



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:

06 September 2022

RELEVANT ACTIVITY CARRIED OUT:

Fiduciary Service Provider

SUPERVISORY ACTION:

Compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €15,846, a Reprimand 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 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs)
- Regulation 5(5)(a)(ii) of the PMLFTR, and Sections 3.5.1 and 8.1 of the IPs
- Section 3.5.1(a)(a) of the IPs
- Regulation 5(5) of the PMLFTR and Section 3.4
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs
- Regulation 12 of the PMLFTR and Section 4.10 of the IPs
- Regulation 5(5)(e) of the PMLFTR and Section 7.1 and 7.2 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Risk-based Approach – Business Risk Assessment (BRA) - Regulations 5(1) and 15(3) of the PMLFTR and Section 3.3 of the IPs

It was noted that the BRA was a reflection of the FIAU's Risk Evaluation Questionnaire and that while it did cover important risk factors this was not specific to the Company's own operations. The Company also proceeded to allocate a risk score of '4' to the effectiveness of controls in place, thus implying a "Full Control Measure" without explaining the rationale leading to this scoring. The Committee commented on the

importance of delving deeper into the risk factors which the Company is exposed to. It explained that through the BRA, the Company should be able to identify the respective threats and vulnerabilities which its business is exposed to and in turn determine which areas require more attention. In turn, this will help it ensure that the AML/CFT measures, policies, controls and procedures are in line with the ML/FT risks which it faces in order to try and mitigate these risks. The Company was under the obligation to carry out an assessment of each risk factor and control measure, whilst taking into consideration past experiences, in a more holistic manner, as well as considering its business model, modus operandi and near future plans. The Committee continued to explain that the Company was then obliged to consider whether any particular events have since arisen and thus require re-assessment of the business-wide risk.

Risk-based Approach – Customer Risk Assessment (CRA) - Regulation 5(5)(a)(ii) of the PMLFTR, and Sections 3.5.1 and 8.1 of the IPs and Section 3.5.1(a)(a) of the IPs

i. Customer Risk Assessment

The Committee noted that the Company had conducted the CRA late for approximately 19% of the files, some of which were only delayed by a couple of months and others by a number of years. In this regard, the Committee highlighted the fact that the obligation to carry out a CRA was first introduced in the 2008 PMLFTR and was later on further explained in the 2011 IPs. Therefore, even though customers may have been onboarded prior to this date, the Company was still obliged to carry out a CRA upon the coming into force of the obligation. It was also noted that inadequate CRAs were found for three files, wherein the Company failed to provide sufficient explanations as to the allocation and changes to the risk ratings.

ii. Dealing with High-risk jurisdictions

The Committee noted that the Company had failed to carry out a jurisdiction risk assessment for circa 29% of the files reviewed. The customers in these files had connections with countries such as Africa, Turkey, Brazil and Israel, however the Company failed to assess the ML/FT risk which may arise when dealing with these jurisdictions. In turn, the Company was exposing its business to a higher risk of ML/FT. Moreover, the Company failed to provide sufficient explanations relating to the rationale behind the classification of one country in approximately 5% of the files.

iii. Customer Screening

The Committee remarked that the OFAC Sanctions list is not sufficient for the purpose of screening customers for adverse media as it is mainly oriented towards individuals and entities subject to sanctions only and solely considers sanctions issued by the U.S. Treasury sanctions regime without considering EU Lists. It further pointed out that the legal obligation to carry out screening came into force in July 2019. Although the Company was not obliged to carry out screening prior to this date (since its corporate customers had been onboarded prior to this date), it was indeed under the obligation to take note of the change in legal obligation and address same in a timely manner. The lapse of six months to do so is not acceptable, particularly considering the importance of addressing any adverse media implication. In view of this, the Committee concluded that the Company had carried out late screening for approximately 24% of the files reviewed, whilst no information was provided in relation to circa 5% of the files reviewed.

