

2. Sector-specific PCMLTFA changes

In addition to the changes of general application listed in Part 1, a number of changes apply to certain Reporting Entity sectors.

OSLER





SECTOR-SPECIFIC PCMLTFA CHANGES

Casinos

Entering into business relationships

FINTRAC issued new [guidance](#) in February to come into effect on June 1, 2021 that redefines when a casino is considered to have entered into a business relationship. This has wide-reaching implications for various obligations casinos have under the PCMLTFA and its regulations as the beginning of a “business relationship” triggers beneficial ownership determination obligations, ongoing monitoring obligations and obligations to conduct certain PEP/HIO screenings. Under the new definition, a casino enters into a business relationship with a client when one of the following occurs

- the casino opens an account for a client (except in certain circumstances, see the guidance for the full list)
- if the person does not hold an account, the second time, within a five-year period, that the client engages in a transaction for which the casino is required to verify their identity

Know-your-client requirements

On March 22, 2021, FINTRAC issued new guidance on [when to verify the identity of persons and entities for casinos](#) in order to reflect the Amendments. This guidance will come into effect on June 1, 2021.

Changes from the prior guidance include

- additional client verification requirements for large virtual currency transactions (equivalent to \$10,000 or more), which are subject to the 24-hour rule

- the addition of a new exception: there is no need to verify the identity of a person or entity that conducts a large virtual currency transaction if the virtual currency is received from a financial entity or a public body or a person acting on behalf of a financial entity or public body

Screening for politically exposed persons and heads of international organizations

As of June 1, 2021, casinos will be required to conduct screenings for PEPs, HIOs, and the family members and close associates of PEPs and HIOs. In anticipation of this, as well as other changes to PEP/HIO screening under the Amendments, FINTRAC issued new [guidance](#) in May to take effect on June 1. New guidance containing obligations of general application for all REs, including casinos, is described in detail above in Part 1. New guidance specific to account-based reporting entities, including casinos, is available from FINTRAC [here](#).

In summary

- Requirements to take “reasonable measures to determine” PEP/HIO status under the new guidance
 - Casinos must take reasonable measures to determine whether someone opening an account is a PEP, HIO, family member of a PEP or HIO, or a close associate of a foreign PEP.
 - Casinos must periodically determine whether any account holder is a PEP, HIO, family member of a PEP or HIO, or a close associate of a foreign PEP.
 - If the casino or any of its employees or officers detects a fact that would be reasonable grounds to suspect an account holder is a PEP, HIO, or a family member or close associate of a PEP or HIO, the detection of such a fact also triggers an obligation to determine under the new guidance.
- Under the new guidance, once a determination has been made that an account holder is a foreign PEP (or a family member or close associate of a foreign PEP), or a high-risk domestic PEP or HIO (or the high-risk family member or high-risk close associate of a domestic PEP or HIO), casinos must take reasonable measures to establish the source of the funds or virtual currency and the source of the person’s wealth, obtain proper approval by senior management to keep the account open and put into place enhanced measures with respect to the account. This must be done within 30 days after the account is opened or the fact is detected.
- Transaction-specific requirements under the new PEP/HIO guidance
 - When a person requests the initiation of international electronic funds transfers (EFTs) for \$100,000 or more, the casino must determine whether such a person is a PEP, HIO, or a family member or a close associate of a PEP or HIO. If the person is a foreign PEP (or a family member or close associate of a foreign PEP), or a high-risk domestic PEP or HIO (or the high-risk family member or high-risk close associate of a domestic PEP or HIO), the casino must take reasonable measures to establish the source of the funds or virtual currency used for the transaction and the source of the person’s wealth, and must ensure that a member of senior management reviews the transaction.

