

No. Phone: 11.17.001.008.141

December 3, 2020

WITH THE HAND

Decision

Subject: Complaint against First Investment Bank Ltd (Fibank)

In continuation of the correspondence between us, in relation to the said complaint, I inform you of the following:

Facts:

The complainant's positions on Fibank Ltd:

2. According to the content of the complaint (as it is presented through letter of the complainant XXXXXX, dated August 24, 2020 Sent to Fibank Ltd and has been communicated to my Office along with its submission of his complaint/complaint on August 31, 2020), the complainant claimed that his data has been: (a) illegally shared with third parties and (b) have not been updated to present themselves as corrected.

2.1 According to the content of his letter, the complainant is currently an employee and representative of XXXXX companies (the "company"), as well and the companies XXXXXX and XXXXXX. On or about March 2020, the company wanted to change director, due to the death of XXXXX, who was director to all the above companies. The company notified Fibank Ltd that the new director from 03/03/2020, would be XXXXX. Relevant certificates have been sent. XXXXXX, acted as a director of XXXXXX and XXXXXX. Owner of XXXXX is XXXXX, an important customer of the company. XXXXX, was also the signatory (bank signatory) of the company XXXXX. That's why it should be replaced by XXXXX. The relevant changes should be approved by Fibank Ltd.

2.2 According to the complainant, there was an inexplicable delay in that concerns the approval of the relevant requests. On or about June 26, 2020, Mr complaining, he contacted his client on XXXXX. Customer, reported to XXXXX and the employees of the XXXXX company that Fibank decided not to proceed with the requests, due to the fact that the name of XXXXX was on a sanctions list. It appears that an email was sent on 26 June, 2020 from Fibank Ltd, informing XXXXX that "... it appears that Mr XXXX), representative of XXXX and XXXX, is in a Sanction List.

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of the personal

Unfortunately, we cannot keep Company's account under such circumstance...". THE complaining considers that this action on behalf of Fibank, led to infringement of data, spreading false ones information regarding his person.

2.3 XXXXXXX indicated that his name had been removed from the said list of sanctions on XXXXXXX 2020. Relevant confirmation letter from the US Treasury owned by the complainant, he had communicated by e-mail dated 29/06/2020 to Fibank Ltd, demanding that the incorrect one be corrected information. He also considers that it was Fibank Ltd's responsibility to update them information about his person. Effect of Fibank Ltd's omission, to share incorrect information with third parties (employees and the company's clientele¹). Also a consequence of the actions of Fibank and refusal to register the new manager, to also be adversely affected related to the request, companies.

Fibank Ltd's response to the complainant's allegations:

3. Fibank Ltd had initially responded with a letter dated September 16, 2020

to the complainant, rejecting the allegations contained therein

in the letter dated August 24, 2020 and filling in, how

they had every right to refuse cooperation with him. They also added that

they reported nothing more and nothing less than they knew

at the time, that is, it appeared that his name was on a list

sanctions.

3.1 Following a letter from my Office, Fibank Ltd further provided

clarifications on October 20 and 21, 2020, stating that after the request

of the complainant to be added as an authorized signatory, proceeded to

due research in relation to his name. The result of the research that

conducted through LexisNexis (which has been submitted and is dated 26

June 2020), contained the name of the complainant. Among the information

which contained the result, were also the following:

- Last Updated – XXXXX, 2020

- XXXXX was sanctioned by the Ministry of Strategy and Finance of South Korea

- Nature (Cause): May be subject to sanctions pursuant to the conditions imposed by the U.S. Department of the Treasury (Treasury) Office of Foreign Assets Control (OFAC), or subject to a sanction, restriction or partial denial pursuant to the conditions imposed by the U.S. Department of States (STATE) or Federal agency of the U.S. Government.

- Effect: If you think you have a potential match with an OFAC listing, please visit the following section of OFAC's website for guidance.... For all others prohibitions and restrictions, see the agency note in the Additional Comments field to ascertain the extent or limit on the sanction, restriction or partial denial.