Risk-based approach – Policies and Procedures - Regulation 5(5) of the PMLFTR and Section 3.4

It was noted that the Company's AML Manual was relatively generic and included little consideration to the Company's business activities. The Company claimed that it had since started updating its policies and procedures, however the Committee could not confirm the extent of the remediation as no evidence of same was provided. It was also noted that there was unclarity as to whether the Board of Directors had approved such policies and procedures. The Committee indeed commented that having an adequate record of this approval is ideal. Issues with the Internal Audit function were also noted when reviewing the Company's AML Manual. The latter lacked any reference to said function. The Committee commented that this function is there in order to test the internal measures, policies, controls and procedures and ensure that they are in line with the law and are effectively implemented in practice, this whilst also considering the nature and size of the subject person's business. Moreover, it was noted that there was no division between the second and third line of defence. On this, the Committee remarked that it is not enough to simply state that there is indeed a separation between the second and third line of defence. The policies and procedure need to reflect the same in order to ensure that all employees follow the same procedure.

Customer Due Diligence (CDD) – Identification and Verification (ID & V) - Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs

The Committee noted deficiencies in relation to the identification and verification process in approximately 5% of the files, wherein no proof of address to identify the residential address of the BO was found on file. Although the Company submitted that it had since requested a copy of the client's recent utility bill, the Committee could not come to the conclusion that the Company had indeed collected it.

Customer Due Diligence (CDD) – Information on the Purpose and Intended Nature of the Business Relationship - Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs

It was noted that the Company relied on the Memorandum and Articles of Association in order to understand the nature of the respective business relationships with its clients. In fact, no further information which could potentially help in the understanding of the purpose behind the business was found on file. The M&As are usually all encompassing, providing little to no detail as to the actual operations of the corporate customer. The Company was thus under the obligation to get a full and comprehensive image of what the activity of the customer will be and understand why the Company's services have been requested, as well as how they are expected to be used in the course of the business relationship.

Customer Due Diligence (CDD) – Reliance - Regulation 12 of the PMLFTR and Section 4.10 of the IPs

The Committee noted that although there were reliance agreements found on file, these agreements took the form of a letter wherein the third party simply confirmed that it will be acting in line with its obligations rather than a proper contract reflecting the extent of the reliance. The Committee highlighted that the main purpose behind the reliance agreement is that of having a formal, written agreement between the parties, whereby the procedures and conditions of the relationship are clearly laid down in order to ensure that the entity on whom reliance is being placed immediately forwards the relevant copies when requested. The Committee pointed out that the Company should have had these agreements in place from the moment that it started placing reliance on the third party.

Training and Awareness - Regulation 5(5)(e) of the PMLFTR and Section 7.1 and 7.2 of the IPs

It was noted that the MLRO did not attend any external training between 2018 and 2019 and only attended internal training, whilst there was no indication that the Board of Directors has attended any training in the

training log provided. Moreover, the Compliance Officer did not seem to attend any training in 2019. The only records found were a training session presented by the Compliance Officer, which was followed by a test. A copy of the presentation of this training was also provided however it was deemed as being basic and lacking any real-life scenarios. The Committee whilst acknowledging that the training log has since been updated so as to include further training attended by the Compliance Officer and Directors, emphasised the importance that all Company officials and employees attend adequate training, irrespective of the level of seniority. It further stressed that the training attended must target the employees' respective responsibilities in order to ensure that it is indeed effective and adequate.

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

After taking into consideration the abovementioned breaches by the Subject Person, the Committee decided to impose an administrative penalty of fifteen thousand and eight hundred, forty-six euro (**€15,846**) with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 8.1 of the IPs for the failure to carry out timely customer risk assessments; for the failure to carry out adequate CRAs; and for the failure to carry out a jurisdictional risk assessment
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs for the failure to collect adequate information on the purpose and intended nature of the business relationship

Moreover, a Reprimand was imposed in relation to Section 3.5.1(a)(a) of the IPs for the failure to carry out timely screening.

