



## 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:**

27 September 2021

### **RELEVANT ACTIVITY CARRIED OUT:**

Trustees & Fiduciaries

### **SUPERVISORY ACTION:**

Onsite compliance review carried out in 2019

### **DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:**

Remediation Directive and a reprimand in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulation (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Regulations 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs);
- Regulation 5(5)(a) of the PMLFTR and Section 8.1 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs;
- Regulation 7(1)(a) of the PMLFTR and Section 4.3 of the IPs; and
- Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the IPs.

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

Business Risk Assessment (BRA) - Regulations 5(1) the PMLFTR and Section 3.3 of the IPs

The Company's methodology used to conduct the BRA was not comprehensive enough for the proper assessment of the risks which its operations were exposing it to. The Company did not assess the likelihood of an adverse event happening and the impact it could have if it ever materialised, with regards to the actual risks that the Company had identified. The quantitative data that was featured in the report, differed from the data included in the Annex that was part of the same report. This could have hindered the Company from collating accurate data for the purpose of conducting an accurate assessment. Furthermore, it was noted that the formula being used to calculate the effectiveness of the controls in place was not effective, with certain controls being overrepresented.

The Company explained that at the time when the BRA was carried out, there was not enough guidance on how to carry out a BRA. Although the Company informed the Committee that it has since revised its BRA

in line with the updated IPs, it was noted that the revised BRA newly submitted also required enhancements.

In view of the above-mentioned factors, the Company was found in breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

#### Jurisdiction Risk Assessment (JRA) - Regulation 5(5)(a) of the PMLFTR and Section 8.1 the IPs

The Company did not have evidence of having carried out a Jurisdiction Risk Assessment with regards to six client files, all of which had links with non-reputable jurisdictions or with jurisdictions that were subject to sanctions and embargoes. The Company explained that it had carried out these assessments prior to onboarding the clients, and that going forward, it will be carrying out this assessment more regularly and will include it with the customer profile.

The Committee expressed that it appreciates the Company's efforts to remediate, and that the Company itself had identified that the customers had links with non-reputable jurisdictions and jurisdictions that were subject to sanctions and embargoes. However, it emphasised that the Company was expected to assess the possible risks that these jurisdictions could expose the Company to, while giving particular attention to the connections its customers had with these jurisdictions.

In view of the above-mentioned factors, the Company was found in breach of Regulation 5(5)(a) of the PMLFTR and Section 8.1 of the IPs.

#### Purpose and intended nature of the business relationship - Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the Implementing Procedures

In six of the files reviewed, it was noted that the Company did not collect sufficient information on the customer's source of wealth and funds. The source of wealth and source of funds information collected did not always determine how such wealth was accumulated, or what was the source that was funding the activities of the corporate customer. In one instance, the Company provided supporting documentation together with its representations, however, the information contained in such supporting documentation contradicted the information that was provided during the compliance examination.

Committee members determined that the Company did not collect sufficient information that could confirm the source of wealth and source of funds of the customers.

In view of the above-mentioned factors, the Committee found the Company in breach of Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs.

#### Identification and Verification - Regulation 7(1)(a) of the PMLFTR and Section 4.3 of the IPs

In two of the files reviewed, no proof of address was found on one of the UBOs of the respective corporate clients. Furthermore, in one of these files, Officials noted that there was a discrepancy in the address of one of the beneficiaries in the documents provided. In its representations, the Company provided a copy of the verification of the residential address of one of these files. With regards to the other file, the Company conceded to the finding and informed the Committee that it has since taken action to strengthen both its human and technological resources in order to avoid similar recurrences.

The Committee noted how the proof of address that was provided with the representations could not be accepted since it was manually completed and was not from an independent and reliable source.

In view of the above-mentioned factors, the Company was found in breach of Regulation 7(1)(a) of the PMLFTR and Section 4.3 of the IPs. Taking into consideration the relatively low number of files this breach was found in as well as that it related only to one of the identification details – the residential address only, it was concluded that the Company will be served with a reprimand for this breach.

### Ongoing Monitoring - Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the IPs

The Company failed to maintain up-to-date identification documents for one of the files reviewed. The passport copy of the beneficiaries of a trust had expired some time following the onset of the relationship and had remained expired for a relatively long period of time. In its submissions, the Company explained that this individual was a 'potential beneficiary' of the customer and that s/he had not received any distributions from said customer.

Committee members considered that although no distributions had been made yet, the beneficiary of the trust was known and while it was identified, verification of such identity had to be kept up to date. In addition, the Committee considered that the verification documentation had been expired for approximately six years at the time of the compliance review.

In view of the above-mentioned factors, the Company was found in breach of its obligation in terms of Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures. In view of this breach not being of a serious nature, as well as the fact that such findings were only found in a small sample of the files reviewed, it was concluded that the Company will be served with a reprimand for this breach.

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

In terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU served the Company with a Remediation Directive, to be able to assess the remedial actions being implemented by the Company in view of the breaches identified. The Remediation Directive ensures that the Company can adhere to the AML/CFT obligations applicable. The Remediation Directive includes an obligation on the Company to make available the following documentation:

- The updated BRA outlining the methodology being implemented, together with a document which outlines any changes carried out to the methodology (if applicable) and the rationale behind the changes.
- The updated Jurisdiction Risk Assessment, which must include the sources that are being used to derive the scores attributed to the Jurisdictions, together with a document indicating any updates being carried out to the assessment.
- The Company's policies and procedures on purpose and intended nature of the business and any document(s) the Company uses which show how it is complying to this obligation in practice. The Company is also being requested to forward a sample of customer files having varying risk ratings. The purpose of the assessment of this sample is to understand the Company's remedial measures in relation to its obligation of collecting information and documentation on the purpose and intended nature of its business relationships.

In the eventuality that the requested information and/or documentation is not made available within the stipulated timeframes, the Committee shall be informed of such default, allowing 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.

**28 September 2021**

