

**FINAL NOTICE ISSUED UNDER SECTION 251 OF  
THE FINANCIAL SERVICES AND MARKETS REGULATIONS 2015**

To: **Elmar Capital SPV Limited**  
2458, 24, Al Sila Tower  
Abu Dhabi Global Market Square  
Al Maryah Island  
United Arab Emirates

Date: 8 March 2021

**1. PROPOSED ACTION**

1.1. For the reasons given in this Final Notice, the Financial Services Regulatory Authority (the “Regulator”) has decided to impose on Elmar Capital SPV Limited (“Elmar”) a financial penalty of \$10,000 under section 232 of the *Financial Services and Markets Regulations 2015* (the “Regulations”) for the contraventions set out below.

**2. DEFINED TERMS**

2.1. 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 a Rulebook, Glossary, or in the body of this Notice at the first instance the term is used. Unless the context otherwise requires, where capitalization of the initial word is not used, an expression has its natural meaning.

2.2. Annexure A to this Final Notice sets out regulations and rules relevant to this Notice.

**3. SUMMARY OF REASONS FOR THE DECISION**

3.1 The Regulator has decided impose a financial penalty on Elmar because it considers that Elmar has:

- a. Purported to carry on a Regulated Activity by way of business in the Abu Dhabi Global Market (“ADGM”);
- b. Described itself (in whatever terms) as an Authorised Person; and
- c. Behaved, or otherwise held itself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that it is an Authorised Person,



when it was not an Authorised Person, and in doing so, contravened sections 16 and 20(a) and (c) of the Regulations.

#### **4. FACTS AND MATTERS RELIED ON**

##### **Background**

- 4.1. On 19 December 2019, Elmar was incorporated and registered in ADGM as a private company limited by shares, and assigned the registration number 000003366. Elmar holds a commercial license to carry on non-financial business activities including “professional, scientific and technical activities” as a special purpose vehicle only.
- 4.2. Elmar has at no time been granted a Financial Services Permission (“FSP”) by the Regulator and as such, is not and has never been licensed or authorised by the Regulator to conduct any Regulated Activity in or from the ADGM.
- 4.3. Elmar maintained a registered address in ADGM from around May 2020 to around 29 July 2020 (the “Relevant Period”), but at no time had physical premises in the ADGM from which it could operate.

##### **Relevant Facts**

- 4.4. During the Relevant Period, Elmar maintained and operated a website, URL: <https://elmarcapital.ae> (the “Website”), on which it published representations to the effect that Elmar:
  - a. Carried on Regulated Activities by way of business in ADGM; and
  - b. Was an Authorised Person.
- 4.5. The Website, under the heading ‘*About Elmar*’ stated, over the Relevant Period, that:

*“Elmar Capital is a financial company Licensed by the Abu Dhabi Global Market authority under license number 3366, and a group of subsidiary and sister companies licensed by the Government of the United Arab Emirates under license number 1804069 in addition under laws of the United Kingdom under license number 2018751. It is a leading company in finance, managing [sic] and investing money, brokerage services between financial companies and international and local banks, edit [sic] swaps, rights of option and other coverage arrangements to avoid [sic] loss and private equity activities such as adventure [sic] capital firms and investment companies.*

*It also provides guardianship, safeguard and custody services for a fee on a contract basis. Financial and investment consultation services and other financial services activities dealing with the funds distribution and financial services activities that are mainly concerned with providing loans from institutions engaged in financial brokerage, Sale of stocks, debentures, stock options and contracts of main commodities.*



*.... It manages assets, various programs and markets exclusively for the products of our strategic partners, and find appropriate solutions in the development of products, programs and investment funds in an innovative way, in order to provide a profitable and lasting revenues for investors.”*

