

16 January 2024

AGRINV SPV RSC Limited
2427ResCo-work03
24th floor, Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention:

[REDACTED]

Sent by e-mail:

[REDACTED]

Dear Sirs

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

1. The Financial Services Regulatory Authority (“FSRA”) of the Abu Dhabi Global Market (“ADGM”) hereby confirms its decision to impose a penalty on AGRINV SPV RSC Limited (“ASR”) pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the “Regulations”). This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 (the “Cabinet Resolution”), which applies pursuant to the Regulations, following due consideration of an appeal submitted by ASR on 28 September 2023 and 23 October 2023 in response to a notice from the FSRA dated 28 September 2023.

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. Following due consideration of ASR’s appeal submitted pursuant to subsection 9(2) of the Regulations, the FSRA has decided to impose a penalty of AED 10,000 on ASR.
4. This is because the FSRA considers that ASR classified itself as a Reporting Financial Institution (“RFI”) for the purposes of the Regulations and failed to submit the required annual information

FINANCIAL SERVICES REGULATORY AUTHORITY
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return in respect of the 2021 calendar year by the due date of 15 August 2022. This constitutes a contravention of subsection 3(1) of the Regulations in force at the time of the contravention¹ (“2022 Regulations”) and accordingly, subsection 9(1)(b) 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 CRS sets out the required information to be exchanged, the types of entities required to report, the different types of financial accounts and account holders in scope and the common due diligence procedures to be followed by RFIs.
7. Appropriate legislation to support implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations apply the Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(1) of the Regulations.
8. On 27 January 2017, the ADGM published the ‘*Notification of collection of information under the Common Reporting Standards*’ prepared by the UAE’s Ministry of Finance, setting out the requirement for implementation of the CRS across all jurisdictions within the UAE.
9. On 19 March 2019, ASR was registered as a non-financial company to carry on the business activity of a Special Purpose Vehicle (“SPV”).
10. On 12 December 2021, the FSRA sent an email to ASR requesting it to complete and return a signed ‘UAE FATCA and CRS Entity Self-Certification Form’ (“Entity Self-Certification Form”).
11. On 14 December 2021, ASR, through its Legal Counsel, submitted its completed Entity Self-Certification Form to the FSRA dated 13 December 2021.
12. On 15 December 2021 the FSRA sent an email to ASR, through its Legal Counsel, stating that the contact details and address were not included in the Entity Self-Certification Form it submitted and requesting that the form be resubmitted. The same Entity Self-Certification Form dated 13 December 2021 was resubmitted on the same day, and acknowledged by the FSRA on 16 December 2021. In the form ASR self-classified as an Active NFE for the purposes of CRS.
13. On 17 May 2022, the Ministry of Finance announced the go-live of the Automatic Exchange of Information (“AEOI”) reporting portal for RFIs to submit their annual information return in relation to CRS (“CRS Return”) and the Foreign Account Tax Compliance Act as implemented in the UAE (“FATCA” and “FATCA Return” respectively).

¹ See:

[https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_\(Consolidated_January_2022\)_v4.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_(Consolidated_January_2022)_v4.pdf)

14. On or around 13 August 2022, ASR registered on the AEOI portal. On the AEOI portal, ASR self-classified as an Investment Entity and as such, an RFI, for the purposes of CRS and FATCA.
15. On 15 August 2022, the FSRA sent a new Entity Self-Certification Form to ASR for completion as the Entity Self-Certification returned on 15 December 2021 did not include a GIIN, which the FSRA was now of the understanding that ASR possessed.
16. On 15 August 2022, ASR returned the same Entity Self-Certification Form it submitted on 15 December 2021 to the FSRA with its GIIN included in the FATCA section of the form, and requested the FSRA to confirm if all is in order. In the form ASR had self-classified as an Active NFE for the purposes of CRS.
17. On 17 August 2022, the FSRA sent an email to ASR stating that ASR had failed to submit its FATCA and CRS Returns for the 2021 calendar year, and reminding ASR that failure to finalise their submission on the AEOI portal may lead to penalties being imposed by the FSRA.
18. On 18 August 2022, the FSRA sent an email to ASR confirming that ASR's CRS Return (but not its FATCA Return) was still pending.
19. On 22 August 2022, ASR sent an email to the FSRA with reference to their email of 15 August 2022 mentioned in paragraph 15 above in relation to the new Entity Self-Certification Form, asking whether the matter had been closed or whether anything else was required from it.
20. In response to an email from the FSRA, on 24 August 2022 ASR returned the same Entity Self-Certification Form it submitted on 15 December 2021 dated 13 December 2021 to the FSRA with its GIIN included in the CRS section of the form as well as the FATCA section and requested confirmation that everything was fine. The FSRA responded stating "*Well received and it seems in good order*".
21. On 21 February 2023, the FSRA sent an email to ASR requesting it to provide documentary evidence of submission of its CRS Return via the AEOI portal for the 2021 calendar year. The FSRA stated that its records indicated that ASR had registered as an RFI for CRS purposes on the AEOI portal but had failed to submit either the information return described at Schedule 1, Part 1, paragraph F of the 2022 Regulations in force in August 2021 ("Annual Return") or alternately the return required by Schedule 1, Part 1, paragraph G of the 2022 Regulations ("Nil Return").
22. On 22 February 2023, ASR sent an email to the FSRA which attached a screenshot taken from the AEOI portal and copies of certain earlier emails between the FSRA and ASR concerning ASR's FATCA Return and CRS Return for the 2021 calendar year. The screenshot from the AEOI portal appeared to confirm that ASR had submitted its 2021 FATCA Return, but not its 2021 CRS Return.
23. On 23 February 2023, the FSRA sent an email to ASR in which it stated that ASR had not provided confirmation of submission of its CRS Return for the 2021 calendar year. The email noted that an email sent to ASR dated 18 August 2022 with an attached file named "*FATCA and CRS returns for 2021 – Failed*" indicated that the CRS Return was still pending. The email again requested evidence that the CRS Return had been submitted. The FSRA also requested confirmation as to whether ASR maintained any Reportable Accounts for the 2021 calendar year. The FSRA requested ASR's response by 24 February 2023.
24. On 27 February 2023, the FSRA sent an urgent reminder to ASR by email for ASR to provide the information requested.

