



FINANCIAL INTELLIGENCE ANALYSIS UNIT

# Administrative Penalty 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 (Cap. 373) and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

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 PENALTIES:**

17 May 2018

## **SUBJECT PERSON:**

Bank of Valletta P.L.C. (C2833)

## **RELEVANT FINANCIAL BUSINESS CARRIED OUT:**

Credit Institution

## **APPEALS PROCESS**

In accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), Bank of Valletta P.L.C (the Bank) appealed the respective decisions taken by the FIAU on the imposition of administrative penalties for failure by the Bank to abide with its AML/CFT obligations. By means of two separate decisions handed down on 8 November 2019, the Court of Appeal (Inferior Jurisdiction) dismissed the Bank's appeals and upheld the FIAU's decisions.

As a result, and in terms of Article 13C of the PMLA, the details of the breaches identified are being published hereunder.

## **CASE 1**

### **LEGAL PROVISION / GUIDANCE BREACHED:**

Failure by the Bank to establish a comprehensive business and risk profile for the customer, to effectively monitor the transactions that were taking place in the context of an established business relationship, including the unusual patterns of transactions that were being effected, and failure to submit a suspicious transaction report to the FIAU for reasonable grounds to suspect that the transactions were related to proceeds of crime or money laundering.

The Bank therefore breached Regulation 7(1)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) and Section 3.1.4 of Part I of the Implementing Procedures<sup>1</sup>, Regulation 7(1)(d), 7(2)(a) and Regulation 15(1) of the PMLFTR<sup>2</sup> and Section 3.1.5 of Part I of the Implementing Procedures part I<sup>3</sup> and Regulation 15(6) of the PMLFTR<sup>4</sup>.

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

The Bank held a business relationship with a customer who had informed the Bank that its economic activity was that of a factory worker and subsequently of an unemployed person. In determining the expected level of activity the Bank made use of value brackets which were deemed as being too wide and could not in anyway be related with the level of activity one would expect from someone who is a factory worker or otherwise unemployed. The Bank failed to understand that such information did not make economic sense and further failed to gather any evidence whatsoever to suggest how an individual who was first a factory worker and subsequently unemployed could dispose of such amounts. This shortcoming led the FIAU to conclude that the Bank breached Regulation 7(1)(c) of the PMLFTR and Section 3.1.4 of the Implementing Procedures.

The Bank should also have scrutinized the transactions that were carried out in the context of the established relationship with the customer. Particularly, the customer was making significant deposits of uneven amounts of money in cash, including coins, or by means of cheques (some of which were endorsed) which is not in keeping with someone in employment or otherwise unemployed. While the Bank made available a document to justify a substantial part of the funds being received by the customer, the nature of the transaction described in the said document would not usually entail multiple uneven transfer of funds being effected by means of (endorsed) cheques, coins and other cash.

Furthermore, the document available at the Bank was very limited in its contents, especially given that it did not explain how or by what means the funds were to be made available to the customer, which the Bank had also failed to enquire about. Moreover, it was noted that the amount referred to in the document was lower than the total amount of funds deposited by the customer, leaving a considerable amount unaccounted for. Thus, although the Bank was not expected to review each and every transaction that occurred throughout the business relationship, its ongoing monitoring systems should have alerted the Bank that the means how the account was being utilized by the customer was not in line with the customer's profile.

In view of the above, the FIAU determined that the Bank had failed to obtain further clarification and documentation to establish the actual source of the funds that were being deposited in the customer's accounts and to understand the rationale of the transactions being undertaken in order to ensure that the funds were originating from a legitimate source, breaching Regulation 7(1)(d) and 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures.

The FIAU also took into consideration that:

1. The conflicting information held by the Bank as to the employment status of the customer and the anticipated level of activity;

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<sup>1</sup> This obligation is now explained in Section 4.4 of the revised Implementing Procedures Part I as last amended by the FIAU on 17 July 2019

<sup>2</sup> This obligation is now imposed in terms of Regulation 11(9) of the PMLFTR as last revised on 1 January 2018.

<sup>3</sup> This obligation is now explained in Section 4.5 of the revised Implementing Procedures Part I as last amended by the FIAU on 17 July 2019

<sup>4</sup> This obligation is now imposed in terms of Regulation 15(3) of the PMLFTR as last revised on 1 January 2018. This obligation is further explained in Section 5.5 of the revised Implementing Procedures Part I as last amended by the FIAU on 17 July 2019

2. The transactions that were taking place were not in any way correlated with the available information on the customer;
3. The document made available could not justify the transactions that were taking place through the established relationship in their entirety; and
4. The document available did not explain the patterns of cash, coins and cheque deposits that were taking place, including the various amounts of cheques that were being endorsed in the name of the Bank's customer.

