



Tipped Off: FINTRAC Examination Preparedness

Presented by KPMG to professional members of BCREA

—
July 5, 2023

Disclaimer: This presentation has been prepared based on KPMG's AML Real Estate general industry knowledge. The content should not be viewed as regulatory or legal advice.



Presenters

About our team

KPMG Forensic is an integrated network of forensic and investigative professionals who deliver market-leading services across four key pillars: dispute advisory, investigations, regulatory, and technology.



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Agenda

1

AML Refresher

2

**Improving Your
Compliance Program**

3

**FINTRAC Suspicious
Transactions
Reporting Guidance**

4

**Preparing for Your
FINTRAC Examination**

5

Case Study



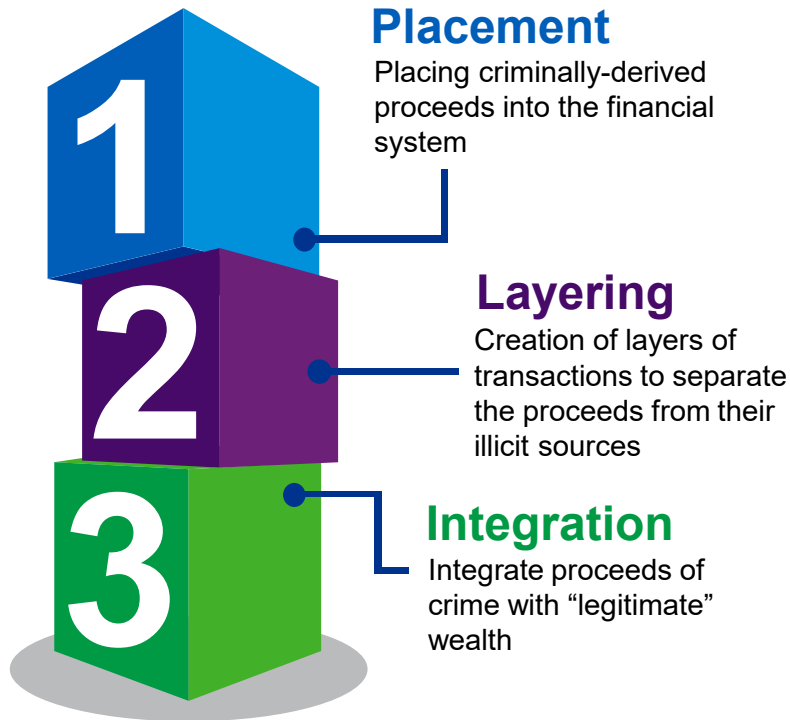
Anti-Money Laundering Refresher



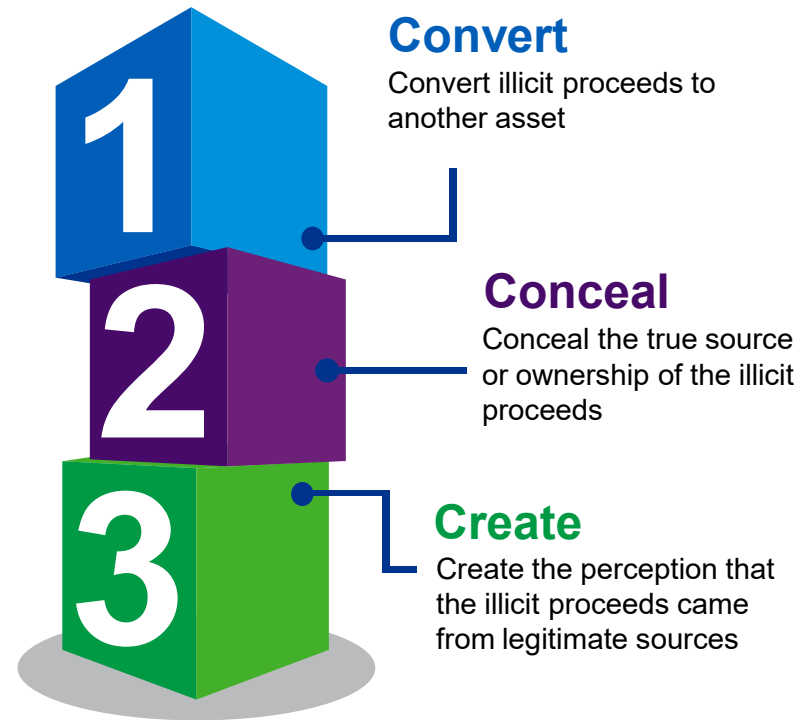
Three Stages of Money Laundering

Money laundering is defined by the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”) as “the process used to disguise the source of money or assets derived from criminal activity”.

