

**Guideline 6D: Record Keeping and Client Identification
for Foreign Exchange Dealers**

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June 2005

This replaces the previous version of *Guideline 6: Record Keeping and Client Identification for Foreign Exchange Dealers* issued in June 2002. The changes made to this version are indicated by a side bar to the right of the modified text.

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1 General

The objective of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to help detect and deter money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist activity financing offences. This includes reporting, record keeping, client identification and compliance regime requirements for foreign exchange dealers .

If you are in the business of foreign exchange dealing, this guideline has been prepared to help you meet your record keeping and client identification obligations. It uses plain language to explain the most common situations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as well as the related Regulations. It is provided as general information only. It is not legal advice, and is not intended to replace the Act and Regulations.

Please also refer to *Guideline 6C: Record Keeping and Client Identification for Money Services Businesses* if your business includes any of the following activities:

- you remit or transmit funds by any means through any individual, entity or electronic funds transfer network; or
- you issue or redeem money orders, traveller's cheques or other similar negotiable instruments.

Record keeping and client identification obligations for other types of reporting persons or entities are explained by sector in other versions of this guideline (financial entities, securities dealers, life insurance companies, brokers and agents, agents of the Crown that sell or redeem money orders, accountants, real estate brokers and representatives, and casinos.

For more information about money laundering and terrorist financing, or other requirements under the Act and Regulations applicable to you, see the other guidelines in this series:

- *Guideline 1: Background* explains money laundering, terrorist financing, and their international nature. It also provides an outline of the legislative requirements as well as an overview of FINTRAC's mandate and responsibilities.
- *Guideline 2: Suspicious Transactions* explains how to report a suspicious transaction. It also provides guidance on how to identify a suspicious transaction, including general and industry-specific indicators that may help when conducting or evaluating transactions.
- *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* explains when and how to submit suspicious transaction reports. There are two different versions of Guideline 3, by reporting method.
- *Guideline 4: Implementation of a Compliance Regime* explains the requirement for reporting persons and entities to implement a regime to ensure

compliance with their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

- *Guideline 5: Submitting Terrorist Property Reports to FINTRAC* explains when and how to submit terrorist property reports.
- *Guideline 6: Record Keeping and Client Identification* explains the requirement for reporting persons and entities to identify their clients and keep records. There are eight different versions of Guideline 6, by sector.
- *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC* explains when and how to submit large cash transaction reports. There are two different versions of Guideline 7, by reporting method.
- *Guideline 8: Submitting Electronic Funds Transfer Reports to FINTRAC* explains when and how to submit EFT reports.
- *Guideline 9: Submitting Alternative to Large Cash Transaction Reports to FINTRAC* explains when and how financial entities can choose the alternative to large cash transaction reports. This is only applicable to financial entities.

If you need more help after you read this or other guidelines, call FINTRAC's national toll-free enquiries line at 1-866-346-8722.

Throughout this guideline, several references are provided to additional information that may be available on external Web sites. FINTRAC is not responsible for the accuracy, reliability or currency of the information contained on those external Web sites. The links provided are based on information available at the time of publishing of this guideline.

Throughout this guideline, any references to dollar amounts (such as \$10,000) refer to the amount in Canadian dollars or its equivalent in foreign currency.

2 Record Keeping and Client Identification Obligations

As a foreign exchange dealer, you have to do the following:

- When you conduct a large cash transaction, your record keeping and client identification obligations are as follows:
 - Keep a large cash transaction record (see Section 3);
 - Identify the individual (see Section 4); and
 - Make a third party determination and keep related records (see Section 5).
- When you create a client information record, your record keeping and client identification obligations are as follows:
 - Keep the client information record (see Section 3);
 - Identify the client(s) (see Section 4); and
 - Make a third party determination and keep related records (see Section 5).

- When you conduct a foreign currency transaction, you have to keep a record about the transaction (see Section 3);
- When you conduct **any** transaction of \$3,000 or more with an individual for whom you do not keep a client information record, you have to identify the individual (see Section 4);
- When you create client credit files and internal memoranda in the normal course of business, you have to keep those records (see Section 3).

There are some exceptions and these are explained throughout each section.

