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This report is being submitted pursuant to Article 31 of the Prevention of Money Laundering Act, Chapter 373. The information disclosed in this report shall be used only in connection with investigations of money laundering activities and/or the funding of terrorism. The information disclosed in this report is for intelligence purposes only and shall not be used as evidence in any judicial proceedings and shall not be used or placed in any prosecution files. The information provided by the FIAU shall not, under any circumstances, be disseminated to another party or agency without the FIAU's prior express and written consent.

Brief overview of the facts of the case

Reference is made to Annex III of the preliminary report dated 7th April, 2016 presented to the former Commissioner of Police, which provides a brief overview of the transactions relating to the company WILLERBY TRADE INC and its beneficial owner Mr Brian TONNA that were considered by the FIAU to be sufficiently suspicious to warrant notification to the Police.

A more detailed analysis was subsequently carried out by the FIAU in terms of the powers conferred to it under Article 16(1) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) in relation to two specific suspicious transactions of €50,000 each. These transactions consisted of bank transfers carried out through the domestic bank account pertaining to WILLERBY TRADE INC, a company registered in the British Virgin Islands, in favour of a domestic bank account held in the name of Mr Keith Allen SCHEMBRI, a person who falls within the definition of a “politically exposed person” under the Prevention of Money Laundering and Funding of Terrorism Regulations in view of his appointment as Chief of Staff to the Prime Minister as from 11th March, 2013.

Following the analysis of the facts available to the FIAU, together with other information obtained by the FIAU through the powers conferred to it by law, it has been determined that sufficient information is available to conclude that a reasonable suspicion of money laundering subsists in this case.

This decision is supported by the relevant facts outlined in this report.

1.0 Details of Natural and Legal Persons Involved

- 1.1 Name and SURNAME: Keith Allen SCHEMBRI
Date of Birth: 26th July 1975
Maltese ID card: 331975M
Address: Villa Abelia, Santa Marija Gardens Unit C4,
Triq iz-Zebbug, Mellieha
- 1.2 Name and SURNAME: Brian TONNA
Date of Birth: 14th June 1964
Maltese ID card: 316764M
Address: Flat 6, Delano Flats, Triq Hurds Bank, Zonqor Point
Marsascala, MSK 1502, Malta
- 1.3 Company Name: Willerby Trade Inc
Company number: 1765606
Date of Incorporation: 19th March, 2013
Registered Address: PO Box 3136, Akara Building 24, de Castro Street,
Wickhams Cay 1, Road Town, Tortola, British Virgin Islands
Correspondence Address: Office 2, Suite 2, The Penthouse, Capital Business Centre, Entrance C, Triq taz-Zwejt, San Gwann, Malta
UBO: Brian TONNA
Directors: Giselle Yajaira OCAMPO FONSECA
Jacqueline Jasmine ALEXANDER PARRALES
Shareholder: ATC Administrators Inc.

2.0 Financial Intelligence Analysis

2.1 *Suspicious Transactions*

The FIAU is in possession of information confirming that three transactions were carried out through which the total amount of €166,831.90 was transferred to a bank account held in the name of WILLERBY TRADE INC with Pilatus Bank plc (details of this account are provided in Appendix 4.1). These three separate remittances were made by three individuals of Russian nationality, namely Ms Irina Orlova, Mr Evgeny Filibokov and Mr Viktor Vashkevich. All three payments referred to an invoice number or settlement for services provided in relation to an application for the registration under the Individual Investor Programme.

2.1.1 Invoicing

The invoices provided in support of these three transactions (Appendix 4.2) were all raised by BT INTERNATIONAL LIMITED for services it had provided, however payment for those services was made directly to WILLERBY TRADE INC, a company that is not listed as an accredited agent under the Individual Investor Programme on the Identity Malta website (<http://gov.mt/agents-list/>). BT INTERNATIONAL LIMITED and NEXIA BT, on the other hand, are included in the said list, meaning they are authorised to act as agents as illustrated in the screenshot reproduced hereunder.

