# 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.

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:**

2 September 2020

**SUBJECT PERSON:**

MPM Capital Investments Ltd

**RELEVANT ACTIVITY CARRIED OUT:**

Investment Services

**SUPERVISORY ACTION:**

On-site Compliance Review carried out in 2019

**DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:**

Administrative penalty in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

**LEGAL PROVISIONS BREACHED:**

- Regulation 5(1) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures Part I (IPs);
- Regulation 7(1)(a) of the PMLFTR
- Regulation 7(1)(b) of the PMLFTR;
- Regulation 7(3) of the PMLFTR;
- Regulation 7(5) and 8(1) of the PMLFTR and Section 4.6 of the IPs;
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs;
- Regulation 11(5)(b) of the PMLFTR;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;
- Regulations 7(1)(d), 7(2)(a) – (b) of the PMLFTR and Section 4.5.1(a) – (b) of the IPs;
- Regulation 13 of the PMLFTR and Section 9.2 of the IPs; and
- Regulation 15(1)(b) of the PMLFTR and Sections 5.1.1 and 5.1.2(a) of the IPs.

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

Regulation 5(1) of the PMLFTR

The Committee noted that although the obligation to have a business risk assessment in place had been in force since January 2018, the Company only established a business risk assessment in January 2019. In addition, the business risk assessment carried out by the Company did not address many of the risks which the Company was being exposed to through its operations. For instance, the 'impact', 'probability' and overall risk of PEPs is according to the Company 'low' which ratings do not reflect the higher AML risk associated with relationships with PEPs. In addition, while the BRA acknowledged higher risks associated with ''certain threshold'' and ''business associated with high levels of corruption'', such thresholds and businesses were not defined. The inadequacy of the BRA was also exhibited through the lack of jurisdiction risk assessments which the Company, although conducting business with multiple jurisdictions, failed to carry out. Jurisdictions involved (but not limited to) included Macedonia, Fiji, Belize, Marshall Islands and Libya.

In evaluating the seriousness of the finding, the Committee also considered that the shortcoming was not limited to the documentation of a business risk assessment but that from the assessment of the Company's management it was evident that they did not possess an adequate level of understanding of the risks the Company is exposed to through its operations.

In view of the aforementioned shortcomings, the Committee found the Company in breach of the obligations emanating from Regulation 5(1) of the PMLFTR.

Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the IPs

The Committee's Customer Risk Assessment (CRA) procedures were deemed to be inadequate by the Committee. The Committee based its decision on the fact that the written CRA procedures included a replication of sections of the IPs and did not reflect the Company's own methodology. In addition, the CRA sheet used to assess its customers was highly lacking in detail and while the customers did have assigned risk ratings, the rationale behind such risk ratings could not be identified. Furthermore, Company representatives could neither explain the parameters considered nor how a final risk rating was attained. The Committee also noted that in 23 of the 25 files reviewed, no consideration was given by the Company on the ML/FT risks emanating from foreign jurisdictions.

In addition to the weak and ineffective methodology adopted by the Company when conducting its customer risk assessments, the Committee noted that in two files, no assessment at all was carried out. The Company, although being aware that it had missing information, which was indispensable for understanding the customer risks and establishing a comprehensive customer profile, it still decided to provide services to these customers and proceeded to carry out transactions on their behalf.

The Committee also considered that in eight of the files reviewed, the CRA was carried out after the establishment of the relationship. In relation to this finding, the Committee also considered the relatively long period of time taken by the Company to carry out a CRA for these customers. For instance, three of the files reviewed, the CRA was carried out 7 years, 4 years and 3 years following the start of the business relationship while in another file reviewed, the CRA was carried out following the termination of the relationship.

In view of the aforementioned shortcomings, the Company was found in breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the IPs.

