



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 March 2022

RELEVANT ACTIVITY CARRIED OUT:

Trustee and Fiduciary Services

SUPERVISORY ACTION:

Off-site Compliance Review carried out in 2021.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €20,145 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(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs)
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs
- Regulations 7(2)(a) and 7(2)(b) of the PMLFTR and Section 4.5.1 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

The Business Risk Assessment (BRA) - Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs:

Whilst reviewing the BRA, the Committee observed that in theory it highlighted the inherent ML/FT risk factors faced by the Company, but it omitted the inclusion of an analysis of the risk scenarios, the likelihood of any risk materialising and the possible impact thereof. Therefore, the BRA in place could not be considered as adequate for the Company to be able to comprehensively understand its risks and to effectively implement adequate controls. Some of the deficiencies highlighted include:

- The BRA referred to various sources that could be utilised to identify and assess its threats and vulnerabilities and the likelihood and impact of ML/FT risks arising from exposure to specific jurisdictions. Additionally, reference was made to the list of countries extracted from Transparency International, HMT Sanctions, EU Sanctions, UN Sanctions, OFAC Sanctions and FATF requirements and countries which are deemed to be EU Non-Cooperative territories or jurisdictions the EU has identified as possessing weak AML regimes. However, the considerations taken from such

statements or organizations and how these contributed to an understanding of the Company's geographical risks were neither found nor explained.

- Under product risk there was no indication of the volume of business, which limited the possibility to truly understand the exposure to each of the risks identified. The Committee remarked that products or services that inherently provide or facilitate anonymity, thus allowing the customer or the beneficial owner to remain anonymous or facilitate hiding their identity, such as in the case of a nominee are to be considered in light of the ML/FT risks they present. This observation was made due to the Company having relationships which involved ownership held in a nominee capacity.

The Committee reiterated that by not having an adequately documented BRA, the Company diminished both its ability to comprehensively identify the threats and vulnerabilities to which it was exposed and to adequately implement the necessary controls to mitigate the risks. When assessing the extent of this failure, the Committee also considered that it had lasted for at least three (3) years from when the regulatory obligation was introduced. The Company had therefore had ample time to revise its BRA so that a thorough and comprehensive understanding of its business risks could have been attained.

Hence, following the consideration of all the above factors, the Committee found the Company to be in breach of Regulation 5(1) of the PMLFTR and Section 3.3.4 of the Implementing Procedures Part I.

Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs:

The Committee noted that the CRA adopted was not rigorous and comprehensive enough to enable the Company to understand the risks posed by customers, nor to effectively apply the risk-based approach. Consequently, the measures being applied did not include the identification and the assessment of all risks in relation to every business relationship that the Company established. The Committee concluded that the CRA's generic nature created gaps in the understanding of the risks posed by the customer profile. This especially since customer risk is the risk of ML/FT that arises from entertaining relations with a given person or entity. Therefore, when carrying out the CRA, consideration should have been given to the business or professional activity carried out by the customer or the beneficial owner, from which the funds to be used during a business relationship are expected to be derived.

It was also observed that the CRA methodology failed to include information on the weighting of the risk factors mentioned. The Committee considered that the final score was not an aggregate of the scores. To this effect, the Committee emphasised that an effective CRA is one where all the risk criteria are exhaustively considered, and an understanding of risk is obtained. Thus, the Company was expected to take into consideration all the criteria that influence the customers' risks, in a manner that drives the assessment based on the risk to which such customer exposes it to.

During the file review it was revealed that in practice, the Company had not consistently implemented its CRA and risk rating procedures, because a CRA was not performed at onboarding nor throughout the business relationship for one (1) of the files reviewed. Furthermore, in an additional five (5) files, the initial CRA's had been conducted after the start of the business relationship. This led to a situation whereby the Company embarked on business relationships without first identifying and assessing ML/FT risks emanating from the specific business relationships. This resulted in a failure to apply adequate Customer Due Diligence (CDD) measures to mitigate the risks related to such relationships.

