



Administrative Measure Publication Notice

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The 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:

28th October 2020

RELEVANT ACTIVITY CARRIED OUT:

Advocate, Company Service Provider - Individual

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2018.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of Eur 22,062 and a Remediation Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

The FIAU's Compliance Monitoring Committee (CMC or Committee) issued a Remediation Directive on the Subject Person to take action and remedy the breaches identified during the compliance review and to ensure that the actions planned to be taken by the Subject Person are implemented.

LEGAL PROVISIONS BREACHED:

- (1) Regulation 5 of the PMLFTR;
- (2) Regulation 5(5)(a)(ii) of the PMLFTR;
- (3) Regulation 7(5) and Regulation 8(1) of the PMLFTR;
- (4) Section 4.3 of the Implementing Procedures (IPs) Part I;¹
- (5) Regulation 7(1)(c) of the PMLFTR;
- (6) Regulation 5(5)(a) of the PMLFTR;
- (7) Regulation 11(5) of the PMLFTR;
- (8) Regulation 7(2)(a) of the PMLFTR;
- (9) Section 5.2 of the IPs Part I;
- (10) Section 8.3 of the IPs Part I.

¹ For the purposes of clarification, any references to the Implementing Procedures within this publication, shall be construed to refer to the Implementing Procedures in place at the time of the onsite examination.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

(i) Regulation 5 of the PMLFTR

During the examination it was revealed that the Subject Person did not have a business risk assessment (BRA) in place and instead followed the BRA adopted by another entity to which it was outsourcing its CDD obligations (Third Party). The Subject Person was not involved in the drawing up of the BRA, and therefore, although some of the details of the risks identified were applicable to the Subject Person's operations, the assessment was focused on the business activities and risk exposures of the Third Party's own operations and not in any way tailored to cater for the Subject Person's own risk exposure.

The Committee also found issues in relation to the jurisdictional risk assessment carried out. In fact, the compliance examination revealed that in a number of files, there was no documented jurisdiction risk assessment for the jurisdictions the Subject Person was exposed to.

In view of the above findings, the Committee determined that at the time of the onsite examination, the Subject Person was in breach of Regulation 5 of the PMLFTR.

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

The onsite examination revealed several shortcomings concerning the Subject Person's customer risk assessment. Such findings included: documentation relating to the customer risk assessment not being held on file; lack of clarity as to the manner in which all the considerations were taken into account to derive the assigned risk rating; and the failure to document or provide an explanation to the rationale for the risk rating assigned.

It was further observed that the customers were risk rated in accordance with the risk parameters set by the Third Party, which did not necessarily correspond to the Subject Person's own business.

In view of the above, the Committee determined that the findings identified during the onsite examination constituted breaches of Regulation 5(5)(a)(ii) of the PMLFTR, and imposed an administrative fine for such failures.

(iii) Regulation 7(5) and Regulation 8(1) of the PMLFTR

The compliance review revealed findings in a number of files. Shortcomings consisted in:

- i) Address verification documents pertaining to the ultimate beneficial owner which had been issued more than six months prior to the date of the business relationship;
- ii) Certification of customer due diligence documentation obtained in relation to the ultimate beneficial owners were dated following the establishment of the business relationship.

In view of the above, the Committee determined that the Subject Person was in breach of his/her obligations emanating from Regulation 7(5) and 8(1) of the PMLFTR.

(iv) Section 4.3 of the IPs Part I²

² Sections 3.1.1.2 (ii) and Section 3.1.3.3 of the Implementing Procedures applicable at the time.

The examination revealed that in a number of files reviewed the verification documentation obtained for natural persons was not certified as required by Section 3.1.1.2 (ii) and Section 3.1.3.3 of the IPs Part I. The Committee found the subject person in breach of Section 4.3 of the IPs Part I.

(v) Regulation 7(1)(c) of the PMLFTR

For a particular file, FIAU officials noted that no information was available to the Subject Person in order for it to build a comprehensive customer business and risk profile on its customers. The fact that the Subject Person accepted a liquidator position for a number of companies that opted for a voluntary winding up, did not discharge him/her from his/her obligation to obtain information on the corporate customer's set up.

In another instance the Subject Person acted as a company secretary and director for a company, however no information was found on file or provided during the course of the examination in relation to the purpose and intended nature of the relationship, including information regarding the purpose of the company.

In view of these findings, the Committee found the Subject Person in breach of his/her obligations in terms of Regulation 7(1)(c) of the PMLFTR.

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

The examination revealed that, although for a number of files the Subject Person had established whether the customer is a politically exposed persons (PEP), in two files no information was found on file that checks had indeed been done to confirm or otherwise the individuals involved's PEP status. Hence, this implied that PEP checks were not applied evenly throughout.

In light of the abovementioned findings, the Committee found the Subject Person in breach of Regulation 5(5)(a) of the PMLFTR.

(vii) Regulation 11(5) of the PMLFTR

The examination revealed that in one instance where the ultimate beneficial owner of the customer was a PEP, no evidence was found on file to establish or confirm that the additional customer due diligence requirements in relation to PEPs had been carried out.

