



Administrative Measure Publication Notice

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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:

25 January 2022

RELEVANT ACTIVITY CARRIED OUT:

Corporate Service Provider & Fiduciary Services Provider

SUPERVISORY ACTION:

Thematic offsite compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €10,000 and a remediation directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I; and
- Regulation 7(3) of the PMLFTR, Section 4.3.3 of the IPs Part I and Sections 2.1.2 and 2.1.3 of the IPs Part II
- Regulation 15(3) PMLFTR and Section 5.5 of the IPs Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Reporting Obligations

The Committee noted that the subject person had failed to submit an STR to the FIAU based on the information available to it in respect of one of its corporate customers.

An ownership transfer took place whereby 99% of the shareholding was transferred from the previous beneficial owner (BO) of the corporate customer to its present BO. However, it was also observed that on the same day, a letter was issued whereby the present BO authorised the subject person's Director to accept instructions, for the day-to-day running of the corporate customer, from a company owned, controlled, and managed by the previous BO. Thus, indirectly the previous BO retained control of the corporate customer. From the documentation provided to the subject person as part of the new BO onboarding documents it was also evident that the new BO possessed no experience or knowledge of the main business area of the corporate customer or its subsidiaries.

The subject person explained that the transfer was done in view of the personal relationship existing between the previous BO and the present BO of the corporate customer. However, the subject person did not delve deeper into the extent of this personal relationship.

The subject person did not give due consideration to the above red flags, which would have undoubtedly led the subject person to reasonably suspect that the BO transfer was not legitimate and thus suspect that ML could have taken place. This should have prompted the submission of a suspicious report to the FIAU. In view of this, the Committee agreed that the Company had failed to understand that this arrangement could have facilitated illicit activities and the occurrence of ML. The Committee specifically commented on the fact that the Company had simply accepted that the motive for the ownership transfer was the close personal relationship existing between the previous BO and the present BO. The Committee stated that the personal relationship between the two could not be considered as sufficient justification for not examining more closely the business rationale behind the ownership transfer and for not ascertaining that the transfer was legitimate. The Committee also concluded that the subject person was faced with sufficient facts and information to be prompted to keep a more vigilant eye on the corporate customer and to further query the reason behind having a company owned by the present BO, yet indirectly controlled and managed (with the control being granted on the same day of the transfer of ownership on paper) by the previous BO. The Committee, therefore, determined that the information and indicators presented to the Company during the business relationship with this specific customer raised sufficient suspicion of ML to merit submission of a suspicious report with the FIAU.

Consequently, in view of the above facts, the Committee decided that the subject person was in breach of Regulation 15(3) PMLFTR and Section 5.5 of the IPs.

Policies and Procedures

The documented policies and procedures did not define the procedure referred to in the second proviso of Regulation 7(1)(a) of the PMLFTR. The mentioned proviso binds subject persons to obtain proof that BO information had been duly registered with a designated beneficial ownership register, where the customer is a body corporate, a body of persons or any other form of legal entity incorporated in a Member State or a trust or a similar legal arrangement administered in a Member State, that is subject to the registration of BO information. However, the Committee also noted that the Company was still found to be complying with this obligation in practice.

Furthermore, the Company's policies and procedures did not address instances where a customer is assisted by an intermediary and/or agent and what measures would be applied by the subject person in such situations. Due to this, the Committee held that the shortcomings identified in the Company's AML/CFT policies and procedures decreased the Company's ability to act efficiently and this documentation is expected to be updated to better achieve its intended purpose and adequately guide the Company.

In view of the above, the Committee determined that the Company was in minor breach of Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I and is expected to provide the FIAU with the updated policies and procedures.

Identification and Verification of Intermediaries and/or Agents

In respect of one of its customer files, the Company failed to verify the residential address of the natural person appointed to submit instructions on the day-to-day running of operations of the customer. In fact, in its representations, the subject person acknowledged that, at the time of the compliance review, due diligence in respect of this customer was not updated.

In view of the above, the Committee declared that the subject person was in breach of Regulation 7(3) of the PMLFTR, Section 4.3.3 of the IPs Part I and Sections 2.1.2 and 2.1.3 of the IPs Part II for Customer File 24 and due diligence of this customer file shall be updated accordingly

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 ten thousand euro (**€10,000**) with regards to the breach identified in relation to:

- Regulation 15(3) PMLFTR and Section 5.5 of the IPs for failure to adhere to reporting obligations resulting in the non-submission of an STR to the FIAU based on information available to the subject person.

In addition to the above, the Committee also served the Company with a Remediation Directive with regards to the breaches identified in relation to:

- Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I for the shortcomings identified in relation to the Company's AML/CFT Policies and Procedures.
- Regulation 7(3) of the PMLFTR, Section 4.3.3 of the IPs Part I and Sections 2.1.2 and 2.1.3 of the IPs Part II for the shortcomings identified in relation to identification and verification of agents and/or intermediaries.

The aim of this remediation directive is to direct the subject person to take the necessary remedial action to ensure that it understands the risks surrounding its operations and that the subject person has implemented sufficient controls to mitigate the identified risks. Furthermore, it aims to ensure that the subject person is effectively addressing the breaches set out above. The Committee also instructed the subject person to make available all documentation and/or information necessary to prove that the remedial actions have been implemented.

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 its consideration and possible eventual action.

When determining 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 caused or could have caused, both to its own operations and to the local jurisdiction. The fact that the Company's failure to submit a suspicious report to the FIAU concerned foreign BOs was also considered. In addition, the seriousness of the breaches identified, together with their occurrence were taken into account.

25 January 2022