It is therefore not clear why the payments made following the issuance of an invoice by BT INTERNATIONAL LIMITED were made directly by the clients of BT INTERNATIONAL LIMITED to a bank account in the name of WILLERBY TRADE INC when the services were actually provided by BT INTERNATIONAL LIMITED, as confirmed by the aforementioned invoices.

In the meantime it has been confirmed that all three individuals of Russian nationality, as well as a fourth person who was included as a dependent spouse of a main applicant, were in fact granted Maltese citizenship under the Individual Investor Programme. It was also confirmed through official channels that BT INTERNATIONAL LIMITED was the firm through which the applications of these individuals were processed.

2.1.2 Referral Agreement

The FIAU is in possession of an unsigned version of an agreement between BT INTERNATIONAL LIMITED and WILLERBY TRADE INC which states that WILLERBY TRADE INC is to receive a referral fee for every prospective client who proceeds to engage the services of BT INTERNATIONAL LIMITED in relation to the Individual Investor Programme. It is not known whether this agreement was eventually ever signed or brought into force. However it appears to set out the intended agreement between these companies.

The agreement states that the referral fee is to be calculated at 50% of the agreed fee between BT INTERNATIONAL LIMITED and the prospective client in cases where WILLERBY TRADE INC assumes an active role, and 30% should a passive role be assumed. The fact that according to this agreement WILLERBY TRADE INC is to assume the role of a referrer in relation to the Individual Investor Programme poses a number of questions as to how this would actually take place in practice, given that WILLERBY TRADE INC appears to be a shell company established in the British Virgin Islands. Moreover, the fact that the shell company is based in a tax haven raises the suspicion that this agreement clearly states that “a referral fee shall be payable to the Referrer by BT International”. This again raises the question made earlier as to why fees which are supposedly due to WILLERBY TRADE INC from BT INTERNATIONAL LIMITED, were paid directly to

WILLERBY TRADE INC by the respective clients against invoices which were issued by BT INTERNATIONAL LIMITED (a copy of this agreement is provided in Appendix 4.8).

In addition to this unsigned agreement between BT INTERNATIONAL LIMITED and WILLERBY TRADE INC, the FIAU also obtained an assignment letter signed by Mr TONNA on behalf of BT INTERNATIONAL/NEXIA BT and addressed to the Director of WILLERBY TRADE INC from the three Russian Individual Investor Programme applicants (Appendix 4.2). This assignment letter indicates that the funds originating from the aforementioned individuals are being deposited in the account belonging to WILLERBY TRADE INC in anticipation of dividends that will be paid by NEXIA BT HOLDINGS LIMITED. To note is that WILLERBY TRADE INC is not a shareholder in NEXIA BT HOLDINGS LIMITED and therefore is not owed dividends by NEXIA BT HOLDINGS LIMITED.

2.1.3 Bank account transactions

From a review of the transaction history of the bank account pertaining to WILLERBY TRADE INC, it transpires that shortly after the receipt of the funds in this account (within a period of eight months), two separate payments - both of €50,000 - were made from the said account held in the name of WILLERBY TRADE INC in favour of a bank account held in the name of Mr Keith Allen SCHEMBRI which is also held with Pilatus Bank plc (Appendix 4.3).

The bank statements of the two accounts reveal that there was little or no activity in both the account held in the name of WILLERBY TRADE INC and in the account of Mr Keith Allen SCHEMBRI prior to these transactions. Furthermore, it is evident that a portion of the same funds received in the account of WILLERBY TRADE INC as payments made for services provided for registration under the Individual Investor Programme were subsequently transferred to the personal account of Mr Keith Allen SCHEMBRI. Mr SCHEMBRI's account in fact was not used for any transactions other than the credits received from WILLERBY TRADE INC and a payment of €10,000 to his prepaid card which is also held with Pilatus Bank plc (Appendix 4.4).