- 4.6. Further, the Website, under the heading “*Products*”, described a number of ‘*investment opportunities*’ purported to be provided by “Elmar Capital”. This included:
- a. An “*Income Program*”, described as “*an investment program that invests in monetary markets and financial indicators*”;
  - b. A “*Trading Program*”, described as “*an investment program aimed at supporting small and medium enterprises through investment and participation in private sector investments*”;
  - c. A “*Growth Program*”, described as “*an investment program that invests in money markets and futures contracts*”;
  - d. An “*Elmar Venture Program*” described as “*an investment program that invests in monetary markets, financial indicators, Real estate, stocks and Gold bullion, oil programs, Structured products and start ups*”;
  - e. A “*Local Stock Program*”, described as “*an investment program aimed at investing in local stock markets*”;
  - f. A “*Commodities and Precious Metals Program*”, described as “*a program that invests in precious commodities and mierals [sic] which consists of ( Silver, Gold, Platinum and Palladium )*”; and
  - g. The “*Elmar Mixed Stock Program*”, described as a program that “*invests in American stocks in several different and diversified sectors*”.
- 4.7. Each of the “*investment opportunities*” described on the “*Products*” section of the Website were accompanied by a link to a page of the Website setting out further detail on the investment opportunity, including details of the minimum subscription amount, the “*Risk Degree*”, “*Risk Rate*” and “*Profit Rate*” for the investment. Further, the pages of the website which described the “*Income Program*”, “*Trading Program*” and “*Growth Program*” allowed readers to download a fact sheet which purported to include historical performance information on the product.
- 4.8. Further, the Website included an “*Open an Account*” page, on which members of the public were allowed to submit their name and contact information to Elmar.
- 4.9. As stated in paragraph 4.2 above, Elmar has at no time been granted an FSP by the Regulator and as such, is not and has never been licensed or authorised by the Regulator to conduct any Regulated Activity in or from the ADGM.



- 4.10. On 27 July 2020, the Regulator communicated its concerns in relation to the Website to Elmar and, on or around 29 July 2020, Elmar removed the relevant statements from the Website.
- 4.11. Elmar has provided information and documents to the Regulator which, among other things, were to the effect that the representations on the Website, including in particular the reference to the statement that Elmar is “*a financial company Licensed by the Abu Dhabi Global Market authority under license number 3366...*”, mentioned in paragraph 4.5 above:
- a. Was published due to a “*typo*” which was missed upon final review, and that it was not intended to deceive, mislead or manipulate any third parties; and
  - b. Was drafted on the assumption that a “*financial license*” was in place, when in fact Elmar was only taking steps to obtain an FSP.
- 4.12. The Regulator does not accept Elmar’s explanation that the relevant statement on the Website was the result of a typographical error. The relevant statements on the Website were clear. They described “Elmar Capital” as “*a financial company Licensed by the Abu Dhabi Global Market authority*” and followed this with a detailed description of the financial services that it purported to provide.
- 4.13. Further, the Regulator does not accept Elmar’s subsequent explanation to the effect that the relevant statement was drafted on the assumption that a “*financial license*” would be granted in the future. Elmar has at no time applied to the Regulator for an FSP, and had no basis to expect that it would be granted an FSP in the future. Further, the Website described financial products and services currently offered as mentioned in paragraph 4.6 above, which Elmar was not allowed to undertake unless it was an Authorised Person. Elmar allowed the Website to be published which represented it as being “*a financial company Licensed by the Abu Dhabi Global Market authority*” offering those financial products when it did not have an FSP allowing it to do so.
- 4.14. Elmar has also contended that the products and services described on the Website concerned the activities of a related entity in the UAE. The Regulator accepts that Elmar did not provide the purported services from the ADGM, as it at no time maintained a physical premises in the ADGM from which it could operate. However, the Website in clear and unambiguous terms describes “*Elmar Capital*” as “*a financial company*” licensed in the ADGM. Accordingly, the Regulator does not accept this further explanation provided by Elmar.

#### **Purporting to carry on a Regulated Activity by way of business in the ADGM**

- 4.15. Section 16 of the Regulations states that no person may carry on a Regulated Activity by way of business in the ADGM, or purport to do so, unless he is an Authorised or Exempt Person.
- 4.16. Elmar has at no time been an Authorised Person or Exempt Person and therefore was prohibited from carrying on, or purporting to carry on, any Regulated Activity in the ADGM.



