



Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(1) 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. This notice provides select information from the FIAU's decision imposing the respective administrative penalties, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE PENALTY:

17 July 2020

SUBJECT PERSON:

Sparkasse Bank Malta plc

RELEVANT FINANCIAL BUSINESS CARRIED OUT:

Credit Institution

SUPERVISORY ACTION:

On-site compliance review carried out in 2018

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty and Follow-up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISION BREACHED:

- Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures, Part I¹;
- Regulation 7(1)(a), 7(1)(b), 7(3) and 7(5) of the PMLFTR and Section 3.1.1 to Section 3.1.3 of the Implementing Procedures, Part I²;
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures, Part I³;
- Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part I⁴.

¹ This obligation is now being expanded upon in Section 3.5 of the Implementing Procedures Part I as last amended on 17 July 2019

² This obligation is now being expanded upon in Section 4.1 to 4.3.3 of the Implementing Procedures Part I as last amended on 17 July 2019

³ This obligation is now being expanded upon in Section 4.4 of the Implementing Procedures Part I as last amended on 17 July 2019

⁴ This obligation is now being expanded upon in Section 4.5 of the Implementing Procedures Part I as last amended on 17 July 2019

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures, Part I

During the onsite examination, various shortcomings were noticed in relation to customer risk assessment. The findings related to:

- i. Failure to have a customer risk assessment on file;
- ii. Customer risk assessment was carried out after the establishment of the business relationship;
- iii. Customer risk assessment lacked sufficient and adequate detail; and
- iv. Customer risk assessment carried out by the Bank did not factor all the available information.

One or more of the above shortcomings were noted in a total of thirty-four (34) files.

Moreover, it was also observed that in a total of thirty-one (31) files reviewed, the jurisdictional risk assessment performed by the Bank was considered to be inadequate by the Compliance Monitoring Committee (CMC). The Committee determined that although the Bank made reference to public sources, this could not be considered as adequate since there was no information whatsoever as to how the Bank made use of such public sources and what the result of such consideration was. There were also several other jurisdictions to which the Bank was exposed to, for which neither any references to any public sources were on file, nor any jurisdictional risk assessment. The CMC therefore determined that the Bank had failed to consider the geographical factor, one of the four main risk pillars when performing the customer risk assessment.

In view of these failures in relation to the Bank's obligation to carry out and document its customers' risk assessments in a comprehensive manner, which would in turn enable the Bank to understand the risk profile of its customer and conduct transaction scrutiny accordingly, the Bank was deemed to have systematically breached Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures Part I.

Regulations 7(1)(a), 7(1)(b), 7(3) and 7(5) of the PMLFTR and Section 3.1.1 to Section 3.1.3 of the Implementing Procedures, Part I

The onsite examination also revealed some shortcomings in the Bank's identification and verification measures. These weaknesses were observed in a total of six files and consisted in shortcomings with respect to the manner and the timing within which the identity of agents, customers and UBOs were verified.

Therefore, the Bank was deemed to be in breach of Regulation 7(1)(a), 7(1)(b), 7(3) and 7(5) of the PMLFTR and Section 3.1.1 to Section 3.1.3 of the Implementing Procedures, Part I.

Regulation 7(1)(c) of the PMLFTR

The compliance review performed on the Bank revealed that it has failed on numerous occasions to adhere to its obligation to obtain sufficient information and/or documentation to establish the purpose and intended nature of the business relationships it maintained with its customers. This shortcoming included one or more situations where:

- v. The Bank failed to collect information on source of wealth and estimated size of transactions on the basis that it exercised reliance on another subject person even though the exercise of reliance does not exempt subject persons from collecting sufficient information to have a comprehensive customer profile;
- vi. The Bank could not explain how documentation collected and found on file was to be considered within the context of the purpose and intended nature of its relationship with the customer;
- vii. The Bank was provided with information on how the accounts made available to the customer were to be used but did not question why the use of the same did not tally with what the accounts were usually intended to be used; and
- viii. The Bank failed to collect information on how the customer was intending to use the account such as the estimated annual turnover and the estimated size and activity passing through the said accounts.

In relation to the abovementioned findings, the CMC determined that the Bank breached its responsibilities under Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I.

Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part I

Serious shortcomings were identified in relation to the Bank's obligation to scrutinise transactions taking place through its customers' accounts. With regard to several transactions highlighted by FIAU officials during the compliance review, it was revealed that the Bank either did not scrutinise the transactions being effected through its accounts, or it otherwise carried out inadequate monitoring of accounts held with it.

The failure to scrutinise transactions appropriately was observed in a number of transactions effected to/from the various accounts or sub-accounts of 6 files. Whilst in certain instances the volumes passing through the Bank's accounts were extremely large, with single payments at times even exceeding EUR 1 million, in other cases the transactions did not tally with the customer profile. The Bank neither questioned such voluminous amounts nor did it attempt to obtain further information about the payments from its customers. Instead, it proceeded to allow the transactions being effected.

In particular, in two files (with various sub-accounts) relating to investment services companies, the Bank applied simplified due diligence (SDD) on the basis that these customers were licenced entities. However, after taking into consideration the risks surrounding the transactions taking place, the jurisdictions involved, the customers being serviced by these entities and the adverse media on one of these entities, the Bank should have reconsidered the application of SDD and the low risk assigned to such customers. This is especially relevant when taking into consideration that these entities were making use of omnibus accounts. Considering the actual risks associated with these customers, the level of on-going monitoring that the Bank was carrying out with respect to the transactions taking place through these accounts should have been stricter and more thorough than what was actually being implemented.

Taking into account this somewhat lenient approach to the nature of the transactions taking place through its accounts, the Committee concluded that the Bank had breached Regulation 7(2)(a) of the PMLFTR.

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

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of two hundred and seventeen thousand and six hundred and thirty-five euro (EUR 217,635) with regard to the findings in relation to:

- ix. Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures, Part I;
- x. Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I; and
- xi. Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part I.

With regard to the findings in relation to Regulations 7(1)(a), 7(1)(b), 7(3) and 7(5) of the PMLFTR and Section 3.1.1 to Section 3.1.3 of the Implementing Procedures, Part I, the Committee concluded that a reprimand shall be given to the Bank.

The Committee also positively noted the remedial action that was already being undertaken by the Bank. To ensure that the Bank is effectively addressing the breaches set out above, the Committee directed the Bank to provide it with an Action Plan setting out the actions already taken, what actions it still has to implement and in both instances how these resolve the issues with the Bank's AML/CFT policies, procedures and measures set out hereabove. Specifically, the Action Plan is to cover:

- xii. Jurisdictional risk assessments performed by the Bank;
- xiii. Changes being effected to the Bank's Customer risk assessment methodology and procedures including supporting documentation in relation to the automated system being now utilised by the Bank for customer risk assessment purposes;
- xiv. Customer Acceptance Policy;
- xv. Methodology(ies) utilised with regard to PEP on-boarding;
- xvi. Procedure(s) relating to transaction monitoring, including any policies relating to the new automated AML compliance system implemented by the Bank for the purpose of carrying out transaction monitoring (in real time);
- xvii. The current status of any other action within the Bank's remediation project that are currently being implemented or that have yet to be actioned upon by the Bank.

In determining the appropriate administrative measures to impose the Committee took into consideration the representations submitted by the Bank together with the remedial action that the Bank had already started to implement, the nature and size of the Bank's operations, the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Bank'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 Bank has also been duly informed that in the eventuality that the Bank fails to provide the above mentioned action plan and supporting documentation available with the specified deadline, the Bank's default shall be communicated to the Committee for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

24 July 2020

