



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:

07 September 2022

RELEVANT ACTIVITY CARRIED OUT:

Corporate Service Provider (CSP)

SUPERVISORY ACTION:

Compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €20,101, 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 Sections 3.3.1, 3.3.2 and 3.3.3 of the Implementing Procedures (IPs);
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.2, 3.5.3 and 3.5.1(a)(a) of the IPs;
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.1 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs;
- Regulation 5(5)(e) of the PMLFTR and Sections 7.1, 7.2 and 7.4 of the IPs;
- Regulation 13 of the PMLFTR and Section 9.2 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Risk-Based Approach – Business Risk Assessment (BRA) – Regulation 5(1) of the PMLFTR and Sections 3.3.1, 3.3.2 and 3.3.3 of the IPs

The BRA mainly reflected the questions of the FIAU's Risk Evaluation Questionnaire (REQ), which while providing good context into risk understanding these are not specific to the operational set up of a subject person. While these may be good indicators, these should always be seen in the context of the specificities of the business and the BRA should always reflect one's own risk exposure. The Company also allocated a scoring of '4' to the effectiveness of controls, thus implying a 'Full control measure' without providing the rationale behind such scoring. Assessing the effectiveness of the controls and understanding how such

control will be achieved is crucial to determine how the controls that serve to mitigate the risks posed. Moreover, the BRA was carried out one year after the requirement first came into force.

Risk-based Approach – Customer Risk Assessment (CRA) - Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.2, 3.5.3 and 3.5.1(a)(a) of the IPs

i. Customer Risk Assessment

The Committee determined that no CRAs were found for approximately 26% of the files reviewed, whilst inadequate CRAs were found for circa 16% of the files. Moreover, late CRAs were carried out for three additional files. The Committee emphasised that the legal obligation to carry out CRAs has been in place since 2008 through the PMLFTR, which obligation was then further explained through the 2011 IPs. It further noted that whenever corporate service providers are in situations where they lose contact with their customers, they are to assess whether they want to retain the relationship and if not, to inform the Malta Business Registry about it. It also stressed on the importance of updating the CRA especially when certain ML/FT risks arise.

ii. Screening

The Committee pointed out that the OFAC list is not a sufficient screening method as it mainly caters for individuals and entities subject to sanctions issued by the U.S. Treasury sanctions regime only, without taking into consideration any adverse media and also EU Lists. Moreover, it also noted that the legal obligation to carry out screening came into effect in 2019. The clients in question had been onboarded prior to this date, however the Committee noted that the Company had failed to carry out the relevant screening for approximately 37% of the files reviewed. Notwithstanding this, the relationship with these customers proceeded normally. The Committee stressed that changes in legal obligations are to be addressed in a timely manner. Therefore, although screening was not a legal obligation at the time when these clients had been onboarded, the Company should have ensured that such screening is indeed carried in a timely manner and not unnecessarily delayed.

Customer Due Diligence (CDD) – Identification and Verification (ID & V) - Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.1 of the IPs

It was noted that verification documentation relating to the corporate customer's BOs was missing for circa 5% of the files reviewed. The Company had failed to provide Officials with the file relating to this customer and therefore, the Committee could not be certain that the Company did in fact have in its possession the relevant ID & V documentation of the BOs.

Customer Due Diligence (CDD) – Information on the Purpose and Intended Nature of the Business Relationship - Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs

Deficiencies in relation to the information on the purpose and intended nature of the business relationship were noted in circa 37% of the files reviewed. The Committee commented that the Company could not solely rely on the mere assertion that such information had been discussed prior to the respective customers' onboarding by its previous Director. It stressed that the purpose and intended nature of the business relationship aids in the determination as to whether the service being provided makes sense when comparing it with the customer's profile, as well as contributes to the customer's CRA, thus determining

whether the customer in question falls within the subject person's risk appetite. It was further noted that it is not enough for the Company to simply rely on the Memorandum and Articles of Association when it comes to the nature of the business of its customers. The Company was under the obligation to get a thorough view 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.

Training and Awareness - Regulation 5(5)(e) of the PMLFTR and Sections 7.1, 7.2 and 7.4 of the IPs

The Committee noted that the MLRO of the Company only attended internal training presented by the Compliance Officer between 2018 and 2019. The training log also lacked any information relating to training attended by the Board of Directors, as well as any training attended by the Compliance Officer in 2019. Moreover, there were only records of one training session which was presented by the Compliance Officer, following which a test was taken, as well as an internal training evaluation form. Material covered during this session was considered as being basic, and not tailored to suit the business operations of the Company and specific to the work exposure of the different attendees. The Committee emphasised the importance that all officials and employees, irrespective of their level of seniority, attend the necessary training and remarked that this training can only be effective if it targets the employees' respective responsibilities within the Company. Moreover, the MLRO is obliged to ensure that he remains well-versed both in relation to the AML/CFT obligations and to the typologies and risks that could materialise. The Committee also pointed out that similarly, the Board of Directors should also attend training, aimed at providing general knowledge of the AML/CFT obligations that need to be abided by the Company.