Consequently, in view of the above shortcomings the Company was found in breach of its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

On-Going Monitoring – Regulations 7(2)(a) and 7(2)(b) of the PMLFTR and Section 4.5.1 of the IPs:

The CRA, as well as the initial CDD measures and any other mitigating measures carried out, would have all been based on the information obtained about the customer during the establishment of the business relationship. This information must therefore remain relevant, accurate and sufficiently timely if the Company is to have a clear understanding of the ML/FT risks it is exposed to and so that the measures it has put in place remain effective. From the file analysis it was noted that the Company had failed to carry out on-going name screening for three (3) of the files reviewed. An example is being illustrated hereunder:

- In one file, consideration was given to the Company's statement that even though the file held no evidence of on-going name screening, Know Your Customer (KYC) was monitored and updated throughout 2018 and 2019 as part of a bank account opening process. However, this monitoring had to be documented and kept on file, as well as reassessed in view of any possible additional risks.

Due to the above, the Committee concluded that the Company's failure to carry out appropriate screening on an on-going basis had resulted in its not being able to identify whether a specific customer merited a higher risk rating and therefore require enhanced measures. Consequently, the Company was found to have breached its legal obligations in terms of Regulations 7(2)(a) and 7(2)(b) of the PMLFTR and Section 4.5.1 of the IPs.

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

After taking into consideration the abovementioned breaches by the Company, the Committee decided to impose an administrative penalty of twenty thousand one hundred and forty-five euro (€20,145) with regards to the breaches identified in relation to:

- Regulations 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs)
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs
- Regulations 7(2)(a) and 7(2)(b) of the PMLFTR and Section 4.5 of the IPs

When making its decision, the Committee also took into consideration the level of cooperation exhibited by the Company during the compliance review. The size of the Company's operations was also considered. Furthermore, when deciding on the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company, together with the remedial action that the Company had already started to implement. The Committee took note of the pro-active and immediate actions taken by the Company to remediate its failures as well as the positive regard portrayed to ensuring it has the necessary safeguards to understand and manage its risks and those of its customers. However, the Committee had to take into consideration that for a number of years the Company had an ineffective understanding of both its business risks and customer risks and that this continued at least until the compliance review. CSPs are important gatekeepers as they provide services which allow third parties access to the financial system through the legal entities they incorporate and/or administer for the benefit of the beneficial owners of these entities. Any vulnerability within their AML/CFT framework increases the likelihood that they and the financial system as a whole may be abused for ML/FT purposes.

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 Company with a Remediation Directive. The aim of this administrative measure is to direct the Company to take the necessary remedial action to ensure that it understands the risks surrounding its operations and that the Company has implemented sufficient controls to mitigate the identified risks. To ensure that the Company is effectively addressing the breaches set out above, the Committee instructed the Company to make available all documentation and/or information necessary to prove that the remedial actions have indeed been implemented in practice. The Remediation Directive also directs the Company to, on a risk sensitive basis, re-assess the CRA of existing active customers. The Company is therefore requested to provide the FIAU with the timeframes outlining the period within which all current customer relationships will be reviewed in line with the new system

Furthermore, the Remediation Directive provides for a follow-up meeting to be conducted with the Company to discuss the actions being taken to address the shortcomings highlighted and to ensure the documented policies and procedures made available, including the most recent Business Risk Assessment are well understood by the Company. The follow-up meeting is intended to provide the FIAU with more reassurance that the remedial actions are being implemented and to ensure that the Company has sufficient knowledge with regards to the AML/CFT obligations.

Finally, the Company has also been duly informed that in the event that the Company fails to provide the above-mentioned action plan and supporting documentation available within the specified deadline, the Company's 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.

Key Take aways:

- The BRA should not be a list of risks or a list of considerations, but an actual assessment of the risks faced by the subject person, both through the consideration of experience (when available) and from an understanding of how each factor, actual or potential, could impact the risks to which the subject person is exposed to.
- Each individual risk must be understood in its totality. Customers need to be seen in the context of the different services/businesses they are involved in, or plan to be involved in, as well as the source that will fund the operations carried out by the customer or in which the customer participates. The product risk must be assessed in view of the risks that the products/services offered by the subject person may present.
- The CRA is fundamental for the effective application of effective risk-based customer due diligence and monitoring. As such, risk factors must be weighted in the context of the repercussions arising from their possible occurrence and all risk criteria are to be exhaustively considered. It is also important to link all risk factors including the results of adverse media checks carried out.
- Risk is never static but evolves and changes with any new element or development such as a new product or the customer venturing into a new service, or new adverse information presents itself. Therefore, it is crucial that the assessments, both at the business and customer level, remain relevant, accurate and updated in a sufficiently timely manner. This ensures a clear, unambiguous and accurate



understanding of the ML/FT risks the subject person is exposed to and that the measures needed to manage these risks are effectively taken and implemented.

4 April 2022

