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 administrative measures established by the Board of Governors of the FIAU.

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:

03 March 2023

SUBJECT PERSON:

Casino Malta Limited

RELEVANT ACTIVITY CARRIED OUT:

Land-based Casino

SUPERVISORY ACTION:

Compliance review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €233,834 and a Follow-Up 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 3.2.2, 3.2.7, 3.3.1, 3.3.2 and 8.1 of the IPs Part I
- Regulation 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.4, 3.4.1, 3.5, 3.5.1(a) and 3.5.3 of the IPs Part I
- Regulation 7(1)(a) of the PMLFTR and Sections 4.3.1 and 4.3.1.1 of the IPs Part I
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.2 of the IPs Part I
- Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs Part I
- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Sections 4.5.1, 4.5.2.1 and 4.5.2.3 of the IPs Part I
- Regulations 11(1), 11(9) and 11(10) of the PMLFTR and Sections 4.9.1, 4.9.2.3 and 8.1.3 of the IPs Part I
- Regulation 15(1)(a) of the PMLFTR and Sections 5.1.1, 5.1.2 and 5.3 of the IPs Part I
- Regulations 5(5)(a)(i) and 15(3) of the PMLFTR and Sections 5.4 and 5.5 of the IPs Part I
- Regulation 5(5)(e) of the PMLFTR and Sections 7.1, 7.2 and 7.3 of the IPs Part I

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Risk Assessment and Risk Management – Business Risk Assessment (BRA) – Regulation 5(1) of the PMLFTR and Sections 3.2.2, 3.2.7, 3.3.1, 3.3.2 and 8.1 of the IPs Part I

i. Late implementation of the BRA

The Committee noted that the Company's first BRA was carried out in April 2019. The Company contended that when the obligation was first introduced in the PMLFTR, there was no stipulated date by which subject persons were to carry out a BRA. The Committee understood that the drafting of the BRA may take some time, however there was a lapse of over a year from when the obligation came into effect (in January 2018) to when the Company actually implemented its first BRA. Such delay meant that the Company failed to identify and assess the threats and vulnerabilities that it, as a land-based casino, was being exposed to when servicing its clients.

ii. Inadequate Geographical Risk Assessment

The Committee noted that the jurisdiction risk in the BRA segmented countries in three categories however no explanation was given as to how the Company arrived at this conclusion. It further noted that the Company failed to explain the risks associated with each jurisdiction with which the Company conducts business or with which it is willing to conduct business. Furthermore, it was observed that the risk matrix which was included in the BRA, did not include any jurisdictional risk scenarios nor controls implemented for such risks. The Company reiterated that one cannot argue against the risk scores it allocated to certain jurisdictions. The Committee however stressed that having an adequate geographical risk assessment in place is not merely about having a rating but most importantly about understanding from where the risk derives so as to be able to mitigate and manage the same.

iii. The BRA did not consider the results of the Supranational Risk Assessment

The Committee noted that whilst the Company did consider the results of the National Risk Assessment published in 2018 in its BRA, it failed to consider those of the Supranational Risk Assessment. The Company based its representations on the fact that as per the legislation available, subject persons can either consider the National Risk Assessment or the EU Supranational Risk Assessment. The Committee stressed on the importance of considering the results of both assessments in the BRA and pointed out that the legislator, when drafting Regulation 5(1) of the PMLFTR which states that the subject person shall "take into consideration any national or supranational risk assessments relating to risks of money laundering and the funding of terrorism", meant that both are to be considered unless one of the two was not available at the time of the drafting of the BRA.

iv. *Methodology and Risk Understanding*

The Committee noted that the methodology applied when determining the residual risk rating for each of the risk scenarios identified was inadequate and this since the Company was determining the residual score without considering the extent to which the controls manage the risks identified. The Company, in its

representations provided an overview of the contents of the BRA at the time of writing, which contents were considered by the Committee for the purpose of the Directive issued.

