



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 penalties and 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:

27 February 2025

RELEVANT ACTIVITY CARRIED OUT:

Advocate - Individual

SUPERVISORY ACTION:

Compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURE 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) Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 11(5) and 8(1) of the PMLFTR and Section 4.3 of the IPs,
- Regulations 5(5)(b) & (e) of the PMLFTR and Sections 7.1, 7.2 and 7.3 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

Prior to the compliance examination, the subject person (SP) was requested to provide the BRA, however this was not provided. The absence of a BRA was further confirmed by the subject person during the initial meeting held with the Officials. Therefore, at the time of the compliance review the subject person had failed to take appropriate steps, proportionate to the nature and size of their business, to document any assessment made to identify the risks of ML/FT arising from their operations as a warranted lawyer, offering legal and liquidation services constituting as 'relevant activity' in line with Regulation 2 of the PMLFTR. However, the Committee positively acknowledged that following the compliance examination, the subject person rectified their position by documenting the BRA.

Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR

The template to conduct CRAs was finalised by the subject person for the purpose of the compliance examination. Moreover, the CRAs completed using the newly created template (albeit carried out late) could not be considered as adequate for the subject person to be able to comprehensively assess its risks and to effectively implement adequate controls. For example:

- The only question related to the customer risk factor was in relation to whether the customer is a politically exposed person (PEP). Other aspects, such as the type of customer (that is, whether the customer is a legal person or a natural person) and the business or professional activity of the customer were not considered.
- Although most of the subject person's customers and their related parties were located in Malta, some of the customers had connections to other jurisdictions, such as the United Kingdom or Italy. Nevertheless, the CRA template did not cater for ML/FT risks emanating from connected jurisdictions.

Notwithstanding, the subject person was forthcoming in rectifying the shortcomings observed during the compliance review. This by revising the CRA template and re assessing its customers. In particular, it was noted that the CRAs now adequately include consideration of the four risk pillars as well as portrays extensive questions designed to obtain a thorough understanding of the customer.

Customer Due Diligence (CDD) – Regulation 11(5) and 8(1) of the PMLFTR and Section 4.3 of the IPs

The compliance examination revealed shortcomings by the subject person in terms of their obligations which require the carrying out of due diligence measures when establishing a business relationship or carrying out an occasional transactions, including:

- The M&As obtained for two (2) corporate customer files reviewed were not the latest versions available at the time of the commencement of the business relationship, instead changes to such M&As were noted to which the subject persons failed to consider prior to commencing the relationship.
- Although the residential addresses of all the individuals in one (1) file reviewed were identified through an internal form, the information provided therein was not verified.
- Although most of the individuals were met on a face-to-face basis, since none of the documents obtained to verify the identity of natural persons indicated the date when they had been obtained, it was not possible to determine whether such documents were obtained before or after entering into a business relationship or carrying out an occasional transaction.
- Checks as to whether the beneficial owner (BO) is a PEP was not conducted for one (1) file and carried out after the commencement of the relationship for an additional three (3) files.

The subject person was requested to provide a log of the AML/CFT training programs attended over the last three years, however it was established that the subject person did not attend any training sessions. The subject person clarified that a significant element of AML/CFT training is self-taught and obtained through experience. While not disputing the knowledge gained from self-training and experience, however this is to be accompanied with other form of professional AML/CFT training. Indeed, the subject persons failed to maintain an up to date understanding of the ML/FT risks, threats and vulnerabilities that the Advocate could be exposed to when carrying out relevant activity as a subject person and by keeping abreast with the AML/CFT obligations at law.

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

In view of the breaches identified, the Committee proceeded to serve the subject person 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 subject person, both during the compliance examination, as well as in the representations submitted. The Committee must ascertain that the administrative measure(s) imposed are effective, dissuasive, and proportionate to the seriousness of the failures identified. In doing so, the Committee took into consideration the importance of the obligations breached, the level of seriousness of the findings identified, and the extent of potential ML risk such failures could lead to. The Committee also considered the subject person's small size and good level of cooperation portrayed. Lastly, the Committee took note of the subject person's commitment towards updating and enhancing specific AML/CFT processes, as well as the remedial actions that has already been implemented.

