



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 measures 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 is not a full reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

6 August 2021

SUBJECT PERSON:

AWS Malta Limited

RELEVANT FINANCIAL BUSINESS CARRIED OUT:

Financial Institution

SUPERVISORY ACTION:

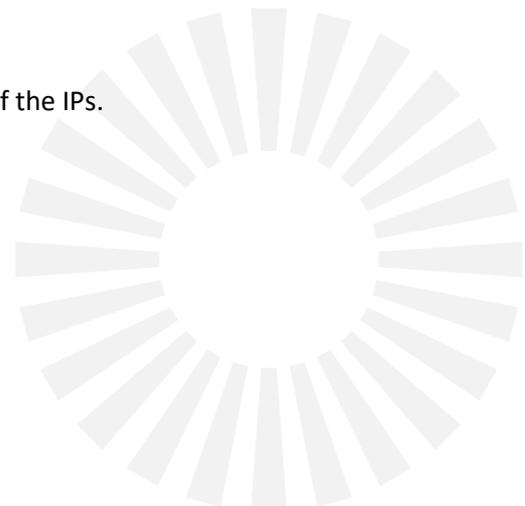
Off-site compliance review carried out in 2020.

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €502,046 and a Follow-up 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, 3.3.1 and 8.1 of the Implementing Procedures (IPs);
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs;
- Regulation 7(5) and 8(1) of the PMLFT and Section 4.6.1 of the IPs;
- Regulation 13 of the PMLFTR and Section 9 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;
- Regulation 11 of the PMLFTR and Section 4.9.1 of the IPs;
- Regulation 7(2)(a) and 11(9) of the PMLFTR and Section 4.5.2 of the IPs.



REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Business Risk Assessment (BRA) - Regulation 5(1) of the PMLFTR and Section 3.3, 3.3.1 and 8.1 of the IPs

During the compliance examination, it was acknowledged that when identifying the threats and vulnerabilities the Company is exposed to, the Company's BRA takes into consideration the risk areas and risk factors both from a qualitative and a quantitative point of view. Notwithstanding, deficiencies were noted within the Company's BRA methodology which ultimately distort the final calculation of its residual risk. Therefore, making the Company unable to properly assess the risks of ML/FT it is exposed to and to adequately apply sufficient mitigating measures to manage them. Some of the deficiencies highlighted include:

- The Company failed to distinguish which mitigating measures to apply to effectively manage the specific inherent risk exposure across different factors. At times the risk rating resulted in a negative figure which contradicts the principles of risk management as also outlined under Section 3.1 of the IPs, wherein it is stated that, an element of risk shall always remain as ML/FT risk cannot be fully addressed, avoided or controlled.
- It failed to analyse its own data to prove whether the controls implemented are effective or otherwise. Instead, in its BRA, the Company included an explanation of what is deemed to be an effective control, without establish how effective the Company's applied controls actually are in mitigating the identified inherent risk.
- The Company failed to provide a clear understanding of the methodology behind the jurisdiction risk ratings assigned to several jurisdictions, nor was any documented rationale provided to account for the considerations undertaken to arrive to such final ratings as well as the controls implemented for the risks identified.

In view of the above, the FIAU's Compliance Monitoring Committee (the "Committee") determined that the Company's BRA methodology was inadequate, hence leaving the Company unable to adequately assess the ML/FT risk exposure and apply the required mitigating measures. Whilst acknowledging the Company's commitment to further enhance its controls through the remediation planned in compiling a revised BRA, the fact that the Company has been operating for a significant period without having conducted an adequate BRA could not be disregarded.

Hence, the Company was found in breach of Regulation 5(1) of the PMLFTR and Section 3.3, 3.3.1 and 8.1 of the IPs.

Customer Risk Assessment (CRA) - Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

Despite the Company's beliefs, that it only provides occasional transactions and does not hold any active business relationships with its customers, the Committee determined otherwise. This particularly since transactions were being carried out on a regular basis on behalf of the same customer. As an example, in one file, the first transaction was processed on 12 November 2017, followed by 544 transactions up to 29 October 2018. Hence, making it clear that the Company was indeed holding active business relationship with its customers.

The compliance examination identified shortcomings to the Company's CRA methodology, some of which are being relayed hereunder:

- The methodology focuses on the provision of occasional transactions; hence it does not contribute to a good understanding of the customer risk since the assessment is always seen in isolation. An effective CRA is one where all the available data and information is used at on-boarding and throughout the relationship.
- The Company's CRA fails to provide an overall final rating to the respective customer. As outlined in Section 3.5.3 of the IPs, taken together, the scores assigned to the individual risk factors should then allow the subject person to generate an overall risk score and lead it to understand whether the business relationship or occasional transaction falls within its risk appetite.

