



## Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(1) 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:**

24 July 2020

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

Investment Services

### **SUPERVISORY ACTION:**

On-site Compliance Review carried out in 2018

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

Administrative penalty in conjunction with a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Regulation 5(1) of the PMLFTR;
- Regulation 7(1)(a), 7(1)(b) of the PMLFTR and Section 3.1.1.2 (ii) of the Implementing Procedures Part I;
- Regulation 11(1) and 11(2) of the PMLFTR;
- Regulation 11(5) of the PMLFTR; and
- Regulation 7(1)(c) of the PMLFTR, Section 3.1.4 and Section 3.1.6 of the Implementing Procedures Part I.

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

#### Regulation 5(1) of the PMLFTR

From the file review carried out during the on-site examination, it was revealed that the Company had dealings with and was exposed to jurisdictions outside Malta, including non-EU jurisdictions. The Company however failed to carry out assessments on these jurisdictions. The Committee therefore

determined that without taking into account the jurisdiction risk in assessing its customers, the Company failed to establish a comprehensive risk assessment that reflects the actual risks which the Company was being exposed to through its operations. As a result of such failure, the geographical factor could not be properly assessed and the Company could not ensure it was implementing the necessary mitigating measures and controls to cater for the risk to which it was being exposed to.

As a result of these shortcomings, the Committee determined that the Company has failed to carry out risk assessments of jurisdictions it had dealings with so as to determine the geographical risk it is exposed to, thus breaching Regulation 5(1) of the PMLFTR.

#### Regulation 7(1)(a), 7(1)(b) of the PMLFTR and Section 3.1.1.2(ii) of the IPs

Although deficiencies were found in relation to the identification and verification obligations the Company has, these were not considered to be major by the Committee. Breaches identified with regards to these obligations mainly related to the Company failing to adequately verify the residential address of the customer and of the beneficial owner. In addition, the Company was found deficient in adequately certifying the documentation obtained for the verification of the customer's identity.

The Committee determined that the Company breached Regulation 7(1)(a), 7(1)(b) of the PMLFTR and Section 3.1.1.2(ii) of the IPs, however it noted that although still found in breach, the Company did have a system in place to identify and verify its customers and the cases identified were in most cases isolated breaches.

#### Regulation 11(1) and 11(2) of the PMLFTR

The Company failed to carry out enhanced due diligence measures in two of the files reviewed which the Company considered as posing a high risk. The high risk identified in one of these files was that one of the ultimate beneficial owners of the corporate customer was an Argentinian politically exposed person. In view of the services being offered by the Company to this customer, it was determined that additional measures should have been carried out by the Company to mitigate the risk it itself identified, however failed to do so and instead referred to an additional document it obtained and which evidence of such document was never provided to the FIAU.

In relation to the other file, the Committee noted that the high risk identified was in view of the connections the customer had with Argentina as well as the presence of adverse media. While the Company held that certification of documentation was carried out as an enhanced due diligence measure after identifying the customer as posing a high risk, the Committee reiterated that the enhanced due diligence carried out by subject person did not in any way address the high risk involved in this case.

Therefore, although the Company carried out adequate risk assessments and identified the high risk that the Company would be exposed to by entering into a relationship with these two customers, it failed to implement adequate enhanced measures that would mitigate the risk identified.

The Committee determined that the Company failed to carry out the necessary enhanced due diligence measures that would address the higher ML/FT risk the customer was exposing the Company to in two of the files reviewed, thus breaching Regulation 11(1) and 11(2) of the PMLFTR.

#### Regulation 11(5) of the PMLFTR

Although the Company did have a system in place used in the detection of a customer being politically exposed or otherwise, in one of the files reviewed in which the Company determined the presence

and involvement of a politically exposed person (PEP), the Company failed to carry out enhanced due diligence required when a PEP exposure is identified.

The Committee therefore concluded that the Company breached Regulation 11(5) of the PMLFTR.

Regulation 7(1)(c), Section 3.1.4 and Section 3.1.6 of the Implementing Procedures Part I

The Committee determined that in one of the files reviewed, the information held by the Company in relation to this particular customer was not sufficient to fulfil the obligations emanating from Regulation 7(1)(c) of the PMLFTR. The Committee noted that the purpose of the corporate customer included the leasing of aircrafts in a non-EU jurisdiction and the Company failed to understand the purpose behind the structure and the complex means how this activity would ultimately be carried out.

