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

This 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:

31 December 2019

RELEVANT ACTIVITY CARRIED OUT:

Financial Institution – Payment Service Provider

SUPERVISORY ACTION:

On-site Compliance Review carried out in 2018

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

The FIAU had initially imposed an administrative penalty of €156,202 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). This was revised by the Court of Appeal (Inferior Jurisdiction) to €31, 240.

LEGAL PROVISIONS BREACHED:

- Regulation 5(1) of the PMLFTR 2017
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures Part I (IPs)
- Regulation 7(1)(b) of the PMLFTR
- Regulation 7(3) of the PMLFTR
- Regulation 7(1)(a) of the PMLFTR
- Section 3.1.1.2(ii) of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs
- Regulation 11(5) of the PMLFTR and Section 3.5.3 of the IPs
- Regulation 7(2)(b) of the PMLFTR
- Regulation 7(2)(a) of the PMLFTR
- Regulation 13(1) of the PMLFTR
- Section 8.3 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

The Business Risk Assessment (BRA) - Regulation 5(1) of the PMLFTR:

The Committee noted that at the time of the compliance review, the Company did not have a BRA in place. What was even more concerning was the MLRO's lack of knowledge demonstrated during meetings held as part of the compliance review during which he stated that the Company did not require the carrying out of a BRA in view of the relatively small number of customers it services. The absence of such BRA and the responses provided by the Company's MLRO also raised concerns on the Company's regard to its AML/CFT obligations. In its deliberations, the Committee also considered the Company's admittance to this finding in its letter of representations.

Hence, following the consideration of all the above factors, the Committee found the Company to be in systematic breach of Regulation 5(1) of the PMLFTR.

Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the IPs;

The Committee noted that none of the customers serviced by the Company were risk assessed prior to the start of the business relationship. The Committee noted the Company's attempt to remediate this shortcoming as soon as the compliance review commenced, however could not fail to note that the Company had been servicing customers and facilitating transactions on their behalf for years, without knowing the risk these customers were exposing the Company to.

The Committee also considered that the Company, in preparation of the compliance review had prepared a number of jurisdiction risk assessments (carried out after the FIAU notified the Company of the compliance review and before the review actually commenced) to assess the geographical risk factor emanating from its customers. However the assessment was only of jurisdictions where the customer resided or else was a national and omitted assessments to jurisdictions it was exposed to through the activity of its customers and the flow of funds of such customers.

In view of these shortcomings, the Committee determined that the Company fell short to determine whether customers fell within the Company's risk appetite, the type of due diligence measures required and to determine whether any enhanced due diligence measures are required to mitigate any high risks identified.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the IPs.

Identification and Verification – Regulations 7(1)(a), Regulation 7(1)(b), Regulation 7(3) of the PMLFTR and Section 3.1.1.2(ii) of the IPs:

The Committee noted that the file review revealed the Company's shortcomings in relation to the identification and verification of its customers, agents and beneficial owners (BOs) as well as the Company's acceptance of such findings. The Company failed to carry out the verification of the residential address of the BOs and the agents of some of its customers. The Company also failed to verify the ownership and control structure of some of its corporate customers at the start of the relationship. In other files, such structure was never verified. In addition, some of the documentation found in the files reviewed was not certified.

Consequently, in view of the above shortcomings the Company was found in breach of its obligations in terms of Regulations 7(1)(a), Regulation 7(1)(b), Regulation 7(3) of the PMLFTR and Section 3.1.1.2(ii) of the IPs.

Purpose and Intended Nature of the business relationship - Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs:

The compliance review revealed that the Company has minimal regard to this obligation and its importance. The Committee noted that the information on the purpose and intended nature of the relationship maintained by the Company was only limited to a description of the business activity as recorded in the application form of its customers, which information was lacking both in nature and in substance. As an example, in one of the files, the only information on the activity of the customer recorded was 'online retail sales agriculture'. The Committee also noted that supervisory officials queried about further information about this customer however the answer provided by senior officials of the Company was again extremely limited..

Although the Committee noted that prior to the commencement of the compliance review, the Company tried to remediate this finding by creating the profiles of some of its customers, the Committee could not ignore the fact that the Company held business relationships with these customers for a number of years without any concrete knowledge of the activity the customers would be engaging in, the source of wealth associated with such customers, the customers' expected source of funds and the anticipated level of their turnover. Without such information, the Company could not establish adequate customer profiles which are also crucial for the Company to implement an effective ongoing monitoring programme.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs.

Politically Exposed Persons (PEPs) - Regulation 11(5) of the PMLFTR and Section 3.5.3 of the IPs:

The Committee noted that the majority of the files reviewed did not have any checks in place that would determine whether the customer and/or BOs were politically exposed or otherwise. Although the Company held a declaration as part of its procedures intended to be used in determining whether its prospective customers are PEPs, this form was not being utilised in practice by the Company.

