
FINAL NOTICE ISSUED PURSUANT TO SECTION 50 OF THE COMMERCIAL LICENSING REGULATIONS 2015 AND SECTION 7 (1) OF THE FOUNDATIONS REGULATIONS 2017

To: Mr. Daniel Philip Toft

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Email: [REDACTED]

Date: 14 February 2025

1. DECISION

1.1 This Final Notice ("**Notice**") is issued pursuant to Section 50 under Part 4 of the Commercial Licensing Regulations 2015 and Section 7(1) under Part 1 of the Foundations Regulations 2017.

1.2 For the reasons given in this Notice, the Registrar of Abu Dhabi Global Market ("**ADGM**") has decided to impose a financial penalty pursuant to Section 20(4) and Section 21(12) under Part 5 of FR 2017 on Mr. Daniel Philip Toft ("**Mr. Toft**"), Council Member of KV Foundation ("**KV Foundation**" or the "**Foundation**") with ADGM Registration No. 000008013 of:

USD 1,500 for contravening Section 20(1) under Part 5 of FR 2017, specifically by failing to keep adequate Accounting Records; and

USD 1,500 for contravening Section 21(8) under Part 5 of FR 2017, specifically by failing to deliver copies of all requested Accounting Records and/or accounts and returns.

1.3 This Notice is issued to Mr. Toft only. Other persons may be referred to in this Notice due to their factual connection to the matter under the Notice. This Notice does not construct a determination by the Registrar or ADGM that any other person other than

Mr. Toft has committed a contravention of enactments or subordinate legislation of ADGM, nor is it a reflection upon any other person or entity.

2. EXECUTIVE SUMMARY

- 2.1 On 12 October 2022, KV Foundation was registered as a foundation in ADGM. The Council Members of KV Foundation are Mr. Nathan Paul Taylor (“**Mr. Taylor**”) and Mr. Daniel Philip Toft (“**Mr. Toft**”).
- 2.2 In August 2023, the Monitoring Team of the Registration Authority (“**RA Monitoring Team**”) initiated an assessment of KV Foundation, an ADGM licensed person, to evaluate its compliance with ADGM commercial legislation.
- 2.3 During the assessment, the RA Monitoring Team identified risk factors relating to the Foundation’s Record of Beneficial Owners and its keeping of records. Whilst engaging with KV Foundation, it failed to fully comply with a relevant requirement imposed to provide specified information and documents, as requested by the RA Monitoring Team on 4 August 2023. This includes failing to deliver copies of all requested Accounting Records and/or accounts and returns.

3. DEFINED TERMS AND RELEVANT REGULATIONS

- 3.1 Defined terms are identified in the 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 Regulations, or in the body of this 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.
- 3.2 Extracts of Regulations and Rules referred to in this 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.

4. FACTS AND MATTERS SUPPORTING THE DECISION

- 4.1 On 4 August 2023, the RA Monitoring Team sent an email to KV Foundation attaching a Firm Assessment Letter giving notice that it was undertaking an assessment of the Foundation’s compliance with ADGM commercial legislation and the UAE’s Economic Substance Regulations. The Firm Assessment Letter included a requirement, pursuant to Section 29 under Part 3 of Commercial Licensing Regulations (“**CLR 2015**”), to provide information and documents including but not limited to a “*Record of Beneficial Owners*” and “*Accounting records and annual accounts*”. The deadline for responding was 25 August 2023. Notably, Mr. Taylor confirmed receipt of the Firm Assessment

Letter by way of email on 11 August 2023, stating “*we will revert within the deadline stated*”.

