



## 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 MEASURE:**

31 August 2020

### **SUBJECT PERSON:**

Vivaro Ltd.

### **RELEVANT ACTIVITY CARRIED OUT:**

Remote Gaming Operator

### **SUPERVISORY ACTION:**

On-site Compliance Review carried out in 2019

### **DETAILS OF THE ADMINISTRATIVE MEASURE 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 PROVISIONS BREACHED:**

- Regulations 5(1), 5(5) and 5(6) of PMLFTR, and Sections 3.1 and 3.4 of the Implementing Procedures Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR, and Sections 2.1.2, 2.2.1, 2.2.2 and 3.3.2 of the Implementing Procedures Part II Remote Gaming Sector;
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.4.1 of the Implementing Procedures Part I;
- Section 3.3.2(ii) of the Implementing Procedures Part II Remote Gaming Sector;<sup>1</sup>
- Regulation 7(1)(c) of the PMLFTR and Section 3.2(iii) of the Implementing Procedures Part II Remote Gaming Sector;
- Regulation 7(2)(a) of the PMLFTR, and Sections 4.5 and 4.5.2.2 of the Implementing Procedures part I;
- Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Implementing Procedures Part I and Section 3.4 of the Implementing Procedures Part II Remote Gaming Sector;
- Regulation 5(5)(c) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I;
- Sections 5.4 and 5.5 of the Implementing Procedures Part I;
- Regulation 5(5)(e) of the PMLFTR and Section 7.2 of the Implementing Procedures Part I.

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<sup>1</sup> Currently Section 3.3.2(i) of the Implementing Procedures Part II Remote Gaming Sector, issued in July 2020.

## **REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

### Regulations 5(1), 5(5) and 5(6) of PMFLTR and Sections 3.1 and 3.4 of the Implementing Procedures Part I

From the onsite examination it was noted that, Vivaro Ltd (the “Company” or “Licensee”) had a Business Risk Assessment (“BRA”) that was however not approved by the Board of Directors of the Company and nor did the BRA make any reference as to when it was published or last revised on.

The FIAU’s Compliance Monitoring Committee (the “Committee”) found the content of the Business Risk Assessment to be inadequate. Although a reference to the risk pillars was found in the Business risk assessment, the criteria included under such pillars were not always relevant to the understanding of the business risks, for example; reference was made to risk criteria that are generally considered to be controls rather than risks such as, IP information and Personal Information do not match.

Furthermore, the Company also failed to consider the likelihood of risks materialising, such as for example, although the Company made reference to non-reputable jurisdictions or to countries subject to sanctioning, it failed to consider the exposure it had to such jurisdictions. Nor did the Company taken into consideration the risk exposure from Politically Exposed Persons (PEPs).

As far as mitigating measures are concerned, the BRA included several measures, however it was observed that the Company did not apply such measures in practise, as shall be outlined further in this publication.

The Committee also considered that although the Company had been operating under its Maltese license since year 2015, the BRA was not making reference to the Maltese legal framework but otherwise referred to UK law.

In view of the findings identified and the representations of the Company, the Committee concluded that the Company had systematically breached Regulation 5(1), 5(5) and 5(6) of the PMLFTR and Section 3.1 and 3.4 of the Implementing Procedures, Part I.

### Regulation 5(5)(a)(ii) of the PMLFTR and Sections 2.1.2, 2.2.1, 2.2.2 and 3.3.2 of the Implementing Procedures Part II Remote Gaming Sector

At the time of the compliance examination, the Company had internal manuals and policies in place indicating that the Licensee was supposed to carry out Customer Risk Assessments (CRAs) in order to identify potential ML/FT risks to which it could be exposed to upon entering a business relationship with a customer. However, the onsite examination revealed that the Licensee had not implemented its CRA procedures.

Prior to the examination, the Company’s Money Laundering Reporting Officer (MLRO) had stated that, the procedure that the Company was implementing was to rate as low risk players who had not reached the 2,000 EUR deposit threshold. On the other hand, those who had exceeded such threshold were being rated as high risk. About this approach, the Committee remarked that simply rating the customers on the basis of reaching a predefined threshold is far from being an adequate assessment of the risks posed by each customer, since such procedure is simply dependent on the value of deposits rather than a consideration of all the risk elements.

The MGA and FIAU officers onsite noted that all the 30 player profiles reviewed had reached the EUR 2,000 threshold and none of the players were rated as high risk, hence, the Company was not following its own procedures either, even though same cannot be considered to be a comprehensive measure to risk assess customers. In reality, the Company was not carrying out any form of CRA and in fact none of the 30 player profiles reviewed had been risk assessed.

The internal manual and policies that had been submitted to the FIAU and MGA as part of the documentation requested prior to the onsite examination lacked the depth of an adequate CRA. The information which the Company considered for its understanding of customer risk was limited, since not enough information would have been collected by the Company to understand the type of customer being on-boarded, had it applied the procedures outlined in its internal manual.

