FINAL NOTICE ISSUED UNDER
SECTION 936 OF THE
COMPANIES REGULATIONS 2020

To: Mr Bishr Shiblaq
[redacted]

Email: [redacted]

Date: 22 May 2023

1. DECISION

1.1 This Final Notice ("Notice") is issued under section 936 of the *Companies Regulations 2020* ("CR 2020").

1.2 For the reasons given in this Notice, the Registrar of Abu Dhabi Global Market ("ADGM") has decided to impose the following financial penalties on Bishr Shiblaq ("Shiblaq"), one of the directors of 10 Leaves Limited with ADGM Registration No. 000000600 ("10 Leaves"):

i) **USD 4,000** as per section 426 of CR 2020 (*default in filing accounts and reports: contraventions*), for the failure of Shiblaq as a director of 10 Leaves to file its accounts and reports for the financial year ending 31 December 2020, in accordance with section 415 of CR 2020, before the end of the period for filing those accounts, namely 30 September of 2021.

ii) **USD 4,000** as per section 426 of CR 2020 (*default in filing accounts and reports: contraventions*), for the failure of Shiblaq as a director of 10 Leaves to file its accounts and reports for the financial year ending 31 December 2021, in accordance with section 415 of CR 2020, before the end of the period for filing those accounts, namely 30 September of 2022.

2. EXECUTIVE SUMMARY

2.1 CR 2020 requires 10 Leaves to deliver its annual accounts and reports for the year ending 31 December 2020 to the Registrar by 30 September 2021 and for the year ending 31 December 2021 by 30 September 2022. 10 Leaves and its directors failed to deliver consecutive accounts by 30 September 2021 and 30 September 2022. Therefore, Shiblaq, in his capacity as a director of 10 Leaves, failed to file accounts and reports in accordance with section 415 before the end of the period for filing those accounts and reports.

2.2 Given the nature of the contravention and the repeated failure to comply with section 415 of CR 2020, the RA considers it appropriate in the circumstances to impose a financial penalty on Shiblaq.

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

The year ending 31 December 2020 accounts

4.1 10 Leaves was incorporated in ADGM on 19 April 2017 as a private limited company, licensed to carry on the professional services of Company Service Provider ("CSP") activities, accounting, bookkeeping activities and management consulting activities.

4.2 Shiblaq has been appointed as a director of 10 Leaves since 27 May 2021.

4.3 The CR 2020 required 10 Leaves to deliver its annual accounts and reports for the year ending 31 December 2020 to the Registrar by 30 September 2021. The accounts for the period ending 31 December 2020 were not delivered by the statutory deadline.

4.4 Although the accounts and reports for the period ending 31 December 2020 were filed with the Registrar on 30 March 2023, a contravention of section 415 occurred as the filing was not made within the statutory deadline.

The year ending 31 December 2021 accounts

4.5 The CR 2020 required 10 Leaves to deliver its annual accounts and reports for the year ending 31 December 2021 to the Registrar by 30 September 2022. The accounts for the period ending 31 December 2021 were not delivered by the statutory deadline.

4.6 Although the accounts and reports for the period ending 31 December 2021 were filed with the Registrar on 30 March 2023, a contravention of section 415 occurred as the filing was not made within the statutory deadline.

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5. CONTRAVENTIONS

5.1 Section 426 of CR 2020 states that "*If the requirements of section 415 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, <u>the company and every person who immediately before the end of that period was a director of the company, commits a contravention of these Regulations</u>* <u>[emphasis added]</u>".

5.2 Based on the facts and matters noted above, the Registrar considers that Shiblaq has contravened section 415 of CR 2020 by failing to file 10 Leaves' accounts and reports, for the financial year ending 31 December 2020, in accordance with section 415 of CR 2020, before the end of the period for filing those accounts and reports, namely 30 September 2021.

5.3 Additionally, the Registrar considers that Shiblaq has contravened section 415 of CR 2020 by failing to file 10 Leaves' accounts and reports, for the financial year ending 31 December 2021, in accordance with section 415 of CR 2020, before the end of the period for filing those accounts and report, namely 30 September 2022.