4.2 On 28 August 2023, there was an email exchange between the RA Monitoring Team and Mr. Taylor regarding the outstanding response to the Firm Assessment Letter and the relevant requirement:

- At approximately 3:28 PM, the RA Monitoring Team emailed Mr. Taylor giving notice that the RA Monitoring Team were yet to receive the submissions for the KV Foundation that were required by 25 August 2023. This email also queried the reason for the non-submissions.
- At approximately 3:37 PM, Mr. Taylor responded to the RA Monitoring Team stating, “*Following your initial e-mail, we received the attached e-mail dated 15 August stating that the case status was ‘closed’. We therefore assumed that nothing further was required – could you please advise?*” Attached was an automated email response from the monitoring mailbox which states, in part, “*Your case has been resolved successfully and is now marked closed.*” Additionally, Mr. Taylor queried the following, “*I also note that the request for information relates to a company / SPV, as opposed to a Foundation. If you do wish to receive information and documentation, could you please advise exactly what is required for a Foundation?*”
- At approximately 3:58 PM, the RA Monitoring Team responded confirming that it was an automated response regarding the acknowledgement of receipt shared previously. It was confirmed to Mr. Taylor that “*The initial email and the on-site assessment notification letter stated the requirements to provide the documentation by 25 August 2023*” and he was further advised “*If you noted any requirement that is not available for the foundation, please state the same when submitting Appendix A. Please provide all the required information by no longer than **30 August 2023.***”

4.3 It is acknowledged that it is plausible Mr. Taylor did not provide a response to the relevant requirement within the initial deadline due to the automated response that had been received from the RA Monitoring Team Mailbox. However, the clarification email sent to Mr. Taylor explicitly confirmed that there was a requirement to provide the documentation. Given this confirmation and Mr. Taylor’s subsequent response (as described below), it is reasonable to conclude that Mr. Taylor understood a relevant requirement that had been imposed.

4.4 On 30 August 2023, Mr. Taylor sent an email to the RA Monitoring Team stating, “*please find attached a letter in response to yours dated 4 August, together with relevant*

supporting documents as noted within our letter.” The response from Mr. Taylor was for and on behalf of KV Foundation, the following documents were attached:

- (i) KV Foundation letter dated 29 August 2023;
- (ii) Completed Required Information Checklist;
- (iii) KV Foundation By-Laws (June 2022);
- (iv) Notification of Appointment of Company Service Provider; and
- (v) Statement of Purpose dated 4 July 2022.

- 4.5 Mr. Taylor’s response did not fully comply with the relevant requirement imposed on KV Foundation. It did not contain a Record of Beneficial Owners or any Accounting Records, as requested. Further, it is noted that the completed ‘Required Information Checklist’ indicates that a Record of Beneficial Owners was attached to the response, however it was not. Mr. Taylor also indicated that requested items in relation to management accounts and annual accounts (i.e. Accounting Records) were Not Applicable to KV Foundation, which is incorrect.
- 4.6 On 6 December 2023, the RA Monitoring Team sent an email to Mr. Taylor giving notice that it had finalised the review of the documents and invited it to attend a closing meeting to present the findings. A meeting was scheduled for 12 December 2023 via Microsoft Teams.
- 4.7 On 12 December 2023, the meeting between the RA Monitoring Team and KV Foundation was held and attended by Mr. Taylor on behalf of the Foundation. During this meeting, the RA Monitoring Team presented the identified findings and risk factors from its review, specifically highlighting issues relating to the ‘Record of Beneficial Owners’ and keeping ‘Accounting Records’.
- 4.8 During the meeting, the RA Monitoring Team explained that in relation to beneficial owners under the regulations, a record of the required particulars in respect of all the beneficial owners must be kept. However, as part of its response to the assessment, KV Foundation provided a copy of its by-laws. This was acknowledged by Mr. Taylor. Further, it was explained by the RA Monitoring Team that Accounting Records must be kept. Mr. Taylor acknowledged that he understood and asserted that this information was easy to provide.
- 4.9 A transcript from the recording of the meeting which took place on 12 December 2023 has been produced and an extract is provided below of the exchange between RA Monitoring Team and Mr. Taylor:

Hani El Afchal: The, the review was thematic in nature and, uh, we just were checking, uh, if everything was kept in line with the regulation —

Mr. Taylor: Sure.

Hani El Afchal: — and we know the two things in here that we wanted to share. First is the record of beneficial owners. Now under the regulations, and I'm I have the copy here, each ADGM person must keep a record of the required particulars in the beneficial owners records and these particulars are stated in the regulations themselves. As part of the on-site assessment, we requested for the record of beneficial owners and we received the bylaws of, of the of the foundation, of KV Foundation.

