



Administrative Penalty Publication Notice

This Notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2) 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 measure, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

14th September 2020

RELEVANT ACTIVITY CARRIED OUT:

Company Service Provider

SUPERVISORY ACTION:

On-site Compliance Review carried out in June 2018

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative penalty of €35,000 and Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISIONS BREACHED:

- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 11(5) of the PMLFTR and Section 3.5.3.2¹ of the Implementing Procedures;
- Regulation 7(1)(c) of the PMLFTR; and
- Regulation 7(2)(a) of the PMLFTR.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

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

The compliance review revealed that although the Company was carrying out a Customer Risk Assessment (CRA) in relation to its customers and had updated this assessment and methodology in 2017, the changes carried out were not effective since the Company was not evaluating properly the risks which the Company was being exposed to by its customers. The officials also noted that in one (1) file, although the final risk score for the customer was found, the CRA was undocumented and hence the officials could not determine the rationale behind this assessment. The Committee also observed that in five (5) files, although the CRA was carried out and was found on file, such assessments were not comprehensive and were highly lacking in detail. Consequently, the rationale

¹ Section 4.9.2.2 of the Revised Implementing Procedures issued in July 2019

behind the risk rating assigned could not be established. Additionally, in five (5) other files reviewed, the officials noted that the CRA was carried out after the establishment of the business relationship.

The Committee acknowledged that at the time of the compliance review, the Company was in the process of updating its CRA to an automated one. However, the Committee concluded that this enhancement does not eliminate the fact that for a number of years, the Company was onboarding customers without having proper CRA measures in place. Therefore, the Company was on-boarding customers without appreciating the risks surrounding the same, and without ensuring that the proper level of controls, depending on the risks posed by its customers, were being implemented.

After taking into consideration the findings revealed during the compliance examination and the representations submitted by the Company, the Committee concluded that the Company's failure to have effective CRA procedures in place at the time of the onsite review constituted a breach in terms of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulation 11(5) of the PMLFTR and Section 3.5.3.2 of the Implementing Procedures

During the file review, the officials noted that the beneficial owner of one of the corporate customers was a PEP. Although the Company had obtained management approval and collected information pertaining to the employment and source of wealth of this individual as part of the enhanced due diligence (EDD) measures, the Company did not collect or obtain supporting documentation in relation to the holdings of the Company and information on what, if any, would be the income generated from the said property. The Committee also noted that the Company was unable to demonstrate enhanced monitoring of the relationship was being carried out. Furthermore, although the Company was being involved in the daily management of the customer since it was acting as a director, legal and judicial representative, and company secretary, the Company did not question the rationale behind certain changes that were taking place throughout the relationship. The Committee also noted that the Company was involved in changing the activities of the customer from a company holding family property, to then trading in software products and software development. However, yet again, the Company fell short of understanding the purpose behind such a drastic change and whether this change made sense with the line of business of the customer (which was previously set up to hold family assets).

In view of the abovementioned shortcomings, the Committee determined that the Company breached Regulation 11(5) of the PMLFTR and Section 3.5.3.2 of the Implementing Procedures Part I².

Regulation 7(1)(c) of the PMLFTR

During the compliance examination, the officials noted that four (4) of the files did not have sufficient information that is required to build a comprehensive business and risk profile.

In one of the files, the Company's on-boarding form indicated that the customer was being set up to receive commission and dividends from investments, however, during the compliance review the Company explained that the customer was established to recover monies that were previously lent to individuals and entities. The Committee learnt that for this file, the Company did not collect any information in relation to the amounts and frequency of the funds that would be derived from either the investments or from the loans.

Another file related to a Maltese registered company which included a trust as part of its structure, whose beneficiaries were non-governmental entities and charities. The Company's officials could not

² Section 4.9.2.2 of the Revised Implementing Procedures issued in July 2019

explain the reason behind the creation of such a complex structure. Moreover, no information was found in relation to the activities of one of the beneficiaries of the trust. The Company only proceeded to request additional detail and information from the customer after this finding was highlighted by the officials during the compliance examination. The Committee also noted that this customer was transferred from another fiduciary service provider which had lost contact with the settlor and had proceeded to terminate its relationship with the client for such reason. However, even though the Company was in possession of such information, it failed to ensure that the situation does not repeat itself and in fact failed to collect all the information required to establish a comprehensive customer profile.

