



Administrative Measure 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 administrative measures established by the Board of Governors of the FIAU. It is pertinent to note that this Notice provides select information from the FIAU’s decision imposing the respective administrative measures, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

2 October 2020

RELEVANT ACTIVITY CARRIED OUT:

Company Service Provider – Firm

SUPERVISORY ACTION:

On-site compliance review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Follow-Up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”)

LEGAL PROVISION BREACHED:

- Regulation 5(1) and 5(3) of the PMLFTR;
- Regulation 5(5)(a) of the PMLFTR;
- Section 8.1¹ of the Implementing Procedures Part I;
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4² of the Implementing Procedures Part I;
- Regulation 7(1)(a) and 7(2)(b) of the PMLFTR and Sections 3.1.1.2³, 3.1.2⁴ and 3.1.3.3⁵ of the Implementing Procedures Part I; and
- Section 3.5⁶ of the Implementing Procedures Part I.

¹ Reference to the Implementing Procedures (“IPs”) as last amended on 27 January 2017. This obligation is now explained in Chapter 8 of the IPs as last amended on 15 September 2020.

² Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.4.1 of the IPs as last amended on 15 September 2020.

³ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.2.1 of the IPs as last amended on 15 September 2020.

⁴ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.2.2 of the IPs as last amended on 15 September 2020.

⁵ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.3.2.1 of the IPs as last amended on 15 September 2020.

⁶ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.9 of the IPs as last amended on 15 September 2020.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Regulation 5(1) and 5(3) of the PMLFTR

At the time of the compliance review, the Firm did not have a documented Business Risk Assessment (“BRA”) in place. The Compliance Monitoring Committee (“CMC”) took into consideration that although no documented BRA was in place, the Firm’s representatives were able to articulate the risks surrounding its operations and to explain to the officials on-site the degree of such risk exposure and the control level necessary and that therefore the shortcomings surrounding the BRA were mainly related to same not being documented. Furthermore, the CMC positively noted the Firm’s commitment in remediating the situation (this even prior to the commencement of the compliance review) and the remedial actions undertaken by the Firm through its documented BRA attached with the Firm’s 2020 Risk Evaluation Questionnaire submission. The CMC further believes that additional enhancement is required to the Firm’s BRA and more importantly in the controls the Firm has in place to manage the risks identified.

In view of the aforementioned shortcomings in not having a documented BRA, the Firm was found in breach of Regulation 5(1) and 5(3) of the PMLFTR.

Section 8.1⁷ of the Implementing Procedures Part I

During the compliance examination, despite the Firm’s representatives’ knowledge of the risks emanating from potential non-reputable jurisdictions, a documented risk assessment indicating whether such jurisdictions were considered as reputable or otherwise was not carried out. While the CMC noted the Firm’s explanations provided and the different sources taken into consideration in terms of jurisdiction risk assessment, the CMC determined that the Firm failed to document in writing the reasons for determining whether a particular jurisdiction is considered as a ‘reputable jurisdiction’ or otherwise. Hence, the Firm breached Section 8.1 of the IPs.

Regulation 5(5)(a) of the PMLFTR

During the examination, FIAU officials noted that although Customer Risk Assessment (“CRA”) procedures were in place, these were not comprehensive enough to prevent ML/FT since the measures applied did not include the identification and the assessment of all risks in relation to every business relationship/occasional transaction that the Firm had dealings with. Additionally, during the compliance examination, although it was noted that a risk rating was assigned to customers, no written assessment explaining the determination of such rating was found in all of the files reviewed. However, the CMC acknowledged that in the majority of such cases, the Firm was correct in classifying a customer with the assigned risk rating.

The controls/mitigations outlined within the Firm’s AML Manual to cater for product/service risk have been deemed by CMC as insufficient as such controls/mitigations identified do not always provide the necessary mitigation from the risk exposure emanating from the different products/services being offered by the Firm. By way of example, the controls to be implemented when incorporating a company should focus on establishing the rationale for incorporation, a nexus/reason for establishing an entity in Malta and also in cases involving high value share capital an understanding of the source that is funding such initial capital. While in case of a registered address, being a business relationship, the Firm

⁷ Reference to the Implementing Procedures (“IPs”) as last amended on 27 January 2017. This obligation is now explained in Chapter 8 of the IPs as last amended on 15 September 2020.

should ensure it has measures in place to confirm that the activities and operations of the corporate customer remain in line with the information obtained at on-boarding.

After taking into consideration the findings identified during the compliance examination and the representations submitted by the Firm, the CMC concluded that the Firm's failures constitute as a breach of Regulation 5(1) and 5(3) of the PMLFTR.