The Committee remarked that in view of the lack of a clear explanation as to the controls which the Company had in place at the time of the examination, the Company was not implementing an effective methodology to understand its business risks and the extent to which such identified risks are effectively being managed, thus inevitably exposing its business to a higher risk of ML/FT in this regard.

The Committee also observed that a number of risk factors were omitted from the BRA. These related to the Holding of Player Funds, Junkets and VIP customers. The Company based its argument on the fact that Junket players form a small percentage of its clientele and that it does not allow customers to park any of their funds. Moreover, it held that VIP customers are now catered for in the Company's latest BRA. The Committee emphasised on the importance of carrying out an adequate BRA which caters for all the risk factors which the Company is exposed to in the carrying out of its business. The omission of the same exposes the casino to a heightened risk of not effectively mitigating the risks from such players. Even if the exposure to such customers is relatively low, the risks presented may still be high and that would necessitate the appropriate levels of controls.

The Committee pointed out that the main issue seemed to centre around the lack of consideration of the inherent risk. The inherent risk is to be calculated on the basis of the likelihood of the scenario materialising and the possible impact. It is only once this has been determined that the level of AML/CFT measures, policies, controls and procedures aimed at mitigating such risks can effectively be assessed.

<u>Risk Assessment and Risk Management – Customer Risk Assessment (CRA) - Regulation 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.4, 3.4.1, 3.5, 3.5.1(a) and 3.5.3 of the IPs Part I</u>

i. The risk factors in the CRA Procedure not fully in line with the documented BRA conclusions

The Committee noted that the Company's CRA Procedure was not in line with the risk factors outlined in the BRA. Moreover, it did not consider all the risk factors in order to determine the ML/FT risk that the customers expose the Company to. Additionally, the CRA Procedure only focused on the customer and geographical risks. In fact, the product, service, transaction and delivery channel risks were not considered. The Committee stressed that the Company is obliged to understand the particulars of the risks presented by each individual customer it services. Moreover, additional risk factors need to be factored for assessing the risks posed by customers. Indeed, the Company is obliged to consider each respective player's reputation, nature and behaviour in the CRA.

ii. The CRA Procedure not fully adhered to in practice

The Committee noted that political exposure risk was completely excluded from the risk scoring calculation tool used by the Company when risk rating its customers. The Company admitted that this was an error from their side and that this was immediately fixed. The Committee pointed out that it is only through the CRA that the appropriate level of CDD can be applied and further noted that due to this oversight, it was difficult for the Company to apply the correct level of CDD. Moreover, the Committee also deliberated on the concept of weekly customer risk scoring reports and held that the Company is obliged to look at the

CRA in a holistic manner rather than on a weekly basis. Therefore, new information needs to be factored in without erasing any other details and information which were discovered in previous weeks.

iii. Inadequate CRA methodology

The Committee noted that not only was a CRA only carried out in January 2019, but also a number of inadequacies in the Company's CRA methodology and rationale were observed. For example, the Company only took into consideration the place of residency when it determined the geographical risk that the customer poses to the business relationship. The Company in its representations explained that the residency risk refers to the place of business and/or legal residence of the customer. It further provided an overview of the amendments it had undertaken in relation to the CRA after the examination took place.

The Committee also observed that it was unclear how the Company calculated the Visit Frequency risk and the Drop Behaviour risk and this since the dropdown selections for these two risk categories were 'usual' and 'unusual', with both of them having a rather vague description attributed to them in the CRA Procedure. The Company disagreed with this, however the Committee commented that these descriptions were not as detailed as they should have been and lacked the clarity that was needed in order to adequately assess the risks which the Company is exposed to. The Committee also identified instances wherein the CRA Procedure adopted could neither be considered as being comprehensive nor reliable. Furthermore, the Committee remarked that circa 20% of the player profiles reviewed were attributed a low or medium risk rating even though they presented a higher risk of ML/FT, with this being mainly due to the size of the transactions which were undertaken throughout the business relationship.

iv. Missing Policies and Procedures

The Committee remarked that the Company did not have a documented Customer Acceptance Policy (CAP) at the time of the examination. Moreover, it was noted that the policies and procedures did not meet the requirements set out in Section 3.4.1 of the IPs Part I and this since they failed to cover:

- Criteria for establishing or refusing a relationship with any new customers
- The procedure behind the 'High Risk Jurisdiction List' distributed to the casino's staff by the MLRO

The Company agreed with the above omissions since it based its representations on the updates that it had adopted since the examination.