It was further noted that the Company's manual did not make any reference as to how the final risk scoring should be assigned when risk assessing customers and how the risk factors would be evaluated in order to determine the final risk scoring.

Hence, the Committee concluded that at the time of the onsite examination the Company had systematically breached Regulation 5(5)(a)(ii) of the PMLFTR, and Sections 2.1.2, 2.2.1, 2.2.2 and 3.3.2 of the Implementing Procedures Part II Remote Gaming Sector.

#### Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.4.1 of the Implementing Procedures Part I

Prior to the examination taking place the Company failed to submit its Customer Acceptance Policy (CAP), and in correspondence exchanged with FIAU and MGA officers the Company had confirmed that it did not have a documented CAP and suggested to accept as substitute the terms and conditions that were available on the Company's website. However, the terms and conditions did not contain the information required by AML/CFT legislation to form part of a CAP.

Moreover, the Company provided the FIAU and MGA officers with a document of accepted jurisdictions however, this was simply a word document containing a list of twelve countries as accepted jurisdictions under the Maltese license. Despite the fact that the Company was not supposed to accept players residing in countries which were not listed in the document, it was noted that a total of 22 players out of the 30 reviewed resided in countries which were supposedly unacceptable to the Company.

In light of the findings and the representations submitted, the Committee determined that the Company had systematically breached Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.4.1 of the Implementing Procedures Part I.

#### Section 3.3.2(ii) of the Implementing Procedures Part II Remote Gaming Sector<sup>2</sup>

The Business Risk Assessment in force at the time of the onsite examination stated that the Company is a white label operator with multiple brands and that therefore steps are taken to link these accounts to the same individual, thus, ensuring that they are treated as one relationship rather than separate ones. It was found however, that the Company had failed to implement the necessary measures to ensure that accounts belonging to the same player are linked.

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<sup>2</sup> Currently Section 3.3.2(i) of the Revised Implementing Procedures Part II Remote Gaming Sector, revised on 17 July 2020.

By way of example, when the MGA and FIAU officers found two different player profiles belonging to the same individual, the Company did not implement measures to determine that these are the same customer.

The Committee determined that the Company had systematically breached its obligations under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.4.1 of the Implementing Procedures Part I.

Regulation 7(1)(c) of the PMLFTR and Section 3.2(iii) of the Implementing Procedures Part II Remote Gaming Sector

The Company did not obtain any information regarding the source of wealth and source of funds of the players. The onsite examination revealed that out of the 30 profiles examined during the review, none of these files had any information on the customers' source of wealth and source of funds despite the fact that all the files exceeded the 2,000 EUR threshold.

This systemic deficiency impinged on the Company's ability to effectively monitor the activity of its customers since it failed to create a customer risk profile. Therefore, the Committee determined that the Company was in systematic breach of Regulation 7(1)(c) of the PMLFTR and Section 3.2(iii) of the Implementing Procedures Part II Remote Gaming Sector.

Regulation 7(2)(a) of the PMLFTR, and Sections 4.5 and 4.5.2.2 of the Implementing Procedures, Part I

As far as transaction monitoring is concerned, the Company did not have in place any measure to monitor the players' activity with the aim to analyse transactions that were anomalous or suspicious. The Licensee was allowing all types of transactions to pass through its accounts without understanding whether any of such payments were unusual or voluminous which would necessitate a review of such transactions to be carried out.

The Committee proceeded to analyse a number of player profiles for this finding. Despite the amount of the transactions held and withdrawals as well as the profile of the players (including citizenship in high risk countries; betting patterns of low odd methodology; depositing and withdrawing through different payment methods), the Company had not performed any measure of transaction scrutiny. For instance one of the players examined, held a total of EUR 194,450 and withdrew EUR 201,347, he made use of the sports betting services and was following a low odds bets methodology which is considered to be a money laundering typology. However, the Company did not scrutinise the patterns of the customer so to ensure that the customer's modus operandi was not suspicious or linked to ML.

The Committee concluded that the Licensee was in systematic breach of Regulation 7(2)(a) of the PMLFTR and Sections 4.5 and 4.5.2.2 and of the Implementing Procedures, Part I.

Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Implementing Procedures Part I and Section 3.4 of the Implementing Procedures Part II Remote Gaming Sector

Although the Licensee's manual provided that the Company was to take the necessary steps in order to identify if any of its clients are classified as PEPs, the Company claimed that PEP checks were performed for the first time on all clients a few weeks prior to the onsite examination. No evidence was provided to the FIAU and the MGA officers that such checks had indeed been carried out.

The Committee determined that the Company had systematically breached Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Implementing Procedures Part I, and Section 3.4 of the Implementing Procedures Part II Remote Gaming Sector.

#### Regulation 5(5)(c) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I

The senior management of the Company had not assigned the MLRO with responsibilities relative to the role, and instead opted to call in a consultant from an external company to answer questions regarding the duties of the MLRO.

Furthermore, it was also found that the MLRO did not have direct access to the Company's players' KYC documents in order to be able to screen their profiles. As a result, the MLRO did not have full and unlimited access to all records, data, documentation and information of the Licensee for the purpose of fulfilling her AML/CFT duties.

