



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:

20 June 2023

SUBJECT PERSON:

Ifina SICAV plc

RELEVANT ACTIVITY CARRIED OUT:

Collective Investment Scheme

SUPERVISORY ACTION:

Compliance review carried out in 2021.

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €60,141 (sixty thousand, one hundred forty-one Euro) 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 3.3, 3.3.1, 3.3.2 and 3.3.3 of the IPs;
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1(a), 3.5.3; and Regulation 5(5) and Section 3.4.1 of the IPs of the IPs;



REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Business Risk Assessment (BRA) – Regulation 5(1) of the PMLFTR and Sections 3.3, 3.3.1, 3.3.2 and 3.3.3 of the IPs.

The Company's first BRA was carried out late, specifically 3 years after the obligation came into force on the 1st of January 2018. While confirming such tardiness, the Company contended that it still had "a clear and in-depth understanding of its risk exposure and the level of customer due diligence," despite not having a BRA in place. However, the failures observed once the BRA was documented clearly outline that the Company's knowledge of its risks was also not comprehensive, and therefore the issue was not simply with documenting the BRA. Additionally, as clearly stated in the PMLFTR, the BRA should be properly documented and shall be made available to the FIAU and any other relevant authority upon demand. Furthermore, the 3 years delay meant that the Company did not have a comprehensive understanding of the threats and vulnerabilities its business was exposed to during such time as well as an understanding as to the level to which its controls effectively mitigated its risks. This thus meant that the Company could be exposed to risks where the controls are not effective, leaving it susceptible to being misused for Money Laundering and Financing of Terrorism (ML/FT) purposes.

In addition to the above, the Company's first BRA was not considered adequate due to the following reasons:

- Despite the Company's BRA having identified ML/FT threats and vulnerabilities, a quantitative approach as part of its assessment and ultimately in its final risk determination was not undertaken. This since, the BRA presented simply drew up an inventory of the risk areas i.e., "Customer Risk, Products/Service Risk, Interface Risk, Geographical Risk, Delegation/Third party Risk and Staff" and failed to comprehensively assess the extent of which these are threats and vulnerabilities for the Company. Hence, the BRA did not accurately and comprehensively take into consideration the effect the risks identified had on the subject person's business operations.
- The Company's BRA provided no rationale as to how the inherent risk rating for each risk factor and ultimately the overall results were achieved. In addition, no reference was made to the controls implemented by the Company to mitigate its ML/FT risk exposure, instead an attributed final control rating was stated, this without providing any rationale behind its determination.
- The BRA also failed to outline potential ML/FT risks emanating from a significant risk that the company was exposed to, i.e., outsourcing. This since, despite the Company's exposure from outsourcing a significant part of its AML/CFT requirements, the Company did not keep a written record of any assessment undertaken, thus automatically disabling it from understanding the ML/FT risks exposure from such factor. As a result, the BRA also failed to mention any controls undertaken to address the risks from such risk.

Finally, the Committee positively acknowledged the Company's statement that the Company was amending its BRA to be inclusive of additional guidance issued by the FIAU throughout the years and in line with the recommendations made by the FIAU as part of the 2021 compliance examination.

Customer Risk Assessment (CRA) & Customer Acceptance Policy (CAP) - Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1(a),3.5.3 and Regulation 5(5) and Section 3.4.1 of the IPs

During the compliance examination, various shortcomings were noted in relation to the Company's CRA methodology, this including:

- Interface/ Delivery channel risks were not considered as part of the CRA's undertaken. The Company should have at least distinguished whether its customers were onboarded face-to-face or not.
- Inadequate assessment of the jurisdiction exposure as no rationale or methodology was noted pertaining to the understanding of the ML/FT risks tied to jurisdictions that the company was exposed to. Also, the CRA failed to consider the ML/FT exposure of its customers/Beneficial Owners (BOs) residence jurisdiction and also from where the funds generating the investments originated.
- Failure to document the methodology explaining how the final risk rating were assigned. This since no document was provided by the Company during the compliance examination nor with its representations, to explain how each factor was rated/assigned a risk rating and how the final classification of each customer was determined.