The Committee acknowledged that the Company has already started remediation procedures to be implemented to enhance its system, however the systematic deficiencies identified in the Company's CRA methodology could not be overlooked. Hence, the Company was found in breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

Timing of Customer Due Diligence - Regulation 7(5) and 8(1) of the PMLFT and Section 4.6.1 of the IPs;

FIAU officials undertaking the compliance review identified shortcomings pertaining to the Company's 'timing' in collecting the required verification documents to either verify the identity or residential address of its customers. Whilst in most cases, the Company did eventually collect the documentation required to adequately verify the customers' identity or residential address, the fact still remains that such documentation was required to be collected at the start of the business relationship.

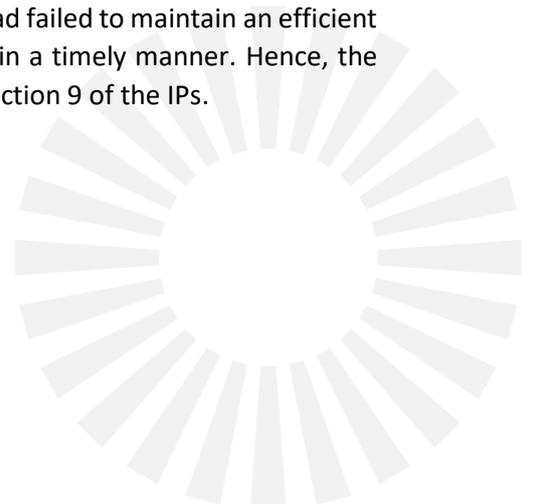
In view of the above, the Company was found in breach of Regulation 7(5) and 8(1) of the PMLFT and Section 4.6.1 of the IPs.

Record Keeping - Regulation 13 of the PMLFTR and Section 9 of the IPs

In its daily operations the Company relies heavily on its automated system to retain records. Whilst acknowledging the benefits brought about by an automated system, such as having a main source of reference, alerts generated, audit log, etc., deficiencies in the Company's ability to adequately retain records were identified, this since:

- The Company could not accurately provide for the requests made by the supervisory authority. This, in view of the inaccurate client lists provided to FIAU officials following the request made as part of the compliance examination.
- The time required to be able to extract data from its system was also a concern. This in view of the multiple requests made during the examination by FIAU officials to be provided with documented CRAs undertaken on the Company's customers.

In view of the above, the Committee determined that the Company had failed to maintain an efficient record-keeping procedure and in being able to retrieve information in a timely manner. Hence, the Company was found in breach of Regulation 13 of the PMLFTR and Section 9 of the IPs.



Purpose & Intended Nature - Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs

During the compliance examination, FIAU officials noted that in a significant number of customer files reviewed (84% of sample), the Company had failed to collect adequate information on the purpose and intended nature of the business relationship, which is required to establish an adequate customer business and risk profile. The Company, both during the examination, as well as through its representation, overlooked the importance of having measures in place to establish the purpose and intended nature of the business relationship. Some examples are being illustrated hereunder:

- In one file, the customer's first transaction was affected on 11 August 2016. Up until the beginning of 2020, the customer had processed approximately 67 transactions. Notwithstanding, information and/or documentation required to establish the purpose and intended nature only started to be collected in 2020. In addition, while eventually some information was collected, this was not sufficient to understand the expected future activity and reason for the remittances since it just provided general details such as gifts for friends and family support, which information is required to establish an adequate profile.
- In another file, the customer's first transaction was affected on 12 December 2017. Up to May 2020, the customer processed approximately 593 transactions. Notwithstanding, information and/or documentation required to establish the purpose and intended nature only started to be collected in June 2020. Hence, for over 2 years, the Company cleared numerous transactions without obtaining the information necessary to establish the purpose and intended nature of the business relationship. In addition, the information on SOW/ expected SOF of the customer and information on the expected activity was insufficient and generic. Notwithstanding, the Company accepted the customers statements without questioning further.

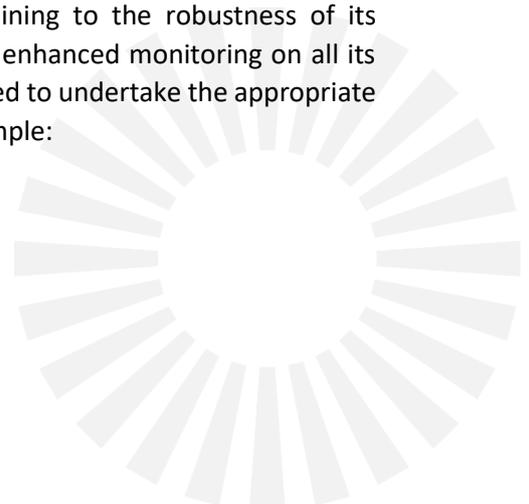
In view of the above, the Company was found to be systematically in breach of Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.

