



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:

23rd December 2020

RELEVANT ACTIVITY CARRIED OUT:

Financial Institution

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

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 (“IPs”);
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs;
- Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Section 4.3.1.1 of the IPs; and
- Regulation 7(1)(c) of the PMLFTR

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures:

Prior to the on-site compliance examination, the officials were provided with a copy of the Company’s Business Risk Assessment (the “BRA”). Whilst reviewing said documentation, it was observed that although theoretically highlighting the inherent ML/FT risk factors faced by the Company, the BRA omitted the inclusion of the analysis and risk scenarios, the likelihood of any risk materialising and the possible impact thereof. Therefore the BRA did not provide a holistic approach on the various risk factors that may arise out of the Company’s activities. As a result, the Company was not in a position to establish the areas in which its AML/CFT measures, policies, controls and procedures, need to be the strongest and the specific measures to implement in order to mitigate the inherent risk identified.

The Committee however considered that although certain weaknesses were identified in the documented BRA, the Company was immediately forthcoming in rectifying same. The Committee in fact positively welcomed that following the engagement of an external AML Specialist, a revamped BRA had been uploaded

within the Company's REQ submission subsequent to the compliance review. Therefore, although the Company's BRA in place at the time of the onsite examination was not robust enough, the factors outlined above were all positively acknowledged by the Committee in the taking of the decision in relation to this finding.

Notwithstanding the pro-active approach adopted by the Company, the Committee could not oversee the fact that the BRA that had been established within the Company's operations at the time of the compliance examination was not considered as comprehensive enough. Hence, following the consideration of all the above factors, the Committee found the Company to be in breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures Part I.

Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures:

It was also noted that although the Company had assigned a risk rating to each of its customers, there was no documented rationale justifying such rating in all of the files reviewed. Matters were further aggravated since the Customer Risk Assessment ("CRA") adopted by the Company was found to be not rigorous and comprehensive enough to enable the Company to understand the risks posed by customers and to effectively apply the risk-based approach. This was a result of the Company not taking into consideration the client's jurisdiction, expected transactional activity and interface risk factors when assigning a risk score. Therefore although the Company had a risk assessment procedure in place, the risk rating process implemented by the Company at the time of the compliance review was not widely effective to proactively detect and prevent potential ML/FT risks.

In the taking of the decision, the Committee acknowledged that the recommendations raised during the onsite visit were immediately taken on board by the Company. This led to the review and updating of both the CRA itself and the performance process with regards to prospective clients. It was further detailed that the new risk score was drafted and implemented in accordance with the PMLFTR as well as the Basel recommendations. Additionally, the document, which was also provided as documentary evidence with the Company's representations, summarized a Money Laundering Risk Assessment in relation to the initial assessment of risk prior to the on-boarding of customers. This meant that the Company is also carrying out an interim risk assessment should any factors change after on-boarding and a period risk assessment in relation to the risk score allocation should any changes arise throughout the course of the relationship as part of the case reviews.

Nevertheless, due to the CRA lacking the detail as required at the time of the compliance review, the Committee determined that the Company had breached its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures Part I.

Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Section 4.3.1.1 of the Implementing Procedures:

The compliance examination revealed shortcomings by the Company in terms of its obligations as outlined by Regulation 7 of the PMLFTR which requires the identification and verification of natural persons, legal entities and where applicable the ultimate beneficial owners of its corporate customers. From the file review, shortcomings were noted in seven customer files:

- In one file, the Officials on site were not in a position to determine the validity of the verification document collected for one of the corporate customer's UBOs since the Company only obtained a copy of the rear side of such document;

- It was also noted that the verification documents procured to identify and verify one of the UBOs for a further two files were illegible and hence the validity date could not be determined;
- A document obtained to verify the residential address of the UBOs in one file was more than six months old at the time of on-boarding and thus deemed to be invalid in terms of the requirements set out by the Implementing Procedures; and
- It was also observed that for three customer files, in order to verify the permanent residential address of the natural persons involved, the Company obtained a copy of the mobile utility bills of same with such documents being invalid in terms of the Implementing Procedures.