The use of personal information in Canadian commercial activities is protected by the *Personal Information Protection and Electronic Documents Act*, or by substantially similar provincial legislation. You have to inform individuals concerning the collection of personal information about them. However, you do not have to inform individuals when you include personal information about them in any of the reports that you are required to make to FINTRAC. You can get more information about your responsibilities in this area from the following:

- The office of the Privacy Commissioner of Canada (http://www.privcom.gc.ca/information/guide_e.asp); or
- Industry Canada (http://privacyforbusiness.ic.gc.ca/epic/internet/inpfb-ccc.nsf/en/h_hc00000e.html).

3 Records To Be Kept

As a foreign exchange dealer, you have to keep the following records:

- Large cash transaction records;
- Client information records;
- Certain records created in the normal course of business; and
- Foreign currency exchange transaction tickets.

Details about each of these types of records are provided in Sections 3.1 through 3.4.

This guideline describes your record keeping obligations under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Your policies and procedures may cover situations other than the ones described in this guideline, and you may require additional records to be kept for purposes other than your requirements under this legislation. For example, the retention period for your records may vary for purposes other than what is described in this guideline.

3.1 Large Cash Transaction Records

This is a record for every amount of cash of \$10,000 or more that you receive from a client in a single transaction. If the transaction is in a foreign currency, convert it to Canadian dollars to find out if it is \$10,000 or more Canadian. For example, if your client converts foreign cash and the Canadian equivalent is \$10,000 or more, you have to keep a large cash transaction record. In addition to this record, a large cash transaction will also require a report to FINTRAC, as explained in *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.

If you know that two or more cash transactions of less than \$10,000 each were made within a 24-hour period (i.e., 24 consecutive hours), by or on behalf of the same client, these are considered to be a single large cash transaction if they add up to \$10,000 or more. In this case, you would have to keep a large cash transaction record, and report the transaction to FINTRAC as explained above.

You do **not** have to keep a large cash transaction record or make a large cash transaction report to FINTRAC if the cash is received from a financial entity or a public body. In this context, a financial entity means any of the following:

- a bank (i.e., one that is listed in Schedule I or II of the *Bank Act*) or an authorized foreign bank with respect to its operations in Canada;
- a credit union or a caisse populaire;
- a trust and loan company; or
- an agent of the Crown that accepts deposit liabilities.

Also in this context, a public body means any of the following or their agent:

- a provincial or federal department or Crown agency;
- an incorporated municipal body (including an incorporated city, town, village, metropolitan authority, district, county, etc.); or
- a hospital authority. A hospital authority means an organization that operates a public hospital and that is designated to be a hospital authority for GST/HST purposes. For more information on the designation of hospital authorities, refer to GST/HST Memoranda Series, Chapter 25.2, *Designation of Hospital Authorities* available from the following Web site: <http://www.cra-arc.gc.ca/E/pub/gm/25-2/25-2-e.pdf>.

Contents of a large cash transaction record

For any large cash transaction, the information you have to keep in a large cash transaction record includes the following:

- the amount and currency of the cash received;
- the name of the individual from whom you received the cash and that individual's address and principal business or occupation;
- the date of the transaction;
- the purpose and details of the transaction and the type of transaction (for example, the cash was in Canadian currency and exchanged for U.S. dollars,

- etc.), including whether any other individuals or entities were involved in the transaction;
- how the cash was received (for example, in person, by mail, by armoured car, or any other way); and
 - if an account was affected by the transaction, include the following:
 - the number and type of any such account;
 - the full name of the client that holds the account; and
 - the currency in which the account's transactions are conducted.

If any of this information is readily available in other records that you have to keep (as described below), it does not have to be kept again as part of the large cash transaction record.

If you have to identify the individual as explained in Section 4, the large cash transaction record also has to contain the following information:

- the individual's date of birth; and
- the type of document used to confirm the individual's identity, the document's reference number and its place of issue.

3.2 Client Information Records

If you have an on-going business relationship with your client, you have to keep any client information records that you create. A client information record sets out your client's name, address and the nature of the client's principal business or occupation.