It is pertinent to note that the Office of the Prime Minister has been extensively involved in the actual establishment of the Individual Investor Programme and in the promotion of the scheme in different countries. The transfer of funds originating from applicants under the scheme to the personal account of an official holding a position of trust in that same office is seen to be a suspicious transaction warranting further investigation by the Police.

2.1.4 Information to bank officials and supporting documentation

The justification provided to bank officials for these two transfers was that these consisted of the repayment of a €100,000 to WILLERBY TRADE INC, Managing Partner of Nexia BT as well as Director and sole shareholder of BT INTERNATIONAL LIMITED. The alleged purpose of this loan was "as assistance with personal finances during separation proceedings of the Borrower." A loan agreement, an assignment approval and an assignment of loan agreement dated 12th March, 2012, 12th January, 2015 and 2nd February, 2015 respectively, were presented to the bank as documentary evidence to support these transactions (Appendix 4.5).

It is known that Mr Brian TONNA did in fact enter into a deed of separation with his wife dated 13th August 2014 (copy of deed attached as Appendix 4.6). A review of the deed of separation, to-

gether with an examination of public registry searches on the individual concerned reveal that he appears to be sufficiently wealthy to handle the costs of personal separation proceedings without needing third party funding. Moreover, it should be noted that even though certain circumstances might lead to temporary liquidity problems, the figure of €100,000 seems to be much higher than what would normally be needed for a person to undertake personal proceedings in Malta.

Even more importantly, the arrangement entered into raised certain basic questions that can only be answered by the persons concerned. The first of these questions is why the repayment of a loan seemingly granted by one individual to another, unsecured, interest free and for personal reasons, required such an elaborate and costly set up involving the use of a company incorporated in the British Virgin Islands as well as another agreement which reassigned the personal debt of Mr TONNA to WILLERBY TRADE INC (Appendix 4.5).

Notwithstanding an in-depth review of several bank accounts held with different credit institutions both in the name of Mr SCHEMBRI and Mr TONNA and in the name of several companies with which they are connected, it was not possible to identify a transaction or a series of transactions through which the original loan was granted to Mr TONNA, even though it cannot be excluded that the funds might have been transferred through alternative channels or in cash. Although efforts were made to examine all potential avenues, these facts can only be determined conclusively through a investigation by a body having law enforcement powers.

2.1.5 Banking relationships

Mr TONNA is a longstanding customer of HSBC Bank (Malta) plc and Bank of Valletta plc, having established a banking relationship with both institutions as from 1995 and 2001 respectively. Given that Mr TONNA already had these well-established banking relationships at the time the account in the name of WILLERBY TRADE INC was set up with Pilatus Bank plc, the establishment of this new relationship with another bank through which very few transactions were carried out raises a number of questions.

Indeed, it is not customary behaviour for an individual to set up a new relationship with another bank when he is well served for several years by other institutions. Neither is it customary for a small bank with a very select client base whose business model centres round the provision of private banking services to foreign high net-worth individuals to be used for transactions of this nature, unless the purpose for the use of this bank was to secure a higher level of privacy and confidentiality (vide section 2.3 of this report). Furthermore, the fact that the bank account of WILLERBY TRADE INC held at Pilatus Bank plc was closed and the relationship terminated during the same period when the name of this company started to surface in local media reports following the Panama Papers revelations should also be noted and the potential reasons for such action examined. This should also be seen in the context of the fact that the account was to channel funds originating from applications of a Government investment scheme to a Government official involved in promoting the scheme internationally.

The fact that the first few transactions on the account had nothing to do with the stated purpose and intended nature of the relationship with the bank should also be reviewed.

2.2. Additional considerations

As was outlined earlier in this report, the FIAU was unable to identify a transaction or a series of transactions which could confirm that Mr SCHEMBRI did in fact lend money to Mr TONNA, raising serious doubts as to whether the transfers identified in favour of Mr SCHEMBRI could in fact constitute a repayment of a loan or whether this was a bogus loan.

