



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.

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:

15 October 2021

SUBJECT PERSON:

NBG Bank Malta Limited

RELEVANT ACTIVITY CARRIED OUT:

Credit Institution

CASE 1:

Off-Site Thematic Review

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €134,500 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (the PMLFTR).

LEGAL PROVISIONS BREACHED:

Regulation 15(8) of the PMLFTR which obliges subject persons to provide any information requested by the FIAU "as soon as is reasonably practicable but not later than five working days from when the demand is first made"¹.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Failure by NBG Bank Malta Limited (the "Bank") to reply to FIAU requests for information on twenty-two (22) occasions and failure by the Bank to reply to an additional twenty-nine (29) requests within the stipulated timeframes during the period January 2017 to March 2018. The twenty-nine (29) instances wherein the Bank replied late ranged from instances where the reply was received by the FIAU more than twenty-two (22) days late, to instances where the reply was received one (1) or two (2) days late. In calculating the number of days that the Bank replied late for each of the twenty-nine (29) occasions referred to above, the 5 working days within which subject persons are obliged to submit their replies in terms of law were not counted; i.e. the days of late reply were determined over and above the 5 working

¹ The equivalent provision within the 2008 PMLFTR was previously envisaged under Regulation 15(11)

days allowed by law. This shortcoming caused the Bank to be in breach of Regulation 15(8) of the 2018 PMLFTR.

CASE 2:

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2020.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €202,922 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:

- Regulations 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs);
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;
- Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs;
- Regulations 7(2)(a) and 7(2)(b) of the PMLFTR and Section 4.5 of the IPs.

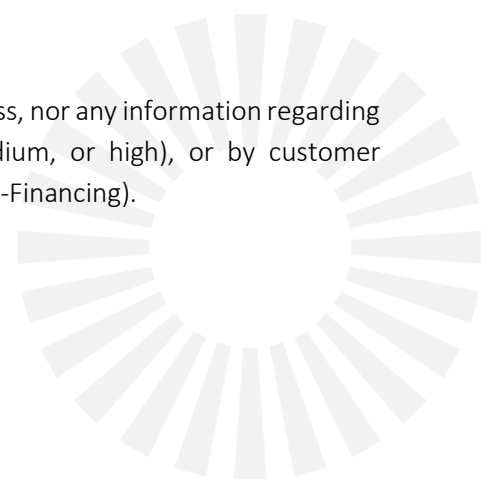
REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

The Business Risk Assessment (BRA) - Breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs:

The Committee noted that the BRA provided during the compliance examination was finalised by the Bank in March 2020 and subsequently approved by the Board of Directors in April 2020. This notwithstanding the obligation having come into force in January 2018. Hence, despite being licensed to act as a credit institution, the Bank opted to operate for over a year without compiling a BRA.

Moreover, the BRA compiled by the Bank in 2020 omitted the inclusion of the analysis and risk scenarios, the likelihood of any risk materialising and the possible impact thereof. Therefore, the BRA in place could not be considered as adequate for the Bank to be able to comprehensively understand its risks and to effectively implement adequate controls. Some of the deficiencies highlighted include:

- The BRA referred to various sources that could be utilised in identifying and assessing its threats and vulnerabilities and the likelihood and impact of ML/FT risks arising from exposure to jurisdictions. Additionally, reference was also made to the list of countries extracted from the Basel AML Index, Trafficking Index, Corruption Perception Index, as well as any statements and declarations issued by the FATF or FATF-Style Regional Bodies such as MONEYVAL. Nevertheless, the considerations taken from such statements or organizations and how these contributed to an understanding of the Bank's geographical risks were neither found nor explained.
- Under customer risk, there was no indication of the volume of business, nor any information regarding the number of customers it has by risk category (e.g., low, medium, or high), or by customer type/customer activity (e.g., Pensioners, Unemployed, Shipping, Ship-Financing).



In view of the shortcomings listed, the Committee determined that, the BRA did not enable the Bank to comprehensively determine its threats and vulnerabilities and exposure to ML/FT risks. Hence, the Bank was found in breach of its obligations in terms of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

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

The Committee noted that the CRA adopted was not rigorous and comprehensive enough to enable the Bank to understand the risks posed by customers and to effectively apply the risk-based approach. Therefore, the measures being applied did not include the identification and the assessment of all risks in relation to every business relationship that the Bank entered. This since:

- The interface factor was not recorded. To this effect, consideration by the Committee was given to the fact that the Bank has two channels of account opening: (a) Face to Face and (b) through reliance from other entities within the group.
- The expected Source of Funds (SoF) and Source of Wealth (SoW) are not taken into consideration when formulating the risk rating of the customer. Consideration in this regard was given to the fact that the expected SoF and SoW information is provided by the client as part of the on-boarding process when completing the relative forms and questionnaires. However, the Committee could not overlook the fact that despite collecting such information, this is not inputted into the core banking system, which ultimately feeds into the generation of the customer's risk rating. This especially since customer risk is the risk of ML/FT that arises from entertaining relations with a given person or entity. Therefore, in the carrying out of the CRA, consideration by the Bank should have also been given to the business or professional activity carried out by the customer or the beneficial owner from which the funds to be used during a business relationship are expected to be derived.

