

FINTRAC gets flexible with new anti-money laundering requirements

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On June 1, 2021, substantial amendments to the regulations issued under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) came into force, along with a comprehensive set of new and updated guidance documents issued by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Taken together, these amended regulations and the new and updated guidance documents effect a wide-reaching overhaul of Canada's anti-money laundering regime, and all entities that have reporting obligations to FINTRAC (known as "reporting entities") will need to carefully assess and uplift their anti-money laundering (AML) policies and compliance procedures.

At a high level, key areas affected by the new regime include:

- new virtual currency obligations;
- new identification and reporting obligations regarding politically exposed persons and heads of international organizations;
- expanded obligations for foreign money services businesses;
- the introduction of obligations relating to prepaid cards for financial entities, such as banks;
- beneficial ownership reporting obligations;
- updates to the 24-hour rule;
- new travel rule requirements;
- business relationship screening requirements;
- ongoing monitoring requirements;
- updated recordkeeping requirements;
- new anti-money laundering training program requirements; and
- updates to identification methods and know-your-client checks.

In light of these significant changes, FINTRAC published a Notice on May 18 stating that it would exercise flexibility and reasonable discretion in the course of assessing reporting entities' compliance programs, and noting that it will not begin to conduct compliance

assessments with respect to the new obligations until April 1, 2022. Accordingly, from June 1, 2021, to March 31, 2022, FINTRAC will only assess reporting entities' compliance programs against the regulatory regime in force prior to June 1, 2021. FINTRAC may, however, assess the new transactional reporting requirements prior to the April 1, 2022, date, but FINTRAC has indicated that it will also exercise an amount of flexibility in such assessments. FINTRAC expects to make an updated Assessment Manual available to the public by March 31, 2022, and projects that it will publish updated harm done assessment guides by spring 2022.

For reporting entities that have already completed the necessary uplift of their compliance programs to reflect the new regulatory requirements, FINTRAC will review the most up-to-date compliance program elements as a part of its assessment process and provide feedback to help those June 1-compliant entities meet all of their new obligations.

Despite these flexibility measures, FINTRAC explicitly noted that it expects reporting entities to comply in full with the new large virtual currency transaction reporting requirements and electronic funds transfer reporting requirements that came into effect on June 1 — although FINTRAC has provided for an interim ramp-up period with respect to these obligations prior to December 1, 2021, as discussed below.

This flexible approach to almost all of the June 1 amendments will come as welcome news to many reporting entities as it will provide some additional time to update and operationalize new policies and procedures and implement any required technology uplifts.

Large Virtual Currency Transaction Reports

One of the foundational components of the recent regulatory overhaul was the introduction of new Large Virtual Currency Transaction Reports (LVCTR) obligations, which all individuals and entities with obligations under the PCMLTFA must submit when receiving an amount in virtual currency equivalent to \$10,000 or more in a single transaction (or series of transactions under the 24-hour rule). While FINTRAC noted that compliance with these requirements is formally required as of June 1, 2021, it has provided for reporting entities to take certain permitted interim measures if the full LVCTR obligations cannot be met. For those unable to comply with the new LVCTR requirements, FINTRAC requires that reporting entities, at a minimum, meet the following interim obligations:

- keep records of reportable transactions as of June 1, 2021;
- complete the implementation of the LVCTR reporting system as soon as possible and no later than December 1, 2021; after that date, LVCTRs must be submitted within five working days; and
- submit all unreported large virtual currency transactions for the period of June 1, 2021 to November 30, 2021 via the FINTRAC Upload or the FINTRAC web reporting system (F2R) as soon as possible but no later than March 31, 2022.

These permitted interim measures will expire on December 1, 2021, and FINTRAC will require all reporting entities to fully comply with the LVCTR requirements on or before that date.

LVCTRs can now be submitted via FINTRAC Upload. The FINTRAC web reporting system, however, does not currently support the submission of LVCTRs. FINTRAC expects to expand its web reporting capabilities to include LVCTRs at some point in the fall of 2021. A specific target date has not yet been announced.

Electronic Funds Transfer Reports

Unlike the more flexible compliance approach detailed above with respect to LVCTRs, FINTRAC's Notice sets a higher standard of expected compliance with the new Electronic Funds Transfer Reports (EFTRs) requirements that also took effect on June 1, 2021.

As of June 1, reporting entities are now required to submit EFTRs to FINTRAC only when acting as the final recipient of international electronic funds transfers of \$10,000 or more in a single transaction (or series of transactions under the 24-hour rule) or when initiating international electronic funds transfers of \$10,000 or more in a single transaction (or series of transactions under the 24-hour rule).

In general, FINTRAC considers instances of over-reporting to be compliance breaches. Accordingly, EFTRs that do not meet either of the above criteria must not be submitted to FINTRAC — even if an EFTR would have been warranted under the regime in place prior to June 1. If over-reporting occurs, reporting entities are expected to submit a voluntary self-declaration of non-compliance to FINTRAC and delete the EFTR from FINTRAC's database as soon as possible.

If an entity with obligations to report EFTRs does not have a system in place to submit EFTRs as required under the June 1 amendments and is consequently under-reporting EFTRs when the amendments come into force, FINTRAC requires that the reporting entity take the following remedial interim measures:

- submit a voluntary self-declaration of non-compliance;
- keep records of all reportable transactions;
- update or implement its reporting system to comply with the requirements as soon as possible but no later than December 1, 2021; and
- submit unreported EFTRs for the period of June 1, 2021, to November 30, 2021, as soon as possible and no later than March 31, 2022.

Declaring non-compliance

Except for the regulatory changes with respect to LVCTRs and EFTRs discussed above, FINTRAC will not require the submission of voluntary self-declarations of non-compliance for a reporting entity's failure to comply with the amendments coming into force of June 1, 2021. This grace period will extend through November 30, 2021. Reporting entities should continue to submit voluntary self-declarations of non-compliance for instances of non-compliance with respect to requirements that were in force prior to June 1 and that remain in force under the June 1 amendments.

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