



## Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(1) of the Prevention of Money Laundering Act (PMLA) and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

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

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

31 July 2020

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

Accountancy/Audit Services - Individual

### **SUPERVISORY ACTION:**

On-site Compliance Review carried out in 2019

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

Administrative penalty in conjunction with 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)(a) of the PMLFTR;
- Regulation 7(1)(b) of the PMLFTR;
- Regulation 7(3) of the PMLFTR;
- Regulation 7(5) of the PMLFTR;
- Regulation 11(1) of the PMLFTR; and
- Regulation 13 of the PMLFTR and Section 5.5 of the Implementing Procedures Part I.<sup>1</sup>

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

#### Regulation 7(1)(a) of the PMLFTR

The Committee noted that the Subject Person did not verify the identity of the corporate customers involved in all of the files reviewed during the onsite examination. While identification of customers was carried out, no documentation was found verifying such identity. The representations of the Subject Person stated that all the corporate customers involved in these files were Maltese registered whose details could be verified through the Malta Business Registry (MBR). The Committee however

---

<sup>1</sup> Reference can be made to Chapter 9 of the revised Implementing Procedures Part I – as last amended July 2019

could not accept such representations in view that the Subject Person was obliged to carry out the verification of these customers before on-boarding/servicing the customer and that such records should always be maintained on file.

In view of the aforementioned shortcomings, the Committee found the Subject Person in breach of the obligations emanating from Regulation 7(1)(a) of the PMLFTR.

#### Regulation 7(1)(b) of the PMLFTR

The Committee considered that in three of the files reviewed, the Subject Person failed to adequately identify and verify the ultimate beneficial owners of the corporate customers. In two of these files, the Subject Person failed to identify the residential address of the beneficial owner whereas in another file reviewed, no verification of the identity of the ultimate beneficial owners was carried out. In the latter case, the Committee noted that even though a change in the beneficial owners was identified by the Subject Person and recorded in the client list provided to FIAU officials, identification and verification of the new ultimate beneficial owners was not carried out.

The Subject Person was therefore found in breach of Regulation 7(1)(b) of the

#### PMLFTR. Regulation 7(3) of the PMLFTR

The Committee determined that for one file, the Subject Person failed to obtain and maintain on file a written authorisation to ensure that the person acting on behalf of the customer is authorised to do so. This breach was found in three of the files reviewed. In addition, in these same files, the identity of the agents acting on behalf of the customer was not verified.

The Committee therefore found the Subject Person to be in breach of Regulation 7(3) of the

#### PMLFTR. Regulation 7(5) of the PMLFTR

The Committee noted that in three of the files reviewed, the verification of the identity of the agents and/or beneficial owners was not carried out at on-boarding but rather at a later stage. The Committee held that the delay in the customer due diligence measures could not be justified in these three files since they were not posing a 'low' risk to the Subject Person, as was in fact confirmed by the Subject Person himself through the customer risk assessment it had carried out for these three files.

The Committee hence determined that the Subject Person breached Regulation 7(5) of the PMLFTR however in view of the nature of this obligation and that the verification process, albeit late, had been carried out by the Subject Person, the Committee did not deem that a pecuniary penalty shall be imposed. Nevertheless, the breach shall still fall within the purposes of the Remediation Directive being imposed on the Subject Person.

#### Regulation 11(1) of the PMLFTR

The Committee observed that the Subject Person did identify high risk exposures emanating from the relationships being entered into with customers. However, in one of the files reviewed although the customer file was marked as high risk due to the customer originating from and having dealings with Pakistan, the Subject Person failed to apply the required enhanced due diligence measures in order to mitigate the identified risk.

The Committee positively noted the representations of the Subject Person in which this finding was admitted and that remedial action has been taken ever since this shortcoming had been identified. In

addition, the Subject Person also enhanced the Procedures Manual to better address the risks emanating from the customers being serviced.

Although the Committee welcomed the mentioned remedial actions, the Subject Person had still breached the obligation under Regulation 11(1) of the PMLFTR at the time of the compliance review and hence concluded that the Subject Person was in breach of its obligations when it failed to apply the necessary enhanced due diligence measures that would mitigate the risk involved.

