

31 December 2024

Iceberg Capital Limited
2435, Level 24
Al Sila Tower, Regus
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention:

[REDACTED]

[REDACTED]

Sent by e-mail:

[REDACTED]

Dear Sirs

CONFIRMATION OF DECISION IN RELATION TO PENALTY IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017 AND THE FOREIGN ACCOUNT TAX COMPLIANCE REGULATIONS 2022

1. The Financial Services Regulatory Authority (“FSRA”) of the Abu Dhabi Global Market (“ADGM”) hereby confirms its decision to impose a penalty on Iceberg Capital Limited (“ICL”) pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (“CRS Regulations”) and subsection 9(1) of the *Foreign Account Tax Compliance Regulations 2022* (“FATCA Regulations”), together the “Regulations”. This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 (“CRS Cabinet Resolution”) which applies pursuant to the CRS Regulations, and Article 9(5) of Cabinet Resolution No. 63 of 2022 (the “FATCA Cabinet Resolution”) which applies pursuant to the FATCA Regulations, following due consideration of an appeal submitted by ICL on 14 October 2024 in response to a notice from the FSRA dated 20 September 2024.

Defined Terms

2. Terms defined in the notice are defined at the first instance the term is used in parentheses. Other capitalised terms are defined in the Regulations and shall bear the same meaning in this notice, unless the context otherwise requires.

SUMMARY

3. The FSRA considers that ICL has:
 - a. failed to submit its risk assessment as requested by the FSRA in connection with its administration of the CRS Regulations (“CRS Risk Assessment”) by the due date of 31 July 2023, in contravention of subsection 6(1) of the CRS Regulations;

- b. failed to submit its risk assessment as requested by the FSRA in connection with its administration of the FATCA Regulations (“FATCA Risk Assessment”) by the due date of 31 July 2023, in contravention of subsection 6(1) of the FATCA Regulations,

and accordingly, subsection 9(1)(b) of the CRS Regulations and subsection 9(1)(b) of the FATCA Regulations respectively apply.

4. The FSRA has decided to impose a penalty of AED 10,000 on ICL pursuant to subsection 9(1) of the CRS Regulations and a penalty of AED 10,000 on ICL pursuant to subsection 9(1) of the FATCA Regulations.

BACKGROUND

CRS Regulations

5. The Organisation for Economic Co-operation and Development (“OECD”) developed the Common Reporting Standard (“CRS”), which came into force in October 2014. The CRS was established in the United Arab Emirates (“UAE”) with effect from 1 January 2017 pursuant to the ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The CRS sets out the required information to be exchanged, the types of entities required to report, the different types of financial accounts and account holders in scope and the common due diligence procedures to be followed by Reporting Financial Institutions, as defined in the CRS (“CRS RFIs”).
7. Appropriate legislation to support the implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the CRS Regulations by the Board of Directors of ADGM in 2017. The CRS Regulations apply the CRS Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the CRS Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(1) of the CRS Regulations.
8. On 27 January 2017, the ADGM published the ‘*Notification of collection of information under the Common Reporting Standards*’ prepared by the UAE’s Ministry of Finance (“MOF”), setting out the requirements for implementation of the CRS across all jurisdictions within the UAE.

FATCA Regulations

9. The Foreign Account Tax Compliance Act (“FATCA”) was introduced by the United States of America (“US”) in 2010 to target non-compliance by US taxpayers using foreign accounts. FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service.
10. On 17 June 2015, the UAE signed a Model 1B Intergovernmental Agreement (“IGA”) with the US to improve international tax compliance and to implement FATCA reporting by Reporting UAE Financial Institutions, as defined in the IGA (“FATCA RFI’s”). The IGA was ratified by Federal Decree 9 of 2016.
11. Appropriate legislation to support the implementation of FATCA in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the FATCA Regulations by the Board of Directors of ADGM in 2022. The FATCA Regulations apply the FATCA Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the FATCA Regulations.

