

REGISTRATION AUTHORITY
سلطة التسجيل

FINAL NOTICE

ISSUED UNDER

SECTION 50 OF THE COMMERCIAL LICENSING REGULATIONS 2015

To: Aquarius Global Limited
Address: 3421, 34 Al Maqam Tower
Abu Dhabi Global Market Square
Al Maryah Island, Abu Dhabi
United Arab Emirates

Date: 8 December 2021

1. ACTION

- 1.1 This Final Notice (“Notice”) is issued under section 50 of the *Commercial Licensing Regulations 2015* (“Regulations”).
- 1.2 For the reasons given in this Notice, the Registrar (the “Registrar” or “RA”) of Abu Dhabi Global Market (“ADGM”) has decided to impose a financial penalty of USD 8,000 on Aquarius Global Limited, (“Aquarius”), ADGM licence #000001351, a private company limited by shares and duly incorporated and validly existing under the laws of Abu Dhabi Global Market, whose registered office is at 3421, 34, Al Maqam Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates.

2. DEFINED TERMS AND RELEVANT REGULATIONS

- 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 the Regulations, or in the body of this Notice at the first instance the term is used. Unless the context otherwise requires, where capitalisation of the initial word is not used, an expression has its natural meaning.
- 2.2 Annexure A sets out extracts from the Regulations and guidance relevant to this Final Notice. Complete copies of the Regulations are accessible on the Abu Dhabi Global Market website www.adgm.com/legal-framework/rules-and-regulations.

3. SUMMARY OF REASONS

3.1 At the time of the contravention, Aquarius was an ADGM private company limited by shares licenced to conduct business activity 7018 "*Activities of holding companies*". This activity is described as follows:

This includes the activities of holdings companies, i.e. units that hold the assets (owning controlling-levels of equity) of a group of subsidiary corporations and whose principal activity is owning the group. The holding companies in this class do not provide any other service to the businesses in which the equity is held, i.e. they do not administer or manage other units.

3.2 The Registrar became aware that Aquarius directly entered into a substantial contract to provide personal protective equipment to a third party.

3.3 The Registrar considers that, by conducting this business activity, Aquarius exceeded the scope of its licence, or purported to do so, contravening section 4 of the Regulations.

3.4 Accordingly, the Registrar has decided to impose a financial penalty on Aquarius.

4. FACTS AND MATTERS RELIED UPON

Background

4.1 Aquarius was incorporated in ADGM on 22 May 2018. It received licence #000001351 allowing it to conduct the passive business activities as set out in paragraph 3.1.

4.2 Aquarius' registered office address, as recorded on the ADGM public register, is:

3421, 34, Al Maqam Tower
Abu Dhabi Global Market Square
Al Maryah Island, Abu Dhabi
United Arab Emirates

Registrar's Concerns

4.3 On 24 June 2021, the Registrar wrote to Aquarius' legal counsel regarding a recent public judgment (the "Judgment") of Justice Stone of the ADGM Court of First Instance, Commercial and Civil Division (the "Court") in the matter between AEFO Technical Services LLC (as Claimant) and Aquarius (as Defendant).

4.4 The Judgment included the description of a commercial dispute between these parties surrounding an agreement to supply of N95 3M 1860 protective masks entered into by Aquarius.

4.5 Following a meeting between Aquarius' legal counsel and the Section Head of Enforcement for the RA, Aquarius agreed to voluntarily provide materials requested by the RA, including those provided by Aquarius to the Court.

4.6 Further, a balance sheet filed by Aquarius with the RA for the year ended 2020 indicated that Aquarius was conducting business activities beyond the scope of its ADGM commercial licence.

- 4.7 The Registrar's concerns involved possible contraventions of section 4 of the Regulations – Licensed persons exceeding the scope of licence.
- 4.8 Aquarius' legal counsel responded to the Registrar's letter on 6 July 2021 and noted that Aquarius had applied in May 2021 to add certain activities to its licensed activities and has had constructive discussions with the RA regarding what are appropriate licensing amendments to make to cover its proposed business activities.
- 4.9 Throughout July and August of 2021, counsel to Aquarius and the Registrar pursued good faith efforts to reach a settlement of this matter.
- 4.10 Aquarius acknowledges that it engaged in business activity in 2020 in or from ADGM outside of the scope of its ADGM commercial licence at the time.

5. CONTRAVENTIONS

- 5.1 Based on the facts and matters noted above, the Registrar considers that Aquarius contravened section 4 of the Regulations, which states that:

(1) If a licensed person carries on a controlled activity in the Abu Dhabi Global Market, or purports to do so, otherwise than in accordance with a licence given to that person under these Regulations he commits a contravention of these Regulations and shall be liable to a fine not exceeding level 5 on the standard fines scale.

(2) In proceedings in respect of a contravention under subsection (1), it is a defence for the person accused of the contravention to show that he took all reasonable precautions and exercised all due diligence to avoid committing the contravention.