Mr. Taylor: Yep. I know.

Hani El Afchal: So we will be adding this comment here in the principle findings and we've provided also a link to the ADGM BO web page where we have a template which is available here. I'm going to just show you the template as well, uh, which can be used, you know, to, to keep the, the, the record, the record as per the particulars which are required under the regulations.

Mr. Taylor: Ok.

Hani El Afchal: The second part was, uh, on keeping accounting records and this is in relation to Section 20 of the Foundation's Regulations.

Mr. Taylor: [Inaudible]

Hani El Afchal: In response, we understand, uh, that the foundation is, was dormant by the time we received the information.

Mr. Taylor: Yeah.

Hani El Afchal: Yeah, two questions. One is, it's still dormant, Nathan?

Mr. Taylor: It's now active in the sense that the trusts have been established. So the fact the purpose of the foundation is to act as a trustee, as per the letter that we provided. So those trusts are now set up. The trusts are holding the underlying assets. So, its performing a function now yes.

Hani El Afchal: Awesome. So, so yeah, that that goes into the point here where we were expecting, you know, at least to see what

were the costs, if there's any loan in, like literally we couldn't see anything. The minimum we would expect is the incorporation costs, the maintenance costs, the licencing or any, you know, corporate service provider that was paid for —

Mr. Taylor: — Yeah.

Hani El Afchal: — during the period. So these are the two points. We will be issuing this today and, and we would expect, you know, the, the planned actions either by providing their records or the accounting records which are up to date, up to you, up to the foundation basically on the transaction.

Mr Taylor: OK, that's, that's understood that, that information is easy to provide. That's not that's not a problem.

- 4.10 It can be observed from the exchange above, that Mr. Taylor accepted the response to the relevant requirement was not fully complied with by virtue of the fact that a Record of Beneficial Ownership was requested, and the Foundation By-Laws were provided instead. Additionally, Mr. Taylor confirmed that the Foundation was now active and that in relation to accounting records, *“that information is easy to provide”*.
- 4.11 On 12 December 2023, the RA Monitoring Team sent an email to Mr. Taylor attaching the Principal Findings Record (“PFR”) to be reviewed and completed by KV Foundation. A response was requested by **“no later than close of business, 27 December 2023”**. It is of note that this email was sent after the meeting which had occurred earlier on the same day.
- 4.12 The PFR sets out the findings from the assessment and provided an overall summary conclusion of *“Moderate improvements needed”*. The principal findings are summarised on page 3 of the PFR document, and this records the risk factors as ‘Record of Beneficial Owners’ and ‘Keeping Adequate Accounting Records’. It provides a comment on the findings referencing the relevant requirement under the legislation.
- 4.13 On 19 January 2024, the RA Monitoring Team sent an email to Mr. Taylor noting that it had not received the signed PFR by the requested deadline. A request for a response by **“no longer than close of business, 25 January 2024”** was made.
- 4.14 On 24 January 2024, Mr. Taylor sent an email to the RA Monitoring Team attaching a “Register of Beneficial Owners” and providing a response to the PFR, which stated:

- *“We believe that the first point should be removed. As mentioned on our call, as we maintain a register of owners on our system. All statutory registers are maintained on our systems and I have attached the Register of Beneficial Owners for the KV Foundation.”*
- *“Again, we don’t believe that the second point raised is relevant. The Council Members believe it’s entirely reasonable and sufficient that the Foundation will be producing periodic financial statements, and this is typically done on an annual basis. Given it is not an income generating or operating entity we would book keep the minimal expense transactions at the time financial statements are due to be produced as we would only expect 1 or 2 transactions per annum. Book keeping at the time of every transaction would be an inefficient use of time and lead to unnecessary cost.”*