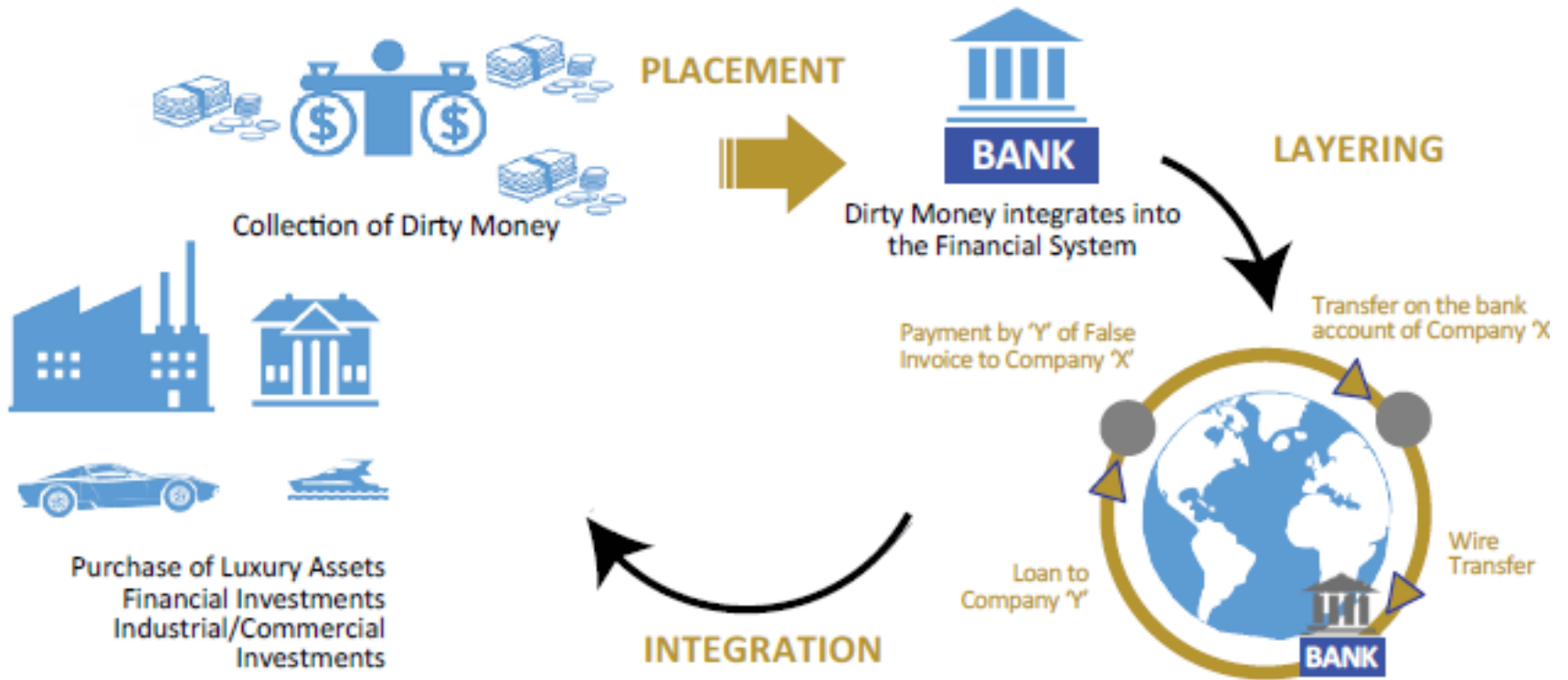
Action



Purpose



Three Stages of Money Laundering



Source: The United Nations, Office of Drugs and Crime

How does this impact your business?



Reputational Risk

Not all news is good news.



Legal/Regulatory Risk

What duties are you required to uphold?



Financial Risk

Loss of assets

Legislation & Regulation – FINTRAC

The **Financial Transactions and Reports Analysis Centre of Canada** is Canada's financial intelligence unit (“FIU”). Its mandate is to:

RECEIVE AND ANALYZE

Receive and analyze information received from reporting entities on ML/TF suspicions

OVERSIGHT

Ensure reporting entities comply with their obligations

PRIVACY

Protect the privacy of personal information under its control

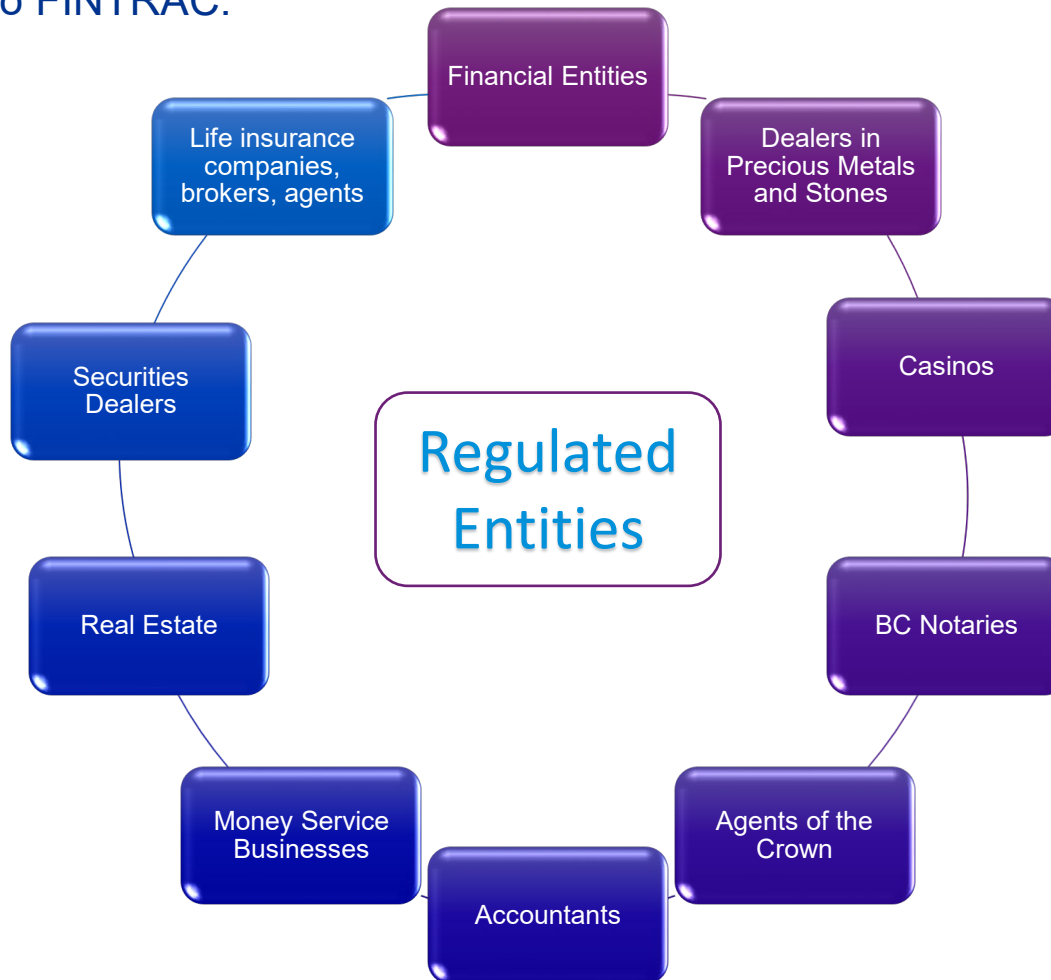
DISSEMINATE

Provide financial intelligence to:

- Law enforcement relevant to investigating or prosecuting a money laundering or terrorist activity financing offence
- CSIS relevant to threats to the security of Canada

