

Statements

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GFSC fines a licenced Insolvency Practitioner for incurring breaches of its obligations under the Proceeds of Crime Act 2015

24 Jan 24

This statement is in relation to an Insolvency Practitioner licenced by the Gibraltar Financial Services Commission (“GFSC”). The GFSC has taken sanctioning action against the Insolvency Practitioner for contraventions of the Proceeds of Crime Act 2015 (“POCA”) in the following areas:

- Section 11 – Application of Customer Due Diligence
- Section 12 – Ongoing Monitoring
- Section 20 – Politically Exposed Person (“PEP”)
- Section 25A – Risk Assessment
- Section 26(1) – Policies and Procedures
- Section 26(1A) – Independent Audit Function
- Section 27 – Training

In November 2022, the GFSC’s Anti-Money Laundering and Counter Financing of Terrorism (“AML/CFT”) Supervision team (“AML/CFT team”) conducted an onsite visit at the Insolvency Practitioner’s offices, during which the AML/CFT team reviewed a sample of client files.

The review of the sample client files established that the Insolvency Practitioner did not hold sufficient Source of Wealth information and did not verify all Ultimate Beneficial Owners. Consequently, the Insolvency Practitioner was unable to demonstrate compliance with Section 11 of POCA.

The review found that the Insolvency Practitioner had not documented any ongoing monitoring in any of the sample files reviewed and therefore did not demonstrate compliance with Section 12 of POCA.

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The review established that the Insolvency Practitioner had not documented any PEP screening within the sample client files reviewed and therefore did not display compliance with Section 20 of POCA.

The review also established that the Insolvency Practitioner had not conducted client risk assessments within the sample client files reviewed and its policies and procedures did not include a business risk assessment. The Insolvency Practitioner was unable to demonstrate compliance with Section 25A of POCA.

The review also found that the Insolvency Practitioner's policies and procedures did not sufficiently consider insolvency practitioner services throughout and did not adequately address customer due diligence, reliance and ongoing monitoring with Section 26(1) of POCA.

In addition, the review found that the Insolvency Practitioner had never had an Independent Audit Function performed on its AML/CFT practices and was consequently unable to demonstrate compliance with Section 26(1A) of POCA.

Finally, it was identified that the Insolvency Practitioner was not undertaking the appropriate AML/CFT/Counter Proliferation Financing training and was unable to demonstrate compliance with Section 27 of POCA.

Regulatory Outcome:

A Decision Notice has been issued by the GFSC imposing a financial penalty in the sum of £15,940 on the Insolvency Practitioner under the Supervisory Bodies (Powers Etc.) Regulations 2017. The Insolvency Practitioner has agreed to the sanctioning action.

The Insolvency Practitioner has since remediated its position and is working with the GFSC in ensuring that its practices and procedures meets regulatory requirements. No further action is contemplated in relation to this matter.