- 4.17. Over the Relevant Period, the statements described in paragraphs 4.5 to 4.8 above were published on the Website.
- 4.18. The Website described Elmar as “*a financial company Licensed by the Abu Dhabi Global Market authority*” and described various activities which would constitute Regulated Activities if conducted in the ADGM.
- 4.19. By publishing these statements, the Regulator considers that Elmar purported to carry on Regulated Activities by way of business in ADGM.

#### **False claims to be authorised**

- 4.20. Sections 20(a) and (c) of the Regulations relevantly provide that a person who is not an Authorised Person must not:
- a. Describe himself (in whatever terms) as an Authorised Person; or
  - b. Behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is an Authorised Person.
- 4.21. Elmar has at no time been an Authorised Person and was therefore prohibited from describing itself, in whatever terms, as an Authorised Person, or behaving or otherwise hold itself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that it is an Authorised Person.
- 4.22. Over the period from around May 2020 to on or about 29 July 2020, the Website described “*Elmar Capital*” as “*a financial company Licensed by the Abu Dhabi Global Market authority under license number 3366*”.
- 4.23. The Regulator considers that this statement could only be a reference to Elmar, as this was the only “*Elmar*” entity in the ADGM, and the reference to “*license number 3366*” corresponds with the commercial license issued by the ADGM Registration Authority to Elmar. However, as set out in paragraph 4.1 above, the commercial license issued to Elmar only permitted it to carry on non-financial business activities. No entity can carry on financial activities in the ADGM unless it is an Authorised Person.
- 4.24. The Regulator considers Elmar, in describing itself on the Website as a “*financial company*” and in providing the further description of its purported activities (which are set out in paragraphs 4.6 to 4.8 above), has described itself (in whatever terms) as an Authorised Person; and held itself out in a manner which indicates (or which is reasonably likely to be understood as indicating) that it is an Authorised Person. Therefore, Elmar has contravened sections 20(a) and (c) of the Regulations.

## **5. CONTRAVENTIONS**

- 5.1. The Regulator therefore considers that Elmar has contravened the following sections of the Regulations:



- a. Section 16 - for purporting to carry on a Regulated Activity by way of business in the ADGM; and
- b. Sections 20(a) and (c) - for describing itself (in whatever terms) as an Authorised Person, and behaving or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that it is an Authorised Person.

## **6. SANCTION**

6.1. In reaching its decision to impose a financial penalty on Elmar, the Regulator has taken into account:

- a. The factors and considerations set out in sections 6.2 to 6.4 of the Regulator's Guidance and Policy Manual ("GPM");
- b. Elmar's written representations of 16 December 2020; and
- c. Further oral representations made by Elmar's authorised representative at a meeting held on 28 February 2021.

### **Determination to impose a financial penalty**

6.2. With reference to section 6.2 of GPM, the Regulator considers the following factors to be of particular relevance in deciding to impose the proposed financial penalty on Elmar:

- a. 6.2.1(a) - the Regulator's objectives under section 1(3) of the Regulations to:
  - i. Prevent, detect and restrain conduct that causes or may cause damage to the reputation of ADGM through appropriate means including the imposition of sanctions; and
  - ii. Promote public understanding of the regulation of ADGM;
- b. 6.2.1(b) - the deterrent effect of the financial penalty and the importance of deterring other persons from committing similar contraventions;
- c. 6.2.1(c) – In terms of nature, seriousness, duration and impact of the contravention:
  - i. The Website was published around May 2020 to on or around 29 July 2020 and members of the public would have placed reliance on the Website during that period;
- d. 6.2.1(j) – Elmar did not act with diligence to ensure that the Website did not contain false and/or misleading statements; and
- e. 6.2.1(f)(iv) - the Regulator considers there is a high likelihood that the same type of contravention will recur if no action is taken.



### **Determination of the level of financial penalty**

- 6.3. The Regulator applies a five-step framework to determine the appropriate level of financial penalty. The Regulator has taken into account the factors and considerations set out in section 6.4 of GPM as follows:

#### *Step 1: Disgorgement*

- 6.4. This step is not considered to be relevant, as the Regulator has not seen evidence of Elmar deriving any financial benefit from the contraventions.

