



19 July 2022

Digital Spring Ventures LLP
8th Floor, Al Maqam Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention: [REDACTED]

Sent by e-mail: [REDACTED]

Dear [REDACTED]

**CONFIRMATION OF DECISION IN RELATION TO THE PENALTY & ADMINISTRATIVE FEE
IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS
2017**

1. The Financial Services Regulatory Authority ("FSRA") of the Abu Dhabi Global Market ("ADGM") hereby gives written notice pursuant to subsection 10(4) of the *Common Reporting Standard Regulations 2017* (the "Regulations") confirming its decision to impose a penalty / Administrative Fee and direction on Digital Spring Ventures LLP ("DSV"). The notice follows due consideration of an appeal submitted by DSV on 24 June 2022 in response to the notice issued by the FSRA on 9 June 2022 pursuant to subsection 9(1) of the Regulations.

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 has decided to:
 - a. impose on DSV the penalty and Administrative Fee(s) of AED 37,000; and
 - b. direct DSV to undertake and complete remedial actions, to be approved by the FSRA, to ensure compliance with the Regulations.
4. This is because the FSRA considers that DSV has failed to:

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

- a. document its due diligence procedures and keep records of the due diligence procedures performed, including the evidence relied upon as part of due diligence and the measures undertaken to obtain those records, in contravention of subsection 6(1) and Schedule 1, Part 2, paragraph A of the Regulations;
- b. apply due diligence procedures as required by the Regulations, by not conducting reviews to confirm reasonableness of self-certifications received with respect to New Individual Accounts and New Entity Accounts, in contravention of Schedule 1, Part 4, paragraph A and Schedule 1, Part 6, paragraph A of the Regulations respectively;
- c. report information as required by the Regulations in a complete and accurate manner, by failing to:
 - i. accurately report the Taxpayer Identification Number ("TIN") for one (1) Reportable Account, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations; and
 - ii. report one (1) Reportable Account in its CRS return, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations,

and accordingly, subsection 7(1) of the Regulations applies.

BACKGROUND

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 ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The OECD Standard 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 ("RFIs").
7. Appropriate legislation to support implementation of CRS in the UAE has been issued in both the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations include the CRS and any explanatory material and commentary published by the OECD in relation to CRS pursuant to subsection 2(1) of the Regulations.
8. On 5 January 2017, DSV was granted a Financial Services Permission by the FSRA under which it was permitted to undertake the Regulated Activities of *"Managing a Collective Investment Fund"*.
9. DSV is classified as a RFI pursuant to Schedule 1, Part 8, subparagraph A(1) of the Regulations.
10. 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, setting out the requirement for implementation of CRS across all jurisdictions within the UAE.
11. On 25 June 2020, the FSRA published Notice No. 8 of 2020 addressed to Senior Executive Officers ("SEOs") and Compliance Officers of RFIs to inform them of amendments to the Regulations which included two new sanctions and various miscellaneous amendments to the Regulations. The Notice also stated that, to ensure that all Account Holders and Controlling Persons have current self-certifications as required by the amendments, the FSRA required all RFIs to obtain new self-

certifications from all Account Holders and Controlling Persons within six months from the date of the notice and maintain records of the same on file.

12. On 25 June 2021, DSV submitted its 2020 CRS return.
13. On 21 September 2021, the FSRA published Notice No. 25 of 2021, informing SEOs and Money Laundering Reporting Officers (“MLROs”) of the UAE’s CRS Compliance Programme designed by the Ministry of Finance and communicated to the relevant UAE Regulatory Authorities (including the FSRA) at the end of August 2021 for implementation by those Regulatory Authorities, enclosing links to training materials. The FSRA stated that it would shortly be in contact to provide a “Self-Certification” form that would need to be completed by each entity licensed by ADGM.
14. On 28 September 2021, the FSRA sent Notice No. 26 of 2021 to SEOs and MLROs regarding the UAE’s CRS Compliance Programme, which required RFIs to complete and submit to the FSRA their Self-Certification form by 7 October 2021.
15. On 7 October 2021, DSV submitted its completed ‘UAE FATCA and CRS Entity Self-Certification Form’ to the FSRA.
16. On 10 October 2021, the FSRA sent a letter to DSV informing DSV of its proposed review of DSV’s activities and operations conducted in relation to CRS (the “Review”) which included an on-site inspection (the “Inspection”) at DSV’s offices scheduled on 11 November 2021. The FSRA requested that DSV complete the ‘CRS Compliance Programme Questionnaire’ (“CRS Questionnaire”) and submit it together with the additional information set out in the Appendix by no later than 21 October 2021.
17. On 20 October 2021, DSV submitted its response to the CRS Questionnaire.
18. On 11 November 2021, the FSRA conducted the Inspection on DSV as part of the Review, to assess its compliance with the Regulations.
19. During the Review and Inspection, the FSRA conducted a review of DSV’s compliance with the Regulations in relation to Reportable Accounts for the period from 1 January 2020 to 31 December 2020 and submitted in its 2020 CRS return.

FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES & FAILURE TO KEEP RECORDS

20. As an RFI, DSV is required to comply with Schedule 1, Part 4, paragraph A and Schedule 1, Part 6, paragraph A of the Regulations, which sets out the review procedures that RFIs must apply for New Individual Accounts and New Entity Accounts respectively, and to determine the residence of the Account Holder or New Entity and, where applicable, its Controlling Persons¹. This includes obtaining a self-certification that allows the RFI to determine the Account Holder’s residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
21. Subsection 6(1) of the Regulations requires every RFI to keep records of steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures

¹ Where the New Entity is a Passive NFE (i.e. non-financial entity).

to obtain those records that the RFI obtains or creates for the purpose of complying with these Regulations.

22. However, the Inspection found, based on a review of the client files provided by DSV and interviews with relevant DSV staff, that there was no available documentation to show that DSV had:
 - a. undertaken any form of assessment of reasonableness of the self-certifications for any of the Reportable Accounts held with DSV; and
 - b. kept records of the steps undertaken and any evidence relied on for the performance of such due diligence procedures.
23. DSV did not have available for review any documents recording the steps undertaken, or supporting evidence relied upon, for the performance of due diligence procedures. DSV explained to the FSRA that it was in the process of winding up its operations and withdrawing from the ADGM. Notwithstanding that process, until the winding up is complete and its license withdrawn, DSV's obligation to comply with applicable Regulations applies.
24. Therefore, the FSRA considers that DSV has contravened subsection 6(1); Schedule 1, Part 2, paragraph A; Schedule 1, Part 4, paragraph A; and Schedule 1, Part 6, paragraph A of the Regulations.

FAILURE TO REPORT INFORMATION REQUIRED TO BE REPORTED IN A COMPLETE AND ACCURATE MANNER

Client 1

25. Schedule 1, Part 1, paragraph A of the Regulations provides that each RFI must collect and report to the UAE Competent Authority (whether directly or indirectly via the Regulatory Authority) specified information with respect to each Reportable Account. The information required to be reported by the RFI in relation to each Reportable Account is specified in Schedule 1, Part 1, paragraph A and includes:
 - a. the name, address, jurisdiction(s) of residence and Taxpayer Identification Number ("TIN") of each Reportable Person that is an Account Holder, or a Controlling Person in relation to an Entity that is an Account Holder;
 - b. the account number; and
 - c. the account balance or value, and other information relating to the income generated in the account.
26. Client 1, as identified in Annexure A of this notice, is an Individual Account Holder. Client 1 had declared his jurisdiction of tax residence as Kazakhstan and provided DSV with his TIN in his self-certification submitted to DSV.
27. Schedule 1, Part 4, paragraph B of the Regulations states *"If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction..."*

28. DSV, however, inaccurately reported the TIN of Client 1 as “AAAAAAAAA” rather than the TIN provided by Client 1.
29. Therefore, the FSRA considers that DSV has contravened subsection 3(1) and Schedule 1, Part 1, subparagraph A(1) of the Regulations by failing to correctly report the TIN of Client 1. In doing so, DSV failed to report the information that is required to be reported under the Regulations in a complete and accurate manner.

Client 2

30. Schedule 1, Part 1, paragraph A of the Regulations provides that each RFI must collect and report to the UAE Competent Authority (whether directly or indirectly via the Regulatory Authority) information with respect to each Reportable Account.
31. Schedule 1, Part 8, subparagraph D(1) of the Regulations defines a ‘Reportable Account’ as: “...a Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person...”
32. Schedule 1, Part 6, sub-paragraph A(2) of the Regulations states: “With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account.”
33. The self-certification provided to DSV by Client 2, as identified in Annexure A to this notice, records Client 2 as being an entity incorporated in the UAE and self-classified as a ‘Passive NFE’. The self-certification form of the Controlling Person of Client 2 records that individual’s jurisdiction of tax residence as the UAE and France.
34. Whilst the UAE is not a Reportable Jurisdiction, one of the jurisdictions of tax residence of the Controlling Person of Client 2 is France, which is a Reportable Jurisdiction. Accordingly, DSV was required to report this account as a Reportable Account.
35. DSV did not include Client 2 as a Reportable Account in its submitted its CRS return for the year 2020. Therefore, the FSRA considers that DSV has contravened subsection 3(1) and Schedule 1, Part 1, subparagraph A(1) of the Regulations by failing to report the information that is required to be reported under the Regulations in a complete and accurate manner.