- 5.2 The Registrar considers that Aquarius purported to carry on a controlled activity in ADGM otherwise than in accordance with the licence given to Aquarius under the Regulations.

6. SANCTION

Financial Penalty

- 6.1 In reaching its decision to impose a financial penalty, the Registrar has taken into account the factors and considerations in the RA's Decision Procedures and Enforcement Manual (the "Manual").

Determination to impose a financial penalty

- 6.2 With reference to paragraph 4.7 of the Manual, the Registrar considers the following factors to be of relevance in deciding to impose a financial penalty against Aquarius:
- a. To promote compliance with the Regulations and achieve the RA's objectives by:
 - i. Penalising persons who have committed contraventions; and
 - ii. Deterring persons that have committed or may commit similar contraventions.
- 6.3 The Registrar has decided to impose a financial penalty, given the seriousness of the contravention and the circumstances.

Determination of the level of financial penalty

6.4 With reference to paragraph 4.8 of the Manual, the Registrar has taken into account the factors and considerations for determining the appropriate level of the financial penalty that it has decided to impose, which are set out as follows.

The seriousness of the contravention

6.5 The Registrar considers that the contravention is serious because Aquarius acting outside its licensed activities adversely effects the integrity and reputation of ADGM.

6.6 Further, the activities of Aquarius are the responsibility of its majority shareholder and sole director, [REDACTED].

Deliberate or reckless

6.7 The Registrar considers that the operational business activities, of substantial commercial value, undertaken by Aquarius at the direction of [REDACTED] were outside of the scope of its ADGM commercial licence. At a minimum, these actions were clearly reckless given the very limited scope of this licence.

6.8 Given the position of [REDACTED] in Aquarius, it was [REDACTED] sole responsibility to ensure Aquarius' compliance with the Regulations.

Whether the person is an individual

6.9 This factor was not considered to be relevant.

Effect on third parties

6.10 This factor was not considered to be relevant.

Deterrence

6.11 Deterrence is one of the main purposes of taking enforcement action. That is, deterring persons who have committed contraventions from committing further contraventions, and deterring others from committing similar contraventions.

6.12 The penalty imposed must deter Aquarius and others from carrying on controlled activities, or purporting to being licensed to conduct certain controlled activities, in or from the ADGM when in fact they do not have the appropriate licence. Further, ADGM companies must pay all the fees associated with this licence.

Financial Gain or Loss Avoided

6.13 This factor was not considered to be relevant.

Subsequent Conduct and Settlement

6.14 The Registrar takes into account the endeavours by Aquarius to remediate any issues in their licensing and that Aquarius has cooperated constructively and promptly with the Registrar and engaged experienced counsel to assist them in this matter.

6.15 This mitigating conduct includes Aquarius' legal counsel entering into settlement discussions with the Registrar almost immediately after being contacted by the Enforcement Section of

the RA. Further, Aquarius has waived certain procedural protections in order to reach a timely issuance of the Notice and resolution of this matter by way of settlement.

- 6.16 The Registrar has considered these mitigating factors in deciding a fine less than level 5 on the standard fines scale.

Disciplinary record and compliance history

- 6.17 At the time of the contravention, the Registrar had not issued any other notices in relation to Aquarius.

Maximum Penalty and Mitigating Factors

- 6.18 Pursuant to section 4 of the Regulations, a person who commits the contravention shall be liable to a fine not exceeding level 5 on the standard fines scale. Level 5 on the standard fines scale equals USD 15,000.

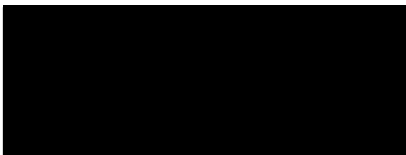
- 6.19 Taking this and the preceding factors into account, the Registrar considers that a financial penalty of **USD 8,000** appropriately reflects the seriousness of the contravention and takes into account the mitigating factors (i.e. early cooperation with the Registrar). Absent these mitigating factors, the fine would have been higher.

7. PUBLICITY

- 7.1 The Registrar may publish the details about the matter at his discretion in accordance with section 51 of the Regulations.

- 7.2 The Registrar proposes to only publish on its website this Final Notice (not including Annexure A).

Signed:



Tarek Kardahji
Senior Manager, Office of the CEO, RA
Delegate of the Registrar
Registration Authority
Abu Dhabi Global Market

Date: 8/12/2021

ANNEXURE A

EXTRACTS OF THE REGULATIONS AND RULES REFERRED TO IN THIS FINAL NOTICE

EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

4. Licensed persons exceeding scope of licence

(1) If a licensed person carries on a controlled activity in the Abu Dhabi Global Market, or purports to do so, otherwise than in accordance with a licence given to that person under these Regulations he commits a contravention of these Regulations and shall be liable to a fine not exceeding level 5 on the standard fines scale.

(2) In proceedings in respect of a contravention under subsection (1), it is a defence for the person accused of the contravention to show that he took all reasonable precautions and exercised all due diligence to avoid committing the contravention.

