



Administrative Measure Publication Notice

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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:

10 September 2021

SUBJECT PERSON:

Notary Dr Roderick Caruana

RELEVANT FINANCIAL ACTIVITY CARRIED OUT:

Notary Public

SUPERVISORY ACTION:

Off-site compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €61, 573 and a Follow-Up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR").

LEGAL PROVISION BREACHED:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures ("IPs")
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs;
- Section 4.3 of the IPs;
- Regulation 11(1) of the PMLFTR and Section 4.9.1 of the IPs;
- Regulation 11(5) of the PMLFTR and Section 4.9.2 of the IPs; and
- Regulation 15(1)(a) of the PMLFTR and Section 5.1 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 of the IPs

The Committee noted that the Subject Person ("SP") failed to have a BRA in line with the standards of the PMLFTR and the IPs. The Committee also noted that the customer risk and the beneficial owner ("BO") risk was not clearly understood and that the customer risk analysis does not take into consideration matters which could be indicative of higher money laundering and funding of terrorism ("ML/FT") risks. The Committee further noted that the customer risk was taken solely from a purchaser

perspective and that geographical risks were inadequately assessed. Furthermore, the Committee pointed out that the BRA was also deficient in the analysis of controls. Due to such factors, the Committee noted that it is unclear whether the calculated residual risk is correct. The Committee considered that even though the geographical risk was not adequately assessed, the BRA still included many of the required considerations and factors. Nevertheless, the Committee considering that the BRA still failed to address certain essential factors such as the geographical risks that were exposing or could potentially expose the SP's business to as a Notary and the controls required to mitigate the specific risks identified as well as the effectiveness of such controls led to an incomprehensive BRA.

The Committee therefore determined that the findings identified constitute as breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

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

In all the files reviewed, the Committee noted that no CRA was conducted. The Committee noted the representations whereby the SP admitted that CRA analysis needs to be improved and that the CRA is not carried out in a structured manner. The Committee also considered that by failing to assess the customer risks, the SP has inevitably exposed himself to a higher risk of ML/FT. Moreover, the Committee also noted that in his submissions, the SP stated that he knows his own clients and has declared such in every deed. The Committee deliberated and emphasized that even though an SP knows his clients, this can never constitute a justification from carrying out a comprehensive understanding of the customer risk, which understanding is not possible by simply stating that one knows the customers being serviced.

In view of the above, the Committee determined that the findings identified constitute a breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

Policies and Procedures – Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

The Committee noted that the Customer Acceptance Policy ("CAP") and the AML/CFT Procedures Manual were drawn up in 2016 and have not been revised ever since and therefore did not reflect the current operations of the Notary in a comprehensive manner. The Committee observed that the policies and procedures were lacking for a number of reasons including: the failure to indicate the level of due diligence in line with the risk allocation of clients; to provide for the accurate and updated definition of beneficial ownership for the various types of legal persons and legal arrangements and to provide adequate guidance on the importance of understanding the source of wealth and the source of funds on a risk sensitive basis.

The Committee highlighted the importance of having updated comprehensive and adequate policies and procedures as these are the foundation to proper AML/CFT compliance. The Committee therefore

determined that the findings identified constitute a breach of Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs.

Customer Due Diligence: Identification and Verification - Section 4.3 of the IPs

In the files reviewed, there were a number of shortcomings identified in relation to the identification and verification of the identity of the customer and the beneficial owners (“BOs”). In addition, in a number of instances the SP did not maintain on file an explanation of the corporate customer’s ownership and control structure, and there were others where the ownership and control structure chart found on file was not entirely comprehensive to establish who the BOs are. As a result in a number of files where corporate entities were involved the Notary did not determine the beneficial owners behind the corporate customer being serviced. Furthermore, it was also noted that appropriate verification of the identity of the customers and BO was not undertaken for all of the files reviewed which had the involvement of corporate customers. Moreover, there were instances where the beneficiaries of a trust, including the settlor and the protector were neither identified nor verified. The trustee was also not verified. Additionally, it was also noted that where no BO existed under the definition of direct or indirect ownership, the beneficial ownership should have been established via other means by determining the natural persons holding control or the position of senior managing officials. Several files where verification was carried out also found to have discrepancies around the timing and certification obligation. The Committee considered the above and noted the SP’s failure to identify and consequently verify the BOs and reiterated its concerns in relation to the non-compliance to this obligation. The Committee further noted that the BO, although identified was not verified in a substantial number of files.

