



Administrative Measure Publication Notice

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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:

28 March 2025

RELEVANT ACTIVITY CARRIED OUT:

Collective Investment Scheme

SUPERVISORY ACTION:

Compliance review carried out in 2020

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:

- Section 6 of the Implementing Procedures (IPs) Part I;
- Regulation 5(5)(a) of the PMLFTR and Sections 3.4 of the IPs;
- Regulation 5(1) of the PMLFTR and Sections 3.3 and 8.1 of the IPs;
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5, 3.5.1 and 3.5.2 of the IPs;
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.1 and 4.3.2 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4.2 of the IPs; and
- Regulation 7(2)(b) of the PMLFTR and Section 4.5.1(b) of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Outsourcing – Section 6 of the IPs

The Company failed to have an outsourcing agreement in place with its Fund Administrator, to which several AML/CFT obligations were being outsourced at the time of the compliance review. Even though the Company's Board of Directors was aware of the responsibilities, functions and work of the outsourced entity and the delegation of AML/CFT obligations was mentioned in other documents held by the Company, these factors did not exonerate the Company from the regulatory requirement to establish a formal outsourcing agreement with its Fund Administrator.

The absence of such an agreement heightened the risk of non-compliance, mainly due to the lack of clarity regarding the roles, responsibilities, and expectations of both the Company and the third party responsible for the outsourced AML/CFT measures and procedures. Nevertheless, this shortcoming was subsequently rectified through the Company's implementation of an outsourcing agreement post-compliance examination.

Moreover, while the Company stated to have undertaken an assessment on the outsourced entity's competence, reputation, and working experience, it failed to provide a written document outlining and recording this assessment. Hence, it was required to carry out and document the money laundering/fund of terrorism (ML/FT) risk assessment before entering into the outsourcing arrangement and also regularly monitor and evaluated the performance of this outsourcing third party insofar as the outsourced activities are concerned. Notwithstanding, it was positively noted that in its submissions, the Company indicated that it will be implementing an outsourcing risk assessment and undertaking additional steps to establish a more robust operational framework.

Policies and Procedures - Regulation 5(5)(a) of the PMLFTR and Sections 3.4 and 3.4.1 of the IPs

The Company's AML/CFT policies and procedures were deemed inadequate as deficiencies were noted in a number of areas, some of which relating to the risk assessment, customer due diligence (CDD) measures, the purpose and intended nature of the business relationship and ongoing monitoring. Notwithstanding, positive consideration was given to the Company's proactive effort in revising its policies and procedures to rectify the findings outlined during the examination.

Business Risk Assessment (BRA) - Regulation 5(1) of the PMLFTR and Sections 3.3 and 8.1 of the IPs

The Company lacked the implementation of an adequate documented BRA methodology in line with applicable regulations, such failure includes the below:

- Although the BRA specified that the Company's overall residual risk rating, it was unclear as to how the various risk factors identified within its BRA contributed to this classification. Also, it transpired that the documented assessment lacked quantitative data as, among other things, failed to include the business volume, number of customers, jurisdictions and transactions exposure.
- While the Company had conducted a jurisdiction risk assessment on the jurisdictions to which it had business dealings, in most cases these assessments did not meet the required standards as they merely consisted of a compilation of information from external sources, without any further analysis being undertaken by the Company. Hence, these assessments were not tailored in any manner to the Company's operations or the specific products/services it offered, lacking details on how the Company was linked to jurisdictions in question and the extent of the risks emanating from the same.

Finally, 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.

Customer Risk Assessment (CRA) - Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5, 3.5.1 and 3.5.2 of the IPs

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

- Although the CRA template provided some guidance on the factors deemed to be of higher risk, it was unclear how the final risk score was determined. In fact, the risk scores and overall ratings delineated in the risk assessments were often accompanied by minimal or no explanations at all.
- The absence of a defined risk scoring criteria led to a rather subjective CRA methodology, where two individuals conducting a risk assessment for the same customer could potentially arrive at divergent conclusions, undermining the consistency and reliability of the process. Indeed, the file review revealed that the risk scores awarded to specific risk pillars were not always consistent and in line with expectations. By way of example, although the Company offers the same exact product to all its customers, one customer received a low product risk rating, whereas another customer was given a medium product risk rating.

Also, the CRAs noted for a small sample of customer files reviewed were undated and not subject to a periodic review. Notwithstanding the significant period elapsed since onboarding, said CRAs had not been revisited to reflect any changes in the clients' business activities or risk profiles.

