



Administrative Measure Publication Notice

This Notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2) of the Prevention of Money Laundering Act (“PMLA”) and in accordance with the policies and procedures on the publication of AML/CFT administrative measures established by the Board of Governors of the FIAU.

It is pertinent to note that this Notice provides select information from the FIAU’s decision imposing the respective administrative measures, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

30 October 2020

RELEVANT ACTIVITY CARRIED OUT:

Investment Services

SUPERVISORY ACTION:

On-site compliance review carried out in 2018

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €35,109 and a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”).

LEGAL PROVISIONS BREACHED:

- Regulation 5 of the PMLFTR;
- Regulation 7(1)(a) of the PMLFTR and section 3.1.1.2(i) & (ii) of the IPs¹; and
- Regulation 7(1)(c) of the PMLFTR.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Regulation 5 of the PMLFTR

From the compliance examination it was identified that the Company conducts two distinct Customer Risk Assessments (“CRAs”) which take into consideration different risk criteria, this depends on whether the customer is on-boarded by the Maltese licensed company or through its EU Branch.

¹ Reference to the Implementing Procedures as last amended on 27 January 2017. This obligation is now found within Section 4.3 of the Implementing Procedures as last amended on 15 September 2020.

CRA assessments for customers on-boarded by the Maltese licensed company undergo a thorough and adequate process which takes into consideration the four risk criteria as mentioned in Section 4.1.1.2² of the IPs. However, customers on-boarded by the EU Branch are risk rated differently, with such assessments only taking into consideration two risk factors, and thus not being in line with the Company's legal obligations and also with its own CRA procedures which necessitate the consideration of the four risk pillars.

The Compliance Monitoring Committee's ("CMC") concerns are increased as the majority of customers (75% of the selected sample of customer files reviewed) on-boarded by the Company were through the EU Branch. Hence, the Company had been implementing an inappropriate approach to risk assessing its customers. This approach has led to the fact that customers on-boarded from the EU Branch are being subjected to a more lenient approach with regards to risk understanding than those on-boarded through the Maltese office.

In view of the above considerations, the CMC determined that the findings identified are deemed as breaches of the Company's Risk Assessment obligations in terms of Regulation 5 of the PMLFTR.

Regulation 7(1)(a) of the PMLFTR and section 3.1.1.2(i) & (ii) of the IPs³

During the compliance examination, in all of the files on-boarded by the EU Branch, none of the documentation pertaining to natural persons boarded face-to-face were duly certified. This is due to the fact that the Company failed to ensure that the policies and procedures implemented by the EU Branch were in line with the AML/CFT obligations pertaining to the Company, as a Maltese subject person, in particular to the regulations outlined within the PMLA, PMLFTR and Implementing Procedures.

In view of the considerations outlined above, the CMC determined that the findings identified during the time of the compliance examination constituted breaches of Regulation 7(1)(a) of the PMLFTR and section 3.1.1.2(i) & (ii) of the IPs, pertaining to identification and verification of applicants for business.

Regulation 7(1)(c) of the PMLFTR

The compliance examination identified that in six files reviewed, the Company either held no or insufficient information pertaining to the purpose and intended nature of the business relationship. Furthermore, as was the case for the majority of such files, they held insufficient information on the employment/occupation of the customer as the descriptions obtained were generic.

While the CMC acknowledges that the type of risk exposure shapes the detail and evidence that need to be obtained to build the customer's risk profile; details that are clear enough to understand the customer and build an opinion of the possible risks are still necessary. Therefore, obtaining generic information such as 'Professional Registered Person' and funds generated from 'Business Proceeds', are inadequate and defeat the purpose for which they are requested. This due to the fact that one cannot understand the professional expertise of the customer and also from where the funds would have been derived. Furthermore, in cases where the customer listed 'inheritance' or 'life savings' as a source of wealth, this was not substantiated in any manner. Therefore more details on the customer

² Reference to the Implementing Procedures as last amended on 27 January 2017. This obligation is now found within Section 3.2 of the Implementing Procedures as last amended on 15 September 2020.

³ Reference to the Implementing Procedures as last amended on 27 January 2017. This obligation is now found within Section 4.3 of the Implementing Procedures as last amended on 15 September 2020.

are necessary to be able, firstly, to strengthen the CRA and secondly, to carry out effective monitoring of the customer relationships.

As an example, the majority of files for which findings were identified, source of wealth value exceeded EUR 1,000,000. This should have led the Company to obtain further information and at times documentation in relation to the origin of such customer's source of funds/wealth. This is required to establish an adequate explanation and reach a reasonable conclusion that the customer's wealth has been accumulated legally, and that subsequent funds that will be used to carry out transactions in the course of a business relationship are legitimate.

In view of the above considerations, the CMC determined that the findings identified constitute as failures to collect adequate information on the purpose and intended nature of the business relationship, hence such findings have been deemed as breaches to Regulation 7(1)(c) of the PMLFTR.

ADMINISTRATIVE MEASURES IMPOSED BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:

After taking into consideration the above mentioned breaches by the Company, the CMC decided to impose an administrative penalty of thirty-five thousand one hundred and nine euro (€35,109) pertaining to the breaches to Regulation 5 and 7(1)(c) of the PMLFTR.

The CMC positively noted the Company's remedial action stated to have been undertaken since the compliance examination. The Committee noted that remedial actions which involved the implementation of updates to the AML/CFT policies of the EU Branch, in particular in order to align the EU Branch Customer Risk Assessment procedures with those implemented by the Maltese Company. In addition to also duly reflect the certification requirement in line with the applicable Maltese AML/CFT Regulations.

In terms of its powers under Regulation 21(4)(c) of the PMLFTR, the CMC also served the Company with a Remediation Directive. This to ensure that the remedial actions are implemented in practice and for the FIAU to ensure that the Company remedies its position and becomes fully compliant with the obligations imposed in terms of the PMLFTR and the Implementing Procedures. Through the Directive, the Company is expected to carry out the following:

- Provide documentation explaining the actions undertaken by the Company to remediate the findings identified pertaining to the Company's Risk Assessment Procedures;
- Provide an update of how many existing customers have been reviewed by the Company/Branch as part of its ongoing monitoring obligations, including the updating of relevant documents and certification;
- Provide documented explanations as to the enhancements undertaken by the Company to ensure that the information collected in relation to the Purpose and intended nature of the business relationship is appropriate and adequate for the Company to be in a position to build a comprehensive business and risk profile of the customer; and
- For a sample of client files on-boarded following the onsite examination by the EU Branch, the Company is to provide all relevant documentation pertaining to the Customer Risk Assessment undertaken, information pertaining to the purpose and intended nature of the business relationship and all other relevant Customer Due Diligence Collected by the Company.

In determining the appropriate administrative measures to impose, the CMC took into consideration the representations submitted by the subject person. The nature and size of the subject person's operations and the overall impact that the AML/CFT shortcomings have caused or could have caused both to its own operations and also to the local jurisdiction were also taken into account by the CMC. The seriousness of the breaches identified together with their occurrence were also considered by the CMC in determining the administrative measures imposed.

Finally, the subject person has also been duly informed that in the eventual failure to provide the above mentioned supporting documentation within the specified deadlines, such default shall be communicated to the CMC for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

6 November 2020

