



FINAL NOTICE ISSUED UNDER  
SECTION 255 OF THE COMPANIES REGULATIONS 2020

To: Mr Babar Abbas

Address:



Email:



Date: 25 July 2022

**1. DECISION**

1.1 This Final Notice ("Final Notice") is issued under section 255 of the *Companies Regulations 2020* ("CR 2020").

1.2 For the reasons given in this Final Notice, the Registrar of Abu Dhabi Global Market ("ADGM") has decided to make a disqualification order against you, Mr Babar Abbas ("Abbas"), pursuant to sections 233(1)(a) and 237(1)(b) of CR 2020, from being a director of any ADGM company and prohibiting you from being concerned or taking part in the promotion, formation or management of any ADGM company for a period of 15 years effective from the date of this Final Notice.

**2. DEFINED TERMS AND RELEVANT REGULATIONS**

2.1 Defined terms are identified in the Final Notice in parentheses, using the capitalisation of the initial letter of a word or of each word in a phrase, and are either defined in the ADGM Regulations and Rules, or in the body of this Final Notice at the first instance the term is used. Unless the context otherwise requires, where capitalisation of the initial word is not used, an expression has its natural meaning.

2.2 Extracts of Regulations and Rules referred to in this Final Notice are attached in **Annexure A**. Complete copies of the Regulations and Rules are accessible on the ADGM website [www.adgm.com/legal-framework/rules-and-regulations](http://www.adgm.com/legal-framework/rules-and-regulations).

**3. SUMMARY OF EVIDENCE SUPPORTING THE DECISION**

3.1 This Final Notice relies on the factual findings set out in the final notice dated 20 May 2022 (the "Fines Final Notice") issued under section 50 of the *Commercial Licensing Regulations 2015* ("CLR"), attached as **Annexure B**, particularly the following:

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- 3.1.1 In December of 2019 and January 2020, as the sole director and CEO of Elia Investments Limited (“Elia”), Abbas caused Elia to enter into financing agreements with two companies without an ADGM license to carry out controlled activities.
- 3.1.2 Elia was to provide a total of USD 5,000,000 in loans to Company #1 and AED 64,000,000 in loans to Company #2 but required each company to provide a 10% deposit of the capital to be lent to Elia prior to providing any of the financing.
- 3.1.3 The financings to both companies never occurred and there is no credible evidence that Elia had the means to provide the promised loans to the companies.
- 3.1.4 Pursuant to these financing agreements, Company #1 provided Elia with a USD 500,000 deposit in January 2020. Company #2 provided Elia with AED 3,400,000 in deposits in December 2019 and a further AED 3,000,000 in deposits in early 2020.
- 3.1.5 All the deposits from Company #1 and Company #2 were initially placed in the Elia AED bank account at Bank #1 in Abu Dhabi. Abbas had sole control over Elia’s accounts at Bank #1.
- 3.1.6 Through Elia, Abbas personally misappropriated a significant percentage of the funds provided by the companies from Elia’s accounts at Bank #1, specifically USD 500,000 provided by Company #1 and over AED 3,300,000 of funds provided by Company #2.
- 3.1.7 With the required filing of its 2019 annual accounts (the “Elia 2019 Annual Accounts”) with the Registrar, Elia presented the financial position of Elia as of 31 December 2019 in a manner that was misleading, false or deceptive in a material particular. As sole director, Abbas approved the delivery of the Elia 2019 Annual Accounts on 23 December 2020.
- 3.1.8 The Elia 2019 Annual Accounts did not account for the AED 3,400,000 provided by Company #2 in December 2019. Further, the Elia 2019 Annual Accounts did not account for the over AED 1,500,000 that Abbas diverted in December 2019 from Elia’s bank account through withdrawals and wire transfer to a personal bank account of his in Pakistan.
- 3.2 The facts determined by the Registrar, as set out in the Fines Final Notice, clearly demonstrate that Abbas had (i) committed significant fraud in relation to Elia and (ii) delivered, or caused to be delivered, in the Elia 2019 Annual Accounts to the Registrar, a statement which was misleading, false or deceptive in a material particular which was a serious breach of his duty as an officer of Elia.

