



Administrative Penalty Publication Notice

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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:

28th August 2020

RELEVANT ACTIVITY CARRIED OUT:

Real Estate Agents

SUPERVISORY ACTION:

On-site Compliance Review

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:

- Regulation 5(1) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 5(5)(a) of the PMLFTR;
- Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR;
- Section 4.4.3 of the Implementing Procedures Part I.
- Regulations 5(5)(b) and 5(5)(e) of the PMLFTR
- Regulation 15 of the PMLFTR and Section 5.1.2 of the Implementing Procedures Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR

The Compliance review revealed that the Company did not have a documented Business Risk Assessment (BRA) in place at the time of the examination however, through the engagement of an external consultant, the Company 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 as part of the Company's representations and to the Company's Risk Evaluation Questionnaire 2020.

Although the obligation had been in force for almost a year at the time of the compliance review, the Company still failed to ensure adherence. The Committee reiterated that despite the MLRO's knowledge of some of the ML/FT risks arising from the conduct of real estate activities that the Company engages in, by not having formally documented a BRA at the date of the compliance review, the Company compromised its ability to comprehensively identify the of threats and vulnerabilities which the Company is exposed to and to subsequently implement the necessary controls in order to mitigate such risks.

In view of the above-mentioned shortcomings, the Committee found the Company to have failed to take appropriate steps, proportionate to the nature and size of its business, to assess the risks of ML/FT arising of its activities and to adequately document such assessment. The Committee therefore decided that the Company is in breach of its obligations in terms of Regulation 5(1) of the PMLFTR.

Regulation 5(5)(a)(ii) of the PMLFTR

The Committee noted that although the Company had assigned a risk rating for each of the occasional transactions carried out, there was no documented rationale justifying such Customer Risk Assessment ("CRA") rating in all of the files reviewed. It was unclear what risk factors were taken into consideration and how these risk factors were weighted in order to derive the risk rating assigned.

The Committee however positively acknowledged that the Company had engaged a third party consultant in order to develop an internal software to be implemented within the Company's day-to-day operations and which in turn will be able to assist all real estate agents when inputting the data collected for all occasional transactions and to streamline and facilitate the CRA and approval process.

Nevertheless, in view of the aforementioned shortcomings, the Committee considered the Company to have failed to have in place adequate risk assessment and risk management procedures that would enable the Company to assess the risk posed by its customers and to subsequently implement measures which are appropriate and proportionate to those risks. The Committee therefore decided that the Company breached its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulation 5(5)(a) of the PMLFTR

Upon reviewing the documentation in relation to the Company's policies and procedures, a number of deficiencies were outlined, primarily that the Company does not have an approved Customer Acceptance Policy in place. It was additionally noted by the Committee that the policies and procedures of the Company were not comprehensive. For instance, these made no reference to the Enhanced Due Diligence ("EDD") measures to be applied in order to mitigate the risk associated with situations that represent a higher risk of ML/FT as required by Regulation 11(1) of the PMLFTR.

The Committee considered that in the absence of established customer acceptance policy and EDD procedures, the Company and its employees lacked clear and approved controls on how to mitigate the risks arising from the transfer of immovable property, particularly when such activity represents a high risk of ML/FT such as having parties to a transaction that are Politically Exposed Persons or established in a non-reputable jurisdiction.

The compliance review also revealed that record keeping procedures defining how the Company should retain records showing how it complied with its obligation at law; such as the type of records to be retained, the method of retention, are not documented. The Committee however determined that there does not seem to be any issues in practice relating to Record Keeping, as the majority of requested documentation was made available to officials during the on-site examination in an efficient manner.

In view of the aforementioned, the Company was found to have breached its obligations in terms of Regulation 5(5)(a) of the PMLFTR.

Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR

In relation to the findings identified to Identification and Verification of Customers, the Committee determined that the matter at hand is that the documented Company's policies are not being implemented in practice. From the file review, several shortcomings were noted in 4 customer files:

- In one file, no documents were obtained by the Company in order to verify the identity of both of the buyers involved in the transaction. In the same file, where there was a legal entity involved in the transaction, the Company did not obtain any documents in order to verify the identity of all the beneficial owners behind the three corporate customers that were appearing as sellers. Similarly, in this same file, no documents were obtained by the Company in order to verify the identity of the agent acting on behalf of two of the sellers involved in the transaction;
- In two other files, where there was a legal entity involved in the transaction, although the Company obtained information on the two shareholders of the entity, who were legal entities, the Company did not go a step further to identify and verify the beneficial owners behind the said legal entities; and
- In one file, no authorisation in writing was found on file authorising the identified individual to act on behalf of one of the buyers involved in the transaction.

In view of the above, the Committee determined that the Company is in breach of Regulation 7(1)(a) for failure to verify the identity of its customers in 1 of the files reviewed, 7(1)(b) for failure to verify the identity of the ultimate beneficial owners in 3 of the files reviewed and Regulation 7(3) for failure to verify the identity of the agent and to ensure the agent was authorised to act on behalf of the Company's customer in 2 of the files reviewed.