41. Fines

(1) If the Registrar considers that a licensed person has contravened a relevant requirement imposed on the person, it may impose on him a fine, in respect of the contravention, of such amount as it considers appropriate, provided such fine shall not exceed level 5 on the standard fines scale.

(2) If the Registrar considers that a person has committed a contravention of an enactment or subordinate legislation, it may impose on him a fine of an amount not exceeding the maximum specified for such contravention in the relevant enactment or subordinate legislation.

(3) A fine under this section is payable to the Registrar.

43. Proposal to take disciplinary measures

(1) If the Registrar proposes –

(a) to impose a fine on a person (under section 41); or

(b) to suspend the licence of a licensed person or impose a restriction in relation to the carrying on of a controlled activity by a licensed person (under section 42), it must give that person a warning notice.

(2) A warning notice about a proposal to impose a fine must state the amount of the fine.

(3) A warning notice about a proposal to suspend a licence or impose a restriction must state the period for which the suspension or restriction is to have effect.

44. Decision to take disciplinary measures

(1) If the Registrar decides –

(a) to impose a fine under section 41 (whether or not of the amount proposed); or

(b) to suspend a licence or impose a restriction under section 42 (whether or not in the manner proposed),

it must without delay give the person concerned a decision notice.

(2) In the case of a fine, the decision notice must state the amount of the fine.

(3) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect.

(4) If a Registrar decides to –

- (a) impose a fine on a person under section 41; or
- (b) suspend the licence of a licensed person, or impose a restriction in relation to the carrying on of a controlled activity by a licensed person, under section 42,

that person may refer the matter to the court.

48. Decision notices

(1) A decision notice must –

- (a) be in writing;
- (b) give the reasons of the Registrar for the decision to take the action to which the notice relates;
- (c) state whether section 53 applies;
- (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
- (e) give an indication of –
 - (i) any right to have the matter referred to the court which is given by these Regulations; and
 - (ii) the procedure on such a reference.

(2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same provision as the action proposed in the warning notice.

(3) The Registrar may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(4) The Registrar may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.

(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the court, he has that right as respects the decision notice under subsection (3).

(6) In this Part, "decision notice" means a notice under sections 18(3), 20(2) or 44(1).

49. Notices of Discontinuance

(1) If the Registrar decides not to take -

- (a) the action proposed in a warning notice given by it; or
- (b) the action to which a decision notice given by it relates,

it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.

(3) A notice of discontinuance must identify the proceedings which are being discontinued.

50. Final notices

(1) If the Registrar has given a person a decision notice and the matter was not referred to the court within 28 days of that person receiving the notice or such other period as the court may allow, the Registrar must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.

(2) If the Registrar has given a person a decision notice and the matter was referred to the court, the Registrar must, on taking action in accordance with any directions given by –

- (a) the court, or

(b) the Court of Appeal on an appeal against the decision of the court,

give that person and any person to whom the decision notice was copied the notice required by subsection (3).

(3) The notice required by this subsection is –

(a) in a case where the Registrar is acting in accordance with a direction given by the court, or by the Court of Appeal on an appeal from a decision of the court, a further decision notice; and

(b) in any other case, a final notice.

(4) A final notice must –

(a) give details of the action being taken;

(b) state the date on which the action is to be taken; and

(c) if it imposes a fine, state the amount of the fine and the manner in which, and the period within which, the fine is to be paid.

(5) The period stated under subsection (4)(c) may not be less than 30 days beginning with the date on which the final notice is given.

(6) If all or any of the amount of a fine payable under a final notice is outstanding at the end of the period stated under subsection (4)(c), the Registrar may recover the outstanding amount as a debt due to it.

51. Publication

(1) In the case of a warning notice, neither the Registrar nor a person to whom it is given or copied may publish the notice or any details concerning it.

(2) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Registrar has published the notice or those details.

(3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Registrar may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Registrar may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(5) The Registrar must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate.

(6) When a supervisory notice takes effect, the Registrar must publish such information about the matter to which the notice relates as it considers appropriate.

(7) The Registrar may not publish information under this section if, in its opinion, publication of the information would be –

(a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);

(b) detrimental to the interests of participants of the Abu Dhabi Global Market; or

(c) detrimental to the interests of the Abu Dhabi Global Market.

(8) Information is to be published under this section in such manner as the Registrar considers appropriate.

(9) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if –

(a) the period during which any person may refer the matter to the court is still running;

(b) the matter has been referred to the court but has not been dealt with;

(c) the matter has been referred to the court and dealt with but the period during which an appeal may be brought against the court's decision is still running; or

(d) such an appeal has been brought but has not been determined.

(10) "Notice of discontinuance" means a notice given under section 49.

(11) "Supervisory notice" has the same meaning as in section 54.

(12) A person, other than the Registrar, who contravenes subsections (1) or (2) shall be liable to a fine not exceeding level 3 on the standard fines scale.