#### 4. DISQUALIFICATION ORDER UNDER SECTIONS 233(1)(a) AND 237(1)(b) OF CR 2020

- 4.1 Under section 233(1)(a) of CR 2020, in certain circumstances, the Registrar may make against a person a disqualification order that, for a period specified in the order, *“he shall not be a director of a company... or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company”*.

REGISTRATION AUTHORITY  
سلطة التسجيل



4.2 One of these circumstances is set out in section 237 of CR 2020 – *Disqualification for fraud*, etc. which states as follows -

(1) *The Registrar may make a disqualification order against a person if it is satisfied that he–*

*(a) has been guilty of breach of section 857 (fraudulent trading), or*

*(b) has otherwise committed, while an officer or liquidator of the company receiver of the company’s property or administrative receiver of the company, any fraud in relation to the company or any breach of his duty as such officer, liquidator, receiver or administrative receiver.*

(2) *The maximum period of disqualification under this section is 15 years.*

4.3 Accordingly, the Registrar has decided to disqualify Abbas pursuant to section 233(1)(a) and section 237(1)(b) of CR 2020 from being a director of any ADGM company and prohibiting Abbas from being concerned or taking part in the promotion, formation or management of any ADGM company.

4.4 The disqualification period against Abbas shall be for 15 years, the maximum permitted.

## 5. CONTRAVENTIONS SUPPORTING THE DISQUALIFICATION ORDER

### Fraud in Relation to Elia

5.1 Based on the facts and findings as set out in the Fines Final Notice, the Registrar considers that Abbas committed a contravention of section 857 of CR 2020.

5.2 Accordingly, the Registrar considers that Abbas as the sole director of Elia committed fraud in relation to Elia, a serious contravention of ADGM commercial legislation.

### Breach of Duty as an Officer of Elia – General False Statement Contravention

5.3 Based on the facts and findings as set out in the Fines Final Notice, the Registrar considers that Abbas committed a contravention of section 984 of CR 2020.

5.4 Accordingly, the Registrar considers that Abbas knowingly delivered or caused to be delivered to the Registrar in the Elia 2019 Annual Accounts, a statement that was misleading, false or deceptive in a material particular. This action constituted a serious breach of his duty as an officer of Elia.

## 6. IMPOSITION OF A DISQUALIFICATION ORDER

6.1 In reaching its decision to a make a disqualification order against Abbas, the Registrar has considered the factors and considerations in the Registrar’s Decision Procedures, Disqualification and Enforcement Manual – February 2021 (the “Manual”).

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- 6.2 This decision has been made after imposition of the Fines Final Notice and receipt of a recommendation from the Monitoring & Enforcement Division of the Registration Authority of ADGM.

### Determination to Make a Disqualification Order

#### Introduction

- 6.3 Pursuant to paragraph 7.1 of the Manual, a disqualification order is an order made by the Registrar disqualifying a person from:

- a. being a director of a company;
- b. acting as a receiver of a company;
- c. taking part in the promotion, formation or management of a company; or
- d. acting as an insolvency practitioner.

- 6.4 As per paragraph 7.2(c) and 7.2(d) of the Manual, a disqualification order may be issued to:

- c. a person who is guilty of fraudulent trading, or other fraud in relation to the company; or
- d. a person who is, or has been, a director or shadow director of a company, where the Registrar is satisfied that the person's conduct in relation to the company makes them unfit to be concerned in the management of a company and it is in the public interest to make the order.

#### Circumstances Leading to the Making of a Disqualification Order

- 6.5 As per paragraph 7.18 of the Manual, the administrative action of the Registrar disqualifying a person from acting as a director or promoter of a company "*indicates to ADGM registered entities and their stakeholders that the particular conduct at issue is unacceptable.*" [emphasis added].