In another file, the Company failed to collect information pertaining to the source of wealth of the beneficial owners. Furthermore, there was no information on file on the expected source and origin of funds to be used within the business relationship. Similarly, in another file, the activities of the customer were limited to just holding investments, and here again the Company failed to identify the type of investments that the customer would be holding, the volume of the said investments and the source of the funds to be invested.

Additionally, in five files, the Company did not have a clear understanding of the business and risk profile of its customers and did not establish their source of funds, but rather relied on the information it had obtained for the purposes of processing IIP Applications of the beneficial owners of such companies.

In view of the abovementioned shortcomings, the Committee determined that the Company breached Regulation 7(1)(c) of the PMLFTR.

Regulation 7(2)(a) of the PMLFTR

The review outlined shortcomings with regards to the Company's ongoing monitoring obligations. Members of the Committee learnt that in one of the files reviewed, the Company could not clearly understand the loan agreements that the customer was involved in. The officials also pointed out that the Company could not explain the connection between the parties involved in the loans and the customer, the purpose behind such loans and how and when these loans had to be repaid. The Committee also learnt that a number of these loans were in fact waived off. Furthermore, despite the fact that the Company provided a table with information on these loans with its representations, such table raised more questions about the loans entered into, rather than provided clarifications. In this regard, the Committee reiterated that it was imperative for the Company to be able to understand the purpose behind the loan agreements and loan assignments its customer was party to, especially when one considers that loan agreements are often utilised as means to facilitate money laundering worldwide.

In another file, the officials highlighted four (4) transactions for which no supporting documentation that could substantiate the MLRO's claim that these transactions related to the sale of companies, was made available during the examination. The Company conceded to this finding and remarked that further action was taken following the review.

In light of the abovementioned findings, the Committee concluded that the Company was in breach of Regulation 7(2)(a) of the PMLFTR during the onsite examination.

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

In view of the findings identified, the Committee concluded that the Company was found in breach of various AML/CFT obligations. The Committee therefore decided to impose an administrative penalty of thirty five thousand euro (Euro 35,000).

In addition to the abovementioned penalty, the Committee also served the Company with a Remediation Directive in virtue of the FIAU's powers under Regulation 21(4)(c) of the PMLFTR. 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 directs the Company to provide the following information and documentation:

- A status update of the new automated AML/CFT system generating the CRA for the Company's customers;
- An updated methodology and rationale of the CRA and how this methodology is being applied in the automated system;
- An overview of the transaction monitoring procedure being adopted by the Company;
- A copy of the procedure relating to PEP on-boarding, including the mitigating measures applied with regard to the PEP clients;
- A sample of 15 client files including all information and documentation obtained during on-boarding and during the monitoring of the customer relationship. The documentation shall also include the CRA performed, together with copies of transactions that have taken place by such customers and any supporting documentation collected for the purpose of scrutinising such transactions.

Furthermore, the Remediation Directive also provides for a meeting with the Company's MLRO in order to discuss the actions being taken to address the shortcomings highlighted and to attest the MLRO's knowledge on AML/CFT obligations. This meeting is also intended to provide the FIAU with reassurance that the remedial actions that the Company is to implement following the review have actually been implemented in practice.

In determining the administrative measures to impose, the Committee took due consideration to the representations submitted by the Company together with the remedial actions that the Company had already started to implement. The Committee also took into consideration the breaches identified during the compliance review, the nature and size of the Company and the overall impact of the AML/CFT shortcomings identified vis-à-vis the Company's operations and also the local jurisdiction.

Finally, the Company was reminded that in the eventuality that the requested information and documentation is not made available within the stipulated timeframes, the CMC shall be informed of such default, for the possibility to take eventual action in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

22nd September 2020