6. SANCTIONS

Financial Penalties

6.1 In reaching its decision to impose financial penalties, the Registrar has considered the below factors and considerations.

Determination to impose a financial penalty

6.2 The Registrar considers the following factors to be of relevance in imposing financial penalties against Shiblaq:

- 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 to impose financial penalties, given the seriousness of the contravention and the circumstances.

Determination of the level of financial penalty

6.4 The Registrar has considered 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

6.5 The contraventions are serious for several reasons as follows. Filing accounts with the Registrar is a key legal obligation for ADGM companies. The Registrar has a responsibility to ensure that the UAE adheres to international commitments and standards concerning the provision of accounts to the Registrar, such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

6.6 10 Leaves was required to file the 2020 and 2021 accounts by no later than 30 September 2021 and 30 September 2022, respectively. However, the filings were not done until March 2023.

6.7 10 Leaves is licensed to provide the professional services of accounting, bookkeeping activities and CSP activities. As an accounting firm 10 Leaves is responsible for preparing accounts for clients. As a licensed CSP, it is responsible for filing accounts with the Registrar on behalf of clients. A licensed CSP and accounting firm that has not filed its own accounts for two consecutive year gives rise to serious concerns over the firm's own systems and controls, as well as competency to provide accounts preparation and filing services to its clients.

6.8 10 Leaves and its directors have failed to adhere to ADGM's accounts obligations for two consecutive years, which suggests a lack of appropriate care, skill and diligence.

6.9 Shiblaq in his capacity as a director of 10 Leaves has failed to adhere to ADGM's accounts obligations.

Deliberate or reckless

6.10 10 Leaves is an ADGM licensed CSP and accounting firm. ADGM licensed CSPs in particular, are expected to maintain and demonstrate high standards of competency, fitness and propriety and to fulfil their duties in a timely and professional manner. 10 Leaves' failure to submit its accounts demonstrates recklessness and a lack of care, skill and diligence.

6.11 As a director of a CSP, Shiblaq is expected to understand and be aware of the importance of ensuring that all legal obligations must be fulfilled diligently, competently and in accordance with all relevant technical and professional standards.

Whether the person is an individual

6.12 Shiblaq is an individual. As a director of 10 Leaves, he bears significant responsibility for the contraventions set out in this notice.

Effect on third parties

6.13 This factor was not considered.

Deterrence

6.14 Deterrence is one of the main purposes of taking enforcement action. That is, deterring persons who have committed contraventions from committing further contraventions.

6.15 The penalty imposed must deter Shiblaq and other ADGM accounting firms, CSPs or company directors generally, from failing to file accounts and reports on time.

6.16 Any sanction must send a message of deterrence that companies must submit all accounts to the Registrar in a timely manner.

Financial gain or loss avoided

6.17 This factor was not considered.

Subsequent conduct

6.18 The Registrar notes that upon the Registrar issuing a Warning Notice proposing to impose financial penalties for accounts filing contraventions, 10 Leaves filed the outstanding accounts, remedying the contraventions.

Disciplinary record and compliance history

6.19 Apart from the contravention related to accounts and reports, Shiblaq has no disciplinary record nor is the Registrar aware of any other concerns in relation to Shiblaq.

Maximum Penalty

6.20 The maximum penalty for a contravention of section 426 of CR 2020 is level 5 (i.e., USD 15,000).

7. PROCEDURAL MATTERS

Representations

7.1 On 13 March 2023, the Registrar issued Shiblaq with a Warning Notice in which it proposed to impose on Shiblaq financial penalties in the amount of USD 10,000.

7.2 Shiblaq was provided with an opportunity to make written representations regarding the Registrar's concerns and the actions proposed.