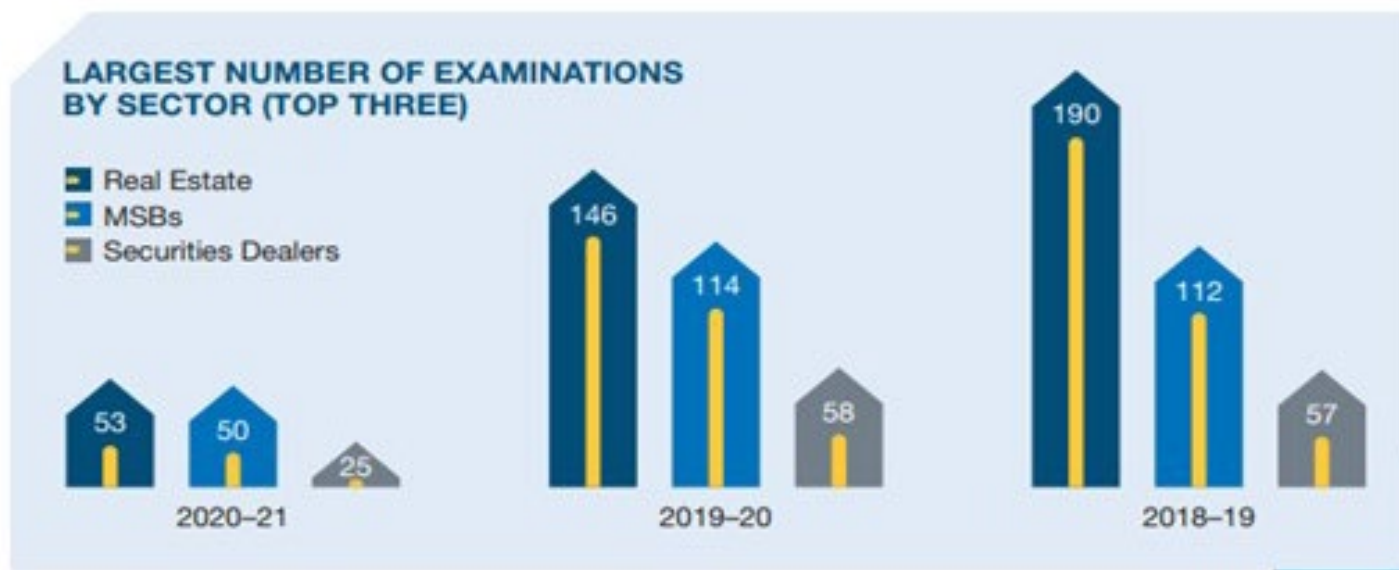
Legislation & Regulation – FINTRAC

The following businesses are considered **reporting entities** and must report certain transactions to FINTRAC:



FINTRAC Compliance Examinations

In 2021-2022, Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) conducted 259 compliance examinations; with 96 of those focused on the real estate sector.



Definition of Real Estate per FINTRAC

Real Estate Brokers and Sales Representatives

Person or entity authorized under provincial legislation to act as an agent for purchasers or vendors in a **purchase or sale** of real property or immovables.

There are **no obligations** for those only dealing in property management transactions (e.g. lease or rental management).

Real Estate Developers

Person or entity that has sold one of the following to the public:

- 5 or more **new** houses or condominium units;
- 1 or more **new** commercial or industrial buildings;
- Multi-unit residential buildings containing at least 5 or more residential units (individually or in combination)

Requirements of Compliance

Non-compliance could put you at risk of administrative monetary penalties (AMPs). AMPs can range in fines of \$1,000 to \$500,000 depending on severity, directly to an entity or even an individual.

