Administrative Measure Publication Notice

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DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

6 May 2022

RELEVANT ACTIVITY CARRIED OUT:

Accountant, Company Service Provider – Class C

SUPERVISORY ACTION:

Targeted compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €3664 and a Remediation Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulations 7(3) and 7(5) of the PMLFTR and Section 4.3 of the Implementing Procedures (IPs)
- Regulation 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

<u>Customer Due Diligence – Authorisation to act on behalf of the customer obtained after the establishment of the business relationship - Regulations 7(3) and 7(5) of the PMLFTR and Section 4.3 of the IPs</u>

The Compliance Monitoring Committee (Committee or CMC) considered that at the time of the examination, the Subject Person had failed to provide evidence that when establishing the business relationship, proof that an individual could act on behalf of the customer had been obtained. A copy of an engagement letter identifying the individual as the representative of the customer was later provided by the Subject Person with the representations submitted. Despite this the CMC decided that it was not sufficient, as there was no reference to the individual's powers to act on behalf of the customer and the authority to act as such.

Consequently, the Committee found the Subject Person in breach of Regulations 7(3) and 7(5) of the PMLFTR and Section 4.3 of the IPs.

Purpose and Intended Nature of the Business Relationship, Enhanced Due Diligence, and Ongoing Monitoring (Transaction Scrutiny) – Regulation 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR

The Committee noted that the Subject Person had a business relationship with a corporate customer that held an asset in trust with an approximate value of €30 million. Moreover, the asset held in trust also incurred substantial costs on a yearly basis to cover running expenses. The Committee considered the high-risk elements presented within the business relationship, as indicated below, necessitated the carrying out of enhanced due diligence (EDD) on the relationship.

- The substantial value of the asset,
- The fact that the individuals involved are high net worth individuals,
- The large amounts of transactions involved in the upkeep and maintenance of the asset.

Despite these high-risk indicators, the only information that the Subject Person had on file was that the funds derived from inheritance. The Subject Person had therefore failed to gather the necessary information and documentation to understand the source that funded both the assets held in trust and the running expenses. In fact, while the subject person referred to inheritance there was no evidence to support this.

Although three copies of trust deeds showing an initial trust fund amounting to £10 each were found, these only confirmed the existence of the trust and not the source of funds/source of wealth of the assets subsequently held in trust. Indeed, it was concluded that the trust deed simply listed assets held in trust and did not indicate the source of funds. Furthermore, it only demonstrated the initial funding of £10 and not what happened thereafter.

The Committee also considered that although there was publicly available information on the beneficial owners (BOs) of the customer, this was neither provided, nor referred to by the subject person during the review and the representations. The officials reviewing the case observed that substantial information found on the high net worth individuals that were the BOs of the corporate customer, was easily found in public sources. While this information had been useful for the Committee to understand the extent of the risks involved, the Committee also noted that this information was not considered by the subject person. Therefore, it was necessary to conclude that the subject person had proceeded to onboard the customer and service them for at least two years without being aware of this information.

Moreover, although the Financial Statements of the Group pertaining to the BOs were provided with the representations, these still did not provide evidence that the customer was being funded by the Group. Furthermore, no information was found about the nature of the Group's business nor about how the funds were being generated.

Although in the representations the Subject Person outlined that the management of the asset is outsourced and the maintenance is financed by the settlors of the trust through periodic funds injection, this explanation was yet again not supported by any documentation. Obtaining documentary evidence to substantiate this statement was important in view of the substantial costs involved in the running of the asset. It was also noted that according to the customer's financial statements of 2020, at a time when the Subject Person had been appointed as director of the customer, a loss of £13.2million had been incurred. Nonetheless, no information and documentation were obtained to understand who was funding these losses and to establish a justifiable rationale for these losses.

