



## 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 measures 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:**

30 March 2022

### **SUBJECT PERSON:**

BDO Consult Limited

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

Trustees & Fiduciaries, that was providing corporate services

### **SUPERVISORY ACTION:**

Targeted compliance review carried out in 2021

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

Administrative Penalty of €61,763 and a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Regulation 7(1)(b) of the PMLFTR and Section 3.1.1.1 of the Implementing Procedures (IPs) of 2015<sup>1</sup>
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 and 3.1.6 of the IPs of 2015 and 2017
- Regulation 7(1)(d), 7(2)(a), 7(2)(b), 11(9)<sup>2</sup> & 15(1)<sup>3</sup> of the PMLFTR and Section 3.1.5<sup>4</sup> & 3.1.5.1<sup>5</sup> of the IPs of 2011
- Regulation 15(3)<sup>6</sup> of the PMLFTR and Section 6.4<sup>7</sup> of the IPs 2017

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<sup>1</sup> Previously under Section 3.1.1.1 of the IPs of 2017

<sup>2</sup> Previously under Regulation 15(1) of the PMLFTR 2008

<sup>3</sup> Previously under Regulation 15(4) of the PMLFTR 2008

<sup>4</sup> Now under Section 4.5 of the IPs last amended 18/10/2021

<sup>5</sup> Now under Section 4.9.2.3 of the IPs last amended 18/10/2021

<sup>6</sup> Previously under Regulation 15(6) of the PMLFTR 2008

<sup>7</sup> Now under Section 5.5 of the IPs last amended 18/10/2021



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

### Identification and Verification - Regulation 7(1)(b) of the PMLFTR and Section 3.1.1.1 of the IPs of 2015

In a specific customer file, the subject person provided, among others, directorship, fiduciary, and company secretarial services, this ever since the business relationship was established in 2015. Despite this, the first structure chart was compiled four months later. More troubling is that the structure chart and other subsequent structure charts compiled thereafter did not tally with the other verification documentation collected by the subject person during onboarding.

In view of the above, the FIAU concluded that not only was the structure chart not compiled in a timely manner, but also that the subject person failed to verify the collected information. This to ensure that the structure chart as well as the documents used to verify it are sufficiently detailed and accurate so to understand who ultimately owns the corporate customer.

Hence, the subject person was found in breach of Regulation 7(1)(b) of the PMLFTR and Section 3.1.1.1 of the IPs of 2015.

### Purpose and Intended Nature of the Business Relationship - Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 and 3.1.6 of the IPs of 2015 and 2017

Even though the customer in a particular file was a holding company, insufficient information was obtained by the subject person on the companies being invested in by its customer. This was evident as no information was obtained to explain the services offered by the companies, their target markets, and the activity they operate in. This bearing in mind that the purpose of the holding company stems specifically from the operations of the trading company, therefore, further information on the purpose behind these investments was critical in establishing an adequate customer profile. In addition, while the trading company's financial statements offer some information on the customer's source of funds, these do not provide the required explanations to establish the underlying source of wealth of the initial investments made and from where the funds originated. Furthermore, no information was provided by the subject person to explain the anticipated level of activity to be undertaken throughout the business relationship. This, to explain the expected frequency and value of investments targeted by the trading companies which would ultimately be the business of the customer.

In another customer file, also a holding company, the subject person again (as above) held insufficient information about the companies being invested in. For example, despite knowing that one investment related to a development of an intellectual property (IP), no information was obtained on the actual IP being developed. The information could have included, a general understanding of what the IP was, the expected costs of development and how it would be funded, its intended use, estimated hours of development and the expected outcome once IP was completed. The anticipated level of the customer's activity was noted to be 'minimal', however, subject persons are at least expected to obtain quantifiable estimates, this to adequately monitor the activity throughout the business relationship. Hence, mere reference to 'minimal' did not provide any indication of the expected frequency and volume of transactions to be undertaken throughout the establishment of the business relationship.

In view of the above, the subject person was found in breach of Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 and 3.1.6 of the IPs of 2015 and 2017.

Ongoing Monitoring, Enhanced Due Diligence (EDD) & Internal Reporting - Regulation 7(1)(d), 7(2)(a), 7(2)(b), 11(9) & 15(1) of the PMLFTR and Section 3.1.5 & 3.1.5.1 of the IPs of 2011

The FIAU identified shortcomings in a file for which the subject person inadequately monitored the business relationship, failed to undertake EDD and did not raise an internal report to its MLRO. This despite holding a business relationship with the customer for over six years, within which directorship, fiduciary, and company secretarial services, among others were provided. Also, during the said period, the subject person was exposed to several instances clearly posing a high ML/FT risk, some of which are being illustrated hereunder:

- The complexity of the transfers that took place in a relatively short period of time (9 share transfers in 1 year), as well as the complex corporate structure created with numerous trust arrangements as well as foundations.
- The period (9 months) within which part of the group was incorporated, its business developed and then eventually sold for a substantial value (over \$10m), done without understanding how this value was determined.
- The substantial value of the costs involved for the development of an IP, without even having proper and comprehensive knowledge of what was being developed and without proper consideration of the cost's veracity.
- The lack of scrutiny behind the sale of the group to a non-EU company (the country is well known for its secretive nature of how companies are incorporated, the tax risks of the country and is considered as a big offshore haven), without any due consideration of the relationship or connection between the parties. This combined with the lack of scrutiny behind the rational for the inclusion of an additional party as a seller without clear understanding of its involvement.