7.3 On 25 March 2023, Shiblaq made representations in response to the Warning Notice.

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

a. Shiblaq is a non-executive director and the executive functions and day-to-day operations, including filing of the accounts, of 10 Leaves were delegated to Mr Ghai, as the executive director, founder and sole shareholder of 10 Leaves. Shiblaq was entirely unaware of the filing contravention until the Warning Notice was served.

   i. The Registrar notes that section 426 of CR 2020 states, "*If the requirements of section 415 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company and every person who immediately before the end of that period was a director of the company, commits a contravention of these Regulations* [emphasis added]".

   ii. The Registrar notes that the CR 2020 does not distinguish between executive and non-executive directors. Pursuant to section 146 of CR 2020, the term 'director' includes "*any person occupying the position of director, by whatever name called*". Thus, any distinction between executive and non-executive functions and powers is an internal matter and cannot be considered by the Registrar in connection with a contravention under section 426, which applies to the company and all of its directors.

   iii. Shiblaq has been a director of 10 Leaves since 27 May 2021, which is before the end of the filing periods for both the 2020 and 2021 annual accounts and reports. Accordingly, Shiblaq is liable for contraventions of section 415 of CR 2020 pursuant to section 426.

   iv. Pursuant to section 426(2) of CR 2020, a person does not commit the contravention in section 426(1) if, "*he proves that he took all reasonable steps for securing that those requirements would be complied with before the end of that period* [emphasis added]". In this respect, the Registrar does not find that merely obtaining 'assurances' from another director that the filing will be made meets the expected diligence and proper oversight to be exercised by a director and could be considered as having taken 'all reasonable' steps. The delegation of a function to another director does not absolve a director from the duty to supervise the discharge of the delegated acts.

b. Shiblaq had no personal benefit of committing the contravention and the matter appears to be an 'internal process issue' as there was no apparent reason to withhold these filings.

   i. The Registrar is of the view that this representation supports an admission that weaknesses in 10 Leaves' systems and controls caused its failure to deliver 2020 and 2021 annual accounts and reports within the specified period.

   ii. Whether the contravention was a deliberate or reckless act was considered by the Registrar in reaching its decision to impose financial penalties. Failure to submit annual accounts demonstrates a lack of care, skill and diligence by the directors of the company. Further, directors of CSPs are expected to be fully aware of the importance of ensuring that legal obligations such as filing of annual accounts and reports are fulfilled diligently and in a timely manner.

c. Financial accounts have been shared with ADGM during an application for CSP license in 2021 and during the annual CSP assessment in late 2022.

   i. The Registrar notes that the balance sheets and profit and loss statements submitted in connection with the application for CSP license and the during the annual CSP assessment were made up to dates that differ from the firm's accounting reference date, and hence do not qualify as annual accounts pursuant to the requirements of CR 2020. Accordingly, contraventions of section 415 of CR 2020 for failure to submit annual accounts and reports remain.

7.5 Having taken into account the facts, matters and circumstances of the contraventions above, the Registrar has decided to impose on Shiblaq financial penalties in the total amount of USD 8,000 noting that the maximum penalty for two contraventions of section 426 of CR 2020 is USD 30,000.

Opportunity to Have the Matter Referred to the ADGM Courts

7.6 On 17 April 2023, the Registrar issued a Decision Notice to Shiblaq pursuant to section 936 of CR 2020.

7.7 Shiblaq 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 Shiblaq to the ADGM Courts.

7.8 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 Final Notice.

Payment of the financial penalty

7.9 The financial penalty imposed by this Notice is to be paid by Shiblaq on or before the date stated in the invoice attached with this Notice.

7.10 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.

7.11 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

7.12 As this Notice has now been issued, the Registrar may, at his discretion, publish the details about the matter to which this Notice relate.

ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

[redacted]

Tim Land
Executive Director, Monitoring & Enforcement, Registration Authority
Delegate of the Registrar, Registration Authority

REGISTRATION AUTHORITY
سلطة التسجيل

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ANNEXURE A

EXTRACTS OF THE REGULATIONS AND RULES REFERRED TO IN THIS NOTICE

EXTRACT OF THE *COMPANIES REGULATIONS 2020*

PART 14: ACCOUNTS AND REPORTS

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415. Duty to file accounts and reports with the Registrar

(1) The directors of a company must deliver to the Registrar for each financial year the accounts and reports required by–

section 418 (filing obligations of companies subject to small companies regime),
section 419 (filing obligations of companies entitled to small companies exemption: additional requirements),
section 420 (filing obligations of medium-sized companies), and
section 421 (filing obligations of companies generally).

