



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

This Notice provides select information from the FIAU's decision imposing the respective administrative penalties and is not a reproduction of the actual decision.

### **DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

15 November 2023

### **RELEVANT ACTIVITY CARRIED OUT:**

Trustees & Fiduciaries

### **SUPERVISORY ACTION:**

Targeted compliance review carried out in 2022.

### **DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:**

Administrative Penalty of €15,000 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Regulation 15(4) of the PMLFTR 2008 and Regulation 15(1) of the PMLFTR 2017 (which is still applicable to date), Section 6.3 of the Implementing Procedures Part I (IPs), which were in force from 2011 till 2019, and Section 5.4 of the IPs 2021. Also, Regulation 15(6) of the PMLFTR 2008 and Regulation 15(3) of the PMLFTR 2017 (which is still applicable to date), Section 6.4 of the IPs, which were in force from 2011 till 2019, and Section 5.5 of the IPs 2021.

### **REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

Failure to raise an Internal Report and eventually externalise with the FIAU through and STR/SAR

#### *Background information*

The FIAU noted that the Subject Person (SP) had been offering fiduciary services to Mr Y, being the beneficial Owner (BO) of a local company (Company X) since its inception in 2017. The SP advised the FIAU that it had never made any form of communication (neither written nor verbal) with the BO, however the BO was being represented by another individual (Mr Z). In fact, Mr Y instructed Mr Z to engage the SP to incorporate Company X and hold its shares under fiduciary.

The SP was aware that Company X was incorporated with the sole purpose of acquiring high value property amounting to ca. € 2 million, which property was already in the process of being acquired by another company (Company U – directly owned by the same BO Mr Y) and this through a promise of sale agreement. The SP was also aware that just a few months later, Company U's rights and obligations tied with the promise of sale agreement were assigned to Company X by means of an assignment agreement. Despite the assignment, the SP was aware that the initial purchaser was still to fund the purchase of the respective properties, this since the BO for both Company X (through fiduciary) and Company U (directly) was Mr Y.

### **Red Flags**

While there may indeed be a business rationale for such assignments, the ensuing red flags created concerns that should have been carefully assessed by the SP.

- Just after a few months from the start of the business relationship, the SP was aware of serious adverse media reports which confirmed that the BO (Mr Y) had serious links to ML crimes, including that the individual was being prosecuted on such grounds.
- Prior to terminating the business relationship with the customer, the SP was also aware of a freezing order against all the assets held by the BO, specifically including Company U, however Company X was not included as part of the order. Meaning had the high value property of ca. 2 million remained assets of Company U and not been assigned to Company X, this property would have been frozen too.
- The complexity of the structure being created, as well as the non-capture of the assets through the freezing order happening in a time close to the introduction of the BO register.

Hence, the SP was in a unique position to gain a comprehensive understanding on the transactions and activity of the BO vis-à-vis the adverse media and freezing order. This in so far that it was aware of the suspicious indicators that create significant cause for concern. In this case the red flags highlighted above were alarming in isolation. These indicators should have prompted the SP to retrospectively examine the history of the business relationship and conduct further investigation. Indeed, had this been the case the SP would have certainly linked the risks behind the creation of Company X and the assets held not being captured by the freezing order.

While it is true that red flags may not always be overt and apparent when considered in isolation, such as the need to incorporate a company on a fiduciary basis and engaging in large complex transactions. However, these indicators accumulate over time, becoming evident when examining the sequence of activities. The cessation of the property purchase through Company U, the subsequent incorporation of Company X through fiduciary services to acquire the same property, and the timing of these events in relation to the emergence of adverse media, the introduction of the BO register and the eventual freezing order, collectively raise significant concerns. Indeed, had the SP understood the implications of all this, it would undoubtedly have led it to submit an internal report and subsequently report the same to the FIAU.

Worryingly, the SP in its Representations confirmed that the red flags “have in actual fact been identified and assessed.” Which assessment according to the SP did not merit further investigation, let alone the need to file an SAR/STR to the FIAU. This conclusion by the SP further aggravates the Committee’s concern given that the SP was fully aware of the potential ML risks linked with the individual/ company it was servicing, yet still failed to adhere to its Reporting Obligations as a SP. The SP was also fully aware of the suspicious chain of events listed above and decided to make the necessary arrangements to terminate the business relationship with the BO due to the identified ML crimes. Notwithstanding the SP did not see any reason to raise an internal report and eventually externalise the same through an SAR/STR to the FIAU.

