

GENERAL FRAMEWORK FOR THE APPLICATION OF MONETARY ADMINISTRATIVE PENALTIES

(Section 20 of the Act Respecting Transparency Measures in the Mining, Oil and Gas Industries)

Section 20 of the Act Respecting Transparency Measures in the Mining, Oil and Gas Industries (CQLR, chapter M-11.5) (the “Act”) allows for the imposition of monetary administrative penalties. The sanctions may be imposed by individuals designated by the minister of Énergie et Ressources naturelles (the “minister”) within the Autorité des marchés financiers (the “Autorité”) on any entity subject to the Act who fails to respect the Act or its regulations in the cases and under the conditions prescribed therein. The section calls for the minister to develop and make public a General Framework for the application of monetary administrative penalties in connection with penal proceedings (“General Framework”).

The General Framework sets forth the directions and overall criteria guiding the application of the regime of monetary administrative penalties. However, the decision to impose such sanctions is at the discretion of the individuals within the Autorité designated by the minister.

1. Objectives of the General Framework

The present Framework has the following objectives:

- To outline the directions and general criteria related to the application of the regime of monetary administrative penalties in connection with penal proceedings so as to guide those designated to impose such sanctions in exercising their discretionary power;
- To promote equity, consistency and uniformity in the handling of failures to comply with the Act or its regulations;
- To inform entities subject to the Act and the general population of these orientations and general criteria.

2. General Criteria Guiding the Handling of Failures

When a failure to comply with the Act or its regulations is detected, the principal elements that are usually taken into account to determine the most appropriate sanctions in view of all the circumstances specific to each file are as follows:

- Nature of the failure;
- Objective and subjective gravity of the failure;
- Consequences of the failure;
- Repetitive character of the specific or other failures to comply with the Act or its regulations;
- Behaviour of the entity subject to the Act involved before or after the failure, including the measures taken to remedy the failure.

3. Monetary Administrative Penalties

3.1. Objectives

The imposition of a monetary administrative penalty constitutes an administrative measure available to the Autorité in order to enable it to effectively fulfill its role in monitoring and assuring compliance with the obligations prescribed by the Act and its regulations.

Monetary administrative penalties are aimed at allowing for the appropriate intervention in the event of a failure to comply with the Act or its regulations so as to:

- lead an entity subject to the Act to take the required measures without delay to remedy the failure; and
- to deter the recurrence of such failures.

3.2. Persons Designated to Impose Monetary Administrative Penalties

The individuals whom have been designated by the minister to impose monetary administrative penalties are those who hold the following functions within the Autorité:

- Senior Director, Corporate Finance
- Director, Corporate Finance
- Director, Continuous Disclosure

When a failure to comply with the Act or its regulations is detected, it is the responsibility of these individuals to evaluate the imposition of a monetary administrative penalty by taking all the circumstances specific to each file into account, including the explanations presented by the entity subject to the Act subsequent to receipt of a notice of non-compliance.

3.3. Notice of Non-Compliance

A notice of non-compliance serves as the means by which the person designated by the minister within the Autorité informs the entity concerned that a failure to comply with the Act or its regulations has been detected. The notice also serves to prompt the entity in default to take without delay the appropriate measures to remedy the failure in question. Such a notice makes reference to the fact that the failure could lead to the imposition of a monetary administrative penalty and the pursuit of penal proceedings.

The imposition of a penalty must be preceded by notification of such a notice of non-compliance. Upon receipt of the notice, the entity concerned can thus contact the Autorité to express their observations regarding the failure in question.

3.4 Circumstances Under Which Monetary Administrative Penalties Are Generally Imposed by the Autorité

A monetary administrative penalty is generally imposed for any failure to respect the time limits established for submitting a statement under the Act.

Moreover, a monetary administrative penalty may be imposed when a contravention of the Act or its regulations is detected and the real or perceived consequences of the failure are deemed to be minor or moderate by the person designated to impose such sanctions.

As stated in section 29 of the Act, if a failure to comply for which a monetary penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

The fact that an entity subject to the Act is unaware of its obligations or the fact that the total amount of penalties imposed may be high do not constitute relevant matters that will be considered by the designated person in exercising its discretion.

3.4. Terms and Conditions Attached to the Imposition of Monetary Administrative Penalties

3.4.1. Notice of Claim

A monetary administrative penalty is imposed by the notification of a notice of claim stipulating the amount being claimed, the reasons for its imposition, and the deadline before interest will be applicable. The notice also makes reference to the entity's right to obtain a review of the decision made by the designated person within the Autorité, the deadline to request for a review, as well as to the right, if applicable, to contest the decision made by this individual before the Tribunal administratif du Québec (the "TAQ").

3.4.2. Amount of the Monetary Administrative Penalty

The determination of the amount of a monetary administrative penalty is not subject to the discretion of the person designated to impose such a sanction. This amount is set by the Act and its regulations. The table in section 5.1 of the General Framework presents the amounts associated with the failures likely to be sanctioned via the imposition of a monetary administrative penalty.