If you create a client information record, you have to identify any individual who is the client as well as any individual who conducts a transaction for the client, as explained in Section 4. In this case, the client information record also has to contain the following information:

- the individual's date of birth; and
- the type of document used to confirm the individual's identity, its reference number and its place of issue.

If you create a client information record about a client that is a corporation, and you obtain a copy of the part of the official corporate records showing the provisions that relate to the power to bind the corporation regarding the account, you have to keep the copy. This could be the articles of incorporation that set out those duly authorized to sign on behalf of the corporation, such as an officer, the comptroller, etc. If there were changes subsequent to the articles, then the board resolution stating the change would be included in this type of record.

3.3 Foreign Currency Exchange Transaction Tickets

For every foreign currency exchange transaction you conduct, regardless of the amount, you have to keep a transaction ticket. A transaction ticket means a record that sets out the following information:

- the date, amount and currency of the purchase or sale; and
- the method, amount and currency of the payment made or received.

If the transaction was carried out by an individual for \$3,000 or more, the transaction ticket also has to contain the name and address of that individual.

If you have to identify an individual conducting a transaction of \$3,000 or more, as explained in Section 4, the transaction ticket also has to include the following information:

- the individual's date of birth; and
- the type of document used to confirm the individual's identity, its reference number and its place of issue.

3.4 Certain Records Created in the Normal Course of Business

You have to keep the following records that you create in the normal course of business with a client.

Client credit files

A client credit file means a record that relates to a credit arrangement with your client, such as a mortgage, loan, credit card or other type of credit agreement. This includes your client's name, address and financial capacity as well as the terms of credit. It also includes your client's principal business or occupation, the name of the business (if any), and your client's business address or place of work address.

Internal memoranda

An internal memorandum means any memo, note, message or similar communication that concerns account operation.

4 Client Identity

4.1 When and How Do You Have To Identify Clients?

As a foreign exchange dealer, you have client identification obligations. You have to take the following measures to identify individuals or entities, subject to the general exceptions outlined in Section 4.6.

This guideline describes your client identification obligations, under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Sections 4.2 to 4.6 explain the need to identify individuals when an event triggers the requirement. Any individuals that you have not identified according to these rules must be identified if any of the following situations occur on or after June 12, 2002.

4.2 Client Identity for Large Cash Transactions

You have to identify any individual with whom you conduct a large cash transaction, at the time of the transaction, if it is one for which you have to keep a large cash transaction record, as described in Section 3.1.

See Section 4.4 to find out how to identify an individual for this purpose.

4.3 Other Client Identity for Individuals

You have to identify any individual for whom you keep a client information record as explained in Section 3.2. You also have to identify any individual who conducts a transaction on behalf of anyone else if you have to keep a client information record for the other individual or entity.

If an individual for whom you do not have to keep a client information record conducts a transaction of \$3,000 or more, you have to identify that individual.

If you are required to identify an individual in any of these cases, you have to do so at the time of the transaction.

See Section 4.4 to find out how to identify an individual for this purpose.

4.4 How to Identify an Individual

When you have to identify an individual, refer to the individual's birth certificate, driver's licence, passport, record of landing, permanent resident card or other similar document. Examples of other similar documents include an old age security card, a certificate of Indian status, or a card with the individual's signature and photograph on it issued by any of the following:

- the Insurance Corporation of British Columbia;
- Alberta Registries;
- Saskatchewan Government Insurance;
- the Department of Service Nova Scotia and Municipal Relations;
- the Department of Transportation and Public Works of the Province of Prince Edward Island;
- Service New Brunswick;
- the Department of Government Services and Lands of the Province of Newfoundland and Labrador;
- the Department of Transportation of the Northwest Territories; or

- the Department of Community Government and Transportation of the Territory of Nunavut.

You can refer to an individual's provincial health card, but only if it is not prohibited by provincial or territorial legislation. For example, you cannot refer to an individual's provincial health card from Ontario, Manitoba or Prince Edward Island since health cards cannot be used for this purpose in these provinces. As another example, in Quebec, you cannot request to see a client's health card, but you may accept it if they want to use it for identification purposes. If you have questions about the use of health cards for identification, please contact the appropriate provincial issuer for more information.

