



## 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:**

9 February 2022

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

Corporate Service Provider - Individual

### **SUPERVISORY ACTION:**

Thematic Off-site compliance review carried out in 2021

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

Administrative Penalty of €46,000, a Reprimand 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 13(1) of the PMLFTR and Sections 9.1 and 9.5 of the Implementing Procedures Part I (IPs)
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.2.1 of the IPs
- Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs.
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

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

Record Keeping – Breach of Regulation 13(1) and Sections 9.1 and 9.5 of the IPs

During the compliance review, FIAU officials asked the Subject Person to provide additional documentation, as well as further clarifications on some of the already provided documentation. For every request sent out by the FIAU, a deadline was imposed for submission of the relevant documents. The FIAU's Committee acknowledged that balancing out business operations as well as abiding to AML/CFT obligations and regulatory deadlines may be time consuming. However, the Committee emphasised that all requests sent out by FIAU's officials were in relation to documentation that should have been readily available. The Committee further emphasised that it is rather concerning that during the examination, the Subject Person failed to provide the requested information and/or documentation

in a timely manner for over eight requests made. Despite these failures, when deciding the administrative measure to impose, the Committee considered that the information requested was eventually provided and the review of it was included as part of the compliance examination.

In addition, a serious matter of concern was noted during the examination, because the Subject Person had failed to maintain a complete client list of all customers being serviced. This concern arose because the FIAU officers noted an additional 40 companies being serviced, which were not included in the client list provided by the Subject Person. Even though these customers were serviced through an agreement with a third party, the Committee emphasised that they should have been considered as customers of the Subject Person and not of the third party. This since directorship and company secretarial services are/were being provided in the Subject Person's own name. Consequently, the Subject Person had failed to provide a complete client list to the FIAU.

In view of the above, the Subject Person was found to have failed to adhere to its record keeping obligations as required in terms of Regulation 13(1) and Sections 9.1 and 9.5 of the IPs.

#### Customer Due Diligence (CDD) – Breach of Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.2.1 of the IPs

In six of the files selected, the FIAU noted deficiencies in relation to the identification and verification of both the corporate customer's identification details. In addition, the verification of the customer's ownership and control structure through independent and reliable checks was deficient. This was observed as for each file, the Subject Person only provided FIAU officials with the identity verification documents in relation to several individuals who were possibly linked with the corporate customer in question. However, no documentation in relation to the verification of the corporate customer's identification details, nor related to the verification of the ownership and control structure were provided, nor were they held on file. The Committee acknowledged the Subject Person's comment that it is permissible for subject persons to rely on other entities for the collection of CDD as per Regulation 12(4) of the PMLFTR. However, the Committee emphasised that the required CDD documentation must be provided to the FIAU or any supervisory authority, upon request. At no point during the examination, or as part of the representations, did the Subject Person provide the documentation required to show adherence to its CDD obligations.

In another file, the Subject Person had failed to independently verify the corporate structure of the customer as at the time of onboarding.

Furthermore, in nine files, verification of beneficial ownership was lacking. The Subject Person stated in its representations that beneficial owner information may be available on the business registry. The Committee reiterated that despite this, subject persons are required to demonstrate that they have indeed verified this information through the available resources. The Subject Person failed to collect proof that the beneficial ownership information of these corporate customers had indeed been registered with the designated beneficial ownership register.

In view of the above, the Subject Person was found to be in breach of their obligations under Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.2.1 of the IPs.

### Ongoing Monitoring – Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs

In three of the selected files, ongoing monitoring of business relationships was not conducted, this despite noting multiple trigger events (such as transfer of shares) which should have required the Subject Person to review the relationship. The Committee noted that even though the Subject Person was offering limited services to two of these customers and that for another customer the relationship had been established over 20 years ago, the obligation to conduct ongoing monitoring following a trigger event should have still been adhered to. The Committee also referred to Section 2.4.4 of the IPs Part II for CPSs, which provide further clarification on the obligation to adequately monitor customers and any changes to their shareholding structure.