- 4.15 The ‘Register of Beneficial Owners’ document provided by Mr. Taylor did not contain all the required particulars in respect of a beneficial owner who is a natural person. The Registrar considers that the document provided fails to meet at least six of the required particulars for a compliant record of beneficial owners.
- 4.16 It is also noted that no Accounting Records were produced by Mr. Taylor for KV Foundation and although Mr. Taylor cited his belief that keeping adequate Accounting Records is not relevant, this is contrary to the legislation which states that every foundation must keep adequate Accounting Records; it was communicated to KV Foundation within the PFR that at a minimum, the incorporation costs and expenses incurred for maintaining the Foundation should have a record.
- 4.17 It is noted that although Mr. Toft was not directly involved in the correspondence with the RA Monitoring Team, he was copied into the correspondence and therefore aware of the matters at hand.
- 4.18 On 14 February 2024, the RA Monitoring Team sent an email to Mr. Taylor providing further comment on the findings. This email clearly sets out the detailed requirements under the Beneficial Ownership and Control Regulations 2022 (“**BOCR 2022**”) in relation to a record of beneficial owners and the requirements under FR 2017 in relation to maintaining adequate Accounting Records. A request for a response by “**no later than longer than 3:00 PM Wednesday 21 February 2024**” was made, however no response was received to this email from Mr. Taylor or other persons on behalf of the KV Foundation.

5. CONTRAVENTIONS

- 5.1 Based on the facts and matters noted above, the Registrar considers that Mr. Toft has contravened Section 20(1) and Section 21(8) under Part 5 of FR 2017, specifically by

failing to keep adequate Accounting Records and failing to deliver copies of all requested Accounting Records and/or accounts and returns.

- 5.2 If a Foundation fails to comply with Section 20(1) under Part 5 of FR 2017, a contravention is committed by every Councillor of the Foundation who is in default. A person who commits the contravention shall be liable to a fine of up to level 5 on the standard fines scale (i.e., USD 15,000) in accordance with Section 20 (4) under Part 5 of FR 2017.
- 5.3 If the Registrar considers that the requirements of Section 21(8) under Part 5 of FR 2017 are not complied with, the Foundation and every Councillor commits a contravention. A person who commits the contravention shall be liable to a fine of up to level 5 on the standard fines scale (i.e., USD 15,000) in accordance with Section 21 (12) under Part 5 of FR 2017.

6. SANCTIONS

Determination to impose a financial penalty

- 6.1 In deciding to impose financial penalties, the Registrar has taken into account the factors and considerations contained within the Decision Procedures, Disqualification and Enforcement Manual (the “**Manual**”).
- 6.2 With reference to 4.7 of the Manual, the Registrar considers the following factors to be of relevance in this matter:
- (a) To promote compliance with the Regulations and achieve the Registrar’s objectives by:
 - (i) penalising persons who have committed contraventions;
 - (ii) deterring persons that have committed or may commit similar contraventions; and
 - (iii) depriving persons of any benefit that they may have gained as a result of their contraventions.
- 6.3 The Registrar has decided the imposition of financial penalties is the most appropriate action, given the nature of the contraventions and the circumstances.

Determination of the level of financial penalty

- 6.4 In determining the appropriate level of the financial penalty, the Registrar has taken into account the factors and considerations below with reference to 4.8-4.29 (inclusive) of the Manual as follows.

Seriousness

- 6.5 The Registrar considers that the contraventions are serious. In this matter, failing to keep adequate Accounting Records and failing to deliver copies of all requested Accounting Records and/or accounts and returns, prevented the Registrar from being able to assess the Foundation and quality of its bookkeeping. However, the Registrar accepts that the seriousness of the contraventions is mitigated based on the representations and Accounting Records that are now provided.
- 6.6 The Registration Authority also has a responsibility to assist the United Arab Emirates in adhering to international standards concerning accounts and accounting records requirements.

Deliberate or reckless

- 6.7 The Registrar accepts that the contravention by Mr. Toft is not deliberate or reckless. However, the Registrar considers that Mr. Toft acted carelessly, and his lack of care contributed to the non-compliance of the Regulations.

Whether the person is an individual

- 6.8 Mr. Toft is an individual. Therefore, this factor was considered in reducing the financial penalty. However, Mr. Toft is a Council Member of KV Foundation, and the responsibilities placed upon him remain.

