



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:

12 May 2023

RELEVANT ACTIVITY CARRIED OUT:

Accountancy/Audit

SUPERVISORY ACTION:

Compliance review carried out in 2022

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €9,010, a 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 7(1)(b) of the PMLFTR and Sections 4.2.2, 4.3.1, 4.3.2.1(iv) of the IPs Part I of 2020.
- Regulation 7(1)(b), Section 3.1.1.2 of the IPs Part I of 2017 and Section 4.3.1 of the IPs Part I of 2019.
- Regulation 13(1)(a) of the PMLFTR and Section 9.2 of the IPs Part I of 2019 and 2020.
- Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Identification and verification of the Beneficial Owner (BO) – Incorrect determination of the BO – Regulation 7(1)(b) of the PMLFTR and Sections 4.2.2, 4.3.1, 4.3.2.1(iv) of the IPs Part I of 2020

The subject person had identified three senior management officials (SMOs) as the BOs of the customer, since none of the individuals included in the structure held more than 25% of the shares. However, the memorandum and articles of association (M&As) of the customer specified that individuals who hold more a minimum of 100,000 shares each had a right to appoint a director. From the documentation collected by the subject person, it was noted that there were three individuals who were holding 180,058 shares each.

The Committee determined that since these individuals could potentially control the customer via other means, they had to be considered as BOs.

Committee members referred to the provisions under Section 4.2.2.1 of the Implementing Procedures (IPs) Part I which states that subject persons need to assess and determine if any individuals have control through other means. Specific reference was made to point (c) under Section 4.2.2.1 (ii) of the IPs outlining that *“individuals who hold the right to directly or indirectly appoint or remove the majority of the board of directors (or administration) of an entity...”* and in the case of this customer, all three individuals had the right to appoint a director. Whilst taking into consideration that the three individuals have never exercised this right, as was also highlighted by the subject person in its representations, it remains a fact that these individuals could indeed appoint directors and therefore exercise control through other means. Thus, the subject person was expected to consider such individuals as BOs. Whilst acknowledging that the subject person had indeed identified and verified these individuals, Committee members determined that the subject person was also expected to consider such individuals as BOs and include them in the customer’s structure chart.

The Committee further highlighted that correct determination of a customers’ BOs, ensures that in a situation where the BOs are to finance a customer’s activities, a subject person can correctly determine and examine how any such funds have been generated and will eventually flow to the customer. Consequently, correct determination of the BO is of utmost importance in order to ensure that when the FIAU sends requests for information, subject persons would be in a position to correctly provide the necessary information.

Verification of the BOs identity details and residential address not always appropriately carried out - Regulation 7(1)(b) of the PMLFTR and Section 3.1.1.2 of the 2017 IPs and Section 4.3.1 of the 2019 IPs

The Committee observed that the verification measures of two of the files reviewed were inadequate.

In one file, it was noted that the utility bills collected to verify the residential address of the BOs were expired. The customer was onboarded in September 2018 and was assessed as having a medium to high risk. The first audit for this customer was carried out in December 2020. Yet, the utility bills obtained were dated November 2017, and thus more than six months old at the time of onboarding. Moreover, the file also contained utility bills dated March 2021, hence collected after the audit was carried out. Whilst taking into consideration that the address of the customer did not change, as highlighted in the subject person’s representations, the Committee determined that in view of the medium to high-risk exposure of this customer, simplified due diligence could not be applied and thus the subject person was obliged to collect valid identification and verification documentation at onboarding.

For the other file, Committee members observed that that at the time of onboarding (April 2019) and until the first audit was carried out (August 2019), the customer was owned by three BOs. However, the file only contained certified passport copies of two of the BOs, which certifications were dated August 2020, and thus after the customer was onboarded and after the first audit was carried out. Moreover, documentation to verify the residential address was certified in October 2020, and thus also after onboarding and after carrying out the first audit. The passport copy of the third BO was uncertified, and the file did not hold a document for the verification of residential address details. While the subject person in its representation argued that these documents were obtained at onboarding, and that the certification was carried out at a

later stage, such statement could not be confirmed. In addition, while noting that the subject person carried out a remediation exercise and identified these shortcomings, the subject person could not obtain the missing documentation from the third BO since this individual was no longer a BO at the time of the remediation exercise. Therefore, the Committee concluded that the subject person did not verify the BOs at onboarding stage and was therefore in breach of its obligations.

Record keeping - Regulation 13(1)(a) of the PMLFTR and Section 9.2 of the IPs of 2019 and 2020

One customer was onboarded in July 2019, however the documentation collected (M&As) to verify the ownership structure of the customer were dated 2005. While the subject person argued that at the time of onboarding, the structure chart of the customer was still valid and in line with the documentation collected, and that such information was cross checked with the Malta Business Registry (MBR) portal, evidence to substantiate this was not retained. Although the Committee accepts that M&As do not expire, and that these may not be updated from the time the legal entity was incorporated, the subject person has to retain evidence to prove that the necessary checks to verify the structure were indeed carried out.