Regulation 7(1)(c) of the PMLFTR and Section 3.1.4⁸ of the Implementing Procedures Part I

In two of the files reviewed during the compliance examination, the Firm failed to collect the necessary information in relation to the purpose and intended nature of the business relationship, since the information collected was mainly focused in understanding the source of funds to be used at incorporation even though the corporate entities incorporated by the Firm were subsequently on-boarded through the offering of other corporate services and thus formed a business relationship with the Firm. Furthermore, in both files, the Firm failed to obtain any information and/or documentation on the anticipated level and nature of the activity of the corporate customers.

The CMC took into consideration the Firm's submission however determined that, while the object clause in the Memorandum and Articles of Association of the company provide a general understanding of its purpose and intended activity, this should be further narrowed down and clearly identified by obtaining further clarification directly from the customer. Should this not suffice or otherwise in circumstances of higher risk, the Company has to consider requesting additional supporting evidence.

In view of the above, the CMC determined that the Firm's failures in relation to the purpose and intended nature of the business relationship constitute as a breach of Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I.

Regulation 7(1)(a) and 7(2)(b) of the PMLFTR and Sections 3.1.1.2⁹, 3.1.2¹⁰ and 3.1.3.3¹¹ of the IPs

In four of the files reviewed during the compliance examination, the applicant for business acting as an agent was neither identified nor verified. In three of these same files, no authorisation in writing was found in relation to the agent acting on behalf of the customer.

In its representations, the Firm stated that the individuals were not agents, yet failed to substantiate this with the necessary evidence. While the Committee still considered the instances referred to above as agents/intermediaries, it also proceeded to clarify the distinction and legal requirements for dealing with agents, intermediaries and introducers.

Hence, the CMC determined that the Firm's failures constitute breaches of Regulation 7(1)(a) and 7(2)(b) of the PMLFTR and Sections 3.1.1.2, 3.1.2 and 3.1.3.3 of the IPs Part I.

⁸ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.4.1 of the IPs as last amended on 15 September 2020.

⁹ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.2.1 of the IPs as last amended on 15 September 2020.

¹⁰ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.2.2 of the IPs as last amended on 15 September 2020.

¹¹ Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.3.2.1 of the IPs as last amended on 15 September 2020.

Section 3.5¹² of the Implementing Procedures Part I

During the compliance examination, FIAU officials noted that the Enhanced Due Diligence (“EDD”) measure undertaken in one file which was considered as posing a ‘high risk’ by the Firm was inadequate. The Committee determined that the additional measure taken by the Firm, which included obtaining a bank reference, was not sufficient to mitigate the higher risk emanating from the type of activity the company being incorporated was involved in.

Hence, in view of the above, the CMC found the Firm to be in breach of Section 3.5 of the Implementing Procedures Part I.

ADMINISTRATIVE MEASURES IMPOSED BY THE FIAU’S COMPLIANCE MONITORING COMMITTEE:

In view of the breaches identified and as highlighted in the previous sections of this Notice, the CMC proceeded to serve the Firm with a Follow-Up Directive to assess the remedial actions taken/planned to be taken by the Firm in order to comply with its AML/CFT obligations.

In ensuring that the shortcomings identified have been rectified, through the Directive, the Firm is expected to make available an Action Plan within a specified deadline containing a plan to remediate the failures identified. The Action Plan is expected to cover:

- Detailed description of the remedial action to be undertaken by the Firm to remediate the deficiencies outlined within the Firm’s Business Risk Assessment;
- Enhancements to be made to the Firm’s Customer Risk Assessment to adhere to Regulation 5(5)(a) of the PMLFTR and Chapter 3 of the IPs, following said enhancements, a reassessment is expected to be undertaken of all active customer relationships;
- Documentation illustrating the methodology undertaken to carry out jurisdiction risk assessments of all the countries that the Firm is exposed to as per Chapter 8 of the current IPs.
- A description on how the Firm intends to remediate the deficiencies identified in relation to the purpose and intended nature of the business relationship; and
- In terms of Identification, Verification and EDD measures undertaken, the Firm is required to update its records and provide evidence of the remediation undertaken.

The Committee positively acknowledged that the Firm had started remediating its shortcomings prior to the conclusions being reached by the Committee. In determining the appropriate administrative measures to impose, the CMC took into consideration the representations submitted by the subject person. The Committee also considered the nature and size of the subject person’s operations and that the breaches identified did not significantly increase the subject person’s vulnerability of being abused for ML/FT. The importance of the breaches identified together with their occurrence were also considered by the CMC in determining the administrative measures imposed.

Finally, the subject person has also been duly informed that in the eventual failure to provide the above mentioned supporting documentation within the specified deadlines, such default shall be communicated to the CMC 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.

9 October 2020

¹² Reference to the IPs as last amended on 27 January 2017. This obligation is now further explained in Section 4.9 of the IPs as last amended on 15 September 2020.