#### **ADMINISTRATIVE MEASURES TAKEN BY THE FIAU’S COMPLIANCE MONITORING COMMITTEE (CMC):**

After taking into consideration the breaches committed by the SP, the Committee remains concerned about the degree and extent of the SP’s lack of adherence and regard to its AML/CFT obligations. The Committee decided to impose an administrative penalty of fifteen thousand Euro (**€15,000**) for the serious breaches identified in relation to:

- Applying ineffective internal reporting procedures as required in terms of Regulation 15(4) of the PMLFTR 2008 and Regulation 15 (1) of the PMLFTR 2017 (which is still applicable to date), Section 6.3 of the IPs, which were in force from 2011 till 2019, and Section 5.4 of the IPs 2021. The SP was also found in breach for failing to submit an SAR/STR to the FIAU in terms of Regulation 15(6) of the PMLFTR 2008 and Regulation 15(3) of the PMLFTR 2017 (which is still applicable to date), Section 6.4 of the IPs, which were in force from 2011 till 2019, and Section 5.5 of the IPs 2021.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations and the good level of cooperation throughout the process. Also, the nature and size of the SP’s operations (minimal activity undertaken by the SP) and the overall impact that the AML/CFT shortcomings of the SP had or could have had both on its own operations and on the local jurisdiction in terms of risks. The seriousness of the breaches identified together with their occurrence were also considered.

#### **Key Take aways:**

- SPs should always keep in mind Section 3.2.3 of the IPs Part I when analysing the risk one is exposed to as a result of providing a given product or service. Particular care should be given to products or services that inherently provide or facilitate anonymity, thus allowing the customer or the beneficial owner to remain anonymous or facilitate hiding their identity. Hence, products like nominee or omnibus accounts, and fiduciary and trustee services are to be considered as presenting a higher risk of ML/FT than other products or services. Also, the ability of a third party to give instructions, even though not a party to the business relationship, should also be factored in.



- Section 3.5.1(a) Risk Factors (a) Reputation of the IPs Part I requires subject persons to consider whether a customer or its beneficial owner has been the subject of adverse reports linking him/her to crime (especially financial crimes) and/or terrorism. The absence of an arraignment or a conviction should not be automatically taken to mean that any adverse reports can be ignored. Subject persons need also to consider what is known about a (prospective) customer and its beneficial owner through official means (e.g., criminal convictions, asset seizures, sanctions, etc.), as well as internally through previous dealings with the same. Where such information gives rise to suspicion of ML/FT, subject persons are reminded of their obligation to report to the FIAU.
  
- The internal reporting procedures of a subject person have to clearly set out the steps to be followed when an employee of the subject person becomes aware of any information or matter that in his opinion gives rise to knowledge or suspicion that a person or a transaction is connected to ML/FT. After considering the internal report and all the necessary documentation, when the MLRO or the designated employee determines that the subject person: (a) knows; (b) suspects; or (c) has reasonable grounds to suspect that:
  - o a transaction, including attempted transactions, may be related to ML/FT; or
  - o a person may have been, is or may be connected with ML/FT; or
  - o ML/FT has been, is being or may be committed or attempted,

the MLRO must file an STR with the FIAU. Subject persons are reminded that the threshold for filing an SAR/STR is based on “reasonable suspicion” meaning that SPs need not have definite evidence of a crime, rather if SPs have reasonable belief or suspicion that a transaction or activity is connected to illegal or suspicious of potential ML/FT activity, they are obligated to report it according to the Internal and External Reporting Obligations outlined under Section 5.4 & 5.5 of the IPs part I. In the case at hand, the red flags identified when viewed in isolation, and even worse when viewed together, raise serious and reasonable suspicion of ML and thus required the need to raise an internal report and eventually externalise to the FIAU through filing an SAR/STR.

**15 November 2023**

