

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

To: **Outer Temple Middle East Limited**
2452, 24, Al Sila Tower
ADGM Square
Al Maryah Island
United Arab Emirates

Date: 25 April 2021

1. DECISION

1.1. For the reasons given in this Final Notice, the Financial Services Regulatory Authority (the “Regulator”) has decided to impose on Outer Temple Middle East Limited (“OTME”) a financial penalty of \$5,000 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** sets out extracts from the Regulations and Rules relevant to this Final Notice.

3. SUMMARY OF REASONS FOR THE DECISION

3.1 The Regulator has decided to take the action set out in this Notice because it considers that OTME has failed to:

- a) Complete and submit its annual AML Return for the period from 1 January 2019 to 31 December 2019 (the “2019 AML Return”) to the Regulator by 30 April 2020; and
- b) Be open and cooperative in all its dealings with the Regulator,

and in doing so, contravened the Anti-Money Laundering and Sanctions Rules and Guidance (“AML”) Rules 4.6.1 and 4.7.1(a) respectively.



4. FACTS AND MATTERS RELIED ON

Background

- 4.1. On 16 July 2018, OTME was incorporated and registered with the Abu Dhabi Global Market (“ADGM”) Registration Authority as a branch of a foreign company. OTME holds a commercial license to carry on non-financial (Category B) business activities as a “*Legal Consultancy*” and providing “*Combined office administrative service*”.
- 4.2. By virtue of carrying on “Other independent legal business”, OTME is classified as a Designated Non-Financial Business or Profession (“DNFBP”) as defined in Rule 3.2.1 of AML.
- 4.3. Accordingly, OTME was required under Rule 15.1.1 of AML to be registered as a DNFBP to conduct its activities in and from ADGM.
- 4.4. On 16 July 2018 OTME was registered as a DNFBP.

Failure to submit the 2019 AML Return

- 4.5. OTME, as a DNFBP, was required under AML Rule 4.6.1 to submit its 2019 AML Return to the Regulator by 30 April 2020.
- 4.6. The Regulator places considerable importance on the timely submission by DNFBPs of the 2019 AML Return. The information it contains is essential for the Regulator's assessment and monitoring of whether a DNFBP is complying with the AML Rules.
- 4.7. In the period February to April 2020, OTME was reminded on a number of occasions of its obligations to file its 2019 AML Return by 30 April 2020. In particular:
 - a) On 23 February 2020, the Regulator published online Notice No. 02/2020, which reminded Relevant Persons (including all DNFBPs) of their obligation to file their annual AML Return by the end of April each year for the period covering 1 January to 31 December of the preceding year;
 - b) In early April 2020, the Regulator published on the ADGM website an ‘Annual AML Return Frequently Asked Questions’ as guidance to assist ADGM registered DNFBPs to understand the requirement to submit the 2019 AML Return by 30 April 2020;
 - c) On 9 April 2020, the Regulator sent an email to OTME in which it reminded OTME of its obligation to submit its 2019 AML Return by 30 April 2020 and, in addition, enclosed a copy of the ‘Annual AML Return Frequently Asked Questions’ document referred to in (b) above to provide further guidance to OTME on the submission of the 2019 AML Return; and
 - d) On 20 April 2020, the Regulator sent a further email to OTME in which it again reminded OTME of its obligation to submit the AML Return by no later than 30 April 2020.
- 4.8. As at 1 May 2020, OTME had failed to submit its 2019 AML Return.
- 4.9. On 7 May 2020, the Regulator sent to OTME a third reminder to submit the outstanding 2019 AML Return by no later than 14 May 2020 and to provide an explanation for the delay. The Regulator further advised OTME that failure to submit the outstanding 2019 AML Return may lead to regulatory action. However, OTME did not respond to the Regulator’s communication or submit its outstanding 2019 AML Return by 14 May 2020.



4.10. On 6 December 2020, OTME was served a Warning Notice by the Regulator under section 246 of the Regulations.

4.11. On 31 December 2020, OTME submitted its 2019 Annual Return.

Failure to be open and cooperative in all its dealings with the Regulator

4.12. AML Rule 4.7.1(a) requires that all Relevant Persons, including DNFBPs to be open and cooperative in all its dealings with the Regulator. As a DNFBP, OTME was therefore required under the AML Rules to be open and cooperative in all its dealings with the Regulator.

