



Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C 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:

17th September 2020

SUBJECT PERSON:

Chris Baldacchino & Associates

RELEVANT ACTIVITY CARRIED OUT:

Auditor / Accountant / Corporate Service Provider

SUPERVISORY ACTION:

On-site compliance review carried out in September 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative penalty of €58,952 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(1) of the PMLFTR and Section 8.1 of the Implementing Procedures, Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I;
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.2.2 of the Implementing Procedures, Part I;
- Regulation 7(5) and 8(1) of the PMLFTR and Section 4.6 of the Implementing Procedures, Part I;
- Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the Implementing Procedures, Part I;
- Regulation 7(1)(c) of the PMLFTR ;
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures, Part I;
- Regulation 5(5)(b) and 5(5)(e) of the PMLFTR.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR and Section 8.1 of the Implementing Procedures

The Committee determined that the Firm did not have a BRA in place but merely a document that simply outlined the basic procedures being followed by the Firm (such as not accepting clients who have outstanding debts), and which considerations were not even directly related with the considerations to be taken to understand the Money Laundering / Financing of Terrorism (ML/FT) risks of the Firm.



While the Committee, agreed that the BRA has to be proportionate to the nature and size of the Firm's operations, it concluded that the uniformity in the services being offered did not exonerate the Firm from conducting an adequate BRA. The Firm was still required to understand the risks, actual or potential, that it could be exposed to from offering services to its portfolio of customers.

Furthermore, the file review revealed that the Firm did not assess the reputability of jurisdictions outside of the EU or the EEA. No jurisdiction risk assessment was carried out on jurisdictions outside of the EU or the EEA to which the Firm was exposed to (including United States of America, British Virgin Islands, Libya and Egypt). The Committee also noted that the Firm was not in a position to explain possible risks surrounding said jurisdictions.

After taking into consideration the abovementioned findings and the representations, the Committee determined that the Firm failed to conduct a BRA at the time of the review, including the carrying out of a jurisdiction risk assessment and concluded that the Firm has breached its obligations under Regulation 5(1) of the PMLFTR and Section 8.1 of the Implementing Procedures, Part I.

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

Throughout the compliance review, it was revealed that the Firm failed to have in place and carry out customer risk assessment (CRA) procedures. During both the file review and the interview held with the MLRO, it transpired that the Firm did not have a methodology in place through which CRA is conducted, and in fact, none of the files reviewed had a documented CRA drawn up.

The Committee also learnt that the Firm did not understand the obligation to have CRA measures in place and to carry out such an assessment for all customers, including the upkeep of such risk assessment as and when required. Nor did the Firm understand the importance of assessing its customer risks.

After taking into consideration the findings revealed during the compliance review and the representations submitted, the Committee concluded that the Firm had systematically breached its obligations under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I.

Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures

Prior to the compliance review, the Firm was requested to provide a copy of its AML/CFT policies and procedures, however the Firm failed to provide such policies and procedures.

In its representations, the Firm explained that although it did not have formal documented policies and procedures in place, the services that were being offered were uniform in nature and were carried out in accordance with a set procedure, albeit informal, which was aimed at limiting the Firm's exposure to risk. However, the Committee considered that the Firm was not guided by policies and procedures to ensure uniformity in its approach but was rather, if any, guided by subjectivity in its approach.

Additionally, the Committee also learnt that over the years the Firm had provided inaccurate information to the FIAU, as both in the Risk Evaluation Questionnaire and prior to this; as in the Annual Compliance Reports, the Firm declared that it had a procedures manual in place, including a Customer Acceptance Policy and CRA. The Committee reiterated that this misleading information could have hindered the FIAU's ability to perform an effective risk assessment of the Firm and consequently, prejudice the FIAU's supervisory functions and responsibilities.

The Committee considered the materiality and importance of the obligation to have adequate and up to date policies and procedures in place, and found the Firm in breach of Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I.



Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.2.2 of the Implementing Procedures

The Firm failed to adequately identify and verify its customers in five (5) of the files reviewed. By way of example in one of these files, the Firm did not carry out the necessary measures to determine who the beneficial owner of the customer is and in another file, none of the shareholders had direct ownership of 25% plus one or more of the shares and the Firm failed to identify the natural person(s) who exercised control of the company through other means.

The Committee therefore determined that these findings constituted a breach under Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.2.2 of the Implementing Procedures, Part I.

Regulation 7(5) and 8(1) of the PMLFTR and Section 4.6 of the Implementing Procedures

The Compliance review revealed that in six (6) files reviewed, the Firm did not identify and verify the customer and/or beneficial owner/beneficiaries before the establishment of the business relationship or before carrying out the occasional transaction. For example, in one of the files, the Firm obtained an agreement establishing the foundation only when this was requested by the FIAU officers, that is, six (6) years from the start of the business relationship. In two (2) other files, the Firm obtained a declaration of trust determining the beneficiaries four (4) years following the start of the business relationship.

In its representations, the Firm conceded that there were instances where the required information or documentation was collected following the establishment of the relationship with the customer.

In its decision, the Committee reiterated that the fact that the verification documents were collected late meant that the firm was offering services to its customers without having carried out the necessary CDD measures. In light of this, the Committee determined that the Firm breached Regulation 7(5) and 8(1) of the PMLFTR and Section 4.6 of the Implementing Procedures, Part I.

Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the Implementing Procedures

During the compliance review, FIAU officials noted that despite offering recurring audit services to a customer, the Firm did not collect updated documentation about two beneficial owners, and in fact the verification documents held on file had expired in 2013 and 2016 respectively. The Firm explained that it had faced difficulties with contacting the non-resident beneficial owners, and that the corporate company is now struck off. However, the Committee reiterated that the documentation had been expired for quite a number of years.

The Firm had therefore failed to ensure that it held up to date information and documentation on the beneficial owners during the time when it was offering services to such customer. Hence, the Committee found the Firm to be in breach of Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the Implementing Procedures, Part I.

Regulation 7(1)(c) of the PMLFTR

Shortcomings with regards to the obligation to obtain sufficient information on the purpose and intended nature of the business relationship were identified during the compliance review. FIAU officials reported how for two audit customers (2 files) the Firm relied on the information contained in the constitutive documents (namely the Memorandum and Articles of Association), which was generic and did not provide a clear picture of the actual activities of these two customers.

In its representations, the Firm explained that it had serviced these customers for a number of years and that therefore it understands the business of its customers. However, it conceded to the fact that it failed to have documented information on two of the files.



In deliberating these findings, the Committee noted that the Firm was expected to collect and retain sufficient information on the nature of the business of these customers. Thus, the Committee determined that the Firm breached its obligations under Regulation 7(1)(c).

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

The Committee learnt that the Firm did not have any measures in place that could determine whether a customer or any of the BOs are Politically Exposed Persons (PEPs). It transpired that none of the files reviewed had a PEP declaration on file except for two (2) files. However, the officials noted that these files held such form only because this was required to be completed by third party banks, and not because the Firm had any knowledge about such obligation.

In light of the abovementioned findings, the Committee found the Firm in systematic breach of Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures, Part I.

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

During the onsite examination, FIAU officials noted how none of the employees within the Firm had attended any training in relation to AML/CFT except for the MLRO. Moreover, the Committee was concerned to learn that the MLRO had only attended a three (3) hour training session delivered in 2017.

In light of the aforementioned finding, the Committee agreed that the Firm breached its obligations under Regulation 5(5)(b) and Regulation 5(5)(e) of the PMLFTR.

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

In view of the findings identified, the Committee concluded that the Firm was found to be in breach of various AML/CFT obligations. The Committee, therefore, decided to impose an administrative penalty of €58,952 with regards to the breaches identified in relation to:

- i. Regulation 5(1) of the PMLFTR and Section 8.1 of the Implementing Procedures, Part I;
- ii. Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I;
- iii. Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I;
- iv. Regulations 7(5) and 8(1) of the PMLFTR and Section 4.6 of the Implementing Procedures, Part I;
- v. Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the Implementing Procedures, Part I;
- vi. Regulation 7(1)(c) of the PMLFTR; and
- vii. Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures, Part I.

The Committee also agreed to issue a reprimand in relation to one file in which the Firm failed to obtain documentation to verify the residential address of one of the beneficial owners.

In addition to the abovementioned penalty, the Committee also served the Firm 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 ensure that the shortcomings identified during the compliance review are effectively remediated by the Firm and that the Firm has the necessary controls, measures, policies and procedures in line with its AML/CFT obligations.

The Remediation Directive directs the Firm to provide the following information and documentation:

- Details of the information the Firm is making use of to rate the criteria considered in the BRA, together with the methodology of how the controls were tested by the consultants employed by the Firm;
- The measures implemented by the Firm to carry out jurisdictional risk assessment;



- A copy of the Firm's CRA procedures including reference to the various risk factors considered by the Firm, the weighting assigned to each of such factors and the risk category such factors fall into, together with the impact of the ML/FT risks identified and the controls necessary depending on the level of perceived risk;
- A copy of the AML/CFT Policies and Procedures including the Client Acceptance Policy;
- A status update of the system(s) that has/have been implemented by the Firm to be utilised with regards to: the carrying out of the CRAs; the determination of links to non-reputable jurisdictions and determining the PEP exposure of customers;
- Training logs of training attended together with the material covered and any certificates obtained following the compliance review;
- An overall status play of the current remediation measures being implemented, including the implementation of the new KYC Forms, in order to ensure that the Firm is adhering to its customer due diligence obligations and that it is taking all the necessary steps to determine whether a customer or a beneficial owner is a PEP.

The Committee also considered that the Firm, engaged third parties to assist them to be in compliance with its AML/CFT obligations. Furthermore, the Committee also noted that the Firm was in the process of setting up system(s) which would assist the Firm in carrying out CRAs; determine links to non-reputable jurisdictions and determining the PEP exposure of customers. The CMC also considered that said remedial actions started to be taken shortly prior to the visit and continued following the visit.

In determining the administrative measures to impose, the Committee also took into consideration the nature of the Firm's services and the size of the business. The Committee further considered that some of the obligations breached are serious in nature, and that such failures further confirm that the Firm did not have the necessary regards towards its AML/CFT obligations. Notwithstanding, the Committee stressed that the fact that for a number of years the Firm operated and serviced customers without sufficient regard to the necessary obligations, could have possibly led the Firm to be used and abused by money-launderers to by-pass checks that would have otherwise been carried out.

Finally, the Firm was reminded that in the eventuality that the requested documentation and information 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.

25th September 2020

