Administrative Measure 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 ("PMLA") and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

The Notice provides select information from the FIAU's decision imposing the respective administrative measure, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

16th November 2020

SUBJECT PERSON:

Credence Fiduciary Limited

RELEVANT ACTIVITY CARRIED OUT:

Trustee and Fiduciary Services

SUPERVISORY ACTION:

On-Site Compliance Review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of EUR 118,365 and a Follow-Up Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

1) Regulation 5(1) of the PMLFTR;
2) Regulation 5(5)(a)(ii) of the PMLFTR;
3) Regulation 7(1)(b) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures Part I[1]
4) Regulation 8(1) and 7(5) of the PMLFTR;
5) Regulation 11(1), 11(2) and 11(5) of the PMLFTR;
6) Regulation 7(1)(c) of the PMLFTR;
7) Regulation 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I;
8) Regulation 13 of the PMLFTR;
9) Regulation 15(1)(c) of the PMLFTR.

[1] For the purposes of clarification, any references to the Implementing Procedures within this publication shall be construed to refer to the Implementing Procedures in place at the time when the breach has occurred.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR

The Committee determined that, although the Company did have a Business Risk Assessment ("BRA") in place, said BRA only marginally referred to the ML/FT risks that the Company is or may be exposed to and what measures the Company is taking to mitigate these risks. Instead, the Company's risk assessment focused on risks unrelated to ML/FT (e.g. legal, financial, organizational and reputational risks). Furthermore, the assessment failed to consider the threats and vulnerabilities emanating from the services the Company offers, the likelihood of these risks materialising and their resulting impact. Additionally, the Company also failed to assess its control measures, and consequently, to determine the level of residual risk it was still exposed to.

Throughout the review, it was also highlighted that the Company was not assessing the geographical risks arising from the business relationships with, or the occasional transactions carried out for, its clients. In fact, officials onsite noted that the Company had failed to carry out a jurisdictional risk assessment on at least 26 jurisdictions; the jurisdictional risk assessment is intimately linked to the understanding geographical risk.

In light of these findings and shortcomings, the Committee determined that the Company failed to carry out an adequate BRA and therefore found the Company in systematic breach of its obligations under Regulation 5(1) of the PMLFTR, including the requirement to carry out jurisdictional risk assessments so as to adequately understand the geographical risk to which the Company is exposed.

Regulation 5(5)(a)(ii) of the PMLFTR

The compliance review revealed that, although the Company had a Risk Assessment Policy and a Risk Assessment Form as part of its Procedures Manual, there was no methodology and/or scoring system in place to allow one to determine how customers were assigned their respective risk rating. Thus, although the client list that was provided to the Officials contained the risk rating assigned to each customer, it was not possible to reconstruct the reasoning why a particular risk rating was assigned to one customer and not another.

Furthermore, it transpired that the Customer Risk Assessment ("CRA") that the Company was making use of up until the time of the compliance examination was not adequate as it failed to take into consideration aspects that are important to properly assess the risks associated with its customers. Additionally, it was also noted that in a small number of files which held a documented CRA, such assessments were either carried out after the establishment of the business relationship or else were not dated. Moreover, in six of the files reviewed, the risk rating that was listed on the client list differed from that reported on the Company's own internal system.

Additionally, it was also noted that in the only file which held a documented CRA, the Company failed to take into consideration all the risk factors emanating from the relationship. The Committee noted that the reasoning behind the final medium risk rating does not justify such rating, especially when considering that the UBO is considered to be an ultra-high net worth individual who is residing in the Bahamas and who was planning on chartering a yacht. This gave rise to geographical and transactional risks. Moreover, the risk ratings assigned in two other files (which were both given a risk rating lower than 'High') were questionable in view of the information found on file. In fact, in one file, the settlors of the trust were considered as Politically Exposed Individuals ("PEPs"), while in the other file, there was adverse media on the settlor of the trust, linking him to the Sicilian Mafia and to a court case which revolved around bribes paid to government officials.

Although the Company in its representations indicated that following the compliance examination it has remediated these shortcomings and is now using an updated and more adequate CRA process, the Committee determined that at the time of the compliance examination the Company was in systematic breach of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulation 7(1)(b) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures Part I

The compliance examination revealed that the Company fell short of the abovementioned provisions in seven of the files reviewed. The Committee noted shortcomings in the Company's obligations specifically failing to: obtain valid verification documentation of one of the UBOs at onboarding in one file; obtain valid verification of the residential address of one of the protectors/beneficiaries/UBOs/agents/settlors at onboarding in four files; obtain documentation to corroborate the information provided by the customer in one file; obtain utility bills addressed to an individual and not to a company in one file; obtain documentation to verify residential addresses in two files.