Regulation in terms of Section 4.4.3 of the Implementing Procedures Part I

When reviewing one particular file it was noted that where the buyers declared that the purchase of the property was to be financed from their own funds, no further information was obtained by the Company to establish the source of the funds that would be used by the buyers. Whilst the Committee recognized that the Company had knowledge of the source of funds of the customer, being from the sale of their matrimonial house, it was expected to go a step further and take additional measures in order to ensure that evidence on file substantiating their customer's statement as to the source of fund was obtained.

In view of the aforementioned reasons therefore, the Committee determined that the Company is in breach of Section 4.4.3 of the IPs for failure to obtain additional information and or/documentation on a risk sensitive basis and to carry out adequate and comprehensive enhanced measures when these were required in one of the files reviewed.

Regulations 5(5)(b) and 5(5)(e) of the PMLFTR

From the findings identified during the inspection of documentation relating to the AML/CFT training provided by the Company to its employees, it transpired that the only training given to employees was that of a short session. In view of this, the FIAU did not deem the content of the training as being sufficient enough for the Company to ensure that its staff is fully aware the AML/CFT obligations, the risks of ML/FT posed by the activities of the Company, and the identification of unusual and riskier transactions. In view

of the aforementioned reasons, the Committee determined that the Company is in breach of Regulation 5(5)(b) and 5(5)(e) of the PMLFTR.

Regulation 15 of the PMLFTR and Section 5.1.2 of the Implementing Procedures Part I

The Committee noted that the person who is currently acting as the MLRO of the Company holds significant ownership of the Company, thus the conflicting objectives and functions emerging from the carrying out of this dual role poses a risk on the effective fulfilment of the MLRO-related duties.

The Committee appreciated that the MLRO feels better placed to ensure the preservation of the Company's reputation and in safeguarding it from ML/FT risk, however rather than being involved in the AML/CFT safeguards of the Company as MLRO, given the conflicting interest in place, the beneficial owner can still continue to have oversight of the compliance department, through him being a director of the Company. The Committee further recommended, that if the Company falls within a group of companies, the possibility of appointing a group MLRO is also viable, however the Committee further made reference to the requirements in terms of the PMLFTR and IPs as to who can take up the role of MLRO.

In view of the aforementioned the committee has determined that the Company is in breach of Regulation 15 of the PMLFTR and Section 5.1.2 of the IPs.

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 Company with a Remediation Directive.

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

- A detailed explanation of the Customer Risk Assessment the Company is conducting and how this is being implemented in practice;
- A copy of the Excel Sheet which is currently being used by the Company to conduct Customer Risk Assessment as explained in the Company's letter of representations;
- A detailed explanation of the new risk assessment tool which is to be implemented and what information will be fed into the respective tool and how such tool will aid the Company in compiling an effective CRA;
- A detailed timeline explaining the different phases required to complete the said tool along with expected go live date of the respective tool.
- To establish and document (as per the IPs) a Customer Acceptance Policy. The Company is expected to not only ensure that a CAP is adequately documented but that the implementation of such CAP is subsequently carried out by the Company to ensure its daily operations are in line with such established Policy; and
- To provide the FIAU with the documented record keeping procedures which should include and follow the guidance provided within the IPs, such as for how long the documents are held and who has access to the said documents.

- To ensure effective implementation of the said policies and procedures, the Company is to provide the FIAU with files for **2 High Risk, 2 Medium Risk and 2 Low Risk** customers, out of which at least 2 must be corporate customers for which occasional transactions have been conducted post the date of the compliance examination up to the date of the imposition of the administrative measure being imposed.
- A copy of the updated policies and procedures that account for EDD measures to be undertaken for cases of occasional transactions which pose a higher risk;
- Evidence of any training attended by the company's officials since the date of the Company's representations. If no such training has been attended to date, a copy of the Company's plans for the next three months in relation to training for its officials including details of what the training shall cover and who shall be attending such training; and
- Evidence of any training attended following the representations. If training is yet to be attended, following the carrying out of such training, evidence of same should be submitted to the FIAU
- The Committee has determined that the Company's current MLRO can no longer hold this position in view of the conflict of interest that exists in being also the Beneficial Owner of the Company. In terms of this Directive, the Company is required to find a qualified MLRO and while ensuring adherence with Section 5.1 of the Implementing Procedures. This change shall be carried out within a 6 month timeframe.

Furthermore, the Remediation Directive also provides for a follow up meeting to be conducted with the Company 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 Company. 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 Company has sufficient knowledge with regards to the AML/CFT obligations.

In determining the appropriate administrative measure to impose the Committee took into consideration the representations submitted by the Company as well as the remedial actions undertaken by the Company in order to address shortcomings identified during the compliance review. The Committee also took into consideration the nature and size of the Company's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Company'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 Remediation Directive reminds the Company that in the eventuality that the requested documentation and/or information is not made available within the stipulated timeframes, the Committee 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.

02 September 2020