3.5. Administrative Review

The decision rendered by the person designated by the minister to impose a monetary administrative penalty can be subject to an administrative review by an individual within the Autorité designated for this purpose by the minister.

3.5.1. Person Designated to Review Monetary Administrative Penalties

The person within the Autorité designated by the minister to review decisions regarding monetary administrative penalties holds the function of Secretary General.

3.5.2. Review Request

The request to review a decision must be made in writing within 30 days after the notification of the notice of claim. The review is an internal administrative process generally conducted on a case-by-case basis, unless the person responsible for the review opts to proceed otherwise. During the course of this process, the entity concerned may express their observations or present any document in support of their case.

A review application is inadmissible if it focuses on the amount of a monetary administrative penalty and this amount corresponds to the sanction prescribed by the Act or its regulations regarding the alleged non-compliance. A review request is also deemed inadmissible if it focuses on the fact that the monetary administrative penalty was imposed on top of another available measure to assure compliance with the Act and its regulations, or on the fact that another measure should have been imposed instead of a monetary administrative penalty.

3.5.3. Review Decision

Requests for review are handled with diligence, and review decisions may be contested before the TAQ within 60 days of its issuance.

3.6. Interest

The amount of the monetary administrative penalty bears interest at the rate prescribed in the first subparagraph of section 28 of the Tax Administration Act (CQLR, chapter A-6.002) as of the 31st day following issuance of the notice of claim, unless it is paid in full before that deadline.

The review request and the appeal before the TAQ do not suspend the application of interest. However, if the review decision is not rendered within 30 days of receipt of the request, interest is suspended until such time as the decision is rendered. In addition, the TAQ can make a ruling regarding interest incurred while the appeal remains before it.

4. Penal Proceedings

4.1. Objectives

The objectives of penal proceedings are generally prioritized as follows:

- Discipline the entity subject to the Act and deter any recurrence;
- Publicly denounce an act or behaviour that infringes or may infringe upon measures of transparency in the mining, oil and gas industries;
- Reprimand refusal to cooperate with the authorities responsible for the application of the Act and its regulations;
- Combat corruption;
- Discourage social stigmatization;
- Allow the court to impose a penalty that takes the gravity of the infraction and its consequences into account.

4.2. Circumstances Under Which Penal Proceedings Are Generally Prioritized

The Autorité prioritizes penal proceedings when it deems such prioritization to be the most appropriate action in light of the objectives being pursued and of all the circumstances specific to the file. The circumstances under which penal proceedings are generally prioritized include, but are not limited to, the following:

- The real or perceived consequences of the failure are serious or sufficiently significant;
- Adequate measures have not been taken by the entity to remedy the infraction;
- Notwithstanding the imposition of one or more monetary administrative penalties, or despite other administrative or judicial measures of a civil nature being taken, the entity subject to the Act omits to remedy the failure;
- The entity concerned acted intentionally or showed negligence or carelessness;
- Several failures to comply with the Act or its regulations were committed by the same entity or are recurrent.

When the real or perceived consequences of a failure are detected at a later point in time, penal proceedings can be launched in accordance with section 21 of the Act, notwithstanding the imposition of a monetary administrative penalty for the same failure. However, it should be noted that no decision to impose such a penalty can be issued to an entity subject to the Act due to a failure to comply with a provision of the Act or its regulations when a statement of offence was previously issued to the entity subsequent to a failure to comply with the same provision occurring the same day and based on the same facts.

5. Categorization of Monetary Administrative Penalties and Fines

Monetary administrative penalty and fine amounts are set by the Act and its regulations. These amounts have been determined in consideration of the nature of the obligations and the objective severity of the contravention of the obligations by the entity concerned.

5.1. Amount of Monetary Administrative Penalties

The following table presents the amount of the monetary administrative penalty associated with each category of failure to comply.

Category	Penalty
Refusing or neglecting to provide any information, study, research or expertise, data, report, review, plan or other document, or failure to respect the deadlines for their presentation (section 30 of the Act)	\$1,000/day
Neglecting to comply with an order imposed under the Act, or preventing or hindering its execution (section 31 of the Act)	\$10,000/day

5.2. Amount of Fines for Penal Proceedings

The table below presents the principal offences outlined under the Act and the maximum fine amount. Section 42 of the Act prescribes that if an offence continues for more than one day, it constitutes a separate offence for each day it continues.

Offence	Maximum Fine Amount
Failure to furnish or to complete a part of the statement (section 6 of the Act)	\$250,000
Failure to make the statement available to the public for a period of five years (section 8 of the Act)	
Failure to conserve all payment-related documents for seven years (section 11 of the Act)	
Failure to convey any information, study, research or expertise, data, report, review, plan or other document required by the Autorité (section 12 of the Act)	
Failure to take the necessary measures to comply with the provisions of the Act subsequent to an order issued by the Autorité (section 14 of the Act)	
Making a false or misleading statement, or providing false or misleading information (section 41(2) of the Act)	
Evading or attempting to evade the application of the Act (section 41(3) of the Act)	
Hindering the action of a person exercising their duties for the purposes of the Act (section 41(4) of the Act)	