If there is no note, contact the agency taking the action for this information.

- Termination Date: Indefinite

1 Reference to "company" refers to Ridge Allied Corporation Ltd.

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- Excluding Agency: OFFICE OF FOREIGN ASSETS CONTROL

- Status: Active

- Create Date: XXXXX

- Update Date: XXXXX

3.2 Fibank Ltd added that there was no indication that his name

complainant had been removed from the sanctions list and thus proceeded

as it informs its customers about this fact and their decision to

do not proceed with the requested changes.

3.3

Fibank Ltd also pointed out the fact that its name

complainant was already on the said list for a period of six (6) years.

According to established procedures, it is at her discretion, yes

weigh the risk and decide whether to proceed or continue to

cooperates in business with the customer, also taking into account

his past. The removal of the complainant's name from the list

sanctions, does not affect the Bank's decision, and does not negate the fact

that this was on the list for a period of six years, about serious

violation of human rights.

3.4 Fibank denied that the complainant's personal data have

communicated to third parties. Correspondence in relation to XXXXXX and XXXXXX,

always conducted directly with their client in their final capacity

beneficial owner and signatories for XXXXXX and who had them

inform about the change in the company structure on June 17, 2020 with notification to XXXXX and one more administrator. The Bank informed about the negative answer and the reason for the refusal, the customers of XXXXX.

3.5

In any case, he noted that his personal data complainant, such as of birth, no. passport no. identity card etc. as well as the fact that he was on the sanctions list, they can easily retrieved from the internet.

The Complainant's response to Fibank Ltd's positions in relation to the above, were as follows:

4. The complainant rejected Fibank Ltd's position that there was no indication that his name had been removed from the sanctions list. He repeated his positions as these were formulated in the letter dated 8/24/2020, adding further how the content of the LexisNexis search provided by the Office Fibank Ltd, is not correct and/or true as it never existed marked by the Ministry of Strategy and Finance of South Korea.

The result that Fibank Ltd relied on and communicated to third parties is baseless. Since the survey was submitted on 26/6/2020 his name complainant should no longer be included in the SDN list (Specifically Designated Nationals). Further, in support of his position, Mr complaining, he attached the letter from the US Treasury, dated XXXXXX (Exhibit 1), in the content of which it is stated that the his name will be removed from the sanctions list, with the entry into force of the decision on the same date and relevant update of their website, soon.

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4.1 The result of the investigation provided to my Office by Fibank Ltd was the

"Last Updated – YYYY, 2020". The complainant reported in relation to this reference, that Fibank Ltd did not take into account the fact that it was removed his name from the list and should have made a more recent inquiry if from the last update date of the list on which they were based, a period of three (3) months has passed.

4.2 Regarding the position of Fibank Ltd, that there was no indication that the name had been removed from the list of sanctions, the complainant stated that the this claim is completely unfounded since on XXXXXX, his name was not now in the catalog and if the information on which Fibank Ltd relied on, then this would also appear in the research it did on 6/26/2020.

4.3 In relation to the position of Fibank Ltd, that his name was on said list for 6 years and that it is left to her discretion to weigh the risk and decide whether to proceed or continue doing business with the customer, the complainant replied that the bottom line is that while his name was no longer on the list, Fibank Ltd employees passed on such information to XXXX's customers. Correspondence in relation to XXXXXX and XXXXXX was always carried out directly with the complainant, with notification to the rest (attaching relevant proof of electronic correspondence – Exhibit 2), while in this case Fibank Ltd chose to share the electronic correspondence with the complainant (Exhibit 3). 4.4 I note here that Exhibit 2 is correspondence with the subject "XXXXXX", according to the content of which, the complainant, among other things, informs Fibank Ltd, about the replacement of the deceased Director with him, regarding the companies XXXXXX, XXXXXX and XXXXXX, as well as the corresponding replacement of the signatory (bank signatory) for the company XXXXXX. 4.5 It is also important to quote the content of Exhibit 3, which, according to the complainant's positions, discloses and therefore violates his personal data, both to the customer XXXXXX and to the company XXXXXX. The Evidence in question is an electronic correspondence which appears to have been sent by an employee of Fibank Ltd to XXXXX, at the XXXXX email address and reads as follows: "Dear XXXXX, good afternoon, Further to the below correspondence, please be informed that it appears that mr. XXXX, representative of XXXX and XXXX, is in a Sanction List. Unfortunately, we cannot keep Company's account under such circumstance. We may

continue our business relationship if XXXXXX and XXXXXX are removed from the Company's structure with immediate effect.

