



Administrative Measure Publication Notice

This Notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C 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.

This Notice provides select information from the FIAU's decision imposing the respective administrative measures, and the subsequent appeals judgment. This Notice is not a reproduction of the actual decisions.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

11 September 2018

RELEVANT ACTIVITY CARRIED OUT:

Trustees and Fiduciaries

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2016

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €30,000 and a Reprimand in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Section 3.1.1.2 and Section 3.1.3.3 of the Implementing Procedures Part I (IPs);
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs;
- Regulation 7(1)(d) and 7(2)(b) of the PMLFTR; and
- Regulation 7(9) of the PMLFTR and Section 4.1 of the IPs;

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Section 3.1.1.2 and Section 3.1.3.3 of the Implementing Procedures Part I (IPs)¹

The compliance examination revealed that the Company fell short of the above mentioned provisions in 50% of the files reviewed. In the course of the carrying out of the file review, the Officials noted shortcomings in the Company's obligations to identify and verify the customer and ultimate beneficial owners, including the details necessary to identify and verify the residential address of same.

The Committee therefore determined that the Company was in breach of its obligations in terms of Section 3.1.1.2 and Section 3.1.3.3 of the Implementing Procedures Part I.

¹ Currently Section 4.3 of the Revised Implementing Procedures last amended on 25 September 2020

Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures²

The compliance review revealed serious shortcomings concerning the obligation to obtain information on the purpose and intended nature of the business relationship as per Regulation 7(1)(c) of the PMLFTR prior to entering such a relationship. This is necessary for the Company to be able to build a comprehensive business and risk profile of its customers, this information is necessary to: risk assess the customer; understand the customer's activity and to be able to effectively monitor the established relationship to capture instances that deviate from the established profile and that on the basis of such monitoring may give rise to a suspicion of ML/FT.

The compliance review performed, revealed that the Company had failed on numerous occasions to adhere to its obligation to obtain sufficient information to establish the purpose and intended nature of the business relationships it maintained with its customers. In its discussion, the Committee learnt how throughout the compliance examination, the officials carrying out the review noted that all reviewed files contained no information to understand the source(s) of wealth, source of funds and anticipated level of activity of the customers.

As a result, the Company had failed in all instances to collect the necessary information on its customers. Therefore, it had not ensured that it had acquired the necessary information to comprehensively understand its customers and the degree and extent of due diligence and monitoring required. For these reasons, the Committee found the Company to be in breach of Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs.

Regulation 7(1)(d) and Regulation 7(2) of the PMLFTR

Once a business relationship is established, the Company was also required to carry out on-going monitoring, by ensuring that the documents, data or information held are reviewed and kept up-to-date. It was noted however that this was not always being adhered to by the Company. The compliance review revealed that four of the files reviewed held documentation to verify the identity of the UBO/Agents/Applicants for business that had expired in the course of the business relationship and had not been updated for a number of years.

In view of the facts outlined above the Committee determined that the Company failed to honour its obligations in terms of Regulations 7(1)(d) and 7(2) of the PMLFTR.

Regulation 7(9) of the PMLFTR and Section 4.1 of the Implementing Procedures³

The Committee noted that the Company failed to establish and implement effective customer acceptance policies that are conducive to determine the PEP exposure of its customers and/or beneficial owners. As a result, the Company did not have measures in place to establish whether customers and/or beneficial owners are PEPs, family members of PEPs or close business associates of PEPs. This led the Committee to determine that for all the customer files reviewed, the Company was not in a position to ascertain whether they had any political exposure.

The Committee therefore determined that the Company breached Regulation 7(9) of the PMLFTR and Section 4.1 of the Implementing Procedures

² Currently Section 4.4 of the Revised Implementing Procedures last amended on 25 September 2020

³ Currently Section 3.4.1 of the Revised Implementing Procedures last amended on 25 September 2020

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

The failures identified, as explained above, necessitated the imposition of an administrative penalty that is appropriate in view of the nature of the breaches identified. For the reasons explained above, an administrative penalty of €30,000 was imposed upon the Company with regards to the breaches identified in relation to:

- Section 3.1.1.2 and Section 3.1.3.3 of the Implementing Procedures Part I (IPs);
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs; and
- Regulation 7(9) of the PMLFTR and Section 4.1 of the IPs;

In addition to the above, the Committee imposed a Reprimand in relation to the minor breaches identified for the Company's failures in terms of Regulation 7(1)(d) and Regulation 7(2)(b) of the PMLFTR.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company, together with the remedial action that the Company had already implemented, the nature and size of the Company's operations, the overall impact, actual and potential, 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.

APPEALS PROCESS:

In accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), the Company appealed the respective decisions taken by the FIAU on the imposition of the administrative penalty for the Company's failure to adhere to its AML/CFT obligations.

By means of the decisions handed over on the 20 January 2021 and communicated in full to the FIAU on 21 January 2021, the Court of Appeal:

- In the appeal proceedings filed by the Subject Person dismissed all grounds of appeal put forth by the Subject Person. Not only did it not revise the FIAU's conclusions with respect to the AML/CFT breaches identified, but it also considered that the information provided throughout the FIAU's supervisory and enforcement process was sufficient to allow the Subject Person to determine to which files reference was being made to in the findings report and therefore to exercise in an unencumbered manner its' right to submit representations to the Compliance Monitoring Committee. In addition, in the absence of any justified reasons, the Court failed to understand on what basis it could somehow consider the administrative penalty imposed by the FIAU to be excessive and revise the value thereof.

27th January 2021