#### Regulation 13 of the PMLFTR

The Committee determined that the Subject Person had serious shortcomings in relation to the obligation emanating from Regulation 13 of the PMLFTR and Section 5.5 of the Implementing Procedures Part I.<sup>2</sup> It was noted that the record keeping procedures were not in line with the obligations emanating from the PMLFTR and the Implementing Procedures Part I. In addition, even if such procedures were not sufficiently robust to completely satisfy its legal obligations, the Subject Person also failed to implement its own procedures in practice. This was evident from the fact that all of the files reviewed held minimal documentation.

In addition, the Committee also noted that the client list provided by the Subject Person prior to the commencement of the compliance review was not comprehensive and did not include all customers the Subject Person was offering services to even though the FIAU's notification letter provided very clear instructions and requested the inclusion of all customers, including those inactive. The Committee held that the seriousness of this shortcoming emanates from the disregard exhibited by the Subject Person in providing correct information to the FIAU and that such misleading information could have hindered the FIAU's supervisory functions and particular the compliance review being carried out.

In the determination of this breach, the Committee also considered that the majority of the findings identified during the compliance review related to inefficient record keeping measures maintained by the Subject Person. This was also evidenced by the Subject Person's representations in which it was stated on various occasions that the information/documentation being reported missing by the officials were archived or maintained in separate files.

In view of the aforementioned shortcomings, the Committee determined that the Subject Person breached Regulation 13 of the PMLFTR and Section 5.5 of the Implementing Procedures Part I.

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

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of eleven thousand euro (Eur11, 000) with regard to the breaches identified in relation to:

- i. Regulation 7(1)(a) of the PMLFTR;
  - ii. Regulation 7(1)(b) of the PMLFTR;
  - iii. Regulation 7(3) of the PMLFTR;
  - iv. Regulation 11(1) of the PMLFTR; and
  - v. Regulation 13 of the PMLFTR and Section 5.5 of the Implementing Procedures Part I.
-

The Committee also positively noted the remedial actions which the Subject Person is taking following the compliance review. To ensure that the breaches set out above are effectively being addressed, the Committee directed the Subject Person to implement the remedial actions highlighted in its letter of representations together with any other action which the Subject Person deems necessary to avoid repetition of any of the breaches identified by no later than 3 months from the imposition of the Directive. The remediation taken by the Subject Person included the following:

- Review of the client on-boarding form and its enhancement to be more comprehensive in order to ensure the required details and information are obtained from the customer at on- boarding;
- Established and documented a Customer Acceptance Policy;
- Implemented a software to support the screening of customers vis-à-vis their PEP status, sanctions and adverse media;
- Revised and enhanced the AML Procedures Manual;
- Remediated specific files in which findings were identified;
- Enhanced the record keeping procedures to ensure easy retrieval;
- Increased both internal and external training hours planned every year on AML matters.

The aim of the remediation directive is to direct the Subject Person to take the necessary remedial action to ensure that going forward it is in a position to adhere to the AML/CFT obligations applicable to its operations.

In determining the appropriate administrative measure to impose the CMC took into consideration the representations submitted by the Subject Person as well as the remedial actions undertaken in order to address the shortcomings identified during the compliance review. The CMC also took into consideration the nature, size and extent of the individual's operations, the overall impact of the AML/CFT shortcomings identified vis-à-vis the Subject Person's own operations and also the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also taken into consideration by the CMC in determining the administrative measures imposed.

Finally, the Subject Person has also been duly informed that in the eventuality that it fails to adhere to the above mentioned Directive within the specified deadline, the Subject Person's default shall be communicated to the Committee for its eventual actions, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

**7 August 2020**

#### **APPEAL:**

On Tuesday 1 September 2020, the FIAU was duly notified that the Subject Person, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decisions taken by the FIAU. The primary point of the appeal relates to the quantum of the administrative penalty imposed as well as the nature of the administrative measure itself. In appealing the administrative measure imposed by the FIAU, the Subject Person also challenged the breaches identified and mentioned above.

**2 September 2020**



# FIAU

## Appeal Decision Publication Notice

On Wednesday 14 April 2021, the Court of Appeal (Inferior jurisdiction) delivered its judgement in relation to the appeal that was filed by the Subject Person as communicated to the FIAU on the 1 September 2020. By means of its decision, the Court of Appeal confirmed the breaches identified and sanctioned by the FIAU. Although all the breaches were confirmed, when issuing judgement the Court took into account the extent of the services provided by the subject person and the extent and nature of the breaches identified and revised the quantum of the administrative penalty imposed by the FIAU from Eur 11,000 to Eur 1,214.

**19 April 2021**