RELEVANT FACTS

12. On 11 February 2022 ICL was registered as a Private Company Limited by Shares.
13. On 24 April 2023, the FSRA published Notice No. 10 of 2023 informing Senior Executive Officers (“SEOs”), Money Laundering Reporting Officers (“MLROs”) and ADGM Licensed Persons (“LPs”) of the MOF’s new Automatic Exchange of Information (“AEOI”) portal for submission of annual returns for the purposes of CRS and FATCA (“Annual Returns”) by CRS RFIs and FATCA RFIs (together “RFIs”) for the 2022 calendar year, with training scheduled on 28 April 2023 and 4 May 2023.
14. On 25 May 2023, the FSRA published Notice No. 16 of 2023, inviting all RFIs to attend a mandatory training session on the AEOI portal. The training was to provide a comprehensive review of the new portal and guide RFIs on completing and submitting Annual Returns, including a Nil Return (as defined in the CRS Cabinet Resolution) or a Nil Report (as defined in the FATCA Cabinet Resolution).
15. On 8 June 2023, the FSRA published Notice No. 18 of 2023 addressed to SEOs, MLROs and LPs to notify them that the new AEOI portal was operational and open for registration in advance of submission of Annual Returns in respect of the 2022 calendar year, with instructions on how to do so.
16. On 15 June 2023 ICL registered as a CRS RFI and a FATCA RFI on the AEOI portal.
17. On 25 June 2023, MOF published on its website a ‘FATCA/CRS Risk Assessment Questionnaire – User Guide’ specifying that RFIs are required to complete a CRS Risk Assessment and/or a FATCA Risk Assessment (as applicable) (the “Risk Assessments”) by the stipulated deadline, with instructions on how to do so.
18. On 26 June 2023, the FSRA published and sent by email ‘FCCP FSRA Notice No. 21 of 2023 – FATCA and CRS System Live’ informing SEOs, MLROs and LPs that the functionality for submission of Annual Returns and Risk Assessments was enabled on the AEOI portal, and that all RFIs were required to fulfil their obligations for the 2022 calendar year by the deadline of 31 July 2023.
19. On 3 July 2023, ICL submitted a Nil Return for CRS and a Nil Report for FATCA through the AEOI portal.
20. On 5 July 2023, the FSRA published Notice No. 22 of 2023 informing RFIs that the MOF would be conducting training and web-based sessions from 10 July 2023 until 31 July 2023, with respect to the submission of Annual Returns and Risk Assessments.
21. On 28 July 2023, the MOF extended the deadline for submission of Annual Returns for the 2022 calendar year, to 15 August 2023. On the same day, the FSRA sent an email to ICL informing it of the extended deadline for submission of Annual Returns and also noting that the deadline for submission of the Risk Assessment(s) remained 31 July 2023 and that the system would not accept late submissions.
22. On 6 September 2023, the FSRA sent an email to ICL requiring ICL’s urgent attention to its failure to submit the Risk Assessments by the deadline specified. The FSRA requested that ICL provide an explanation for this failure by 12 September 2023.
23. On 6 September 2023, ICL sent an email to the FSRA stating that it had submitted its response as attached before the due date and requested the FSRA to check and revert.

