



Administrative Measure Publication Notice

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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:

5th October 2020

RELEVANT ACTIVITY CARRIED OUT:

Company Service Provider

SUPERVISORY ACTION:

On-site Compliance Review in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Reprimand and a 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 3.3 of the Implementing Procedures Part I;
- Regulation 5(5)(a)(ii) and Sections 3.5.2, 3.5.3 and 3.6 of the Implementing Procedures Part I;
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.1 and 4.3.2 of the Implementing Procedures Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Business Risk Assessment – Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures Part I

The Company did not evaluate appropriately the potential threats that it was exposed to. More specifically, the BRA's considerations of the customer risks were mainly related to the residence and nationality of the UBOs, which in reality are geographical considerations rather than risks relating to customer. Moreover, while the controls in place were explained in the BRA, the Company failed to assess the effectiveness of the same.

Furthermore, as far as the geographical risk is concerned, while the Company had a risk classification for countries it is exposed or could be exposed to, there was no information as to the considerations and evaluations undertaken to arrive at such risk assessment. Moreover, the BRA did not take into account the corporate customer's geographical exposure by understanding the geographical area of business.

In light of the above findings and the representations submitted, the Committee determined that at the time of the on-site examination the Company did not have an adequate and appropriate BRA and therefore was in breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures Part I.

Customer Risk Assessment – Regulation 5(5)(a)(ii) and Sections 3.5.2, 3.5.3 and 3.6 of the Implementing Procedures Part I

The onsite examination revealed shortcomings regarding the Company's Customer Risk Assessment (CRA) which was in place at the time. First of all, the CRA neither provided an adequate rationale to support the assigned risk rating per risk factor nor did it outline the method employed to determine the final customer risk rating. As a result, the Committee was not able to determine how the Company used the obtained information in order to risk assess a client. Moreover, the compliance review revealed that the customer risk rating was being assigned by senior management through manual intervention rather than following a consistent approach.

The shortcomings were corroborated since in 9 of the files reviewed the Company did not provide a documented rationale for arriving at the customer risk rating assigned.

As a result of the above findings, the Committee decided that the Company was in breach of its obligations regarding its CRA policies and the implementation thereof in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.2, 3.5.3 and 3.6 of the Implementing Procedures Part I.

Customer Due Diligence: Identification and Verification – Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.1 and 4.3.2 of the Implementing Procedures Part I

As far as the identification and verification of the clients' identity is concerned, the findings of the onsite examination indicated some insufficiencies as the Company was not fully compliant with its AML/CFT obligations. These shortcomings included the identification and verification of identity documents for directors of the corporate customer, verification documents for the UBOs and also not obtaining the structure chart for corporate customers.

The Committee also acknowledged the fact that the Company forms part of an international group. As a result many identification and verification documents are kept in soft copies in the group's servers. Yet, this cannot compensate for the fact that the Company failed to retain identification and verification documents at its disposal for same to be available upon request, and as proof that customer due diligence (CDD) measures were being adequately performed by the Company. The Committee also noted that identification and verification of identity should take place at on-boarding; the fact that no transaction had been effected by the customer did not exonerate the Company from performing CDD duties.

As a result the Committee determined that the Company was in breach of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Sections 4.3.1 and 4.3.2 of the Implementing Procedures Part I regarding the obligation to carry out identification and verification measures on customers properly and at on-boarding.

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

The Committee examined and assessed the findings of the on-site examination, the representations of the Company and all the relevant documentation/information submitted. The members noted that overall the Company's employees had cooperated with MFSA officials during the carrying out of the

compliance review. The Committee also positively acknowledged that the Company carried out remediation measures of its own accord following the onsite examination.

The Committee has therefore determined that the following administrative measures are to be imposed on the Company:

- A reprimand was imposed to the Company in terms of Regulation 21 of the PMLFTR for the Company's breaches regarding the findings in relation to Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Sections 4.3.1 and 4.3.2 of the Implementing Procedures Part I;
- A Remediation Directive as will be explained in more detail below.

The Remediation Directive served on the Company contains several requirements that the Company needs to abide by, including:

- A revised BRA including an explanation of the methodology used to determine the inherent risks, control levels and residual risks. The BRA provided should also cover the likelihood and impact of risks the Company is or could be exposed from its operations and how it intends to mitigate such risks.
- A review of all of the active clients of the Company in order to ensure that the risk assessments maintained by the Company are in accordance with the standards set by the current AML/CFT framework. Moreover, the Company shall provide detail of the customer relationships classified as high risk, medium risk and low risk;
- An acknowledgement in writing to the FIAU confirming that the Company has reviewed all its client files in order to ensure that all the CDD is being obtained and updated in accordance with the relative provisions of the PMLFTR and the Implementing Procedures.

Furthermore, the Remediation Directive also provides for a follow up meeting to be conducted with the Company in order to discuss the actions being taken to address the shortcomings highlighted and to ensure that the Company clearly understands its AML/CFT obligations at law. The follow up meeting is intended to provide the FIAU with more reassurance that the remedial actions are being implemented in practice and to ensure that the Company has sufficient knowledge with regards to the AML/CFT obligations that apply to its operations.

The Committee was positive in relation to the remedial actions undertaken and the ones that are still being implemented by the Company in order to address shortcomings identified during the compliance review. In determining the appropriate administrative measure to impose the Committee took into consideration the representations submitted by the Company. The Committee also took into consideration the nature and size of the Company'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 taken into consideration by the Committee in determining the administrative measures imposed.

Finally, the Committee reminds the Company that in the eventuality that the requested documentation and/or information is not made available within the stipulated timeframes, the Committee shall be informed of such default, for the possibility to take eventual action, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

12 October 2020