The above should have led the Bank to doubt the legitimacy of the transactions taking place and to subsequently submit a Suspicious Transaction Report (STR) to the FIAU. This led the FIAU to determine that the Bank also breached its obligations in terms of Regulation 15(6) of the PMLFTR.

The FIAU considered the above breaches as being of serious concern, especially given that the Bank allowed a customer to transact large sums of cash including coins and cheque deposits when such means of funding was in no way related to the established customer profile, and that it failed to submit a STR, albeit having all the evidence necessary to establish reasonable grounds to suspect that the funds may have been derived from criminal activity or that they were otherwise laundered funds.

**TOTAL VALUE OF ADMINISTRATIVE PENALTY:**

*Forty Thousand Euro (€40,000)*

**CASE 2**

**LEGAL PROVISION / GUIDANCE BREACHED:**

Focused examination on the Bank's involvement as an agent of the Investment Registration Scheme (the Scheme) and the strict obligations imposed in terms of the Investment Registration Scheme Guidance Note (the Guidance Note) issued by the FIAU as last amended on the 31 July 2014. The Bank failed to take all reasonable measures possible to establish the source of funds or assets being registered under the Scheme, breaching Paragraph 12 of the Guidance Note.

**REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE PENALTY:**

In 70% of the files reviewed by FIAU officials during a compliance review carried out in 2016, the Bank failed to take all reasonable measures possible to establish the source of funds or assets being registered under the Scheme.

As clearly outlined in the Guidance Note issued by the FIAU, acting as a registration agent for the Scheme constituted a high risk service and clearly obliged all agents to establish the source of the funds or assets being registered under the Scheme.

- The Investment Registration Scheme Regulation, 2014 (the Scheme Regulations) required registration agents to ensure that the applicant makes available documentary evidence confirming that the assets are eligible under the scheme and that such assets were held by the applicant on the applicable date. It was noted by the FIAU that for 70% of the cases reviewed, the Bank only obtained the documentation necessary to satisfy its obligations in terms of Regulation 7 of the Scheme Regulations.
- The documentation collected by the Bank, which included statement of accounts and investment valuation reports, could not be considered adequate to satisfy the Bank's obligations in terms of Paragraph 12 of the Guidance Note for 70% of the registrations reviewed. The registrations related to:

- Instances wherein the customers' registrations related to funds generated from the operation of the clients' businesses but the Bank failed to establish such connection;
- Instances whereby the Bank relied on a declaration provided by the customer's trustee in relation to the due diligence that the trustee had carried out, without however determining the source that had generated such funds/assets; and
- Instances where the Bank relied on the customers' declarations that the funds were inherited or donated funds, without substantiating such declarations with evidence such as a copy of the will or copy of the donation agreement confirming that the funds had actually been inherited/donated.

Although the FIAU acknowledges that the applicants registering assets/funds under the Scheme were all customers with which the Bank held long term business relationship, such a long term relationship could in no way exonerate the Bank from its obligations to take all reasonable measures possible to determine the source of funds. The high risks the Bank was exposed to by acting as Agent for the Scheme necessitated action by the Bank to understand the provenance of the funds or assets registered. This is even more relevant when considering the significant values of registrations made by the Bank in general, and in particular for 70% of the cases reviewed and for which the Bank was found to be in breach of Paragraph 12 of the Guidance Note.

The FIAU considered the above breaches as being of serious concern, particularly given that the Bank failed to appreciate the risks to which it was being exposed to by acting as agent to the Scheme and by failing to comprehend fully the source of the funds or assets registered under the Scheme.

**TOTAL VALUE OF ADMINISTRATIVE PENALTY FOR THE CASE 2:**

*Seventeen Thousand Five Hundred Euro (€17,500)*

**TOTAL VALUE OF ADMINISTRATIVE PENALTY FOR THE TWO CASES:**

*Fifty Seven Thousand Five Hundred Euro (€57,500)<sup>5</sup>*

14 November 2019

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<sup>5</sup> In reaching a determination on the amount of the administrative penalty imposed on the Bank for breaching its obligations under the PMLFTR and the Guidance Note, the FIAU applied the PMLFTR in force at the time that the breach was committed.