



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 measure, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

17th July 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 carried out in year 2018.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Remediation Directive in terms of Regulation 21(4)(c) of 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 breaches 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 implementing a comprehensive business risk assessment inclusive of an assessment of the geographical risks the subject person is exposed to in terms of Regulation 5(1) and 5(3) of the PMLFTR 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 I;¹
- 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 I;
- Findings in relation to the timing of verification of identification in terms of Regulation 8(1).
- Findings in relation to verification documentation in terms of section 3.1.2 of the IPs Part I.²

¹ Section 3.5 of the revised IPs Part I.

² Section 4.3 of the revised IPs Part I.

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 had already initiated remedial actions to remedy such failure prior to the FIAU's examination. The implementation of such remedial action was also evidenced by the subsequent BRA submission carried out with the Notary's Risk Evaluation Questionnaire 2020. During the onsite examination, the Notary also demonstrated knowledge towards the risks associated with the nature of the operations involved. Nevertheless, the Notary was found to be in breach for not having a documented business risk assessment in place at time of the onsite examination. It was also determined that the newly established BRA requires minor amendments and therefore a remediation directive was deemed necessary by the CMC to ensure that the Notary has updated the most recent BRA as instructed by the FIAU and that the risks arising from the Notary's operations are not only documented but also understood by the Notary.

Moreover, and also included as part of the aforementioned administrative measure, it was determined that, at the time of the onsite review, from the sample of files selected, the Notary serviced a number of customers without carrying out a comprehensive customer risk assessment. The customer risk assessment implemented by the Notary did not holistically take into consideration all the risk factors of its customers and was limited to the geographical risk factor involved. Thus, without assessing all the required risk factors, the Notary failed to understand the overall risk of individual customers and therefore was not able to apply adequate mitigating measures that would address the risk identified.

A follow up action on the Notary's customer's risk assessment measures was therefore instigated by the CMC.

In addition, although the Notary did have in place policies and procedures in relation to identification and verification, during the examination it was found that these were not being fully implemented.

The compliance review revealed other shortcomings including those concerning the timing of customer due diligence; where it was found that the document obtained to verify the identity of the parties to the occasional transaction was obtained after the occasional transaction had taken place, and issues concerning the certification of verification documents not being carried out.

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 administrative measure is to direct the Notary to take the necessary remedial action 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:

- The most recent Customer Risk Assessment Methodology and the CRA forms currently being used by the Notary;
- A sample of deeds carried out after the examination took place, including the CRA forms filled in relation to these deeds. The sample requested shall comprise of a variation in the overall risk ratings assigned ranging from high risk, medium risk and low risk.

Furthermore, the Remediation Directive also provides for a follow up meeting to be conducted with the Notary in order to discuss the actions being taken to address the shortcomings highlighted and to ensure the documented policies and procedures made available, including the most recent Business Risk Assessment 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 and to ensure that the Notary has sufficient knowledge with regards to the AML/CFT obligations.

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.

24 July 2020