



FINANCIAL INTELLIGENCE ANALYSIS UNIT

Administrative Penalty Publication Notice

This notice is being published on an anonymous basis by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2)(b) of the Prevention of Money Laundering Act (PMLA) and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

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 PENALTY:

13 May 2020

RELEVANT ACTIVITY CARRIED OUT:

Company Service Provider

SUPERVISORY ACTION:

On-site Compliance Review carried out in September 2018

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Remediation Directive

LEGAL PROVISION BREACHED:

- Findings in relation to the implementation of adequate customer risk assessment measures in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures Part I.
- Findings in relation to failure to conduct assessments on the reputability of jurisdictions that the Company's customer has dealings with, as envisaged under Section 8.1 of the Implementing Procedures¹.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

In terms of customer risk assessment, whilst an overall risk score was found for each customer, the customer risk assessments were undocumented for all of the files reviewed hence being unable to determine the rationale behind the overall risk scores awarded to customers. During the onsite examination, the FIAU officials were also informed that the Company is in the process of investing in a new customized software that will be used for compliance purposes, including compiling customer risk assessments. Following the compliance examination, the Company proactively initiated its intent to remedy its position by starting documenting customer risk assessments for all their customers through the use of the established risk profile questionnaire. Older files are also in the process of being reviewed to ensure the Company has an updated and adequate customer profile for its entire portfolio. While noting all such positive improvements, the Committee believes that the FIAU should follow up on the implementation of such remedial action as part of the Remediation

¹ Reference to the Implementing Procedures as last amended on 27 January 2017. It is pertinent to clarify that this obligation is expanded now upon in chapter 8 of the Implementing Procedures as last amended on 17 July 2019.

Directive, in particular, to ensure that the new system effectively risk assesses the Company's customers and keeps adequate records of the rationale surrounding the customer risk assessments carried out.

The compliance assessment process further revealed that the Company had not conducted assessments on the reputability of jurisdictions that its customers had dealings with. Jurisdiction assessments were to be completed since the Company was/is exposed through a number of customers having various connections to non EU/EEA jurisdictions, such as Turkey, UAE, Curacao and Singapore. While the Committee took into consideration the Company's statement, being that, an assessment on the reputability of non-EU jurisdictions was being carried out by consulting independent sources of information and reviewing the AML/CFT regime of any jurisdiction falling outside the EU/EEA, evidence of the said statement was unable to be provided since such assessments were not being documented nor was evidence of such measures having been implemented found during the carrying out of the compliance examination. The Committee took note of the Company's proactive attitude to immediately start remediating its position by establishing a new process to ensure adequate documentation of jurisdiction assessments. The Committee further noted that the Company's procedure document is in the process of being updated to also cater for the additional guidance provided by the FIAU, in particular in relation to jurisdiction assessments, as outlined in the new amendments made to part I of the Implementing Procedures. Here again, the FIAU shall, as part of the remediation directive ensure that all the necessary information when conducting the jurisdiction risk assessment is taken into consideration and that adequate documentation of the jurisdiction risk assessments carried out are kept on record.

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

In view of the findings identified and as has been explained above, the Committee proceeded to serve the Company with a Remediation Directive.

The aim of the Remediation Directive is to direct the Company to take the necessary remedial actions and to ensure the actions as aforementioned are implemented. The Remediation Directive shall also ensure that going forward the Company is in a position to adhere to the AML/CFT obligations applicable to its operations. The Directive instructs the Company to make available all documentation and/or information necessary to attest that the remedial actions have indeed been implemented in practice.

The remediation directive includes an obligation to the Company to make available:

- A detailed timeline illustrating the expectation of the developments of the new compliance software, including the expected go live date and the expected timeline of migrating customers.
- A detailed explanation outlining the compliance software's methodology on how it will assist the Company in compiling and updating Customer Risk Assessments, detailed breakdown of the AML/CFT information which will be fed into the system and the degree of importance each consideration shall be given as part of the overall assessment, how the system will assist in mitigating the Company's ML/FT risks and how will new material information be fed into the system for a revision of the CRA and mitigation measures required, if applicable.
- An updated version of the Company's policy and procedures with specific references to which sections explain the Company's process on Customer Risk Assessment, Jurisdiction Risk Assessment and the new compliance system.
- Specifically on the jurisdiction risk assessments, the Company is also expected to provide an explanation of the considerations taken into account for determining the risk exposure of particular jurisdictions and how these considerations are featured in the Company's Business Risk Assessment and subsequently in the specific Customer Risk Assessment.

The FIAU may request for additional information or documentation in order to ensure that it is able to attest the implementation of the Remediation Directive and to ensure that the Company is being compliant with its anti-money laundering/combating the funding of terrorism legal obligations.

Moreover, and in order to understand further the said implementation, the FIAU is interested to hold a meeting with the Company's MLRO and any other representative from the Company to attest how the actual implementation of the said remediation is actually being attained.

In determining the appropriate administrative measure to impose the Committee took into consideration the representations submitted by the Company as well as the remedial actions that had already been initiated by the Company in order to address shortcomings identified during the compliance review. The Committee also took into consideration the nature and size of the Company's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Company's own operations and also the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also taken into consideration by the Committee in determining the administrative measures imposed.

Finally, the Remediation Directive reminds the Company that in the eventuality that the requested documentation and/or information is not made available within the stipulated timeframes, the Committee shall be informed of such default, for the possibility to take eventual action, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

15 May 2020