4.13. As described in paragraphs 4.7 to 4.9 above, OTME failed to respond to each of the communications from the Regulator regarding the submission of its 2019 AML Return. Further, OTME failed to respond to the Regulator's communication of 7 May 2020, which requested that OTME submit its outstanding 2019 AML Return and provide an explanation for its delay in filing the AML Return, mentioned in paragraph 4.9 above.

4.14. Given the importance of the submission of the 2019 AML Return, the Regulator considers that OTME should have taken all reasonable steps to ensure that it responded fully, accurately and promptly to each of the Regulator's communications, but failed to do so, in the period from 30 April 2020 to 6 December 2020.

5. CONTRAVENTIONS

5.1. The Regulator considers that OTME has contravened the following Rules:

- (a) AML Rule 4.6.1 by failing to complete and submit its 2019 AML Return by 30 April 2020; and
- (b) AML Rule 4.7.1(a) by failing to be open and cooperative in all its dealings with the Regulator in the period from 30 April 2020 to 6 December 2020.

6. SANCTION

6.1. In reaching its decision to impose a financial penalty on OTME, 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 & Policies Manual ("GPM"); and
- (b) OTME's written representations of 24 March 2021.

Determination to impose a financial penalty

6.2. With reference to Section 6.2 of GPM (Deciding to take action), the Regulator considers the following factors to be of particular relevance in deciding to impose the financial penalty on OTME:

- (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 DNFBPs from committing similar contraventions;
- (c) 6.2.1(c) – In terms of nature, seriousness, duration and impact of the contravention:
 - (i) OTME's delay in submitting its 2019 AML Return was approximately eight months;
 - (ii) OTME's delayed submission of the 2019 AML Return hindered the Regulator's ability to assess OTME's level of compliance with AML requirements in a timely manner;
 - (iii) OTME is a registered DNFBP and a professional firm engaged in the provision of legal consultancy services. It should therefore be aware of its obligations and the importance of submitting the 2019 AML Return.
- (d) 6.2.1(f)(ii) - OTME has failed to respond to numerous reminders from the Regulator of its obligation to submit its 2019 AML Return, and only took corrective action upon receipt of the Warning Notice in relation to the contraventions.
- (e) 6.2.1(f)(iv) - The Regulator considered that there was a high likelihood that the 2019 AML Return would have remained outstanding if no action had been taken.

Determination of the level of financial penalty

- 6.3. With reference to section 6.4 of GPM, the Regulator has taken into account the factors and considerations set out in the five-step framework in section 6.5 of GPM (Financial penalties imposed on a firm) in determining the level of the financial penalty it has decided to impose.

Step 1: Disgorgement

- 6.4. This step is not considered to be relevant, as we do not see OTME deriving any financial benefit from the contraventions.

Step 2: The seriousness of the contraventions

- 6.5. The Regulator considers OTME's conduct in failing to arrange for and ensure the submission of its 2019 AML Return to be serious because:
- (a) OTME's failure to comply with its AML reporting requirements means that the Regulator has not had access to important information concerning OTME's compliance with AML requirements for an extended period of time;
 - (b) OTME has failed to comply with its AML reporting requirements for a considerable period of time, despite having been reminded of its obligations;
 - (c) OTME was reminded of its obligation to submit its 2019 AML Return on a number of occasions prior to 30 April 2020, and was given a further reminder shortly after it failed to submit its 2019 AML Return on 30 April 2020 but:
 - (i) Failed to take steps to ensure that it did not contravene its reporting requirements; and
 - (ii) Is likely to have continued to be in contravention had the Regulator not taken any action;



- (d) OTME is a registered DNFBP and a professional firm engaged in the provision of legal consultancy services. It should therefore be aware of its obligations and the importance of submitting its 2019 AML Return;
- (e) OTME's failure to submit its 2019 AML Return in a timely manner may be indicative of poor governance or weaknesses in its procedures, management systems or internal controls.
- (f) By failing to respond to communications concerning the submission of its 2019 AML Return in the period from 30 April 2020 to 6 December 2020, OTME has not been open and cooperative in all its dealings with the Regulator.