In view of the above, the Subject Person was found in breach of Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs.

### Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs.

The compliance examination identified shortcomings in the Subject Person's CRA methodology. Although the Subject Person maintained an AML policy explaining how CRAs should be carried out, the Subject Person failed to abide by its own procedures. This since:

- Customers were assessed depending on the complexity, size and level of service being offered by the Subject Person. Hence, no consideration was given to one of the essential risk considerations required to compile an adequate risk assessment, namely interface risk.
- Furthermore, in the files selected, despite noting that customer risk considerations were undertaken, these were inadequate. This because information on the customer's geographic location was taken into consideration instead of information relating to the type of industry the customer operates in, any adverse media on the customer, or the complexity of the customer's structure.

In addition, in eight files reviewed, a documented CRA was not carried out, neither at onboarding nor at any time during the business relationship. Instead, the Subject Person provided numerous documents gathered on each respective customer, none of which constitutes as a CRA. Notwithstanding, the Committee noted the Subject Person's intention to enhance its CRA methodology.

In view of the above, the Committee found the Subject Person to be in breach of its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs.

### Policies and Procedures – Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

During the examination, the Subject Person held on file two distinct policies and procedures, both of which were last updated in 2019. Hence, despite the numerous updates to the Regulations along the years, the Subject Person failed to update its policies and procedures for over 3 years. While

acknowledging that the Subject Person does not have additional employees who needed to refer to these documents, the Subject Person was still required to update these policies.

In view of the above, the Subject Person was found in breach of Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

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

After taking into consideration the abovementioned breaches committed by the Subject Person, the Committee decided to impose an administrative penalty of forty-six thousand euro (€46,000) with regards to failing to abide by the following obligations:

- Regulation 13(1) and Sections 9.1 and 9.5 of the IPs
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.2.1 of the IPs
- Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs.

The Committee also served the Subject Person with a Reprimand for breaching the following Regulations:

- Regulation 13(1) and Sections 9.1 and 9.5 of the IPs
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR, and Section 4.3.2.1 of the IPs
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

In addition to the above-mentioned penalty and in terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Subject Person with a Follow-Up Directive. The aim of this administrative measure is to direct the Subject Person into implementing several requirements to ensure that they understand the risks surrounding their operations and that sufficient controls have been implemented to mitigate the identified risks. The subject person is therefore required to provide to the FIAU:

- Measures taken to ensure that the Subject Person is fully cognisant of who their customer is and fully understands the CDD requirements to be undertaken for all customers in terms of their AML/CFT obligations.
- Evidence that all customer files with failures noted in the identification and verification process have been duly rectified and that measures are in place to monitor this information to capture any changes that occur throughout the business relationship.
- Updates on the enhancements implemented to the Customer Risk Assessment as per Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the Ips.
- Updates to the Policies and Procedures as per Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Subject Person, together with the remedial action that the Subject Person had already started to implement, the nature and size of the Subject Person's

operations, the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Subject Person's own operations and the local jurisdiction. The seriousness of the breaches identified, together with their occurrence were also taken into consideration by the Committee in determining the administrative measures imposed.

Finally, the Subject Person has also been duly informed that in the event that they fail to provide the above-mentioned action plan and available supporting documentation within the specified deadline, this default will 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.

14 February 2022

**APPEAL** - On the 7<sup>th</sup> March 2022, the FIAU was served with a copy of the appeal application filed by the Subject Person before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU as detailed above. Whereas the Subject Person confirms that certain breaches did in fact subsist, and that such breaches might give rise to administrative penalties, it states, *inter alia*, that the penalty imposed is excessive and creates both a financial and a reputational damage to the Subject Person. It thus requests the Court to cancel the FIAU's decision or alternatively to vary it, by reducing the penalty to a sum which is more equitable and proportionate.

**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.

9 March 2022