In the 2010 FATF typology report on money laundering using trust and company service providers, it is clearly set out that -

Shell companies are corporate entities that are used for legitimate purposes such as to hold stock or intangible assets of another business entity. However, they can also be misused by illicit actors and have no legitimate commercial purpose. While it is arguable whether shell corporations can have appropriate application in the operations of legitimate corporate groups, they can be used by white-collar criminals in money-laundering operations, mutual-fund schemes, tax fraud and internal business fraud. To facilitate these types of schemes, shell companies may be used to generate false invoices, fictitious consultancy fees or bogus loans. Where shell companies are permitted under the corporate registration laws of a jurisdiction or where its usage is unrestricted, this may present a money laundering and financial crime vulnerability which criminals will take advantage of.

The same report establishes as one of the principal money laundering indicators -

The transfer of funds in the form of “loans” to individuals from trusts and non-bank shell companies. These non-traditional “loans” then facilitate a system of regular transfers to these corporate vehicles from the “borrowing” individuals in the form of “loan repayments”.

The set-up of the company WILLERBY TRADE INC, the jurisdiction in which it is incorporated, the registered address of the company that is used by several other offshore companies, the use of foreign directorship services, the holding of shares through a nominee company, the type of agreements the company entered into and the fact it has no employees or actual activity in the country of incorporation even though it issues invoices for actual services provided, are all indicative that it is a shell company.

Moreover, in view of the circumstances surrounding this loan agreement, it cannot be excluded that the agreement might have been drawn up more recently and backdated in order to justify the transfers to Mr SCHEMBRI. Although the FIAU is not in a position to determine these matters itself, a Police investigation could reveal the date when this document was actually drawn up, especially in the event that the computer servers of BT INTERNATIONAL LIMITED/NEXIA BT are examined. If it is determined that the date of the drawing up of the loan agreement is close to the date of its presentation to the bank as a justification for payment, then it would be much more likely that the loan is a fictitious one.

This report will not enter the merits of whether it was or was not appropriate for a loan agreement to be entered into between the Managing Partner of an audit firm and the main shareholder of a large group of companies which has been its audit client for several years. Whether it is ethical or otherwise to do so and whether this provision of services is in breach of international audit standards falls outside the scope of this report. Nonetheless, the fact that certain lines might have been crossed should still be looked into by an investigator, especially once it is evident that the two persons concerned appear to have had no qualms about compromising their professional career and the reputation of their business in order to proceed with these agreements.

2.3 Other intelligence obtained by the FIAU

Unconfirmed intelligence obtained by the FIAU reveals that Mr SCHEMBRI has a close association with Mr Seyed Ali Sadr Hasheminejad (known as Ali Sadr), who is a director and the main shareholder of Pilatus Bank plc. It is not clear whether there are business links between the two individuals but according to unconfirmed sources, there appears to be a high level of familiarity. The FIAU has also been informed that Mr SCHEMBRI took a personal interest in the licensing process of Pilatus Bank plc under the Banking Act. Nonetheless, this information could not be confirmed through official channels.

In this respect it should be noted that notwithstanding the highly suspicious nature of these transactions and the numerous requests made by the FIAU on these bank accounts, and even though there has been extensive media coverage on potential suspicious activities involving both Mr SCHEMBRI and Mr TONNA, Pilatus Bank plc has to date chosen not to file a suspicious transaction report with the FIAU.

The FIAU is also informed that Mr Seyed Ali Sadr Hasheminejad, together with other persons, is subject to a criminal investigation which is currently underway in a foreign jurisdiction for money laundering, illegal money transmission as well as other violations. Mr Seyed Ali Sadr Hasheminejad is not believed to be the main target of the investigation, however the FIAU is informed that he is one of the persons being investigated.