The Committee noted that although the Company, made available additional information on this relationship, such additional information was not found on file and was only provided with the letter of representations. In addition even following receipt of such information, the CMC had even more doubts on the purpose of the corporate customer which the Company was servicing. In view of this, of the generic information maintained on file at the time of the compliance review and the various risks emanating from the purpose of the corporate customer, the Company was expected to obtain more information and supporting documentation in order to understand the purpose of the relationship established with this customer.

The Committee therefore determined that the Company failed to obtain sufficient information on the purpose and intended nature of this relationship in order to be able to establish a comprehensive customer profile.

In view of the aforementioned shortcoming, the Company was found in breach of Regulation 7(1)(c) of the PMLFTR.

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

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of one hundred and ten thousand, two hundred and seventy eight (Eur110, 278) with regard to the breaches identified in relation to:

- i. Regulation 5(1) of the PMLFTR;
- ii. Regulation 11(1), Regulation 11(2) and Regulation 11(5) of the PMLFTR; and
- iii. Regulation 7(1)(c) of the PMLFTR, Section 3.1.4 and Section 3.1.6 of the Implementing Procedures Part I.

The Committee also positively noted the remedial actions which the Company is taking following the compliance review. To ensure that the Company is effectively addressing the breaches set out above, the Committee directed the Company to implement the remedial actions highlighted in its letter of representations together with any other action which the Company requires necessary to avoid repetition of any of the breaches identified by no later than 3 months from the imposition of the Directive.

The aim of the remediation directive is to direct the Company to take the necessary remedial action to ensure that going forward it is in a position to adhere to the AML/CFT obligations applicable to its operations. The effective implementation of such remedial actions will be assessed by the FIAU following the 3-month deadline imposed on the Company.

In determining the appropriate administrative measure to impose, the CMC took into consideration the representations submitted by the Company. The CMC also took into consideration the nature and size of the Company's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Company's own operations and also the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also taken into consideration by the CMC in determining the administrative measures imposed. The CMC has also positively acknowledged the remedial actions undertaken by the Company in order to address the shortcomings identified during the compliance review

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 deadline, the Company's default shall be communicated to the Committee for its eventual actions, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

**31 July 2020**

#### **APPEAL:**

On Friday 14 August 2020, the FIAU was duly notified that the Company had, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decisions taken by the FIAU. The Company appealed all breaches as mentioned in this publication in relation to which the FIAU's Compliance Monitoring Committee decided to impose an administrative penalty. The quantum of the administrative penalty imposed was also being challenged by the Company.

**18 August 2020**

#### **Appeal Outcome:**

The Court of Appeal (Inferior Jurisdiction) decided the appeal on the 23<sup>rd</sup> March 2022.

As regards the breach of Regulation 5(1) of the PMLFTR, the Court decided inter alia, that considering the circumstances of the case, and due to the fact that according to the Court there were no specific guidelines, there was no apparent reason for the FIAU to request more in-depth jurisdictional risk assessment and in turn to impose such a high penalty.

As regards the penalty imposed on the Company for failing to carry out the necessary enhanced due diligence measures in two of the files reviewed, thus breaching Regulation 11(1) and 11(2) of the PMLFTR, the Court upheld the Company's grievance in relation to one of the files and confirmed the FIAU's decision in relation to the other file.

As regards the breach of Regulation 7(1)(c) of the PMLFTR, the Court decided that the Company's grievance in this regard could not be upheld. Not only were the FIAU's reasons given in its letter dated 29<sup>th</sup> August 2019 justified, but even at appeal stage, the Company failed to come clear, and thus the Court was not morally convinced of the reasons put forward by the same Company. Given the huge investment that the Company's customer was involved in, the Court considered that the Company's obligation to adhere to its obligations could not be taken lightly. On the contrary these had to be taken very seriously and thus the Court proceeded to deny the Company's grievance in this regard.

The Court thus limitedly upheld the appeal as outlined above, and reduced the administrative penalty imposed on the Company by the FIAU from EUR 110,278 to EUR 15,749.

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

**24 March 2022**