Regulation 7(1)(b) and Regulation 7(3) of the PMLFTR

The Committee noted that in three of the files reviewed, the Company did not verify the residential address of the ultimate beneficial owner while in two files, the Company failed to ensure that the agent acting on behalf of the customer was duly authorised and verified. The Committee considered that these findings related mainly to the residential address not being verified and that otherwise all other identity details had been obtained and duly verified. Also in relation to the other finding, although the Company did not obtain confirmation that the agent was authorised in writing the Company had a connection of the agent with the corporate customer being represented. For these reasons as well as since such breaches were found in a relatively low number of files, the Committee considered these to constitute minor breaches.

The Committee therefore found the Subject Person to be in breach of Regulations 7(1)(b) and 7(3) of the PMLFTR.

Regulation 7(1)(b)

The Committee considered that in two of the files reviewed, the Company failed to establish the identity of the directors and ultimate beneficial owners of its corporate customers. While it was noted that the relationships with these customers was terminated on the basis of the inadequate information held on file, activity was still carried out and the Company proceeded to carry out transactions on behalf of its corporate customers without having identified who were the ultimate beneficial owners.

The Committee was therefore found in breach of Regulation 7(1)(b) of the PMLFTR.

Regulation 7(1)(a)

The Committee observed how the Company was offering payment services to its customers without considering same to be an activity that required the carrying out of customer due diligence measures. As a result, the Company was not deeming the entities and individuals for whom it was carrying out payment services as being its customers. The Company therefore failed to identify and verify all customers involved in these transactions in terms of Regulation 7(1)(a) of the PMLFTR[1].

In relation to these customer files, the Committee remarked that whether or not the Company had a licence to operate as a payment service provider, the Company was still required to carry out its AML/CFT obligations for these customers. This is also well defined in Regulation 2 of the PMLFTR which states that a subject person is one that is either 'licensed or required to be licensed'. Therefore operating without having the necessary licence to do so, does not exonerate the Company from applying the AML/CFT obligations that apply to subject persons, this since the Company was still considered to be a subject person in such circumstance.

The Committee thus found the Company to be in breach of Regulation 7(1)(a) of the PMLFTR and Sections 4.2.1 and 4.3 of the IPs.

Regulation 7(5), 8(1) of the PMLFTR and Section 4.6 of the IPs

The Committee noted that in 12 of the files reviewed, documents required for the verification of the Company's customers were obtained late. The verification documents in these files were obtained 1 year – 3 years after the establishment of the business relationship. The Committee held that the

[1] It should be clarified that the Company provided an explanation for one of the customers but failed to provide a justification for the remaining customers.

findings in this section coupled with those in the previous section evidence the Company's lack of appreciation towards the importance of knowing who the customer is.

In view of the above, the Committee found the Company to have breached Regulations 7(5) and 8(1) of the PMLFTR and Section 4.6 of the IPs.

Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs

The Committee considered that the Company held no information as to whether its customers are politically exposed or otherwise in 4 of the files reviewed while in 19 of the files reviewed, the Company did not establish whether its customers are politically exposed at the time of the establishment of the relationship and instead obtained information on such status following the start of the business relationship. Although a note was found on file dated 2016 stating that a search was executed and that no negative information was found, no evidence of any PEP searches were found. Even if this note was to be considered, many of the customers were on-boarded prior to 2016 and therefore the Company would have still been in breach of its obligations as it failed to establish whether its customers were politically exposed at the start of the business relationship. While the Committee acknowledged that PEP searches dated 2018/2019 were found on file, the Committee held that the Company was servicing customers without knowing whether they are politically exposed or otherwise.

The Committee therefore found the Company to have systematically breached Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs.

Regulation 11(5)(b) of the PMLFTR and Section 4.9.2.2 of the IPs

The Committee noted that in two of files reviewed in which a politically exposed person was identified, the enhanced due diligence (EDD) measures required to be carried out were either not applied or were inadequately applied. In one of these files, while an indication on the annual income was found, no supporting documentation to support the figure indicated was obtained by the Company. In addition, although as part of its ongoing monitoring obligations the Company obtained updated forms from this customer, the annual income declared decreased significantly and it was further indicated that other income would be generated from rent. Although the Company did obtain payslips to support the income indicated in the reviewed form, the income from rent was neither indicated nor supported with any documentation.

