



Lessons Learnt: Ongoing Monitoring Obligations when Providing Directorship Services

Insights from Past Enforcement Actions

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May 2025 | ©Financial Intelligence Analysis Unit Malta

AGENDA



Background on Enforcement Unit



Statistical Data on Past Enforcement Actions



Case Studies



Most Common Breaches



Key Take Aways



THE PROCESS FROM SUPERVISORY TO ENFORCEMENT ACTION



MAIN TYPES OF ADMINISTRATIVE MEASURES

Administrative Penalties

- If Repeated, serious or systematic, or a combination thereof
- Relevant activity: Max €1m, or not exceed twice the amount of the benefit derived from the contravention;
- Relevant financial business: Max of €5m or not exceed 10% of the total annual turnover.

Directives

- Remediation, Follow up Directives or Declaration of Compliance
- Identifies the end goals which need to be achieved to complete the remediation.
- Actionable steps which are to be followed to achieve the goals.
- Target dates for completion.

Written Reprimand

- Did not give rise to significant consequences, it is nonetheless not acceptable and should not be repeated.
- Taken into consideration when assessing any future cases of non-compliance.



ONGOING MONITORING OBLIGATIONS

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“CSPs who provide directorship services or act as partners in commercial partnerships, and who would be empowered to legally represent and bind the company or entity, **are expected to carry out ongoing monitoring of the transactions that the entity undertakes...**”

