



Administrative Measure Publication Notice

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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 January 2023

RELEVANT ACTIVITY CARRIED OUT:

Fiduciary Service Provider/Trustee Services

SUPERVISORY ACTION:

Onsite compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of Euro 24,271 and a Remediation Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISIONS BREACHED:

- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.
- Regulation 7(1)(d) and 7(2) of the PMLFTR and Section 4.5.2 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Customer Risk Assessment – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

Inadequate CRA methodology

The methodology of the Customer Risk Assessment (CRA) used at the time of the compliance examination was not adequate since it mostly focused on the interface risk, resulting in customers being risk assessed as high-risk due to the non-face-to-face interaction. Moreover, the findings report also highlighted that the CRA methodology was not following a risk-based approach. While agreeing with the Company that prior to the publication of the 2019 Implementing Procedures (IPs), the risk-based approach was not mandatory, the Committee however, explained that the IPs had all the same provided sufficient guidance on how to assess and manage risks (See in this regard Section 4.1.2 of the IPs). The Committee also took into consideration that the Company had engaged third party consultants to update its CRA methodology, which now includes risk factors identified in the Supranational Risk Assessment and which calculates an average aggregation of the risk scores. Notwithstanding, the Committee could not ignore the inadequacies identified at the time of the compliance examination and determined that at the time of the review, the

Company was in breach of its obligations as stipulated under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

CRA carried out late

For 15 files reviewed, the CRA was carried out late. For 12 out of these 15 files, the Company provided evidence of the risk score outcome as recorded on an IT system with its representations. However, although the Company stated that the CRA was carried out in December 2016, which was the time when the customers were onboarded, and provided screenshots from its IT system to substantiate this, it was noted that the risk scores of a number of customers were actually assigned between March and August 2017, thus contradicting the Company's declarations. The Committee acknowledged that for other customers, the Company conceded that the risk score was not retained at the time of onboarding and noted that the Company has updated its policies and procedures to ensure that the CRA is completed both in the electronic file and the physical file.

In view of the above, the Committee determined that at the time of the compliance examination, the Company had breached its obligations under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

Ongoing Monitoring – Transaction Scrutiny - Regulation 7(1)(d) and 7(2) of the PMLFTR and Section 4.5.2 of the IPs

The compliance examination revealed shortcomings in the transaction scrutiny obligations. A detailed example of one of the cases reviewed is being relayed hereunder:

Example: One of the customer's beneficiaries provided a loan to the settlors of the trust for Euro 710,000. Repayments of the loan were being transferred from the beneficiary's own bank account. The Company confirmed this and explained that the loan was granted to the beneficiary and that it was being issued for the benefit of the settlors of the trust (the parents). Upon reviewing the loan agreement in place, Committee members noted that the funds were being moved from Malta to Luxembourg and vice versa without any economic rationale. Moreover, this loan was expected to be paid within 12 months.

Members of the Committee expressed that the structure and the flow of the funds (as noted below) raised several red flags –

- Funds being settled by the parents (as settlors) to the trust.
- Funds were eventually loaned from the trust to the beneficiary (i.e. the son) for the benefit and on behalf of the parents (i.e. settlors).
- Funds were ultimately moved from the beneficiary back to the trust.

This raised questions on the purpose and economic rationale of the trust and the loan. In view of this, the Committee determined that the Company did not adequately scrutinise the activities and transactions taking place within the trust and determined that this finding constitutes a breach.

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

After taking into consideration the above mentioned findings together with (i) the nature of the services and products offered by the Company; (ii) the size of the Company; (iii) the seriousness of the obligations breached and whether these were systematic in nature; and (iv) the impact that these breaches could potentially have on both the Company and the local financial system, the Committee decided to impose an administrative penalty of Euro 24,271 with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR Section 3.5 of the IPs.
- Regulation 7(1)(d) and 7(2) of the PMLFTR and Section 4.5.2 of the IPs.

In addition to the above, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Remediation Directive (Directive).

The aim of the Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and that it becomes compliant with the obligations imposed in terms of the PMLFTR and the FIAU's IPs. The Company was directed to remediate the breaches identified and submit the below mentioned documentation for Enforcement Officials to attest that the necessary remediation has indeed taken place:

- A documented update on the CRA methodology including explanations of how risk scores are being assigned in view of the breaches identified under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.
- A declaration confirming that CRAs are being carried out at onboarding in view of the breaches identified under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.
- Updates on how the Company is carrying out transaction scrutiny and the policy and procedures being adopted by the Company for transaction monitoring purposes in view of the breaches identified under Regulation 7(1)(d) and 7(2) of the PMLFTR and Section 4.5.2 of the IPs

In the event that the requested information and/or documentation are not made available within the stipulated timeframes or the Company falls short of its obligations in terms of this Directive, the Committee will be informed of this default. This could result in the possibility of action being taken, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

The administrative penalty imposed is not yet final and may be appealed before the Court of Appeal (Inferior Jurisdiction) within the period as prescribed by the applicable law. It shall become final upon the lapse of the appeal period or upon final determination by the Court.

Key take-aways

- The assessment and management of risks could be found and explained in the IPs of 2011. Thus, in 2011 the IPs already distinguished between customer risk, geography risk, service/product risk, and interface risk.
- The activity and the transactions taking place need to be adequately scrutinised to ensure that there is a legitimate economic rationale for the transactions to take place and that these are consistent with the subject person's knowledge of the customer and his/her business and risk profile. Even when transactions are executed through reputable jurisdictions and banks, a subject person should still ensure that the transactions are in line with the customer's declared business and risk profile. Unusual transactions which diverge from the customer's known transactional pattern should be investigated and scrutinised further.

24 January 2023