The Committee thus found the Company to be in breach of Regulation 7(1)(b) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures.

Regulation 8(1) and 7(5) of the PMLFTR

The Committee learnt that in two of the files reviewed, the Company had verified the residential address of the UBOs and/or settlors several months after the establishment of the relationship. While the Company conceded to these findings, the Committee expressed that a substantial amount of time had elapsed from when the business relationship commenced and therefore the Company was found to be in breach of the abovementioned Regulations.

Regulation 11(1), 11(2) and 11 (5) of the PMLFTR

Findings with respect to the obligation to carry out Enhanced Due Diligence ("EDD") measures were noted in eight files.

- EDD for High Risk Customers:

Two of the customer files reviewed were risk rated by the Company as posing a 'High' risk rating, due to the risk posed by the customers' activities (mining of precious metals and selling of chemicals in one file and renewable energy in another file) and the transactions received by both customers (receipt of almost USD24,000,000 without obtaining a plausible explanation in one file and the absorption of a loan of EUR15.9 million in another file). The Committee proceeded to finding the Company in breach for its failure to perform EDD measures for these two files.

Furthermore, there were also serious findings on three other files. In two of these files, there were connections with Panama and the Bahamas, both of which appear on the FATF list of high risk and other monitored jurisdictions. In one of these files, a number of loan agreements with Panamanian companies were entered into. The Committee determined that the Company had not understood the rationale as to why the Panamanian company was providing capital expenditure to the Maltese company being the customer of the Company. In another file, the Company incorporated a client for the purposes of registering a yacht in Malta for chartering. The UBO of the client was an ultra-high net worth individual who resided in the Bahamas. Lastly, in another file, the Company did not collect source of wealth information on the settlors of the trust, despite these being classified as Politically Exposed Persons ("PEPs").

- EDD for Politically Exposed Persons:

From the compliance examination it also transpired that in three files the Company did not determine whether the clients had any PEP involvements. The Committee remarked that determining the political exposure of the clients is crucial since failure in doing so could have led the Company to provide services to PEPs without implementing the necessary enhanced measures.

In light of the above findings, the Committee concluded that the Company was in breach of Regulations 11(1), 11(2) and 11(5) of the PMLFTR.

Regulation 7(1)(c) of the PMLFTR

A number of shortcomings were noted with regards to the Company's obligation to obtain sufficient information on the purpose and intended nature of its customers' business relationship in four of the files reviewed during the compliance examination. Such weaknesses ranged from the failure to collect information on the origin of the source of wealth and source of funds as well as the lack of information on the anticipated level and nature of the activity to be undertaken. The Committee accentuated that the lack of or incomplete and insufficient information gathered on the purpose and intended nature of the business relationship could affect the monitoring of such business relationship.

The Committee determined that during the time of the visit the Company had failed to obtain the required information on the anticipated level and nature of the activity to be undertaken throughout the relationship and was therefore in breach of its obligations under Regulation 7(1)(c) of the PMFLTR..

Regulation 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I

During the review, shortcomings relating to the obligation to carry out on-going monitoring were identified as is being explained hereunder:

- Transaction Scrutiny

In one file, five credit transactions were highlighted. These transactions all made reference to a loan agreement of EUR 20 million between the UBO of the client and the client company, which loan was granted for the purpose of raising capital. The Committee noted that although the Company knew that the EUR 20 million would originate from the UBO, it was not able, at the time of the examination to provide evidence as to how the UBO could sustain such a high value loan. It was only in the representations that the Company provided a copy of a receipt of dividends from another company owned by the same UBO. The Committee also noted that out of these EUR 20 million, EUR 17 million were utilised to purchase a company. However, the Company did not ascertain that the purchase of such a company actually took place and that this company was actually valued at such amount.

Despite the fact that the Company explained that it had a procedure for scrutinising transactions, the Committee noted that this procedure was not being followed. The Committee reiterated that the purpose of scrutinising transactions is not simply to collect documentation to support the transactions, but to understand the context of such documentation. The Committee therefore concluded that the Company was in breach of its obligations under Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I.