Implementing Procedures – Part II
Company Service Providers

ONGOING MONITORING OBLIGATIONS



**ONGOING MONITORING
OBLIGATIONS**

**KEEPING DOCUMENTS
UP TO DATE**

**TRANSACTION
MONITORING**



ONGOING MONITORING BREACHES THROUGH THE YEARS

ONGOING MONITORING BREACHES THROUGH THE YEARS

**Total of Fines on
O.M Issued
(CSPs)
€142,000**

**18% of All
Sanctions
Imposed on CSPs
– Related to O.M**

**15% of O.M
breaches by Non-
Financial Sector
were by CSPs**

ONGOING MONITORING BREACHES THROUGH THE YEARS

Total of Sanctions Imposed

21

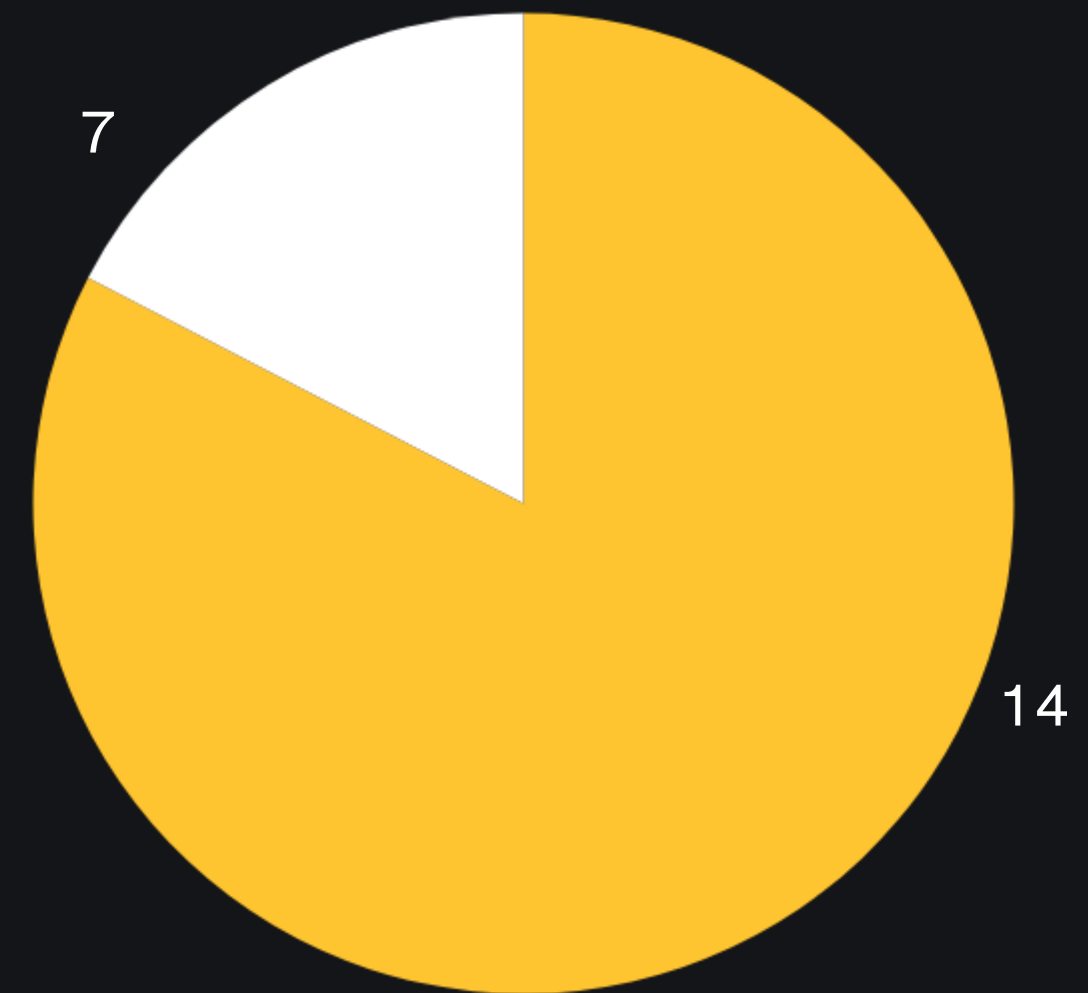
Penalties

13

Directives

8

CSPs - Firms vs Individuals



CSP Firms

CSPs - Individuals

DIRECTIVES

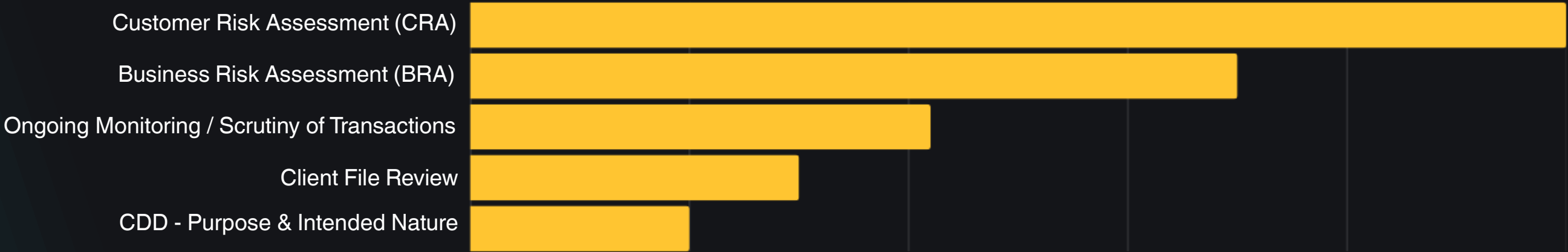
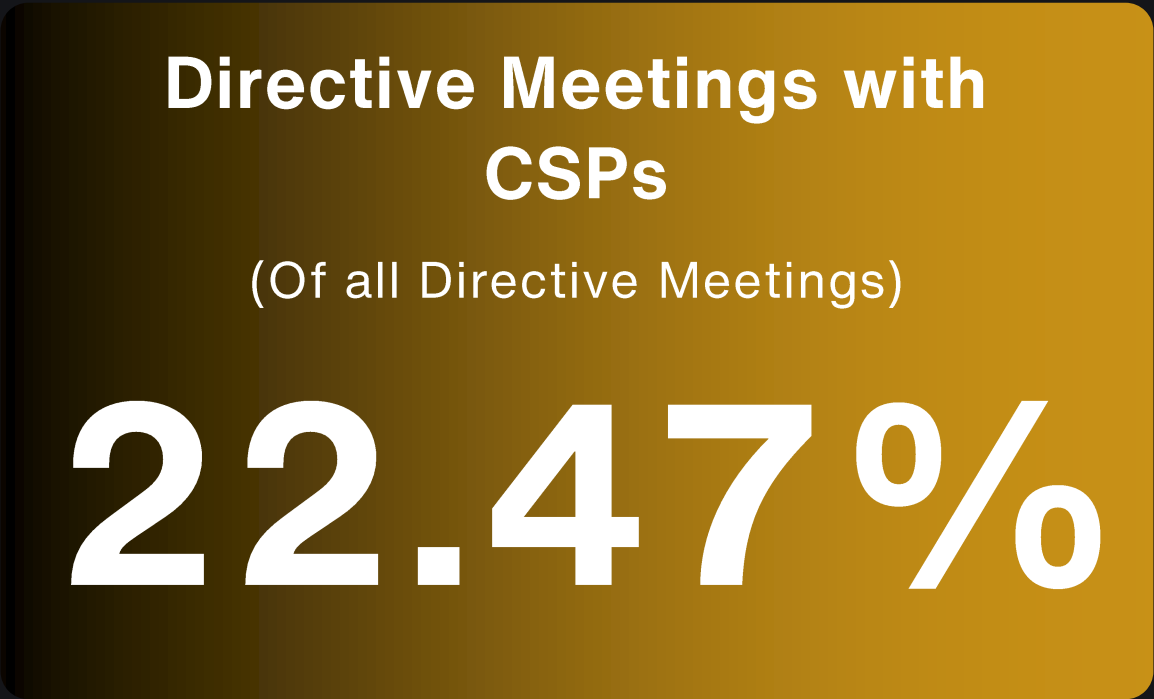
DIRECTIVES

