



## 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 penalties established by the Board of Governors of the FIAU.

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:**

29<sup>th</sup> October 2020

### **SUBJECT PERSON:**

Amicorp Malta Limited

### **RELEVANT ACTIVITY CARRIED OUT:**

Company Service Provider

### **SUPERVISORY ACTION:**

On-site Compliance Review carried out in 2018

### **DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:**

Administrative Penalty of EUR 57,845 and a Remediation Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- (1) Regulation 5 of the PMLFTR, Regulation 5(5)(a)(ii) of the PMLFTR, Chapter 4 and Section 8.1 of the Implementing Procedures Part I;<sup>1</sup>
- (2) Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I;
- (3) Regulation 13(3) of the PMLFTR 2017 and Section 5.4 and Section 5.5 of the Implementing Procedures Part I;
- (4) Section 3.5.3.1 of the Implementing Procedures Part I;
- (5) Section 3.1.5 of the Implementing Procedures Part I;
- (6) Regulation 11(2) of the PMLFTR 2017 and Section 3.5 of the Implementing Procedures Part I;  
and
- (7) Regulation 15(6) of the PMLFTR 2008 and Section 6.4 of the Implementing Procedures Part I.

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<sup>1</sup> 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 when the breach has occurred.

## **REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

(i) Regulation 5 of the PMLFTR, Regulation 5(5)(a)(ii) of the PMLFTR, Chapter 4 and Chapter 8.1 of the Implementing Procedures Part I

The examination revealed various shortcomings that evidenced the Company's non-adherence to the requirements of this obligation.

The Compliance Monitoring Committee (Committee/CMC) concluded that at the time of the onsite examination, the Company failed to:

- have adequate customer risk assessment procedures in place to prevent ML/FT;
- effectively risk assess customers by considering all the information it had available;
- carry out a customer risk assessment for two files;
- understand the reasoning behind an assigned rating in a file;
- assign a rating which adequately reflected the risk posed by the client in one file;
- carry out a customer risk assessment prior to entering into a business relationship with prospective customers; and
- reassess a high risk file once serious concerns arose linking it with crimes of a ML/FT nature.

The Committee observed how the Company was failing to consider whether prospective customers fell within its risk appetite or not, and as a result it also failed to consider the level of customer due diligence necessary in order to mitigate the risks identified. The failures outlined confirm that the Company's risk assessment procedures are inefficient, ineffective and not adequate to manage the Company's ML/FT risks.

The compliance review also revealed that the Company failed to consider the geographical factor when carrying out the customer risk assessment. This was deduced as it had neither conducted assessments on the reputability of jurisdictions that its customers had dealings with, nor documented the reasons for determining why a particular jurisdiction is considered to be a reputable jurisdiction as envisaged in terms of Section 8.1 of the Implementing Procedures Part I. It was further noted that its procedures held no reference to the measures put in place to understand the reputability of jurisdictions, including the exposure to any jurisdiction that should be classified as high risk.

In view of the above findings, the Committee determined that the Company was in breach of Regulation 5, specifically Regulation 5(5)(a)(ii) of the PMLFTR, Chapter 4 and Section 8.1 of the Implementing Procedures Part I and imposed an administrative penalty for such failures.

(ii) Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I

In six of the files reviewed, the Company had either insufficient or no information in relation to the source of wealth, source of funds, the nature and the details of the business of the customer and the anticipated level and nature of the activity that is to be undertaken throughout the relationship. Consequently, the Company could not establish its customer's risk profile which would enable effective ongoing monitoring of the relationship.

In view of the aforementioned shortcomings, the Committee determined that the findings identified during the onsite examination constituted breaches of Regulation 7(1)(c) of the PMLFTR, and imposed an administrative penalty for such failures.

(iii) Regulation 13(3) of the PMLFTR 2017 and Section 5.4 and Section 5.5 of the Implementing Procedures Part I

The compliance review revealed that the Company did not have a standardised and organised approach for record-keeping or for the retrieval of records for the purposes laid out in Section 5.5 of the Implementing Procedures Part I. The Company had for numerous years operated with inefficient record-keeping measures and such shortcomings had prejudiced the Company's ability to provide the necessary information to the officials onsite in an efficient manner. Consequently, such a lax approach resulted in the Company providing an incomplete client list prior to the onsite examination, as well as presenting files with dispersed information. This at times included documentation not belonging to the customer file being reviewed. Said documentation on occasion could not even be identified as to which customer it actually belonged to by the company officials themselves.

In view of the aforementioned shortcomings, the Committee determined that the findings identified during the onsite examination constitute breaches of Regulation 13(3) of the PMLFTR 2017 and Section 5.4 and Section 5.5 of the Implementing Procedures Part I.

(iv) Section 3.5.3.1 of the Implementing Procedures Part I;

The compliance review revealed that although the Company had measures in place to identify Politically Exposed Person (PEP) involvements, in one instance the Company did not apply any measures to determine whether the customer or beneficial owner/s was a PEP, family member or close associate of PEP in terms of Section 3.5.3.1 of the Implementing Procedures Part I. The Committee however noted that from the sample of files reviewed, only one file presented this shortcoming. This was evidence that the Company did have a system in place to determine whether its customers were politically exposed or otherwise and such system was being implemented in practice. However the finding presented in this one file still constituted a breach of the Company's obligations.