In view of the above, the subject person was found in breach of Regulation 7(1)(d), 7(2)(a), 7(2)(b), 11(9) & 15(1) of the PMLFTR and Section 3.1.5 & 3.1.5.1 of the IPs of 2011.

Failure to submit a suspicious transaction report / suspicious activity report (STR/SAR) for beneficial ownership (BO) concealment - Regulation 15(3) of the PMLFTR and Section 6.4 of the IPs 2017

Two related corporate customers, with the first entity being the majority shareholder (99.9%) of the second entity, were initially owned by means of a declaration of trust which allowed the subject person to act as trustee and nominee for the true BO. Approximately 11 years after the relationship was established and coinciding with the introduction of the obligation to record beneficial owners in the BO Register held by the Malta Business Registry (MBR), the true BO requested a change in structure. This change saw the transfer of shares from the true BO to his family members, with the result that each shareholder has no more than 25% of the shares and therefore, an official of the subject person had to appear as the Senior Managing Official (SMO) on the MBR's BO register for both corporate customers. Through email correspondence obtained, it was noted that the true BO wanted these changes to take place to ensure that he is not visible as the BO on the register.

In addition, following the share transfer, during meetings held between the subject person and representatives of both corporate customers, decisions were taken by the true BO, since he was the only person present during these meetings. This clearly indicates that the individual retained control of the two companies and was therefore their BO.

In view of the above, the subject person was found in breach of Regulation 15(3) of the PMLFTR and Section 6.4 of the IPs 2017. This since the suspicion of the BO concealing his ownership within such companies merited a submission of an STR/SAR to the FIAU.

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

After taking into consideration the breaches committed by the subject person, the Committee remains concerned about the degree and extent of the Company's lack of adherence and regard to its AML/CFT obligations. The Committee decided to impose an administrative penalty of sixty-one thousand, seven hundred and sixty-three euro (**€61,763**) for the serious breaches identified with respect to:

- Regulation 7(1)(b) of the PMLFTR and Section 3.1.1.1 of the Implementing Procedures (IPs) of 2015.
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 and 3.1.6 of the IPs of 2015 and 2017.
- Regulation 7(1)(d), 7(2)(a), 7(2)(b), 11(9) & 15(1) of the PMLFTR and Section 3.1.5 & 3.1.5.1 of the IPs of 2011.
- Regulation 15(3) of the PMLFTR and Section 6.4 of the IPs 2017.

When reaching its decision, the Committee also took into consideration the level of cooperation exhibited by the Company during the targeted review. The Committee based its decision on the following considerations:

- The limited and generic information that the Company obtained in establishing the customer profile with some of the customers it serviced.
- The high value of the transactions passing through one customer, without proper consideration of the information and documentation at hand to ensure the value of the group being sold. This combined with the short timeframe from establishment of the group to its sale, and the development of the intellectual property with no justification nor a review of the relationship to ensure that the activity and the transaction made economic sense.
- The array of available information at its disposal to suspect that the BO for two customer files wanted to conceal his beneficial ownership of the customers and from being publicly visible as the BO through Malta's BO Register.
- The foreign ownership of the companies for which the abovementioned failures were observed.
- The lack of appreciation of the ML risks it was exposed to by the red flags presented through the established relationships. Some of these are detailed in this publication, and could have exposed the local jurisdiction to unnecessary risks.

In addition, to ensure that the Company remediates its shortcomings, the Committee served the Company with a Remediation Directive. Through the Directive, the FIAU is requesting the Company to ensure that it holds adequate information pertaining to the purpose and intended nature of the relationship and that they are required to build a comprehensive risk profile in line with the applicable AML/CFT obligations.

Finally, the Company has also been duly informed, that in the eventuality that it fails to adhere to the above-mentioned Directive within the specified deadlines, 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.

**30 March 2022**

**APPEAL** - On the 26<sup>th</sup> April 2022, the FIAU was served with a copy of the appeal application filed by the Company before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU as detailed above. The grievances brought forward by the Company include inter alia, that the process leading to the imposition of the administrative fine goes against the principles of fair hearing; that the FIAU's decision was based on incorrect considerations and arbitrary conclusions; that the administrative penalty is not legally founded and is in any case excessive, and that the administrative penalty is disproportionate when considering factors such as, but not limited to, the Company's turnover. It thus requests the Court to uphold its appeal and cancel the administrative penalty imposed by the FIAU, or alternatively, to mitigate and reduce the said administrative penalty according to law.

**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 whole or 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.**

26 April 2022