Finally, it was positively noted that the Company acknowledged the need for remedial measures to address failures in its approach to conducting risk assessments. It committed to implementing a robust risk assessment framework within its operational workflows, which shall include the introduction of a new automated 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.

Identification and Verification (ID&V) - Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Sections 4.3.1 and 4.3.2 of the IPs

For three customer files reviewed, the Company failed to verify the ownership and control structure of the customer entities. By way of example, in one file, the corporate customer was owned by three entities, however the Company failed to verify the shareholding structure of two of such entities.

Purpose and Intended Nature of the Business Relationship - Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs

The compliance examination also revealed that the Company failed to provide the required information and/or supporting documentation to account for the anticipated level of the majority of its customer, this including the expected value and frequency of transactions.



Ongoing Monitoring – Ensuring that documents, data and information held on the customers are kept up-to-date - Regulation 7(2)(b) of the PMLFTR and Section 4.5.1(b) of the IPs

When it comes to ensuring that documents, data and information held on the customers are kept up-to-date, the Company's use of ongoing monitoring review sheets was noted. However, such sheets merely contained a brief list of requested documents, without specifying whether the documents were eventually obtained and, if so, the dates on which they were effectively collected. Notwithstanding, it was acknowledged that such failures were only noted in few files and that the Company had proceeded to undertake the required remedial actions to strengthen its ongoing monitoring policies and procedures.

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 size and 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 have already been implemented.

The aim of the Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and that it becomes fully compliant with the obligations imposed in terms of the PMLFTR and the FIAU's IPs. In virtue of this Directive, the Company is expected to indicate the remedial actions that it has carried out and implemented since the compliance examination to ensure compliance following the identified breaches, this including but not limited to:

- Ensuring that an outsourcing agreement has been implemented to regulate the outsourcing of AML/CFT measures and procedures to the third party involved. The Company is also to ascertain that the outsourcing arrangement is subject to regular monitoring and quality testing.
- Ensuring that the AML/CFT policies and procedures have been enhanced to rectify all inadequacies noted during the compliance examination. Moreover, the policies and procedures should be sufficient robust to effectively assist the Company to abide by its AML/CFT obligations at law.

- Ensuring that the necessary enhancements have been made to the BRA to address the various shortcomings identified during the compliance examination. The Company is to also ascertain that through the newly implemented jurisdiction risk assessment system, such risk assessments should be tailored to the Company's operations and the specific products/services it offers, with details on how the Company is linked to the jurisdictions in question and the extent of the risks emanating from the same.
- Updating the CRA methodology in order to cater for a comprehensive understanding of ML/FT risks and that allows for the assessment to incorporate all the information considered to risk assess customers and that the CRAs are reviewed on a periodical basis.
- Ensuring that periodic reviews of customer files are carried out on a regular basis depending on the risk rating assigned.

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 Subject person falls short of its obligations in terms of this Directive, the Subject person'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 BRA should not be a list of risks or a list of considerations, but an actual assessment of the risks faced by the subject person, both through the consideration of experience (when available) and from an understanding of how each factor, actual or potential, could impact the risks to which the subject person is exposed to.
- 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.
- Risk is never static but evolves and changes with any new element or development such as a new product or the customer venturing into a new service, or new adverse information presents itself. Therefore, it is crucial that the assessments, both at the business and customer level, remain relevant, accurate and updated in a sufficiently timely manner. This ensures a clear, unambiguous and accurate understanding of the ML/FT risks the subject person is exposed to and that the measures needed to manage these risks are effectively taken and implemented.
- From time to time, the Implementing Procedures may be amended to ensure that they remain harmonised with amendments to legislation and other material developments originating from changes in international standards. Subject persons should therefore ensure that they adhere and refer to the most recent version of the Implementing Procedures which are binding from the date on which they are issued.

- Neither the PMLFTR nor the IPs stipulate the frequency of periodic reviews. Indeed, as per Section 4.5.3 of the IPs, this frequency depends on a variety of factors, predominantly the customer's risk rating, but also the type of information to be updated and whether there are any risks that may be mitigated through such updating. What is crucial is that the subject person reviews the various client-related documents, data and documentation it has gathered at regular intervals, with the ultimate aim of ensuring that they remain up-to-date and relevant. In addition, any ongoing monitoring measures carried out need to be properly documented

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