



19 July 2022

ADS Investment Solutions Limited  
Office 712, Al Khatem 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 on ADS Investment Solutions Limited ("ADSI"). The notice follows due consideration of an appeal submitted by ADSI on 29 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 ADSI the penalty and Administrative Fee of AED 30,000; and
  - b. direct ADSI 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 ADSI has failed to:

FINANCIAL SERVICES REGULATORY AUTHORITY  
سلطة تنظيم الخدمات المالية

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE  
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة المارية، ص ب 111999، الإمارات العربية المتحدة

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- a. report the information required by the Regulations in a complete and accurate manner, by failing to collect and report the Taxpayer Identification Number (“TIN”) for five (5) Reportable Accounts; and
- 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,

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 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.
9. On 28 September 2017, ADSI was granted a Financial Services Permission by the FSRA under which it was permitted to undertake the Regulated Activities of “*Advising on Investments or Credit*”, “*Arranging Credit*”, “*Arranging Custody*”, “*Arranging Deals in Investments*”, “*Managing Assets*”, “*Managing a Collective Investment Fund*”. ADSI was also permitted to undertake “*Shari’a Compliant Regulated Activities*” from 7 April 2020.
10. ADSI is classified as a RFI pursuant to Schedule 1, Part 8, subparagraph A(1) of the Regulations.
11. On 17 June 2021, ADSI submitted its 2020 CRS return.
12. 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.
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 30 September 2021, ADSI 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 ADSI informing ADSI of its proposed review of ADSI’s activities and operations conducted in relation to CRS (the “Review”) which included an on-site inspection (the “Inspection”) at ADSI’s offices scheduled on 4 November 2021. The FSRA requested that ADSI 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 22 October 2021, ADSI submitted its response to the CRS Questionnaire.
18. On 13 December 2021, the FSRA conducted the Inspection on ADSI as part of the Review, to assess its compliance with the Regulations.
19. During the Review and Inspection, the FSRA conducted a review of ADSI’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 REPORT INFORMATION REQUIRED TO BE REPORTED IN A COMPLETE AND ACCURATE MANNER**

20. 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. The information required to be reported by the RFI in relation to each Reportable Account is specified in Schedule 1, Part 1, paragraph A, subparagraphs (1) to (7).
21. 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....*”
22. Schedule 1, Part 8, subparagraph D(2) of the Regulations defines a ‘Reportable Person’ as: “...a *Reportable Jurisdiction Person...*” and subparagraph D(4) of the Regulations defines a Reportable Jurisdiction as (broadly speaking) a jurisdiction other than the United States of America or the UAE.
23. Schedule 1, Part 6, subparagraph 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.*”

#### Client 1

24. The Inspection found, from a review of the client file of Client 1 as identified in Annexure A to this notice, that Client 1 was an entity incorporated in the UAE, and self-classified as a 'Passive NFE'. The 'CRS Self-Certification for Controlling Person' form for the Controlling Person of Client 1 dated 12 February 2020, records that individual's current residential address as being in Tajikistan. However, in the declaration section of the 'Individual Tax Residency Self-Certification Form', only the UAE is declared as the Controlling Person's jurisdiction of tax residence.
25. Both Client 1 and its Controlling Person were reported in ADSI's 2020 CRS return. However, the 2020 CRS return submitted by ADSI reported the Controlling Person's jurisdiction of tax residence as the UAE, which is not a Reportable Jurisdiction under the Regulations. However, ADSI held information indicating that Client 1's Controlling Person was a tax resident in Tajikistan, which is a Reportable Jurisdiction under the Regulations, and yet failed to report this information.

#### Client 2

26. Client 2, as identified in Annexure A to this notice, declared in its Self-Certification form that it is a 'Passive NFE' with its country of tax residency as Panama, with three Controlling Persons – identified as CP1, CP2 and CP3 in Annexure A to this notice.
27. In its 2020 CRS return, ADSI reported the same 'Identification Number' for Client 2 and each of its three Controlling Persons, but did not accurately report Client 2's TIN, even though it held this information as provided by Client 2.
28. In addition, ADSI reported the TIN for Client 2 as provided in its self-certification form (which was not reported by ADSI in its 2020 CRS return as mentioned in paragraph 27 above) as the TIN for CP1 which was inaccurate, and inverted CP3's first and middle names in the 2020 CRS return.

#### Client 3

29. Client 3, as identified in Annexure A to this notice, is an individual Account Holder. In his Self-Certification dated 17 June 2020 and submitted to ADSI, Client 3 declared his country of tax residence as Italy and provided his TIN.
30. 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..."*
31. ADSI, however, inaccurately reported the TIN of Client 3 with three (3) additional alphanumeric characters.