Record Keeping - Regulation 13 of the PMLFTR and Section 9.2 of the IPs.

The Company failed to locate 5% of the files which contained the client profile, all the information related to the BO as well as the corporate company itself, the CRA, and any screening carried out. The Committee commented that the Company was obliged to retain the corporate customer's file even though the latter had been struck off, and this for up to five years following the closure of the business relationship. In so doing, the Company would not only be complying with its AML/CFT obligations but aiding in the fight against money laundering should there any requests for information by the FIAU's Intelligence Analysis Section or by any other Authority.

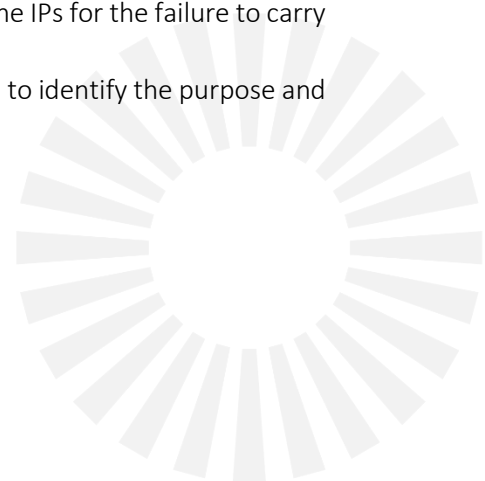
ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE (CMC):

After taking into consideration the abovementioned breaches by the Subject Person, the Committee decided to impose an administrative penalty of twenty thousand and one hundred and one euro (**€20,101**) with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.2 and 3.5.3 of the IPs for the failure to carry out adequate customer risk assessments
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs for the failure to identify the purpose and intended nature.

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



- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.1 of the IPs for the failure to provide identification and verification documents.

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

- Regulation 5(1) of the PMLFTR and Sections 3.3.1, 3.3.2 and 3.3.3 of the IPs for the failure to implement an adequate BRA. The Company is requested to provide a revised version of the BRA tackling the shortcomings identified by the Committee.
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.2 and 3.5.3 of the IPs for the failure to carry out adequate customer risk assessments. The Company is expected to provide updated CRA measures including methodologies, as well as updated as to the screening measures which are being taken by the Company, making specific reference to the failures observed by the Committee.
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.1 of the IPs for the failure to identify the purpose and intended nature. Measures the Company plans to implement in order to ensure that all the necessary information is collected are to be provided.
- Regulation 5(5)(e) of the PMLFTR and Sections 7.1, 7.2 and 7.4 of the IPs for the failure to attend sufficient training. The Company is requested to provide updates on the training provided to all employees, irrespective of the level of seniority.
- Regulation 13 of the PMLFTR for the failure to abide to record keeping obligations. Updates in relation to the Company's record-keeping procedures are to be provided.

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

- The Subject Person must ensure that the allocation of each risk scoring makes sense and that it can provide the rationale behind each score. The BRA should be able to provide the Subject Person with a clear and holistic view of the risks that it is exposed to in the carrying out of its business. Moreover, the BRA must be carried out in relation to any present and future risks, whilst also taking into consideration past risks, in order to aid in the mitigation of said risks. Controls need to be adequate, and such adequacy has to be carefully assessed and understood.
- Timely CRAs are to be carried out for every single customer in order for Subject Persons to be aware of the risks its business is faced with. Losing contact with customers should not be considered as an indicator that there is no risk. Rather such risk should be factored in and decisions on the business relationship should be taken. The Subject Person is to assess where it would like to keep the customer or not and in turn, inform the Malta Business Registry about said customer. Any other ML risks surrounding the inability to locate the customer should also be considered.
- 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.

- Adverse media screening is an important risk consideration that should be factored into the customer risk understanding process and adequately kept up to date. This should not be mistaken for sanctions compliance, which is different, yet equally important.
- Identification and verification documents are to be retained and saved on file.
- The Subject Person is to clearly understand in a comprehensive manner the purpose and intended nature of the business relationship, and clearly document same. It is only once the Subject Person has a clear view of same that it can ensure whether the service being provided is in line with the customer profile and whether the same customer falls within its risk appetite. Moreover, the Subject Person cannot simply rely on the Memorandum and Articles of Association when it comes to the nature of the business of its customers and should get a clear picture as to what the activity of the customer will be and understand why its services have been requested.
- 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 to be attended. A one size fits all approach will not yield the desired outcomes and officials will not be adequately prepared.
- Record keeping is an indispensable tool to retrieve customer information for any necessity both by the subject person itself as well as regulatory and other authorities. Subject Persons are to retain all documentation for five years after the termination of the business relationship and this even in the case where the corporate customer has been struck off.

13 September 2022