<u>Customer Due Diligence (CDD) – Identification and Verification - Regulation 7(1)(a) of the PMLFTR and Sections 4.3.1 and 4.3.1.1 of the IPs Part I</u>

The Committee remarked that 10% of the player profiles reviewed did not have a permanent residential address listed. Instead, these had temporary addresses such as their hotel address. The Company submitted that the residential address was always collected and documented within the system. Notwithstanding this, the Company still failed to identify and verify their residential address throughout the business relationship.

Additionally, the Committee observed that 6% of the player profiles reviewed had a foreign address which was either non-existent or otherwise invalid. All of these players were no longer customers of the Company, as per the Company's representations. This however does not exonerate the Company from performing its AML/CFT obligations. The Committee emphasised on the fact that the Company heavily relied on information which was provided by the players themselves through the registration form.

In another 20% of the player profiles reviewed, the Committee noted that the Company relied solely on information provided by the customers upon registration and that it failed to verify the same.

Customer Due Diligence – Purpose and Intended Nature of the Business Relationship - Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.2 of the IPs Part I

The Committee observed that the Company's overall procedure of obtaining information and/or documentation related to the purpose and intended nature of the business relationship was inadequate and did not aid the Company in building a complete and thorough business and risk profile of the customers it services, especially of those who pose a higher risk of ML/FT. This was especially evidenced in the fact that the Company relies solely on the players' occupation details which are provided by the customers themselves upon registration, albeit this was also found to be missing for some of the files reviewed. The Company does not request any further explanations or proof of source of wealth and source of funds (SOW/SOF), on a risk sensitive basis. The Committee based its representations in this regard on the updates that it had undertaken after the examination.

It was further noted that for around 12% of the player profiles reviewed the occupation information was rather generic with reference to for example one player being an employee of a local reputable bank, and another being a student with no further information being collected pertaining to the designation of the former player and the origins of the funds that were being used to fund their gameplay. The Committee stressed that this was not sufficient for the purpose of determining the players' purpose and intended nature of the business relationship.

The Committee further emphasised on the importance that the Company obtains a holistic view of each player's business and risk profile through detailed occupational details, information and/or documentation of the players' SOW/SOF depending on the perceived level of risk, as well as their average income and anticipated level of activity.

Customer Due Diligence – Ongoing Monitoring – Updating of Records - Regulation 7(2)(b) of the PMLFTR and Section 4.5.3 of the IPs Part I

The Committee noted that the Company's procedures do not mention anything in relation to the updating of the occupational information. Moreover, the Committee further observed that shortcomings were identified in 14% of the player profiles reviewed wherein missing, generic or outdated occupational information was found. The Company's explanations in relation to these shortcomings were still deemed to be insufficient. Indeed, the Committee held that the information that the Company had relating to its customers' business, occupation, or employment, would not even suffice for the purposes of identifying the purpose and intended nature of the business relationship. It therefore pointed out for this reason, it

could not accept the information available as being adequate at an ongoing monitoring stage. The Committee further pointed out that the Company is expected to ensure that the information that it has remains relevant and accurate in order to have a clear understanding of the ML/FT risks that it is being exposed and to ensure that the measures it has in place are truly effective.

Customer Due Diligence – Transaction Monitoring - Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Sections 4.5.1, 4.5.2.1 and 4.5.2.3 of the IPs Part I

The Committee observed that the Company failed to scrutinise transactions in a manner that would allow it to determine whether such transactions were in line with the players' business and risk profile, the customers' SOW and SOF, and previous gaming behaviour. The Committee emphasised that scrutinising customer activity within the casino is not a requirement only for heightening risks but even in normal risk situations. The Committee noted that the Company failed to monitor the transactions in cases where there were high risk individuals who made unusually large transaction and who used cash as their only or main payment method. Additionally, it was also observed that the Company failed to obtain adequate SOF information.

