Administrative Measure 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 administrative measures established by the Board of Governors of the FIAU.

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:

16 April 2024

RELEVANT ACTIVITY CARRIED OUT:

Advocates (Firm)

SUPERVISORY ACTION:

Compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €49,585 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulation 15(6) of the 2015 PMLFTR and Section 6.4 of the 2015 IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Reporting Obligations – Regulation 15(6) of the 2015 PMLFTR and Section 6.4 of the 2015 IPs

The Committee noted that the Firm was acting on behalf of two foreign politically exposed persons (PEPs) and their companies over a period of time (between 2015 and 2019) when several adverse media reports had been published relating to these two PEPs, claiming that one of the two had acquired their wealth through corrupt practices. One particular media report spoke about how this foreign PEP had acquired a company through a questionable deal with a Governmental company that dealt in the same commodity, and this through a joint shareholding by both companies aforementioned in a company which completely owns another company which the Firm had assisted with a number of transactions. The Committee observed that the Firm had failed to submit a timely suspicious transaction report (STR) and this despite the Firm's assertions that there was no need to file an STR prior to 2020. The Committee saw the Firm's representations wherein it was stated that the adverse media reports and reputation of the clients had been carefully assessed and that clarifications had been sought from several individuals, including the clients' own foreign lawyers. The reliability of the adverse media reports was also questioned by the Firm.

Moreover, the Firm also explained that the transaction surrounding the company as aforementioned was questioned and upon extensive probing the Firm concluded that there was no need to escalate matters to the MLRO of the Firm at the time.

The Committee acknowledged the fact that the Firm sought clarifications and explanations in relation to this transaction, and whilst it understood that the Firm did indeed try to get into the crux of the matter in relation to this, it stressed that the adverse media in relation to the PEPs in question had long been accumulating.

Moreover, the Committee also considered the Firm's assertions that although there was adverse media with respect to the clients it was servicing, there were also several positive media reports. The Committee however discounted this since the so-called positive media reports referred to by the Firm did not provide any insight discounting the adverse information found but rather provided information on the business fortune of the customers. The Committee also commented on the Firm's contention that the adverse media were politically motivated and held that although these PEPs were indeed being serviced by known legal providers and there were also media articles that were not adverse in nature, this is not enough to determine that these were politically motivated and to simply discount the same. This more so when considering that the Firm did indeed end up submitting STRs with the FIAU.

The Committee more importantly considered that ultimately there was a connection between the Firm's knowledge of the customers' dealings as abovementioned with what the adverse information was claiming. This because, the Firm had a shareholder's agreement which was linked to the above-mentioned transaction and through such agreement the adverse information became more that simple information. Therefore, the adverse information surrounding the foreign PEP and the way the wealth was earned (as extensively explained in all the adverse media reports on the PEP), is corroborated with a concrete example that truly depicts how money that belonged to the country and had to be used for the benefit of such country could ultimately and very easily end up owned by this foreign PEP.

The Committee saw the Firm's representations which held that it had indeed submitted STRs following adverse information that referenced numerous documentation in relation to these PEPs, which was issued in 2020. However, the Committee stressed that the information unveiled through these leaks corresponded with that published in the media. Therefore, there was no material new information that was available through the 2020 adverse information that would have triggered the submission of an STR at that time and not before when it held all the other adverse information. Moreover, it further pointed out that the Firm was not only in possession of such adverse media reports, but it also had on file the Shareholders' Agreement mentioned above, therefore suspicion should have a least arose by June 2015, when it obtained the shareholder's agreement, confirming the Firm's delay in its submission of the STRs.

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

After taking into consideration the abovementioned breaches by the Subject Person, the Committee decided to impose an administrative penalty of forty-nine thousand, five hundred eighty-five euro **(€49,585)** with regards to the breaches identified in relation to:

- Regulation 15(6) of the 2015 PMLFTR and Section 6.4 of the 2015 IPs.

When deciding on the appropriate administrative measures to impose, in addition to the specific breaches outlined above, the Committee took into consideration the importance of the obligations being breached,

the level of seriousness of the findings identified and whether the breaches identified could have led to the unintentional facilitation of ML/FT. The Committee also considered the Subject Person's size and the impact that the Subject Person's failure may have had on both its operations and on the local jurisdiction. The level of cooperation portrayed by the Firm and its officials throughout the supervisory process were also factored in. The Committee also considered that the Firm ultimately did submit an STR, albeit late, and that the Firm did attempt to understand the transactions as above-mentioned.

The administrative penalty hereby imposed is not yet final and may be appealed before the Court of Appeal (Inferior Jurisdiction) within the period as prescribed by the applicable law. It shall become final upon the lapse of the appeal period or upon final determination by the Court.

Key Takeaways

- The obligation to submit an STR arises when the Subject Person has knowledge, suspicion or reasonable grounds to suspect that a transaction may be related to ML/FT, a person may have been, is, or may be connected with ML/FT, or ML/FT has been, is being, or may be committed or attempted. In determining this in the context of adverse information one is to:
    - Assess adverse information in the context of the business relationship or transactions involved in as well as in the context of all the available information on the customer and its connections.
    - Links to adverse media should not be considered as an outright obligation to report, and Subject Persons should always consider the contents, frequency, and reliability of the adverse information available.
    - When information available corroborates the adverse information found or otherwise there is a clear connection between the media allegation and the services being rendered to the customer then that has to be assessed carefully to determine whether this would indeed raise suspicions that ML could have taken place.

16 April 2024