(My emphasis) 4 Remaining at your disposal for any further clarifications you may require." I should also note that the

company XXXXXX 4.6 (as mentioned by the complainant), was acting as the Director of the XXXXXX company, while

XXXXXX, from an online search conducted by an officer of my Office, appeared as the Secretary of the XXXXXX company.

Today, in the records of the Registrar of Companies, the Director and Secretary have changed. 4.7 Finally, the complainant

considers that Fibank Ltd, as the controller of this data, relied on non-updated facts, which it disseminated to third parties.

Fibank Ltd's response to clarifications requested by my Office: 5. After studying the documents before me, additional

clarifications were requested from Fibank Ltd as well as evidence of what they said, which were provided and are as follows:

5.1 Referring to the word "client" in relation to the fact that the correspondence for the companies XXXXX and XXXXX "has

always been carried out directly by the client being the UBO...", they refer to XXXXX, as the ultimate beneficial owner, director

and authorized signatory of company. As proof of what has been said, they have attached a certificate of directors and

registered shareholders, as well as a letter which starts on 17/06/2020 with the sender XXXXXX himself, informing the Bank of

the changes in the company's structure and ending with the Bank's letter dated . 26/06/2020 to inform XXXXX regarding the

outcome of their investigations and the inclusion of the complainant's name on the sanctions list. 5.1.1 I note that in the letters

exchanged between the Bank and XXXXXX and provided to my Office by Fibank Ltd, it appears that there are other recipients

and/or notified recipients, including the e-mail address of the complainant XXXXXX. Also in the content of the communication

between them, on behalf of XXXXXX, it appears that a specific employee acts in the interim, who sends the Bank the

documents requested for the specific procedure. This employee is the same employee to whom the complainant refers in the

presentation of the facts that support his position, that he had instructed her to send the letter in his possession from the US

Treasury for the removal of his name from the sanctions list. In the letters that the said employee of the complainant sends to

the Bank, she has the e-mail address of XXXXXX (as the initial communication was initiated by him personally) added as

recipient, keeping him informed of her actions. It also has as a notified recipient, the e-mail address of the complainant, as it

was a notified recipient from the beginning, since XXXXXX informed the Bank on 17/6/2020 about the change in the structure

of his company. 5.1.2 In one of these letters exchanged in the interim with the Bank, Fibank Ltd by letter dated June 24, 2020

to XXXXXX 5 requests, among other things, the production of a certified true copy of the resolution appointing a new Director,

a certified true copy of the identity card of the deceased XXXXXX and states that a copy of the identity card of XXXXXX

(complainant) is attached. XXXXX, throughout the exchange of correspondence, is among the notified recipients of said communication and XXXXXX, among the recipients. Subsequently, the employee of the complainant by letter dated June 24, 2020 to Fibank Ltd, appears to be sending the relevant documents requested by XXXXXX, also requesting that XXXXXX be replaced by a user of the company's online account, with XXXXXX, stating that his ID is attached. Subsequently, the Bank replies back on June 25, 2020 requesting, among other things, a certificate of directors of company XXXXX, since XXXXX is included in the Board of Directors of this company and this company in turn belongs to the Board of Directors of company XXXXX. On the same day at a later time, the Bank requests further documents. On the following day, June 26, 2020, the relevant "disputed" information is sent to the customer XXXXXX. 5.2 In the response given by Fibank Ltd to my Office's questions, it also clarifies that XXXXXX is an interested party since the complainant is directly related to the company owned by XXXXXX. The complainant is a Director of the company XXXXX, which in turn of this company, is a Director of XXXXX's company, XXXXX. The complainant is also a Director in the company XXXXX, which provides secretarial services to the company XXXXX. In support of its positions, Fibank Ltd also attached relevant company certificates and also referred to the attached correspondence as described above.