Directive Meetings

- An open conversation between the FIAU and the SP to attest remedial efforts and identify gaps
- Usually split into two phases

Topics of Discussion

- Most common meetings are on remedial actions taken on CRA, BRA, O.M and P & IN amongst others
- O.M is the third most common remedial action discussed in Directive Meetings



CASE STUDY

CASE STUDY 1

Information on the customer's business operations or activities not always kept up-to-date

Key Issue: “Failure to reassess the customer entity's operations and activities following several trigger events”

CASE STUDY 1

Information on the customer's business operations or activities not always kept up-to-date

Background

- 1) A Maltese holding company onboarded in 2012 with an initial medium-risk rating, later increased to high-risk in January 2020.
- 2) The CSP offered **directorship** and **company secretarial services**, with a temporary suspension of directorship services for almost 4 years.
- 3) Initially owned by a **Russian National** residing in **EEA Country**.
- 4) Eventually transferred ownership to a company registered in a **non-EU country** owned by a **EEA country national**.
- 5) Further transferred to XYZ Ltd* - **Non-EU** company owned by the same **EEA country national**.
- 6) Shifted from a holding company to an IT Company.

**Fictitious name*

CASE STUDY 1

Information on the customer's business operations or activities not always kept up-to-date

Details of Case

1) Dormant Period & Transactions

- A) No income for the first 6 years.
- B) On the 7th Year, €10 Million in incoming transactions from a non-EU country.
- C) Followed by equally valued outgoing transactions to a shareholder of XYZ Ltd,

2) Examined Agreements

- A) €10 Million agreement between customer entity and XYZ Ltd.
- B) Intended for IT solutions for a project in a high-risk non-EU country.
- C) Yielded a marginal profit of €10,000,

3) Activities provided by XYZ Ltd

- A) Specialises in high-tech– “dual-use goods” activities in a non-EU country.

CASE STUDY 1

Information on the customer's business operations or activities not always kept up-to-date

Failures & Breaches by the CSP

1) Monitoring Failures

- A) Did not question the sudden change in transactions following years of dormancy.
- B) Failed to reassess operations following several trigger events (share transfers).
- C) One of the transactions happened when the CSP was a director.