**Compliance
Program**

**Know Your
Client**

**Regulatory
Reporting**

**Record
Keeping**

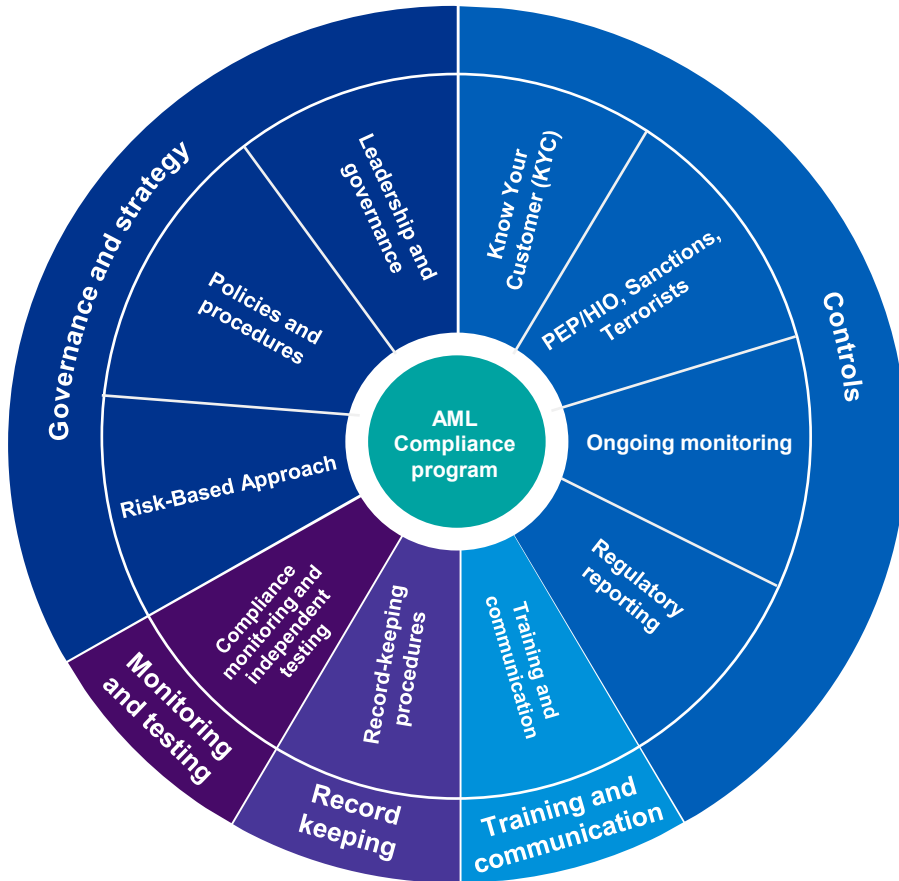
**Ministerial
Directives**



Improving Your Compliance Program

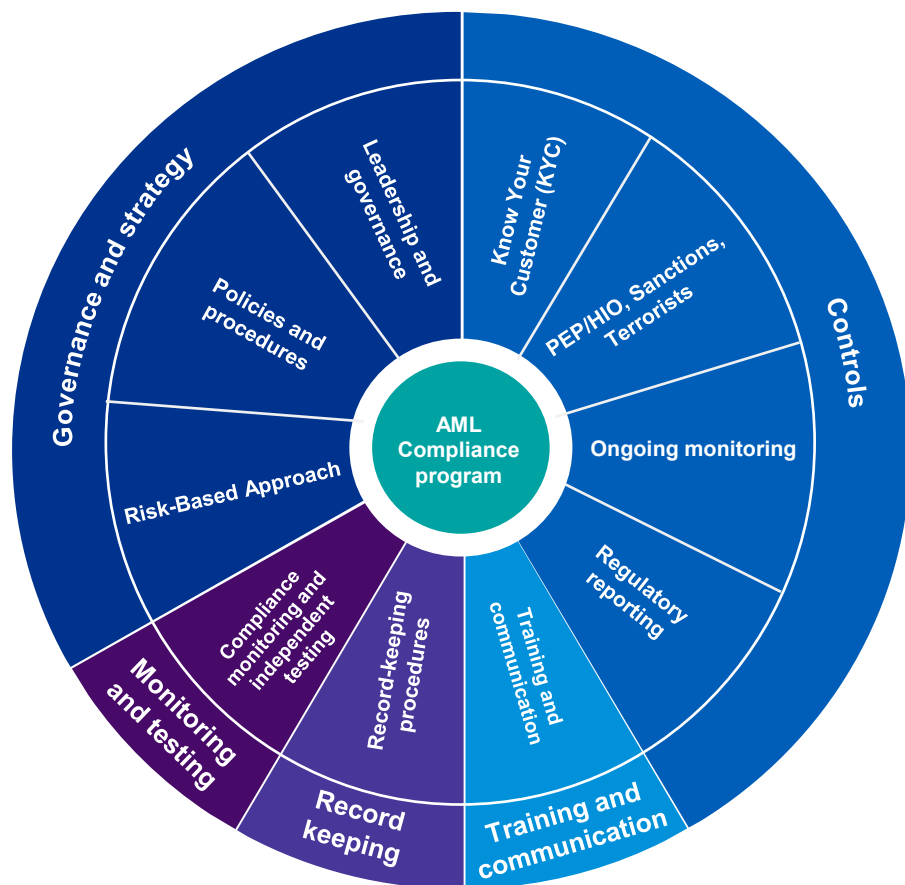


Elements of a Robust AML Program



Section 1 – Governance and strategy	
1	Leadership and Governance
2	Policies and Procedures
3	Risk-Based Approach
Section 2 – Controls	
4	Know Your Customer (“KYC”) / Customer Identification Program (“CIP”) / Customer risk assessment / Customer Due Diligence (“CDD”) / Enhanced Due Diligence (“EDD”)
5	Politically exposed persons and heads of international organizations, Sanctions, and Terrorist List Screening
6	Ongoing monitoring of transactions and business relationships
7	Regulatory reporting
Section 3 – Training and communication	
8	Training and communication
Section 4 – Recordkeeping	
9	Recordkeeping
Section 5 – Compliance monitoring and independent testing	
10	Compliance and monitoring

Section 1: Governance and Strategy



The elements within **Governance and Strategy** act as the foundation upon which an AML/CTF Program is built. Requirements under these elements include:

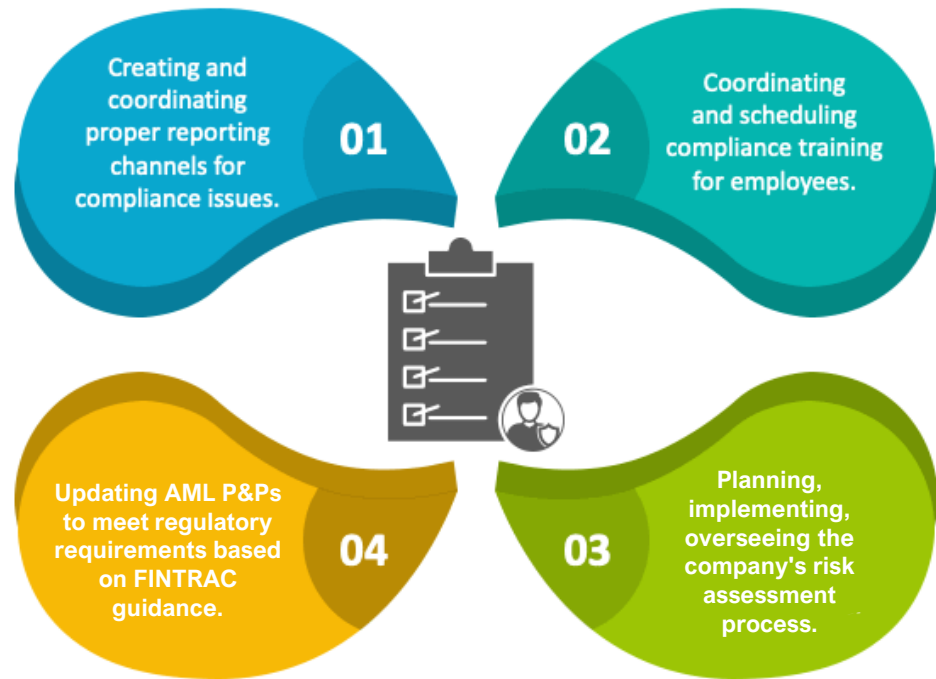
- Board Oversight & Accountability
- Appointment of a CAMLO
- Clearly defined Roles & Responsibilities
- Policies & Procedures
- Institutional-level Risk Assessment

Recommendations on how reporting entities can address these elements is provided in the following FINTRAC Guidance: Compliance Program Requirements & Guidance on the Risk-based Approach to Combatting Money Laundering and Terrorist Financing

Appoint a Compliance Officer

Key Questions

- Do we have a compliance officer? If so, are there any written documents that show we have formally appointed a compliance officer?
- Does this individual have enough knowledge of real estate compliance requirements under the PCMLTFA and other associated regulations, and authority to implement the AML program?



