

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) as amended by Act I of 2020, which came into force on 7 February 2020, and in accordance with the policies and procedures on the publication of administrative measures 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:

29th April 2020

RELEVANT ACTIVITY CARRIED OUT:

Investment Services (Investment Services & Securities Markets)

SUPERVISORY ACTION:

On-site Compliance Review carried out in May 2018.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Remediation Directive in terms of Article 30D of the PMLA, as amended by Act I of 2020.

The FIAU's Compliance Monitoring Committee (CMC) issued a Remediation Directive on the subject person to take action and remedy the contraventions identified during the compliance review and to ensure that the actions planned to be taken by the subject person are implemented.

LEGAL PROVISION:

- Findings in relation to the obligation to carry out a comprehensive Business Risk Assessment (BRA) including a Jurisdiction Risk Assessment emanating from Regulation 5(1) and 5 (3) of the PMLFTR¹ and Section 8.1 of the Implementing Procedures Part I;
- Findings in relation to the obligation of implementing an adequate Customer Risk Assessment (CRA) as per Regulation 5 (5)(a)(ii) and Section 4.1.1 of the Implementing Procedures Part I²;
- Findings in relation to the requirement to carry out the required verification measures to identify Natural Persons and to the certification of due diligence documentation in terms of

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

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

Regulation 7 (1)(a) and 7(3) of the PMLFTR and Section 3.1 of the Implementing Procedures Part I³;

- Finding in relation to the obligation of carrying out Enhanced Customer Due Diligence in terms of Regulation 11 (1)(b) of the PMLFTR and Section 3.5 of the Implementing Procedures Part I⁴.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

While the Company had a documented BRA in place at the time of the compliance review, the BRA did not cover the full range of risk factors that would be expected to be addressed within a BRA and therefore a follow up measure was deemed necessary by the Compliance Monitoring Committee (CMC). Moreover, the CMC also noted that when conducting the BRA, the Company did not assess the reputability of jurisdictions that it was exposed to in order to identify any possible risks that may pose a heightened risk to the subject person.

With regards to the CRA, although the Company had documented customer risk assessment procedures and assigned risk scores to its customers, there was no rationale detailing the consideration of such CRA and no rationale behind the final risk scores assigned. Notwithstanding, the Company informed the FIAU that a remedial action took place after the review, thus the CMC is following up on the remediation the Company has implemented to attest the enhancements made to the CRA.

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

In view of the findings from the compliance review, and as has been explained above, the CMC proceeded to serve the Company with a remediation directive.

The aim of this remediation directive is to direct the Company to take the necessary remedial actions and ensure that the aforementioned actions are indeed implemented. Furthermore, this 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 been implemented in practice.

The remediation directive obliges the Company to make available the following documentation:

- The most recent version of the Business Risk Assessment, unless this would have been provided by the Company when uploading the Risk Evaluation Questionnaire for the year 2020;
- The methodology used to carry out the jurisdiction risk assessment including the considerations taken by the Company when risk assessing the jurisdictions (unless this was already included in the BRA);
- A copy of the assessment carried out in relation to a number of jurisdictions that the Company has carried out;
- A copy of all the documents which form part of the CRA methodology, including but not limited to the newly amended version of the Company's policies and procedures; and
- A copy of the forms and/or templates used by the Company to carry out its customer risk assessment.

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

⁴ Now Section 4.9 of the Implementing Procedures Part I as last amended on the 17th July 2019

The FIAU may request for additional information or documentation and may also request for a meeting to be held 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

In determining the appropriate administrative measures 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 in relation to 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.

7th May 2020