In view of the above, the Committee determined that the findings identified constitute a breach of Section 4.3 of the IPs.

Enhanced Due Diligence (“EDD”) - Regulation 11(1) of the PMLFTR and Section 4.9.1 of the IPs

The policies and procedures in place do not define the enhanced due diligence measures to be carried out in case of high ML/FT risks. The SP has also failed to undertake a CRA for every occasional transaction (“OT”) assessed during the compliance review. This has therefore led to the inability to clearly identify the key risk exposures which his customers were exposing him as a Notary to and to assess whether higher risks exist.

The Committee also considered that independently of the non-existence of CRA measures in place, a number of files presented high-risk indicators that could have easily been captured by the Notary in the conduct of the occasional transactions, even if no formal assessment was carried out. As an example, two of the occasional transactions reviewed which included the same customer were to be considered to pose a higher risk to the Notary in view of the relatively high value transaction and the involvement

of non-EU jurisdictions. Such concerns are exacerbated when considering that in such transactions the Notary did not even determine who the UBO was.

Similarly, in another file the Notary failed to consider the higher risk associated with a self-funded transaction of a substantial amount and apply adequate EDD measures.

Consequently, the Committee has concluded that the SP has failed to apply the necessary EDD measures.

The Committee has therefore determined that the findings identified constitute a breach of Regulation 11(1) of the PMLFTR and Section 4.9.1 of the IPs.

Politically Exposed Persons (“PEPs”) - Regulation 11(5) of the PMLFTR and Section 4.9.2 of the IPs

The SP did not always apply the necessary measures to determine whether the parties within the transactions are politically exposed or otherwise. Consequently, the SP could not determine whether EDD measures needed to be applied to mitigate the potential risks of ML/FT that arise with PEPs. The Committee highlighted the importance of ensuring that the adequate checks are performed on the customers and BOs in order to ensure that they are not PEPs.

The Committee has therefore determined that the findings identified constitute a breach of Regulation 11(4) of the PMLFTR and Section 4.9.2 of the IPs.

Money Laundering Reporting Officer (“MLRO”) – Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs

The Committee noted that the SP’s office partner was replying to the questions being posed by the FIAU and the appointed experts in his stead. The Committee stresses on the importance that the SP himself as a Notary Public carrying out relevant activity, is able to understand and review circumstances of customers and transactions that may raise suspicion and to determine in an independent manner in on the basis of such considerations the need to submit an STR or otherwise.

In view of the above, the Committee determined that the findings identified constitute a breach of Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs.

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

After taking into consideration the abovementioned breaches by the Notary, the Committee decided to impose an administrative penalty of sixty-one thousand, five hundred and seventy-three euro (€61,573), with regards to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (“IPs”);
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs;
- Section 4.3 of the IPs;
- Regulation 11(1) of the PMLFTR and Section 4.9.1 of the IPs;
- Regulation 11(5) of the PMLFTR and Section 4.9.2 of the IPs; and
- Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs.

The Committee acknowledged the statements made by the Notary in his submission in relation to the shortcomings identified. The Committee however remained overall concerned towards the degree and extent of the Notary’s lack of adherence to his AML/CFT obligations, in particular as evidenced during the compliance examination as well as when considering the lack of detail provided in the letter of representations in relation to the findings. The systematic and serious nature of these findings has led the Committee to conclude that the abovementioned administrative penalty should be imposed in terms of its powers under Regulation 21 of the PMLFTR.

In addition to the above, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Notary with a Follow-up Directive to ensure that full remediation of his shortcomings is carried out and that such implementation is monitored by the Enforcement Section of the FIAU as part of a follow up process. The Committee has also directed the Notary to forward the necessary and relevant documentation to the Enforcement Section within four months from the receipt of the sanction letter.

In determining the appropriate administrative measure to impose, the Committee took into consideration the representations submitted by the Notary. Furthermore, the nature and size of the Notary’s operations and the overall impact that the AML/CFT shortcomings have caused or could have caused both to its own operations as well as to the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also considered by the Committee in determining the administrative measures imposed.

Finally, the Notary has also been duly informed that in the eventuality that he fails to provide the above-mentioned documentation with the specified deadlines, his 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 power under Regulation 21 of the PMLFTR.

10 September 2021