Effect on third parties

- 6.9 As documented in the KV Foundation Charter dated June 2022, the Foundation's licensed company service provider ("**Licensed CSP**") is the Founder and was granted a licence by the Registration Authority to conduct the controlled activity of providing company services. As a consequence of the contravention(s), there may be a potential reputational impact on the Licensed CSP.

Deterrence

- 6.10 Deterrence is one of the main purposes of taking enforcement action. That is, deterring persons who have committed contraventions from committing further contraventions, and deterring other licensed persons from committing similar contraventions.

- 6.11 The Registrar has considered the need to ensure that any financial penalty imposed has the appropriate deterrent effect. In this regard, consideration has been given to an appropriate amount in order to ensure that the deterrent effect of the action is not diminished.

Financial gain or loss avoided

- 6.12 This factor was not considered.

Subsequent conduct

- 6.13 The Registrar notes that upon Mr. Toft receiving a Warning Notice from the Registrar proposing the financial penalties, Mr. Toft filed the Accounting Records, remedying the contraventions.

Disciplinary record and compliance history

- 6.14 Mr. Toft has no previous disciplinary record. The Registrar is not currently aware of any other concerns to the best of its knowledge and belief.

Maximum Penalty

- 6.15 The maximum penalty per contravention of Section 20(1) under Part 5 of FR 2017 shall not exceed level 5 on the standard fines scale (i.e. USD 15,000).
- 6.16 The maximum penalty per contravention of Section 21(8) under Part 5 of FR 2017 shall not exceed level 5 on the standard fines scale (i.e. USD 15,000).
- 6.17 Accordingly, the Registrar has decided to impose the following financial penalties on Mr. Toft:

- **USD 1,500** for contravening Section 20(1) under Part 5 of FR 2017; and
- **USD 1,500** for contravening Section 21(8) under Part 5 of FR 2017.

7. PROCEDURAL MATTERS

- 7.1 On 19 November 2024, the Registrar issued Mr. Toft with a Warning Notice in which it proposed to impose on Mr. Toft a financial penalty in the amount of USD 3,500 for contravening Section 20(1) under Part 5 of FR 2017 and USD 3,500 for contravening Section 21(8) under Part 5 of FR 2017 (the “**Warning Notice**”).
- 7.2 Mr. Toft was provided with an opportunity to make written representations regarding the Registrar’s concerns and the actions proposed.

7.3 On 5 December 2024, Mr. Toft made representations in response to the Warning Notice. Mr. Toft also submitted a personal letter of apology.

7.4 It is understood that the response to the Warning Notice consists of the following 'key representations':

- (a) *"Mr. Toft was not involved in the day-to day administration of this case. [REDACTED] Mr. Toft has acted honestly throughout and there has been no deliberate non-compliance...I should have ensured that I had greater oversight of the assessment process and pro-actively engaged to ensure a better outcome. Had I done so, I truly believe that this sorry situation could have been wholly avoided."*
- (b) *"At all times, KVF had the necessary material, and could have produced the Accounting Records. Its failure to do so was a result of a misunderstanding and an oversight, rather than a disregard for the regulatory requirements."*
- (c) *"Mr. Toft has a previous good record, good regard in which he was held by local regulators when he was asked in 2023 by ADGM Registration Authority to discuss compliance and FATCA/CRS reporting with the OECD, is genuinely remorseful, misunderstanding of the position and the fact that information has now been provided."*
- (d) *"[REDACTED]"*

7.5 In response to the representations, the Registrar is of the view that:

- (a) There was no deliberate non-compliance of the Regulations.
- (b) The contraventions are mitigated as the Accounting Records are now provided albeit delayed.
- (c) It accepts Mr. Toft has a previous good record.
- (d) The contraventions are less serious considering the representations provided.