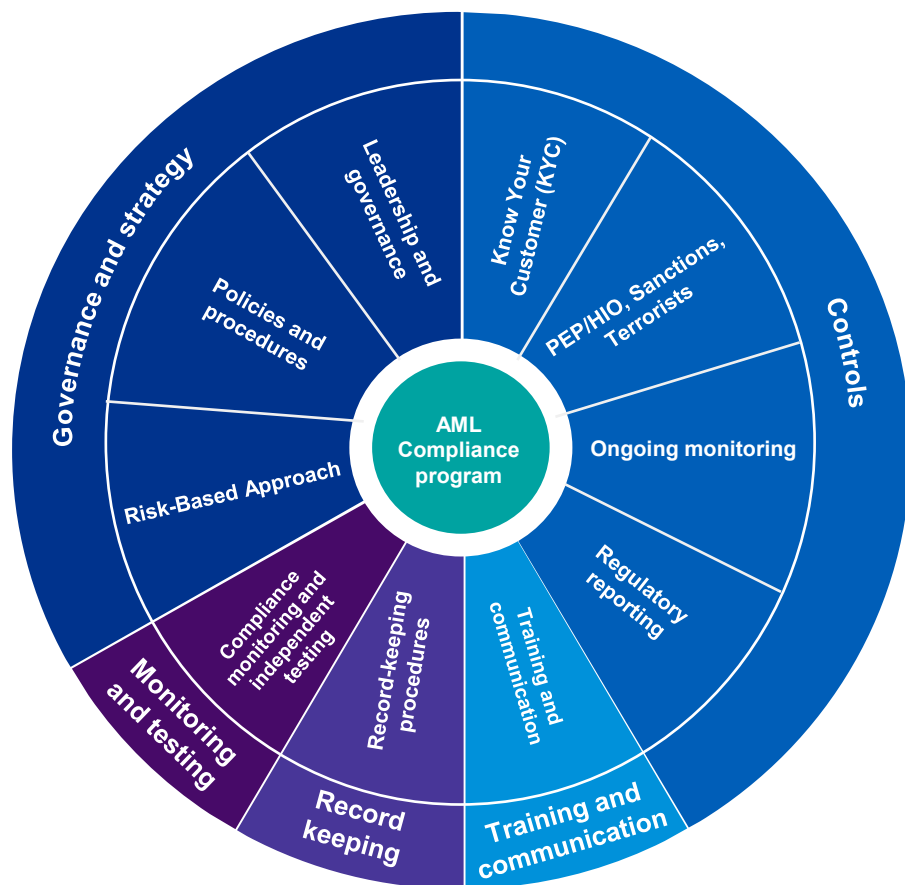
Develop AML/ATF Policies and Procedures

Key Questions

- When was the last time we updated our AML/ATF Policies and Procedures? How do we ensure that our current ML/ATF documents meet the regulatory requirements?
- Do we have well written AML/ATF compliance policies and procedures in place? If so, are they accessible to the intended audience (e.g.: employees, agents and others that deal with clients and transactions)?
- Do these AML/ATF Policies and Procedures clearly provide descriptive processes and steps so that readers can understand and follow them?
- Are these AML/ATF Policies and Procedures approved by Senior Management?



Section 2: Controls

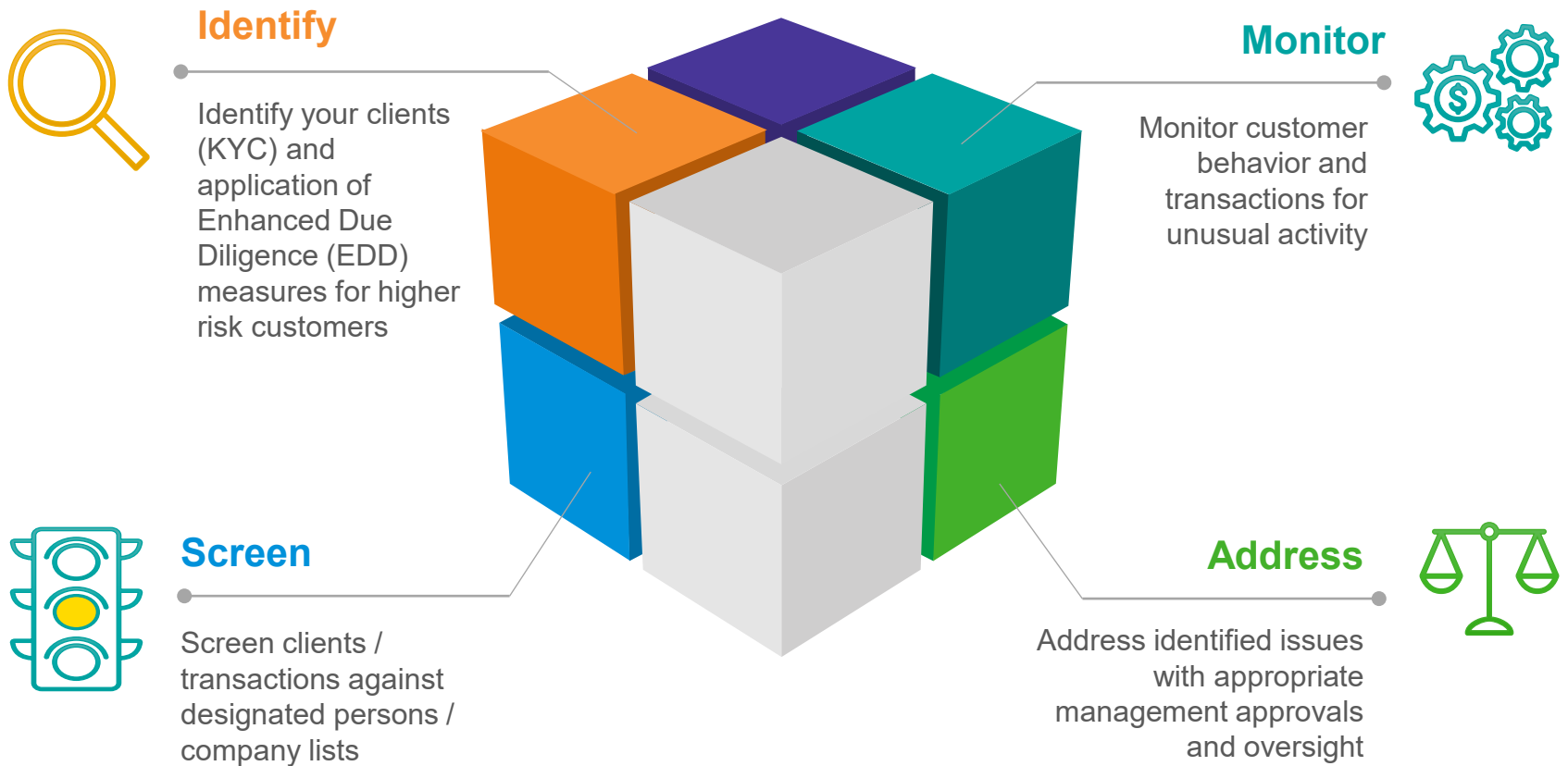


Controls should be designed to help mitigate an institution's ML/TF risks and allow the institution to effectively:

- **Identify** your clients (KYC)
- **Screen** clients / transactions for compliance with imposed Sanctions
- **Monitor** transactions for suspicious and reportable activity
- **Comply** with reporting obligations

FINTRAC has Guidance relevant to these areas including: Compliance Program Requirements, Know Your Client Requirements and Transaction Reporting Requirements.

Know your Client Process



Section 3: Training and Communication



Training and Communication should include the following key areas of focus:

- **Who** to provide training to
- **How frequently** should training be provided to each stakeholder
- **What** topics to cover
- **How** to deliver training

Guidance on building and maintaining an adequate Training program is included in FINTRAC's Guidance Compliance Program Requirements.