The Committee also commented on the monitoring that is claimed to be undertaken by the Company. Whilst noting that casino staff would be going around the casino and monitoring players, as well as monitoring players through the surveillance department, such measure is very dependent on the ability of casino staff to capture customers through the control room and then inform floor managers for action to be taken. Considering the voluminous gaming activity that takes place and the ease with which customers change game, not having robust automated monitoring measures in place leads to both heightened risks of being exposed to ML/FT as well as not having the necessary measures in place to satisfy one's legal obligation to monitor customer activity.

Enhanced Due Diligence (EDD) – Application of EDD Measures - Regulations 11(1), 11(9) and 11(10) of the PMLFTR and Sections 4.9.1, 4.9.2.3 and 8.1.3 of the IPs Part I

i. The EDD procedures and measures applied are not rigorous enough

The Committee observed the EDD procedures and measures in place were not rigorous enough and did not provide enough insight on the players, more specifically on their SOW/SOF. This is mostly due to the fact that the information collected was obtained from unverified open sources. The Committee stressed on the importance of carrying out EDD measures which are appropriate to manage and mitigate the high risk of ML/FT. It remarked that the Company should have collected more information and documentation verifying the customer' business/employment activities. Substantiating the source of funds is indispensable to ascertain the legitimacy of the funds as well as to update the customer profile as necessary. This is why the Committee proceeded to emphasise on the importance of turning to the clients themselves in order to verify the information contained in the EDD reports. Otherwise, the Company had to utilise more reliable and independent sources of information.

ii. Failure to conduct proper EDD measures on players whom the licensee classified as high risk

The Committee remarked that 28% of the player profiles reviewed, were allocated a high-risk rating at some point during the business relationship. The Committee proceeded to ascertain the high risk nature of the relationship and noted that where heightened risk was indeed observed, the Company failed to carry out the necessary EDD measures. Examples of this shortcoming are being relayed hereunder:

Case 1: The player was the CEO of a company and had connections to Turkey. Notes were inserted on his player profile requiring the collection of the customer's identification document upon his next visit to the casino. No reference as to the collection of SOW/SOF information/documentation was made in these notes. This player was allocated a medium risk rating which was subsequently increased to high. The player dropped over EUR1million, the majority of which amount was in cash and using eight different bank accounts. Moreover, a change in transaction pattern was noted. The Committee noted that in view of the high gaming activity, the fact that the player utilised eight different bank accounts and the change in transaction pattern, the Company should have carried out additional measures such as obtaining documentation as to this player's SOW as well as the income earned, and other returns generated through his employment/businesses.

Case 2: The player was a student with links to China and was allocated a high risk rating. He also dropped over EUR200,000 in cash and lost over EUR80,000. The Committee remarked that it was not provided with any reassurance as to how a student could afford such substantial gaming activity/deposit in a relatively short period of time (From January 2019 to December 2019).

The Committee stressed that when conducting EDD measures, it is not enough to simply check the ownership or other involvement in companies through the MBR. The Company was required to understand further and evidence the players' SOW/SOF. The Committee stressed on the importance of carrying out proper EDD measures in order to help mitigate ML/FT.

iii. Failure to conduct EDD measures on transaction which were complex and unusually large

The Committee noted that 22% of the player profiles reviewed, who were allocated a low or medium risk rating, made transactions of a substantial amount and not what one would expect a low/medium risk customer to carry out. The Committee pointed out that this customer activity should have triggered the Company not only to carry out an update of the risk rating but independently of the rating, to carry out the necessary enhanced measures to manage the risks of such activity. Understanding and evidencing the SOW/SOF of customers was in such circumstances indispensable. An example of this shortcoming is being relayed hereunder:

Case 1: The player dropped over EUR2million and lost circa EUR900,000 between 2016 and 2019. The Committee pointed out that whilst ensuring that funds are flowing from a reputable bank is important, this cannot be considered as a measure aimed at mitigating the risks of the customer. This since this measure does not identify nor evidence the SOF but simply outlines the flow of funds.

