



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 7th 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:

19th June 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 in terms of Regulation 21(4)(c) the PMLFTR.

The FIAU's Compliance Monitoring Committee (CMC or Committee) 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 PROVISIONS:

- Findings in relation to the obligation of implementing an adequate Customer Risk Assessment (CRA) as per Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1.1 of the Implementing Procedures¹;
- Findings in relation to the obligation of having an adequate AML/CFT manual as per Regulation 5(5)(a);
- Findings in relation to the obligation to carry out a comprehensive Business Risk Assessment (BRA) emanating from Regulation 5(1) and 5(3) of the PMLFTR;
- Findings in relation to the requirement to carry out the verification of identity measures in terms of Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 3.1.3.3 of the Implementing Procedures Part I²;

¹ Now Section 3.5 of the Implementing Procedures Part I as last amended on the 17th July 2019.

² Now Section 4.3.1 of the Implementing Procedures Part I as last amended on the 17th July 2019.



- Findings in relation to the obligation to take the necessary measures in order to establish whether a customer is politically exposed or otherwise in terms of Regulation 11 (5) of the PMLFTR.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

At the time of the on-site compliance review, the Notary did not have documented customer risk assessments in place. Although the Notary was following the Manual issued by the Malta Notarial Council for guidance during its operations, from the files reviewed it was evident that the Notary still failed to document the required risk assessments and hence failed to adequately implement in practice the Malta Notarial Council's AML/CFT Manual which the Notary considered as its own internal policies and procedures. However, the Committee positively acknowledged that following the compliance review, the Notary took immediate action and prepared a new AML/CFT Manual that is tailor-made to the Notary's own operations and which Manual was submitted to the FIAU with the Notary's representations. It was determined that this Manual required minor amendments and therefore a remediation directive was deemed necessary by the CMC in order for the FIAU to ensure that the Notary has amended its current AML/CFT Manual and has adequately and effectively implemented the provisions of such Manual in practice.

Furthermore, the Notary did not have a documented business risk assessment (BRA) in place at the time of the compliance review, however, the Committee positively considered that the Notary took immediate action to remedy the situation and a BRA was subsequently attached to the Notary's Risk Evaluation Questionnaire. Notwithstanding, following its review it was determined that the compiled BRA contains a number of deficiencies which are required to be addressed by the Notary and therefore a follow up measure was deemed necessary by the CMC.

The review also outlined shortcomings with regards to the obligation to identify and adequately verify the customers on-boarded. Although the Notary collected identity details that were required for the execution of the contracts, the Notary did not carry out the verification of the identity of the customers. Moreover, the Committee noted that at the time of the compliance review, the Notary did not carry out measures in a number of files to determine whether any of the parties involved were Politically Exposed Persons (PEPs) or otherwise. Following the determination of these findings, a follow up action on the Notary's customer due diligence measures was therefore instigated by the CMC.

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 Notary with a Remediation Directive.

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

The remediation directive includes an obligation on the Notary to make the following documentation available to the CMC:

- A list of 15 final deeds that were carried out between January 2019 and May 2020 together with their respective CRAs;
- Latest AML/CFT Policy and Procedures Manual as amended in line with the FIAU's recommendations;
- Copy of the newly prepared KYC forms for both legal and natural persons;
- KYC forms of five separate deeds in relation to customers that have been party to a final contract of sale in 2019 together with any documentation collected to satisfy the identification and verification obligations on the customer.

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 attest the Notary's knowledge on AML/CFT obligations. The follow-up meeting is also intended to provide the FIAU with more reassurance that the remedial actions outlined by the Notary are being implemented in practice.

In determining the appropriate administrative measures to impose, the CMC took into consideration the representations submitted by the Notary as well as the remedial actions that had already been initiated by the Notary in order to address the shortcomings identified during the compliance review. The Committee 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.

24 June 2020