Enhanced Due Diligence (EDD) - Regulation 11 of the PMLFTR and Section 4.9.1 of the IPs

The compliance examination identified deficiencies within the Company's policies and procedures, this since a definition as to which customers are considered as posing a high risk of ML/FT was missing. In addition, the policies lacked clarity and provided insufficient guidance to the Company's employees to determine the adequate EDD measures to be undertaken.

As an example, while the Company's manual provides for the EDD measures to be carried out when dealing with politically exposed persons (PEPs), there is no guidance or detail as to the actual actions and measures that need to be undertaken to ensure EDD is carried out in an effective manner.

The Committee also considered the Company's submissions pertaining to the robustness of its 'backend' system which is also used by the Company as a means of enhanced monitoring on all its customers. Notwithstanding, deficiencies remain as the Company failed to undertake the appropriate EDD measure in instances clearly posing a high ML/FT risk. As an example:



- In one file relating to a Sri Lankan national who had been actively transacting since January 2017, the Company opted to request for EDD information 3 years after Sri Lanka was listed on the FATF's high risk and other monitored jurisdiction (03 November 2017) and after allowing over 220 transactions to pass through amounting to €7,297 and \$14,095 respectively. Notwithstanding, in reply to the Company's EDD request, the customer opted to halt transacting with the Company. Hence, the Company, for over 3 years, disregarded the high ML/FT risk posed by this customer, including the risks emanating from the FATF listed jurisdiction and simply serviced the customer irrespectively.

In view of the above, the Company was found in breach of Regulation 11 of the PMLFTR and Section 4.9.1 of the IPs.

Transaction Monitoring - Regulation 7(2)(a) and 11(9) of the PMLFTR and Section 4.5.2 of the IPs.

Notwithstanding the capabilities of the Company's 'back-end' tool and automated checks undertaken to conduct transaction monitoring, the Compliance examination identified serious shortcomings with the effective implementation of this tool in practise. Specifically, the Company's tool focuses solely on occasional transactions, this notwithstanding that the majority of the Company's customers have an active business relationship and transact regularly.

In addition, the Company's transactional monitoring procedures failed to provide sufficient depth of information and lacked guidance on how to effectively scrutinize transactions. Furthermore, a procedural deficiency was noted in view of the Company's general lack of understanding of its own customers. This in view that it failed to question and scrutinize further certain generic statements made by its customers to determine the true purpose behind the funds being remitted. Instead, the Company in most of the files reviewed, merely relied on the customers explanations, such as remittance of funds to support 'friends' and 'family', this without obtaining additional reassurance on the legitimacy of the intended use of the funds once remitted.

The transactional monitoring concerns are further exacerbated in view of the file specific findings identified during the compliance examination. This since the Company failed to adequately scrutinize transactions, instead opted to disregard the ML/FT risks and simply clear a number of transactions on its own merit. As an example:

- In one file, over a period of 3.5 years, the customer remitted a total of 1096 transactions to the Philippines amounting to \$402,450 and €24,000 respectively. The stated purpose of remittance was to aid the customer's several Philippine friends according to what they require. Some examples include, medical assistance, to purchase a new phone, to assist in setting up a beauty salon, and other purchases of services and goods. The customer's stated SOW/SOF originated from his monthly pension and from a personal line of credit. Notwithstanding, the Committee emphasised that further information/ documentation should have been collected, to have better insight into the source that was funding such transactions. Moreover, the Company was also required to evidence further the purpose of all such transfers and their substantial overall value, this to ascertain the veracity of such a statement, also keeping in mind the country to which the funds were being remitted to and the cumulative value of the funds remitted.

- In another file, over a 4-year period, 563 transactions were remitted by the customer to India. The stated purpose of remittance was to pay for family maintenance costs, school/colleges fees and other miscellaneous expenses. In addition, despite collecting information on the customer's savings and salary, a significant discrepancy remains between the customer's wealth and total funds remitted over a 4-year period. This since, the customer, over the 4-year period, had approximate savings of \$70,000 and salary earnings of approximately \$259,200, however remitted funds amounting to over \$800.000 and €300.000 respectively. Moreover, cumulative high value of transactions passing over to India should have led the Company to also ensure that the information provided by the customer as to the purpose of the transactions carried out is adequate, this by obtaining further information/documentation to substantiate the purpose of such transfers.

In view of the above, the Company was found in breach of Regulation 7(2)(a) and 11(9) of the PMLFTR and Section 4.5.2 of the IPs.