- When a casino receives \$100,000 in an international EFT on someone's behalf, it must determine whether that person is a PEP, HIO, a family member of a PEP or HIO, or a close associate of a foreign PEP. If the person is a foreign PEP (or a family member or close associate of a foreign PEP), or a high-risk domestic PEP or HIO (or the high-risk family member or high-risk close associate of a domestic PEP or HIO), the casino must take reasonable measures to establish the source of the funds or virtual currency used for the transaction and the source of the person's wealth, and must ensure that a member of senior management reviews the transaction.
- When a casino receives \$100,000 or more in cash or an equivalent amount in virtual currency, it must determine whether that person is a PEP, HIO, or a family member or close associate of a PEP or HIO. If the person is a foreign PEP (or a family member or close associate of a foreign PEP), or a high-risk domestic PEP or HIO (or the high-risk family member or high-risk close associate of a domestic PEP or HIO), the casino must take reasonable measures to establish the source of the funds or virtual currency used for the transaction and the source of the person's wealth, and must ensure that a member of senior management reviews the transaction.
- Recordkeeping is not required for unsuccessful reasonable measures taken, when "reasonable measures" are required.

Unlike the prior guidance, the new guidance sets out certain exceptions to these PEP/HIO requirements. No determinations, for example, need to be made under the new guidance if a person was previously determined to be a foreign PEP or their family member, as those designations continue indefinitely. For a full list of exemptions that apply to casinos, please refer to the new [guidance](#).

Recordkeeping requirements

Casinos will be subject to new recordkeeping requirements under the Amendments. In anticipation of these changes, FINTRAC issued new [recordkeeping guidance](#) in March to take effect June 1, 2021. As with prior guidance, the new FINTRAC recordkeeping guidance does not consolidate all recordkeeping requirements and additional recordkeeping requirements continue to be found in the beneficial ownership guidance, the ongoing monitoring guidance and the PEP/HIO screening guidance, among others.

Changes under the new guidance include

- new obligations to retain records of terrorist property reports and large virtual currency reports for five years
- additional information must be retained in records pertaining to EFTs of \$1,000 or more, including exchange rates and their sources and information pertaining to beneficiaries. There are a number of additional and specific recordkeeping requirements that apply under the new guidance when sending an international EFT of \$1,000 or more
- the modification of the information that must be kept as part of the transaction record for the receipt of funds in the amount of \$3,000 or more in a single transaction, and the addition of new information that must be retained. New information that must be provided in the record includes the amount and type of cash or fiat currency and any applicable exchange rates,

information about other individuals or entities involved in the transaction, reference numbers connected to the transaction and details

- foreign currency exchange transaction tickets for \$3,000 or more must include additional information, including details about the person or entity requesting the transaction, payment methods, currency types, exchanges rates and sources, additional account information and reference numbers
- large virtual currency transaction records need not be kept if from a financial entity or public body
- virtual currency received as compensation for the validation of a transaction or a nominal amount received to validate a different transaction does not trigger a requirement to keep a large virtual currency transaction requirement

Travel rule requirements

In May 2021, FINTRAC issued new [guidance](#) regarding the travel rule for electronic funds, which reflects new obligations introduced by the Amendments and which will come into effect on June 1, 2021. The guidance is applicable to financial entities, MSBs (including foreign MSBs) and casinos only. The travel rule is the requirement to ensure that specific information (“travel information”) is included with the information sent or received in an electronic funds transfer (EFT). Information received under the travel rule cannot be subsequently removed from a transfer.

- The following information must be included when initiating an EFT:
 - the name, address and account number or other reference number (if any) of the person or entity who requested the transfer (originator information);
 - the name and address of the beneficiary; and
 - if applicable, the beneficiary’s account number or other reference number.
- Reasonable measures must be taken to ensure that the travel rule information is included when receiving an EFT, either as an intermediary or as the final recipient. When sending an incoming or outgoing EFT (after receiving it as an intermediary), the travel rule information received or obtained through reasonable measures must be included.
- If an EFT is received and does not have the required travel information, reasonable measures must be taken to obtain that information.
- The policies and procedures must document the following travel rule requirements: i) the reasonable measures to be taken; and ii) risk-based policies and procedures for determining what to do when, after taking reasonable measures, the RE is unable to obtain the travel rule information. Policies and procedures must address under which circumstances REs allow, suspend or reject the transaction, and outline any follow-up measures to be taken.

AUTHORS



Elizabeth Sale
Partner, Banking and
Financial Services
esale@osler.com
416.862.6816



Haley Adams
Associate, Banking
& Financial Services
hadams@osler.com
416.862.6614



Malcolm Aboud
Associate, Litigation
maboud@osler.com
416.862.4207



Chelsea Rubin
Associate,
Competition/Antitrust
& Foreign Investment
crubin@osler.com
416.862.4852