In the other file reviewed, the Committee noted that the information maintained on file was inconsistent since the on-boarding form indicated an annual income that was much less than that indicated in the 'EDD Work Sheet for PEPs' maintained by the Company. In addition, although printouts from publicly available information were found on file, these did not relate to the personal income of the customer but rather showed the income of the Firm in which the customer was partner to as well as the income of a family member associated to the customer. No evidence was found in relation to the funds that would be paid from the Firm to the customer as part of the customer's personal income.

For these reasons, the Committee determined that the Company failed to efficiently apply the enhanced due diligence measures required and to adequately establish the source of wealth and funds of these two PEP customers prior to offering services to same.

The Committee therefore found the Company to have breached Regulation 11(5)(b) of the PMLFTR and Section 4.9.2.2 of the IPs.

Regulation 7(1)(c) of the PMLFTR

The Committee determined that all 25 of the customer files reviewed were lacking in the information obtained on the source of wealth and the expected frequency and size of transactions, which information is required to be obtained whenever a business relationship is established. While the Committee understands that in investment services it might be more challenging to establish the anticipated frequency and size of transactions, one should still enquire with the customer for information in relation to the potential value of the investments. Such information can then be used in the ongoing monitoring of the relationship and updated accordingly as the relationship progresses.

In addition, the Committee noted that in most files, information on the customers', source of funds and on their business/occupation/employment was generic. While the Company stated that the directors of the Company have a deep understanding of their clients, the Committee noted that during the course of the compliance review the Company's representatives were enquired on various instances to provide information on the customer's relationship however such knowledge was most often deemed to be insufficient. Hence, the information maintained on file or otherwise known to Company representatives was either generic or lacking.

The following are some examples of individual files in which breaches pertaining to this obligation subsisted:

i. In one of the files reviewed, the only information found on file was that the customer is a software development company and that funds would be generated from its activities. Although it was held that information was requested to the customers and the relationship was terminated in view that the requested documentation was not provided, the Committee noted that investment services were provided to the customer prior to the Company arriving to the conclusion to terminate the relationship; and

ii. In another file reviewed, the Committee noted that one of the customers' employment was marked as 'technician' in some documents while 'real estate director' in others. It was also noted that the customer's annual income was marked as up to Euro50, 000 while two statements of affairs dated 2009 and 2010 showed a yearly income of Euro11, 347 and Euro12, 678 respectively. The total assets pertaining to this customer were marked to amount to Euro5.6 million. The Company failed to understand how a customer with a yearly income ranging between Euro11, 347 and Euro12, 678 could have generated such substantial wealth. The Company also tried to explain that the Euro 5.6million wealth related to Euro2.7 million worth of investments and Euro2.2 million worth of real estate property. Although the Company provided a series of contracts of sale and documents pertaining to loans the customer had in order to substantiate this explanation, these documents could not substantiate how the customer managed to generate such substantial amounts. Moreover, in its representations, the Company further clarified that most of the customer's wealth related to inheritance, however this explanation was not substantiated with any documentary evidence.

Following consideration of the systematic findings present in all of the files reviewed as well as the findings pertaining to each individual customer in relation to the obligation of obtaining information on the purpose and intended nature of the relationship, the Committee determined that the Company has a high level of disregard in ensuring to establish its customer's business and risk profile.

The Committee therefore found the Company to have systemically breached Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.