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

After taking into consideration the abovementioned breaches, the Committee remains concerned about the degree and extent of the Company's lack of adherence and regard to its AML/CFT obligations. Many of the failures have been considered by the Committee as serious and systemic, which seriousness is compounded when taking into consideration the high-risk business model of the Company's operations, the jurisdictions to where the funds were being remitted, the inadequacy in establishing a concrete customer profile and in view of several transactions processed without the appropriate levels of inquiry, probing and scrutiny. The seriousness and systemic nature of these findings has led the Committee to impose an administrative penalty of five hundred two thousand forty-six euro (€502,046) with regards to the breaches identified to:

- Regulation 5(1) of the PMLFTR and Section 3.3, 3.3.1 and 8.1 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs
- Regulation 7(5) and 8(1) of the PMLFT and Section 4.6.1 of the IPs;
- Regulation 13 of the PMLFTR and Section 9 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs
- Regulation 11 of the PMLFTR and Section 4.9.1 of the IPs
- Regulation 7(2)(a) and 11(9) of the PMLFTR and Section 4.5.2 of the IPs

The Committee positively acknowledged the actions already taken by the Company and the actions planned to be taken by it to remediate the failures identified during the compliance review. Said enhancements include and are not limited to revising its BRA, updates to the Company's CRA methodology and enhancements to its transaction monitoring measures. The Committee expects the Company to ensure that the remediation, both that which has already been undertaken and that still planned for the future, are effectively implemented. To ensure that the Company's remediation plan is adhered to, the Committee also served the Company with a Follow-Up Directive. Through the Directive, the FIAU is requesting the Company to make available a detailed action plan pertaining to all the breaches identified following the compliance examination, along with any other relevant enhancements the Company has implemented/plans to implement. The action plan is to include clear reference as to when the actions are to be completed, where applicable to provide supporting evidence and is to explain:

- Remediation to the BRA, specifically in ensuring a sufficient, well-documented methodology in establishing the inherent, residual risk and the controls required by the Company. Also, in establishing a documented rationale behind the attributed risk rating and in addition the mitigating measures required to be undertaken.
- The remedial action undertaken pertaining to the Company's Customer Risk Assessment Methodology. Particularly to enhance the rationale behind the risk scorings attributed to the different factors and the respective weighting allocated to each factor, which ultimately determines the final risk rating of the said customer.
- Remediation undertaken/planned to be made to the Company's record-keeping procedures, this to be able to retrieve accurate information in a timely manner.
- The Company's plan to ensure that it holds adequate information pertaining to the purpose and intended nature of the transactions, which are required to build a comprehensive risk profile is in line with the applicable AML/CFT obligations.
- Remediation undertaken/planned to be made to the Company's policies and procedures, this to adequately reflect the EDD requirements necessary in instances for which it is required and to cater for the transaction monitoring gaps identified.
- The Company's plans to ensure that it will be able to effectively carry out effective scrutiny of transactions.

In determining the appropriate administrative measures 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. Also, the nature and size of the Company's operations and the overall impact that the AML/CFT shortcomings of the Company had or could have had both on its own operations and on the local jurisdiction in terms of risks. The seriousness of the breaches identified together with their occurrence were also considered by the Committee in determining the administrative measures imposed.

Finally, the Company has also been duly informed, that in the eventuality that it fails to provide the above mentioned action plan and supporting documentation available within the specified deadlines, this default will 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 of the PMLFTR.

6 August 2021



Appeal:

On the 30 August 2021, the FIAU was served with a copy of the appeal filed by AWS Malta Limited (the “Subject Person”) against the FIAU’s decision summarised hereabove, which was filed in terms of Article 13A of the Prevention of Money Laundering Act in front of the Court of Appeal (Inferior Jurisdiction).

Pending the outcome of the appeal, the decision of the FIAU is not to be considered final and the resulting administrative penalty cannot be considered as due given that the Court may confirm, vary or reject, in whole or in part, the decision of the FIAU. As a result, the FIAU may not take any action to enforce the administrative penalty pending judgement by the Court.

The said appeal requests the cancellation of the administrative penalty imposed by the FIAU or, in alternative, its reduction to such an amount which the said Court may deem fit taking into consideration the particular facts of the case.

The appeal filed by the subject person is based on the following:

- a) Possible infringement of the Company’s right to a fair hearing;
- b) The administrative penalty is arbitrary;
- c) The decision taken by the FIAU to impose an administrative penalty is based on the FIAU’s interpretation of the law rather than the law itself; and
- d) The administrative penalty imposed on the deficiencies summarised hereabove is legally unfounded, draconian and excessive.

This publication notice shall be updated once the appeal is decided by the Court so as to reflect the outcome of the same.

29 September 2021