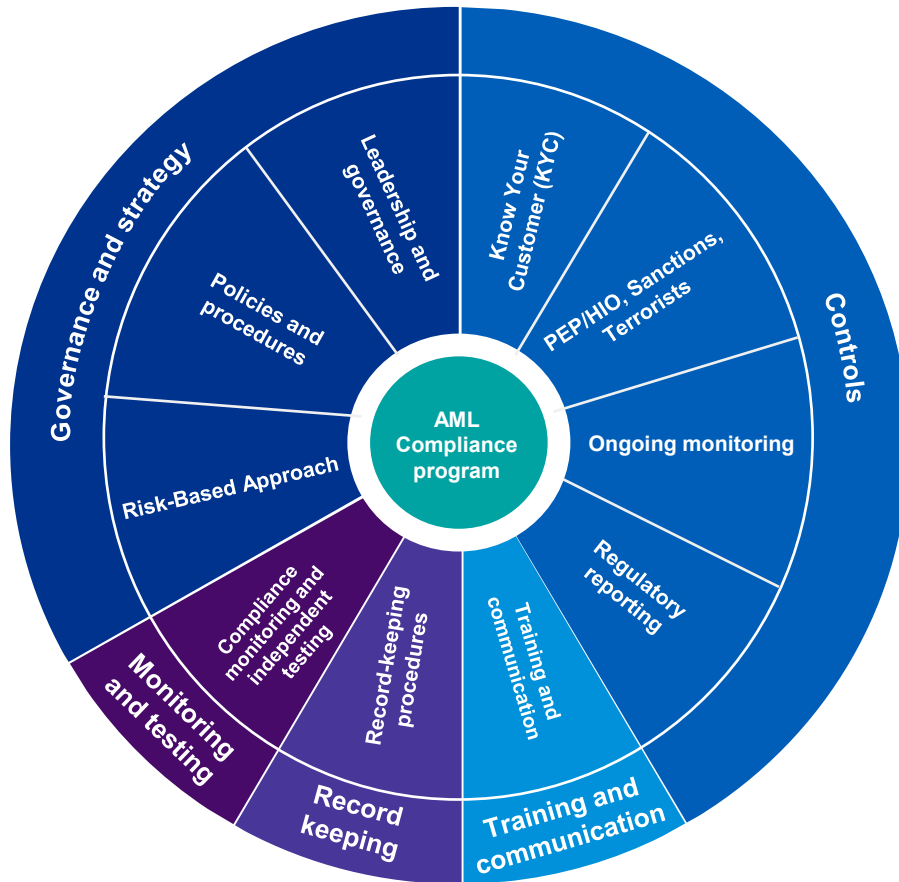
Deliver Ongoing Compliance Training

Key Questions

- Have we developed and maintained a written and ongoing compliance training program?
- Does our training program explain to our employees and agents the requirements under the PCMLTFA and other associated regulations?
- Does our training explain how real estate can be vulnerable to ML/TF activities (e.g.: ML/TF indicators, examples, and trends in real estate sectors?)



Section 4: Recordkeeping

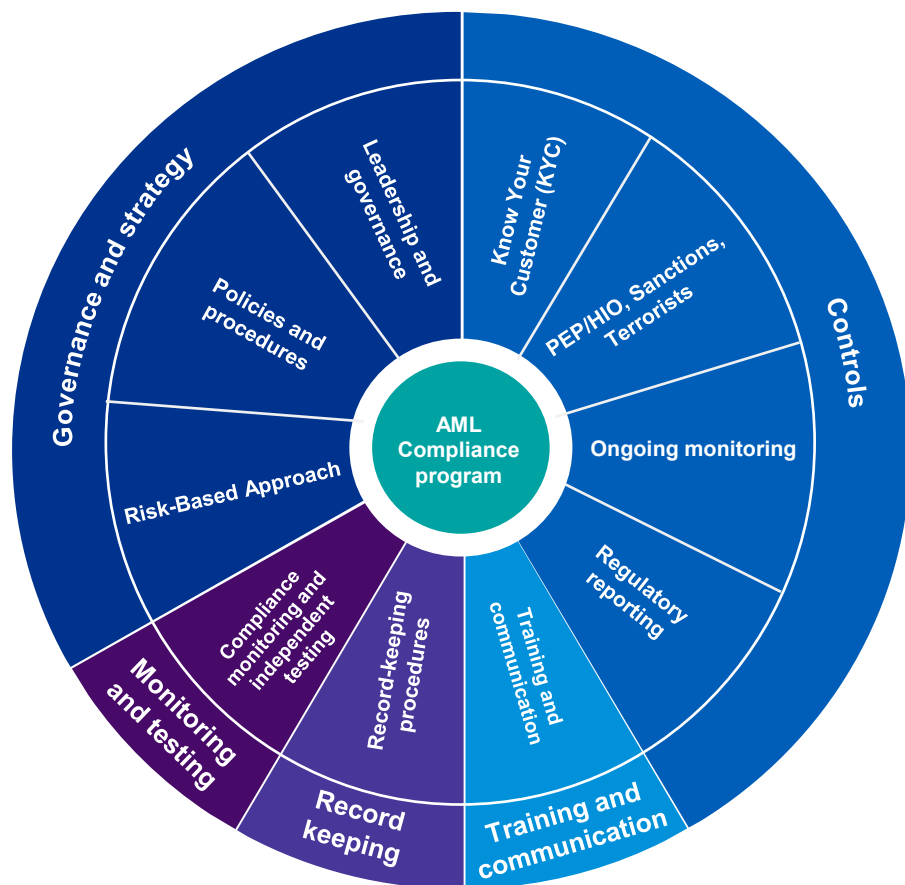


FINTRAC's Guidance on **Record Keeping Requirements** references expectations for the types of records that need to be kept and that records must be maintained in a manner that allows for requests by FINTRAC to be delivered within 30 days.

Specifically, the Guidance lists:

- The types of records that entities must maintain:
- Reports—a copy of every report sent to Receipt of funds records
- Information records
- Identification of unrepresented party records (not applicable to real estate developers)

Section 5: Monitoring and Testing



Effectiveness reviews must be designed to test the effectiveness of the: **policies and procedures, risk assessment, and ongoing training program**, and to identify gaps and weaknesses within the program.

FINTRAC's Guidance on **Compliance Program Requirements** details its expectations for reporting entities to conduct an effectiveness review of its program, every two years. In addition, the **FINTRAC Assessment Manual** describes FINTRAC's overall assessment process and the methods they use to assess compliance with the Act and Regulations.

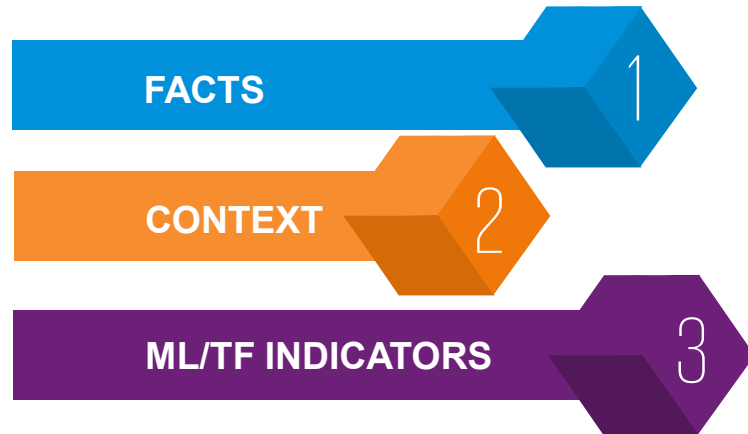


FINTRAC Suspicious Transactions Reporting (STR) Guidance



Identification of a Suspicious Transaction

Used in conjunction with one another



01

FACTS

Not opinion. An event, action, or element that exists or is known to have happened.