In view of the aforementioned and that the finding was present in only one of the files reviewed, the Committee determined that a reprimand shall be imposed on the Company for breach of Section 3.5.3.1 of the Implementing Procedures Part I.

(v) Section 3.1.5 of the Implementing Procedures Part I

The Committee noted that the Company had failed to obtain updated documentation and information on its customers in two of the files reviewed. The Committee noted that even in the case of a trigger event, the Company still failed to update certain documentation kept on file which was expired. In another file, the Company also failed to carry out the necessary review of the customer relationship in line with its policies and procedures, which required the review of high risk customers once a year. Thus the Committee concluded that although the Company's Manual identified the need to carry out ongoing monitoring of the business relationships entered into and also included circumstances wherein such measures would be necessary, this was not comprehensively followed by the Company at all times.

In view of the aforementioned shortcomings, the Committee determined that the findings identified during the onsite examination constitute a breach of Section 3.1.5 of the Implementing Procedures Part I.

(vi) Section 3.5 of the Implementing Procedures Part I and (Regulation 11(2) of the PMLFTR 2017)

The Committee noted that for a particular file, which was risk rated as high, the Enhanced Due Diligence (EDD) Form was not sufficient to satisfy the requirements under Section 3.5 of the Implementing Procedures since it did not explain what EDD measure was employed by the Company to mitigate the risks posed by the customer. In addition, the Committee noted that due to the high risk nature of this customer, the Company would not have on-boarded such customer under normal circumstances. Thus, the Committee highlighted that the Company should have considered the carrying out of an effective EDD measure essential in such circumstances. Furthermore, the Committee noted that for a number of other files which represented a high ML/FT risk the Officials found no evidence of additional measures carried out that could be deemed as appropriate to mitigate a high risk of ML/FT. Some of these files did not even have adequate basic customer due diligence in place.

The Committee therefore determined that the Company failed to apply EDD measures in those instances which by their nature presented a higher risk of ML/FT and therefore, the Company was found in breach of Section 3.5 of the Implementing Procedures.

(vii) Section 6.4 of the Implementing Procedures Part I and Regulation 15(6) of the PMLFTR 2008

The Committee noted that in one of the files reviewed there were a set of circumstances, which could have alerted the Company as to the legitimacy and veracity of the customer's business operations and the agreements therewith. However, the Company failed to recognise and analyse the set of circumstances it had available, which should have led the Company to submit a suspicious transaction report to the FIAU. Through its failure, the Company could have potentially, unintentionally or through negligence, assisted its customers in facilitating ML/FT.

The Committee thus determined that the Company was in breach of Section 6.4 of the Implementing Procedures and Regulation 15(6) of the PMLFTR.

**ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:**

In view of the findings identified, the Committee concluded that the Company was in breach of various AML/CFT obligations. The Committee, therefore, decided to impose an administrative penalty of EUR 57,845 with regards to the breaches identified in relation to:

- (i) Regulation 5 of the PMLFTR, Regulation 5(5)(a)(ii) of the PMLFTR, Chapter 4 and Section 8.1 of the Implementing Procedures Part I;
- (ii) Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures Part I;
- (iii) Regulation 13(3) of the PMLFTR and Section 5.4 and Section 5.5 of the Implementing Procedures Part I;
- (iv) Section 3.1.5 of the Implementing Procedures Part I;
- (v) Regulation 11(2) of the PMLFTR 2017 and Section 3.5 of the Implementing Procedures Part I;
- (vi) Regulation 15(6) of the PMLFTR 2008 and Section 6.4 of the Implementing Procedures Part I.

The Committee also imposed a reprimand for the Company's breaches of Section 3.5.3.1 of the Implementing Procedures Part I.

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

- (i) Customer risk assessment procedures as approved by the Board of Directors, as well as a sample of customer files risk rated through the latest CRA procedure;
- (ii) An explanation of how the jurisdiction risk assessment is carried out as well as a sample of thereof;
- (iii) An update on the Company's new Risk Tool/System and its written methodology;
- (iv) An explanation of the enhancements carried out to its measures for on-boarding customers, in order to ensure that the information necessary to build a comprehensive customer risk profile is obtained, including evidence;
- (v) An explanation of how EDD measures post the on-site examination review were improved;
- (vi) An update of the Company's record keeping procedures;
- (vii) An update on the measures implemented by the Company in order to ensure that customers' records are maintained up to date; and
- (viii) Evidence of training in AML/CFT undertaken by Amicorp Malta's employees.

The aim of this administrative measure is to direct the Company to take the necessary remedial action to ensure that going forward the Company is in a position to adhere to the AML/CFT obligations applicable to its operations. The Directive instructed the Company 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 measures to impose, the CMC took into consideration the representations submitted by the Company, as well as the remedial actions undertaken by the Company in order to address shortcomings identified during the compliance review. The CMC also took into consideration the nature and size of the Company's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Company'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 CMC in determining the administrative measures imposed.

Finally, the Remediation Directive reminds the Company 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 of the PMLFTR.

The FIAU has taken note that since the carrying out of the onsite examination, which occurred back in 2018, a new management team is now responsible for the operations of the Company. The FIAU has also been informed that remedial actions are currently being undertaken by the Company in order to remediate the AML/CFT shortcomings revealed during the onsite examination.



**5 November 2020**