7.6 Having taken into the accounts the facts, matters, and circumstances of the contraventions above, the Registrar has decided to reduce the financial penalties imposed on Mr. Toft from the proposed amount of USD 3,500 to **USD 1,500** for contravening Section 20(1) under Part 5 of FR 2017 and from the proposed amount of USD 3,500 to **USD 1,500** for contravening Section 21(8) under Part 5 of FR 2017.

Opportunity to have the matter referred to the ADGM Courts

- 7.7 On 14 January 2025, the Registrar issued a Decision Notice to Mr. Toft pursuant to section 7 (1) of under Part 1 of FR 2017.
- 7.8 Under section 44 (4) of the CLR 2015, Mr. Toft had the opportunity to refer the Decision Notice to the ADGM Courts. As of the date of this Notice, no referral has been made by Mr. Toft to the ADGM Courts.
- 7.9 As a referral was not made to the ADGM Courts for a review of the Decision Notice within the time period specified in the Decision Notice, the Registrar has proceeded to issue this Notice.

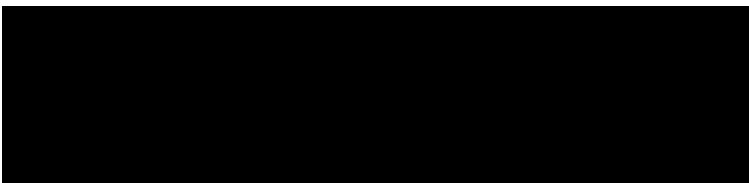
Payment of the financial penalty

- 7.10 The financial penalty imposed by this Notice is to be paid by Mr. Toft on or before the date stated in the invoice attached with this Notice.
- 7.11 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.
- 7.12 Payment of the financial penalty can be made by electronic funds transfer. The account details are listed in the invoice attached with this Notice.

Confidentiality and publicity

- 7.13 As this Notice has now been issued, pursuant to section 51(5) of CLR 2015, the Registrar must publish such information about the matter to which this Notice relates as it considers appropriate.

Signed:



Tim Land
Delegate of the Registrar, Registration Authority
14 February 2025

ANNEXURE A

EXTRACTS OF THE REGULATIONS AND RULES REFERRED TO IN THIS NOTICE

EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

PART 3 INFORMATION GATHERING AND INVESTIGATIONS

29. Registrar's power to require information: licensed persons etc.

- (1) The Registrar may, by notice in writing given to a licensed person, require him —
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced —
 - (a) before the end of such reasonable period as may be specified; and
 - (b) at such place as may be specified.
- (3) An officer who has written authorisation from the Registrar to do so may require a licensed person without delay —
 - (a) to provide the officer with specified information or information of a specified description; or
 - (b) to produce to him specified documents or documents of a specified description.
- (4) This section applies only to information and documents reasonably required in connection with the exercise by the Registrar of functions conferred on it by or under these Regulations.
- (5) The Registrar may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) The Registrar may require —
 - (a) any information provided, whether in a document or otherwise, to be verified in such manner; or
 - (b) any document produced to be authenticated in such manner, as it may reasonably require.
- (7) The powers conferred by subsections (1) and (3) may also be exercised by the Registrar to impose requirements on a person who is connected with a licensed person.
- (8) "Licensed person" includes a person who was at any time a licensed person but who has ceased to be a licensed person.
- (9) "Officer" means an officer of the Registrar and includes a member of the Registrar's staff or an agent of the Registrar.
- (10) "Specified" means —
 - (a) in subsections (1) and (2), specified in the notice; and
 - (b) in subsection (3), specified in the authorisation.
- (11) For the purposes of this section, a person is connected with another person ("A") if he is or has at any relevant time been —
 - (a) a member of A's group;
 - (b) a controller of A;
 - (c) any other member of a partnership of which A is a member; or
 - (d) in relation to A, a person mentioned in Part 1 of the Schedule (reading references in that Part to the licensed person as references to A).

PART 4: ENFORCEMENT

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.

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.

EXTRACT OF THE FOUNDATIONS REGULATIONS 2017

PART 1 – Establishment and Registration of Foundations

The Registrar

7. Powers of the Registrar

(1) The Registrar shall administer these Regulations and perform the functions and exercise the powers conferred by or under these Regulations, the Companies Regulations 2015 and the Commercial Licensing Regulations 2015.