#### Client 4

32. The Inspection found that the Client identified as Client 4 in Annexure A to this notice declared in the 'CRS Self-Certification Form for Entities' it provided to ADSI dated 1 May 2019 that it is a 'Passive NFE', and its Controlling Person is an individual whose jurisdiction of tax residence is Kuwait.
33. Pursuant to Schedule 1, Part 6, subparagraph A(2) of the Regulations, the Controlling Person of Client 4 is resident in Kuwait which is a Reportable Jurisdiction. The Controlling Person failed to

provide a TIN in his self-certification form, claiming that Kuwait does not issue TINs to its residents, which is incorrect. According to OECD guidance, Kuwait issues TINs automatically to all residents for tax purposes.

34. Schedule 1, Part 1, paragraph D of the Regulations provides an exception to the requirement to collect and report TINs where a TIN is not issued by the relevant Reportable Jurisdiction or if the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction. In this case, the exception is not satisfied, as per the OECD Kuwait does issue TINs.
35. ADSI reported the Controlling Person of Client 4 in its 2020 CRS return but failed to collect and report the TIN of this individual. Therefore, ADSI did not report the TIN as required by the Regulations.
36. In addition, as set out in paragraph 12 above, the FSRA's Notice No. 8 of 2020 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. It was identified during the Inspection that the new self-certification was not obtained from this Client within six months of 25 June 2020 or indeed as at the date of the Inspection in late 2021.

#### *Client 5*

37. Client 5 is registered as an Individual Account Holder with ADSI. In his self-certification form, Client 5 declared his country of tax residence as Uruguay but did not provide the TIN as Client 5 claimed that the domestic law of Uruguay does not require the collection of TINs.
38. According to OECD guidance, Uruguay automatically issues TINs to all residents for tax purposes.
39. The FSRA found no evidence that ADSI collected the TIN for Client 5. ADSI did not report the TIN for Client 5.
40. Therefore, in relation to Clients 1-5, the FSRA considers that ADSI has contravened Schedule 1, Part 1, subparagraph A(1) of the Regulations by failing to collect and report information that is required to be reported under the Regulations in a complete and accurate manner.

#### **FAILURE TO APPLY DUE DILIGENCE PROCEDURES**

41. As an RFI, ADSI is required to comply with Schedule 1, Part 6, paragraph A of the Regulations, which sets out the review procedures that RFIs must apply for New Entity Accounts to determine the residence of the New Entity and, where applicable, its Controlling Persons<sup>1</sup>. These include obtaining a self-certification that allows the RFI to determine the Account Holder's residence(s) for tax purposes and a requirement to 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.

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

42. The Inspection found, based on a review of ADSI's Client files and interviews with relevant ADSI staff, that ADSI had exercised a lack of due care and diligence in assessing the reasonableness of self-certification forms. These findings are particularised in paragraphs 43 to 48 below.

*Client 2*

43. Client 2, as identified in Annexure A to this notice, declared in its self-certification form that it is a 'Passive NFE' with its country of tax residency as Panama, with three Controlling Persons – identified as CP1, CP2 and CP3 in Annexure A to this notice.
44. ADSI failed to undertake adequate diligence to establish the jurisdiction of tax residence of:
- a. CP1, who declared his current address as being in Venezuela, which is inconsistent with his declaration that his jurisdiction of tax residence is Panama;
  - b. CP2, who is the son of CP1. In his self-certification form, CP2 claimed that he is "*living with parents with no income*", and as such, does not have a TIN. However, CP2 declared a different address and country of residence to CP1. CP2 listed an address in Aruba, whereas CP1 listed an address in Venezuela. ADSI reported CP2's jurisdiction as Aruba and did not consider CP2's possible tax residency in Venezuela or Panama (similarly, ADSI did not consider CP1's possible tax residency in Aruba). ADSI did not take any steps to resolve the inconsistency in accordance with the requirements for due diligence.
  - c. CP3 who declared in her self-certification form dated 24 March 2020 that her country of tax residence is Venezuela, and that her TIN is not available because her "Tax ID in Panama being processed". The FSRA found no evidence that ADSI collected the TIN of CP3 or followed up with a request to be furnished with the TIN and instead submitted CP3's TIN as "BBBBBBBBB". ADSI also failed to undertake and document steps to consider CP3's possible tax residency in Panama.

*Client 6*

45. In its self-certification form, Client 6, as identified in Annexure A to this notice, declared that it is a 'Passive NFE' with its country of tax residence in the UAE. This entity, however, also listed, in its self-certification form, its residence address as being in the Seychelles.
46. In its 2020 CRS return, ADSI reported Client 6's country of tax residence as the UAE, which is not a Reportable Jurisdiction under the Regulations, and did not report the Seychelles. ADSI was required to report all of the clients' jurisdictions of tax residences and should have therefore reported Client 6's residency in Seychelles or undertaken due diligence in accordance with Part 6 of the Regulations sufficient to confirm that Client 6 was not tax resident in that jurisdiction.
47. Therefore, in relation to Clients 2 and 6, ADSI demonstrated multiple failures to apply due diligence procedures as required under the Regulations.
48. Accordingly, the FSRA considers that ADSI has contravened Schedule 1, Part 6, paragraph A of the Regulations.

