



Administrative Measure Publication Notice

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The 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:

31 December 2024

RELEVANT ACTIVITY CARRIED OUT:

Corporate Service Provider – Class A

SUPERVISORY ACTION:

Off-site compliance examination carried out in January 2021

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs).
- Regulation 5(5)(a) of the PMLFTR and Section 3.5.1 and 3.5.3 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Business Risk Assessment (BRA) – Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

The BRA provided by the Company during the compliance examination was not in line with the applicable regulations, this since:

- It failed to incorporate risks identified in the National Risk Assessment (NRA) and Supranational Risk Assessment (SNRA), which are critical to understanding and addressing the business's exposure to AML/CFT risks, as outlined in Section 3.2.7 of the IPs.
- No evaluation of the effectiveness of the AML/CFT controls and measures implemented by the Company featured within the BRA. This omission hindered the Company from obtaining an accurate understanding of the remaining residual risk levels. The residual risk was essential for the Company to determine whether it was able to tolerate such risk, or whether it needed to take further remedial action, this as required in terms of Section 3.3. of the IPs.

- While the BRA did mention the ML/FT threats and vulnerabilities that the Company's business is exposed to, the materiality of such risks were not assessed from a quantitative perspective. Hence, the BRA was missing a crucial element which deprived a true understanding of the threats and vulnerabilities to which the Company was exposed to. These include, inter alia, the number of customers within each customer risk type, the volume of business, the number of customers from a given jurisdiction, and the number of customers per each product and service.

It was positively acknowledged that following the compliance examination, the Company has applied substantial updates to its BRA in an attempt to remediate the identified shortcomings. The remediation undertaken in subsequent BRA's shall be attested as part of the Directive served on the Company.

In view of the above, the Company was found in breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

Customer Risk Assessment (CRA) - Regulation 5(5)(a) of the PMLFTR and Section 3.5.1 and 3.5.3 of the IPs

Deficiencies were noted in the CRA methodology adopted by the Company during the examination, this since:

- The CRA methodology in place prior to 2018 was found to be inadequate as while individual risk scores were assigned for the main risk pillars (customer, geographical, interface, and product/service risks), no overall customer risk rating was generated.
- Post 2019, the CRA methodology implemented was also considered as inadequate as it was not based on objective criterion, instead, the CRA was deemed to be subjective, leading to inconsistencies in the assessment process. This goes against the requirement outlined under Section 3.5 of the IPs wherein subject persons must be able to objectively and reasonably justify the outcome of its CRA and document those justifications.
- The CRA also failed to include critical elements required to undertake a thorough assessment, such as taking into account the source of wealth (SOW), source of funds (SOF), expected transaction patterns and the customer's reputation (including results obtained from sanctions or adverse media screening). Although the Company argued that these elements were considered during onboarding, such information was not integrated as part of the CRA, hence limited its effectiveness.

Finally, it was positively noted, following the compliance examination, the Company planned to adopt a new CRA system which generates a risk profile for each customer. The remediation undertaken shall be attested as part of the Directive served on the Company.

In view of the above, the Committee determined that the Company was in breach of Regulation 5(5)(a) of the PMLFTR and Section 3.5.1 and 3.5.3 of the IPs.

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

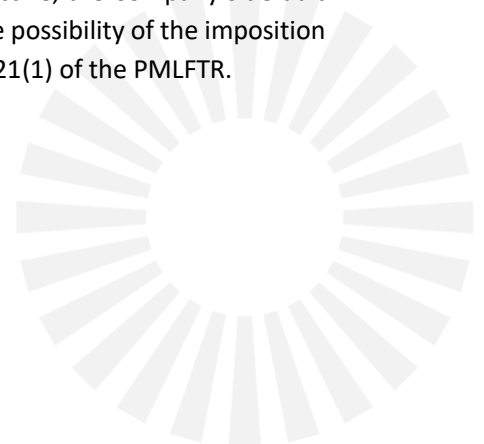
In view of the breaches identified, the Committee proceeded to serve the Company with a Remediation Directive in terms of Regulation 21(4)(c) of the PMLFTR. The aim of this administrative measure is to direct the subject person to take the necessary remedial action to ensure that it understands the risks surrounding its operations and that the subject person has implemented sufficient controls to mitigate such identified risks.

In arriving at its decision regarding the administrative measure(s) to impose, the Committee took into consideration all the information made available by the Company, both during the compliance examination, as well as in the representations submitted. The Committee also considered the importance of the AML/CFT obligations that the Company has breached, together with the seriousness of the findings and their material impact. Furthermore, the Committee took into account the nature, size and operations of the Company, and how the services it rendered and the AML/CFT controls in place may have impacted the local jurisdiction as a whole. In addition, the Committee factored in the level of cooperation exhibited by the Company throughout the whole process, and the overall regard that the Company has towards its obligations. Lastly, the Committee took note of the Company's commitment towards updating and enhancing specific AML/CFT processes, as well as the remedial actions that the Company has already implemented.

The main purpose of this Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and performs all the necessary remedial actions to attain full compliance with its AML/CFT legal obligations imposed in terms of the PMLFTR and the IPs issued thereunder. The Company is being directed to remediate the identified breaches through the following remedial actions:

- Provide a detailed explanation of the remediation undertaken following the examination to ensure that its BRA is in line with Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs. This shall include, identifying risks within the NRA and the SNRA and how these affect the Company's business, attesting and documenting the effectiveness of its controls and finally in determining the Company's residual risk.
- Provide a detailed explanation of the current CRA Methodology applied by the Company and how this is in line with Regulation 5(5)(a) of the PMLFTR and Section 3.5.1 and 3.5.3 of the IPs. This to cater for ensuring a consistent approach is adopted to risk assess customers, due consideration of all critical risk factors and sufficient documentation held to justify the attributed risk scoring.

The Directive served on the Company shall ascertain that sufficient and tangible progress is achieved on the adoption and implementation of all the procedures and measures referred to above. In the event that the requested information and/or supporting documentation are not made available within the stipulated timeframes, or the Company falls short of its obligations in terms of this Directive, the Company's default will be communicated to the Committee for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21(1) of the PMLFTR.



Key Take-aways

- The Business Risk Assessment (BRA) must provide a clear evaluation of the effectiveness of the controls implemented, as mandated by Section 3.3.1 of the IPs. In establishing the controls to apply, subject persons should not only consider regulatory guidance but, in the case of existing businesses, also their own experience with the implementation of the measures, policies, controls and procedures the subject person may already have in place (e.g., internal audit reports, compliance reports and incidents that may have already led to supervisory action). This would have led the Company to establish whether it is able to tolerate that risk as it falls within its risk appetite, or whether it needs to implement additional controls.
- The Company's CRA methodology must adhere to Chapter 3 of the Implementing Procedures (IPs), ensuring consistency in the approach to risk rating customers. For example, when assessing the product risk, subject persons should consider both the products offered by the client to third parties and those provided by the Company to the client. Additionally, the methodology must incorporate reputational element, including whether a customer or its beneficial owner has been the subject of adverse reports linking him/her to crime (especially financial crimes) and/or terrorism, to ensure a thorough and accurate evaluation of potential ML/FT risks.
- The CRA is one of the pillars of a sound AML/CFT compliance program where all the risk criteria are exhaustively considered, and an understanding of risk is obtained. The rationale which led the customer to be rated in a particular manner is to be reflected in the CRA and in turn it is to be ensured that appropriate mitigating measures/controls are applied to minimize the specific increased ML/FT risk identified. Documenting this process is important to confirm the considerations taken to arrive at the final risk score.

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