In addition to this, the Committee also decided to issue a Remediation Directive in relation to:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs for the failure to implement an adequate BRA. The Company is being requested to provide an updated BRA confirming that the shortcomings identified by the Committee have in fact been remediated.
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 8.1 of the IPs for the failure to carry out timely customer risk assessments; for the failure to carry out adequate CRAs; and for the failure to carry out a jurisdictional risk assessment. The Company is expected to update its CRA measures including methodologies.
- Regulation 5(5) of the PMLFTR and Section 3.4 of the IPs for the failure to adopt adequate Policies and Procedures. Updated policies and procedures remediating the deficiencies outlined by the Committee are expected to be provided.
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs for the failure to provide identification and verification documents. The Company is requested to provide updated identification and verification documents relating to the deficiencies found.
- Regulation 12 of the PMLFTR and Section 4.10 of the IPs for the failure to provide adequate reliance agreements. The Company is expected to show that the extent of the reliance being placed on third parties is clearly and adequately highlighted.
- Regulation 5(5)(e) of the PMLFTR and Sections 7.1 and 7.2 for the failure to attend adequate training. The Company is therefore required to attend focused and continuous training.

When deciding on the appropriate administrative measures to impose, in addition to the specific breaches outlined above, the Committee took into consideration the importance of the obligations being breached,

the level of seriousness of the findings identified, and the extent of ML risk such failures could lead to. The Committee also considered the Subject Person's size and the impact that the Subject Person's failure may have had on both its operations and on the local jurisdiction. The level of cooperation portrayed by the Company and its officials throughout the supervisory process were also factored in, including the Company's commitment to remediate its failures.

Key Takeaways

- Subject Persons must ensure that explanations as to the allocation of risk scores are provided highlighting the rationale behind the scorings. The main purpose of the BRA is for subject persons to be able to identify any threats and vulnerabilities which their business is exposed to in a holistic manner and in turn, ensure that the measures, controls, policies and procedures that they have in place are in fact adequate to mitigate the ML/FT risks. This needs to be done in relation to any present or future risks.
- Subject Persons are obliged to carry out customer risk assessments upon onboarding its customers, in order to understand the level of ML/FT risk exposure that each respective business relationship presents on the Subject Persons' own business. Further to this, jurisdictional risk assessments are to be carried out in order to assess the ML/FT risk which may arise when dealing with certain jurisdictions. Such assessments need to be comprehensive, taking into consideration both the reputability as well as the risks a country may present and to understand the same both in the context of the business wide exposure as well as to the exposure at a customer level. The controls in place need to manage the risks identified.
- Subject Persons are to take note of any change in legislation and ensure that same are addressed in a timely manner, and also in line with the risk-based approach.
- Policies and Procedures must be adequately reviewed and approved by senior management and should be aligned with what the Subject Person practices. Moreover, Subject Persons are to ensure that the second and third line of defence are independent from one another allowing for the proper management of risks. The Audit function needs to be given prominence and importance since it acts as an early warning signal for unmanaged risks and for tackling risks of non-adherence to legal obligations.
- Identification and Verification documents are to be collected in a timely manner and retained on file.
- Subject Persons are to comprehensively understand the nature of the business relationships and to ask for more information and not simply rely on the corporate customers' Memorandum and Articles of Association. The Subject Persons is to have a clear image of what the activity of the customer will be whilst also understanding why its customers has requested its services.
- Reliance agreements are a powerful tool that allow Subject Persons to rely on others, yet still have visibility of information and of any required documentation. Such agreements should be clear and comprehensive and should address important areas including the extent of the reliance that is being

placed, the timeliness of the information/documentation sharing and the extent of reviews in line with the agreement.

- Training is indispensable, and this applies to all fronts. However, it must also be tailored to suit the needs both of the business being undertaken as well as be in line with the officials' own responsibilities is to be attended. A one size fits all approach will not yield the desired outcomes and officials will not be adequately prepared.

12 September 2022