#### *Step 2: The seriousness of the contraventions*

- 6.5. The Regulator considers Elmar's conduct in purporting to carry on a Regulated Activity by way of business in the ADGM, and falsely claiming to be authorised by describing itself (in whatever terms) as an Authorised Person, to be serious because:

- a. Elmar's conduct resulted in false and misleading representations being published on the Website for a period of around three months;
- b. Members of the public may have been put at risk when relying on the Website to make their decision whether or not to invest; and
- c. Elmar's conduct appears to be reckless in that the Regulator was initially informed that the representation on the Website was a "typo", and later admitted that it was drafted with the assumption that a financial license was in place.

- 6.6. Taking the above factors into account, the Regulator considers that a financial penalty of \$10,000 appropriately reflects the seriousness of the contraventions.

#### *Step 3: Mitigating and aggravating factors*

- 6.7. The Regulator considers that the following factor has a mitigating effect on the contraventions:

- a. Elmar does not have any previous history of non-compliance with the Rules or Regulations; and
- b. The Website was taken down almost immediately by Elmar following receipt of the Regulator's cease and desist letter.

- 6.8. Having taken the above factor into account, the Regulator does not consider it necessary to adjust the proposed financial penalty.

#### *Step 4: Adjustment for deterrence*

- 6.9. Paragraph 6.5.9 of GPM provides that if the Regulator considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm that committed the contravention, or others, from committing further or similar contraventions,



then the Regulator may increase the financial penalty. Paragraph 6.5.9 sets out the circumstances in which the Regulator may do this.

6.10. In this instance, the Regulator considers that the figure arrived at after Step 3 is sufficient for the purposes of deterring Elmar and others from committing further or similar contraventions. Accordingly, the Regulator does not consider it necessary to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.

6.11. Accordingly, the figure after Step 4 is \$10,000.

*Step 5: Adjustment for cooperation/early settlement*

6.12. Where the Regulator and the firm on which the financial penalty is to be imposed come to an agreement on the amount of the financial penalty and other terms relevant to the action taken by the Regulator, paragraph 6.5.10 of GPM provides that the amount of the financial penalty which might have otherwise been payable will be reduced to reflect the stage at which the agreement is reached.

6.13. The Warning Notice issued to Elmar on 15 December 2020 invited Elmar to propose a settlement with the view to coming to an agreement on the action proposed. Elmar did not take up that opportunity. As no agreement was reached, the Regulator does not consider it necessary to adjust the amount of the penalty arrived at after Step 4.

**Elmar's written representations**

6.14. On 15 December 2020, the Regulator issued Elmar with a Warning Notice in which it stated that it proposed to impose on it a financial penalty of \$10,000.

6.15. Elmar was provided with an opportunity to make written representations regarding the Regulator's concerns and the action proposed.

6.16. On 16 December 2020, Elmar provided written representations to the Regulator. The representations support an admission of responsibility and acknowledgement of the contraventions by Elmar.

6.17. The matters which Elmar asks that the Regulator take into in determining whether or not to impose a financial penalty included the following:

- a. Elmar's conduct was an "*incidental occurrence*" and "*mistake*" which occurred without the "*full knowledge*" of Elmar's sole shareholder and director;
- b. The readiness of Elmar's sole shareholder and director to provide an undertaking to the effect that the conduct of Elmar identified in the Warning Notice would not be repeated;
- c. Elmar took prompt action to remove the contravening content from the website;
- d. Elmar did not have a history of non-compliance;



- e. Elmar did not receive a financial benefit a result of the contraventions;
- f. Representations in relation to the steps undertaken by Elmar and its sole shareholder and director to obtain a license in the ADGM; and
- g. that the proposed penalty would cause serious financial hardship to Elmar.