The Committee found the Licensee in breach of Regulation 5(5)(c) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I.

#### Sections 5.4 and 5.5 of the Implementing Procedures Part I

MGA and FIAU officers noted that as far as the internal and external reporting is concerned, the Licensee had in place policies that contradicted each other. One document focused on UK legislation and made reference to submitting STRs to the UKGC whilst the other document (the Manual) stated that an STR is to be submitted with the FIAU. Committee also noted that the MLRO had neither received any internal reports nor submitted any STRs to the FIAU.

The Committee therefore concluded that the Company was in breach of Sections 5.4 and 5.5 of the Implementing Procedures Part I.

#### Regulation 5(5)(e) of the PMLFTR and Section 7.2 of the Implementing Procedures Part I

The Company did not provide any kind of AML/CFT training to any of its employees except for senior management. While the MLRO claimed that she was preparing a program for the employees she was unable to provide any draft presentations or other documents in order to support this statement, that a program was being prepared.

The Committee determined that the Company was in breach Regulation 5(5)(e) of the PMLFTR and Section 7(2) of the Implementing Procedures Part I.

#### **ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE (CMC):**

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of seven hundred and thirty three thousand, one hundred and sixty euros (733,160 EUR) with regard to the breaches identified in relation to:

- i) Regulations 5(1), 5(5) and 5(6) of PMFLTR, and Sections 3.1 and 3.4 of the Implementing Procedures Part I;
- ii) Regulation 5(5)(a)(ii) of the PMLFTR, and Sections 2.1.2, 2.2.1, 2.2.2 and 3.3.2 of the Implementing Procedures Part II Remote Gaming Sector;
- iii) Regulation 5(5)(a)(ii) and Section 3.4.1 of the Implementing Procedures Part I
- iv) Section 3.3.2(ii) of the Implementing Procedures Part II Remote Gaming Sector<sup>3</sup>;
- v) Regulation 7(1)(c) of the PMLFTR and Section 3.2(iii) of the Implementing Procedures Part II Remote Gaming Sector;

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<sup>3</sup> Currently Section 3.3.2(i) of the revised Implementing Procedures Part II Remote Gaming Sector, revised on 2 July 2020.

- vi) Regulation 7(2)(a) of the PMLFTR, and Sections 4.5 and 4.5.2.2 of the Implementing Procedures part I;
- vii) Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Implementing Procedures Part I and Section 3.4 of the Implementing Procedures Part II Remote Gaming Sector
- viii) Regulation 5(5)(c) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I;
- ix) Sections 5.4 and 5.5 of the Implementing Procedures Part I;

With regard to the findings under Regulation 5(5)(e) of the PMLFTR and Section 7.2 of the Implementing Procedures Part I, the Committee decided that a reprimand shall be imposed on the Licensee.

The Committee positively noted the remedial action that the Company had already started to undertake together with, its pro-active approach towards ensuring that it implements more robust AML/CFT controls. However, and in order to ensure that the Licensee is effectively addressing the breaches set out above, the Committee directed the Licensee 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 Company's AML/CFT policies, procedures and measures set out here-above. Specifically, the Action Plan is to cover:

- The Business Risk Assessment of the Company, and how the Company shall be tackling the shortcomings identified by the Committee in relation to the latest BRA. A confirmation of when the BRA shall be endorsed by the Board shall also be made available.
- Customer Risk Assessment measures, including the risk assessment methodologies which shall include the criteria considered and the weightings assigned.
- Customer Acceptance Policy, including reference of the type of customers that are likely to pose a higher risk of ML/FT and the CDD measure it shall implement depending on the risks identified.
- Methodology(ies) utilised with regard to checking whether customers are PEPs.
- The measures the Company plans to implement in order to ensure that all the information necessary in order to build a comprehensive customer risk profile, including information on the SOW and SOF of the players is obtained as and when necessary.
- The measures and systems it plans to implement to monitor business relationships and transaction monitoring.
- An update of the procedures manual and a confirmation that clarifications on the process to file internal and external STRs has been amended.
- Updates on issues surrounding the MLRO's right to access to all information and that the MLRO is able to act independently of any other official of the Company.
- Updates on the training provided to the MLRO to ensure that she increases her knowledge of ML/FT risks and means to mitigate the same.
- The current status of any other action within the Company's remediation project that are currently being implemented or that have yet to be actioned by the Licensee.

In determining the appropriate administrative measures to impose the Committee took into consideration the representations submitted by the Company together with the remedial action that the Licensee had already started to implement. The Committee further considered the nature of the Company as a licensed gaming operator together with the size of the Company's operations. Consideration was also given to the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Subject Person's own operations and the local jurisdiction. The seriousness of the breaches identified, some of which even considered to be systemic were also taken into consideration by the Committee in determining the administrative measures imposed.

Finally, the Company has also been duly informed that in the eventuality that the Company fails to provide the above mentioned action plan and supporting documentation available with the specified deadline, the Company'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.

**07 September 2020**