- 6.6 With reference to paragraph 7.19 of the Manual, the Registrar will review the facts of each matter and may consider the following factors in deciding whether to make a disqualification order:

- a. whether taking the action will promote the objects of ADGM's regulatory regime;
- b. whether taking the action will deter misconduct;
- c. the strategic significance of taking action;
- d. the need to protect investors and consumers;
- e. other benefits of pursuing misconduct;
- f. whether taking the proposed action is preferable to taking another type of administrative action, in terms of cost and timeliness;
- g. in the case of directors, whether there has been a breach of the director's duties to the company; or
- h. any other issues specific to the case.



- 6.7 As per paragraph 7.20 of the Manual, the Registrar may be more likely to impose a disqualification order after considering any aggravating factors, including those set out in that paragraph.
- 6.8 As per paragraph 7.21 of the Manual, the Registrar will also take into account mitigating factors including those listed in that paragraph.
- 6.9 The key factors to be considered by the Registrar in deciding whether to make a disqualification order are contained in Table 3 of the Manual and can be summarized as follows -
- the nature and seriousness of the person's conduct;
  - conduct after the alleged misconduct occurred, including level of co-operation with the Registrar's investigation;
  - the expected level of public benefit, including the reinforcement of the integrity of the ADGM's regulatory regime;
  - whether the person's behaviour will change in response to the particular action, and
  - the deterrence effect on others, including whether the behaviour of other directors is likely to change if a disqualification order is made.

*Key Relevant Factors in Making the Disqualification Order*

- 6.10 Given the significant misconduct of Abbas as director of Elia, as set out in the Fines Final Notice, and with reference to the factors paragraph 7.19 of the Manual, the making of a disqualification order against Abbas will primarily -
- a. promote the objects of ADGM's regulatory regime including the reinforcement of its regulatory regime;
  - b. deter misconduct by current or future directors of ADGM companies;
  - c. protect investors and consumers; and
  - d. address the serious breaches of Abbas's fraudulent conduct through Elia and the losses incurred by Company #1 and Company #2 as well as his breaches of his duty as an officer of Elia.
- 6.11 Abbas' misconduct as determined in the Fines Final Notice was extremely serious. The making of a significant disqualification order against him should serve to deter other ADGM directors from similar misconduct.
- 6.12 Accordingly, a disqualification order is made against Abbas prohibiting him from being a director of an ADGM company or from being concerning in or taking part in the promotion, formation or management of an ADGM company for maximum period of 15 years.

**Aggravating Factors Taken Into Account**

- 6.13 Pursuant to section 7.20, the Registrar has taken into account the following aggravating factors in imposing the disqualification order against Abbas.

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*The seriousness of the contraventions*

- 6.14 As the sole director of Elia, Abbas, committed a significant fraud against Company #1 and Company #2.
- 6.15 Through Elia, Abbas promised to supply large financings to Company #1 and Company #2. There is no credible evidence that Elia could ever have honoured this commitment. As an SPV, Elia's ADGM licence did not permit it to carry on these controlled activities.
- 6.16 Due to Abbas' fraudulent trading through Elia, Company #1 suffered a loss of USD 500,000 (plus accrued interest) and Company #2 suffered a loss of AED 3,600,000.
- 6.17 Almost all of the amounts lost by Company #1 and Company #2 were personally misappropriated by Abbas by withdrawal from Bank #1 (largely in cash) or transfers to his personal accounts both in Abu Dhabi and Pakistan.

*Whether the conduct involved dishonesty*

- 6.18 Abbas used Elia to commit significant fraud through deceit, falsehood and other fraudulent means.
- 6.19 In addition, on 20 January 2021, Abbas knowingly caused Elia to file the misleading, false or deceptive Elia 2019 Annual Accounts with the Registrar, which clearly misstated the financial position of Elia as of 31 December 2019 by not disclosing the deposits provided by Company #2 in December of 2019 and his misappropriation of funds.
- 6.20 Accordingly, Abbas knowingly delivered or caused to be delivered to the Registrar a document that was misleading, false or deceptive which was a clear breach of his duty as an officer of Elia.