The purpose of this Directive is for the FIAU to ensure that the subject person understands the risks surrounding their operations and that the subject person has implemented sufficient controls to mitigate such identified risks. In virtue of this Directive, the Advocate was requested to:

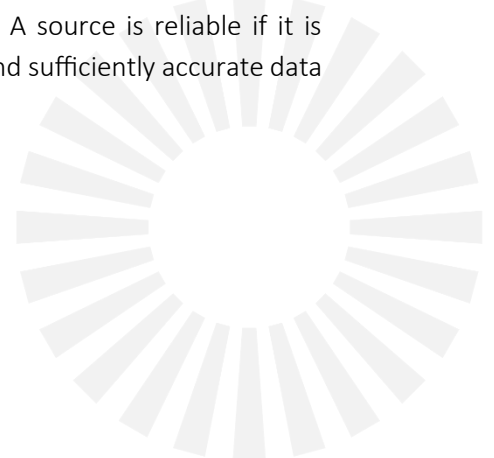
- Provide the process that has been followed to risk assess the risks to which their operations expose them to as well as for the assessment of the effectiveness of the controls implemented. It is also to be ensured that the subject person has assessed all the ML/FT risks they are or could be exposed to through their operations and assess the ways how they intend to effectively implement the BRA's individual and overall outcomes into their operations.
- Provide a detailed explanation to explain the Customer Risk Assessment methodology which they have implemented since the carrying out of the compliance review and how this is in line with the legal requirements. The subject person is also required to provide a detailed explanation of the measures implemented to ensure that Customer Risk Assessments are undertaken prior to the establishment of the business relationship or the carrying out of an occasional transaction.

- Provide a detailed explanation of the measures implemented in order to ensure that:
 - The verification of customers is carried out based on documentation, data or information obtained from reliable and independent sources. Moreover, when using M&As to verify the identification details of a body corporate, the most recent M&As are to be obtained.
 - When the customer is present is present for verification purposes, and a copy of the original verification document is held, this is dated and certified as a true copy.
 - The PEP status of customer(s) and/or BO(s) is always checked.
- Attend training specifically focused on obligations relevant to Advocates including topics such as CDD, AML/CFT policies, and risk understanding.

The Directive served on the subject person 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 Advocate falls short of their obligations in terms of this Directive, the Advocate'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:

- A business risk assessment is necessary not only because it is a legal obligation, but most importantly because it is the foundation of a solid AML/CFT framework. This assessment must be comprehensive in assessing all actual or potential risk factors, as well as in assessing the effectiveness of the control measures implemented. Such assessment cannot be skewed on focusing only on limited risk factors, but it must be a holistic understanding of risks and controls.
- 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. Therefore, subject persons are to ensure that the risk factors identified as part of their customer risk understanding are being considered for the purpose of understanding the level of control necessary and the measures which are better suited to effectively manage all the risks identified.
- Identification of the customer, and the verification of the customer's identity on the basis of documents, data or information is to be obtained from a reliable and independent source. The term "independent" should be interpreted to mean a source that is independent of the customer (therefore, this would exclude a declaration made by a customer). A source is reliable if it is reputable and is trusted by the subject person to provide extensive and sufficiently accurate data or information to verify the customer's identity.



- PEPs pose a high risk of ML/FT due to the position they occupy and the influence they may exercise through their prominent public function. Risks include those of being involved in corrupt practices, accepting bribes, or abusing or misappropriating public funds. The failure to carry out checks to determine whether a customer and/or BO is politically exposed or otherwise exposes a subject person to a heightened risk of ML/FT without the necessary mitigating measures being employed.

27 February 2025