Regulations 7(1)(d), 7(2)(a) – (b) of the PMLFTR and Section 4.5.1(a) – (b) of the IPs

The Committee found the Company to have systematically failed to have in place an efficient and adequate ongoing monitoring system that ensures the effective scrutiny of transactions throughout the course of the business relationship with its customers. Although the Company insisted that a Manual monitoring system was in place, the Committee reiterated that not only was a manual ongoing monitoring system not adequate in view of the size of the Company and the activity being carried out but also that from the findings emanating from the compliance review, no manual review was being applied in practice.

The Committee also expressed its disappointment towards the justifications brought forward by the Company in stating that certain transactions were originating from reputable banks or that the Directors of the Company had a deep understanding of the customer and therefore scrutiny of transactions was not required. This further confirmed the lack of knowledge and appreciation the Company has towards the obligation of ongoing monitoring, more specifically the importance to scrutinise effectively the transactions being carried out. In the determination of this systematic breach, the Committee has considered multiple transactions. Some of the examples for which the Company failed to effectively scrutinise the transactions that were taking place are being relayed hereunder:

i. In one of the files reviewed, although the cumulative investments during the period October 2010 – May 2017 amounted to Euro2.6 million, the customer had declared a yearly income of Euro 50, 000. The Company failed to scrutinise these transactions particularly in view that these were not in line with this information. The Committee noted that in 2018, the Company did carry out searches to determine the financial potential of this customer however this was at a point where all major transactions had already been carried out;

ii. In another file, three deposits were made by the customer amounting to Euro75, 000, Euro100, 000 and Euro186, 679 however no additional information and/or documentation were obtained by the Company to explain the source and origin of these funds when the customer's annual income was declared to amount to Euro35, 000. Albeit the invested amount is far from what one would expect from a person with such annual income, the Company proceeded with accepting and investing the amounts without substantiating the source that were funding such investments. The Company stated that the Company's directors had extensive knowledge on this customer and that their personal knowledge was enough to understand the customer's source of funds and wealth. It was also added that the monies were all received from reputable institutions. The Committee reiterated that while the reputability of an institution from where the funds are being transferred might have reduced the risk of the transaction, it does not exonerate the Company from its obligation to conduct its own checks and ensure the funds were originating from legitimate sources. In addition, the knowledge of this customer was neither provided during the review nor in the Company's letter of representations. Even had this been provided, the personal knowledge of a customer by a member of staff of a subject person is not sufficient to satisfy the obligations to scrutinise the transactions being carried out; and

iii. The Committee also noted that in 4 other files in which a PEP was identified, transactions were being passed without any scrutiny when in fact, these customers required enhanced ongoing monitoring to be applied.

In conclusion, the Committee found the Company to have systematically breached Regulations 7(1)(d), 7(2)(a) – (b) of the PMLFTR and Section 4.5.1(a) – (b) of the IPs.

Regulation 13 of the PMFTR and Section 9.2 of the IPs

During the course of the compliance review, it transpired that the Company had weak record keeping procedures which resulted in the Company failing to keep adequate records of the documentation related to its customers and to evidence adherence towards its AML/CFT obligations. In fact such record keeping failures also resulted in the Company providing an incomplete client list to the FIAU and incomplete transaction data.

The Committee noted that in the 2019 REQ submitted to the FIAU the Company had declared a total number of customers that was more than the number of customers included in the client list provided by the Company as part of the documentation submitted to the FIAU in preparation to the on-site compliance review.

The Committee noted the Company's assertions that such customers were omitted because these were not considered as being the Company's customers. However, from the compliance review it was evident that multiple payment transactions were being carried out on behalf of these customers and that does indeed render such entities and individuals as customers of the Company.

In addition, during the onsite examination, FIAU officials requested the bank statements of a selected bank account. However, the Company failed to provide same even though the Company had obligations at law to keep such transactional data.

The Committee also noted that no records were being maintained by the Company in relation to any reviews and updates made to the policies and procedures of the Company and the Board of Directors minutes were equally insufficient since no evidence confirming any updates had been carried out.