Legal Aspect 6. Article 4 of GDPR 2016/679 defines that "personal data" is "any information concerning an identified or identifiable natural person (data subject); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors specific to physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question...". Data controller is defined as anyone (the natural or legal person, public authority, agency or other body) who, "alone or jointly with another, determine the purposes and manner of processing personal data", the breach of personal data as "the breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access of personal data transmitted, stored or otherwise processed", while "third party": any natural or legal person, public authority, agency or body, with the exception of the data subject, the controller, the processor and the persons who, under the direct supervision of the controller or the processor, are authorized to process the personal data ».

6.6.1 In the "Guidelines" issued by the European Data Protection Board, regarding the notification of a personal data breach, on October 3, 2017 and revised on February 6, 2018, it is explained that personal data breaches can be categorized according to following principles of information security:

- "Breach of privacy" – when there is unauthorized or accidental disclosure of personal data or unauthorized or accidental access to personal data.
- "Breach of integrity" – when

there is unauthorized or accidental ☐ alteration of personal data. "Breach of availability" – when there is accidental or unauthorized loss of access to personal data or accidental or unauthorized destruction of personal data." 6.2 Also according to the same Guidelines, it is clarified that "... a breach is a type of security incident", which can result either from an attack on the organization from an external source, or from internal processing that violates security principles. 6.3 In Article 5 of GDPR 2016/679, the Principles governing the processing of personal data are mentioned, such as e.g. that the data must: "d) be accurate and, where necessary, updated; all reasonable steps must be taken to promptly delete or correct personal data that is inaccurate, in relation to the purposes of the processing ("accuracy "), f) are processed in a way that guarantees the appropriate security of personal data, including their protection against unauthorized or illegal processing and accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality")." 6.4 Related to the issue of data security are Articles 24 and 32 of the Regulation, where Article 24 states the controller's responsibility to "apply appropriate technical and organizational measures in order to ensure and be able to prove that the processing is carried out in accordance with this regulation.", and in Article 32 the controller's responsibility to apply the appropriate technical and organizational measures "in order to ensure the appropriate level of security against risks, including, among others, as the case may be: (...) b) of ability to ensure the privacy, integrity, availability and reliability of processing systems and services on an ongoing basis". 7 6.5 In Article 6 of the Regulation, in addition to the data subject having consented to a processing, other cases are mentioned where a processing of personal data is lawful, such as e.g. when: "b) the processing is necessary for the performance of a contract to which the data subject is a party or to take measures at the request of the data subject prior to the conclusion of a contract, c) the processing is necessary to comply with legal obligation of the controller, f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child." 6.6 I should also add that according to recital 14 of GDPR 2016/679: "(14) The protection provided by this regulation should apply to natural persons, regardless of nationality or place of residence, in relation to the processing of data their personal nature. This regulation does not cover the processing of personal data concerning legal entities and in particular businesses incorporated as legal entities, including the name, type and contact details of the legal entity. 6.7 Furthermore, with regard to the Prevention and Combating of Money Laundering Law of 2007 (188(I)/2007), some excerpts related to this case

