

### JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0019
Case Number	ADGMCFI-2023-071
Name of Case	Elnaggar & Partners Limited v Abu Dhabi Global Market Registration Authority
Judge	Justice William Stone SBS KC
Date Issued	24 October 2023
Catchwords	Statutory appeal. Record of beneficial owners. Monetary Penalty Notice. Principal Findings Record. Compliance with Sections 2 and 3 of the Beneficial Ownership and Control Regulations. Whether decision made was wrong in law or is in excess of jurisdiction.
Cases Cited	Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223
Legislation and Authorities Cited	<p>ADGM Beneficial Ownership and Control Regulations 2018 – Sections 2, 3, 4, 5, 17 and 19</p> <p>ADGM Commercial Licensing Regulations 2015 – Section 29, 41, 43 and 47</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 25</p> <p>ADGM Court Procedure Rules 2016 – Rule 230(A)</p>
Executive Summary	<p>This judgment considers a statutory appeal brought by Elnaggar &amp; Partners Limited (the “<b>Company</b>”) against the Abu Dhabi Global Market Registration Authority (the “<b>RA</b>”). The Company challenged a Monetary Penalty Notice issued by the RA for alleged non-compliance with the ADGM Beneficial Ownership and Control Regulations 2018 (“<b>BOCR</b>”), specifically Sections 2 and 3 concerning internal record keeping. The Company argued that the decision was wrong in law or in excess of jurisdiction, claiming procedural errors by the RA, the availability of a correct filing elsewhere, and that filing under Sections 4 and 5 of the BOCR should suffice for compliance with Sections 2 and 3. The Court dismissed the appeal, finding that the Company had ample opportunity to address the RA's concerns and failed to do so effectively during the assessment period.</p>

<p>Overall Summary</p>	<p><b>Background</b></p> <p>This Abu Dhabi Global Market (“<b>ADGM</b>”) Court of First Instance (Commercial &amp; Civil Division) judgment concerns a statutory appeal brought by Elnaggar &amp; Partners Limited (the “<b>Company</b>”) against the Abu Dhabi Global Market Registration Authority (the “<b>RA</b>”). The appeal challenges the RA's decision on 13 April 2023 to issue a Monetary Penalty Notice (“<b>MPN</b>”) of USD 5,000 to the Company. The MPN was imposed for the Company's alleged failure to comply with Sections 2 and 3 of the ADGM Beneficial Ownership and Control Regulations 2018 (“<b>BOCR</b>”), which relate to keeping an internal record of beneficial owners. The RA's assessment found that a Record of Beneficial Ownership (“<b>RBO</b>”) submitted by the Company on 15 June 2022 lacked required particulars under Section 2 of the BOCR and was inconsistent with the RA's online records regarding the number of beneficial owners. Prior to the MPN, the RA sent the Company a Principal Findings Record (“<b>PFR</b>”) on 14 March 2023 detailing these findings. The Company responded to the PFR, stating it was in the process of updating the register and acknowledging potential enforcement. The Company later claimed the June 2022 RBO submission was an “<i>administrative mistake</i>”.</p> <p><b>Analysis</b></p> <p>The appeal grounds asserted that the RA's decision was wrong in law or in excess of jurisdiction. The Court considered several arguments raised by the Company.</p> <ol style="list-style-type: none"> <li>1. <b>Relevant date for compliance:</b> The Company argued that its compliance with the BOCR should be judged as of 15 June 2022 when it submitted the RBO. The Court rejected this, finding the relevant assessment period ran from the start of the issuance of the Firm Assessment Letter on 24 May 2022 (this Letter confirmed that the assessment would cover compliance in terms of the Company's RBO, and a copy of this document (together with other documents and information) was required to be provided to the RA by 15 June 2022) until the MPN was issued on 13 April 2023. The Company had opportunities during this time to clarify the discrepancies.</li> <li>2. <b>Procedural error / Absence of warning notice:</b> The Company argued that the RA failed to issue a warning notice before the MPN, citing an expected “<i>closure letter</i>” and seeking to import requirements from the ADGM Commercial Licensing Regulations 2015 (the “<b>CLR</b>”). The Court found no statutory requirement for a warning notice in the BOCR. It held that while no closure letter was sent as discussed, the PFR served to adequately notify the Company of the concerns and necessary actions, precluding a “<i>natural justice</i>” argument. The attempt to apply CLR provisions was rejected as the BOCR is the later and more specific legislation.</li> <li>3. <b>True and correct BOCR record otherwise available:</b> The Company contended that a correct record was filed on the RA portal since April 2022. The Court rejected this argument, as the Company failed to bring this record to the RA's attention during the assessment process</li> </ol>
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	<p>as reflecting the correct position. The RA was entitled to rely on the document provided by the Company.</p> <p>4. <b>Compliance with BOCR Sections 4/5 conclusive of compliance with Sections 2/3:</b> The Company suggested that filing with the Registrar (Sections 4 and 5) meant compliance with keeping the internal record (Sections 2 and 3). The Court disagreed, stating that the BOCR imposes distinct duties for internal record-keeping and external filing. A correct filing on the portal subsequent to submission of an erroneous document is not conclusive of internal compliance.</p> <p>5. <b>Excess of jurisdiction:</b> The Company alleged that the RA acted unreasonably, considered irrelevant information (the RBO), ignored relevant information (the correct April 2022 filing), acted irrationally, discriminatorily, breached a legitimate procedural expectation of the Company (regarding the closure letter), or unlawfully and wrongly fettered its discretion by application of a blanket policy and giving effect to a pre-determined outcome. The Court rejected all these claims. It found no evidence of irrationality (Wednesbury unreasonableness) and determined the RA fairly investigated and offered opportunities for representation. The detailed PFR addressed concerns about the promised closure letter.</p> <p><b>Conclusion</b></p> <p>The Court found that the RA had fairly investigated the matter and provided the Company with opportunities to make representations. Considering the evidence, the Court concluded that the RA's decision was not wrong in law or in excess of jurisdiction. Accordingly, the appeal was dismissed. The Court made an order <i>nisi</i> that costs be awarded to the RA.</p>
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***This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.***