himself or herself or on behalf of a third party, is a politically exposed foreign person. This has to be done within 14 days after the transaction occurred.

If an individual is a politically exposed foreign person, you will also have to do the following:

- take reasonable measures to establish the source of funds used for the transaction; and
- within 14 days after the transaction occurred, get a member of senior management to review the transaction.

Once you have determined that an individual is a politically exposed foreign person, you will not have to do it again.

You do not have to make determinations about politically exposed foreign persons when you deal in reinsurance.

Records

Once a transaction has been reviewed as explained above, you will have to keep a record of the following:

- the office or position of the individual who is a politically exposed foreign person;
- the source of funds, if known, used for the transaction;
- the date you determined the individual to be a politically exposed foreign person;
- the name of the member of senior management who reviewed the transaction; and
- the date the transaction was reviewed.

2.5 Client information record

When you have to keep a client information record, you have to verify the identity of the client within 30 days rather than the current six months after the record is created. You will also have to keep the date of birth in a client information record about an individual.

2.6 Date of birth on other records

When you have to keep a large cash transaction record or any other record about an individual as a third-party, you will have to include the individual's date of birth on that record. Currently, this only applies to certain records when you have to identify an individual.

3. CHANGES AFFECTING YOUR COMPLIANCE REGIME

In addition to appointing a person responsible for implementing your compliance regime, once the changes come into effect, you will have to include the following:

- develop, apply and keep up to date written compliance policies and procedures. If you are an entity, they need to be approved by a senior officer;
- assess and document the risk related to money laundering and terrorist activity financing in a way that is appropriate to you considering:
 - your clients and your business relationships;
 - your products, delivery channels and geographic areas where you do your business activities; and
 - any other relevant factor.
- develop and maintain a written ongoing compliance training program for your employees, agents or other individuals authorized to act on your behalf;
- establish and document a review of your policies and procedures, risk assessment and training program for their effectiveness. The review will have to be done every two years by either an internal or external auditor or by an individual of your organization if you do not have an auditor.

If you are an entity, within 30 days after the above review, its findings, any updates to your compliance policies and procedures, including the status of their implementation, will have to be reported in writing to one of your senior officers.

If you determine that the risk is high for money laundering or terrorist financing, you will have to take measures to mitigate the risk, and take reasonable measures to:

- keep client identification and beneficial owner information up to date; and
- conduct ongoing monitoring of financial transactions to detect suspicious transactions.

4. FOREIGN SUBSIDIARIES OR BRANCHES

If your life company or insurance company has foreign subsidiaries or foreign branches, you will have to ensure that they develop and apply policies and

procedures consistent with record keeping, client identification and compliance regime requirements here in Canada. This will only apply if all of the following conditions are met:

- The subsidiary or branch carries out life company or life insurance company activities.
- The subsidiary or branch is located in a country that is not a member of the Financial Action Task Force.
- The laws of the country in which the subsidiary or branch operates permit compliance with these requirements.
- In the case of a subsidiary, it is wholly-owned by your life company or life insurance company.

If the laws of the country in which your subsidiary operates prohibit compliance with these requirements, you will have to keep a record to that effect.

None of this will apply to you if you are an authorized foreign company with respect to your operations in Canada.