



Administrative Measure Publication Notice

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The 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:

12th December 2023

RELEVANT ACTIVITY CARRIED OUT:

Insurance Undertakings

SUPERVISORY ACTION:

Off-site compliance examination carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Remediation 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 Section 3.3.1 & 3.3.3 of the Implementing Procedures (IPs) Part I.
- Regulation 5(5)(a) of the PMLFTR and Sections 3.5.1, 3.5.1(a) and 3.5.3 of the IPs.
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Business Risk Assessment (BRA) – Regulation 5(1) of the PMLFTR and Section 3.3.1 & 3.3.3 of the IPs

The Company was found to have documented its first BRA over 1.6 years from when the obligation came into force back in January 2018. Shortcomings were also identified to the BRA document made available by the Company during the examination. Mainly since it included no evidence to show that the assessment of ML/FT threats and vulnerabilities and effectiveness of controls were based on quantitative data (e.g. the number of customers in each risk category, the various jurisdictions that the Company deals, transaction volume, etc). Notwithstanding, given the nature of the services it was offering, the Company portrayed a good sense of the risks that were involved in the business. Also, the majority of its customer base were insurance policies pledged against bank loans and therefore pose a lower risk of being misused for financial crime purposes. Finally, the proactive approach taken by the Company in updating subsequent BRAs, which remediated most of the deficiencies associated with the former BRA methodology, was positively acknowledged.

Customer Risk Assessment (CRA) – Regulation 5(5)(a) and Regulation 8.1 of the PMLFTR and Sections 3.5.7, 3.5.1(a) and 3.5.3 of the IPs

The examination identified shortcomings in the Company's CRA procedure and methodology adopted by the Company prior to April 2019, this since, rather than being based on the 4 risk pillars, focused solely on product risk ('level term', 'decreasing term' and 'protection plan'). Hence, for a significant period of time, the Company's CRA methodology failed to consider the risks pertaining to the interface risk, customer risk and geographical risk factors.

However, prior to the examination in 2021, the Company had already undertaken a self-remediation exercise and implemented a new CRA Methodology (post April 2019). No findings were identified to the newly adopted methodology. Also, the Company had already re-assessed most of its customers through the newly adopted methodology. Finally, during the oral hearing held by the Company with the FIAU's Committee in 2023, the Company confirmed that all of its customers have been successfully migrated and risk assessed based on the newly adopted methodology.

Purpose & Intended Nature of the Business Relationship (P&IN) – Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs Part I

For only 1 file, the Company was found to have failed to collect the required information and/or documentation to account for the Customer's Source of Wealth (SoW) and Source of Funds (SoF). This since, back in 2019, the customer initiated a '5-year Life Insurance Policy' and paid a lumpsum premium of €15,000 (via cheque originating from the client's own account). However, the only information collected by the Company to account for SoW/SoF was through its onboarding form which stated that the customer was a "Housewife with and annual income of €10,000".

While relying on funds from the customer's own bank account provides some assurance, it does not inherently establish the legitimacy of the fund's origin. Hence, the Company was required to query how the housewife was obtaining an annual income of €10,000 and acquire supporting information and/or documentation to confirm the legitimate origin of the €15,000 lumpsum.



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

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, as well as the extent of ML/FT risk such failures could lead to. The Committee also considered the Company's size, that this is not a large institution as well as the impact that the subject person's failures may have had on both its operations and on the local jurisdiction. The good level of cooperation portrayed by the Company throughout the supervisory process was also factored in, including the Company's commitment to remediate its failures, and its statements that it had already commenced working on some action points. This was also evidenced through documentation provided as well as explained by Company representatives during their oral hearing with the Committee. Key mitigating factors included:

- The Company operates in the insurance sector which according to the current NRA and SNRA in force is deemed as posing a low risk, this especially due to the long term and low return on investment, which renders the insurance sector less attractive to be exploited for ML/FT purposes. Here the Committee clarifies that this does not automatically render all products pertaining to the insurance sector as low risk;
- 90% of the Company's customers are all Maltese;
- More than 50% of its policies were all policies pledged against a home loan, thus are secured low-risk products;
- The sample of files reviewed all related to relatively low premia i.e. small amounts and no major issues were identified as encompassed in the above, thus the adverse impact resulting from some of the breaches persisting over a period of time is relatively contained.

After taking into consideration the findings detailed above, the Committee decided to serve the Company with a Remediation Directive in terms of its powers under Regulation 21(4)(c) of the PMLFTR, specifically addressing the following breaches:

- Regulation 5(1) of the PMLFTR and Section 3.3.1 and 3.3.3 of the IPs;
- Regulation 5(5)(a) and Regulation 8.1 of the PMLFTR and Sections 3.5.7, 3.5. 1(a) and 3.5.3 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs;

The aim of the Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and that it becomes fully compliant with the obligations imposed in terms of the PMLFTR and the FIAU's IPs, as well as perform any required follow-up measures in relation to the Company's adherence to its AML/CFT legal obligations. This also in line with the Company's commitment to enhance its AML/CFT measures. In virtue of this Directive, the Company is expected indicate the remedial actions that it has carried out and implemented since the compliance examination to ensure compliance following the identified breaches, this including but not limited to:

- Ensure that the upcoming BRA is updated in line with the shortcomings identified.
- Ensuring that the customers' CRAs are reviewed on an ongoing basis, and that any new customers onboarded are subject to a risk assessment prior to the establishment of the business relationship in lien with AML/CFT requirements.

The Directive served on the Company shall ascertain that sufficient and tangible progress is achieved on the adoption and implementation of all the procedures and measures referred to above. In the event that the requested information and/or supporting documentation are not made available within the stipulated timeframes, or the Company falls short of its obligations in terms of this Directive, the Company's default will be communicated to the Committee for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21(1) of the PMLFTR.

Key Take-aways

- Although the Insurance Sector is categorised as posing a lower risk in terms of the SNRA and NRA, and this is in fact not the preferred product through which money launderers try to launder their ill-gotten gains, one must always remain vigilant in understanding the customers being serviced and in monitoring the relationship with the same. Particular care must be given to the source that is funding the premia paid, particularly where this is of considerable amount. One should also monitor for additional add-ons or lump sums that may happen throughout the relationship; in such instances one should be cautious to understand the source funding the same. Sudden surrender of policies without a justified explanation should also be carefully assessed.
- With regards to the BRA, it is not sufficient for subject persons to merely draw up an inventory of the threats or vulnerabilities, but it also has to consider how numerous these threats or vulnerabilities are. Whereby said BRA should be based on both qualitative and quantitative elements and most importantly inclusive of the rationale behind the scoring which should be duly documented.
- The BRA should, amongst others, consider the ML/FT exposure emanating from different products offered, this by identifying the number of customers/ volume of transactions across each product, this to determine the extent of exposure from specific products.
- In terms of timing, the CRA is to be carried out whenever a new business relationship is to be entered into or an occasional transaction is to be conducted. Complying with this requirement is essential as subject persons will be able to formulate comprehensive risk profiles for their customers and be able to adequately determine the proper level of CDD measures to be applied.
- In establishing their customers' business and risk profiles, subject persons must, *inter alia*, obtain information, and where necessary, supporting documentation, regarding the activities from which the customers derived their wealth, as well as the expected sources and origin of the funds to be used throughout the business relationship. If there is a need to collect SOW/SOF documentation, subject persons should not only seek to acquire such documents, but also scrutinise them to ensure that they adequately explain the customers' SOW/SOF and make sense in the broader context of the customers' profiles.



12th December 2023