



Administrative Measure Publication Notice

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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:

30 November 2021

RELEVANT ACTIVITY CARRIED OUT:

Corporate Services Provider (Individual)

SUPERVISORY ACTION:

Targeted offsite compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €15,000

LEGAL PROVISIONS BREACHED:

- Regulation 7(3) of the PMLFTR and Section 4.2.2 of the IPs Part I
- Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I
- Regulation 5(5)(f) and 7(1)(a) of the PMLFTR

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 7(3) of the PMLFTR and Section 4.2.2 of the IPs Part I

Shortcomings were noted with regards to the obligation to collect authorisation from intermediaries and agents acting on behalf of the customer. Two of the files reviewed were noted to have intermediaries and agents acting on behalf of the customer and providing instructions to the subject person. Although the subject person informed the Committee that he is now in direct contact with the customer, at the time of the review, the intermediaries and agent were not duly authorised in writing to act on behalf of the customers. Thus, the Committee concluded that the subject person was in breach of Regulation 7(3) of the PMLFTR and Section 4.2.2 of the IPs Part I and imposed a reprimand for the breaches identified.

Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I

During the compliance examination, Officials noted that there were two instances where the Subject Person was expected to submit a suspicious activity report to the FIAU but had not. In one of the files (file 01), the intermediary who was providing instructions on behalf of the customer, had previously been a shareholder of the customer. The beneficial owners (BOs) of the intermediary

were also the BOs of the customer before all the shares were transferred to five individuals. Despite the share transfer, it was noted that the intermediary, who was also providing registered office services, was providing the instructions to the subject person, and thus controlling the customer.

Although the structure of the customer was not a complex one, the Committee noted that the customer was making use of multiple corporate service providers (CSPs). While there are no legal concerns in engaging multiple CSPs, the fact that any correspondence of the customer was being received at the offices of the intermediary and that any instructions on the customer were being provided directly by the intermediary was considered irregular. This set up enabled the intermediary, and thus also enabling the previous BOs, to have direct access to the correspondence of the customer and thus be able to control it. This factor was also concerning since the subject person was aware of this before onboarding the customer. In view of this, the Committee determined that there was sufficient evidence and elements which merited the submission of a suspicious activity report.

In another file (file 24), a number of share transfers were carried out between two individuals. At onboarding stage, the BO of the customer was a Slovak national (MS), and shortly after onboarding, the shares were transferred to a Czech national (MJ). Another share transfer took place shortly after, whereby all the shares were transferred back to MS. Although MS had declared that he is acting on his behalf, MJ was the one who was giving out the instructions. Therefore, although on paper, the BO was MS, MJ ultimately retained control of the corporate customer.

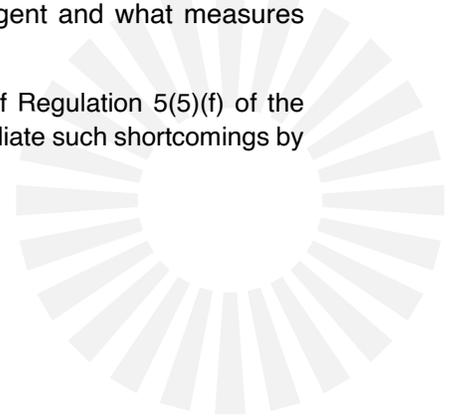
Even though the subject person realised this and informed the customer that a nominee agreement needed to be in place, the agreement was never received by the subject person. Although the subject person proceeded to terminate the relationship, no suspicious activity reports were filed to the FIAU with regards to this matter. The Committee noted that while the subject person recognised the possible threat of having another person controlling the corporate customer other than the person listed as the BO, this had not been considered sufficient for the Subject Person to give rise to suspicion of money laundering and funding of terrorism. Additionally, the Committee noted that even though no transactions had taken place through the customer's local bank account during the time when the subject person provided Directorship services, as per the financial statements submitted for year ending 2018, the customer had more than €3,000,000 in revenue, and profits of around €2,000,000. In view of this, the Committee decided that there were sufficient grounds to suspect that the activity and behaviour of the customer were irregular, and should have been reported to the FIAU.

Therefore, the Committee concluded that the subject person breached Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I for both files 01 and 24.

Regulation 5(5)(f) and 7(1)(a) of the PMLFTR

The Committee was informed that the subject person had failed to document certain obligations in his written policies and procedures. Particularly, the policies and procedures in place were not updated to address the involvement of such intermediaries and agent and what measures were to be applied when such instances are identified.

In view of this, the Committee found the Subject Person in breach of Regulation 5(5)(f) of the PMLFTR and imposed a directive directing the Subject Person to remediate such shortcomings by enhancing the documented policies and procedures.



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

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of fifteen thousand Euro (€15, 000) in relation to:

- Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I.

Furthermore, the Committee also served the Company with a reprimand in relation to the below:

- Regulation 7(3) of the PMLFTR and Section 4.2.2 of the IPs Part I.

In addition to the above, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Remediation Directive.

When deciding on the amount of the administrative penalty to impose, in addition to the specific considerations outlined above, the Committee further considered the importance and seriousness of the obligations breached, whether the breaches identified could have led to the unintentional facilitation of ML/FT, the subject person's operations vis-à-vis their impact on the jurisdiction, the level of cooperation exhibited, together with the overall regard that the subject person has towards his AML/CFT obligations. The size and operations of the subject person as a CSP in carrying out relevant activity were taken into consideration. The Committee acknowledged the remedial actions that the subject person stated to have taken or is in the process to implement.

Finally, the Subject Person was informed that in the eventuality that the requested information and/or documentation is not made available within the stipulated timeframes, the Committee will be informed of this 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.

2 December 2021

