



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 MEASURE:

6 March 2020

RELEVANT ACTIVITY CARRIED OUT:

Notary public, when acting in the exercise of his/her professional activities under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

SUPERVISORY ACTION:

On-site Compliance Review

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Remediation Directive

LEGAL PROVISIONS:

- Findings in relation to implementing a comprehensive business risk assessment including jurisdictional risk assessments in terms of Regulation 5(1) and 5(3) of the PMLFTR¹ and Section 8.1 of the Implementing Procedures Part I;
- Findings in relation to the implementation of adequate customer risk assessment measures in terms of Regulation 5(5)(a)(ii) and Section 4.1.1 of the Implementing Procedures Part I²;

¹ The requirement to have a business risk assessment in place is also covered in Section 3.3 of the Implementing Procedures Part I as last amended on 17 July 2019

² Now Section 3.5 of the Implementing Procedures Part I as last amended on 17 July 2019

- Findings in relation to the requirement to perform the required identification and verification measures in terms of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 3.1 of the Implementing Procedures Part I³;
- Findings in relation to the requirement to take the necessary measures to determine whether particular individuals are politically exposed persons, or otherwise in terms of Regulation 11(5) of the PMLFTR and Section 3.5.3.1 of the implementing Procedures Part I⁴

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Although the notary did not have a documented business risk assessment (BRA) in place at the time of the compliance review, the notary took immediate action to remedy the situation and a BRA was subsequently attached to the Notary's Risk Evaluation Questionnaire. However, the BRA did not take into consideration all the risk factors that impact the notary's operations and therefore a follow up measure was deemed necessary by the CMC.

Moreover, and also included as part of the aforementioned follow up measure, it was determined that, at the time of the onsite review, from the sample of files selected, the Notary serviced a customer who was resident in a jurisdiction outside of the EU but failed to consider the associated geographical risk.

The customer risk assessment implemented by the notary did not holistically take into consideration all the risk factors of its customers. Thus, whilst the customer risk assessment did make reference to the individual risk factors referenced in the relevant Section of the Implementing Procedures Part I, it did not take these into consideration in their totality for the purpose of understanding the overall customer risk. This was further corroborated by the fact that the notary failed to determine the overall risk rating of the customers. A follow up action on the Notary's customer risk assessment measures was therefore instigated by the CMC.

The notary had adopted policies and procedures in relation to identification and verification. However, these were not being fully implemented. It was also noted that in a small part of the files reviewed, there were no declarations on file determining whether an individual was a politically exposed person or otherwise. In a particular case, the declarations were obtained well after the occasional transaction had taken place. Following the determination of these findings, the CMC also determined that it is necessary to follow up on these matters with the Notary.

³ Now Sections 4.3.1 and Section 4.3.2 of the Implementing Procedures Part I as last amended on 17 July 2019

⁴ Now Section 4.9.2.2 of the Implementing Procedures Part I as last amended on 17 July 2019

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

In view of the findings identified and as has been explained above, the CMC proceeded to serve the notary with a remediation directive.

The aim of the remediation directive is to direct the notary to take the necessary remedial actions to ensure that going forward the notary is in a position to adhere to the AML/CFT obligations applicable to its operations. The Directive also instructs the notary 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 on the notary to make available:

- An updated business risk assessment including appropriate and commensurate assessment of the geographical risks the notary is exposed to.
- The updated documentation on the methodology for risk profiling customers either as part of the customer risk assessment or as a separate methodology

Furthermore, the Remediation Directive also provides for a follow up meeting with the notary in order to discuss the actions being taken to address the shortcomings highlighted and to ensure the documentation made available are well understood by the notary. The follow up meeting is intended to provide the FIAU with more reassurance that the remedial actions are being implemented in practice.

In determining the appropriate administrative measure to impose the CMC took into consideration the representations submitted by the notary as well as the remedial actions undertaken by the notary in order to address shortcomings identified during the compliance review. The CMC also took into consideration the nature and size of the notary's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the notary'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 CMC in determining the administrative measures imposed.

Finally, the Remediation Directive reminds the notary that in the eventuality that the requested documentation and/or information is not made available within the stipulated timeframes, the CMC 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.

13 March 2020