- Updating of Documentation

The review revealed that the Company was falling short of its obligations to monitor and update the documentation on the clients. In three files, the documentation obtained for the verification of identity of the UBO, the identity documents of the protector and two of the beneficiaries of the trust had expired and there was no evidence that updated documents were collected. In its representations, the Company conceded to such findings and informed the Committee that remedial action will take place.

The Committee concluded that the Company was in breach of Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures.

Regulation 13 of the PMLFTR

The Committee was informed how the Company was unable to provide an accurate list of its active customers, and also failed to submit the inactive client list prior to the onsite examination. Although this formed part of the requests made by the Supervision Section of the FIAU in preparation for the onsite compliance examination, the Company failed to satisfy said requirements. In fact, the client list that was eventually provided was not complete and did not provide sufficient detail as to the services being offered by the Company to its customers.

In light of these findings, the Committee proceeded to find the Company in breach of its obligations under Regulation 13 of the PMLFTR.

Regulation 15(1)(c) of the PMLFTR

The Money Laundering Reporting Officer ("MLRO") and the Designated Employee did not have full and unlimited access to the information pertaining to the transactional activity of the Company's customers. Such limited access undermined the MLRO's ability to analyse suspicious activities or transactions in order to submit suspicious transaction reports to the FIAU. The officials also noted that the MLRO was unaware of some of the processes employed by the Company in relation to AML/CFT matters.

The Committee determined that during the time of the compliance examination, the MLRO could not exercise her duties in terms of Regulation 15(1)(c) of the PMLFTR and therefore, the Company was in breach of this Regulation.

ADMINISTRATIVE MEASURE TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:

In view of the findings identified, the Committee concluded that the Company was in breach of various AML/CFT obligations, which necessitated the imposition of an administrative penalty. An administrative penalty of EUR 118,365 with regard to the below mentioned breaches was imposed on the Company:

- Regulation 5(1) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 11(1) and 11(2) of the PMLFTR;
- Regulation 7(1)(c) of the PMLFTR;
- Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part I;
- Regulation 13 of the PMLFTR;
- Regulation 15(1)(c) of the PMLFTR.

With regard to the findings under Regulation 7(1)(b) and Section 3.1.3.2 of the Implementing Procedures; Regulations 8(1) and 7(5) of the PMLFTR; Regulation 11(5) of the PMLFTR; and Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, the Committee decided that a reprimand shall be imposed on the Company.

In terms of its powers under Article 21(4)(c), the Committee also served the Company with a Follow-up Directive in order to ensure that the Company is effectively addressing the breaches set out above. The Committee directed the Company to provide an Action Plan which shall, as a minimum, address the findings explained above, as well as any other additional enhancements being implemented. A summary of the process carried out by the Company to address the action points together with evidence to prove that these action points have actually been implemented in practice were also requested. Specifically, as a minimum, the Action Plan is to cover the following action points:

- An updated BRA addressing the shortcomings identified during the review, and containing an explanation as to how the Company arrived at the final risk ratings;
- An explanation of the measures being used to carry out jurisdiction risk assessments;
- An updated Risk Assessment Policy and Customer Risk Assessment Form and Questionnaire, along with an explanation of the risk assessment methodology used;
- The Company's plan to remediate the risk assessment of its active customers;
- The procedures and measures adopted by the Company in relation to obtaining information on the purpose and intended nature of the customers' business relationships;
- An update of the measures to monitor customer relationships and transactions effected;
- Procedures and measures in relation to the application of EDD;
- The Company's plan to review its high risk customers and ensure that the necessary EDD is being carried out;
- Updated record-keeping procedures;
- A declaration that the MLRO and Designated Employee have been granted access to transactional data;
- Training plan for the MLRO.

In determining the appropriate administrative measure to impose, the Committee took into consideration the representations submitted by the Company together with the remedial actions that the Company had already started to implement. The nature and size of the Company, the overall impact, both actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Company's own operations and also the local jurisdiction, together with the seriousness of the breaches were also considered.

The Committee positively noted that it has been informed by the Company's representatives that remedial actions are currently being undertaken by the Company with the aim to remediate the AML/CFT shortcomings revealed during the onsite examination and in fact, the Company has already provided the Enforcement Section with a draft Action Plan.

23rd November 2020