Reporting obligations - Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs

The Committee determined that for one of the files reviewed, the subject person was expected to submit a suspicious transaction report (STR) to the FIAU. The customer, a Maltese registered company, was owned by two Angolan BOs who worked in a law firm. The Maltese registered company was set up to be contracted for services relating to a project that was required by the Angolan Government. This project involved the setup of an IT system in order to collect housing data for all of Angola. The Committee observed that the Malta company was being contracted by foreign companies owned by the same BOs, for it to then subcontract services to another company registered in the BVI, also owned by the BOs of the Malta company. A number of red-flags surrounding this particular case were identified by the Committee, as is being relayed hereunder:

- Committee members noticed that the invoices prepared by the customer contained no detailed explanation as to the services rendered (only mentioned hours spent by respective individuals) and the purpose of the same. Nor did they mention the reason why certain roles were required and what their responsibility would be to justify the costs. Moreover, none of these invoices contained any bank details such as the account number where the payment must be settled, raising concerns as to whether these were fabricated invoices.
- The structure of the customer was relatively complex considering the service was purely to subcontract services. Accentuating this is the involvement of a Cyprus registered holding company as well as a BVI nominee company holding the shares on behalf of the Angolan BOs. Such complexity should be considered in light of the local legislation at the time that the activity was taking place whereby there was no beneficial ownership register in Malta and thus the Angolan BOs were not disclosed.
- None of the BOs had any expertise or experience working in IT, with both BOs indicating in their CV that they only had knowledge from a user's perspective. This raised concerns as to how the services would be rendered and whether these individuals are the actual BOs of the customer.
- One of the BOs had worked with multiple Angolan Government entities, which also included the Ministry responsible for housing, which raised further concerns on possible corrupt practices.
- The customer file held a large volume of documents including contracts and reassignment of contracts. One of the agreements found on file indicated that a consortium of companies that was set up for the purpose of carrying out this project, became extinct with the creation of the Malta company. Members

of the Committee argued that, as opposed to the subject person's representations indicating that all these contracts were drawn up for commercial reasons, it seemed that these were obscuring and disturbing the audit trail of the activities taking place in practice and which companies were actually carrying out the work.

- Once the project was completed, the customer become dormant yet this did not trigger any doubts about the legitimacy of such an additional layer. This behaviour might be indicative that the customer was solely set up to channel funds obtained in virtue of illicit means through Malta. The Committee noted that while the subject person in its representations explained that the customer did not require resources on the ground to carry out its activities, such statement further increases concerns that the Malta customer was solely used to channel funds. In fact, the subject person was also aware of the minimal profits being earned by the customer, yet again no doubts arose on the commercial rationale for the creation of the additional layer.

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 nine thousand and ten euro (**€9,010**) with regards to the breaches identified in relation to:

- Regulation 7(1)(b) of the PMLFTR and Sections 4.2.2, 4.3.1, 4.3.2.1(iv) of the IPs Part I of 2020.
- Regulation 7(1)(b), Section 3.1.1.2 of the IPs Part I of 2017 and Section 4.3.1 of the IPS Part I of 2019.
- Regulation 15(3) of the PMLFTR and Section 5.5 of the IPs Part I.

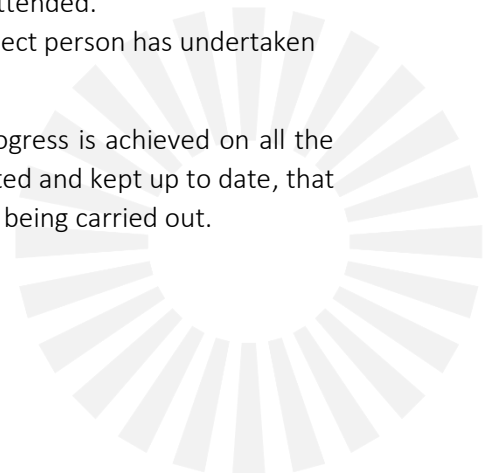
In addition to the above, the Committee also issued a reprimand in relation to the below breach:

- Regulation 13(1)(a) of the PMLFTR and Section 9.2 of the IPs Part I of 2019 and 2020.

In terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the subject person with a Remediation Directive, to be able to assess the remedial actions being implemented by the subject person in view of the breaches identified. The Remediation Directive ensures that the subject person can adhere to the AML/CFT obligations applicable. The Remediation Directive includes an obligation on the subject person to make available the following documentation:

- Ensure a review of the M&As of the subject person's customers to understand the control structure of the customer in order to properly determine the BOs of the customers and ensure that valid and unexpired documentation is collected for verification purposes at onboarding. Consequently, an updated Policies and Procedures Manual reflecting the above was requested.
- Attend training on STR obligations and provide proof of the training attended.
- Provide the FIAU with updates on any other remedial actions the subject person has undertaken or is currently undertaking.

The Directive served on the subject person 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, that customer activity is adequately understood and that reporting as necessary is being carried out.



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 subject person throughout the supervisory process was also factored in, including the subject person's commitment to remediate its failures. In particular, the Committee noted the commitment to remediate the AML/CFT failings of the subject person by noting that a remediation exercise had already taken place prior to the start of the compliance examination.

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 lapse of the appeal period or upon final determination by the Court.

Key Takeaways

- Correctly identifying and determining who a customer's BO(s) is/are is even more important for reporting purposes, specifically when in receipt of a Requests for Information, in order to ensure not only seamless data exchanges between the subject person and the FIAU, but also that correct information is made available to the FIAU. In addition, a correct determination of a customers' BOs, ensures that in a situation where the BOs are to finance a customer's activities, subject persons can correctly determine and examine how the funds will be generated and will eventually flow to the customer.
- Having large volumes of documentation on file does not prove compliance, especially if same are not thoroughly reviewed and scrutinised. Subject persons are expected to understand the contents of the documentation collected and not simply collect documentation for the sake of having these on file.
- Subject persons should not just rely on the information being provided to them by the customer and by third parties they may be relying on, but are expected to carry out their own assessment and review the nature of the business activities of their customers and any information provided by the same.
- In determining when to submit an STR, one has to keep in mind that such reporting does not need to take place at the time when the transactions are being executed (since transactions may not be suspicious at the time of execution) but that suspicion may arise later on throughout the business relationship.

12 May 2023

