



## 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:**

30 November 2021

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

Real Estate Agent

### **SUPERVISORY ACTION:**

Targeted Off-site compliance review carried out in 2020

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

Administrative Penalty of €36,689 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 of the Implementing Procedures (IPs)
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5 of the IPs
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 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 IPs

While the Committee considered that the Company had a BRA in place, certain weaknesses in relation to it were identified. The weakness related to the failure to assess certain risk factors that the Company was exposed to through its operations, as well as to the controls listed in the BRA. For instance, the Company's BRA did not include an assessment of the risk arising from having an agent representing the customer in the transaction. Other additional risk factors were also not factored in, such as outsourcing and operating through various branches. This was especially important since having business operations carried out from branches could lead to the variation in the application of controls, which could potentially increase the residual ML/FT risk. In addition, although the control of

record keeping was according to the BRA rated as 'effective', certain findings reported evidenced a lack of records kept, which led to the inability to comprehensively determine the exposure to certain inherent risks.

Therefore, despite having a BRA in place, the Committee determined that the enhancement of the BRA is required. The Company was directed to carry out a review of the BRA to rectify the shortcomings identified.

The Committee therefore determined that the findings identified constitute a 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 also noted the Company's representations in which it stated that Company representatives would have met the customer on various occasions and hence a rapport would have been built. However, the Committee reiterated that such interaction does not exonerate a subject person from carrying out an adequate and comprehensive CRA. While acknowledging that remedial action was initiated by the Company, including the introduction and migration of customer information to a new system for the purposes of conducting a customer risk assessment, the Committee considered this finding as serious. Consequently, the Company carried out occasional transactions without first understanding the customer risk the Company was exposed to, inevitably exposing itself to a higher risk of ML/FT.

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

#### Customer Due Diligence (CDD) - Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

The Committee noted that the compliance review identified various shortcomings in relation to the Company's obligation to identify and verify the customer and the beneficial owner when applicable. The deficiencies identified and the deliberations of the Committee are relayed hereunder:

- Deficiencies in the identification and verification of customers being natural persons  
The Committee noted that no identification and verification documentation was found on file in some of the files reviewed. In other files, the identification and verification process was considered to be incomplete. Other, breaches related to the Company's failure to verify the residential address of a foreign purchaser.
- Deficiencies in the identification and verification of customers being entities and beneficial owners  
The Committee noted that in a number of files where either the purchaser or the vendor were a corporate entity, the Company fell short of its obligations in carrying out adequate identification and verification of such corporate customers and their beneficial owners. In fact, no relevant constitutive documents to support the 'know your customer' process were found on file. Being corporate customers, the Company through its due diligence process was obliged to verify the identity of these customers, as well as by verifying the identity information collected through a reliable and independent source. However, no evidence of these measures were found. The Committee considered that the Company failed to carry out adequate identification and verification processes of most of the corporate customers included in the sample of files reviewed. It therefore expressed its disappointment on the Company's lack of measures adopted in relation to the corporate customers it was dealing with.

Furthermore, the Company not only did not verify the identity of its corporate customers but at times also failed to identify and verify the BOs behind those corporate customers. In these cases the Company neither knew whether the legal entities party to the contract were in fact who they claimed to be let alone who the natural persons behind these legal entities (BOs) were. The Company therefore carried out its occasional transactions without knowing who it was servicing in several files reviewed. Other breaches included ones where although the UBO's identification details were mostly verified, its residential address was not. The Committee further considered that in another instance, verification of one of the BOs was carried out through an unclear document.

While acknowledging that since the compliance review the Company had made several enhancements to its due diligence process, including the implementation of a new system, the Committee could not ignore that a number of transactions had been carried out by the Company without first establishing the identity of its customers. Even more serious is the fact that not only did the Company not know who the customer is, but wherever the customer was a corporate customer, it had failed to establish the identity of the BOs as well as verify that identity.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 7(1)(a), Regulation 7(1)(b) of the PMLFTR and Section 4.3 of the IPs.

Politically Exposed Persons (PEP) - Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2 of the IPs

The Company failed to conduct any checks to determine whether its customers were politically exposed or otherwise. Due to this, the Company was therefore also unable to implement the enhanced due diligence measures to mitigate the increased risk associated with PEP customers whenever services are being provided to one. The Committee expressed its disappointment towards the lack of implementation of the Company's own measures and highlighted the negative repercussions this weak implementation could lead to, especially when it comes to dealing with PEPs or even more serious not knowing whether the Company was dealing with PEPs or otherwise.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs.

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

After taking into consideration the abovementioned breaches by the Company, the Committee decided to impose an administrative penalty of thirty-six thousand six hundred and eighty nine euro (**€36,689**) with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5 of the IPs
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs

The Committee acknowledged that the Company has started remediation in relation to some of the shortcomings identified. However, the Committee remains generally concerned about the Company's lack of adherence to its AML/CFT obligations. Particularly since the failures identified inevitably rendered the Company exposed to a heightened risk of ML/FT. The failures identified are considered as serious failures, at times even systematic. These failures confirm that the Company did not have sufficient regard in ensuring an adequate and effective AML/CFT program that would enable it to mitigate any risks associated with ML/FT. The serious and at times systematic nature of these findings

led the Committee to conclude that the following administrative penalty should be imposed in terms of its powers under Regulation 21 of the PMLFTR.

The Committee also issued a Directive on the Company to ensure that full remediation of the shortcomings is carried out and that its implementation will be monitored by the Enforcement Section of the FIAU as part of a follow up process. In terms of its powers under Regulation 21 of the PMLFTR, the Committee directed the Company to provide the FIAU with an Action Plan setting out the actions already taken, the issues that still need to be addressed, the actions that should be carried out and the timeframes by which these actions should be implemented. The actions need to address the details of the failures identified, as explained above.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company together with the remedial actions outlined in the letter of representations. The nature and size of the Company's operations and the overall impact that the AML/CFT shortcomings caused or could have caused, both to its own operations and to the local jurisdiction were also considered. 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 been duly informed that in the eventuality that it fails to provide the above-mentioned action plan within the specified deadlines, its default would 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.

**2 December 2021**