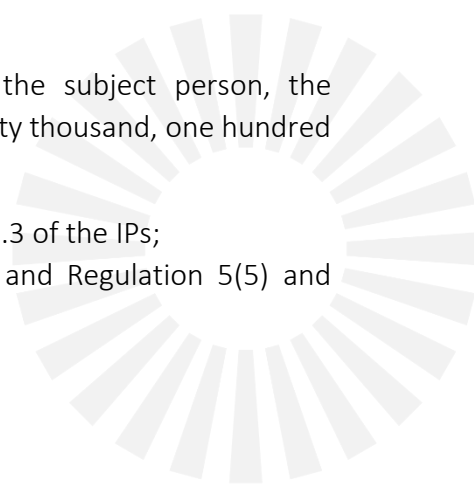
In addition to the above, for all files reviewed, the name screening provided were not dated and/or not properly documented. The Company acknowledged the findings and informed the Committee that it has since strengthened its screening process and that all customers are now being screened daily and that new customers are being screened prior to onboarding. Finally, the Company was also found to have been operating without establishing a Customer Acceptance Policy (CAP).

In its deliberations the Committee remarked that the seriousness of this failure is compounded as it persisted for a considerable period of time. However, it also acknowledged the proactive approach of the Company in affecting prompt remedial actions taken by the Company, as delineated at the time of the compliance examination.

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 €60,141 (sixty thousand, one hundred forty-one Euro) with regards to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR and Sections 3.3, 3.3.1, 3.3.2 and 3.3.3 of the IPs;
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1(a),3.5.3; and Regulation 5(5) and Section 3.4.1 of the IPs of the IPs;



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, including the importance of having a comprehensive understanding of risks has on the ability to implement effective controls in place. Consideration was also given to the extent of ML risk exposure such failures could lead to, particularly since a non-comprehensive understanding of the extent and severity of risks being exposed to could lead to ineffective implementation of controls, including also the fact that the effectiveness of the controls was not assessed. The Committee also considered the subject person's size and the impact that the subject person's failure in comprehensively understanding its risks may have had on both its operations and on the local jurisdiction. The good 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.

Under normal circumstances, a Directive would be imposed for the breaches identified in terms of Regulation 21(4)(c) of the PMLFTR, however the Committee took into consideration that the Company has since surrendered its licence. Had the Company not surrender its licence, a process to follow up on the measures necessary to ensure compliance with the local AML/CFT legislative provisions, both in relation to the failures for which the Company has been found in breach (as relayed above), as well as on the remedial actions that the Company would have initiated.

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:

- Having a comprehensive understanding of one's risks is crucial to determine in what manner and to what extent can one's business be misused and abused by money launderers to process ill gotten gains. Determining both the weaknesses that may be exploited for ML/FT purposes as well as the external elements that seek to exploit a subject person's vulnerabilities is thus indispensable. Having knowledge of these and being able to explain the same is essential, but documenting this knowledge is also necessary.



- Subject persons must ensure that the effectiveness of controls is adequately catered for in compiling their BRA. Having determined the inherent risk, the subject person has to then consider what AML/CFT measures, policies, controls and procedures it already has in place or it plans to adopt, and establish how effective these are in mitigating the inherent risk. In so doing, a subject person should not only consider regulatory guidance but, in the case of existing businesses, also their own experience with the implementation of the measures, policies, controls and procedures the subject person may already have in place (e.g., internal audit reports, compliance reports and incidents that may have already led to supervisory action). It is important to note that the effectiveness of one's measures will leave the inherent risk unchanged; independently of how effective a mitigating measure may be, a high-risk situation will remain high risk.
- In compiling their BRA, subject persons have to also consider whether there are additional risk factors that would need to be considered. One example would be outsourcing; that is, delegating the implementation of parts of one's AML/CFT measures, policies, controls, and procedures to a third-party service provider. Doing so introduces an additional variable since the subject person will be dependent on the service provider's reliability and quality of work to obtain the necessary information on which to base its decisions, including information that may influence the subject person's risk assessment and changes thereto. Such ML/FT risks are essential to ensuring a sound and adequate BRA.
- 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.
- As part of the measures, policies, controls and procedures that the subject person is to implement, it is especially important that it adopts and applies a CAP. This policy is to provide a description, with non-exhaustive examples, of the type of customers that are likely to pose a higher than average risk of ML/FT; the risk indicators that will lead to a business relationship or an occasional transaction being considered as presenting a low, medium or high risk of ML/FT; the level of CDD measures, including ongoing monitoring to be applied in their relation; and under what circumstances the subject person will decline to service someone.

20 June 2023