Consequently, in view of the above shortcomings the Bank was found in breach of its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR.

Identification and Verification – Breach of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs:

In one (1) file, it was observed that when on-boarding the customer, the Bank did not identify the residential address of one of the agents. Similarly, in another file no documentation that would verify the residential address for the agent involved was found. As part of the discussions, the Committee determined that despite the Bank ensuring that such persons were duly authorised in writing to act on the customer's behalf, the Bank had still failed to carry out the standard identification and verification requirements as outlined by the IPs.

In view of the above factors, the Bank was found in breach of Regulations 7(1)(a) and 7(1)(b) 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 Bank would be served with a reprimand for this breach.

Purpose and Intended Nature – Breach of Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs:

The Committee noted that customers are required to indicate their total annual incoming funds/transaction volumes by selecting from four (4) pre-determined bands which widen as the declared

value increases. Nevertheless, the Committee observed that the brackets used to obtain the expected transaction volumes were deemed to be too wide to be able to better distinguish between different types of customers and to be able to effectively monitor actual levels of activity against the expected levels. Moreover, the maximum bracket included anything over €1,000,000, which was considered by the Committee as being too wide and generic and bearing in mind that the Bank had customers exceeding the €1,000,000 threshold.

In addition to the above, the compliance review revealed shortcomings concerning the obligation to obtain information on the purpose and intended nature of the business relationship prior to entering such a relationship. This including insufficient information on the source of wealth (SoW), source of funds (SoF) and anticipated level of turnover. Some examples are being illustrated hereunder:

- In one (1) file, it was observed that no information on the expected SoF was recorded, to which the Bank replied that the corporate customer is owned by another client and that the Bank held information as to the economic sector the customer is involved in. However, it was determined that the Bank had a limited understanding of the customer and of the nature of the commercial activity undertaken, including the main markets targeted, the type of customers they service, and their relationship.
- In another file, the Committee while acknowledging that the Bank obtained some documentation such as income tax returns, noted that this was not until June 2018. The business relationship had been established since 2013, therefore for over 5 years the Bank was servicing the customer without having the information necessary to be able to monitor the activity taking place. Such concerns were also held since despite stating that information was held on file, the mentioned income tax returns pertained to the Beneficial Owner (BO). Therefore, the Committee could not understand how the Bank could justify the funds remitted to the account without having any information whatsoever in relation to the activities carried out by the customer.

Consequently, the Bank was not able to build a comprehensive business and risk profile on its customers. This profile would subsequently allow the Bank to carry out effective transaction monitoring. For these reasons, the Committee found the Bank to have failed from adhering to Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.

Enhanced Due Diligence – Breach of Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs:

It was put forward to the Committee that during the compliance examination, whenever clarifications were requested, the Bank did not provide a concise answer of the EDD measures adopted on the identified clients, but instead referred again to the documents that had originally been provided. Following the review of these documents, the Committee noted that the required EDD measures were either not carried out (no evidence of any EDD measures taken found on file) or deemed to be inadequate (the information gathered by the Bank was deemed inappropriate to mitigate the risks emanating from the business relationship). The below are some examples:

- One (1) file had been assigned a High-Risk rating in view of the client being born in Egypt, which was considered as High-Risk by the Bank's policies. From the documentation reviewed the Committee observed that the customer was not only born in Egypt, but also resided in this jurisdiction as evident

from the documentation submitted. The connection of the customer to this jurisdiction, warranted the application of adequate EDD measures. Therefore, in this particular case the Bank should have also considered obtaining additional information on the customer, as well as the intended nature of the business relationship. Questions should have also been raised as to why an individual of a particular nationality, residing in Cairo would be opening a term-deposit account in Malta and the carrying out of adequate EDD measures would have clarified and mitigated these higher risks. Moreover, further documentation would have been expected to understand in more detail the expected source of funds.

- In an additional file, despite the customer being subject to adverse media reports in March 2017, this was only picked up by the Bank in January 2020. This, after allowing a cash collateral of over \$30 million to be used by the customer and after allowing two outward transactions amounting to over \$35,000,000 without obtaining any supporting evidence. The Bank submitted that the activity was in line with the overall financial and economic profile of the client, as well as the business relationship established with the it, since he was a very well-known businessman, as had been confirmed from independent sources. However, upon reviewing such searches, based on the time stamp found on each document, the Committee noted that the Bank, had only carried out additional measures in 2020. This allowed for the risks of this customer to be unmanaged for a considerable time and allowed for transactions to take place without the necessary checks taking place. The Committee also remarked, that while the customer may indeed be a well-known businessman, the large value of transactions, including the cash collateral necessitated the Bank to carry out additional checks to ascertain the provenance of such cash collateral.