The Committee thus concluded that the Company breached Regulation 13 of the PMFTR and Section 9.2 of the IPs.

Regulation 15(1)(b) of the PMLFTR and Sections 5.1.1 and 5.1.2(a) of the IPs

The Committee raised serious concerns on the function of the MLRO within the Company, both as to the conflicting nature of the MLRO's other positions within the Company and also as to his level of competence to ensure the Company's adherence to AML/CFT obligations.

The multiple roles the MLRO had within the Company, including acting as Director and Financial Advisor; also being one of the ultimate beneficial owners as well as customer in its own Company, led the Committee to conclude that the MLRO could not have adequately fulfilled such an important role within the Company and this since his other involvements created a conflict of interest that undermined the effectiveness of the MLRO's role. The Committee held that all such involvements hindered the MLRO from dedicating the time necessary to carry out such a role with the necessary diligence.

The conflicting nature of the MLRO's position is further aggravated by the fact that no independent member of staff was part of the decision-making process of the Company as all members of staff were relatives of the MLRO. The only independent employee was a Company manager who was only involved in administrative work.

Moreover, although assistance was provided by the MLRO during the compliance review, documentation requested was not always provided such as the bank statements mentioned in the previous section. In addition, the MLRO was not always keen to follow the instructions provided by the FIAU such as the refusal of signing the missing documentation sheet or in ensuring that information provided to the FIAU is reliable (evidence is the misleading REQ information and the incomplete client list). Such matters, including all the findings which transpired throughout the course of the review and from the representations submitted, accentuated the Committee's doubts in relation to the MLRO's competence and knowledge to ensure adherence to all AML/CFT obligations and to efficiently process internal reports and submit ML/FT suspicions to the FIAU.

The Committee therefore found the Company to have breached its obligations in terms of Regulation 15(1)(b) of the PMLFTR and Sections 5.1.1 and 5.1.2(a) of the IPs.

**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 one million, one hundred and eighty three thousand, eight hundred and eighty seven euro (Euro1, 183, 887) with regard to the breaches identified in relation to:

i. Regulation 5(1) of the PMLFTR;
ii. Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures Part I (IPs);
iii. Regulation 7(1)(a) of the PMLFTR
iv. Regulation 7(1)(b) of the PMLFTR;
v. Regulation 7(3) of the PMLFTR;
vi. Regulation 7(5) and 8(1) of the PMLFTR and Section 4.6 of the IPs;
vii. Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs;
viii. Regulation 11(5)(b) of the PMLFTR;
ix. Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;
x. Regulations 7(1)(d), 7(2)(a) – (b) of the PMLFTR and Section 4.5.1(a) – (b) of the IPs;
xi. Regulation 13 of the PMLFTR and Section 9.2 of the IPs; and
xii. Regulation 15(1)(b) of the PMLFTR and Sections 5.1.1 and 5.1.2(a) of the IPs.

In addition to the above, the Committee imposed a Reprimand in relation to the minor breaches identified by the Committee for the Company's failures in terms of Regulation 7(1)(b) and Regulation 7(3) of the PMLFTR.

In determining the quantum of the administrative penalty imposed, the Committee took due consideration of the very serious and alarming breaches identified during the compliance review, which at times were also of a systematic nature. The Committee also considered the lax and careless approach the Company had both in understanding its obligations as well as to ensure the implementation of the same. Consideration was also given to the Company's actions in offering

payment services without considering this to constitute the provision of a service for which AML/CFT obligations needed to be applied. Therefore, the Company had no AML/CFT regard toward such customers, not even in the basic obligation of making sure that they were duly identified and verified.

The extensive volume and value of the transactions that were processed by the Company not only as an investment service provider but also as an unlicensed payment service provider, were taken into consideration by the Committee. This exposure coupled with ineffective controls further increased the risks of the Company being abused for the facilitation of ML/FT through the Maltese financial system.

**9 September 2020**