02

CONTEXT

A firm understanding and explanation of the observed transaction or action that occurred.

03

ML/TF INDICATORS

Inconsistencies with your client that produce red flags that may directly implicate or prompt suspicions for further assessment.

“The account activity involves wire transfers in and out of the country (FACT), which does not fit the expected pattern of that business (CONTEXT)”

Threshold of Suspicion

Reasonable Grounds: another individual with similar knowledge, experience and training would draw the same suspicions



Simple Suspicion



Reasonable Grounds to Believe



Reasonable Grounds to Suspect

Threshold increases



Simple Suspicion – Low Threshold

A “gut feeling” or a “hunch”. No facts, context, or ML/TF indicators. Promotes action to assess transactions.



Reasonable Grounds to Suspect – Required Threshold

Required to submit an STR. Possibility of ML/TF offense. Do not have to prove the facts that lead to suspicion. Entities are responsible for assessing the facts, context and indicators.



Reasonable Grounds to Believe – High Threshold

More than required to submit an STR. Probability supported by verified facts.

Money Laundering and Terrorist Financing Indicators

Below are some Real Estate Money Laundering indicators as per FINTRAC

Closing with a significant amount of cash or funds

Purchases property in someone else's name (associate or relative other than spouse)

Pays initial deposit with cheque from another party (not spouse or parent)

Complex Corporate Structures

Use of Shell Companies

Purchase of Distressed Properties

Avoids their names on documents that would connect them with the property, or uses different names at each phase

Purchase of Multiple Properties

Build a luxury house in non-prime locations

Unusual Source of Funds

Suspicious Transactions Reporting Steps



01 Confirm

Efficient ongoing monitoring process.

02 Explain

Process for assessment and risk assessment consistencies.

03 Demonstrate

How relevant transactions are identified.

04 Show

Record keeping and decision-making process. Helpful to always document rational.

“It is important to remember that your STR program is linked to the overall effectiveness of your compliance program.”

Practical Considerations for STR Filing

01 | Ensure consistency of STRs in comparison to similar scenarios

02 | Constantly submit & re-assess STRs as long as there is suspicion

03 | Establish common baselines for reasonable grounds to suspect any suspicious transactions

04 | Apply reasonable grounds logic to assessment of transactions

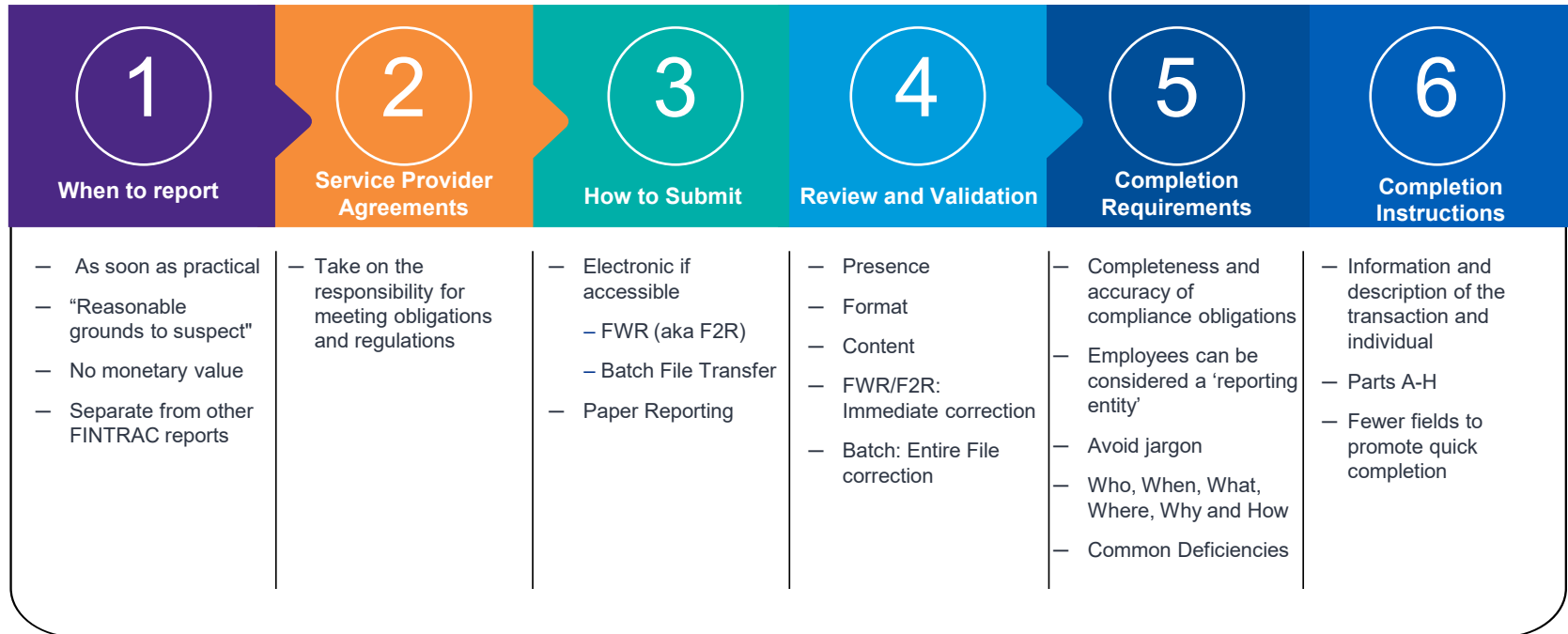
05 | Review timely submission of reports

06 | Assess quality through consistency and integrity

07 | Double-checking the quality of STRs as they have fewer fields than other reports



Submitting STRs Considerations





Preparing for Your FINTRAC Examination



FINTRAC Examinations

FINTRAC has the authority to inquire into the business and affairs of any entity covered under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).

On-Site Examinations

A FINTRAC compliance officer will provide advance notice of the examination. In special circumstances, FINTRAC can enter any premises to carry out a compliance examination without prior notice.

Documentation, such as policies and procedures, risk assessments, and samples of transaction documentation, will be requested prior to arrival.

Desk Examinations

Desk examinations are conducted at a FINTRAC office location instead. A FINTRAC compliance officer will provide advance notice of the examination.

Documentation, such as policies and procedures, risk assessments, and samples of transaction documentation, will be requested to assess compliance with legislative requirements.

