



## 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 penalties and is not a reproduction of the actual decision.

### **DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

3 January 2022

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

Accountant/Auditor – Individual

### **SUPERVISORY ACTION:**

Targeted compliance review carried out in 2021

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

Administrative Penalty of €7,500 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Regulation 15(3) of the 2018 PMLFTR and Section 5.5 of the Implementing Procedures.

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

The Committee noted that the Subject Person had been engaged to offer audit services to the company (Customer) since its incorporation i.e.: for more than 20 years. The Customer's initial appointed director, legal and judicial representative, as well as direct shareholder, was an individual (initial BO). The subject person clarified that the initial BO had been entrusted by another individual (second BO) to set up and manage the Maltese office of the Customer.

Some years later, the initial BO transferred his appointments, together with his entire shareholding, to a Maltese Fiduciary to be held on behalf of the second BO. The Committee noted that even though officially the initial BO did not appear to be involved in the Customer, in practice he still maintained control of the Customer. The Committee considered the following factors in its deliberations:

- The existence of a power of attorney granted by the Maltese fiduciary, which empowered the initial BO to enter into any contract, transact, manage, carry on, and do all business matters connected with or having reference to the business of the Customer, without further reference to the second BO or its directors. The power of attorney meant that the initial BO's name and personal details did not feature anywhere in the public domain (such as the MBR Register).

- Two agreements, including an agreement between the initial BO and the second BO. The latter agreement was intended to regulate the way the initial BO was to be paid for works which he had performed for another third party. The agreement between the initial BO and second BO authorised the initial BO to withdraw funds from the Customer for the repayment of the debt. The Committee could not understand the commercial rationale behind this transaction and arrangement, when the parties could have opted for a less complex and time-consuming approach to ensure that the first BO is paid. This agreement essentially meant that the first BO had the power to withdraw funds from the Customer at any time he wished and for any amount.
- An additional power of attorney entered into between the individuals, wherein the second BO empowered the initial BO to administer, act, accept and undertake actions, on his behalf. In the representations the Subject Person clarified that the initial BO was the person of trust of the second BO. When seen in conjunction with the rest of the documentation and factors, this power of attorney continues to provide the initial BO with unfettered power over the Customer.
- Correspondence between the subject person and the Customer's clerk, showing the payroll of the first BO for services as a director of the Customer. However, officially the first BO was not a director.

When seen in their totality, the above considerations should have prompted the subject person to consider the possibility that the initial BO remained the BO of the Customer, this either as the sole owner of the Customer or otherwise as a co-owner with the second BO. This was more significant when considering that the initial BO was authorised to exert control over the Customer through the power of attorney, in view of which he had the powers to act as director and as BO of the Customer, without featuring in any official document pertaining to the Customer.

Whilst CMC members acknowledged that the Subject Person had identified both individuals, the Committee concluded that the subject person had failed to understand basic information on the setup of the Customer and also failed to probe further the powers granted to the initial BO, despite having transferred his shareholding and also not featuring in any official document pertaining to the Customer.

All the above facts were sufficient for the subject person to establish grounds to suspect that the individuals are using or could have had the intention to use the Customer as a vehicle to launder illegitimate funds. This should have prompted the subject person to submit a suspicious transaction report (STR).

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

After taking into consideration the abovementioned breaches by the subject person, the Committee decided to impose an administrative penalty of seven thousand, five hundred Euro (**€7,500**) for the subject person's failure to submit an STR to the FIAU, in terms of Regulation 15(3) of the 2018 PMLFTR and Section 5.5 of the Implementing Procedures.

When deciding the appropriate administrative measures to impose, in addition to the specific considerations outlined above, the Committee took into consideration the nature and size of the subject person's operations and the overall impact that the AML/CFT shortcomings had or could have had, both on its own operations and on the local jurisdiction. The seriousness of the breaches identified, together with their occurrence were also considered by the Committee in deciding the administrative measures imposed.

3 January 2022