*Whether the conduct was intentional, reckless or negligent*

- 6.21 The acts of fraudulent trading by Abbas were clearly intentional.
- 6.22 Further, Abbas knowingly delivered or caused to be delivered the misleading, false and deceptive Elia 2019 Annual Accounts to the Registrar in purported compliance with section 418 of CR 2020.

*The amount of any financial losses to investors and consumers*

- 6.23 Abbas misappropriated millions of AED through his contraventions of ADGM commercial legislation and misuse of Elia, an ADGM company:
- USD 500,000 provided by Company #1 plus the accrued interest was misappropriated by Abbas.
  - Over AED 3,300,000 of funds provided by Company #2 was misappropriated by Abbas.

**Absence of Mitigating Factors**

- 6.24 As per section 7.21 of the Manual, the Registrar will take into account mitigating factors. The Registrar, however, has decided that there are no mitigating factors.

**Additional Key Factors Taken Into Account**

*Conduct after the alleged misconduct occurs*

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ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE  
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة المارية، ص ب 111999، أبوظبي، الإمارات العربية المتحدة  
T +971 2 333 8888 [adgm.com](http://adgm.com)



- 6.25 Abbas showed little to no meaningful and credible cooperation during the investigation except for eventually attending for a required interview during which he attempted to mislead staff. However, Abbas did provide some admissions which helped prove his contraventions of sections 857 and 984 of CR 2020.

*The expected level of public benefit*

- 6.26 The Registrar considers a disqualification order against Abbas will protect future investors and consumers within ADGM and serve to reinforce the integrity of the ADGM's regulatory regime.
- 6.27 Further, disqualification of Abbas is likely to promote compliance within ADGM.

*Whether the person's behaviour will change in response*

- 6.28 Given the lack of any meaningful or credible representations or submissions by Abbas about his future compliance, this factor was not considered.

*The deterrence effect on others*

- 6.29 Taking enforcement action should deter persons who have committed contraventions from committing further contraventions and deter others from committing similar contraventions.
- 6.30 Any disqualification order imposed against Abbas must serve to deter him and others from committing fraudulent trading and making false statements to the Registrar to the greatest extent possible.

## 7. PROCEDURAL MATTERS

### Access to Material

- 7.1 Section 257 of CR 2020 applies to this Final Notice. The effect of section 257 of CR 2020 is to allow Abbas to access:
- the material on which the Registrar is relying on in making the decision under this Final Notice ("Primary Material"); and
  - any "Secondary Material" as described in section 257(6) of CR 2020 which, in the Registrar's opinion, might undermine that decision.
- 7.2 With respect to Primary Material, the Registrar is relying upon the facts and findings set out in the Fines Final Notice.
- 7.3 As part of the process leading to the issuance of the Fines Final Notice under Part 4 of CLR 2015, Abbas was provided access to materials in accordance with section 53 of CLR 2015.
- 7.4 The Registrar has reviewed his records and has not identified any Secondary Material.

### Representation

- 7.5 On 1 June 2022, the Registrar issued Abbas with a Warning Notice in which it proposed to make a disqualification order, pursuant to sections 233(1)(a) and 237(1)(b) of CR 2020, against Abbas from being a director of any ADGM company and prohibiting Abbas from



being concerned or taking part in the promotion, formation or management of any ADGM company for a period of 15 years.

- 7.6 Abbas was provided with an opportunity to make written representations regarding the Registrar's concerns and the actions proposed.
- 7.7 No representations were submitted by Abbas, nor did Abbas submit any requests for an extension of time for making representations.