Without establishing whether its customers were politically exposed or otherwise, the Company could not comprehensively understand the risk exposure by servicing its customers and to identify whether enhanced measures were required to mitigate the risk emanating from such relationship.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Regulation 11(5) of the PMLFTR and Section 3.5.3 of the IPs.

Ongoing Monitoring - Regulation 7(1)(d), 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the IPs:

The Committee noted that during the compliance review, the majority of the transactions reviewed by supervisory officials were not scrutinized by the Company. This even though the Company processed a

number of transactions that were of a relatively high value. The following are a few examples for which the Committee found the Company in breach of its ongoing monitoring obligations:

In one of the case files, although the Company stated that the customer used to deposit funds with the Company, the source of these funds was never obtained. The Company even ignored the significantly high value of a particular transaction which although amounting to GBP1 million, no additional information was obtained on the source and origin of funds of the transactions. The Committee was highly concerned that the Company was receiving instructions from the customer and processing payments on the customer's behalf to beneficiaries without understanding the purpose of such payments and without obtaining any information on the activity of the corporate customer these instructions were emanating from.

In another case file, the Committee noted that three transactions amounting to GBP 316,000, USD 83, 900 and GBP 2,21 million were processed by the Company without requesting any supporting documentation to the customer. The Committee noted that not only these transactions were of a significantly high value and such factor itself should have prompted the Company to scrutinize such transactions, but the values of these transactions were not even in line with the available information on the customer. In fact, in its onboarding form the customer had declared that its anticipated level of transactions would have been less than EUR 50, 000 per month, yet these three transactions processed were not in line with such information. Despite all these risk factors, the Company failed to enquire and obtain information for the scrutiny of these transactions.

In view of the serious findings identified, the Committee concluded that the Company's manual ongoing monitoring measures are inefficient, ineffective and certainly not adequate to manage the Company's ML/FT risks. –The examples above further corroborate the complete absence of effective ongoing monitoring measures.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Regulation 7(1)(d), 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the IPs.

Record Keeping - Regulation 13) of the PMLFTR and Section 5.5 of the IPs.

During the conduct of the compliance review, the provision of documentation by the Company proved to be highly inefficient. The Committee noted that the reason for this inefficiency seemed to be the Company's back office being situated in another European country. While for AML/CFT record keeping obligations, the location of the actual depository of the information and documentation can be situated in any location as allowed by law, subject persons should ensure that such record keeping arrangements do not hinder the Company from providing the required information and documentation in a timely manner upon their request. The Committee also noted that the representations submitted by the Company held additional documentation which was not provided to officials during the compliance review. This further confirms the inefficiency of the Company's record keeping measures and in retrieving the necessary documentation to be able to prove compliance with its AML/CFT obligations.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Regulation 13 of the PMLFTR and Section 5.5 of the IPs.

Internal Procedures - Section 8.3 of the IPs.

The Committee noted that the Company's Compliance Manual, dated March 2017 was in draft copy and therefore not approved by the Board of Directors. The Committee noted that the Company had been operating for years without having an AML Compliance Manual in place and although the Company in March 2017 managed to compile such Manual, this was still in draft format at the time of the compliance review.

Consequently, in view of the above shortcomings the Company was found in systematic breach of its obligations in terms of Section 8.3 of the IPs.

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

After taking into consideration the abovementioned breaches by the Company, the Committee decided to impose an administrative penalty of one hundred and fifty six thousand, two hundred and two euro (€156,202) with regards to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR 2017
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 4.1 of the Implementing Procedures Part I (IPs)
- Regulation 7(1)(b) of the PMLFTR
- Regulation 7(3) of the PMLFTR
- Regulation 7(1)(a) of the PMLFTR
- Section 3.1.1.2(ii) of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the IPs
- Regulation 11(5) of the PMLFTR and Section 3.5.3 of the IPs
- Regulation 7(2)(b) of the PMLFTR
- Regulation 7(2)(a) of the PMLFTR
- Regulation 13(1) of the PMLFTR
- Section 8.3 of the IPs

When making its decision, the Committee also took into consideration the level of cooperation exhibited by the Company during the compliance review. The size of the Company's operations was also considered. Furthermore, when deciding on the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Company. However, the Committee toko into consideration that for a number of years the Company's AML/CFT programme was highly lacking and an ineffective understanding of both its business risks and customer risks could have potentially led to the Company unknowingly facilitating ML/FT though the services it provided to customers. Financial Institutions process transactions on behalf of customers and thus are key in combatting ML/FT. With adequate and robust measures in place and with the proper investment in ongoing monitoring measures, financial institutions have the facility to monitor, review and alert the Authorities in case of suspicion for further investigation. Any vulnerability within their AML/CFT framework increases the likelihood that they and the financial system as a whole may be abused for ML/FT purposes.

