

Compliance Update

CAILBA COMPLIANCE NEWSLETTER

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Anti-Money Laundering – the Introduction of Ministerial Directives and Transaction Restrictions

In 2014, the Act was amended to allow the Minister of Finance to issue “ministerial directives” requiring reporting entities to use countermeasures to transactions coming from or going to designated foreign jurisdictions or entities; and to recommend regulations to restrict reporting entities from entering into financial transactions with those jurisdictions or entities (“transaction restrictions”).

The first such ministerial directive was issued on December 7, 2017 in connection with the Democratic People’s Republic of Korea (North Korea). Under this directive, reporting entities such as insurers, MGAs and advisors must treat all transactions from or to North Korea as high risk, regardless of the size of the transactions.

The special measures you take could include:

- Recording each transaction, including the client's name and address, the amount, currency, date and type of transaction. For individuals you must record the date of birth

and the nature of their principal business or their occupation and for entities, the nature of their principal business.

Records of electronic funds transfers must include the names and addresses of the “ordering client” and the beneficiary (“receiving”) client and the amount, currency and date of transaction. For individual ordering clients, record their date of birth and the nature of their principal business or occupation. For entities that are ordering clients, record the nature of their principal business. You must record whether funds are coming from or going to North Korea.

- identifying clients for all transactions and keeping ID information up to date;
- customer due diligence, including asking for the:
 - source of the funds;
 - purpose of transactions; and
 - beneficial ownership (if the client is an entity);
- enhanced ongoing monitoring of the client and/or the business relationship and/or the account involved in the transaction;
- keeping records of all of the above actions; and
- reporting suspicious transactions (if applicable).

Policies and procedures must include general information on how your organization becomes aware of ministerial directives issued by the Minister of Finance as well as what you will do in response. (Note that FINTRAC states that “the directive will be issued by the Minister of Finance. However, FINTRAC will inform reporting entities that a directive has been issued,” and that instructions will be included on its website. To stay current with your obligations, consider subscribing to FINTRAC’s mailing list at <http://www.fintrac.gc.ca/contact-contactez/list-liste-eng.asp>

Your risk assessment should include the fact that transactions to and from North Korea (and jurisdictions in any future directives) are high risk.

During its reviews, FINTRAC has indicated it may assess your compliance with a directive and your risk assessment to ensure you have documented that you have recorded and assessed the risk associated with jurisdictions subject to ministerial directives and transaction restrictions.

Privacy

In early March, the House of Commons Standing Committee on Access to Information, Privacy and Ethics released a report on updating PIPEDA, which recommends that consideration be given to aligning the Act with Europe's General Data Protection Regulation ("GDPR") over the long term.¹

The report discusses:

- a default opt-in framework for consent for secondary uses of personal information such as marketing.
- updating rules of consent for young people.
- expanding the Commissioner's authority to include making orders and issuing fines for non-compliance.
- modernizing PIPEDA to address new technology and new uses of personal information.
- a framework for the rights to erasure and de-indexing (commonly known as the "right to be forgotten").
- collaborating with the European Union to maintain Canada's adequacy status under the GDPR.

It is expected that the government will issue a discussion paper in the fall of 2018.

As was reported recently in The Canadian Underwriter, the Insurance Council of B.C. recently fined a general insurance broker \$2,500 and ordered her to complete a

privacy compliance course for storing client documents in the locked garage of her home.

The Council found that the broker "had improperly compiled, retained and stored confidential client information without the knowledge and consent of the clients".

What's New with CCIR

CAILBA has provided comments on CCIR's confidential draft guidance on the fair treatment of customers, which is based on Core Principle 19 ("Conduct of Business") of the International Association of Insurance Supervisors. Canada is a member of the Association and the CCIR has made the fair treatment of customers a key initiative. We will provide information at such time that the draft is made public.

What's New in the Provinces

Ontario

FSCO will accept comments on its Draft Statement of Priorities for 2018 until May 8. The Draft Statement focuses heavily on supporting the implementation of the Financial Services Regulatory Authority ("FSRA"). See http://www.fSCO.gov.on.ca/en/about/annual_reports/pages/2018-sop-draft.aspx

CAILBA has been asked to comment on FSCO's confidential draft of guidance on the fair treatment of customers, which is similar in scope to the confidential draft issued by CCIR.

We will provide information at such time that the draft is made public.

To date, only Quebec has issued guidance on the fair treatment of customers in its Conduct of Business guideline.

Quebec

On March 8, the AMF posted "Registrant Governance and Compliance Guide under the act respecting

¹ Tory's, Mondaq newsletter, March 12, 2018

distribution of financial products and services,” which is a very helpful compendium of the laws, regulations and guidance that apply to firms, partnerships and representatives. An appendix provides instructions on performing a cyber self-assessment. Several companion guides are published in addition. See

https://lautorite.qc.ca/fileadmin/lautorite/professionnels/distribution/guide-gouvernance-conformite-inscrits_an.pdf

[https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/G19+EN+public+20171208.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/G19+EN+public+20171208.pdf)

Saskatchewan

CAILBA continues to attempt to dialogue with Saskatchewan in the wake of its introduction of changes to its insurance act and the addition of new regulations that impact MGAs. Of particular concern is the plan to include CLHIA, Advocis and IFB as members of the Insurance Council, while ignoring the key role CAILBA plays in distribution.

What’s New with Insurers and the CLHIA

Several insurers have introduced advisor reviews based on the reference document “CLHIA Standardized Advisor Practice Review for Use in the MGA Channel” introduced in August. Most other insurers intend to introduce reviews shortly.

By now, MGAs should have introduced training and information to advisors on the requirement to produce a “Reason Why” letter or equivalent in all provinces.

Unfortunately, many MGAs have received complaints from advisors, particularly large producers, about the impact of receiving so many surveys with small differences and the lack of harmonization.

CAILBA will make an effort to ensure that CLHIA is aware of the concerns and considers implementing harmonization along the lines of what it did for the MGA Compliance Review Survey.

The CLHIA Board of Directors approved Guideline G19 “Compensation Disclosure in Group Benefits and Group Retirement Services,” in late 2017. CAILBA will continue to provide its input on this important development, as the concerns of industry stakeholders are brought forward. See