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.

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:

01 March 2021

RELEVANT ACTIVITY CARRIED OUT:

Financial Institution

SUPERVISORY ACTION:

On-Site Compliance Review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of EUR 38,576 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISIONS BREACHED:

1) Regulation 5(1) of the PMLFTR and Sections 3.3 and 3.4 of the Implementing Procedures Part I
2) Regulation 5(5) and Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.3 and 3.4 of the Implementing Procedures Part I
3) Regulation 15(1) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR and Sections 3.3 and 3.4 of the Implementing Procedures Part I

The Compliance Monitoring Committee ("Committee") observed that the Company did have a Business Risk Assessment (BRA) in place at the time of the visit, and even though it was following the model of the guidance paper issued jointly between the FIAU and MFSA in 2018, it was done in an overly generic manner. Furthermore, there were a number of other failures noted within the same BRA. In fact, the Company neither prepared an inventory of the risks relevant to its activities, nor included any quantitative data. Instead, it grouped all the risks under the four main risk categories (customer, geography, interface, and product/services/transaction risks) without understanding the exposure of each scenario and without assessing the risks pertaining to each category at a granular level. The same was noted with regard to the controls in place, whereby it was determined that the Company did not carry out an assessment of its controls but rather simply included a list of the control measures it has in place. It was also observed that the BRA only delved into the risk exposure of clients or ultimate

beneficial owners who were from high-risk or non-reputable jurisdictions. It failed to indicate which jurisdictions its customers come from or to which jurisdictions its customers trade with. The Company's BRA also failed to consider terrorist financing risks emanating from certain jurisdictions, since it focused mostly on the risks originating from clients and UBOs rather than on the risks coming from transactions passing through countries that are associated with terrorism.

The Committee also noted that the BRA prepared did not explain the modus operandi of the Company, which was indispensable for the Company to have a comprehensive understanding of its business risks. Additionally, it was observed that the Company had another BRA prepared for another jurisdiction, from which jurisdiction the Company was offering its services in virtue of various branches. The latter BRA contained more depth and detail than the one prepared for the licensed Malta Company, however this was only made available by the Company with its representations and was thus neither provided, referenced nor explained during the compliance review. The Committee concluded that since the operations of the Company were being carried out through the Maltese licence, the Company was required to ensure that it had a holistic understanding of its operations both in Malta and abroad, and that this had to be reflected in the local BRA. The Committee was also informed that the MLRO's knowledge of the Company's BRA and the implementation of same was limited.

Following the above considerations, the Committee determined that the Company was in breach of its obligations in terms of Regulation 5(1) of the PMLFTR and Sections 3.3 and 3.4 of the Implementing Procedures Part I.

Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.3 of the Implementing Procedures Part I

During the compliance visit, it was noted that the Company had set up an in-house system to risk assess its clients, which system also carried out sanction screening and checks for politically exposed persons. However, it was noted that certain questions included in the customer risk assessment (CRA) were overly generic, in that they did not allow for more specific answers and provided for only a limited series of options, collating together multiple different scenarios. For example, one of the questions which asked about the profession of the client included 'business owner', 'self-employed' and 'full-time employee' as potential answers which could be chosen by the customer, yet no further detail would subsequently be included in the risk assessment tool on the type of employment. Moreover, the criteria 'business owner' carried a 'low' risk rating, and therefore the Company could not distinguish between the different types of business owners. Consequently, the Company could not assign a risk rating that would align to the levels of risks perceived. The Committee explained that the CRA methodology has to be calibrated in a way to ensure that circumstances of a higher risk nature are identified and properly risk weighted, as otherwise the final risk profile could be skewed towards the lower side in situations where this would not be justified.

The Committee was also informed that the MLRO was not able to comprehensively explain how the CRA was being conducted. Although it was noted that the CRAs were not being carried out at the Company's offices in Malta, it determined that the Malta based MLRO was not knowledgeable about the system being used to carry out such assessments and to ensure that adequate considerations were being taken.

In light of the above considerations, the Committee determined that the Company was in breach of its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.3 of the Implementing Procedures Part I.

Regulation 5(5) of the PMLFTR and Section 3.4 of the Implementing Procedures Part I

The compliance visit revealed that the written policies and procedures of the Company were generic and were not tailormade to the business model of the Company. Furthermore, the Company's Manual did not explain the modus operandi of the Company and its foreign branches, specifically: how its officers in Malta would ensure that the foreign branches are adhering to the legal obligations; and whether the office in Malta would be involved in the on-boarding process or during the on-going monitoring of the business relationship.

Although the Company explained that it had separate policy documents that were prepared for the foreign branches, the Company did not provide these when it was formally requested to do so. Consequently, the Committee reiterated that it was the Company's responsibility to provide documentation to prove compliance with its AML/CFT obligations. It also noted that the Company had to make sure that its written policies and procedures are comprehensive and uniform. The absence of these comprehensive procedures casts doubt as to the extent to which the Company and its branches were operating as one or as separate distinct companies.

As a result, the Company was found to be in breach of Regulation 5(5) of the PMLFTR and Section 3.4 of the Implementing Procedures Part I.

Regulation 15(1)(c) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I.

The compliance visit revealed that the MLRO was not knowledgeable of the modus operandi of the Company, particularly about the activities that were being carried out in the host country and could not explain the operational set up of the Company. It was also observed that the Company did not ensure that the MLRO had visibility of what was happening at the foreign branches.

In its deliberations in relation to the above concerns, the Committee concluded that the Company did not ensure that the MLRO has sufficient resources to perform her duties. The Company also failed to ensure that it appointed an MLRO who was able, both in terms of time and resources, to understand the modus operandi of the Company and its operations in both jurisdictions.

Hence, following the above considerations, the Company was found to be in breach of its obligations in terms of Regulation 15(1) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I.

ADMINISTRATIVE MEASURE TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:

In view of the breaches identified, the Committee concluded that the Company was in breach of various AML/CFT obligations, which necessitated the imposition of an administrative penalty. An administrative penalty of EUR 38,576 with regard to the below mentioned breaches was imposed on the Company:

- Regulation 5(1) of the PMLFTR and Sections 3.3 and 3.4 of the Implementing Procedures Part I
- Regulation 5(5), Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.3 and 3.4 of the Implementing Procedures Part I
- Regulation 15(1) of the PMLFTR and Section 5.1.2(b) of the Implementing Procedures Part I

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company, the limited nature of the services offered by the Company as well as its size and set up, and the overall impact, actual or potential, of the AML/CFT shortcomings identified vis-à-vis the Company's own operations and the local jurisdiction. The Committee also took into consideration the Company's efforts such as setting up its own system to carry out its CRA and ongoing screening. Furthermore, the Committee also considered that the

Company is subject to monitoring by the Authorities of the host country. The seriousness of the breaches identified, together with their occurrence were also taken into consideration by the Committee in determining the final administrative measure imposed.

8 March 2021