2.4 Information obtained from Pilatus Bank plc

According to documentation obtained by the FIAU, the account held by WILLERBY TRADE INC with Pilatus Bank was opened on 27th November 2014. The bank was informed that the business activity of the company was stated to be “consultancy/market intermediary”. This was recorded in the bank’s account-opening form.

Following the receipt of the funds in the account from the Russian individuals whose registration under the Individual Investor Programme was being processed by BT INTERNATIONAL LIMITED, the bank is known to have informed the beneficial owner of WILLERBY TRADE INC that since his activity was not in line with the established purpose of the opening of the account, he should refrain from carrying out further transactions of this nature through the said account.

The suspicious transactions referred to earlier in the report were followed by two other transfers into the account originating from an account held with Bank of Valletta plc in the name of BT INTERNATIONAL LIMITED that referred to an invoice issued by WILLERBY TRADE INC. The said inward transactions, which were effected in November 2015 and January 2016 respectively, had a total value of €583,617.72.

The FIAU is informed that the said account pertaining to WILLERBY TRADE INC was closed on 5th May 2016 following a request for closure by the client that, according to bank officials, was made on 19th April 2016. The balance held in this account (€609,830.62) was moved to a new account with Bank of Valletta plc that was opened for this purpose (Appendix 4.7). Interestingly, even though the funds originated from WILLERBY TRADE INC, the account was opened in the name of ‘Brian Tonna A/C Nexia BT Dividend’ rather than WILLERBY TRADE INC.

3 Conclusions

After having reviewed the information available to the FIAU, the following facts are considered to be of relevance in the determination as to whether a reasonable suspicion of money laundering subsists in this case:

- i) The setting up of a company (WILLERBY TRADE INC), by Mr Brian TONNA in the British Virgin Islands through the services of Mossack Fonseca Limited in which foreign director services were used and, more importantly, shares are being held in a nominee capacity by ATC ADMINISTRATORS INC on behalf of Mr TONNA. This set-up and the choice of jurisdiction reduces to a very large extent the possibility that any information on the link between Mr TONNA and the company is identified by the authorities in Malta;
- ii) The receipt of payments made directly into the bank account of WILLERBY TRADE INC for services provided by BT INTERNATIONAL LIMITED in connection with the registration of individuals under the Individual Investor Programme, when this was never meant to be the purpose for the setting up of the company and the opening of the bank account;
- iii) The receipt of funds directly from applicants under the Individual Investor Programme for services provided in relation to their application was not in line with the information provided to the bank when carrying out its customer due diligence, in particular, when obtaining information on 'the purpose and intended nature of the business relationship'. In fact the ultimate beneficial owner of the company and signatory on the account, Mr Brian TONNA, was asked by bank official to desist from carrying out other transactions of this nature;
- iv) A large portion of the funds received following the payments made into the bank account held by WILLERBY TRADE INC by three applicants of Russian nationality under the Individual Investor Programme were then transferred to the personal account of Mr Keith Allen SCHEMBRI, the Chief of Staff within the Office of the Prime Minister, an office that has been actively involved in the promotion of the scheme in several countries;
- v) These transactions were the first transactions that were processed through the bank account of WILLERBY TRADE INC, suggesting that the account was opened for this purpose. The other principal transactions in the account involved the inward transfer of funds from BT INTERNATIONAL LIMITED;
- vi) The choice of Pilatus Bank plc for these transactions was also taken into account since these transactions are not in line with the profile of the bank, as its business model is that of a private bank that mainly services high net-worth foreign individuals. The fact that both the account of WILLERBY TRADE INC and that of Mr SCHEMBRI appear to have been opened specifically to provide a platform for these transactions that is separate from their other private and commercial affairs was noted, as was the fact that the bank's main shareholder is implicated in an investigation in a foreign jurisdiction, together with the unconfirmed links between this individual and Mr SCHEMBRI;
- vii) In the event that the unsigned agreement between BT INTERNATIONAL LIMITED and WILLERBY TRADE INC was actually brought into force, funds payable to WILLERBY TRADE