(2) This is subject to–
section 422 (unlimited companies exempt from filing obligations), and
section 423 (dormant subsidiaries exempt from filing obligations).

(3) Subject to section 411(7), this Chapter shall not apply to a company that is a restricted scope company unless the Registrar has given notice to any restricted scope company that this Chapter applies to it and following notice such restricted scope company shall deliver to the Registrar all accounts required to be prepared by it under these Regulations.

(4) Accounts of restricted scope companies will not be subject to public disclosure by the Registrar.

416. Period allowed for filing accounts

(1) This section specifies the period allowed for the directors of a company to comply with their obligation under section 415 (duty to file accounts and reports with the Registrar) to deliver accounts and reports for a financial year to the Registrar.

This is referred to in these Regulations as the "period for filing" those accounts and reports.

(2) The period is–
   (a) for a private company, nine months after the end of the relevant accounting reference period, and
   (b) for a public company, six months after the end of that period. This is subject to the following provisions of this section.

(3) If the relevant accounting reference period is the company's first and is a period of more than twelve months, the period is–

(a) nine months or six months, as the case may be, from the first anniversary of the incorporation of the company, or

(b) three months after the end of the accounting reference period, whichever last expires.

(4) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 381 (alteration of accounting reference date), the period is–

(a) that applicable in accordance with the above provisions, or
(b) three months from the date of the notice under that section, whichever last expires.

(5) If for any special reason the Registrar thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.

(6) Any such extension must not have the effect of extending the period for filing to more than twelve months after the end of the relevant accounting reference period.

(7) Whether the period allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the relevant accounting reference period.

(8) In this section "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

426. Default in filing accounts and reports: contraventions

(1) If the requirements of section 415 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company and every person who immediately before the end of that period was a director of the company, commits a contravention of these Regulations.

(2) A person does not commit the contravention referred to in subsection (1) if he proves that he took all reasonable steps for securing that those requirements would be complied with before the end of that period, and for this purpose, it is not enough to prove that the documents in question were not in fact prepared as required by this Part.

(3) A person who commits the contravention referred to in subsection (1) shall be liable to a fine of up to level 5.

PART 31: THE REGISTRAR OF COMPANIES

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936. The Registrar's functions

(1) The Registrar shall–

(a) perform the functions conferred on the Registrar by or under the ADGM Founding Law, these Regulations, the Commercial Licensing Regulations 2015 or any other law or regulation applicable in the Abu Dhabi Global Market, and

(b) perform such functions on behalf of the Board, in relation to the registration of companies or other matters, as the Board may from time to time direct by resolution.

(2) Without limiting the generality of subsection 1(a) or (b), the functions of the Registrar shall include–

(a) the preparation indicative and non-binding guidance on these Regulations and advising the Board when any such guidance is issued;

(b) prescribing forms to be used for any of the purposes of these Regulations, the Commercial Licensing Regulations 2015 or any other regulations administered by the Registrar;

(c) any tasks and powers properly delegated to it by the Board or any other authority in the Abu Dhabi Global Market; and

(d) where it considers it appropriate to do so, delegating such of its functions and powers as may more efficiently and effectively be performed by its officers or employees and, with the approval of the Board, to any other Abu Dhabi Global Market authority (other than the Court).

(3) The Registrar shall assist the United Arab Emirates in complying with its obligations under any international treaty or other agreement to which the United Arab Emirates is a party through the exercise of its powers and functions.

(4) In exercising its powers and performing its functions the Registrar shall act in an independent manner.

(5) References in these Regulations to the functions of the Registrar are to functions within subsections (1) and (2).

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