24. On 11 September 2023, the FSRA sent an email to ICL noting that the attachment to ICL's email was in relation to an Audit Questionnaire and not related to the FSRA's request for Risk Assessments. The FSRA requested ICL to explain the reason for its failure to submit the Risk Assessments.
25. On 11 September 2023, ICL responded stating that it had submitted the Risk Assessments and attaching a document that it described as its proof of submission.
26. On 11 September 2023, ICL in a further email requested the FSRA's confirmation that the request had been closed.
27. On 11 September 2023, the FSRA responded that the matter was not closed until the FSRA understands why the Risk Assessments were not submitted, and to refer to the FSRA's previous email.
28. On 11 September 2023, the FSRA sent a further email to explain that the document shared by ICL was confirmation of its FATCA and CRS registration on the AEOI portal and not submission of the Risk Assessments, and that the second document shared was unrelated to FATCA and CRS. The FSRA again requested ICL to explain the reason for its failure to submit the FATCA and CRS Risk Assessments as according to the FSRA's records ICL had not made the submission through the AEOI portal.
29. On 11 September 2023, ICL requested a call to discuss as ICL maintained that it had submitted and the confirmation was issued from MOF, and that it had submitted both the registration and submission. ICL resent a screenshot as proof that the report had been submitted.
30. On 11 September 2023, the FSRA sent an email to ICL in which it requested ICL to provide confirmation of its submission of the Risk Assessments in the form of a screenshot from the AEOI portal with the Risk Assessment section open.
31. On 11 September 2023, ICL sent an email to the FSRA stating that whilst it had submitted the Annual Returns ahead of the deadline, it was of the view that since its reporting was a Nil Return/Nil Report the requirement for a Risk Assessment did not apply, as it did not have any Reportable Accounts. ICL stated that it was their first reportable period and that it would ensure that the Risk Assessments were completed and submitted going forward.

FAILURE TO SUBMIT RISK ASSESSMENT FOR CRS BY THE DUE DATE

32. Subsection 6(1) of the CRS Regulations requires RFIs to collect and report all information in accordance with the CRS Regulations and the CRS Cabinet Resolution.
33. Article 4(7) of the CRS Cabinet Resolution requires CRS RFIs to provide any other information, documentation and records as may be reasonably requested by the FSRA and MOF within the time prescribed by them.
34. As mentioned in paragraphs 18 and 21 above, the FSRA sent reminders to ICL that the submission of the CRS Risk Assessment was due by 31 July 2023.
35. ICL failed to submit the CRS Risk Assessment by the deadline stipulated. Accordingly, ICL has contravened subsection 6(1) of the CRS Regulations and Article 4(7) of the CRS Cabinet Resolution.

FAILURE TO SUBMIT RISK ASSESSMENT FOR FATCA BY THE DUE DATE

36. Subsection 6(1) of the FATCA Regulations requires RFIs to collect and report all information in accordance with the FATCA Regulations and the FATCA Cabinet Resolution.
37. Article 5(3)(e) of the FATCA Cabinet Resolution requires FATCA RFIs to provide to the FSRA or MOF any information, records or documents required to be submitted in a complete and accurate manner.
38. As mentioned in paragraphs 18 and 21 above, the FSRA sent reminders to ICL that the submission of the FATCA Risk Assessment was due by 31 July 2023.
39. ICL had failed to submit the FATCA Risk Assessment by the deadline stipulated. Accordingly, ICL has contravened subsection 6(1) of the FATCA Regulations and Article 5(3)(e) of the FATCA Cabinet Resolution.

PENALTY

40. The FSRA considers that ICL contravened subsections 6(1) of and the CRS Regulations and Article 4(7) of the CRS Cabinet Resolution, and accordingly subsection 9(1)(b) of the CRS Regulations applies. The FSRA also considers that ICL contravened subsection 6(1) of the FATCA Regulations and Article 5(3)(e) of the FATCA Cabinet Resolution and accordingly subsection 9(1)(b) of the FATCA Regulations applies.
41. The penalties for the contraventions are set out in Article 5(6)(a) of the CRS Cabinet Resolution, and Article 7(6) of the FATCA Cabinet Resolution.
42. The total penalty imposed by the FSRA on ICL is AED 20,000.
43. The breakdown of the penalty imposed by the FSRA on ICL pursuant to the Regulations are as follows:

Reference	Contravention	Penalty (AED)
Article 5(6)(a) of the CRS Cabinet Resolution	An RFI that fails to comply with any other provision(s) of the CRS Cabinet Resolution	10,000
Article 7(6) of the FATCA Cabinet Resolution	A Financial Institution that fails to comply with any other provision(s) of the FATCA Cabinet Resolution	10,000

