



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:**

17 April 2020

## **RELEVANT ACTIVITY CARRIED OUT:**

Company Service Provider

## **SUPERVISORY ACTION:**

On-site Compliance Review carried out in June 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 4.1.1 of the Implementing Procedures Part I<sup>1</sup>.
- 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 Procedures<sup>2</sup>.
- Findings in relation to the requirement to determine the purpose and intended nature of the business relationship in terms of Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part 1<sup>3</sup>.

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<sup>1</sup> Now Section 3.5 of the Implementing Procedures Part I as last amended on 17 July 2019

<sup>2</sup> 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.

<sup>3</sup> This obligation is now being expanded upon in Section 4.4.1 of the Implementing Procedures as last amended on 17 July 2019.

## REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

At the time of the on-site compliance examination, the compliance review revealed that although the Company had adequate customer risk assessment procedures in place, the findings resulting from the file review manifested a lack of uniformity in the carrying out of customer risk assessments, in particular for customers on-boarded prior to April 2016 suggesting that the Company's procedures in place were not strictly being adhered to. During the carrying out of the compliance assessment, the officials were informed that the Company was also undergoing an upgrade of the customer risk assessment system. Since no further updates in relation to the progress achieved on the upgrades of the customer risk assessment system, and in order to ensure that the upgrades satisfy the Company's obligations at law, together with ensuring that the system is being exhaustively implemented, the FIAU shall follow up the implementation of said measures.

The compliance assessment process further revealed inconsistencies with regards to the effective assessment of jurisdiction risks. While the Company's remedial action as explained in its representations included risk assessing the reputability of jurisdictions it is being exposed to, including the periodical updating of the Jurisdiction Risk assessments, the Committee noted that the Risk Assessment Matrix utilized by the Company did not record the reasoning behind the attributed jurisdiction scoring. As a result, it does not provide an explanation linking the information obtained from the jurisdiction risk assessment carried out with the result obtained from the Matrix. Here again, the remediation directive shall ensure that such considerations are being included in the risk assessment process and in the new system implemented by the Company, and that adequate records of the considerations taken by the Company are being kept.

Specifically on the Purpose and Intended Nature of the Business Relationship, the compliance assessment revealed that for four of the files reviewed, the Company did not have sufficient information at its disposal to be in a position to build a comprehensive business and risk profile, to properly risk assess each of such relationships and to subsequently understand whether additional measures are necessary in view of any heightened risk exposure. Through the Remediation Directive the FIAU shall ensure that the Company comprehensively obtains information on the purpose and intended nature of the business relationships for all customers with whom a business relationship is being formed and that this information is being incorporated into the customer's risk assessment process.

## 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 documented time plan explaining the status of the **new Customer Risk Assessment System**. This documentation is expected to provide detail in relation to, the current status of the new system, the date of commencement/ expected commencement of the said system and also Information and timeframes in relation to customer migration onto the new system.

- Documentation/ procedures on the **new Customer Risk Assessment System**, including information as regards to the methodology behind the ratings and the rationale for same, which shall also specifically cover the jurisdiction risk assessment. The documentation made available shall also cover how the information obtained to build the customer's business and risk profile is being taken into consideration in determining the overall customer risk assessment.
- How the Company ensures that material changes in the customer's business and risk profile are taken into consideration for a determination as to whether the customer risk assessment needs to be revised.
- How the Customer Risk Assessment including customer profiling as compiled by the Company's system is being integrated into the monitoring of the business relationship, including transaction monitoring.

In addition and in terms of the Directive, the Committee expects the Company to ensure that the new risk assessment system is fully functional including complete migration of all its active customers within 90 days from notification of the Remediation Directive.

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.

23 April 2020