Administrative Measure Publication Notice

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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:

29 October 2021

RELEVANT ACTIVITY CARRIED OUT:

Corporate Service Provider, Trustees & Fiduciaries

SUPERVISORY ACTION:

Targeted compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €15,000

LEGAL PROVISIONS BREACHED:

- Regulation 15(1) of the 2008 PMLFTR (Now found under Regulation 11(9) of the 2017 PMLFTR and Section 3.1.5.1 of the Implementing Procedures ("IPs")).
- Regulation 15(1) of the 2017 PMLFTR (Previously Regulation 15(4) of the 2008 PMLFTR)

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

In its deliberations, the Compliance Monitoring Committee (Committee) noted that the Company had been engaged, in virtue of a fiduciary services agreement, to hold 100% of the shareholding within a company (Customer) in August 2000 on an individual's behalf (initial beneficial owner). The Company was also appointed as director, company secretary and legal and judicial representative of the Customer.

On October 2000, the effective share transfer of the shares pertaining to the initial beneficial owner were transferred to the Company. Nonetheless, on the same date, the initial BO requested the termination of the fiduciary services agreement and the Company proceeded to enter into another fiduciary services agreement on the same date, this time with another individual (second individual / supposed new beneficial owner), to hold shares on behalf of this individual within the Customer.

The Committee observed that despite the fact that the Company was holding shares on behalf of the second individual (who was the supposed new beneficial owner of the Customer), the initial BO had at all times retained control of the Customer. In fact, the initial BO was entitled to exercise complete control over the Company without the need to refer to the Customer's directors, i.e., the Company.

The Committee considered that in its representations, the Company highlighted that the initial BO had been instructed to set up the Customer, including the setting up of a bank account, and that the supposed new BO was the business associate of the initial BO, with the individuals' ties originating from previous business relationships elsewhere. Consideration was also given to the Company's statement that the source of funds appertained to the supposed new beneficial owner and that the tax refunds were also sent directly to the Bank account of the supposed new BO, all of which according to the Company, confirm that the BO is the second individual and that the business agreement between the two is legit.

However, the Committee noted that the Company did not provide any evidence of the claims which it had made in its submissions. Neither did the Company evidence the proof of the capital injected by the supposed new BO nor provide any correspondence or agreements between the two individuals showing their intentions and relationship.

Independently of this and even if the Company had the evidence aforementioned, the true purpose for the initial BO to retain full control of the Customer after having transferred his ownership to the supposed new BO still remains questionable. The power of attorney confirmed that no one else within the Customer had power or control over the affairs of the Customer, apart from the initial BO. The receipt of tax refunds was also not deemed to be a sufficient justification for determining that the second individual was essentially the BO, without taking account of the complete control vested in the initial BO to administer the Customer and its funds.

The Committee expected the Company to query such means of doing business, yet it still opted to perform directorship services to the Customer for nineteen years albeit knowing power was vested in the initial BO who could take any action without further reference to directors. The Company proceeded with the relationship for so long without asking further questions into the setup of the Company and without understanding whether the same presented any money laundering red flags.

The Company failed to understand that this arrangement could have facilitated illicit activities and the occurrence of money laundering. In fact, the Company had not scrutinised the rationale behind this arrangement, and whether the same was legitimate, but rather it simply accepted that the parties had a business relationship that made such an arrangement a legitimate one. Aggravating matters further is the fact that the unusual arrangement between the initial BO and the supposed new BO was further confirmed through a letter dated 24 November 2016, wherein the supposed new BO requested the Company to authorise the initial BO to sign on behalf of the Customer, thus reaffirming that the arrangement was still in existence. Such a reconfirmation, yet again, did not trigger the Company to delve deeper and carry out enhanced measures to ascertain that there are no risks with such a complex arrangement.

In view of all the abovementioned considerations, the Committee concluded that the Company breached its obligations in accordance with -

- Regulation 15(1) of the 2008 PMLFTR for failure to examine with special attention, the background and purpose of the complex transaction and the unusual pattern of the same, including the fact that there was no visible economic rationale for structuring in such manner increasing thus the ML risks exposure that necessitated the taking of more enhanced measures. This obligation is now envisaged under Regulation 11(9) of the 2017 PMLFTR and Section 3.1.5.1 of the Implementing Procedures ("IPs").
- Regulation 15(1) of the 2017 PMLFTR (Previously Regulation 15(4) of the 2008 PMLFTR) for the failure to have effective internal and external reporting procedures which lead the Company to not generate any internal report on this case for further scrutiny and a determination as to whether there is suspicion that ML is taking place.

The Committee has decided that, in view of the seriousness of the failures identified, the imposition of an administrative penalty in terms of Regulation 21 of the PMLFTR is warranted. In arriving at the total amount of the administrative penalty to impose, the Committee, in addition to the specific considerations outlined above, also took into consideration the size of the Company's operations and its activities. The Committee further considered the importance and seriousness of the obligation breached. Thus, the Committee imposed a penalty of fifteen thousand Euro (€15,000) in view of the failure to abide with the legal provisions outlined above.

29 October 2021