<u>Reporting Procedures and Obligations – MLRO and Monitoring Function – Regulation 15(1)(a) of the PMLFTR and Sections 5.1.1, 5.1.2 and 5.3 of the IPs Part I</u>

The Committee noted that additional resources were needed in order to assist the MLRO in the carrying out of his duties, and this especially since there were numerous activities presenting heightened risks of ML/FT which happened on the MLRO's watch, which were neither observed nor acted upon. The Company in its representations submitted that the MLRO was involved in AML/CFT matters on a daily basis and that the fact that he held two position within the Company aided him in his role as MLRO of the Company. The Committee however pointed out that it is futile for the MLRO to have knowledge of the obligations emanating from the law unless there are sufficient resources and measures aimed at assisting in the implementation of such knowledge in practice.

Reporting Procedures - Regulations 5(5)(a)(i) and 15(3) of the PMLFTR and Sections 5.4 and 5.5 of the IPs Part I

The Committee noted that the Company's Procedures do not adequately outline the procedure that employees are required to follow when filing an internal suspicious report to the MLRO. Furthermore, the procedures do not mention the portal used to submit such reports nor to which Authority reports are to be submitted. Moreover, the Committee also noted that the details of the MLRO to whom these reports are to be made were also omitted.

The Committee noted that there were three players who should have been flagged by the Company as being suspected of facilitating ML/FT and which should have consequently been reported to the FIAU:

Case 1: This player was Maltese who registered with the casino in 2015 and who was listed as 'self-employed – plasterer' in his player profile. The Company allocated a low risk rating to this player. In the course of the business relationship, this player was arraigned in court for allegedly being involved in drug trafficking with a freezing order also issued against him. The Company, although unaware of the freezing order, knew of the ongoing court proceedings against the customer. Notwithstanding this, the Company never submitted an STR to the FIAU in relation to this and continued to allow the player to wager substantial amounts.

Case 2: The player was a former PEP and who registered with the casino in 2015. Despite this information, the player was allocated a low risk rating. The Company conducted open source checks in 2019 which resulted in the discovery of the player's alleged involvement in bribery and tax evasion at the time of the formal appointment. Notwithstanding this discovery, the customer was still allowed to continue wagering great amounts in cash. Despite all of this, the Company failed to submit an STR to the FIAU.

Case 3: The player was a business owner who registered with the casino in 2016. He was subsequently allocated a low risk rating in 2019 even though the Company had been aware that the player had been served with a judicial letter demanding him to pay over EUR500,000 in unpaid taxes, since 2017. Moreover the Committee also noted that the Company had adverse records which suggested that this customer had been involved in fraudulent events which included tax evasion. Notwithstanding this, the Company still failed to submit an STR to the FIAU.

Awareness and Training - Regulation 5(5)(e) of the PMLFTR and Sections 7.1, 7.2 and 7.3 of the IPs Part I

The training course attended by employees provided basic knowledge of AML, even though some of the attendees held a managerial/superior role. Moreover, the training that was attended by the Directors was dated at the time of the examination suggesting that the examination triggered such training.

The Committee observed that the training provided focused on the PMLFTR only and provided a general overview of Maltese AML regulations. The training did not go into the details of the Company's policies and procedures, nor into the risks associated with land-based casinos. The Committee also remarked that the casino's employees were not well-versed in the procedure that is to be adopted to manage and prevent ML/FT and did not fully understand how to adopt a risk-based approach. They also lacked knowledge related to reporting any suspicious activities to the MLRO and the procedure which should be adopted.