are listed below: "58. An obliged entity shall implement sufficient and appropriate policies, controls and procedures, which are commensurate with its nature and size, to effectively mitigate and manage money laundering and terrorist financing risks in relation to the following: (a) The determination of identity and the exercise of due diligence regarding the customer, in accordance with the provisions of articles 60-66 of this Law
..... (d) internal control, assessment and risk management for the purpose of preventing money laundering and terrorist financing;" "58A. (1) For the purposes of paragraph (d) of article 58, an obliged entity shall take appropriate measures in order to identify and assess the money laundering and terrorist financing risks it faces, taking into account risk factors, including those related to its customers, countries or geographical areas, products, services, transactions or banking service delivery channels: 8 Provided that, these measures are proportional to the nature and size of the obliged entity. (2) Those referred to in the subsection are updated and made available to the competent Supervisory Authority." 2 (1) risk assessments are documented, 6.8 According to Article 62 of the same Law: "(4) When an obligated entity cannot comply with the due diligence requirements regarding its customer, as defined in paragraphs (a), (b) and (c) of subsection (1) of section 61, does not carry out a transaction through a bank account, does not enter into a business relationship or does not carry out the transaction, as the case may be, terminates the said business relationship and considers the possibility of filing a report for a suspicious transaction in relation to the client in the Unit, in accordance with the provisions of article 69. Rationale:
7. In the present case, according to the facts that have been presented to my Office, the complainant requested a change of directors for the companies XXXXX, XXXXX and XXXXX as well as change of signatory (bank signatory) for the company XXXXX3. 7.1 Company XXXXX, at the material time, acted as Director of Company XXXXX4 and Company XXXXX. XXXXX is owned by XXXXX, a major customer of XXXXX. 7.2 According to the position of the complainant, Fibank Ltd, based on non-updated data and communicated on 26/06/2020, to the customer of XXXXX and to the employees of the company XXXXX, incorrect information, that is, his name was on a sanctions list . The complainant protested on 6/29/2020 with a relevant letter to the Bank, to which he attached a confirmation letter from the US Treasury, dated YYYYMMDD 2020, to remove his name from the said sanction list. 7.3 Fibank Ltd, on the other hand, denies the allegations of the complainant, stating that in the result of the research it had conducted through LexisNexis on 26/06/2020, there was no indication that the complainant's name had been removed from the sanctions list. In any case, it does not negate the fact that the complainant's name was on the said list for 6 years and that it is the bank's responsibility to weigh the risk and decide whether to proceed or

continue doing business with the customer, also taking considering his past. The data of the complainant in each case, such as of birth, no. passport no. 2 The Law refers to the Central Bank of Cyprus as the competent Supervisory Authority for Credit Institutions (see Article 59). 3 I have before me three different versions of this name, such as (1)XXXXX, (2) XXXXX and (3) XXXXX, without any data being put before me that clarifies whether it pertains to the same company each time. In the content of my Decision, the names are listed exactly as the two parties put them forward, each time. 4 And for this company there are two versions of the same name, such as (1) XXXXX and (2) XXXXX. 9 ID etc., as well as the fact that he was on the sanctions list, can be easily retrieved from the internet. 7.4 Fibank Ltd also argued, providing relevant supporting documents of its position, that XXXXX and XXXXX's company was directly interested in whether the complainant's name was on the sanctions list, since the complainant was a Director in a company, the who was a Director at XXXXX, but also at a company that provided her with secretarial services. In the relevant correspondence he also provided, it is clear that XXXXXX had informed the Bank about changes in the structure of his company, subsequently the Bank requested the presentation of specific documents, which included, among others, a resolution of the members of the Board of Directors for the appointment of a new Director, a copy of the identity of the complainant, as well as a certificate of directors of the company XXXXX, since the complainant is a member of the Board of Directors of the company that was a Director in the company of XXXXX. 7.5 Correspondence and supporting documents provided by Fibank Ltd revealed the following: (1) The disclosure of any, potentially personal dataof the persons involved, was conducted within the framework of a contractual relationship between the companies involved and Fibank Ltd (see Article 6(1)(b) of GDPR 2016/679).

(2) The data exchanged between the companies and the Bank, did not concern the data subjects involved only under the their personal capacity (e.g. home address), but also under the law their capacity as Directors of companies, which are not protected by GDPR 2016/679, as long as they are covered by the mantle of "legal entity".

