



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 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:

13 August 2020

RELEVANT ACTIVITY CARRIED OUT:

Notary Public, when acting in the exercise of his professional activities under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

SUPERVISORY ACTION:

Onsite compliance review carried out in 2018

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty and Remediation Directive in terms of Regulation 21 of the PMLFTR

LEGAL PROVISIONS BREACHED:

- Regulations 5(1) and 5(3) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Section 8.1 of the Implementing Procedures, Part I;
- Section 4.1.1.1 of the Implementing Procedures, Part I;
- Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Sections 3.1.1.2, 3.1.3, 3.1.1.3 and 3.1.3 of the Implementing Procedures, Part I;
- Regulations 13(1), 13(2) and 13(3) of the PMLFTR as well as Sections 5.2 and 5.3 of the Implementing Procedures Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulations 5(1) and 5(3) of the PMLFTR

The compliance review revealed that the Notary did not have a documented Business Risk Assessment (BRA) in place at the time of the examination. As a result, the Notary was not in a position to understand the risks surrounding his operations as a Notary Public and the mitigating measures that should be implemented to mitigate the identified risks. Thus, the Compliance Monitoring Committee (Committee/CMC) found the Notary in breach of Regulations 5(1) and 5(3) of the PMLFTR.

The Committee also considered how although the Notary made reference to a policy he had in place since August 2017, such policy was not made available to FIAU officials as part of the documentation being requested in preparation of the compliance review. Nor was such policy ever referred to by the Notary during the on-site compliance review. As a result, this could not be taken into consideration.

The Committee positively noted that the Notary attached a BRA when submitting the 2020 Risk Evaluation Questionnaire, however, this did not indicate the methodology being employed in order to determine how a particular risk rating is being computed. Moreover, it contained some contradictory and inaccurate statements. For this reason, the Enforcement Section of the FIAU shall be following up on this matter in order to ensure that the BRA is adequately revised.

Regulation 5(5)(a)(ii) of the PMLFTR

During the onsite examination, it was noted that the Customer Risk Assessments (CRA) carried out by the Notary in 7 of the files reviewed were all undated and no evidence was made available to confirm that the CRAs had indeed been carried out before the transfer of immovable property took place.

In his representations, the Notary submitted the dates of when the assessments were performed, however no documentary evidence substantiating that the CRAs were actually performed during said dates were made available. It was also observed that reference to when the CRAs were carried out was only made available as part of the representations, but no reference to same was made during the compliance review.

In deciding on the appropriate administrative measure to impose, the Committee considered that the purpose behind the carrying out of a CRA is to understand the risks posed by the customer in order to be in a position to determine the level and nature of the mitigating measure to apply. The Committee also considered that given the nature of the services offered, which in most instances would fall to constitute occasional transactions, the carrying of a CRA after the occasional transaction took place would be of no value as a risk management measure.

In view of this, the CMC determined that the Notary was in breach of Regulation 5(5)(a)(ii) of the PMLFTR.

Section 8.1 of the PMLFTR

In four files reviewed, there were findings relating to jurisdiction risk assessment. In two of such files, albeit the buyers had connections with China and Libya, only a printout that the jurisdictions do not feature in a FATF list, MONEYVAL list or any other similar list. The same could be noted in two other different files whereby the seller had connections with Canada, Mexico and Australia. The CMC determined that such printouts do not constitute a suitable jurisdictional risk assessment and thus, found in the Notary in breach of his obligations under Section 8.1 of the PMLFTR.

Regulation 5(5)(a)(ii) and Section 4.1.1.1 of the Implementing Procedures, Part I

Although the Notary was able to explain his risk appetite, it was noted that he did not have a formalised and documented Customer Acceptance Policy at the time of the onsite examination. Therefore, it was concluded that at the time of the onsite examination, the Notary was in breach of his obligations under Regulation 5(5)(a)(ii) and Section 4.1.1.1 of the Implementing Procedures, Part I.¹

Whilst the Notary submitted a policy² which was supposedly his Customer Acceptance Policy with the representations (the same document which he also deemed to be his Business Risk Assessment and Customer Risk Assessment), the CMC noted that the same document had not been made available at the time of the compliance examination. It was also concluded that the document needed further enhancements to actually be considered to cover the requirement of Customer Acceptance Policy, since the same was not even making reference to examples of customers that the Notary considered as posing heightened risk and under which circumstances he would be entitled to refuse providing service to customers.

¹ Currently Section 3.4.1 of the Revised Implementing Procedures, issued in July 2019.

² This was the same policy referred to in the section of this publication covering the BRA.

Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Sections 3.1.1.2, 3.1.2, 3.1.1.3 and 3.1.3 of the Implementing Procedures, Part I

Findings relating to identification and verification were noted in three files reviewed as relayed hereunder:

- In one file, the residential address of one of the individuals acting on behalf of the buyer (a foundation) was not verified;
- In the same file, the Notary failed to identify and verify the founders of the buyer;
- In another file, the person appearing on behalf of a publicly listed company was not verified. Moreover, there was no document showing that the individual acting on behalf of the seller company was duly authorised to do so in writing;
- In another file, the identity of one of the seller was not verified.

In light of the abovementioned findings, the Committee concluded that the Notary was in breach of his obligations under Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Sections 3.1.1.2, 3.1.2, 3.1.1.3 and 3.1.3 of the Implementing Procedures Part I.³

Regulations 13(1), 13(2) and 13(3) of the PMLFTR as well as Sections 5.2 and 5.3 of the Implementing Procedures Part I

The Notary retained minimal amount of documentation on file, and documentation requested during the onsite examination was not readily accessible. Moreover, the Committee learnt how the Notary had to communicate with several individuals before being able to provide the necessary documentation. All this became evident since the communication with said individuals was happening in front of FIAU officials.

In his representations, the Notary reiterated that all the original deeds are archived and retained by the Notarial Archives. The Committee remarked that the record keeping obligations necessitate that the Notary keeps record of all the information and documentation obtained to satisfy the AML/CFT obligations for a period of 5 years from when the transactions have taken place (i.e. from the date of transfer of the immovable property) and to ensure that such records are easily retrievable in case same are requested by the FIAU. Therefore the keeping of records by the Notarial Archives does not satisfy the record keeping obligations that the Notary had to abide by in terms of his AML/CFT obligations.

Therefore, the Notary was found in breach of Regulations 13(1), 13(2) and 13(3) of the PMLFTR as well as Sections 5.2 and 5.3 of the Implementing Procedures Part I.

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

The issues identified, as has been explained above, necessitated the imposition of an administrative penalty that is appropriate and just to the seriousness of the case. For this reason an administrative penalty of EUR 26,706 has been imposed upon the Notary.

In terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Notary with a Remediation Directive containing several requirements in order to ensure that the Notary understands the risks surrounding his operations and that he has implemented sufficient controls to mitigate such identified risks. Specifically, the Directive requires the Notary to make available:

- A revised Business Risk Assessment which shall clearly include how the Notary arrives to his conclusion of granting an overall risk to a particular risk category, amongst other changes;
- Take into consideration the jurisdiction risks his operations expose him too and to carry out jurisdiction risk assessments for such jurisdictions;

³ Currently Sections 4.3.1, 4.3.2 and 4.3.3 of the Revised Implementing Procedures, issued in July 2019.

- A revised Customer Acceptance Policy which makes clear reference to examples of customers that are likely to pose a higher risk of money laundering and funding of terrorism to his operations.

The Committee positively remarked that the Notary is enhancing his AML/CFT safeguards and that he had carried out a BRA, albeit this still needs to be revised as abovementioned.

In determining the appropriate administrative measure to impose, the CMC took into consideration the shortcomings identified during the compliance review, as well as the nature and size of the Notary's operations. The overall impact of the AML/CFT shortcomings identified vis-à-vis the Notary's own operations were also taken into account. The degree of seriousness of the breaches that have been identified was also taken into consideration by the Committee in determining the administrative penalty imposed.

Finally, the Notary has also been duly informed that in the eventuality that the Notary fails to make the abovementioned documentation available with the specified deadline, the Notary's default shall be communicated to the CMC 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.

20 August 2020

APPEAL:

On 1 September 2020, the FIAU has been duly notified that the Notary, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decision taken by the FIAU. The Notary has 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 is also being challenged by the Notary.

2 September 2020

Pending the outcome of the appeal, the decision of the FIAU leading to the imposition of the administrative penalty is not to be considered final and the resulting administrative penalty cannot be considered as due given that the Court may confirm, vary or revoke, 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.

3 August 2021



On 7 October 2022, the Court of Appeal (Inferior Jurisdiction) delivered its judgement in relation to the appeal that was filed by the Notary as aforementioned. By means of its decision, the Court of Appeal:

- Confirmed all breaches identified and which gave rise to the imposition of an administrative measure by the FIAU; and
- Revised the quantum of the administrative penalty imposed by the FIAU to € 3,500.

The Court held that given the seriousness of the breaches, the imposition of an administrative penalty was merited, however it found that the quantum was excessive and thus deducted the said penalty.

12 October 2022