



Administrative Measure Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2) 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. It is pertinent to note that 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:

25 September 2020

RELEVANT ACTIVITY CARRIED OUT:

Accountancy/ Audit Services/ Tax Advisor & Corporate Service Provider – Individual

SUPERVISORY ACTION:

On-site compliance review carried out in 2016

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €20,000, Reprimand and a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR")

LEGAL PROVISION BREACHED:

- Section 8.3¹ of the Implementing Procedures ("IPs") Part I
- Section 7.2² of the Implementing Procedures Part I

¹ This obligation is now further explained in Section 3.4 of the Implementing Procedures as last amended on 15 September 2020.

² This obligation is now further explained in Chapter 7 of the Implementing Procedures as last amended on 15 September 2020.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Section 8.3 of the Implementing Procedures Part I

The subject persons failed to establish adequate and efficient procedures that would ensure compliance with all the obligations emanating from the PMLFTR, Implementing Procedures and PMLA that were in force at the time of the on-site examination. Particularly in this case since the subject person had provided an annex of a standardised set of AML Procedures Manual that however did not make specific reference to the subject persons' operations and did not contain definite policies and actionable procedures relating to: customer on-boarding; CDD; EDD measures that should be applied in specific circumstances; on-going monitoring; risk assessment and risk management.

The below are considerations taken by the Compliance Monitoring Committee ("CMC") in determining that the procedures manual that was being used by the subject person was not adequate:

- Although the manual makes reference to the need to have internal controls it falls short in actually including explanations as to what internal controls are being implemented;
- Although the manual and the form used by the subject person allow for some of the customer due diligence information and documentation to be collected, this was also considered to be inadequate. For example, there was no mention as to the requirement to understand the ownership structure of corporate customers, nor was there a description of who is to be considered as the beneficial owner;
- Similarly, there is reference to the requirement to risk assess customers and to the need to manage such identified risks. Yet, the only form provided was covering the due diligence exercise to be carried out for the registration of a limited liability company. No reference as to the measures used to risk assess customers was however made both in the manual and also in the form;
- The policies and procedures also did not cover the measures that need to be implemented to determine the political exposure of potential/existing customers;
- Furthermore, no reference as to the need to obtain information on the purpose and intended nature of the business relationship for the establishment of the customer risk profile, was found in the manual;
- There was also no reference as to the need to carry out a heightened degree of customer due diligence in circumstances of higher risk;
- Moreover, there was no mention as to the level of ongoing monitoring necessary for the business relationships entered into.

In view of the above, the CMC determined that the failures identified in relation to establishing measures, policies, procedures and controls necessary to be in a position to effectively understand and manage the ML/FT risks to which the subject person is exposed to, are considered to be serious breach of the subject person's AML/CFT obligations, hence the subject person has been deemed to having breached Section 8.3 of the Implementing Procedures Part I.

Section 7.2 of the Implementing Procedures Part I

Through the compliance examination, the CMC determined that the subject person had never attended any AML/CFT training that would assist in the understanding of ML/FT risks and in the implementation of measures necessary to mitigate such risk exposures.

The CMC, while agreeing with the concept of appropriateness and proportionality in the attendance of training, clarified that it is unacceptable for a subject person to carry out relevant activity without having ever attended any appropriate AML/CFT training. Self-training gained from experience is good and should be such however same is not considered to be appropriate nor proportionate and this since to self-train oneself one must first attend to training by professionals in the field of AML and then practice what has been learnt and further develop such knowledge through self-experience.

In view of the above considerations, the CMC determined that the failure to attend any form of training focussed on AML/CFT obligations resulted in the subject person to be in breach of Section 7.2 of the Implementing Procedures Part I.

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

After taking into consideration the abovementioned breaches, the CMC decided to impose an administrative penalty of twenty thousand euro (€20,000) with regards to the findings in relation Section 8.3 of the Implementing Procedures Part I.

To ensure that the subject person is effectively addressing the breaches set out above, the CMC proceeded to serve the subject person with a Remediation Directive. The aim of the directive is to direct the subject person to take the necessary remedial actions required to be in line with the AML/CFT obligations. The remediation directive includes an obligation for the subject person to update and amend the Policies and Procedures manual to ensure that the shortcomings identified are remediated in line with the obligations outlined within the PMLFTR, the Implementing Procedures and PMLA, in particular, such revamped policies should cater for:

- Clear procedures to undertake Risk Assessment, Risk Management, customer due diligence and the establishment of a Customer Acceptance Policy;
- Information and/or documentation which is required to be obtained in relation to the purpose and intended nature of the business relationship;
- Checks required to determine whether a customer or a beneficial owner is a PEP and to carry out EDD measures both when establishing or continuing business relationships with, or undertaking occasional transactions for a PEP; and
- Providing a clear understanding of the enhanced measures to be undertaken in circumstances which portray a heightened level of risk exposure.

Additionally, the CMC decided to also impose a Reprimand in relation to the subject person's failure to attend any form of training focussed on AML/CFT obligations.

In determining the appropriate administrative measures to impose, the CMC took into consideration the representations submitted by the subject person. The nature and size of the subject person's operations and the overall impact that the AML/CFT shortcomings have caused or could have caused both to its own operations and also to the local jurisdiction were also taken into account by the CMC. The seriousness of the breaches identified together with their occurrence were also considered by the CMC in determining the administrative measures imposed.

Finally, the subject person has also been duly informed that in the eventual failure to provide the above mentioned supporting documentation within the specified deadlines, such 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.

2 October 2020

APPEAL:

On Wednesday 14th October 2020, the FIAU was duly notified that the Subject Person has, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decision taken by the FIAU. The Subject Person appealed all the breaches as mentioned in this publication and requested that such decisions are annulled and revoked. The grounds raised in the appeal contest the independence and impartiality of the FIAU in relation to its decision making functions and thus whether the process that led to the imposition of this administrative penalty is in line with the right to a fair hearing.

21 October 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 to reflect the outcome of same.

4 August 2021

APPEAL DECISION NOTICE:

On 9 November 2022, the Court of Appeal (Inferior Jurisdiction) delivered its judgement in relation to the appeal that was filed by the Subject Person as aforementioned. By means of its decision, the Court of Appeal:

- Confirmed all breaches identified and sanctioned by the FIAU;
- Reduced the quantum of the administrative penalty imposed by the FIAU to € 7,000.

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.

10 November 2022