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 two hundred thirty three thousand, eight hundred thirty four euro **(€233,834)** with regards to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR and Sections 3.2.2, 3.2.7, 3.3.1, 3.3.2 and 8.1 of the IPs Part I for the serious and systemic failure to implement an adequate business risk assessment
- Regulations (5)(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.4, 3.4.1, 3.5, 3.5.1(a) and 3.5.3 of the IPs Part I for the serious and systemic failure to carry out adequate customer risk assessments
- Regulation 7(1)(a) of the PMLFTR and Sections 4.3.1 and 4.3.1.1 of the IPs Part I for the failure to obtain residential address information, for having invalid residential address information available and for the failure to perform verification of the residential address
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.2 of the IPs Part I for the serious and systemic failure to identify the purpose and intended nature of the business relationship
- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Sections 4.5.1, 4.5.2.1 and 4.5.2.3 of the IPs Part I for the serious and systemic failure to apply an adequate transaction monitoring procedure
- Regulations 11(1), 11(9) and 11(10) of the PMLFTR and Sections 4.9.1, 4.9.2.3 and 8.1.3 of the IPs Part I for the serious and systemic failure to carry out adequate enhanced due diligence measures
- Regulations 5(5)(a)(i) and 15(3) of the PMLFTR and Sections 5.4 and 5.5 of the IPs Part I for the serious failure to have adequate internal and external reporting procedures and to submit a suspicious transaction report to the FIAU

In addition to this, the Committee also decided to issue a Follow-Up Directive as per the below:

- For the serious and systemic failure to implement an adequate business risk assessment, the Company is requested to provide a revised version of the BRA tackling the shortcoming identified by the Committee and an updated geographical risk assessment with an adequate quantitative analysis.

- For the serious and systemic failure to carry out adequate customer risk assessments, the Company is expected to provide updated CRA measures including methodologies that cater for a comprehensive understanding of risks and that allows for the assessment to incorporate all the information considered

to risk assess customers. The Company is also expected to provide updated CAP and Policies and Procedures which reflect the procedures that are adopted in practice.

- For the failures observed with regards to the residential address information and verification, the Company is expected to provide the measures taken to ensure that identification and verification identification/documentation in relation to the customers' residential address is adequately collected.

- For the serious and systemic failure to identify the purpose and intended nature of the business relationship, the Company is expected to provide the procedure relating to the collection of information and/or documentation and the measures the Company plans to implement in order to ensure that all necessary information is collected to be able to build a comprehensive customer profile.

- For the failure to update its records, the Company is expected to provide the procedures and measures that are to be taken in relation to the updating of the occupational information. The Company is also required to provide a plan for the updating of all its active customer relationships this to ensure that it has a comprehensive customer risk profile as well as to assess such risks.

- For the serious and systemic failure to apply an adequate transaction monitoring procedure, the Company is expected to provide the procedure and measures adopted or planned to be adopted in relation to the scrutiny of transactions.

- For the serious and systemic failure to carry out adequate enhanced due diligence measures, The Company is expected to provide the procedure and measures relating to the carrying out of enhanced due diligence measures for higher risk situations.

- In view of the remediations which have already been undertaken in relation to the procedure relating to internal and external reporting, the Company had already provided updated documentation which it is expected to comprehensively implement and follow.

- For the failure to have an MLRO of sufficient seniority and command, during the follow up action, due regard shall be given to the level of experience and expertise as well as the level of seniority and command entrusted to the appointed MLRO of the Company.

- For the failure to attend sufficient and adequate training, the Company is expected to provide updates on the training provided to all employees, irrespective of the level of seniority.

The follow up action on the Company shall ascertain that sufficient progress is achieved on all the procedures and measures referred to above, that customer profiles are updated and kept up to date and that measures for the monitoring customer activity and reporting as necessary are effective.

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. In particular, the Committee noted the commitment to remediate the AML/CFT failings of the Company by noting that certain remedial actions have already been initiated or even completed by the Company before the imposition of the directive by the Committee.

The administrative penalty hereby 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 lase of the appeal period or upon final determination by the Court.

Key Takeaways

- Subject Persons were first obliged to start carrying out a BRA in January 2018. The lack of a stipulated deadline by when the obligation was to officially come into force is not to be understood as there being no deadline at all. The lack of same implies that the obligation is to become applicable immediately. While, it is understandable for some time lapse from the introduction of the obligation to its implementation to happen, a delay by one year is far from being acceptable.

