

ENFORCEMENT OUTCOME

Imposition of Administrative Penalty - PCL Management Services (Mauritius) Ltd Ref: ENF/18L2020/E1

1. Background

- 1.1. PCL Management Services (Mauritius) Ltd (the “Company”) holds a Management Licence issued by the Financial Services Commission, Mauritius (the “FSC”) on 15 November 1994.
- 1.2. In June 2020, the FSC conducted an on-site inspection at the premises of the Company. This inspection revealed that the Company was in breach of numerous statutory obligations. A deficiency letter was thus issued to the Company detailing the on-site inspection findings and requiring the Company to submit an action plan to remedy the statutory breaches. The Company responded to the deficiency letter and was required to submit periodic reports on the implementation of its remedial plan.
- 1.3. Notwithstanding the remedial plan, the matter was referred to the Enforcement Directorate of the FSC for such action, as it deems appropriate in relation to the contraventions revealed by the inspection.
- 1.4. In this regard, following an assessment of the matter, the Enforcement Directorate provided written notice to the Company, of its intention to refer the matter to the Enforcement Committee (“EC”) pursuant to section 53(1) of the FSA. The Company duly responded to the Enforcement Directorate. Subsequent to an assessment of the Company’s submissions, the matter was referred to the EC.

2. Breaches committed by the Company

- 2.1. The EC observed that the following breaches of the Financial Intelligence and Anti-Money Laundering Act (the “FIAMLA”) and the Financial Intelligence and Anti-Money Laundering Regulations 2018 (the “FIAMLR”) were committed by the Company:

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2.1.1. *Section 17 of the FIAMLA*

The Company has contravened section 17 of the FIAMLA inasmuch as it has not undertaken a risk assessment to identify, assess and understand the money laundering and terrorism financing risks in relation to its business. Such a policy document was subsequently submitted to the FSC on 08 June 2020 but during the Inspection, there was no evidence to support that the Company carried out the risk assessment.

2.1.2. *Section 17A of the FIAMLA*

In accordance with section 17A of the FIAMLA, the Company was required to establish policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorism financing which it has identified in its risk assessment. In this regard, the Company has compiled a Compliance Procedures Manual. However, as at the date of the Inspection, the Compliance Procedures Manual was not finalised and was not approved by the Company's senior management thereby resulting in a breach of section 17A (2) of the FIAMLA. However, the Compliance Procedures Manual was thereafter finalised and approved by the Company's board on 10 August 2020.

2.1.3. *Regulation 3 of the FIAMLR*

As at the Inspection, the Company had infringed regulation 3 of the FIAMLR since it had failed to take reasonable measures to ascertain and verify the identity of the beneficial owner of **[Edited for Confidentiality]**, one of its clients. Nonetheless, post Inspection, the Company has endeavoured to update its clients-related Customer Due Diligence records.

2.1.4. *Regulation 22(1) (d) of the FIAMLR*

The Company infringed regulation 22(1) (d) of the FIAMLR by failing to implement an independent audit function to review and verify compliance with, and effectiveness of the measures that it has taken to maintain compliance with the FIAMLA and the FIAMLR. Thereafter, with effect from 10 August 2020, the

Company has ratified the appointment of an external auditor to carry out this independent audit.

3. Proceedings before the EC

3.1. *Contemplated sanction*

Following assessment of the information submitted by the FSC regarding the abovementioned breaches, the EC considered that the most appropriate way to sanction the breaches committed by the Company was an administrative penalty (“AP”) pursuant to section 7(1)(c) (v) and 52(3) of the FSA.

3.2. *Calculation of the AP*

3.2.1. The FSC’s policy for imposing an AP is set out in the Administrative Penalties Regulatory Framework. In this respect, the EC has taken a five (5) - step approach to determine the appropriate level of AP to be imposed on a licensee in relation to breach(es) committed.

3.2.1.1. *Step 1: Disgorgement*

At Step 1, the EC seeks to deprive the Company of the financial benefit derived directly from the breach where it is practicable to quantify this. Based on the referral material, the EC has not identified any financial benefit that the Company has derived directly from this breach. Step 1 is therefore MUR 0.

3.2.1.2. *Step 2: Seriousness of the breach*

At Step 2, the EC determines a figure, which, in its opinion, reflects the seriousness of the breach. That figure is based on a percentage of the Company’s gross income for the duration of the breach.

The breach remained ongoing for a period of one year from 2018 to 2019. The EC considered the gross income of the Company for this period **[Edited for Confidentiality]**.