INC should have derived from BT INTERNATIONAL LIMITED. Nonetheless in this case three applicants made direct payment to WILLERBY TRADE INC a BRITISH VIRGIN ISLANDS registered company whose existence was, until the revelations of the Panama Papers, largely unknown. The way in which the operation was set up and the choice of jurisdiction, in fact, ensured that there would have been little or no trace of these funds being transferred from foreign investors to Mr Keith SCHEMBRI through an offshore company. It is pertinent to note that this level of secrecy would have been harder to maintain had the transactions been carried out through the bank accounts of BT INTERNATIONAL LIMITED as per the unsigned agreement referred to earlier in this report;

viii) The documentary evidence provided to the bank to justify the payments made to Mr SCHEMBRI consisted of a loan agreement that sets out a repayment plan for a loan that had taken place. The agreement cannot be taken at face value and requires further investigation as it could potentially be a bogus loan, which is a well-known method used to camouflage kickbacks when politically exposed persons are involved. Indeed, the terms of the loan, the purpose for which the sum of €100,000 is said to have been originally loaned and the professional ties between the persons involved all indicate that additional investigations are warranted to determine whether the original payment of €100,000 was ever actually made and whether the documentation was potentially fabricated to provide a justification to the bank;

ix) The complexity of the set-up involving (1) a company registered in the British Virgin Islands, (2) the opening of an account with a private bank in Malta, (3) the engagement of foreign directors, (4) the engagement of a nominee company incorporated in Panama to hold shares on behalf of the ultimate beneficial owner, (5) the signing of a loan agreement, (6) an assignment of the loan and (7) a signed assignment approval, is disproportionately cumbersome for the repayment of what appears to have been meant to be a casual interest-free loan agreement, casting doubts on the real motivation behind the set-up and the back-to-back agreements;

x) The closure of the bank account and the transfer of the balance to a personal account of the ultimate beneficial owner of the company during the same period that there was media speculation that this company may have been used for illicit purposes was also taken into consideration.

On the basis of this information, it has been concluded that the circumstances surrounding the loan agreement merit further examination. In the event that it is discovered that Mr SCHEMBRI did actually loan a sum of money to Mr TONNA as a means of providing financial assistance during separation proceedings, the reason why the repayment of this personal debt necessitated the transfer of funds through a company registered in the British Virgin Islands (whose owners would not be able to be identified as they are kept confidential under strict secrecy laws) would need to be ascertained. It would also need to be determined why a bank account was set up with a private bank in Malta to be used for these transactions and why these transactions were carried out using a company that was meant to be operating differently.

It will also need to be determined why a portion of the fees paid for services rendered for the processing of applications under the Individual Investor Scheme was paid directly to this corporate structure in the British Virgin Islands rather than to the company that actually carried out the services in Malta.

Finally, and most importantly, an explanation will need to be provided for the fact that funds originating from the personal accounts of applicants under the scheme ended up in the personal account

of a very senior Government official within the Office of the Prime Minister after having first been transferred to the bank account of an offshore company held with a private bank.

In view of the above circumstances, the information available to the FIAU is deemed to be sufficient to conclude that a reasonable suspicion of money laundering and/or the existence of proceeds of crime subsists. It is therefore being recommended that this report be transmitted to the Police in terms of Article 31(1) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) for any action the Police may consider appropriate.

The case was presented to the Financial Analysis Committee for final determination on 17th May, 2016. After reviewing the facts of the case, the Committee resolved that the information available to the FIAU is deemed to be sufficient to conclude that a reasonable suspicion of money laundering and/or the existence of proceeds of crime subsists. It is therefore being recommended that this report be transmitted to the Police in terms of Article 31(1) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) for any action the Police may consider appropriate.