25. On 28 February 2023, ASR sent an email to the FSRA stating that it had shared all available information in its last email regarding its FATCA and CRS Returns either via the portal or by email. ASR requested that the FSRA provide guidance for it to follow if there was any action required.
26. On 24 March 2023, the FSRA sent an email to ASR in relation to its self-classification for the purposes of CRS and FATCA. In the email, the FSRA noted that:
 - a. in its Entity Self-Certification Form dated 13 December 2021, ASR had self-certified as an Active NFE;
 - b. in its August 2022 submission via the AEOI portal, ASR had changed its classification to Investment Entity, and as such, an RFI.

The FSRA requested clarification as to the inconsistency in ASR's 2021 FATCA/CRS classification, and confirmation as to whether there had been a change in ASR's circumstances after 31 December 2021. The FSRA requested ASR's response by 27 March 2023.

27. The FSRA has not received a response to its email of 24 March 2023 from ASR.

FAILURE TO SUBMIT AN ANNUAL RETURN OR NIL RETURN

28. Subsection 3(1) of the 2022 Regulations required each RFI to collect and report to the Ministry of Finance all information required by the 2022 Regulations. Such information had to be reported via the reporting system stipulated (i.e. via the AEOI portal) and by the dates specified (i.e. 30 June of the year following the calendar year to which the information relates).
29. The Ministry of Finance extended the deadline for the 2021 calendar year to 15 August 2022.
30. As mentioned in paragraph 11 above, ASR submitted its Entity Self-Certification Form to the FSRA dated 13 December 2021 in which it self-classified as an Active NFE.
31. However, in its submission on the AEOI portal, ASR self-classified as an RFI.
32. As mentioned in paragraph 26 above, on 24 March 2023, the FSRA wrote to ASR to request clarification as to the inconsistency of its classification in the Entity Self-Certification Form and the AEOI portal, and confirmation as to whether ASR had a change in circumstances since the Self-Declaration Form was submitted on 14 December 2021. The FSRA requested ASR to respond by 27 March 2023. ASR did not respond to the FSRA's email.
33. Having self-classified as an Investment Entity on the AEOI portal, ASR was therefore a RFI and required under subsection 3(1) of the 2022 Regulations to submit either an Annual Return or a Nil Return (as applicable) for the purposes of CRS.
34. To date, ASR has not submitted an Annual Return or a Nil Return for the 2021 calendar year. Accordingly, ASR has contravened subsection 3(1) of the 2022 Regulations and subsection 9(1)(b) of the Regulations applies.

PENALTY

35. The FSRA considers that ASR contravened subsection 3(1) the 2022 Regulations. The penalty for such a contravention of the 2022 Regulations was set out in paragraph 1.4 of Schedule 2 of the 2022 Regulations.

36. The total penalty imposed by the FSRA on ASR is AED 10,000.

CONSIDERATION OF APPEAL

37. On 28 September 2023, the FSRA issued ASR with a notice in which it imposed on ASR a penalty of AED 10,000.

38. Under subsection 9(2) of the Regulations and Article 7(1) of the Cabinet Resolution, ASR had the opportunity to appeal against the FSRA’s decision set out in the notice dated 28 September 2023.

39. On 28 September 2023 and 23 October 2023, ASR submitted its appeal, which was acknowledged by the FSRA on 26 October 2023.

40. In its appeal, ASR submitted copies of the email communications summarised at paragraphs 14 to 20 above and asked the FSRA to take into consideration that ASR is a non-financial foreign entity, and that it was now in the process of deactivating its GIIN.

41. The FSRA has considered the grounds and supporting documentation submitted in support of ASR’s appeal. The records of communications submitted by ASR in support of its appeal had previously been considered by the FSRA, as set out in paragraphs 14 to 20 of the FSRA’s notice dated 28 September 2023. Accordingly, the grounds of appeal and supporting documentation do not materially change the FSRA’s findings and decision set out in that notice.

42. In addition, while ASR had self-declared as an Active NFE in its Self-Certification Form dated 13 December 2021, it had subsequently self-classified as an Investment Entity on the AEOI portal in August 2022. Having self-classified as an Investment Entity and hence an RFI, ASR was therefore required to submit a CRS Return or a nil return. Further, the FSRA sought clarification from ASR in relation to its change of classification but did not receive any response from ASR. ASR’s representations do not provide a sufficient basis for the FSRA to change or revoke its decision or vary the amount of penalty in this matter. Accordingly, the FSRA has decided to confirm its decision in this matter.

PROCEDURAL MATTERS

Manner and time for payment of penalty

43. Pursuant to Article 6(4) of the Cabinet Resolution, the penalty imposed pursuant to this notice is to be paid by ASR within fifteen (15) business days from the date of this notice, i.e. on or before **6 February 2024**.

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

Account Name	██
Account Number	████████████████
IBAN Number	████████████████████████████████████
Account Type	██████████████████████████████████

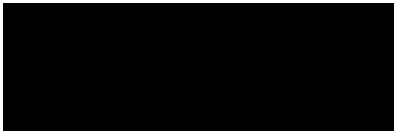
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

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

Publicity

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

Yours sincerely,



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