The Committee considered that case presented the following red flags:

- The individuals involved are high net worth individuals.
- The asset held in trust was of substantial value.
- The asset incurred substantial yearly costs.
- The corporate customer was operating at a substantial loss and was potentially being funded by the settlors of the trust through the group of companies they owned.
- The subject person held no information nor documentation to ascertain the provenance of the money used to fund the asset held in trust and its upkeep and running costs and that the transactions that were taking place were funded through legitimate means.

Consequently, the failure to collect sufficient information and documentation and to conduct EDD, adversely affected the Subject Person's ability to conduct effective and efficient transaction scrutiny, and hence, the Committee found the Subject Person in breach of Regulations 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR.

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

After taking into consideration the breaches committed, the Committee concluded that the Subject Person breached the below mentioned obligations:

- Regulations 7(3) and 7(5) of the PMLFTR and Section 4.3 of the Implementing Procedures
- Regulations 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR.

Since the breach of Regulations 7(5) and 7(3) of the PMLFTR and Section 4.3 of the IPs was considered a minor breach and not serious in nature, the Committee concluded that a reprimand shall be served.

In regard to the remaining shortcomings in relation to Regulations 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR, 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 reaching its decision, the Committee took into consideration:

- The level of cooperation exhibited by the Subject Person during the review;
- The good understanding which the Subject Person had of the corporate customer's structure.
- The size of the subject person;
- The fact that the Subject Person held generic information about the customer and the asset it held;
- The failure to furnish information on the costs involved in running the asset and to substantiate that it was being funded by the Group; and
- That there could not be established risks of possible facilitation of ML/FT in view of the extensive information found online on reliable sources on the individuals involved, the inherited assets as well as the Group and the business carried out through the same.

In view of the above, the Committee decided to impose an administrative penalty of three thousand, six hundred and sixty-four euro (€3,664) for the failure to adhere to Regulations 7(1)(c), 7(1)(d), 7(2)(a), 11(1) and 11(2) of the PMLFTR.

Furthermore, the Committee served the Subject Person with a Remediation Directive, by which the Subject Person is requested to provide a set of policies and procedures containing the information and documentation being collected to establish purpose and intended nature of the business relationship and to conduct EDD. Additionally, the policies and procedures must also outline the process adopted by the Subject Person to monitor the activities of the customer and the business relationship entered into, including the transactions taking place, in an effective and efficient manner.

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 deadlines, this 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 of the PMLFTR.

Key Takeaways:

- Customers can be represented by third parties, including by their own officers and employees. It is important to ensure that these persons are duly identified and verified and that there is evidence to confirm that they can act on behalf of the customer. These measures provide reassurance to the subject person that it is in fact servicing the customer, that the relationship is well understood and that it has information on the person that is acting on behalf and in the name of the customer.
- Complex structures involving trusts, or similar arrangements or entities, should not only be well understood both in terms of the structure and the purpose behind them, but also in terms of any flow of funds or assets that is to take place to finance the activities of the customer. This includes sufficient reassurance of knowing how the funds or any other assets held in trust, and which are being eventually used for the purposes of the customer's activities, have been derived. A trust can initially be set up with only a minimal amount of funds being settled on trust and additional funds or assets added on at a later stage. Therefore, it is equally important to monitor whether the funds/assets flowing to the corporate customer following the establishment of the business relationship still make sense with what is known about the trust. Where this is not the case, additional questions should be asked to ascertain how these have been generated.
- One should ascertain that the wealth of high-net-worth individuals, as well as the source used by them to fund their activities are well understood. Online or other publicly available information can be used if they are determined to be reliable sources. However, if these are not sufficient, especially when carrying out the necessary ongoing monitoring and when reviewing specific transactions, subject persons should ensure that explanations and documentation supporting these are obtained, and that these makes economic and lawful sense. It is equally important to retain records of all the sources consulted and keep the information/documentation obtained to demonstrate that the necessary checks were carried out. It is important to bear in mind that what is not recorded cannot be said to have taken place.

12 May 2022