(3) Fibank Ltd was acting in compliance with a legal obligation of and above all for compliance with the Obstruction Act and

Fighting

from Illegals

Activities Law (see Article 6(1)(c)).

of Income Legalization

(4) In case it did not comply with the Law in question, it existed

case of being found liable for omissions and suffering administrative charges

sanctions (see article 59 of Law 188(I)/2007).

So there was

possibly also the legal interest of the Bank, beyond the obligation

compliance with the relevant Law, to be protected from enforcement

sanctions (see Article 6(1)(f) of the Regulation).

(5) The information given to XXXXX, as the owner of XXXXX, was not

only in continuation of previous relevant correspondence, of which always

the complainant was a notified recipient, but also in contexts

informing XXXXX as an interested person (and therefore

having a legitimate interest to be informed), since Director of the Director

Company of XXXXX, was the complainant.

7.6 In addition to the above, through the study of all the facts they have

be laid before me, the various documents supporting them, and of the

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of Preventing and Combating Money Laundering by Illegals

Law Activities, the following further became apparent:

(1) Fibank Ltd, in the exercise of due diligence, had a right

not to enter into and/or terminate any business relationship, in

case he could not comply with his demands

Law (see article 62(4)), something that certainly does not concern the GDPR

2016/679.

(2) The result of the research carried out by Fibank on LexisNexis

Ltd date June 26, 2020, in the context of due diligence on the

person of the complainant, does not mention anywhere that his name

complainant has been removed from the sanction list.

(3) In the copy of the survey also produced, there are

links at the bottom to its source of information

LexisNexis from various government agencies and/or publications in

type. There is also a Legal Notice, which mentions the

information contained in the LexisNexis result "... is

derived from public sources such as government and industry global watch

lists and published news articles. LexisNexis is not the source of the data

and is not responsible for the content of third party sources. LexisNexis

does not determine any positive or negative risks associated with the

profiled entity. These decisions are solely determined by our clients as well

mandated by with their applicable regulatory obligations."

contract risk

(4) Fibank Ltd relied on the information it identified, for purposes

him

assessment

the

complaining. Responsible

person/organization publishing said information. Opening

some of the links at the bottom of it

result, the name of the complainant is found to be mentioned

as involved in published articles in the press as well as in

Government Documents.

business relationship with

processing each time,

is

(5) Whether or not Fibank Ltd correctly assessed the risk in

based on the data it collected, it is something that is specialized

in the Law (*lex specialis*), and refers to the Central Bank

of Cyprus, as the Supervisory Authority, for consideration of this issue (see

section 58(A)(2)). In any case, the Bank said no

only takes into account the removal of the complainant's name

from the list of sanctions, but also the fact of its inclusion in

she.

(6) There is no question of correct or non-updating of the data by the

Fibank Ltd as data controller based on GDPR 2016/679,

since the source

someone else is responsible for her

processing. Fibank Ltd's responsibility begins with the collection of

information and after. Whether he collected incorrect data and was with

the impression that these were correct, does not mean that he omitted them

update, especially since he had no knowledge that these were

wrongly.

of the information

(7) The complainant, as he ultimately did, could simply clarify that

subject and prove that his name has been removed from said

list of sanctions.

(8) All correspondence has not been shared with "third parties" and they have not the complainant's data is breached, in the sense that GDPR 2016/679 applies, since none had arisen security breach that resulted in personal disclosure data of the complainant to third parties.

(9) All correspondence had been carried out under a legal basis, with employees of the respective data controllers (XXXXXX, XXXXX, Fibank Ltd etc). According to GDPR 2016/679, persons who, are "under the direct supervision of the controller or processor, are authorized to process them personal data' and do not fall within its definition "third" person.

Conclusion

Having in mind the above findings and according to the powers that I provides Article 57(1)(f) of GDPR 2016/679 for investigation of complaints, my conclusion is that the present complaint/complaint of the complainant against Fibank Ltd, cannot be advanced further, since the communication of his data, even if incorrect at the given moment complainant, does not constitute a violation of GDPR 2016/679. Therefore, the art due to complaint/complaint, is rejected as unfounded.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character