



FIAU

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:

29 July 2020

SUBJECT PERSON:

FIMBank 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:

- Section 8.1 of the Implementing Procedures, Part 1¹.
- Section 5.5 of the Implementing Procedures, Part 1²
- Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part 1³

¹ 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

² 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 9 of the Implementing Procedures as last amended on 17 July 2019

³ 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 Section 4.5.2 of the Implementing Procedures as last amended on 17 July 2019

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Section 8.1 of the Implementing Procedures, Part 1

During the compliance examination, two limitations were noted in relation to the Bank's Country Risk Assessment:

- I. The Bank's risk assessment tool did not take into account all the countries that the Bank's customers are dealing with. Therefore by way of example a customer trading with multiple jurisdictions would not be exhaustively risk accredited based on all the jurisdictions it is exposed to but rather to only one.
- II. When taking into consideration the risk posed by the country of residence of the ultimate beneficial owner ("UBO"), the Bank's risk assessment tool only took into consideration countries which are included in the Financial Action Task Force (FATF) lists. Thus countries which are not included in such lists were treated equally, irrespective of the AML/CFT risks that may be posed by those countries.

The Compliance Monitoring Committee (CMC) has however considered that although in assessing the Customer risk the Bank was not taking into consideration the risks posed by all countries, the Bank was always taking into consideration the highest risk country that each Customer/ UBO would be exposed to.

In view of these failures in relation to the Banks obligation to carry out a Country Risk Assessment in a comprehensive manner, the Bank was deemed to have breached Section 8.1 of the Implementing Procedures Part 1.

Section 5.5 of the Implementing Procedures, Part 1

The compliance examination also identified weaknesses in the Bank's ability to retrieve records in an efficient manner, in particular since the information collected to compile the customer business and risk profile was dispersed between different departments of the Bank. The Committee therefore determined that the Bank's record keeping measures were not adequate for the Bank to completely satisfy its record keeping obligations.

Hence, the Bank was deemed to be in breach of Section 5.5 of the Implementing Procedures Part 1.

Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part 1

Serious shortcomings were identified in relation to the Bank's obligation to scrutinize transactions. The Findings related to:

- Failure to adopt an adequate transaction monitoring system to effectively scrutinize incoming/ outgoing transactions.
- Failure to effectively monitor the transactions that were taking place through the established business relationships.

During the compliance examination, it was noted that while all transactions were being screened a-priori (i.e.: Live monitoring), said screening did not extend to cover the amount involved in the transaction or the detection of any patterns of transactions.

The Bank was, at the time of the compliance review, heavily dependent on a-posteriori monitoring. While, a-posteriori is one of the measures that can be applied for monitoring transactions, the Bank was expected to be more vigilant and to monitor transactions in real time particularly when having control over whether or not a transaction may be executed. This was especially important considering the high value and high risks associated with certain transactions that the Bank was involved in. Therefore, although the Bank had transaction monitoring measures in place, such measures were not commensurate to the size and nature of its activities.

The Compliance examination also identified serious shortcomings in relation to the Bank's obligation to scrutinise transactions taking place through its customers' accounts. For eight (8) of the transactions reviewed, the Bank did not comprehensively understand the reasons for certain transactions that were taking place through the customers' accounts with the Bank.

Overall the CMC observed that while in certain instances the volumes passing through the Bank's accounts were significantly large, with single payments at times even exceeding EUR 13 million, in other cases the transactions did not tally with the customer profile, yet the Bank failed to thoroughly scrutinise the transactions that were taking place.

In one particular instance, the Bank's customer obtained a loan from the Bank to finance the acquisition of a vessel. The said acquisition was not carried out by the Bank's customer but rather by a related third party. Following refurbishment works, said vessel was sold to an unrelated entity however all the funds from the sale were remitted to the Bank's customer with the company that had carried out the original acquisition not retaining any earning from this sale. In this case, the Bank did not question the actual reason for this particular arrangement but relied on its understanding that these were intra group transactions, and this even though there was adverse media available on the company from which the vessel had been originally acquired.

In view of the failures in relation to the Banks obligation to carry out effective scrutiny of transactions, the Bank was deemed to be in breach of Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I.

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

After taking into consideration the abovementioned breaches by the Bank, the CMC decided to impose an administrative penalty of one hundred sixty eight thousand and nine hundred forty three euro (€168,943) with regards to the findings in relation to Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part 1.

The CMC has however positively noted the remedial action that was already being undertaken by the Bank at the time when the 2018 Compliance Review was carried out. The remedial actions the Bank started to implement included the introduction of a new AML/CFT monitoring system that should bridge the gaps identified during the compliance review of 2018. The CMC also noted that the Bank has already started implementing other measures to address the other breaches that were determined by the CMC. To ensure that the Bank is effectively addressing the breaches set out above, the CMC 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 here above. Specifically, the Action Plan is to cover:

- The updates, implementation and utilization of the country assessment within the Bank's new system;
- How the implementation of the Bank's new system assists the Bank to ascertain that AML/CFT records are well organized and easily obtainable whenever required;
- A detailed description of the transactional monitoring criteria/ rules/ scenarios implemented within the Bank's newly adopted transactional monitoring system to effectively monitor and scrutinize transactions that pass through the customers' accounts of the Bank.

In determining the appropriate administrative measures to impose, the CMC took into consideration the representations submitted by the Bank together with the remedial actions that the Bank had already started to implement. The nature and size of the Bank's operations and the overall impact that the AML/CFT shortcomings of the Bank have caused or could have caused both to its own operations and also to the local jurisdiction were also taken into account by the CMC. The seriousness of the breaches identified together with their occurrence were also considered by the CMC 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 deadlines, the Bank's default shall be communicated to the CMC 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.

5 August 2020