



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

---

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

- Regulation 5(5)(c) of the PMLFTR and Section 5.1.2(b) of the Revised Implementing Procedures Part I;
- Sections 5.4 and 5.5 of the Revised Implementing Procedures Part I;
- Regulation 5(5)(e) of the PMLFTR and Section 7.2 of the Revised Implementing Procedures Part I.

**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 Revised Implementing Procedures Part I

From the onsite examination it was noted that, the Vivaro Ltd (the “Company” or “Licensee”). Company’s Business Risk Assessment (“BRA”) was not approved by the Board of Directors of the Company and nor did it 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, cross referencing IP information with personal data of the customer to ensure no multiple use.

Furthermore, although the Company made reference to non-reputable jurisdictions or to countries subject to sanctioning, it failed to consider the exposure to such jurisdictions or the risk exposure from Politically Exposed Persons (PEPs).

As far as mitigating measures are concerned, the BRA included a number of several measures, however it was observed that the Company did not apply such measures in practise, since for example although the Licensee had CDD procedures, no evidence was found to support that CDD these were carried out.

Noting the fact that the Company had been operating under its Maltese license since year 2015, the Committee could not ignore the fact that the BRA referred to UK law rather than the applicable local legislation.

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 Revised 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 CRAs and risk rating procedures.

Prior to the examination, the Company’s Money Laundering Reporting Officer (MLRO) had stated that, the procedure that the Company was implemented 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. Moreover it was also noted that the Company was not carrying out any form of CRA and in fact none of the 30 player profiles reviewed has been risk assessed.

The internal manuals 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, as not enough information was collected to understand the type of customer being on-boarded.

It was further noted that the Company's Manual did not make any reference as to how the final risk scoring was being assigned to its clients and how the risk factors were being 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 Revised 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. Needless to add that, the terms and conditions did not contain the information required by AML/CFT legislation to form part of a CAP.

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 Revised Implementing Procedures Part I.

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

In terms of the abovementioned section, Licensees must have in place a system to detect IP addresses, device location etc, to disallow the opening of multiple accounts by the same person. The Business Risk Assessment in force at 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

---

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

however, that the Company had failed to implement the necessary measures to ensure that accounts belonging to the same player are linked.

When the MGA and FIAU officers found two different player profiles belonging to the same individual, the Company did not have any measures in place to show that a link was being made between the customer within the multiple brands and therefore perform KYC procedures separately for both accounts.

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 Revised 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 in order to detect unusual or suspicious activity and to analyse such alerts with the aim of determining whether the filing of Suspicious Transactions Reports (STRs) to the FIAU was warranted. 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 Revised 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 to the extent that they would need to be reviewed.

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; young age; betting patterns of low odd methodology; depositing and withdrawing through multiple different payment methods and so forth), 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 an indication of possible ML/FT patterns, the Company did not request the client's source of funds in order to ascertain their provenance and ensure that the customer's modus operandi was not suspicious or linked to ML/FT.

It was also noted that the Company's Manual stipulated that the Company had to review periodically the customer accounts in order to ensure that information, documents and data related to the customer are kept up-to-date, reflecting the obligation set emanating from under PMLFTR and Section 3.2 (iv) of the Implementing Procedures Part II of the remote Gaming Sector.

This shows that the Licensee was well aware of its AML/CFT ongoing monitoring obligation as far as the updating of records is concerned.

Despite the above, the MGA and FIAU officers found that the documentation available on players was not being checked periodically to ensure that data was kept up-to-date. In fact it was revealed that the Company despite its size and amount of clients, did not have a system in place that would detect expired CDD documents.

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 Revised Implementing Procedures, Part I and Section 3.2 (iv) of the Implementing Procedures Part II of the remote Gaming Sector.

Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Revised 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 a PEP check was performed for the first time on all of its clients a few weeks prior to the onsite examination once it had been notified of the 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 Revised 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 Revised 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 Revised Implementing Procedures Part I.

Sections 5.4 and 5.5 of the Revised 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 Revised Implementing Procedures Part I.

Regulation 5(5)(e) of the PMLFTR and Section 7.2 of the Revised 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 Revised 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 PMLFTR, and Sections 3.1 and 3.4 of the Revised 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 Revised 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;
- vi) Regulation 7(2)(a) of the PMLFTR, and Sections 4.5 and 4.5.2.2 of the Revised Implementing Procedures part I;
- vii) Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Revised 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 Revised Implementing Procedures Part I;
- ix) Sections 5.4 and 5.5 of the Revised Implementing Procedures Part I;

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

Whilst the Committee noted the remedial action that was already being undertaken by the Company, its pro-active approach towards ensuring that it implements more robust AML/CFT controls, 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.

---

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

- 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.
- Measures to be put in place to vary the extent of CDD circumstances that are deemed to pose higher risk.
- 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 nature and size of the Company's operations, the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Subject Person'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 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**

**APPEAL:**

On Monday 28 September 2020, the FIAU was duly notified that Vivaro Limited has, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decisions taken by the FIAU. The Company has appealed the breaches identified in relation to:

- Regulations 5(1), 5(5) and 5(6) of the PMLFTR and Sections 3.1 and 3.4 of the Revised Implementing Procedures, Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.4.1 of the Revised Implementing Procedures, Part I;
- Regulation 7(2)(a) of the PMLFTR and Sections 4.5 and 4.5.2.2 of the Revised Implementing Procedures, Part I;
- Regulation 11(5) of the PMLFTR, Section 4.9.2.2(b) of the Revised 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 Revised Implementing Procedures, Part I.

The quantum of the administrative penalty imposed is also being challenged by the Company.

**2 October 2020**