#### **Opportunity to Have the Matter Referred to the ADGM Courts**

- 7.8 On 23 June 2022, the Registrar issued a Decision Notice to Abbas pursuant to section 248 of the CR 2020.
- 7.9 Under sections 248 and 255(1) of CR 2020, Abbas had the opportunity to refer the Decision Notice to the ADGM Courts. As of the date of this Final Notice, no referral has been made by Abbas to the ADGM Courts.
- 7.10 As a referral was not made to the ADGM Courts for a review of the Decision Notice within one month, the Registrar has proceeded to issue this Final Notice pursuant to section 255 of CR 2020.

#### **Publicity**

- 7.11 The Registrar may publish the details about the matter to which this Final Notice relates.

Signed:



**Tarek Kardahji**  
**Senior Manager, Office of the CEO, Registration Authority**  
**Delegate of the Registrar, Registration Authority**

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## ANNEXURE A

### EXTRACTS OF THE REGULATIONS AND RULES REFERRED TO IN THIS NOTICE

#### EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

##### 50. Final notices

- (1) If the Registrar has given a person a decision notice and the matter was not referred to the court within 28 days of that person receiving the notice or such other period as the court may allow, the Registrar must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If the Registrar has given a person a decision notice and the matter was referred to the court, the Registrar must, on taking action in accordance with any directions given by –
- the court, or
  - the Court of Appeal on an appeal against the decision of the court,
- give that person and any person to whom the decision notice was copied the notice required by subsection (3).
- (3) The notice required by this subsection is –
- in a case where the Registrar is acting in accordance with a direction given by the court, or by the Court of Appeal on an appeal from a decision of the court, a further decision notice; and
  - in any other case, a final notice.
- (4) A final notice must –
- give details of the action being taken;
  - state the date on which the action is to be taken; and
  - if it imposes a fine, state the amount of the fine and the manner in which, and the period within which, the fine is to be paid.
- (5) The period stated under subsection (4)(c) may not be less than 30 days beginning with the date on which the final notice is given.
- (6) If all or any of the amount of a fine payable under a final notice is outstanding at the end of the period stated under subsection (4)(c), the Registrar may recover the outstanding amount as a debt due to it.

##### 53. Access to material

- (1) If the Registrar gives a person ("A") a warning notice or a decision notice, it must –
- allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
  - allow him access to any secondary material which, in the Registrar's opinion, might undermine that decision.
- (2) But the Registrar does not have to allow A access to material under subsection (1) if the material is excluded material or it –
- relates to a case involving a person other than A; and
  - was taken into account by the Registrar in A's case only for purposes of comparison with other cases.
- (3) The Registrar may refuse A access to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material –
- would not be in the public interest; or (b) would not be fair, having regard to –
- the likely significance of the material to A in relation to the matter in respect of which he has been given a notice; and
  - the potential prejudice to the commercial interests of a person other than A which would be caused by the material's disclosure.
- (4) If the Registrar does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of –
- the existence of the protected item; and
  - the Registrar's decision not to allow him access to it.
- (5) If the Registrar refuses under subsection (3) to allow A access to material, it must give him written notice of - (a) the refusal; and (b) the reasons for it.
- (6) "Secondary material" means material, other than material falling within paragraph (a) of subsection (1) which –
- was considered by the Registrar in reaching the decision mentioned in that paragraph; or
  - was obtained by the Registrar in connection with the matter to which that notice relates but which was not considered by it in reaching that decision.
- (7) "Excluded material" means material which is a protected item (as defined in section 56).
- (8) This section does not apply to a warning notice under section 18(1) or 18(2) or a decision notice under section 18(3).