The Committee also noted that the fact that the Subject Person knew the customer or beneficial owner on a personal level, did not exonerate the subject person from carrying out the necessary risk assessments, due diligence and ongoing monitoring on the same.

In light of the abovementioned findings, the Committee determined that the Subject Person was in breach of Regulation 11(5) of the PMLFTR.

(viii) Regulation 7(2)(a) of the PMLFTR

Subject Persons are required to scrutinise the transactions undertaken throughout the course of the business relationship in order to ensure that they are consistent with the Subject Person's knowledge of the customer and his/her business.

During the onsite examination, three transactions were highlighted in a particular file;

- (i) A credit transaction of USD 49,990, where a Share Sale/Asset Purchase Agreement was provided as supporting documentation however the amounts included in the agreement did not

correspond to the amount of the transaction and thus not deemed sufficient to explain the transaction;

- (ii) A debit payment of USD 96,539. For this transaction, two invoices for tools and equipment were provided as supporting documentation however similarly to the previous case, the amount indicated in the documents provided did not correspond the payment effected;
- (iii) A number of credit transactions amounting to a total of USD3,600,000. Although invoices were obtained for these transactions, the parties in whose name the invoices were issued and those who were actually effecting the payments differed. During the visit, reference was also made to an agreement which confirmed the relationship between the parties involved in the transactions and detailing the modus operandi of such relationship, however a copy of this agreement was neither found on file nor provided to the Officials during the course of the examination.

For another file, the information found on file suggested that a number of transactions should have taken place through the course of the business relationship, however no bank account statements pertaining to the customers were made available during the compliance examinations or with the representations to show whether in actual fact the transactions were effected or otherwise.

The Committee found the Subject Person in breach of its obligations emanating from Regulation 7(2)(a) of the PMLFTR, and determined that, in addition to the administrative fine being imposed for such failure, the shortcomings shall also be addressed through the Directive served.

Section 5.2 of the IPs Part I

The compliance examination revealed that no training in relation to AML/CFT was undertaken by the Subject Person at the time of the examination. In virtue of the Subject Person's representations, it was revealed that since the examination had taken place, the Subject Person had attended training focused on AML/CFT.

The Committee found the Subject Person in breach of its obligations under Section 5.2 of the IPs Part I. The FIAU thus required the Subject Person either to provide it with proof of more training undertaken since the date of the last training attended or else, expected the Subject Person to provide it without delay, proof of actual attendance of another training session within 4 months of receipt of the letter.

Section 8.3 of the IPs Part I

During the review, FIAU officials also noted that no Procedures Manual was in place. The Committee acknowledged the Subject Person's submissions wherein it stated that, specific AML/CFT policies and procedures shall be established to cater for the identified risks in the business risk assessment.

The Committee found the Subject Person in breach of its obligations under Section 8.3 of the IPs Part I and imposed an administrative penalty in relation to such failure.

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

In view of the findings identified, the Committee concluded that the Subject Person was in breach of various AML/CFT obligations. The Committee, therefore, decided to impose an administrative penalty of Eur 22,062 with regards to the breaches identified in relation to:

- (1) Regulation 5(5)(a)(ii) of the PMLFTR;
- (2) Regulation 7(2)(a) of the PMLFTR; and
- (3) Section 8.3 of the IPs Part I.

In terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Subject Person with a Remediation Directive containing several requirements in order to ensure that the Subject Person understands the risks surrounding his/her operations and that he/she has implemented sufficient controls to mitigate such identified risks. Specifically, the Directive requires the Subject Person to make available:

- (i) A more appropriate and focused BRA that includes the improved methodology referred to in the representations.
- (ii) Jurisdiction risk assessments carried out in relation to five different jurisdictions which any of the Subject Person's customers had/have connections to, as well as, a detailed explanations as to why a particular risk rating was assigned.
- (iii) The revised CRA procedures as well as a sample of files since the implementation of the revised CRA procedures.
- (iv) A detailed explanation of the PEP measures in place and any forms or declarations utilised to determine PEP status.
- (v) A detailed explanation of how EDD measures post the compliance review were improved including an explanation of the documentation that the Subject Person obtains prior to on-boarding, any checks that he/she carries out and an explanation of the enhanced level of monitoring he/she adopts;
- (vi) An explanation of how on-going monitoring of transactions and analysis of any anomalous transactions is being carried out.
- (vii) A copy of the Subject Person's AML Procedures Manual.

The aim of this administrative measure is to direct the Subject Person to take the necessary remedial action to ensure that going forward the Subject Person is in a position to adhere to the AML/CFT obligations applicable to its operations. The Directive instructed the Subject Person to make available all documentation and/or information necessary within specific timeframes to attest that the remedial actions have indeed been implemented in practice.

In determining the appropriate administrative measure to impose the CMC took into consideration the representations submitted by the Subject Person as well as the remedial actions undertaken by the Subject Person in order to address shortcomings identified during the compliance review. The CMC also took into consideration the nature and size of the Subject Person's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Subject Persons' own operations and also the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also taken into consideration by the CMC in determining the administrative measures imposed.

Finally, the Remediation Directive reminds the Subject Person that in the eventuality that the requested documentation and/or information is not made available within the stipulated timeframes, the CMC 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 (1) of the PMLFTR.

4 November 2020