2) Lack of Transaction Scrutiny

- A) Did not scrutinize the substantial suspicion of the one-off transactions.

3) Lack of Scrutiny on BOs

- A) Failed to scrutinise the connections between the BOs and projects within high-risk countries.
- B) Neglected the potential risks associated with high-risk jurisdictions.

CASE STUDY 2

Lack of scrutiny of certain large / complex / unusual transactions

Key Issue: “Inadequate scrutiny of large, complex, and/or unusual transactions.”



CASE STUDY 2

Lack of scrutiny of certain large / complex / unusual transactions

Background

1) Customer Onboarding

- Holding Company onboarded by CSP in 2014 and scored a high-risk rating throughout the whole relationship.

2) Services Provided

- Directorship, Company Secretarial, Registered Offices.

3) Financial Background

- Audited financial statements reveal substantial loan balances (Total of €50 million loans receivables and loans payable).



CASE STUDY 2

Lack of scrutiny of certain large / complex / unusual transactions

Details of Case

1) Discrepancies between Financials and Agreements

- A) Significant discrepancies between the figures in the loan agreements and in the financial statements.
- B) Loans with expired repayment dates were still reflected in financial statements.
- C) Counterparties to the loans were related entities.

2) Insufficient Documentation

- A) Vague loan agreements with terms and amounts only – no rationale or purpose.

3) Loan Extensions

- A) Continuous loan extensions – No verification of legitimacy or alignment with business nature was done by the CSP.

4) High Interest Rates

- A) Loans assigned high-interest rates despite the involvement of related entities

CASE STUDY 2

Lack of scrutiny of certain large / complex / unusual transactions

Failures and Breaches by the CSP

- 1) Failure to **verify the legitimacy of the transactions** and their **business and economic sense**.
- 2) **Failed to assess** the purpose of the transactions and their alignment with the customer entities' business activities.
- 3) Failed to ensure a **comprehensive visibility** into the source of funds of these transactions.

CASE STUDY 3

Lack of scrutiny of certain large / complex / unusual transactions

Key Issue: “Inadequate scrutiny of large, complex, and/or unusual transactions.”



CASE STUDY 3

Lack of scrutiny of certain large / complex / unusual transactions

Background

- CSP had repetitive failures related to all aspects of Ongoing Monitoring Obligations.
- Failed to understand the purpose and alignment with customer entity business activities.

CASE STUDY 3

Lack of scrutiny of certain large / complex / unusual transactions

Details of Case

Customer Entity 1

Inward Transaction:
€1.5 Million

Very vague loan agreement
lacking purpose, relationship and
alignment with expected
activities

Customer Entity 2

Outward Transaction:
€720,000
(To Parent Entity)

Invoices and Service
Agreements Provided but
contradictions between them
raise questions about the
legitimacy of the services
provided

Customer Entity 3

Change in Shareholding
(Right after onboarding)

Share Transfer:
1) EU Shareholder to non-EAA
national with Call Option
Agreement
2) Allowed the reseller to
repurchase shares for a nominal
of €1

CASE STUDY 3

Lack of scrutiny of certain large / complex / unusual transactions

Failures and Breaches by the CSP

- 1) Inadequate Transaction Scrutiny.
- 2) Lack of Understanding on purpose of Shareholding Changes.
- 3) Overlooked Potential Risks in Unexplained Agreements and Incomplete Documentation.

MOST COMMON BREACHES



Failure to conduct ongoing monitoring of the business relationship –
scrutiny of transactions



Failure to conduct ongoing monitoring of the business relationship –
documents and information not up to date



Numerous cases of transactions **being scrutinised but not adequately**

KEY TAKE AWAYS



Thorough Scrutiny of Documentation



Challenge Inconsistencies and Address Doubts



Have Escalation Protocols in Place



Ongoing Monitoring – A continuous effort



Your Effort Counts!

Thank you



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