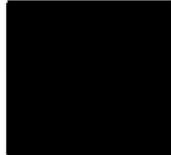


FINAL NOTICE ISSUED UNDER
SECTION 50 OF THE COMMERCIAL LICENSING REGULATIONS 2015

To: Elia Investments Limited
c/o Babar Abbas, Director

Address:



Email:



Date: 20 May 2022

1. DECISION

- 1.1 This Final Notice ("Final Notice") is issued under section 50 of the *Commercial Licensing Regulations 2015* ("CLR 2015").
- 1.2 For the reasons given in this Final Notice, the Registrar (the "Registrar") of Abu Dhabi Global Market ("ADGM") has decided to impose a financial penalty of **USD 30,000** on Elia Investments Limited ("Elia") for two separate contraventions of section 4 of CLR 2015 – Licensed persons exceeding scope of licence.

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 ADGM's commercial legislation, 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.

3. SUMMARY OF EVIDENCE SUPPORTING THE DECISION

- 3.1 On 12 September 2017, Elia was incorporated in ADGM and received a licence permitting it to carry on the non-financial business activities of a special purpose vehicle ("SPV") – proprietary investment company, proprietary asset investment company and special purpose company for professional investors. Babar Abbas ("Abbas") was its founder and, throughout its existence, its sole director and shareholder.

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- 3.2 Elia has never applied for nor received a Financial Services Permission (“FSP”) from the Financial Services Regulatory Authority (“FSRA”).
- 3.3 In December of 2020, the Registrar received a complaint from an ADGM company, “Company #1”, claiming that they had been the victim of fraudulent trading committed by Elia and Abbas.
- 3.4 Shortly thereafter, the Registrar received a similar complaint from a group of related ADGM companies (collectively, “Company #2”) who alleged that they had been defrauded by Elia and Abbas.

Company #1

- 3.5 As Elia was licensed in ADGM solely to conduct the activities of a passive SPV in ADGM, Elia could not carry on the controlled business activity of arranging or providing credit or purporting to do so.
- 3.6 Nevertheless, in December of 2019, as Elia’s sole director and CEO, Abbas caused Elia to enter into a financing agreement with Company #1. Elia was to provide a total of USD 5,000,000 in loans to Company #1 but required Company #1 to provide a 10% deposit of USD 500,000 to Elia prior to providing the total amount of the financing.
- 3.7 Accordingly, on 12 January of 2020, Company #1 provided USD 500,000 to Elia by transferring these funds to a bank account of Elia at a bank located in Abu Dhabi (the “Elia AED Account”). Abbas had sole control over the Elia AED Account.
- 3.8 The financings promised to Company #1 never occurred and there is no credible evidence that Elia had the means to provide the promised loans to Company #1.
- 3.9 Company #1 never recovered any of its USD 500,000 deposit from Elia.
- 3.10 By November 2020, Abbas had personally misappropriated virtually all of the funds provided by Company #1, including the interest accrued on these funds.
- 3.11 As Elia was only licensed to conduct the activities of a passive SPV in ADGM, Elia could not carry on the controlled business activity of arranging or providing credit, or purporting to do so, under this limited licence.

Company #2

- 3.12 In December of 2019 and January of 2020, Abbas caused Elia to enter into financing agreements with Company #2. Elia was to provide a total of AED 64,000,000 in loans but, required Company #2 to provide Elia with a total deposit of AED 6,400,000, constituting 10% of the total capital to be lent under these financing agreements. Again, these deposits were required by Elia as a condition of financing.
- 3.13 In December 2019, Company #2 transferred the initial deposits totalling AED 3,400,000 into the Elia AED Account. In January and February of 2020, Company #2 transferred additional deposits totalling AED 3,000,000 into the Elia AED Account.
- 3.14 The financings promised to Company #2 never occurred and there is no credible evidence that Elia ever had the means to provide the promised loans to Company #2.