### **Consideration of written submissions**

- 6.18. The Regulator sees no substance in these representations.
- 6.19. In relation to the representation set out in paragraph 6.17(a), Elmar was not licensed or authorised by the FSRA at the time that Elmar's statements were drafted and published. In addition, Elmar was responsible for ensuring that the statements it published on its Website did not contravene the Regulations. The representation that Elmar's conduct in publishing the relevant statements on the Website occurred without the full knowledge of Elmar's sole shareholder and director is unpersuasive.
- 6.20. In relation to the representation set out in paragraph 6.17(b), the representation that Elmar's sole shareholder and director is willing to provide an undertaking to the effect that the conduct of Elmar will not be repeated is unpersuasive. All ADGM entities holding FSPs must comply with the Regulations, and the Regulator will take action in circumstances where an entity has been found to contravene the Regulations.
- 6.21. In relation to the representation set out in paragraph 6.17(c), this matter had already been considered in the Warning Notice.
- 6.22. In relation to the representation set out in paragraph 6.17(d), this had already been considered in the Warning Notice.
- 6.23. In relation to the representation set out in paragraph 6.17(e), this had already been considered in the Warning Notice.
- 6.24. In relation to the representation set out in paragraph 6.17(f), this clarified position provided by Elmar was already understood by the Regulator and accordingly did not alter the Regulator's consideration of relevant facts and matters.
- 6.25. In relation to the representation set out in paragraph 6.17(g), the onus was on Elmar to satisfy the Regulator that payment of the financial penalty will cause it serious financial hardship. In the absence of any evidence to support that representation, the representation was afforded no weight.
- 6.26. In summary, the representations relied on, neither individually or collectively, do not warrant the Regulator reducing or waiving the financial penalty proposed in the Warning Notice.



### **Elmar's oral representations**

- 6.27. On 28 February 2021, the Regulator attended a meeting with Elmar's authorised representative, following a request from Elmar made after the Regulator had issued a Decision Notice in this matter on 25 January 2021.
- 6.28. Following the meeting, the Regulator informed Elmar that the Regulator's position remained as set out in the Decision Notice of 25 January 2021, and that it had been provided with the opportunity to refer the Regulator's decision to the Regulatory Committee for a full merits review, but had not done so.

### **Conclusion**

- 6.29. Given the facts and matters set out above, and all the circumstances including Elmar's written and oral representations, the Regulator has determined that it is proportionate and appropriate to impose on Elmar a financial penalty of \$10,000.

## **7. PROCEDURAL MATTERS**

### **Issuance of Decision Notice**

- 7.1. On 25 January 2021, the Regulator issued a Decision Notice dated 25 January 2021 to Elmar pursuant to section 248 of the Regulations.
- 7.1 Under section 225(1) of the Regulations, Elmar had the opportunity to refer the Decision Notice to the Regulatory Committee for a full merits review.
- 7.2 A reference under section 225(1) is to be commenced –
- a. Within 30 days of the decision of the Regulator; or
  - b. Within such further period not exceeding 30 days as may be approved by the Regulatory Committee where it is satisfied that such approval is appropriate in the circumstances.
- 7.3 As a referral was not made to the Regulatory Committee for a review of the Decision Notice within 30 days, the Regulator has proceeded to issue this Final Notice pursuant to section 251(1) of the Regulations.

### **Payment of the financial penalty**

- 7.4 The financial penalty imposed by this Final Notice is to be paid by Elmar on or before 7 April 2021.
- 7.5 Payment of the financial penalty can be made by electronic funds transfer into the following account:



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

7.6 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 Regulator.

**Publicity**

7.7 As this Final Notice has now been issued, pursuant to section 252(3) of the Regulations the Regulator may publish the details about the matter at its discretion. Pursuant to section 252(4) of the Regulations, a person to whom a notice is given may not publish the notice or any details concerning it unless the Regulator has published the notice or those details in accordance with section 252(3).

7.8 The Regulator proposes to publish on its website:

- a. this Final Notice (not including Annexure A); and
- b. subject to section 252(5) of the Regulations, a press release in a form and manner the Regulator considers appropriate.

Signed:

[REDACTED]

Philippe Richard  
Executive Director – International Affairs  
Delegate of the Financial Services Regulatory Authority