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FINTRAC examines compliance with AML legislation and has the power to issue penalties because of deficiencies they observe, but based on the harm they perceive that the deficiency involves. In their guidance, FINTRAC defines "harm" as the degree to which a violation interferes with achieving the objectives of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("**PCMLTFA**") or with FINTRAC's ability to carry out its mandate. Therefore, the consequences of non-compliance, when penalties are imposed, should be linked to its effects on Canada's efforts to combat money laundering and terrorist activity financing ("**ML/TF**").

In this post, we will have a look at violations related to assessing and documenting the risks of ML/TF (often referred to as a company's risk-based approach), and FINTRAC's stated position on the harm that different types of deficiencies entail.

In the event that an individual or entity fails to assess and document the risk referred to in subsection 9.6(2) of the PCMLTFA, it is classified to be a serious violation by FINTRAC and would invoke a penalty of up to $100,000.

Assessment and documentation of ML/TF risks ensures that reporting entities ("**RE**s") are aware of their ML/TF vulnerabilities**.** Identification of the levels and areas of risk enables the RE to apply appropriate mitigation measures to reduce those risks. Failure to assess and document ML/TF risks would prevent the REs from identifying the said vulnerabilities and lead to failing to identify high-risk clients and business relationships for which enhances risk measures are to be applied. Worse still, an absent or poor risk assessment might lead to a failure to detect suspicious transactions, which would deprive FINTRAC of intelligence.

FINTRAC determines the penalties ranges for violations related to assessing and documenting ML/TF risks in four levels.

- Level 1: This is the most serious of violations and in such cases, the ML/TF risks are not assessed or documented for any, or most of the prescribed factors which causes widespread non-compliance and leaves the RE vulnerable to being used for ML/TF, especially in those areas that pose the highest risk. This is assessed as posing the highest level of harm, and the penalty for a Level 1 violation is the highest, set at $100,000.

- Level 2: This level of harm is triggered when a high-priority element for achieving the objectives of the PCMLTFA is not met in the risk assessment, including those for high-risk situations. This could be, but not limited to information and determination of politically exposed persons ("PEP"), beneficial ownership information, clients from a previously submitted terrorist property report ("TPR") or any service, product, delivery channels, geographic locations or individuals or entities, that are identified as high risk by a ministerial directive. Such elements inherently present a high risk of ML/TF, which are key for the prescribed risk assessment. Failure to comply with this requirement leads to a penalty of $75,000.

- Level 3: Level 3 harm is associated with risk assessments that don't include the prescribed elements as their basis in order to support risk mitigation. Basic elements include the products, services and delivery channels offered, business relationship information, geographic considerations and any new technologies that might be in use. Such risk

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assessments might be weaker in identification and lowering of common risks and add to the vulnerability of the RE to ML/TF offences. This level of harm would incur a penalty of $50,000.

- Level 4: Assessing other relevant factors allows REs to understand the ML/TF risks applicable to their operations and contributes to the efficiency of the risk assessment and mitigation strategies. Non-compliance with this requirement poses a harm of Level 4 and incurs a penalty of $25,000.

Risk assessments are complex exercises, and FINTRAC has often rejected templated approaches without sufficient tailoring or support. We routinely help clients through comprehensive exercises to understand and document money laundering risks relevant to their operations, and intelligent risk controls that lean heavily on automated processes.

For more information, visit FINTRAC's guide on harm done or contact us at our website at The AML Shop or email: Contactus@theamlshop.ca.