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- 3.15 Company #2 recovered AED 2,600,000 of their AED 6,400,000 in deposits but did not recover the remaining AED 3,800,000 from Elia.
- 3.16 By November 2020, Abbas had personally misappropriated virtually all of the funds provided by Company #2.
- 3.17 Again, as Elia was only licensed to conduct the activities of a passive SPV in ADGM, Elia could not carry on the controlled business activity of arranging or providing credit, or purporting to do so, under this limited licence.

Abbas Interview of 1 June 2021

- 3.18 On 1 June 2021, Abbas attended for a video interview with investigators from the RA and the FSRA (the "Abbas Interview").
- 3.19 During the Abbas Interview, Abbas made numerous significant admissions including the following:
- Abbas stated he is the CEO of Elia and that it was "his baby"
 - Abbas admitted that he caused Elia to enter into four contracts with clients for the provision of finance including contracts with Company #1 and Company #2

Registrar's Concerns

- 3.20 In late 2019 and early 2020, Abbas caused Elia to enter into agreements with Company #1 promising USD 5,000,000 in financing and promising AED 64,000,000 in financing to Company #2. These purported financings did not occur, and Company #1 and Company #2 suffered significant financial losses as a result.
- 3.21 Under its ADGM SPV licence, Elia was not permitted to purport to engage in these business activities (e.g., providing or arranging credit) in the ADGM.
- 3.22 Further, there is no credible evidence that Elia had the ability to provide these financings to Company #1 and Company #2 despite its representations.
- 3.23 The Registrar was concerned that Elia was exceeding the scope of its licence.
- 3.24 With respect to Elia, the Registrar's concerns involved two separate and distinct possible contraventions of section 4 of CLR 2015.

4. CONTRAVENTION

Exceeding Scope of Licence

- 4.1 Based on the facts and matters noted above, the Registrar considers that Elia committed two separate contraventions of section 4 of CLR 2015, which states that:

Section 4. Licensed person exceeding scope of licence

(1) If a licensed person carries on a controlled activity in the Abu Dhabi Global Market, or purports to do so, otherwise than in accordance with a licence given to that person

under these Regulations he commits a contravention of these Regulations and shall be liable to a fine not exceeding level 5 on the standard fines scale.

(2) In proceedings in respect of a contravention under sub n section (1), it is a defence for the person accused of the contravention to show that he took all reasonable precautions and exercised all due diligence to avoid committing the contravention.

- 4.2 Based on the above, the Registrar considers that Elia, as a licensed person, carried out controlled activities in ADGM, otherwise than in accordance with the ADGM commercial licence given to Elia under CLR 2015.
- 4.3 In separate and distinct instances, Elia purported to arrange credit for Company #1 and Company #2 in ADGM while its licence only permitted Elia to carry on the passive activities of an SPV. In 2019 and 2020, Abbas signed separate financing agreements on behalf of Elia with representatives of Company #1 and Company #2.
- 4.4 Accordingly, the Registrar has decided to impose a financial penalty on Elia for these two separate contraventions of section 4 of CLR 2015.

5. SANCTIONS

Financial penalties

- 5.1 In deciding to impose financial penalties, the Registrar has taken into account the factors and considerations in the Registrar's Decision Procedures, Disqualification and Enforcement Manual (the "Manual").

Determination to impose a financial penalty

- 5.2 With reference to paragraph 4.7 of the Manual, the Registrar considers the following factors to be of relevance in deciding to impose financial penalties against Elia:
- To promote compliance with the Regulations and achieve the Registrar's objectives by:
 - penalising persons who have committed contraventions;
 - detering persons that have committed or may commit similar contraventions; and
 - depriving persons of any benefit that they may have gained as a result of their contraventions.

- 5.3 The Registrar has decided to impose financial penalties, given the seriousness of the contravention and the circumstances.