A social insurance number (SIN) card can be used to verify the identity of a client, but the SIN (i.e. the number itself) is not to be provided to FINTRAC on any type of report. The office of the Privacy Commissioner (<http://www.privcom.gc.ca>) has produced a fact sheet concerning best practices for the use of SINs. Please consult it for more information on this topic (http://www.privcom.gc.ca/fs-fi/02_05_d_21_e.asp).

For a document to be acceptable for identification purposes, it must have a unique identifier number. Also, the document must have been issued by a provincial, territorial or federal government. For example, a birth or baptismal certificate issued by a church would not be acceptable for this purpose. Also, an identification card issued by an employer for an employee (i.e. an employee identification card) is not acceptable.

The document also has to be a valid one. In other words, an expired driver's licence would not be acceptable.

Valid foreign identification, if equivalent to an acceptable type of Canadian identification document, would also be acceptable for the purposes explained in this guideline. For example, a valid foreign passport is acceptable.

When you refer to a document to identify an individual, it has to be an original, not a copy of the document. In cases where it is not possible for you to view the original yourself, you may choose to use an agent to verify the original identification document on your behalf. Even if you use an agent, you are responsible for making sure the identification requirements are met. If you do this, you should enter into a written agreement with the agent outlining what you expect the agent to do for you.

4.5 Client Identity for Corporations and Other Entities

You have to confirm the existence of any corporation or other entity for which you have to keep a client information record, within six months of creating this record. In the case of a corporation, you also have to determine the corporation's name, address and the names of its directors.

Corporations

To confirm the existence of a corporation as well as the corporation's name and address, refer to the following documents:

- the corporation's certificate of corporate status;
- a record that has to be filed annually under provincial securities legislation; or
- any other record that confirms the corporation's existence. Examples of these include such other records as the corporation's published annual report signed by an independent audit firm, or a letter or a notice of assessment for the corporation from a municipal, provincial, territorial or federal government.

You also have to confirm the names of the corporation's directors. To do this, you may need to see the list submitted at the time of their application for incorporation. In the case of a corporation that is a securities dealer, you do not need to ascertain the name of the corporation's directors. In this context, a securities dealer means a person or entity authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services.

The record you use to confirm a corporation's existence can be paper or an electronic version. Although such information may be available orally (such as by phone), it is not acceptable for these purposes, as you have to refer to a record. If the record is in paper format, you have to keep the record or a copy of it.

If the record is an electronic version, you have to keep a record of the corporation's registration number, the type and source of the record. An electronic version of a record has to be from a public source. For example, you can get information about a corporation's name and address and the names of its directors from Industry Canada's Strategis on line corporations database at http://strategis.ic.gc.ca/cgi-bin/sc_mrksv/corpdire/dataOnline/corpnse. As another example, you may also get this type of information if you subscribe to a corporation searching and registration service.

Entities other than corporations

To confirm the existence of an entity other than a corporation, refer to a partnership agreement, articles of association or any other similar record that confirms the entity's existence. The record you use to confirm the existence of an entity can be paper or an electronic version. Although such information may be available orally (such as by phone), it is not acceptable for these purposes, as you have to refer to a record. If the record is in paper format, you have to keep the record or a copy of it.

If the record is an electronic version, you have to keep a record of the entity's registration number, the type and source of the record. An electronic version of a record has to be from a public source.

4.6 General Exceptions to Client Identification

In addition to the exceptions explained throughout Section 4, the following general exceptions apply to client identification requirements.

Once you have confirmed the identity of an individual as explained in this guideline, you do not have to confirm their identity again if you recognize the individual at the time of a future event that would otherwise trigger the identification requirement.

Once you have confirmed the existence of a corporation and confirmed its name and address and the names of its directors (as explained above), you are not required to confirm that same information in the future.

Once you have confirmed the existence of an entity other than a corporation as explained in this guideline, you are not required to confirm that same information in the future.

5 Third-Party Determination and Related Records

5.1 Third-Party Determination

You have to make a third party determination when you have to keep any of the following records:

- **Large cash transaction record**
Whenever you have to keep a large cash transaction record, you have to take reasonable measures to determine whether the individual who gives you the cash is acting on behalf of a third party.
- **Client information record**
Whenever you are required to keep a client information record as explained in Section 3.2, you have to take reasonable measures to determine whether the client is acting on the instructions of a third party.

