



FIAU

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:

7 August 2020

RELEVANT ACTIVITY CARRIED OUT:

Advocate, 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 2020

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") served the Subject Person with a Remediation Directive instructing the Advocate to take remedial action and remedy the breaches identified during the compliance review.

LEGAL PROVISIONS BREACHED:

- Regulation 5(1) of the PMLFTR, and Sections 3.3.1 of the Implementing Procedures Part I;
- Section 8.1 of the Implementing Procedures Part I;
- Regulation 5(5)(a)(ii) and Section 3.5 of the Implementing Procedures Part I;
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures Part I;
- Section 7.1 of the Implementing Procedures.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR, and Section 3.3.1 of the Implementing Procedures Part I

The Advocate had an inadequate business risk assessment (BRA) in place at the time of the compliance review. The BRA was not covering efficiently the Subject Person's AML/CFT obligations. More specifically, it did not identify the threats and vulnerabilities which the Subject Person was or could have been exposed to in his/her practise, and was not assessing the likelihood and the impact of possible money laundering and financing of terrorism (ML/FT) risks. In fact, the BRA was only referring

to specific cases regarding gaps in the customers' verification documents, provisions about cash-payments and clarifications in relation to the face to face on-boarding procedures. Moreover, the BRA had substantial deficiencies in relation to the mitigating measures in relation to the ML/FT risks which the Subject Person was or could have been exposed to.

While noting that the Subject Person tried to enhance and improve the BRA following the recommendations of the AML officers during the on-site examination, the Revised BRA provided with the 2020 Risk Evaluation Questionnaire still does not adhere to the provisions of the PMLFTR and Implementing Procedures, Part I. In fact, it does not go into detailing the risks which the Advocate is or could be exposed to and does not take determine the inherent and residual risks of the Subject Person's operations. Therefore, the current BRA still lacks in effectiveness and needs to be enhanced further.

Section 8.1 of the Implementing Procedures Part I

During the onsite examination, it was also noted that although the Subject Person had customers with connections to a foreign jurisdiction, no risk rating was assigned to such jurisdiction and neither was any documented rationale provided behind the risk rating assigned. The Committee took into consideration the representations submitted by the Subject Person, which stipulated that the foreign jurisdiction is a member state of the European Union. The Committee concluded that the fact that the jurisdiction should be adhering to EU Directives did not exonerate the Subject Person from performing a jurisdictional risk assessment in accordance with Section 8.1 of the Implementing Procedures Part I.

Regulation 5(5)(a)(ii) and Section 3.5 of the Implementing Procedures Part I

FIAU officials observed that the Customer Risk Assessment (CRA) had critical inaccuracies regarding its methodology and rationale in the categorisation of risk ratings. While the CRA took into consideration risk factors including "geography", "people", "service", "interface" and "politically exposed persons", it did not evaluate the criteria that should be included for each factor. Thus, the CRA was not effectively evaluating the threats which arise or could arise through on-boarding or servicing a specific customer. Consequently, while the Advocate had some appreciation of the risk factors that the business operations exposed her to, the Committee concluded that a more comprehensive CRA was required in order to ensure that the Subject Person was in a position to take effective steps to mitigate the risks related to the customers onboarded.

Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures Part I

The Committee observed that while the Advocate stated that he/she had endorsed a non-PEP on-boarding policy, there was no information on file to confirm that measures to determine whether a customer, or the beneficial owner, where applicable, is a PEP, a family member of a PEP or a close business associate of a PEP. Thus, the Committee concluded that whilst the Subject Person had confirmed that searches had indeed been carried out for all customers, and that the Advocate did have knowledge on how to perform the necessary searches, evidence of such searches was not retained.

Section 7.1 of the Implementing Procedures Part I

Finally the members agreed that the Subject Person was not adhering to his/her training and awareness obligations. The last training attended by the same Subject Person took place in 2018, and was in relation to a course that neither had anything to do with the Advocate's services nor with the Advocate's local AML/CFT obligations. As a result, the Advocate was not being updated and informed regarding the ongoing threats and changes as far as the AML/CFT framework is concerned.

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 Advocate with a Remediation Directive.

The aim of this administrative measure is to direct the Advocate to take the necessary remedial action to ensure that going forward the Advocate is in a position to adhere to the AML/CFT obligations applicable to his/her operations. The Directive also instructs the Advocate 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 Advocate to make available:

- A revised BRA including an explanation of the methodology used to determine the inherent risks, control levels and residual risks. The BRA should include the necessary information to be able to understand the considerations taken to arrive at the rating to assign each risk factor and to finally arrive at the overall rating of the business risks;
- A copy of the Jurisdictional Risk Assessment on foreign jurisdictions, either as part of the BRA or rather as a separate document;
- An update on-boarding Client Risk Assessment Form;
- A revised CRA that considers more criteria in relation to the customer risk factors and that includes a methodology in arriving at the final risk rating together with an updated on-boarding CRA form;
- Confirmation that the PEP searches for all current customers have been adequately documented and that new customers are being so screened and record of same retained on file;
- Copies of AML/CFT Training Certificate(s) undertaken by the Advocate within the stipulated timeframes.

In determining the appropriate administrative measure to impose the CMC took into consideration the representations submitted by the Advocate as well as the remedial actions undertaken by the Advocate in order to address shortcomings identified during the compliance review. The CMC also took into consideration the nature and size of the Advocate's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Advocate'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 Advocate 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.

13 August 2020