



## Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C of the Prevention of Money Laundering Act (PMLA) and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

The notice provides select information from the FIAU's decision imposing the respective administrative measure, and is not a reproduction of the actual decision.

### **DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

09 September 2020

### **SUBJECT PERSON:**

Playbay Malta Ltd

### **RELEVANT ACTIVITY CARRIED OUT:**

Remote Gaming Operator

### **SUPERVISORY ACTION:**

On-site Compliance review carried out in 2018

### **DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:**

Administrative Penalty of €58,757 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

### **LEGAL PROVISIONS BREACHED:**

- Regulation 5(1) and Regulation 5(3) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 11(5) of the PMLFTR and Section 3.4 of the Implementing Procedures Part II (Remote Gaming);
- Regulation 15(6) of the PMLFTR, Section 6.4 of the Implementing Procedures Part I, and Section 5.4 of the Implementing Procedures Part II (Remote Gaming).

### **REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

Regulation 5(1) of the PMLFTR and Regulation 5(3) of the PMLFTR

The compliance review revealed that the Company did not have a documented business risk assessment (BRA) in place at the time of the examination, and neither did it display a sufficient level of understanding which could evidence the Company's appreciation of the risks its business operations are or could expose it to. In its representations, the Company did not deny this finding however it explained that its failure to have a BRA was due to the small number of registered players. The Committee, while agreeing

that the BRA has to be proportionate to the nature and size of the Company's operations, concluded that this did not exonerate the same from performing a BRA. The Company was still required to understand the risks, actual or potential that it could be exposed to from its overall customer base, the products/services it offered, the geographical distribution of its services, the channel through which such products/services are being offered and to understand the level of controls necessary to manage the risks identified.

In light of the abovementioned findings, the Committee determined that the Company has completely failed to comply with its obligations and has therefore been found in breached of Regulations 5(1) and 5(3) of the PMLFTR.

#### Regulation 5(5)(a)(ii) of the PMLFTR

The Company failed to have in place the necessary risk assessment and risk management procedures including customer acceptance policies, customer risk assessment procedures and internal controls, in order to be in a position to understand the risks it is exposed to and to have sufficient controls to mitigate these risks. Thus, the Company was servicing customers without understanding the risks posed by same and without determining the mitigating measures necessary in view of any risks identified.

The compliance review revealed that the Company did not have a documented Customer Acceptance Policy. The Company did not have a document which sets out the kind of customers it was willing to service and the ensuing level of due diligence that had to be applied based on the risk posed by such customers. The Company's representatives were not able to explain the Company's overall risk appetite, that is, whether the Company considered any particular criteria before accepting a customer and in which circumstances it would decline a customer.

The Company was found to have no documented customer risk assessment procedures in place and its AML Policies and Procedures offered no explanation as to how the Customer Risk Assessment was conducted in practice.

During the onsite examination, it was also noted that the Company was not obtaining the necessary information to establish the customer's source of wealth and the expected level of activity. The Committee determined that as a result of this failure, the Company was unable to develop a customer business and risk profile, which profile is essential to monitor and detect anomalous activity. There were no established procedures in place providing for the collection of information and when this information needs to be obtained. The Committee concluded that this failure further corroborated the Company's inadequate policies and procedures and its failure to ensure that it has measures in place to ensure adherence to its AML/CFT obligations.

Further to the above, although a general reference was made to the circumstances that would require the carrying of enhanced due diligence ("EDD") measures, such procedures were generic and non-comprehensive. The procedures fell short of outlining the appropriate EDD measures to be conducted whenever the Licensee encounters higher risk scenarios. Most of the EDD measures employed by the Company focused on obtaining verification documents or validating the customer's residential address, thereby failing to identify and address the risks emanating from each set of circumstances. Officials onsite also noted the Company's limited appreciation of the need to implement adequate measures to control high risk situations. The Committee concluded that the fact that the Company did not distinguish between obtaining additional information from the client and customer identification measures demonstrated the Company's weak comprehension of the requirement to implement risk assessment and risk management procedures that are commensurate to the levels of risks encountered.

Furthermore, the Company did not have in place procedures covering the requirement to monitor the relationship entered into with its customers, thus not being in a position to detect anomalous or suspicious transactions adequately.

The abovementioned shortcomings confirmed that the Company had systemic issues in relation to its ability to understand and mitigate the risks posed by its customers. Therefore, the Committee found the Company in breach of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulation 11(5) of the PMLFTR and Section 3.4 of the Implementing Procedures Part II (Remote Gaming)

The examination review revealed that although the Company was open to accepting politically exposed persons (“PEPs”), it was noted that no evidence that PEP searches were carried out was found on file. Moreover, it was observed that the Company was making use of a website which caps the total amount of searches to five per day, thus the Company’s ability to perform PEP searches on customers was limited to a maximum of 5 a day. The Committee also noted that the Company’s procedures were silent in relation to the measures to be applied to determine whether an individual is a PEP or otherwise. Neither was any reference made to the EDD measures that were to be implemented to control this particular risk exposure (as explained above).

In light of the aforementioned findings, the Committee determined that the Company had systematically breached Regulation 11(5) of the PMLFTR and Section 3.4 of the Implementing Procedures Part II at the time of the onsite examination.

Regulation 15(6) of the PMLFTR, Section 6.4 of the Implementing Procedures Part I, and Section 5.4 of the Implementing Procedures Part II (Remote Gaming)

Lastly, it was also observed that the Company’s procedures were silent on the procedures which must be followed by employees of the Company for the filing of internal reports of suspected or known instances of ML/FT to the MLRO. Moreover, the Company’s procedures made reference to submitting suspicious transaction reports (STRs) to the FIAU and to any other authority. This was considered by the Committee as a cause for concern since the PMLFTR and the Implementing Procedures are explicitly clear in guiding subject persons to submit STRs exclusively to the FIAU.

After taking into consideration the findings and the representations of the Company, in which it admitted to having missing processes and procedures, the Committee determined that the Company was in breach of Regulation 15(6) of the PMLFTR, Section 6.4 of the Implementing Procedures Part I, and Section 5.4 of the Implementing Procedures Part II (Remote Gaming).

**ADMINISTRATIVE MEASURES TAKEN BY THE FIAU’S COMPLIANCE MONITORING COMMITTEE (CMC):**

The serious and systemic issues identified, as has been explained above, necessitated the imposition of an administrative penalty that is appropriate and just to the seriousness of the case. For this reason an administrative penalty of fifty eight thousand, seven hundred and fifty seven euro (€58,757) has been imposed on the Company for all the breaches explained above.

In determining the appropriate administrative measure to impose, the CMC took into consideration the shortcomings identified during the compliance review, the representations of the Company, as well as the nature and size of the Company’ operations, and that the Company is not considered to be large within its same business operations. The Committee also took into consideration the status of the Company, that is, that over a period of nine months from the beginning of the year 2020 it had undergone voluntarily suspension of its license.

The Committee noted that the Company had expressed its intention to remedy and rectify the shortcomings however, it further noted that no evidence whatsoever was produced by the Company confirming that action was actually being undertaken to redress the various shortcomings identified..

In view of the fact that the lifting of the voluntary suspension is contingent upon the Company providing the Malta Gaming Authority with a comprehensive business regeneration plan, the Committee determined that it would serve a Remediation Directive upon the Company once it had submitted the same plan so that the actions included therein would be integrated in the said plan.

16 September 2020