Determination of the level of financial penalty

- 5.4 With reference to paragraph 4.8 of the Manual, the Registrar has taken into account the factors and considerations for determining the appropriate level of the financial penalty that it has decided to impose, which are set out as follows.

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The seriousness of the contraventions

- 5.5 Elia purported to provide 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 business activities in ADGM.
- 5.6 It is a serious contravention for a licensed person to purport to carry on a controlled activity otherwise than in accordance with its ADGM licence.
- 5.7 It is highly aggravating for a licensed person like Elia to exceed the scope of its licence, particularly as a vehicle for fraudulent trading against multiple victims.
- 5.8 It is difficult to envision more serious violations of section 4 of CLR 2015.

Deliberate or reckless

- 5.9 These contraventions of section 4 of CLR 2015 by Elia, as directed of Abbas, were clearly deliberate.

Whether the person is an individual

- 5.10 This factor was not considered to be relevant.

Effect on third parties

- 5.11 Company #1 and Company #2 suffered massive financial losses related to the contraventions of section 4 of CLR 2015 by Elia.

Deterrence

- 5.12 Deterrence is one of the main purposes of taking enforcement action. That is, deterring licensed persons who have committed contraventions from committing further contraventions, and deterring others from committing similar contraventions.
- 5.13 The penalty imposed must deter Elia and other similar SPVs or licensed persons from exceeding the scope of their ADGM commercial licence.

Financial gain or loss avoided

- 5.14 As the sole shareholder and directing mind of Elia, Abbas would have achieved significant financial gain as a result of the contraventions. The large majority of the deposit funds received by Elia from Company #1 and Company #2 were personally withdrawn by Abbas or otherwise misappropriated by him.

Subsequent conduct

- 5.15 This factor was not considered to be relevant.



Disciplinary record and compliance history

- 5.16 At the time of the contraventions, Elia had been registered and licensed for approximately 27 months and in that time the Registrar has not issued any other notices, nor is aware of any other concerns in relation to Elia.

Maximum Penalty – Licensed person exceeding scope of licence

- 5.17 Pursuant to section 4(1) of CLR 2015, a person who commits the contravention shall be liable to a fine not exceeding level 5 on the standard fines scale.
- 5.18 Level 5 on the standard fines scale equals USD 15,000.
- 5.19 Elia purported to exceed the scope of its ADGM licence in its dealings with both Company #1 and Company #2. These two contraventions are separate and distinct and, individually, each warrant significant sanction.
- 5.20 Taking this and the preceding factors into account, the Registrar considers that a financial penalty of USD 15,000 for each contravention as wholly appropriate in order to reflect the seriousness of these contraventions.
- 5.21 Accordingly, the Registrar has decided to impose the maximum financial penalty of USD 30,000 against Elia for its two contraventions of section 4 of CLR 2015.

6. PROCEDURAL MATTERS

Representation

- 6.1 On 8 March 2022, the Registrar issued Elia with a Warning Notice in which it proposed to impose the maximum financial penalty against Elia for its two contraventions of section 4 of CLR 2015.
- 6.2 Elia was provided with an opportunity to make written representations regarding the Registrar's concerns and the action proposed. No representations were submitted by Elia nor did Elia submit any requests for an extension of time for making representations.

Opportunity to have the matter referred to the ADGM Courts

- 6.3 On 30 March 2022, the Registrar issued a Decision Notice to Elia pursuant to section 48 of the CLR 2015.
- 6.4 Under section 48 of the CLR 2015, Elia 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 Elia to the ADGM Courts.
- 6.5 As a referral was not made to the ADGM Courts for a review of the Decision Notice within 28 days of Elia's receipt of the Decision Notice, the Registrar has proceeded to issue this Final Notice pursuant to section 50 of the CLR 2015.

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Payment of the financial penalty

- 6.6 The financial penalty imposed by this Final Notice is to be paid by Elia on or before 30 June 2022.
- 6.7 In the event that any part of the financial penalty remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the Registrar.
- 6.8 Payment of the financial penalty can be made by electronic funds transfer. The account details are listed in the invoice attached with this Final Notice.