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) OTME does not have any previous history of non-compliance with AML Rules.

6.8. The Regulator considers that the following factors have an aggravating effect on the contraventions:

- (a) OTME failed to respond to communications from the Regulator in the period from 30 April 2020 to 6 December 2020.

6.9. Having taken the above factors into account, the Regulator considers the mitigating and aggravating factors balance each other and does not consider it necessary to adjust the financial penalty.

6.10. Accordingly, the figure after step 3 is \$10,000.

Step 4: Adjustment for deterrence

6.11. Section 6.5.9 of GPM provides that if the Regulator considers 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. Section 6.5.9 of GPM sets out the circumstances in which the Regulator may do this.

6.12. In this instance, the Regulator considers that the figure arrived at after Step 3 is sufficient for the purposes of deterring OTME 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.

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

Step 5: Adjustment for cooperation/early settlement

6.14. 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, section 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.



OTME's written representations

- 6.15. On 6 December 2020, the Regulator issued OTME with a Warning Notice in which it stated that it proposed to impose on OTME a financial penalty of \$10,000.
- 6.16. OTME was provided with an opportunity to make written representations regarding the Regulator's concerns and the action proposed.
- 6.17. On 24 March 2021, OTME provided written representations to the Regulator.
- 6.18. The matters which OTME asked that the Regulator take into account in determining whether or not to impose a financial penalty included the following:
 - (a) OTME's failure to submit its 2019 AML Return was the result of ADGM's notifications being sent to an inoperative email account;
 - (b) Corrective action taken by OTME, in that it submitted its 2019 AML Return on 31 December 2020 and the Money Laundering Reporting Officer ("MLRO") has updated his contact details with the Regulator;
 - (c) OTME's conduct was not reckless; and
 - (d) A request to reconsider the proposed sanction.

Consideration

- 6.19. In relation to the representation set out in paragraph 6.18(a), the Regulator notes that the onus is on OTME and its MLRO to notify the Regulator of any change in the MLRO's contact details. It is OTME's responsibility to ensure that they have access to the email address that they have nominated to the Regulator as their mode of contact for receiving communications of the nature of those referred to in the Warning Notice. It is also OTME's responsibility to have systems and controls in place to ensure that it does not contravene any of the FSRA's Rules and Regulations.
- 6.20. In relation to the representation set out in paragraph 6.18(b), the Regulator accepts that OTME has undertaken corrective action. However, OTME only took steps to submit its 2019 AML Return only upon notification by the Regulator, after a delay of approximately eight months.
- 6.21. In relation to the representation set out in paragraph 6.18(c), the Regulator notes that intention is not an element of the contraventions, but it is a factor that can be considered when determining a penalty in relation to the contraventions.
- 6.22. In relation to the representation set out in paragraph 6.18(d), the Regulator considers that the representations by OTME do not support reconsideration of the sanction proposed in the Warning Notice.
- 6.23. The Regulator has also taken into account the high level of cooperation received from OTME following receipt of the Warning Notice.
- 6.24. Having taken into account the facts, matters and circumstances of the contraventions and OTME's written representations, the Regulator has decided to impose on OTME a financial penalty of \$5,000.



7. PROCEDURAL MATTERS

Settlement

7.1. The Regulator and OTME have reached an agreement on the relevant facts and matters relied on, and the financial penalty to be imposed. In agreeing to the action set out in this Final Notice and deciding to settle this matter, OTME has agreed to waive its right to receive a Decision Notice pursuant to section 247(2) of the Regulations and agreed to not refer this matter to the Regulatory Committee.

Payment of financial penalty

7.2. The financial penalty imposed by this Final Notice is to be paid by OTME on or before 26 May 2021.

7.3. 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]

7.4. 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

7.5. 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).

7.6. The Regulator proposes to only publish on its website this Final Notice (not including Annexure A).

Signed:

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