



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.

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:

27 January 2022

RELEVANT ACTIVITY CARRIED OUT:

Advocates (Firm) – Offering CSP

SUPERVISORY ACTION:

Targeted offsite compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €23,250 a Reprimand and a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulation (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulations 5(5)(a), 5(5)(f), 7(1)(a), 7(1)(b), 7(5), 8(1), 15(1)(a), 15(3) of the PMLFTR
- Sections 3.4, 4.3, 4.3.1, 4.3.2.1, 4.6, 5.1, 5.5 of the Implementing Procedures Part I

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Verification of the customer and/or its ownership and control not adequately performed – Regulations 7(1)(a), 7(5) and 8(1) of the PMLFTR and Sections 4.3, 4.3.2.1 and 4.6 of the IPs Part I

The Committee noted shortcomings in three of the files reviewed. For each customer, the Firm held Memorandum and Articles of Associations (M&As) that were dated at least one year before the corporate customer was onboarded by the Firm. While the data on the M&As could still have been valid at onboarding, the Firm failed to ensure that the information contained in these documents was indeed valid and up to date. It therefore found the Firm in breach of Regulations 7(1)(a), 7(5) and 8(1) of the PMLFTR and Sections 4.3, 4.3.2.1 and 4.6 of the IPs Part I and imposed an administrative penalty.

Failure to verify the corporate structure – Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Sections 4.3 and 4.3.2.1 of the FIAU's IPs Part I

Shortcomings were identified in two of the files reviewed. In one file, which pertained to a terminated customer, the Firm did not verify the link between the customer and the corporate shareholder, at least until the relationship was still active. In the other file, the copy of the trust deed provided to the Officials did not belong to the customer, but to another customer. The Firm only proceeded to provide the correct

document at representations stage, and it was still considered not to be adequate in view of a number of irregularities in the details of the parties involved.

Committee Members concluded that the Firm did not verify the corporate structure of two of its customers and therefore found the Firm in breach of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Sections 4.3 and 4.3.2.1 of the FIAU's IPs Part I.

Invalid residential address verification documents of the Beneficial Owners (BOs) – Regulation 7(1)(b) of the PMLFTR and Section 4.3.1 of the FIAU's IPs Part I

The Committee noted that in four of the files reviewed, the documentation to verify the residential address was dated more than six months prior to the onboarding or was obtained following onboarding. The documentation held for these four files was dated between one year and over four years before the start of the business relationship. Moreover, another document held in one of these files was dated four months following the provision of services. The Committee also noted how in one of these four files, the Firm had obtained three documents which all showed a different residential address.

Thus, the Committee decided that the Firm had breached its obligations in terms of Regulation 7(1)(b) of the PMLFTR and Section 4.3.1 of the FIAU's IPs Part I.

Inadequate documentation obtained to verify the residential address of the BO – Regulation (1)(b) of the PMLFTR and Section 4.3.1 of the IPs Part I

This shortcoming was identified in one of the files reviewed. The Committee noted that the translated certificate collected by the Firm did not adequately verify the residential address of the BO, since it only included the municipality and name of the village where the BO resides. Furthermore, this document did not include information as to who had carried out the translation, and the translation document was dated before the actual certificate was issued.

The Committee, therefore, concluded that the Firm had breached its obligations in terms of Regulation 7(1)(b) of the PMLFTR and Section 4.3.1 of the FIAU's IPs Part I.

Proof that BO information was registered with a designated BO register not obtained by the Firm – Regulation 7(1)(a) of the PMLFTR

Committee Members noted how this shortcoming was found in four of the files reviewed. Although the Firm held share certificates and copies of the corporate structures on file, extracts from the BO register were not held. The Committee took into consideration that the Firm held documentation leading to the BO in these four files, and that for the other files reviewed during the compliance examination, BO extracts were found on file.

Notwithstanding, the Committee determined that the Firm had breached its obligations in terms of Regulation 7(1)(a) of the PMLFTR.

Failure to submit an STR – Regulation 15(3) of the PMLFTR and Section 5.5 of the FIAU's IPs Part I

In one of the files reviewed, as per the constitutive documents held by the Firm, the BO of the customer was possibly acting as a frontman. Although the Firm considered the BO to be Ms SK, through email correspondence held, it was observed that there could possibly be two other individuals who owned and controlled the customer. Committee Members noted several red flags arising from the business relationship with this customer. These red flags should have prompted the Firm to suspect that other individuals were owning and controlling the corporate customer, and this should have led the Firm to suspect the true purpose behind this and to submit a suspicious report to the FIAU. Some of the red flags determined by the Committee are explained hereunder:

- The customer was set up to operate in a specific industry, however Ms SK did not have any background in the industry, and neither did she have the finances required to operate in it.
- The Firm did not hold an agreement between Ms SK (the presumed BO) and Mr KA (the intermediary and main contact person) which would have confirmed that Mr KA was authorised to act on behalf of the BO. Furthermore, fees for services provided by the Firm were being paid by a company owned by Mr KA.
- Throughout the correspondence held between the Firm and the intermediary (Mr KA), the BO (Ms SK) was never held in copy. When Mr KA informed the Firm that he does not service Ms SK any longer, he indicated that he did not even have her email address.