Publicity

- 6.9 As this Final Notice has now been issued, pursuant to section 51(5) of the CLR 2015, the Registrar considers it appropriate to publish the details about the matter to which the 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 FINAL NOTICE

EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

4. Licensed persons exceeding scope of licence

- (1) If a licensed person carries on a controlled activity in the Abu Dhabi Global Market, or purports to do so, otherwise than in accordance with a licence given to that person under these Regulations he commits a contravention of these Regulations and shall be liable to a fine not exceeding level 5 on the standard fines scale.
- (2) In proceedings in respect of a contravention under subsection (1), it is a defence for the person accused of the contravention to show that he took all reasonable precautions and exercised all due diligence to avoid committing the contravention.

41. Fines

- (1) If the Registrar considers that a licensed person has contravened a relevant requirement imposed on the person, it may impose on him a fine, in respect of the contravention, of such amount as it considers appropriate, provided such fine shall not exceed level 5 on the standard fines scale.
- (2) If the Registrar considers that a person has committed a contravention of an enactment or subordinate legislation, it may impose on him a fine of an amount not exceeding the maximum specified for such contravention in the relevant enactment or subordinate legislation.
- (3) A fine under this section is payable to the Registrar.

44. Decision to take disciplinary measures

- (1) If the Registrar decides –
- (a) to impose a fine under section 41 (whether or not of the amount proposed); or
 - (b) to suspend a licence or impose a restriction under section 42 (whether or not in the manner proposed),
- it must without delay give the person concerned a decision notice.
- (2) In the case of a fine, the decision notice must state the amount of the fine.
- (3) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect.
- (4) If a Registrar decides to –
- (a) impose a fine on a person under section 41; or
 - (b) suspend the licence of a licensed person, or impose a restriction in relation to the carrying on of a controlled activity by a licensed person, under section 42,
- that person may refer the matter to the court.

48. Decision notices

- (1) 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 53 applies;
 - (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned 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.
- (2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same provision as the action proposed in the warning notice.
- (3) The Registrar may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (4) The Registrar may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.
- (5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the court, he has that right as respects the decision notice under subsection (3).
- (6) In this Part, "decision notice" means a notice under sections 18(3), 20(2) or 44(1).

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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 —
- (a) the court, or
 - (b) 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 —
- (a) 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
 - (b) in any other case, a final notice.
- (4) A final notice must —
- (a) give details of the action being taken;
 - (b) state the date on which the action is to be taken; and
 - (c) 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.

51. Publication

- (1) In the case of a warning notice, neither the Registrar nor a person to whom it is given or copied may publish the notice or any details concerning it.
- (2) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Registrar has published the notice or those details.
- (3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Registrar may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Registrar may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (5) The Registrar must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate.
- (6) When a supervisory notice takes effect, the Registrar must publish such information about the matter to which the notice relates as it considers appropriate.
- (7) The Registrar may not publish information under this section if, in its opinion, publication of the information would be —
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);
 - (b) detrimental to the interests of participants of the Abu Dhabi Global Market; or
 - (c) detrimental to the interests of the Abu Dhabi Global Market.
- (8) Information is to be published under this section in such manner as the Registrar considers appropriate.
- (9) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if —
- (a) the period during which any person may refer the matter to the court is still running;
 - (b) the matter has been referred to the court but has not been dealt with;
 - (c) the matter has been referred to the court and dealt with but the period during which an appeal may be brought against the court's decision is still running; or
 - (d) such an appeal has been brought but has not been determined.
- (10) "Notice of discontinuance" means a notice given under section 49.
- (11) "Supervisory notice" has the same meaning as in section 54.
- (12) A person, other than the Registrar, who contravenes subsections (1) or (2) shall be liable to a fine not exceeding level 3 on the standard fines scale.

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