Hence, in view of the above shortcomings the Bank was found in breach of its obligations in terms of Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs for its failure to carry out the necessary EDD measures that would address the higher ML/FT risk the customer was exposing the Company to.

On-Going Monitoring – Breach of Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs:

The Committee noted that several files reviewed held expired Customer Due Diligence (CDD) documentation and no update was ever conducted, despite this being considered by the Bank in its own procedures as a trigger event. In reaching a determination the Committee considered that the Bank's core banking system raises a trigger whenever a CDD document expires. The trigger raised is to alert the Bank towards the expiration of documents and for the Bank to seek to obtain the updated documentation. However, in one (1) file the Committee observed how the Bank had requested fresh documentation from the customer following its expiration at the beginning of 2020 as part of the regular/on-going CDD and in view of the automated nature of the system, until the client provides a new document, accounts were blocked and no transaction could be performed. Nevertheless, despite the Bank stating that no transactions could be performed, from the transaction lists provided by the Bank itself, it was noted that the customer effected an outward remittance during such period.

In its discussions, the Committee considered that during 2019 the Bank launched a project with the objective of ensuring that its systems are populated with all the customer data, information, and documentation which it has collated on its clients over the years. This in line with different regulatory requirements applicable from time to time and to identify any potentially missing information.

Consequently, in view of the facts outlined above relating to the monitoring of the customer relationships and ensuring that information and documentation held are up to date, the Committee determined that the Bank failed to honour its obligations in terms of Regulation 7(2)(b) of the PMLFTR and Section 4.5 of the IPs.

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

After taking into consideration the abovementioned breaches by the Bank, the Committee decided to impose an administrative penalty of €202,922 with regards to the breaches identified in relation to:

- Regulations 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs);
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;
- Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs;

The Committee also imposed a reprimand for the Bank's breaches of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs.

In addition to the above-mentioned penalty and in terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Follow-Up Directive. The aim of this administrative measure is to direct the Bank into implementing several requirements to ensure that it understands the risks surrounding its operations and that the Bank has implemented sufficient controls to mitigate the identified risks. To ensure that the Bank is effectively addressing the breaches set out above, the Committee directed the Bank to provide it with an Action Plan setting out the actions already taken by the Bank, what actions it still must implement and, in both instances clearly indicate, how these resolve the issues with the Company's AML/CFT policies, procedures and measures set out here above. The Action Plan is to cover amongst others the following:

- An updated BRA, including the process that has been followed to carry out the Bank's risk assessment, as well as for the assessment of the effectiveness of the controls implemented.
- To implement robust CRA measures that cater for a comprehensive understanding of risks and that allows for the consideration of all the information necessary to risk assess customers.
- To update its measures, so that the generic understanding of employment status, such as, 'in employment' or 'retired', is not the only information obtained, and that these are substantiated with the necessary detail to be able to create an understanding of what activity is expected. This shall also include reference to the obtainment of both the details of their employment and income earned, as well as any other means through which their activities with the Bank are expected to be funded.
- The Bank is to re-review on a risk sensitive basis all of its active clients and ensure that the information/documentation in relation to SoW/SoF/anticipated turnover are adequate as per the relevant sections of the PMLFTR and Ips.
- The Bank is to revise its measures and ensure that it requests more detailed information and documentation to effectively manage the risks posed by customers. This shall include both the updating of the forms used by the Bank and also its procedures for EDD.
- A detailed timeline explaining the different phases of the Bank's plan to update the expired customer file reviews.
- The implementation of measures to ensure that the Bank avoids becoming overdue in the review of customer relationships.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Bank, together with the remedial action that the Bank had already started to implement, the nature and size of the Bank's operations, the overall impact, actual and potential, 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. The Committee also considered that the Bank's officials were cooperative during the carrying out of the compliance examination.

Finally, the Bank has also been duly informed that in the eventuality that the Company fails to provide the above-mentioned action plan and supporting documentation available within the specified deadline, the Bank's 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 powers under Regulation 21 of the PMLFTR.

TOTAL VALUE OF ADMINISTRATIVE PENALTY FOR THE TWO CASES:

Three Hundred Thirty-Seven Thousand, Four Hundred Twenty-Two Euro (€337,422)

19 October 2021

APPEAL: On 8th November 2021, the FIAU was served with a copy of the appeal application filed by NBG Bank Malta Limited ("the Bank") before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU. Through the said appeal, the Bank is requesting the Court to revoke, annul and cancel the FIAU's decision as hereabove described, or alternatively to vary, change and reform such decision.

The Bank is of the view, inter alia, that the process leading to said decision breaches its right to a fair hearing. Moreover, it submits that the FIAU based its decision taken in relation to failures to reply to requests made by the FIAU in a timely manner on incorrect considerations. In its appeal in relation to the breaches identified from the compliance review carried out, the Bank submits that such decision is not based on the provisions of the Law as they stand. For both cases, the Bank submits that the penalty imposed is excessive.

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.

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



9 November 2021