



## 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 administrative measures established by the Board of Governors of the FIAU.

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:**

5 October 2018

### **SUBJECT PERSON:**

SataBank plc

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

Credit Institution

### **SUPERVISORY ACTION:**

Off-site targeted review – Requests for information sent by the FIAU

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

The FIAU had initially imposed an administrative penalty of €327, 500 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). This was revised by the Court of Appeal (Inferior Jurisdiction) to €68, 000.

### **LEGAL PROVISIONS BREACHED:**

- Regulation 15(11) of the PMLFTR 2017
- Regulation 15(8) of the PMLFTR 2017
- Regulation 13(4) of the PMLFTR 2017 and Section 5.5 of the IPs

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

Failure to reply to requests made by the FIAU within the stipulated regulatory timeframes

Throughout the period February 2016 – November 2016, the Bank failed to reply to requests for information made by the FIAU within the stipulated regulatory timeframes on 22 different occasions. The working days by which the Bank replied late varied from 1 day late to 44 days late. In its representations the Bank had submitted that these delays were due to the Bank not having adequate resources to reply to the requests in a timely manner. However, the Committee determined that this does not justify this shortcoming and the Bank should have ensured to have adequate resources to reply to requests made by the FIAU in an efficient manner in line with its legal obligations.

Consequently, in view of the above shortcomings the Bank was found in breach of its obligations in terms of Regulation 15(11) of the PMLFTR.

#### Failure to reply to requests made by the FIAU with correct information

In seven cases, the Bank did not provide the correct information required by the requests made by the FIAU. In four of these cases, the Bank stated that the incorrect information was provided in view of the Bank not being able to identify the natural/legal person in the FIAU's request as it did not match the information found on the Bank's system. However, the Committee reiterated that the Bank should have been able to identify that it held a relationship with the person mentioned in the request since the name, surname and ID card number were an exact match. Similarly, in another case, the Bank held that it had failed to capture the relationship it had with the customer because the customer's surname was inputted as the first name of the customer. However, the Committee did not accept this as sufficient justification since the Bank's systems should have been able to detect these variations and to consequently be able to provide accurate information to the FIAU. Moreover, the Committee reiterated that in this case, the FIAU had sent another request in relation to the same individual this time also including the IBAN number, yet the Bank still failed to provide correct information to the FIAU. In three other cases, the incorrect information provided to the FIAU was explained by the Bank to have happened due to a human error and lack of dual control upon preparing responses to FIAU. However, this was considered inadmissible by the Committee.

In view of the above, the Committee expressed its serious concerns relating to the Bank's systematic failures. This because the breaches identified were a result of the ineffective systems and procedures the Bank had in place to retrieve customer information.

Consequently, in view of the above shortcomings the Bank was found in systematic breach of its obligations in terms of Regulation 13(4) of the PMLFTR and Section 5.5 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 three hundred, twenty-seven thousand and five hundred euro (€327,500) with regards to the breaches identified in relation to:

- Regulation 15(11) of the PMLFTR 2017
- Regulation 15(8) of the PMLFTR 2017
- Regulation 13(4) of the PMLFTR 2017 and Section 5.5 of the IPs

In reaching its decision, the Committee also took into consideration the size of the Bank's operations, as well as the nature and seriousness of the breaches identified. Furthermore, when deciding on the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Bank. Additionally, the Committee took into consideration that the Bank had repetitively failed to provide information within the stipulated timeframes and to provide correct information upon the first request. The serious repercussions that could have emanated due to

the incorrect information provided by the Bank were also taken into consideration, including any prejudice to investigations being carried out both locally as well as by foreign counterparts.

**Key Take aways:**

- Replying to requests made by the FIAU within the stipulated timeframes ensures the function of the FIAU is safeguarded and any ongoing analysis or requests by foreign counterparts are not prejudiced due to a failure by a subject person to provide information in a timely manner.
- When replying to requests made by the FIAU, subject persons must also provide correct and accurate information. Providing a reply to the FIAU containing misleading information may greatly prejudice not only the work being carried out by the FIAU but also ongoing analysis being carried out by foreign counterparts – particularly foreign FIUs, the network of which depends on the sharing of information.
- Subject persons must dedicate the necessary resources and implement the required processes to ensure that FIAU requests for information are replied to in a timely manner and that the information required by the FIAU can be easily, correctly and comprehensively retrieved by the subject person.

31 May 2022

**APPEAL:**

In accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), on the 24<sup>th</sup> October 2018, the Bank appealed the FIAU's decision imposing the administrative penalty for the Bank's failure to adhere to its AML/CFT obligations.

**APPEAL DECISION NOTICE:**

On the 25<sup>th</sup> May 2022, the Court of Appeal (Inferior jurisdiction) decided the aforementioned appeal.

Among other things, the Court dismissed the Company's argument that its representations were not taken into account by the FIAU and went on to identify all the factors which the FIAU considered in arriving at its decision, including the nature and seriousness of the breach and the systematic delay in replying amongst numerous other factors.

The Court noted *inter alia* that the Company's submission that its breach was negligible and that it brought about no damage not only shows arrogance on the part of the Company but also reflects the lack of understanding of its obligations according to the Act and Regulations. Timely execution of the Company's obligations is imperative in the prevention of money laundering and financing of terrorism, otherwise the legislator would not have included a peremptory period within which to reply and attributed an administrative penalty in case of non-compliance.

The court noted the administrative penalties imposed by the FIAU for both the instances of late replies as well as the instances of incorrect/misleading replies were too high.

Thus, whereas the Court of Appeal confirmed the breaches identified and sanctioned by the FIAU, it revised the quantum of the administrative penalty imposed by the FIAU from Eur 327,500 to Eur 68,000.

This publication has been amended in line with the provisions of Article 13C of Chapter 373 of the Laws of Malta.

**31 May 2022**