Your Examination Responsibilities

FINTRAC compliance examinations assess your compliance program against its obligations under the legislation.



Giving Access to Premises

The PCMLTF Act allows authorized FINTRAC personnel to enter your business premises to ensure compliance with the law.

Producing Documents

The PCMLTF Regulations require that you produce any record that is required to be kept within 30 days of a request by an authorized officer.

Providing Assistance

The person in charge of the premises is required to give a FINTRAC officer all reasonable assistance and furnish them with any compliance information requested.

Potential Requested Documents

FINTRAC compliance examinations may also request for the following documents:

- Most recent version of compliance policies and procedures;
- Most recent version of your documented risk assessment;
- Copy of the last two documented internal and/or external reviews of your compliance program (this may include the reviewer's working papers as well);
- Training program and records;
- Organizational Chart;
- Financial Statements;
- Number of full-time and part-time employees/sales representative;
- All suspicious and attempted suspicious transaction records;
- A list of all closed deals related to the sale/purchase of real estate;
- Receipt of funds record; and
- Large cash transaction records.

Note that this is not an exhaustive list of documents that FINTRAC could request.

Preparing for your FINTRAC Examination

1. Designate a Key Contact

- All correspondence with FINTRAC should be designated to one person

2. Prepare Your Documents

- Coordination and review of all documents before sending to FINTRAC
- Put all materials in binders with tabs and a table of contents, in the same order as the topics identified on the request for information

3. Self Identified Issues

- Consider adding a preface to each section where you have additional contextual information that may be helpful for the examiner (recent updates or changes, etc.) – you may not have the option of walking the examiner through the material

4. Seek External Help

- Seek help from an AML expert

General Phases of the FINTRAC Exam



Case Study



Case Study: Project Athena

The below is an excerpt of a statement provided by a real estate broker in the context of a project titled Project Athena.

Reasons for Suspicion:

This report is submitted for INDIVIDUAL A and is related to the ATHENA project. The main source of funds identified is made up of the following: 12 incoming wire transfers from various Hong Kong-based MSBs, totaling over CAD\$4M.

Funds are dispersed by the following transactions

- 17 bank drafts to 3 different real estate agents
- Bank drafts to dozens of third parties (relationships unknown)
- 3 bank drafts to lawyers (related to real estate).

The client appears to pool funds from HK into one account and then complete various real estate transactions. Many agents work for the same brokerage firm, and why our client is structuring real estate purchases this way is unclear.

What might be the primary indicators of potential money laundering?

Case Study: Project Athena

What are the primary indicators of potential money laundering?

Reasons for Suspicion:

This report is submitted for **INDIVIDUAL A** and is related to the ATHENA project. The main source of funds identified is made up of the following: 12 incoming wire transfers **from various Hong Kong-based MSBs**, totaling over CAD\$4M.

Funds are dispersed by the following transactions:

- 17 bank drafts to 3 different real estate agents
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The client appears to pool funds from HK into one account and then complete various real estate transactions. Many agents work for the same brokerage firm, and why our client is structuring real estate purchases this way is unclear.

Indicators

- **Several transactions are carried out by the same individual, with funds whose origin cannot be validated**
- **Multiple third parties are involved and receive large amounts**
- **In general, real estate transactions make little sense**

Additional Considerations

Changing practices and the regulatory environment will impact how criminals use real estate to achieve their goals



The Prohibition on the Purchase of Residential Property by Non-Canadians Act may lead to a marked increase in the use of nominees.



Major cities such as Vancouver, Toronto, and Montreal are at higher risk, but risk is also increasing in other cities.



Cryptoassets could eventually disrupt the real estate industry.



FINTRAC is increasingly imposing penalties on the real estate industry, with over \$1.1M in penalties issued to 6 brokers in 2022 alone.

Ultimately, money laundering accentuates the problems of access to property and the increase in costs, in addition to reducing income from taxation and taxes; thus, harming the reputation of certain professions.



Thank you



Presenter Bio – Rebecca Ip

CPA, CA, CFF, CAMS-Audit



Rebecca Ip is a Partner and specializes in AML for various reporting sectors including, FIs, Real Estate, Casinos and MSBs. She helps client set up AML compliance program, conduct independent reviews as well as assist in identifying and assessing ML risks. Rebecca is the leader of the GVA Forensic practice. She is also the Co-Chair of the ACAMS Toronto Chapter Board of Directors and is a frequent speaker at industry events.

Rebecca has led and assisted a wide range of forensic and internal audit assignments in the financial services and other AML regulated industries since 2007. These projects include assignments to assist clients in investigating employee misconduct and asset misappropriation, assessing and enhancing fraud and AML-related processes and controls.

Other Useful Resources

Real estate brokers or sales representatives, and real estate developers

<https://fintrac-canafe.canada.ca/re-ed/real-eng>

Guide on harm done assessment for compliance program violations

<https://fintrac-canafe.canada.ca/pen/guides/cp-eng>

Public notice of administrative monetary penalties

<https://fintrac-canafe.canada.ca/pen/4-eng>

The approach and methods used during examinations (FINTRAC Assessment Manual)

<https://fintrac-canafe.canada.ca/guidance-directives/exam-examen/cam/cams-eng>

FINTRAC examinations: your responsibilities and what you can expect from FINTRAC

<https://fintrac-canafe.canada.ca/guidance-directives/exam-examen/05-2005/4-eng>

Risk assessment guidance

<https://fintrac-canafe.canada.ca/guidance-directives/compliance-conformite/rba/rba-eng>

Policy interpretations database

NOTE Real Estate filter can be applied to view all relevant policy interpretations

<https://fintrac-canafe.canada.ca/guidance-directives/overview-apercu/pi/pi-eng>

Other Useful Resources

Record keeping requirements for real estate brokers/sales representatives, and real estate developers
<https://fintrac-canafe.canada.ca/guidance-directives/recordkeeping-document/record/real-eng>

FINTRAC Guidance
[Compliance Program Requirements](#)

Know Your Client (KYC) Guidance

- When to apply KYC <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/client/real-eng>
- Acceptable Methods <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/Guide11/11-eng>
- Business Relationship Requirements <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/brr-eng>
- Ongoing Monitoring Requirements <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/omr-eng>

*There are other subsections under the FINTRAC KYC section.

Transaction Reporting Requirements

- STR <https://fintrac-canafe.canada.ca/guidance-directives/transaction-operation/Guide3/str-eng>
- Terrorist Property <https://fintrac-canafe.canada.ca/guidance-directives/transaction-operation/Guide5/5-eng>
- 24-hour rule <https://fintrac-canafe.canada.ca/guidance-directives/transaction-operation/24hour/1-eng>



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