Committee Members unanimously determined that the Firm had sufficient red flags to raise a suspicious report with the FIAU. It was therefore decided that the Firm had breached its obligations under Regulations 15(3) of the PMLFTR and Section 5.5 of the FIAU's IPs Part I.

Procedure to obtain proof of BO not documented – Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I

The Committee noted that the Firm's documented policies and procedures did not define the procedure that would be followed with regards to obtaining BO information from designated BO registers. Committee Members took into consideration that the Firm had accepted the finding and that it had also informed the Committee that it has since the examination re-drafted its documented policies and procedures to include this information.

The Committee concluded that despite this redress following the compliance examination, the Firm was in breach of Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I at the time of the compliance examination.

Money Laundering Reporting Officer – Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs Part I

The Committee noted that the Firm had in full awareness engaged an MLRO who held other positions, which gave rise to a conflict of interest. Moreover, it was also noted that although the MLRO was knowledgeable on the daily operation of the Firm, the MLRO lacked the experience and expertise necessary for such an onerous role. The Committee expressed that the red flags identified earlier in connection with the failure to submit an STR, could have easily been identified if the MLRO had had the sufficient experience and expertise required to carry out such a role.

Committee Members pointed out that the Firm was expected to ensure that it appoints an MLRO who could dedicate the necessary time and who had the necessary resources to carry out the roles and responsibilities that being a MLRO entails. Furthermore, it is the responsibility of the Firm to ensure that the individual appointed does not have other roles which give rise to a conflict of interest and that the individual can act on ML/FT risks in a diligent manner.

The Committee expressed that it cannot ignore the fact that the Firm recognised that there was a conflict of interest but nonetheless, still appointed this person as an MLRO, and that the Firm was aware that such individual did not have the necessary experience and expertise. The Committee also took into consideration that the Firm had this knowledge for some time, but only requested to resign the MLRO after being notified about the compliance examination.

It was therefore determined that the Firm had breached its obligations in terms of Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs Part I.

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

After taking into consideration the abovementioned breaches committed by the Firm, the Committee decided to impose an administrative penalty of twenty-three thousand two hundred and fifty euro (€23,250) with regards to the below.

- Regulations 7(1)(a), 7(1)(b), 7(5), 8(1), 15(1)(a) and 15(3) of the PMLFTR
- Sections 4.3, 4.3.1, 4.3.2.1, 4.6, 5.1 and 5.5 of the IPs Part I.

The Committee also served the Firm with a Reprimand for breaching the below Regulations:

- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR
- Section 4.3.1 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 served the Firm with a Remediation Directive for breaching its obligations relating to Regulations 5(5)(a) and 5(5)(f) of the PMLFTR and Section 3.4 of the IPs Part I. The Directive requires the Firm to remedy its shortcomings in relation to its documented policies and procedures and to ensure that shortcomings identified in connection with the Firm's breaches relating to customer due diligence obligations, in terms of Regulations 7(1)(a) and 7(1)(b), are duly rectified.

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 and whether the breaches identified could have led to the unintentional facilitation of ML/FT. The Firm's operations vis-à-vis their impact on the jurisdiction, the level of cooperation exhibited by the Firm together with the overall regard that the Firm has towards its AML/CFT obligations were also factored into the decision. The size and operations of the Firm in carrying out relevant activity were also taken into consideration. In addition, the involvement of foreign individuals in the breach relating to failure to submit a suspicious report to the FIAU was duly considered by the Committee. The Committee acknowledged the remedial actions the Firm stated it had taken or is in the process of implementing. Furthermore, the Committee ensured that the penalty being imposed is effective, dissuasive, and proportionate to the failures identified.

The Company is also aware that if the requested information and/or documentation is not made available within the stipulated timeframes, the Committee will be informed of this default with 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.

31 January 2022

APPEAL: On the 21st February 2022, the FIAU was served with a copy of the appeal application filed by the Firm before the Court of Appeal (Inferior Jurisdiction) from part of the decision of the FIAU, asking the Court to revoke, cancel or annul such part of its decision. The Firm states, inter alia, that it has no legal standing; that it suffered a breach of the principle of *audi alteram partem*; that the obligation to file an STR never subsisted; that there was nothing irregular with the Firm's choice of MLRO, and that the penalties appealed are excessive and disproportionate. It thus requests the Court to uphold the appeal and cancel, or alternatively reduce the penalties imposed in relation to the breach of Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs, and the breach of Regulation 15(1)(a) of the PMLFTR and Section 5.1 of the IPs, as per the fourth and fifth points of the FIAU's decision respectively.

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 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.

21 February 2022