PART 5 – Foundation Officials

19. Foundation Council

(1) A Foundation is required to have a Council which consists of at least two Councillors.

(2) The Founder or a Legal Person may be appointed as Councillor.

(3) The duties of a Council are –

- (a) to carry out the objects of the Foundation;
- (b) to manage and administer the Assets of the Foundation; and
- (c) to do any other acts which may be required by the Charter, By-laws or under these Regulations.

(4) The duties of the Councillors are –

- (a) to act in accordance with the Foundation's Charter;
- (b) to only exercise powers for the purposes for which they are conferred;
- (c) to act honestly, in good faith and in the best interests of the Foundation;
- (d) to exercise independent judgment. This duty is not infringed by a Councillor acting in accordance with an agreement duly entered into by the Foundation that restricts the future exercise of discretion by its Councillors, or in a way authorised by the Foundation's Charter;
- (e) to exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent Person with the general knowledge, skill and experience that may reasonably be expected of a Person carrying out the functions carried out by the Councillor in relation to the Foundation, and the general knowledge, skill and experience that the Councillor has;
- (f) to not act on behalf of a Foundation, or exercise any of his powers as a Councillor, in relation to any matter in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Foundation;
 - i. This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the Foundation could take advantage of the property, information or opportunity).
 - ii. This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the Foundation.
 - iii. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised by the Councillors who do not have a direct or indirect interest that conflicts with the interests of the Foundation in such matter ("Non-conflicted Councillors").
 - iv. Where nothing in the Foundation's Charter invalidates such authorisation, authorisation may be given by the matter being proposed to and authorised by the Non-conflicted Councillors. Where the Foundation's Charter includes a provision enabling the Non-conflicted Councillors to authorise the matter, authorisation may be given by the matter being proposed to and authorised by the Non-conflicted Councillors in accordance with the Charter.
 - v. Any reference in this paragraph (f) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (g) to not accept a benefit from a third party conferred by reason of his being a Councillor, or his doing (or not doing) anything as Councillor;
 - i. A "third party" means a Person other than the Foundation or a Person acting on behalf of the Foundation.
 - ii. Benefits received by a Councillor from a Person by whom his services (as a Councillor or otherwise) are provided to the Foundation are not regarded as conferred by a third party.
 - iii. This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
 - iv. Any reference in this paragraph (g) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (h) to declare to the other Councillors the nature and extent of any direct or indirect interest in a proposed transaction or arrangement with the Foundation;
 - i. The declaration may (but need not) be made at a meeting of the Councillors.
 - ii. If a declaration of interest under this paragraph (h) proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

- iii. Any declaration required by this paragraph (h) must be made before the Foundation enters into the transaction or arrangement.
- iv. This paragraph (h) does not require a declaration of an interest of which the Councillor is not aware or where the Councillor is not aware of the transaction or arrangement in question. For this purpose a Councillor is treated as being aware of matters of which he ought reasonably to be aware.
- v. A Councillor need not declare an interest if it cannot reasonably be regarded as likely to give rise to a conflict of interest; if, or to the extent that, the other Councillors are already aware of it (and for this purpose the other Councillors are treated as aware of anything of which they ought reasonably to be aware); or if, or to the extent that, it concerns terms of his service contract that have been or are to be considered by a meeting of the Councillors, or by a committee of the Councillors appointed for the purpose under the Foundation's Charter; and
- (i) to ensure compliance with section 20.

