Administrative Penalty Publication Notice

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

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

02 February 2021

RELEVANT ACTIVITY CARRIED OUT:

Remote Gaming Operator

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2018

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €41,284 and Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISIONS BREACHED:

- Regulations 5(1) of the PMLFTR and Sections 2.1.2 and 2.2.2 of the Implementing Procedures Part II Remote Gaming Sector
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.1 of the Implementing Procedures Part II Remote Gaming Sector
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.3 of the Implementing Procedures Part II Remote Gaming Sector
- Regulations 11(1)(b) and 11(9) of the PMLFTR, and Sections 3.2(iii) and 3.3.2 of the Implementing Procedures Remote Gaming Sector Part II

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

<u>Regulation 5(1) of the PMLFTR and Sections 2.1.2 and 2.2.2 of the Implementing Procedures Remote Gaming Sector</u>

The compliance exercise revealed that at the time of the onsite examination the Company's Business Risk Assessment (BRA) did not provide adequate measures regarding the risk assessment of the jurisdictions where the Company's business activity was taking place. In particular, the BRA stipulated that the geographical risk varies according to the country of registration based on the lists published

by the Financial Action Task Force (FATF). The BRA also identified five geographical risk scenarios that might pose a risk to the Company, however, without having performed any jurisdictional assessment for the countries identified in such scenarios. The Company also provided a list of targeted jurisdictions. Nonetheless, these jurisdictions were neither referred to in the BRA nor being risk assessed.

The Compliance Monitoring Committee (Committee) noted that the abovementioned findings indicated that the Company had failed to appropriately identify the geographical risk that it was exposed to through its operations, the risks posed by clients connected with one or more of these jurisdictions, and the funds originating from or channelled to such jurisdictions. Whilst the BRA indeed referred to FATF lists, this only covered part of the geographical risk understanding and other important areas such as level of corruption, political instability, prevalent crimes and other similar factors in the country being assessed were not being taken into consideration.

The Committee determined that since the Company did not conduct a jurisdictional risk assessment of the countries it was exposed to, the BRA was deemed to lack one important element, the absence of which distorted the results of the BRA and the necessary mitigating measures to be applied.

The Committee also observed that in its representations, the Company declared that its BRA would be updated to tackle the shortcomings related with the jurisdictional risk assessments. However, no jurisdictional risk assessment could be found within the BRA submitted with the 2019 Risk Evaluation Questionnaire (REQ).[1] In fact, the Company submitted the same BRA which was provided during the onsite examination, despite its claims to update the same. Thus, the Committee did not have any evidence of the alleged remedial actions taken by the Company.

As a result, the Committee determined that the Company was in breach of its obligations in terms of Regulation 5(1) of the PMLFTR and Sections 2.1.2 and 2.2.2 of the Implementing Procedures Part II Remote Sector in view of its failure to take into consideration the geographical risk factor when performing the BRA.

<u>Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.3 of the Implementing Procedures Part II Remote Gaming Sector</u>

The Committee noted that the Company had failed to implement an effective methodology regarding its Customer Risk Assessment (CRA). More specifically, the Committee examined the information provided for the 42 clients reviewed during the onsite examination and observed that 10 highest life deposit players with transactions ranging between €1,369,485.69 and €21,699,170.49 were rated as low risk, even though these did indeed represent a heightened risk. The Committee took note of the volume of the deposits made by the players, the payment methods utilised, the products offered, and the occupation of the players; risk factors which when considered in a holistic manner should have alerted the Company's compliance officials to increase the risk rating initially assigned. The Committee therefore concluded that whilst at the start of the relationship, it could have been possible for the Company to arrive at the conclusion that such relationships were of a low risk, on the basis of the ongoing monitoring that should have been performed, the Committee believed that such a low risk rating should have been revised and a high risk rating assigned. These incongruencies in relation to the risk assigned, together with the information the Company had available shed light on the ineffectiveness of the Company's CRA measures.

[1] The Company failed to upload the BRA with the 2020 REQ.

Furthermore, several additional insufficiencies were observed with regards to the information and data being collected in order to risk assess customers in an appropriate manner. While the Committee considered that the information collected from governmental open sources of a number of countries is reliable and can be used for the purpose of risk assessing customers;, the same cannot be said for the websites which the Company was referring to for the purposes of collecting information. In fact, the Committee noted that the low risk rating of a poker player was substantiated through data collected from an online poker players' database. Whilst such a database provides certain information on poker players (which contains only indicative and not always trustworthy information), this information should have only been used for indicative purposes and not as the basis for classifying the customer as low risk. In particular when taking into consideration the payment methods used by the player and the volume of deposits carried out during the business relationship. These facts should have prompted he Company to assign a higher risk rating to such player.

In its representations, the Company counter argued that it exercised its right of discretion in risk assessing and rating its clients in line with Article 26(3)(e) of the PMLA and Section 2.1 of the Implementing Procedures Part II. Nonetheless, the Committee stated that it was not contradicting the Company's right to apply discretion, but rather the methodology utilised to ensure that the information on customers is factored into the Company's CRA and updated in a manner which justifies the player's risk ratings.

Therefore, the Committee concluded that the Company was in breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.3 of the Implementing Procedures Part II Remote Gaming Sector.

<u>Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.1 of the Implementing Procedures Part II Remote Gaming Sector</u>

During the onsite examination, the Company did not have a Customer Acceptance Policy (CAP) in place. Instead, it referred to the Terms and Conditions of its website, which specified that a number of criteria should be met in order for the client to be accepted by the Company. Consequently, in its representations the Company claimed that the content which was supposed to be within the CAP was covered in its AML/CFT Manual.