CONSIDERATION OF APPEAL

44. On 20 September 2024, the FSRA issued ICL with a notice in which it imposed on ICL a penalty of AED 20,000 ("September Notice").
45. Under subsection 9(2) of the CRS Regulations and Article 7(1) of the CRS Cabinet Resolution, and subsection 9(2) of the FATCA Regulations and Article 9(1) of the FATCA Cabinet Resolution, ICL had the opportunity to appeal against the FSRA's decision set out in the September Notice.
46. On 14 October 2024, ICL submitted its appeal to the FSRA.
47. In its appeal, ICL asked the FSRA to take certain matters into consideration, as follows:

ICL did not commit the violation attributed to it

- a. ICL had fully complied with the reporting obligations for the 2022 reporting year by submitting a Nil Return and Nil Report for CRS and FATCA respectively. ICL believed that the Risk Assessment was not required because it had no Reportable Accounts.

The administrative penalty imposed is disproportionate to the violation

- b. The penalty of AED 20,000 was disproportionate taking into consideration that ICL was newly incorporated, and it was its first reporting cycle. ICL had acted in good faith by complying with all other reporting obligations, including the submission of a Nil Return and Nil Report and the Audit Risk Questionnaire. ICL had also faced technical challenges with the MOF platform and the miscommunication surrounding the Risk Assessment contributed to the situation. Additional guidance or warning would have been more appropriate.

The administrative penalty imposed exceeded the limit prescribed

- c. ICL considered the financial penalty imposed of AED 10,000 each for the CRS and FATCA contraventions was disproportionately high considering that ICL had submitted a Nil Return and Nil Report and there were no Reportable Accounts or tax liabilities involved.

48. The FSRA has considered the grounds in support of ICL's appeal.

49. In relation to ICL's representations in paragraph 47 above, the FSRA notes that:

- a. Risk Assessments were required to be submitted even if ICL had no Reportable Accounts. As mentioned in paragraphs 18 and 21 above, ICL was notified that the functionality for submission of Risk Assessments was enabled on the AEOI portal, and that all RFIs were required to fulfil their obligations for the 2022 calendar year by the deadline of 31 July 2023, and that the portal would not accept any late submissions.
- b. The penalties for non-submission of the Risk Assessments are prescribed by Article 5(6)(a) of the CRS Cabinet Resolution and Article 7(6) of the FATCA Cabinet Resolution respectively. As mentioned in paragraphs 22 to 31 above, ICL had corresponded with the FSRA from 6 September 2024 onwards in relation to the Risk Assessment, after the deadline for the Risk Assessment submission for both CRS and FATCA had passed.
- c. As mentioned in the paragraph above, the penalties are prescribed by the CRS Cabinet Resolution and the FATCA Cabinet Resolution respectively.

50. Given the facts and matters set out above, and having given due consideration to ICL's appeal, the FSRA has decided to confirm its decision in this matter to impose a penalty of AED 20,000 on ICL.

PROCEDURAL MATTERS

Manner and time for payment of penalty

51. Pursuant to Article 6(4) of the CRS Cabinet Resolution and Article 10(2) of the FATCA Cabinet Resolution, the penalty imposed pursuant to this notice is to be paid by ICL within fifteen (15) business days from the date of this notice, i.e. on or before **21 January 2025**.

52. Payment of the penalty can be made by electronic funds transfer into the following account:

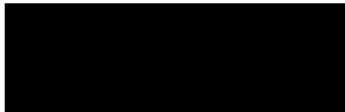
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

53. If the penalty or any part of it remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the FSRA.

Publicity

54. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. Accordingly, the FSRA will publish relevant information about the decision in this notice, including the notice itself, as the FSRA considers appropriate. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Mr. Adrian Bock
Executive Director – Enforcement
Abu Dhabi Global Market Financial Services Regulatory Authority