

FINTRAC Issues Administrative Monetary Penalties Policy and New Compliance Tools

Suhuyini Abudulai

February 19, 2019

On February 7, 2019, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), issued a number of new compliance tools including a revised administrative monetary penalties (AMPs) policy, FINTRAC's compliance framework, FINTRAC's assessment manual, and a notice on voluntary self-declaration of non-compliance.

The new compliance tools provide valuable guidance and transparency for reporting entities (described below) about how FINTRAC monitors compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations. Reporting entities should review these tools and update policies, procedures, and internal training practices accordingly to strengthen their compliance programs to meet the expectations of FINTRAC.

AMP Policy

Part of FINTRAC's mandate is to assess reporting entities compliance with the PCMLTFA and its regulations. Non-compliance may subject a reporting entity to criminal penalties or AMPs. FINTRAC has had the authority to issue AMPs since late 2008, however, its AMP program has been on hiatus since 2016 after the Federal Court of Appeal's decision in *Canada v. Kabul Farms* (Kabul Farms).

In Kabul Farms, the Court quashed a \$6,000 AMP assessed by FINTRAC, citing a lack of transparency in the manner FINTRAC assessed fines. The revised AMP policy addresses the decision, *inter alia*, outlining how FINTRAC assesses non-compliance, the criteria for determining the AMP amount, and the AMP process.

Principles

The revised AMP program's guiding principles are objectivity, reasonableness, transparency, fairness, consistency, and documentation.

Issuing AMPs

The revised AMP policy outlines the framework where FINTRAC assesses an AMP to address non-compliance. FINTRAC may issue an AMP where it has reasonable grounds to believe a reporting entity has

Cassels

not complied with the PCMLTFA and its regulations. AMPs are not issued automatically and are generally issued where other compliance options are unsuccessful.

Penalty Amounts

Violations are categorized by three degrees of importance with the following penalty ranges:

- Minor violation - \$1 to \$1,000 per violation
- Serious violation - \$1 to \$100,000 per violation
- Very serious violation - \$1 to \$100,000 per violation for an individual and \$1 to \$500,000 per violation for an entity

FINTRAC will take the following into account when determining the penalty amount (1) the purpose of AMPs, which is to encourage compliance, (2) the “harm” done by the violation, and (3) the reporting entity’s compliance history. FINTRAC defines harm as the degree to which a violation interferes with achieving the objectives of the PCMLTFA or FINTRAC’s ability to carry out its mandate.

Assessing AMP Amount

FINTRAC uses a two-step process to assess an AMP amount.

- **Step 1: Harm done assessment – FINTRAC.** In assessing harm, FINTRAC looks at the potential and resulting harm (resulting harm being separate violations that originate from the initial violation). FINTRAC determines whether a reporting entity has either completely failed to meet a requirement or failed in part. Complete failure will typically result in the issuance of the maximum penalty amount. Where the reporting entity has failed to meet part of a requirement, the penalty amount will depend on the part that is non-compliant and the extent of the failure. The extent of the failure is measured using assessment criteria established based on the level of interference with the PCMLTFA’s objectives and FINTRAC’s mandate.
- **Step 2: Compliance history and non-punitive adjustment.** FINTRAC looks at the compliance history of the reporting entity and the purpose of the AMP (which purpose is to encourage compliance, not punishment). The penalty amount is adjusted based on whether or not the reporting entity has previously had an AMP assessed for the violation. The full penalty amount is assessed only after a specific violation has been committed for a third time.

FINTRAC has provided penalties calculation examples, as to the criteria it applies when assessing harm from failure to report a large cash transaction, an electronic funds transfer or a casino disbursement.

Assessment Manual

Cassels

FINTRAC has issued a new Assessment Manual, which describes FINTRAC's approach and methods used during examinations. The manual serves as guidance for reporting entities as to how FINTRAC assesses compliance with the requirements under the PCMLTFA and its regulations. The assessment methods provided in the Assessment Manual are subject to change as a result of consultations or changes in law.

The Assessment Manual is divided into three parts:

- Part 1 provides the framework FINTRAC applies in conducting examinations. The framework is comprised of risk-based examinations (FINTRAC focuses on areas where the reporting entity may be at a higher risk), assessment methods used by FINTRAC, and FINTRAC's assessment approach when evaluating examination findings.
- Part 2 addresses the phases of an examination and provides an overview of FINTRAC's examination process (planning and setting the scope of the examination, applying assessment methods, and developing its conclusions and finalizing the examination).
- Part 3 addresses the methods used by FINTRAC in examinations to assess compliance for the various requirements of the PCMLTFA and its regulations.

Voluntary Self-Declaration of Non-Compliance

Reporting entities are encouraged to voluntarily disclose non-compliance in writing to FINTRAC. Prescribed information must be included in the voluntary self-declaration (e.g., information about the reporting entity and the nature of the non-compliance).

FINTRAC recognizes that there may be circumstances where a reporting entity may come across unreported transactions and may not impose penalties for voluntary self-declaration of non-compliance. For instance, where the non-compliance is not a repeated instance and the declaration is not made after a reporting entity has been notified of an upcoming examination, FINTRAC will not propose AMPs.

Compliance Framework

FINTRAC has prepared a graphic illustrating its compliance framework for assessing compliance with the PCMLTFA and its regulations. The graphic sets out:

- FINTRAC's guiding principles
 - o Transparency, engagement, and clarity
- Businesses (i.e., reporting entities) with compliance obligations under the PCMLTFA
 - o Accountants, agents of the Crown, British Columbia notaries, casinos, dealers in precious metals and

Cassels

stones, financial entities, life insurance, money services businesses, real estate, and securities dealers

- Key obligations of reporting entities

- o Compliance program
- o Know your client identification requirements
- o Reporting transactions requirements
- o Record keeping requirements
- o Registration requirements of money service businesses

- Pillars of FINTRAC's compliance framework

- o Assistance (providing assistance through various channels including online publications and technical support)
- o Assessment (overview of the assessment tools and examination process)
- o Enforcement (overview of enforcement tools and the AMP process)

About FINTRAC

FINTRAC is Canada's financial intelligence unit and its mandate is to facilitate the detection, prevention, and deterrence of money laundering and the financing of terrorist activities.

FINTRAC does not operate as a criminal authority or law enforcement agency and, among other responsibilities, FINTRAC collects reports and voluntary information, monitors compliance by reporting entities with the PCMLTFA and its regulations, and provides financial intelligence to a number of law enforcement and intelligence agencies.

For more information on FINTRAC and related issues, please contact Suhuyini Abudulai or any member of our Banking, Lending & Specialty Finance Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.