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## EXTRACT OF THE COMPANIES REGULATIONS 2020

### 233. Disqualification orders: general

- (1) In the circumstances specified below the Registrar may, and under section shall 238 (duty of Registrar to disqualify unfit directors of insolvent companies), make against a person a disqualification order that, for a period specified in the order –
- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has permission to do so from the Registrar, and (b) he shall not act as an insolvency practitioner.<sup>10</sup>
- (2) In each section of these Regulations which gives the Registrar the power or, as the case may be, imposes on him the duty to make a disqualification order, there is specified the maximum (and, in section 238 (duty of Registrar to disqualify unfit directors of insolvent companies), the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order. (3) Unless the Registrar otherwise specifies, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.
- (4) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.
- (5) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.
- (6) The Registrar may make an order (a "delegation order") for the purpose of enabling functions of the Registrar under this chapter to be exercised by the Financial Services Regulator.
- (7) A delegation order has the effect of transferring to the Financial Services Regulator designated by it all functions of the Registrar under this chapter subject to such exceptions and reservations as may be specified in the order.
- (8) A delegation order may confer on the Financial Services Regulator such other functions supplementary or incidental to those transferred as appear to the Registrar to be appropriate.
- (9) A delegation order may be amended or, if it appears to the Registrar that it is no longer in the public interest that the order should remain in force, revoked by a further order under this section. (10) Where functions are transferred or resumed, the Registrar may by order confer or, as the case may be, take away such other functions supplementary or incidental to those transferred or resumed as appear to him to be appropriate.

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### 237. Disqualification for fraud, etc.

- (1) The Registrar may make a disqualification order against a person if it is satisfied that he–
- (a) has been guilty of breach of section 857 (fraudulent trading), or
- (b) has otherwise committed, while an officer or liquidator of the company receiver of the company's property or administrative receiver of the company, any fraud in relation to the company or any breach of his duty as such officer, liquidator, receiver or administrative receiver.
- (2) The maximum period of disqualification under this section is 15 years

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### 247. Proposal to make disqualification order

- (1) If the Registrar proposes to make a disqualification order against a person, it must give him a warning notice.
- (2) A warning notice must state the period of disqualification under the proposed disqualification order.

### 248. Decision notice

- (1) If the Registrar decides to make a disqualification order against a person, it must without delay give him a decision notice.
- (2) The decision notice must state the period of disqualification under the disqualification order.
- (3) If the Registrar decides to make a disqualification order against a person, that person may refer the matter to the Court.

### 251. Warning notices

- (1) A warning notice must–
- (a) state the action which the Registrar proposes to take;
- (b) be in writing;
- (c) give reasons for the proposed action;
- (d) state whether section 257 (access to material) applies; and

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- (e) if that section applies, describe its effect and state whether any secondary material exists to which the person receiving the notice must be allowed access under it.
- (2) A warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Registrar.
- (3) The Registrar may extend the period specified in the notice.
- (4) The Registrar must then decide, within a reasonable period, whether to give the person receiving the warning notice a decision notice.

#### 252. Decision notices

A decision notice must–

- (a) be in writing;
- (b) give the reasons of the Registrar for the decision to take the action to which the notice relates;
- (c) state whether section 257 (access to material) applies;
- (d) if that section applies, describe its effect and state whether any secondary material exists to which the person receiving the notice must be allowed access under it; and
- (e) give an indication of–
- (i) any right to have the matter referred to the Court which is given by these Regulations; and
- (ii) the procedure on such a reference

#### 253. Notices of discontinuance

- (1) If the Registrar decides not to take–
- (a) the action proposed in a warning notice given by it, or
- (b) the action to which a decision notice given by it relates, it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (2) A notice of discontinuance must identify the proceedings which are being discontinued.

#### 254. Appeals

- (1) A person may appeal to the Court from any decision of the Registrar to issue a decision notice to him under section 252 (decision notices).
- (2) If notice of appeal is given against a decision notice, the effect of the Registrar's notice is suspended.
- (3) On appeal the Court may (as the case may require) specify the terms of the final notice to be issued under section 255 (final notices), remit the matter to the Registrar or make any order or determination that the Registrar might have made.