In this context, a third party is an individual or entity other than the individual who conducts the transaction. When you are determining whether a “third party” is involved, it is not about who “owns” the money, but rather about who gives instructions to deal with the money. To determine who the third party is, the point to remember is whether the individual in front of you is acting on someone else’s instructions. If so, that someone else is the third party.

In making a third party determination when employees are acting on behalf of their employers, they are considered to be acting on behalf of a third party. The only exception to this is applicable to deposit taking institutions when they have to make a third party determination: an employee depositing cash to his or her employer’s account is not considered to be acting on behalf of a third party.

What constitutes reasonable measures will vary in accordance with the context in which they occur, and therefore could differ from one situation to the next. However, reasonable measures would include retrieving the information already contained in your files or

elsewhere within your business environment, or obtaining the information directly from the client. If a suspicious transaction report is involved, you cannot tip off the client that you are submitting a report. In this case, reasonable measures may not involve obtaining information from the client if you feel this would tip them off that a suspicious transaction report is being submitted to FINTRAC.

5.2 Third Party Records

If you determine that there is in fact a third party, as explained above, you have to keep a record of the following information:

- the third party's name, address and principal business or occupation;
- the incorporation number and place of incorporation if the third party is a corporation; and
- in the case of a large cash transaction, the nature of the relationship between the third party and the individual who gives you the cash; or
- in the case of a client information record, the nature of the relationship between the third party and the client. For examples of third party relationships, see field 18 of Part G in the large cash transaction report.

If you are not able to determine that there is in fact a third party, but you have reasonable grounds to suspect that there are instructions of a third party involved, you have to keep a record to indicate the following:

- in the case of a large cash transaction, whether, according to the individual giving the cash, the transaction is being conducted on behalf of a third party.
- in the case of a client information record, whether, according to the client, the transaction is being conducted on behalf of a third party.

This record must also indicate details of why you suspect the individual is acting on a third party's instructions.

6 How Should Records Be Kept?

You should maintain an effective record-keeping system to enable FINTRAC to have access to the records in a timely fashion. Your records have to be kept in such a way that they can be provided to FINTRAC within 30 days of a request to examine them.

For the requirements explained in this guideline, you can keep records in a machine-readable or electronic form, as long as a paper copy can be readily produced. Also, for records that are kept electronically, an electronic signature of the individual who must sign the record has to be retained. An electronic signature means an electronic image of the signature and does not include a personal identification number (PIN).

You are not required to keep a copy of the reports you make to FINTRAC, but you may choose to do so. It is recommended that you keep the information that FINTRAC sends you in the acknowledgement message about each report processed. This provides the date and time the report was received along with its FINTRAC-generated identification number.

Timeframe for keeping records

In the case of client information records and records to confirm the existence of an entity (including a corporation), these records have to be kept for five years from the day the last business transaction was conducted. In the case of all other records, the records must be kept for a period of at least five years following the date they were created.

Employees or contractors who keep records for you

Your employees who keep records (as described in Section 3) for you are not required to keep those records after the end of their employment with you. The same is true for individuals in a contractual relationship with you, after the end of that contractual relationship. This means that you have to get and keep the records that were kept for you by any employee or contractor before the end of that individual's employment or contract with you.

7 Penalties for Non-Compliance

Failure to comply with your record keeping requirements can lead to criminal charges against you. Conviction of failure to retain records could lead to up to five years imprisonment, to a fine of \$500,000, or both.

8 Comments?

These guidelines will be reviewed on a periodic basis. If you have any comments or suggestions to help improve them, please send your comments to the mailing address provided below, or by email to guidelines@fintrac.gc.ca.

9 How to Contact FINTRAC

For further information on FINTRAC and its activities, reporting and other obligations, please go to FINTRAC's website (<http://www.fintrac.gc.ca>) or contact FINTRAC:

Financial Transactions and Reports Analysis Centre of Canada
234 Laurier Avenue West, 24th floor
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Canada K1P 1H7

Toll-free: 1-866-346-8722