20. Accounting Records

- (1) Every Foundation must keep adequate Accounting Records.
- (2) If a Foundation fails to comply with subsection (1), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.
- (3) A Person does not commit the contravention referred to in subsection (2) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.
- (4) A Person who commits the contravention referred to in subsection (2) shall be liable to a fine of up to level 5.
- (5) A Foundation's Accounting Records—
 - (a) must be kept at its registered office or such other place as the Councillors think fit; and
 - (b) must at all times be open to inspection by the Foundation's Councillors and any Guardian.
- (6) If Accounting Records are kept at a place outside the Abu Dhabi Global Market, copies of Accounting Records, such that would:
 - (a) disclose with reasonable accuracy the financial position of the Foundation at intervals of not more than six months; and
 - (b) enable the Councillors to ensure that the accounts required to be prepared under this Part comply with the requirements of these Regulations, must be sent to, and kept at, a place in the Abu Dhabi Global Market, and must at all times be open to inspection by the Foundation's Councillors and any Guardian.
- (7) If a Foundation fails to comply with any provision of subsections (5) or (6), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.
- (8) A Person does not commit the contravention referred to in subsection (7) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.
- (9) Subject to subsection (8), a Person who commits the contraventions referred to in subsection (7) shall be liable to a level 2 fine.
- (10) The Accounting Records of a Foundation that has its name struck off the Foundations Register shall not be destroyed for a period of 5 years from the date of strike off.
- (11) Failure to comply with subsection (10) is a contravention of these Regulations committed by every Councillor of the Foundation who is in default.
- (12) A person who commits the contravention referred to in subsection (11) shall be liable to a fine of up to level 4.

21. Maintaining Records

(1) Accounting Records that a Foundation is required by subsection 20(1) to keep must be preserved by it for ten years from the date on which they are made.

(2) Subsection (1) is subject to any provision contained in other regulation or law applicable in the Abu Dhabi Global Market.

(3) If a Foundation fails to comply with subsection (1), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.

(4) A Person does not commit the contravention referred to in subsection (3) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.

(5) A Councillor of a Foundation commits a contravention of these Regulations if he—

- (a) fails to take all reasonable steps for securing compliance by the Foundation with subsection (1), or
- (b) intentionally causes any default by the Foundation under that subsection.

(6) Subject to subsection (4), a Person who commits the contraventions referred to in subsection (3) shall be liable to a level 2 fine.

(7) A Person who commits the contraventions referred to in subsection (5) shall be liable to a fine of up to level 5.

(8) Not later than 14 days after the Registrar sends a written request to the Foundation's registered office, the Foundation must deliver to the Registrar a copy of all requested Accounting Records and/or accounts and returns.

(9) Upon the written request of the Registrar delivered to the Foundation's registered office, the Foundation must obtain an audit of such Accounting Records and/or accounts and returns as the Registrar may request. The results of such audit shall be delivered to the Registrar within such time period as the Registrar may specify.

(10) If the requirements of subsections (8) or (9) are not complied with, the Foundation and every Councillor commits a contravention of these Regulations.

(11) A person does not commit the contravention referred to in subsection (10) if he proves that he took all reasonable steps for securing that those requirements would be complied with, and for this purpose, it is not enough to prove that the documents in question were not in fact prepared as required by this section.

(12) A person who commits the contravention referred to in subsection (10) shall be liable to a fine of up to level 5.

(13) The Accounting Records and accounts and returns of a Foundation will not be subject to public disclosure by the Registrar.

BENEFICIAL OWNERSHIP AND CONTROL REGULATIONS 2022

PART 1 INFORMATION DUTIES OF ADGM PERSONS

2. Record of beneficial owners

- (1) Each ADGM Person must keep a record of the required particulars of its beneficial owners in a record referred to in these Regulations as the "record of beneficial owners".
- (2) Each ADGM Person must ensure that a record of beneficial owners is established within 1 month of its establishment.
- (3) Section 363 of the Companies Regulations shall apply in respect of the record of beneficial owners and the manner in which it is kept and made available for inspection.
- (4) The "required particulars" means,
 - (a) in respect of a beneficial owner who is a natural person:
 - (i) full name, including any former names;

- (ii) residential address and, if different, an address for service of notices;
- (iii) date and place of birth;
- (iv) nationality;
- (v) occupation;
- (vi) information identifying the person from their passport;
- (vii) the date on which that person became a beneficial owner of the ADGM Person;
- (viii) the date on which the person ceased to be a beneficial owner of the ADGM Person; and
- (ix) the grounds on which that person is considered to be a beneficial owner; and