#### 255. Final notices

- (1) If the Registrar has given a person a decision notice and the matter was not referred to the Court within one month, the Registrar must, on taking the action to which the decision notice relates, give such person and any person to whom the decision notice was copied a final notice.
- (2) If the Registrar has given a person a decision notice and the matter was referred to the Court within one month, the Registrar must, on taking action in accordance with any directions given by the Court give that person and any person to whom the decision notice was copied a notice required by subsection (3).
- (3) The notice required by this subsection is–
- (a) in a case where the Court has upheld an appeal against a decision notice, a discontinuation notice, and
- (b) in any other case, a final notice.
- (4) A final notice must state the period of disqualification under the disqualification order.

...

#### 257. Access to material

- (1) If the Registrar gives a person ("A") a warning notice or a decision notice, it must–
- (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
- (b) allow him access to any secondary material which, in the Registrar's opinion, might undermine that decision.
- (2) But the Registrar does not have to allow A access to material under subsection (1) if the material is excluded material or it–
- (a) relates to a case involving a person other than A; and
- (b) was taken into account by the Registrar in A's case only for purposes of comparison with other cases.
- (3) The Registrar may refuse A access to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material–
- (a) would not be in the public interest; or

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- (b) would not be fair, having regard to–
- (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice; and
  - (ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material's disclosure.
- (4) If the Registrar does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of–
- (a) the existence of the protected item; and
  - (b) the Registrar's decision not to allow him access to it.
- (5) If the Registrar refuses under subsection (3) to allow A access to material, it must give him written notice of–
- (a) the refusal; and
  - (b) the reasons for it.
- (6) "Secondary material" means material, other than material falling within subsection (1)(a) which–
- (a) was considered by the Registrar in reaching the decision mentioned in that subsection; or
  - (b) was obtained by the Registrar in connection with the matter to which that notice relates but which was not considered by it in reaching that decision.
- (7) "Excluded material" means material which is a protected item (as defined in section 260 (protected items)).

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#### 418. Filing obligations of companies subject to small companies regime

- (1) The directors of a company subject to the small companies regime–
- (a) must deliver to the Registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and
  - (b) may also deliver to the Registrar–
    - (i) a copy of the company's profit and loss account for that year, and
    - (ii) a copy of the directors' report for that year.
- (2) The directors must also deliver to the Registrar a copy of the auditor's report on the accounts (and any directors' report) that it delivers. This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) Subject to section 419 the copies of accounts and reports delivered to the Registrar must be copies of the company's annual accounts and reports.
- (4) The copies of the balance sheet and any directors' report delivered to the Registrar under this section must state the name of the person who signed it on behalf of the board.
- (5) The copy of the auditor's report delivered to the Registrar under this section must–
- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior auditor, or
  - (b) if the conditions in section 477 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Board in accordance with that section.

...

#### 857. Fraudulent trading

- (1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, a contravention of these Regulations is committed by every person who is knowingly a party to the carrying on of the business in that manner.
- (2) This applies whether or not the company has been, or is in the course of being, wound up.
- (3) A person who commits the contravention referred to in subsection (1) shall be liable for a fine of up to level 8.
- (4) The provisions of this section are without prejudice to any other fine, censure or legal proceeding to which a director may be subject under these Regulations or any other law or regulation applicable in the Abu Dhabi Global Market.

...

#### 984. General false statement contravention

- (1) It is a contravention of these Regulations for a person knowingly or recklessly–
- (a) to deliver or cause to be delivered to the Registrar, for any purpose of these Regulations, a document, or

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- (b) to make to the Registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular.
- (2) A person who commits the contravention referred to in subsection (1) is liable to a fine of up to level 7.

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ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE  
مبنى سلطات سوق أبوظبي العالمي، مريعة سوق أبوظبي العالمي، جزيرة المارية، ص ب 111999، أبوظبي، الإمارات العربية المتحدة  
T +971 2 333 8888 [adgm.com](http://adgm.com)



## EXTRACT OF THE DECISION PROCEDURES, DISQUALIFICATION AND ENFORCEMENT MANUAL – FEBRUARY 2021

### Introduction to disqualification orders

7.1 A disqualification order is an order made by the Registrar disqualifying a person from:

- a. being a director of a company;
- b. acting as a receiver of a company;
- c. taking part in the promotion, formation or management of a company; or
- d. acting as an insolvency practitioner.