The Committee determined that the Terms and Conditions of the Company's website were not sufficient to constitute a CAP. Rather, the Terms and Conditions referred to the legal age of gambling and included a list of prohibited jurisdictions. Moreover, the Company's AML/CFT Manual addressed the onboarding and screening procedures of clients, rather than laid down the aspects that are supposed to be covered by a CAP (such as a description of the clients who may be considered to pose a higher risk, the identification of risk factors and the circumstances under which a business relationship may be declined, and so forth).

Consequently, the Committee decided that the Company breached Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.1 of the Implementing Procedures Part II Remote Gaming Sector.

<u>Regulations 11(1)(b) and 11(9) of the PMLFTR and Sections 3.2(iii) and 3.3.2 of the Implementing Procedures Remote Gaming Sector Part II</u>

During the onsite examination, it transpired that while the Company was checking the source of wealth/source of funds (SoW/SoF) information of its clients through open source databases (where same would be available in view of the transparency and disclosure requirements of certain countries), it failed to evaluate such information on a risk sensitive basis and to obtain additional and more reliable information and documentation when necessary. Furthermore, the generic explanations

portrayed in the Company's AML/CFT Manual contributed to the Company's failure to carry out the necessary EDD measures.

The abovementioned shortcomings became evident through the examination of the player files. The Committee observed that the Company had failed to carry out the necessary EDD checks on 10 player files, even though the Company had sufficient and clear information at its disposal through the business relationship with its customers (this failure is independent of the issues observed in the CRA), which should have led the Company to assign a high risk rating and to subsequently perform EDD, ie: collecting more evidence on the customers' SoW and SoF. It was also noted that whilst the Company had collected information through open sources regarding the SoW/SoF of these players, the voluminous amounts deposited, the payment methods utilised by the players and the generic information on the occupation of these players indicated that EDD measures were necessary in order to verify the SoW/SoF of such clients. Hence, whilst the information acquired through governmental open sources may have been considered reliable at the start of a business relationship (for customers where such government sources would be available), additional EDD checks were required as a result of the aforementioned risk factors.

Additional shortcomings in the Company's methodology in relation to EDD procedures were also detected in the examination of the files of players assigned a high-risk rating. In one particular file, the Committee observed that the player who was a night porter, had deposited approximately EUR 1,345,000 with the Company, using higher risk payment methods. Although the player was rated as high risk by the Company, no EDD measures were performed on the same player.

In addition, the Committee noted that there were shortcomings in the Company's implemented EDD policies and procedures, which in turn had an impact on the quality and the level of the EDD performed. Indeed, the Company was highly dependent on the information provided by a particular online open source to justify the collection of SoF information by poker players, as already outlined in the section dealing with CRA. In this regard, the Committee remarked that the Company should be cautious on how dependent it is on such websites and that while the website in question gives some information on customers and their SoF, the Company is required to ensure that more reliable information is obtained in particular for higher risk situations. The Company did not carry out EDD measures through the collation of additional information and via the verification of that information from multiple and reliable third party sources or did not perform any EDD screening at all.

Consequently, the Committee decided that the Company was in breach of its obligations in terms of Regulations 11(1)(b) and 11(9) of the PMLFTR and Sections 3.2(iii) and 3.3.2 of the Implementing Procedures Remote Gaming Sector Part II.

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

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of forty-one thousand, two hundred and eighty four Euro (€41,284) with regard to the breaches identified in relation to:

- Regulations 5(1) of the PMLFTR and Sections 2.1.2 and 2.2.2 of the Implementing Procedures Part II Remote Gaming Sector
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.1 of the Implementing Procedures Part II Remote Gaming Sector

- Regulation 5(5)(a)(ii) of the PMLFTR and Section 2.1.3 of the Implementing Procedures Part II Remote Gaming Sector
- Regulations 11(1)(b) and 11(9) of the PMLFTR, and Sections 3.2(iii) and 3.3.2 of the Implementing Procedures Remote Gaming Sector Part II

In terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Remediation Directive in order to make sure that the Company remediates the breaches set out above and that the Company has the necessary controls, measures, policies and procedures in line with its AML/CFT obligations. The Committee directed the Company to make available its policies and procedures as instructed below within specific timeframes –

i) A revised BRA which encompasses jurisdictional risk assessments carried out on the countries which the Company is exposed to. Such assessments should follow the requirements set by the Implementing Procedures and take into account indices which assess jurisdictional risks. Following the analysis of such sources, the Company is expected to arrive at a final risk scoring, document it and be able to explain the rationale behind the risk rating;

ii) An updated CRA which recalibrates the weighting of the scores assigned to different risk factors, in accordance with the abovementioned findings. The Company must ensure that the information available is weighted in accordance with the risk parameters of the Company and its CRA, in order to ascertain that the risk being assigned is justified;

iii) A CAP, in line with the standards set by Implementing Procedures.

iv) Updated Due Diligence procedures that specify the information and the documentation which needs to be collected in relation to the customer's SoW/SoF and expected level of activity. These policies should also specify the information and documentation which will be collected through a variety of reliable sources when conducting EDD.

The Company was also directed to perform a review of all its active clients which have exceeded the EUR 2,000 threshold, to ensure that the risk assessments maintained by the Company are accurate, adequate and in accordance with the updated CRA methodology of the Company. The Company is also expected to ensure that it applies the appropriate due diligence to the player profiles, including EDD where necessary.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company, the nature and size of the Company's operations, the origin of the Company's clients, the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Subject Person's own operations and the local jurisdiction. The seriousness of the breaches identified, together with their occurrence were also taken into consideration by the Committee in determining the administrative measures imposed.

In the eventuality that the requested documentation is not made available within the stipulated timeframes, the Committee shall be informed of such default, for the possibility to take eventual action, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

09 February 2021