- The geographical risk assessment is not merely about having a rating but rather it is about understanding where the risk derives from in order for the subject person to be able to mitigate the same. Therefore, it is not enough to provide a list without providing the rationale behind it.

- Subject persons are to consider both the NRA and the SNRA in the BRA. Although Regulation 5(1) of the PMLFTR points out that the subject person shall "take into consideration any national or supranational risk assessments relating to risks of money laundering and the funding of terrorism", this does not mean that it is a question of either or. The 'or' here depended on which one of the two (or both) was available at the time of the drafting of the BRA.

- Subject persons must ensure that the effectiveness of controls is always considered when determining the residual risk. The BRA should be able to provide the Subject Person with a clear and holistic view of both the controlled and unmanaged risks that it is exposed to in the carrying out of its business.

- Subject persons are to consider all the risk factors each individual customer may present. In the absence of an adequate CRA, the subject person may end up attributing risk ratings that do not truly reflect the customers' risks. One must keep in mind that it is only through the CRA that the correct level of CDD and the necessary degree of controls can be applied. Moreover, the subject person must ensure that when updating the CRA, the new information is factored in without erasing any other details and information which were discovered previously.

- 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. For Casinos, understanding the customer's occupation and income levels is crucial to be able to understand the expected level of activity and to subsequently monitor expected against actual activity.

- The subject person must keep in mind that business relationships are not static and that the circumstances surrounding them and the customers themselves are very likely to change over time. The information collected must therefore remain relevant, accurate and sufficiently timely for the subject person to have a clear understanding of the ML/FT risks it is exposed to and for it to ensure that the measures that it has in place are indeed effective.

- Subject persons are to have effective transaction monitoring procedures in place. It is only through the monitoring of customer transactions or activities that subject persons can identify that the customers' behaviour/transactions are not in line with their profile, that they can identify suspicious activity, and that they can determine whether the initial risk assessment requires updating. Voluminous activity may be rather impossible to be monitored manually. In such circumstances, the use of transaction monitoring systems may indeed be indispensable to be able to effectively monitor all such activity.

- Subject persons must apply enhanced due diligence measures on a risk-sensitive basis in those situations that, by their nature, represent a higher risk of ML/FT. In such instances, the subject person is to understand further and evidence the players' source of wealth and source of funds. This would be substantiated through for example obtaining financial statements of companies they own evidencing any earnings they receive, payslips, employment contracts, and other reliable and independent documentation. The value of the gaming activity taking place, the type of games played, the payment method utilised and the geographical connections all play a crucial role in understanding any high risk exposure necessitating EDD measures to be carried out.

- The MLRO has to be of sufficient seniority and command and must not only have knowledge of the obligations emanating from the law, but also be capable of satisfying his duties and ensuring that sufficient technical and human resources are provided to implement such knowledge in practice.

- The ultimate aim of all AML/CFT controls implemented is to capture transactions or activity that is to be reported to the FIAU. Having robust controls in place is thus indispensable. Such controls also include providing staff with adequate training on red flags, typologies and trends as well as subject person business focused training. Advising staff of the importance to submit reports on suspicious activity or behaviour to the MLRO is thus crucial.

07 March 2023

APPEAL - On the 24th of March 2023, the FIAU was served with a copy of the appeal application filed by the Company before the Court of Appeal (Inferior Jurisdiction), from the decision of the FIAU.

The Company states, *inter alia*, that the FIAU's decision breached its right to a fair hearing as it was not taken by an impartial tribunal; that the penalty is of a punitive nature and that the FIAU based its decision on subjective considerations. In relation to the merits of the FIAU's decision, the Company, *inter alia*, contests the FIAU's finding of breach in relation to the Business Risk Assessment, Customer Risk Assessment, Customer Due Diligence, Enhanced Due Diligence, the obligations of the MLRO and its Reporting Procedures.

The Company thus asked the Court to revoke and annul the decision of the FIAU in its regard, or alternatively, to modify and reform the said decision by reducing the penalty imposed upon it.

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

28 March 2023