Key takeaways:

- The BRA is very important in formulating actual assessment of the risks faced by subject persons, both through the consideration of experience (when available) and from an understanding of how each factor, actual or potential, could impact the risks to which the subject person is exposed to.

- The CRA is fundamental for the effective application of effective risk-based customer due diligence and monitoring. As such, risk factors must be weighted in the context of the repercussions arising from their possible occurrence and all risk criteria are to be exhaustively considered. It is also important to link all risk factors including the results of adverse media checks carried out.

- Establishing a comprehensive customer profile enables a true understanding of the customers being serviced. Having such profiles is key for enabling the application of controls at the customer level, including the ongoing monitoring of the business relationship. Without such establishment at the start of each relationship, it would be more challenging for a subject person to note any incongruencies in the activity of its customer.

- PEPs pose a high risk of ML/FT due to the position they occupy and the influence they may exercise through their prominent public function. Risks include those of being involved in corrupt practices, accepting bribes or abusing or misappropriating public funds. As such the failure to carry out checks to determine whether a customer is politically exposed or otherwise exposes a subject person to a heightened risk of ML/FT without the necessary mitigating measures being employed.

14 April 2022

APPEAL:

On the 21 January 2020, the FIAU was duly served with the Company's appeal application, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA). The Company partly appealed the decision taken by the FIAU. The main grievance put forward by the Company was that the FIAU made a wrong appreciation of the facts at hand. It stated, *inter alia*, that following receipt of the compliance review report, it suspended its operations for a period of three months, and that this fact should have been taken into consideration by the FIAU before imposing the administrative penalty. It also stated that the FIAU's statement that the obligation to have a BRA is not dependant on the Company's size is erroneous, and that it was impossible for it to implement the FIAU guidelines on institutional/business risk assessment which were published on the 2nd February 2018 by the time of the compliance review i.e. in October 2018. It submitted that for identification and verification purposes, the residential address of the BO is not necessary. It also contended that with regards to purpose and intended nature, there was no need for in-depth information, but a generic description would suffice. With regards to ongoing monitoring, it stated that there was no prohibition in the PMLFTR against the adoption of a manual system. Regarding the fact that the AML Compliance Manual was not approved by the Board of Directors, it stated that the Company has only one director and he himself was making use of such manual. Finally, it complained that the quantum of the administrative penalty would have a drastic negative impact on the Company, given its small size and the fact that it is relatively new.

Appeal Outcome:

The Court of Appeal (Inferior Jurisdiction) decided the appeal on the 6 April 2022. The Court upheld all decisions taken by the FIAU's compliance Monitoring Committee, however it regarded the administrative penalty imposed to be too high and reduced the penalty to Eur 31,240.

The Court decided inter alia, that the fact that the Company decided to suspend its operations for some time upon the communication of the findings of the FIAU, does not change the fact that at the time when the review was performed, the Company was allegedly in breach of its obligations. In addition, the Court highlighted that the Company never formally suspended its licence issued by the MFSA. Therefore, unlike what the Company alleged, it is considered a subject person even to this day. The Court held that any subsequent actions, even where the Company would not be considered any longer as a subject person, does not nullify previous wrongdoings.

Moreover, the Court noted that Regulation 5(1) of the PMLFTR as at October 2018 did not give any exemption from carrying out a BRA. The Court also noted that the guidance document 'Supervisory Guidance Paper on ML and FT Institutional/Business Risk Assessment' was published on the 2 February 2018, which gave the Company enough time to adhere to its obligations.

The Court confirmed the legal obligation as at the time of the compliance review to verify the residential address of BOs as well as persons acting on behalf of the customer.

The Court upheld the FIAU's argument that the Company used generic terms to establish the customer profile which information would not enable the Company to have full assess and evaluate the customer's business in a way as to determine whether its funds are legitimate or otherwise.

The Court stated that the FIAU disapproved the ongoing monitoring measures as applied by the Company and not of the Company's choice of such measures. The ongoing monitoring measures adopted by the Company were inefficient, ineffective and inadequate to efficiently control risks.

As regards the Company's breach in having the manual approved, the Court stated among other things that Section 8.3 of the IPs is very clear and the Company's arguments cannot exempt it from such obligation.

The Court reiterated that the nature of the breaches, including that these were carried forward for a number of years, show a serious lack of diligence and responsibility on the Company's part in the fulfilment of its obligations.

14 April 2022