## PENALTIES, FEES AND DIRECTIONS

49. The FSRA considers that ADSI 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.
50. The total penalty/Administrative Fees imposed by the FSRA on ADSI is AED 30,000.
51. The breakdown of the penalties/Administrative Fees imposed by the FSRA on ADSI 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 ADSI
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	<b>AED 25,000</b>
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.	<p><u>Minor non-compliance:</u> AED 1,000 Administrative Fee</p> <p>and</p> <p>AED 100 Administration Fee for every day the failure continues up to of AED 25,000 in Administrative Fees</p> <p><u>Significant non-compliance</u> AED 250,000 penalty</p>	<p><b>AED 1,000</b> <b>x 5</b> <b>= AED 5,000</b></p>
<b>Total penalty/Administrative Fee</b>			<b>AED 30,000</b>

### The Direction

52. The FSRA directs that ADSI must, within a scope and timeframe to be approved by the FSRA:
- undertake a review of its systems, controls, policies and procedures relevant to compliance with the Regulations;
  - 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.

53. The directions under paragraph 52 above shall cease to have effect when ADSI can demonstrate to the satisfaction of the FSRA that it has complied with the direction.

#### **CONSIDERATION OF APPEAL**

54. On 9 June 2022, the FSRA issued ADSI with a notice in which it imposed on ADSI a penalty/Administrative Fee of AED 30,000 and directed ADSI to undertake certain action to ensure compliance with the Regulations.

55. Under subsection 10(1) of the Regulations, ADSI had the opportunity to appeal against the FSRA's decision set out in the notice dated 9 June 2022.

56. On 29 June 2022, ADSI submitted its appeal to the FSRA.

57. In its notice of appeal ADSI asked the FSRA to take the following matters into consideration:

a. In relation to Client 1, that whilst the Controlling Person for Client 1 was a Tajikistan national with a Tajikistan address, ADSI had received information from the client that confirmed that he was a UAE resident with a UAE residency until 10 September 2022. As a result, ADSI considered that Client 1 did not reside in a Reportable Jurisdiction;

b. In relation to Client 2, that whilst the client had multiple residences, ADSI considered that the client had only one residence that was applicable for taxation purposes. In particular, for Client 2, ADSI understood that the son (CP2) was living in a residence in Aruba owned by the parents (which included CP1), which was different to the parents' residence, and that the son (CP2) was supported financially by the parents and therefore did not have a Tax ID;

c. In relation to Clients 3-6, the incorrect information provided in the CRS forms was provided by the client or is a result of typing errors, most of which have been corrected;

d. In relation to Client 4, that there was confusion as to which forms were applied as of which date; and

e. ADSI had developed measures to address the control weaknesses identified in the FSRA notice.

58. The FSRA has considered the grounds submitted in support of ADSI'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 penalty/Administrative Fee in this matter. Accordingly, the FSRA has decided to confirm its decision in this matter.

59. One of the issues raised was that the Controlling Person for Client 1 is a UAE resident and as such does not reside in a Reportable Jurisdiction. The self-certification of the Controlling Person of Client 1 clearly states that his residence address is in Tajikistan with his mailing address in the UAE. As such, whilst the UAE is not a Reportable Jurisdiction, ADSI should have reported the other jurisdiction of tax residence of the Controlling Person of Client 1 being Tajikistan, which is a Reportable Jurisdiction. RFIs are required to determine the Account Holder's tax residence(s) for tax purposes, including where applicable, Controlling Persons, based on the self-certifications obtained.

60. Secondly, as regards CP2 of Client 2, ADSI's representations do not change the FSRA's position as set out in paragraphs 26 to 28 above.
61. The FSRA has also considered ADSI's representations regarding Clients 3-6 and the incorrect information provided in the CRS forms, and the confusion regarding the forms for Client 4. However, the FSRA has concluded that these do not provide sufficient grounds for the FSRA to change its findings regarding ADSI's failures in relation to those clients and do not warrant the FSRA reducing or waiving the penalty/Administrative Fees imposed.
62. Given the facts and matters set out above, and having given due consideration to ADSI's appeal, the FSRA has decided to confirm its decision to impose a penalty/Administrative Fee of AED 30,000 on ADSI. Further, nothing in ADSI's appeal provides any basis for the FSRA to change or cancel the direction set out in paragraph 52 above.

**PROCEDURAL MATTERS**

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

63. Pursuant to subsection 10(5) of the Regulations, the penalty/Administrative Fee(s) imposed pursuant to this notice is to be paid by ADSI within twenty (20) days of the date of this notice, i.e. on or before **8 August 2022**.
64. Payment of the penalty/Administrative Fee(s) can be made by electronic funds transfer into the following account:

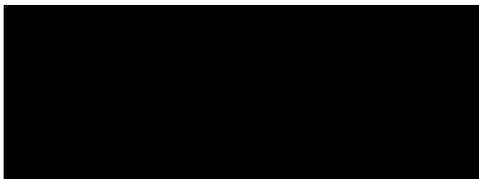
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

65. 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**

66. 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]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

### CONTROLLING PERSON DETAILS

- CP1 - [REDACTED]
- CP2 - [REDACTED]
- CP3 - [REDACTED]