PENALTIES, FEES AND DIRECTIONS

36. The FSRA considers that DSV has contravened the Regulations as set out in paragraph 4 above. The penalties/Administrative Fees for contraventions of the Regulations are set out in Schedule 2 of the Regulations.
37. The total penalty/Administrative Fees imposed by the FSRA on DSV is AED 37,000.
38. The breakdown of the penalties/Administrative Fees imposed by the FSRA on DSV pursuant to the Regulations in effect as at 30 June 2021 is as follows:

No	Contravention	Penalty/Late Reporting Fee	Penalty/Administrative Fee imposed by the FSRA on DSV
1.2	A Reporting Financial Institution fails to keep records of the due diligence procedures performed under the Regulations, or fails to keep them for a period of six (6) years pursuant to the requirements of the Regulations.	AED 10,000 penalty	AED 10,000
1.3	A Reporting Financial Institution fails to apply the due diligence procedures specified in Schedule 1, Part 2 through to Part 7 in Schedule 1.	AED 25,000 penalty	AED 25,000
1.5	A Reporting Financial Institution fails to report the information required to be reported in terms of these Regulation in a complete and accurate manner.	<u>Minor non-compliance:</u> AED 1,000 Administrative Fee and AED 100 Administration Fee for every day the failure continues up to of AED 25,000 in Administrative Fees <u>Significant non-compliance</u> AED 250,000 penalty	AED 1,000 x 2 = AED 2,000
Total penalty/Administrative Fee			AED 37,000

The Direction

39. The FSRA directs that DSV must, within a scope and timeframe to be approved by the FSRA:
- a. undertake a review of its systems, controls, policies and procedures relevant to compliance with the Regulations;
 - b. submit to the FSRA for its approval a plan of remedial actions required to ensure compliance with the Regulations; and
 - c. undertake and complete the remedial actions, as approved by the FSRA under b. above.
40. The directions under paragraph 39 above shall cease to have effect when DSV can demonstrate to the satisfaction of the FSRA that it has complied with the direction.

CONSIDERATION OF APPEAL

41. On 9 June 2022, the FSRA issued DSV with a notice in which it imposed on DSV a penalty/Administrative Fee of AED 37,000 and directed DSV to undertake certain action to ensure compliance with the Regulations.
42. Under subsection 10(1) of the Regulations, DSV had the opportunity to appeal against the FSRA's decision set out in the notice dated 9 June 2022. On 24 June 2022, DSV submitted its appeal to the FSRA.
43. In its notice of appeal, DSV asked the FSRA to take the following matters into consideration:
 - a. The fact that DSV had submitted its CRS procedure for inspection; and
 - b. The name of Client 1 was correctly reported based on proof of identity on file (the self-certification provided by Client 1 had incorrectly provided the client's last name before its first name and DSV had corrected this error).
44. The FSRA has considered the grounds submitted in support of DSV's appeal and concluded they do not provide a sufficient basis for the FSRA to change or cancel its decision or vary the amount of the penalty/Administrative Fee(s). Accordingly, the FSRA has decided to confirm its decision in this matter.
45. One of the issues raised was that DSV did have in place a CRS procedure document and that was provided to the FSRA on 20 October 2021. DSV's CRS procedure document was received by the FSRA and formed as part of its consideration prior to issuance of the notice to DSV.
46. Whilst the CRS procedure document contained review procedures, the FSRA found that DSV did not have available underlying records that demonstrated that DSV had performed and applied due diligence procedures, or supporting evidence of reasonableness assessments of self-certifications having been performed (as referred to in paragraph 20 to 24 of this notice).
47. The FSRA has however, amended paragraphs 22 and 23 of the Notice to remove the previous additional finding that DSV did not have available documentation to establish that it had established, maintained and documented relevant CRS due diligence procedures.
48. Secondly, in respect of DSV's submission that the name of Client 1 was correctly reported based on the proof of identity that DSV held on file, the FSRA has amended its previous finding that DSV failed to correctly report the name of Client 1. DSV has explained that Client 1 incorrectly reported his name in his self-certification (in that he transposed his first and last name) and that DSV had corrected this error. Accordingly, the FSRA has removed the previous finding that DSV inverted the first and last name of Client 1 in its 2020 CRS return. However, this does not change the finding that the TIN for Client 1 was inaccurately reported, which DSV acknowledged in its appeal.

PROCEDURAL MATTERS

Manner and time for payment of penalty/Administrative Fee(s)

49. Pursuant to subsection 10(5) of the Regulations the penalty/Administrative Fee(s) imposed pursuant to this notice is to be paid by DSV within twenty (20) days of the date of this notice, i.e. on or before **8 August 2022**.

50. Payment of the penalty/Administrative Fee(s) can be made by electronic funds transfer into the following account:

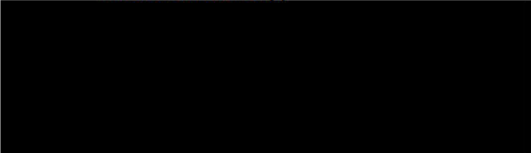
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

51. If the penalty/Administrative Fee(s) 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

52. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Abu Dhabi Global Market Financial Services Regulatory Authority

ANNEXURE A – CLIENT DETAILS

- 1. [REDACTED]
- 2. [REDACTED]