



## 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:**

19 July 2021

### **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 PMLFTR.

### **LEGAL PROVISIONS:**

- Regulation 5(1) of the PMLFTR and Section 3.3.4 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 Sections 4.3.1(i) and 4.3.2 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs.

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

#### Regulation 5(1) of the PMLFTR and Section 3.3.4 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"), dated October 2018. Whilst reviewing said documentation, it was observed that despite theoretically highlighting the inherent ML/FT risk factors faced by the Company, the BRA omitted the inclusion of an analysis of the 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.

In addition, given that the Compliance review was carried out more than a year after such regulatory obligation was introduced, the Company had ample time to revise its BRA so that a thorough and comprehensive understanding of its business risks may be attained. The Committee reiterated that

despite the MLRO's knowledge of some of the ML/FT risks arising from the activities that the Company engages in, by not having an adequately documented a BRA at the date of the compliance review, the Company compromised its ability to comprehensively identify the of threats and vulnerabilities which the Company is exposed to and to subsequently implement the necessary controls in order to mitigate such risks. In its deliberations however, the Committee did take into consideration the remedial actions that have since been carried out by the Company following the compliance examination. This in view of the fact that since the visit took place, the Company has updated its BRA aimed at identifying and assessing the risks of the money laundering and funding of terrorism to which its activities and business are exposed. Factors, including NRA and EU SNRA have been taken into consideration in the overall risk assessment It was also positively acknowledged that as part of its on-going assessments, the Company is carrying out discussions with regards to the possibility of a partnership with a software service provider InScope, which would also result in a fully functional enhanced on-going risk assessment.

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 3.3.4 of the Implementing Procedures Part I.

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

The Committee learnt that the customer risk assessment "CRA" in place at the time of the compliance examination was created by the Company's Consultants in November 2018 to replace their previous CRA form. In four client files which included a relationship that commenced prior to November 2018, the old form that was being utilized at the time of their on-boarding was not found on file. The clients were only risk assessed via Webshield which only considered: identification, location, customer contact address, transaction currency, visa logo, returns and refunds, shipping policy and the terms and conditions found on the merchant's website. Therefore, although the Company had a risk assessment procedure in place, it did not however take into consideration all of the risk factors (such as the activity of the merchant) that contribute to the overall risk of the customer.

The Committee further noted that the CRA adopted by the Company in November 2018 was not rigorous and comprehensive enough to enable the Company to understand the risks posed by customers and to effectively apply the risk-based approach. By means of an example, with respect to one customer file, whose principal shareholder was the Government of a non-EU country, the CRA measures applied did not include the identification and the assessment of all risks in relation to the business relationship that the Company had entered into. Matters were further exacerbated since the new CRA referred to complex merchant ownership structures and/or ownership structures including PEPs as being risk rated as Medium.

In the taking of the decision, the Committee acknowledged the pro-active approach taken by the Company in remediating the weaknesses identified by the Officials conducting the review immediately. Namely that following the onsite inspection, the Company further enhanced its CRA which must now include the rationale behind each sub risk rating. In addition, new developments are currently ongoing to have the CRA automated on the system. Nevertheless, in view of the aforementioned shortcomings, the Committee considered the Company to have failed to have in place adequate risk assessment and risk management procedures that would enable the Company to assess the risk posed by its customers and

to subsequently implement measures which are appropriate and proportionate to those risks. The Committee therefore decided that the Company breached its obligations in terms of 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 Sections 4.3.1(i) and 4.3.2 of the Implementing Procedures

The compliance examination revealed shortcomings by the Company in terms of its obligations as outlined in 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 five customer files:

- In two of the files reviewed, the Company failed to obtain a valid passport since it was observed that these were collected upon customer review. Moreover, the Company also failed to verify the permanent residential address for the beneficial owners since the merchants were on-boarded in 2014 and the respective UBOs were verified using an electronic data provider;
- Besides failing to obtain a valid passport when one client was on-boarded, no details were held in relation to the date and place of birth, permanent residential address, nationality, and identity reference number for the beneficial owner. Moreover, although the Company obtained information on the shareholders of the entity (a legal entity), the Company did not establish the link between the BO and the said legal entity;
- In one additional file, the Company also fell short on its obligation to obtain from the customer and maintain on file or in electronic form an explanation of the customer's ownership and control structure; and
- Despite the Company obtaining the structure chart for an additional customer file this was found to be undated.

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(i) and 4.3.2 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 4.4.1 of the Implementing Procedures Part I

The compliance review revealed 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 into such a relationship for three (3) customer files. As part of the customer on-boarding process, the Company had to obtain information as to understand why a customer is requesting its services and/or products and how those services and/or products are expected to be used in the course of the business relationship. The file review revealed that the three (3) aforementioned files reviewed held inadequate information recorded within the client files to satisfy such requirements.

- One file was marked as high risk in view of: (a) the High-risk industry and/or MCC codes as per Card Scheme regulations and (b) the Merchant and/or UBO not based in EU and not serving exclusively EU. The Committee, while acknowledging the measures implemented commented that the Company

still did not collect any information in relation to the source of wealth, the expected source and origin of the funds to be used in the business relationship as well as the anticipated level of turnover. Moreover, the details obtained in identifying the nature and details of the business, the Company limited itself to generic information as this was simply listed as “Betting Deposits”.

- The only information held on file for an additional customer was in relation to the nature of business which was to provide clients with a digital wallet which is an electronic money app linked to a multi-currency prepaid debit card. The Company therefore failed to conduct any in depth analysis of type of customer that are serviced by the merchant, the source and origin of funds and for what purpose such funds will be received.
- One client file reviewed was a money remitter, yet no information in relation to the source of wealth and source of funds was held. In its discussions, the Committee made reference to the fact that remittance services provide a channel to obscure the movement of terrorist funds within a high level of legitimate activity. Therefore, more caution and additional information should have been exercised by the Company.

Therefore, the Committee determined that the findings identified within the abovementioned three (3) files shall consist as breaches of Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs 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 the Company being directed to implement the following:

- 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;
- To ensure that the files in which shortcomings were identified in relation to Identification and Verification are remediated so as all the required information to identify and verify the applicants for business, as well as the beneficial owners (where applicable) is obtained and maintained on file;
- Review the on-boarding questionnaire and enhance same to ensure that checks are undertaken so that the required information is collected;
- To provide a copy of the remediated on-boarding form, with a clear explanation of what considerations the Company has applied to collect all the required information;
- To ensure that the files breached under Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs are remediated and that all the required information is taken into account within the respective customers risk profile; and

- To review using a risk-based approach 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 the AML/CFT obligations.

In determining the appropriate administrative measure to impose the Committee 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 Committee 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 Committee 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 Committee 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.

**21 July 2021**