In view of the abovementioned shortcomings, the Committee considered the Company to have breached Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Section 4.3.1.1 of the IPs for multiple failures to obtain the necessary identification and verification of natural persons and legal persons as required.

Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the Implementing Procedures:

The Committee was presented with a number of shortcomings identified during the compliance review concerning the obligation to obtain information on the purpose and intended nature of the business relationship prior to entering into such a relationship. The file review revealed that 6 out of the 25 files reviewed held inadequate information recorded within the client files to satisfy such requirements. The Committee noted that information in relation to these customers was present showing that they were largely involved in the hospitality industry. However, the Company had failed to comprehensively understand how the property being utilized in the generation of the funds was originally acquired (e.g. purchased through own funds, through credit facilities, or inheritance).

The Committee also noted that the information held in terms of the anticipated level and nature (including expected value and frequency of transactions) that is to be undertaken throughout the relationship was also found to be insufficient. This was a result of the on-boarding questionnaire making no reference to the breakdown of the high seasons or low season fluctuations, the size of the businesses or if the business locations were situated in geographical areas that attracted year-around business. In addition, following a review of the Company's on-boarding online questionnaire, the Committee determined an element of subjectivity of what fields are required to be filled in by its potential customers, this since not all fields are required to be filled in and the customer can easily decide to omit certain information during the compilation and eventual submission of these questionnaires.

Therefore, the Committee determined that the findings identified within the abovementioned six (6) files shall consist as breaches of Regulation 7(1)(c) of the PMLFTR as the Company failed to collect sufficient information on the purpose and intended nature of the business relationships, thus not being able to compile a comprehensive customer risk profile.

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

In view of the breaches identified and as highlighted in the previous sections of this Notice, the CMC proceeded to serve the Company with a Remediation Directive. The aim of this administrative measure is to direct the Company to take the necessary remedial action in order to ensure that it understands the risks surrounding its operations and that the Company has implemented sufficient controls to mitigate such identified risks. To ensure that the Company is effectively addressing the breaches set out above, the Committee also instructs the Company to make available all documentation and/or information necessary

to attest that the remedial actions have indeed been implemented in practice. The Remediation Directive includes an obligation on the Company:

- To ensure effective implementation of the said Customer Risk Assessment, the Company is to provide the FIAU with files for 3 customers, which have been on-boarded post the date of the compliance examination up to the date of the letter being imposed, which files are to include the CRA carried out;
- On a risk sensitive basis, the Company is to re-assess the CRA of existing active customers. The Company is therefore requested to provide the FIAU with the timeframes outlining the period within which all current customer relationships will be reviewed in line with the new system;
- Within six (6) months' time, the Company must provide the FIAU with the total number of customers which have been reviewed and the number of customers who had the risk rating changed through the said review against the number of customers the assigned rating remained unchanged;
- Review the on-boarding questionnaire and enhance same to ensure that checks are undertaken so that the required information is collected (this can be done through adding mandatory fields to be filled in);
- To provide a copy of the remediated on-boarding form, as explained above, with a clear explanation of what considerations the Company has applied to collect all the required information; and
- On risk sensitive basis to review the Company's active clients and determine whether further information is to be collected with regards to purpose and intended nature of the business relationship, in particular to account for the anticipated level of activity. An update of this status is to be provided to the FIAU.

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 the documented policies and procedures made available, including the most recent Business Risk Assessment are well understood by the Company. 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 its AML/CFT obligations.

In determining the appropriate administrative measure to impose, the Committee took into consideration the representations submitted by the Company together with the remedial actions that the Company had already started to implement prior to the imposition of this administrative measure. The Committee also considered the nature and size of the Company's operations, the overall actual and potential 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 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 within 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(1) of the PMLFTR.

30 December 2020