In deciding on the percentage of the gross income forming the basis of the Step 2 figure, the EC has considered the seriousness of the breach and chosen a percentage between 1% and 15%.

This range is divided into three (3) fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level:

Minor:	1- 5%
Moderate:	6 - 10%
Major:	11 -15%

In assessing the level of seriousness of the breach, the EC has taken into consideration the factors reflecting the impact and nature of the breach. In this regard, after considering all relevant circumstances of the matter, the EC has formed the opinion that the level of seriousness of this breach is Moderate. The figure under Step 2 is 8% of the gross income.

3.2.1.3. *Step 3: Mitigating and aggravating factors*

At Step 3, the EC may increase or decrease the amount of the AP arrived at after Step 2, but not including any amount disgorged at Step 1, to take into account factors that aggravate or mitigate the breaches.

Having regard to the circumstances of this matter, the EC considered the fact the duration of the breaches and the fact that these have been remedied by the Company following the Inspection as a mitigating factor. Consequently, the EC has decreased the level to 6% of the gross income.

Step 3 is therefore USD 4,950.

3.2.1.4. Step 4: Adjustment for deterrence

If the EC considers that the figure arrived at after Step 3 is insufficient to deter the Company having committed the breach, or others, from committing further or similar breaches, then the EC may increase the penalty.

The EC, however, considers that the figure at Step 3 is sufficient to act as a deterrent to the Company and others. As such, the EC has not increased the penalty at Step 4.

Step 4 is therefore maintained at USD 4,950.

3.2.1.5. Step 5: Adjustment effected if the amount of the AP would cause serious financial hardship

The EC recognises that the imposition of an AP may cause significant financial hardship to a licensee. In these circumstances, it may consider a reduction in the AP. However, the onus will be on the licensee to satisfy the EC, based on cogent and verifiable evidence, that the proposed AP may give rise to serious financial hardship.

At this stage, the EC did not consider such an adjustment to be applicable.

3.2.1.6. Amount of AP

In light of the above, the EC contemplated the imposition of an AP amounting to USD 4,950 on the Company.

4. Warning Notice under section 53(2) of the FSA and the Company's written representations

- 4.1. The EC issued a notice dated 10 November 2020 to the Company pursuant to section 53(2) of the FSA. The purpose of this notice was to inform the Company that:

- 4.1.1. The EC was contemplating to impose an AP amounting to USD 4,950 on the Company under sections 7(1) (c) (i) and 52(3) of the FSA; and
 - 4.1.2. It is entitled, as of right, to make written representations to the EC within a period of 21 days as to why it should not be subject to an AP amounting to USD 4,950.
- 4.2. The Company exercised its right to make written representations to the EC by way of letter dated 30 November 2020.

5. Findings of the EC

- 5.1. Following due consideration of the written representations of the Company, the EC observed therein that the Company requested the EC to diminish the quantum of the AP of USD 4,950 on the grounds that the financial services industry and the Company are facing testing times. However, the Company failed to satisfy the EC, with cogent and verifiable evidence, that the proposed AP would give rise to serious financial hardship.
- 5.2. Moreover, the Company did not submit explanations relating to the statutory breaches spelt out in paragraphs 5 to 9 of the EC's notice dated 10 November 2020.

6. Decision of the EC

In light of the above and based on the written representations of the Company, the EC has resolved to impose an AP amounting to USD 4,950 on the Company under sections 7(1) (c) (v) and 52(3) of the FSA.

7. Payment of the AP

- 7.1. Payment of the AP to the FSC may be effected as follows:
- MUR payment – through cheque or wire transfer; and
 - USD payment – through wire transfer.
- 7.2. Banking details of the FSC are provided in the table below:
[Edited for Confidentiality]

8. **Discount for early payment of the AP**

The attention of the Company is drawn to the Administrative Penalties Regulatory Framework, which provides for a discount on the amount of the AP to be paid by a licensee, where payment is made promptly from the date of this notice **[Edited]**.

9. **Application to the Financial Services Review Panel (the “FSRP”)**

The Company may make an application to the FSRP for a review of the above decision of the EC, within 21 days from the issue of this notice. Such an application must be made by registered post, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application must be sent, by registered post, to the FSC.

18 December 2020

This published version of the Decision Notice has been edited for formatting purposes and to remove certain confidential, sensitive or personal information.

The person to whom the decision in this Notice relates may exercise the right to seek a review by the FSRP. Any amendment, cancellation or further update pertaining to the exercise of the aforementioned right in relation to the decision in this Notice will be communicated at the appropriate time.

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