7.2 A disqualification order may be issued to:

- a. a person convicted of a criminal offence in the UAE in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property, or with their being an administrative receiver of a company;
- b. a person who has been persistently in default of any regulation in the ADGM requiring any return, account or other document to be given to the Registrar;
- c. a person who is guilty of fraudulent trading, or other fraud in relation to the company; or
- d. a person who is, or has been, a director or shadow director of a company, where the Registrar is satisfied that the person's conduct in relation to the company makes them unfit to be concerned in the management of a company and it is in the public interest to make the order.

7.3 Unless the Registrar otherwise orders, the period of disqualification begins 21 days after the order is made.

7.4 If a disqualification order is made against a person who is already subject to a disqualification order or a disqualification undertaking, then the periods of disqualification run concurrently.

7.5 The minimum period to be specified in a disqualification order is two years, while the maximum period of a disqualification order is 15 years.

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### Process of making a disqualification order

7.16 The Registration Authority's Monitoring and Enforcement Division may become aware of actual or suspected contraventions while conducting supervisory activities such as investigations, on-site assessments, ad-hoc inspections and management meetings with ADGM registered entities, as well as through referrals and complaints from third parties.

7.17 M&E conducts an assessment of the facts of the matter and provides a recommendation to the Registrar (or delegate). The Registrar will decide whether to make a disqualification order preventing the person from acting as a director, receiver or promoter of a company or insolvency practitioner as the case may be.

### In what circumstances might the Registrar disqualify a person?

7.18 The administrative action of disqualifying a person from acting as a director, receiver or promoter of a company, or acting as an insolvency practitioner, indicates to ADGM registered entities and their stakeholders that the particular conduct is unacceptable. This in turn promotes the objects of ADGM's regulatory regime and may deter industry participants from engaging in misconduct.

7.19 Whether the Registrar will make a disqualification order will depend on the facts of each matter. Factors underlying the decision about whether to take this type of administrative action may include:

- a. whether taking the action will promote the objects of ADGM's regulatory regime;
- b. whether taking the action will deter misconduct;
- c. the strategic significance of taking action;
- d. the need to protect investors and consumers;
- e. other benefits of pursuing misconduct;
- f. whether taking the proposed action is preferable to taking another type of administrative action, in terms of cost and timeliness;

REGISTRATION AUTHORITY  
سلطة التسجيل

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE  
مبنى سلطات سوق أبوظبي العالمي، مريضة سوق أبوظبي العالمي، جزيرة المارية، ص ب 111999، أبوظبي، الإمارات العربية المتحدة  
T +971 2 333 8888 [adam.com](http://adam.com)



- g. in the case of directors, whether there has been a breach of the director's duties to the company; or
- h. any other issues specific to the case.

7.20 If there are aggravating factors, the Registrar may be more likely to impose a disqualification order. Aggravating factors include, but are not limited to:

- a. the seriousness of the conduct;
- b. whether the conduct involved dishonesty ;
- c. whether the conduct was intentional, reckless or negligent;
- d. the amount of any financial losses to investors and consumers;
- e. whether the conduct is continuing, or likely to recur; or
- f. whether there has been previous misconduct.

7.21 However, the Registrar will also take into account mitigating factors. These include, but are not limited to:

- a. the extent to which there may be personal hardship if a disqualification order is made;
- b. the level of co-operation with the investigation;
- c. whether the misconduct is an isolated case;
- d. whether there has been attempts at remedial steps;
- e. whether the person has been co-operative in compensating any losses;
- f. whether the misconduct was inadvertent; or
- g. whether the misconduct was self-reported.

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T +971 2 333 8888 [adgm.com](http://adgm.com)