

FINAL NOTICE
ISSUED UNDER SECTION 50
OF THE COMMERCIAL LICENSING REGULATIONS 2015

Reference: ME-2020-02
To: Elmar Capital SPV Limited
Address: Office 2458, Level 24
Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island, Abu Dhabi
UNITED ARAB EMIRATES
Date: 15 March 2021

1. DECISION

- 1.1 This Final Notice (“Final Notice”) is issued under section 50 of the *Commercial Licensing Regulations 2015* (the “Regulations”).
- 1.2 For the reasons given in this Final Notice, the Registrar of the Registration Authority (the “Registrar”) has decided to impose a financial penalty of USD 5,000 on Elmar Capital SPV Limited (“ECSL”).

REGISTRATION AUTHORITY
سلطة التسجيل

2. DEFINED TERMS AND RELEVANT REGULATIONS

- 2.1 Defined terms are identified in the Final 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 Final 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 Extracts of Regulations and Rules referred to in this Final Notice are attached in **Annexure A**. Complete copies of the Regulations and Rules are accessible on the Abu Dhabi Global Market website www.adgm.com/legal-framework/rules-and-regulations.

3. SUMMARY OF REASONS

- 3.1 In July 2020, the Registrar received information concerning business activities being promoted on the public website www.elmarcapital.ae.
- 3.2 At that time, the website showcased a company called 'Elmar Capital', a company located in Emirates Towers in Dubai that purported to offer investment services and invited people to open an account with the company.
- 3.3 In the 'About us' section of the website, the following extract appeared:

"About Elmar

Elmar Capital is a financial company Licensed by the Abu Dhabi Global Market authority under licence number 3366, and a group of subsidiary and sister companies licensed by the Government of the United Arab Emirates under licence number 1804069 in addition under laws of the United Kingdom under licence number 2018751."

- 3.4 Licence number '3366' is the licence number assigned by the Registrar to ECSL, whose licence is to conduct the non-financial activities of a special purpose vehicle.
- 3.5 In the Registration Authority's view, the reference to "Elmar Capital" being "a financial company licensed by the Abu Dhabi Global Market authority under licence number 3366", suggests that ECSL is licensed to conduct financial services, when in fact it is not.
- 3.6 Based on the above, the Registrar considers that ECSL exceeded the scope of its licence, or purported to do so, contravening section 4 of the Regulations – licensed persons exceeding scope of licence.
- 3.7 Accordingly, the Registrar has decided to impose a financial penalty on ECSL.

4. FACTS AND MATTERS RELIED UPON

Background

- 4.1 ECSL was incorporated in the Abu Dhabi Global Market on 19 December 2019, as a private company limited by shares, licensed to conduct the activities of (#7017) Special Purpose Vehicle.

- 4.2 The ADGM registration number assigned to the company was #000003366.
- 4.3 ECSL's registered office address, as recorded on the Abu Dhabi Global Market public register, was:
- 2406ResCo-work03, 24
Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island, Abu Dhabi
UNITED ARAB EMIRATES
- 4.4 The business case submitted with the incorporation application states that the purpose and activities of ECSL are to act as a passive holding structure, investing and holding shares in UAE property.
- 4.5 A signed confirmation and undertaking dated 26 November 2019 was given by [REDACTED] [REDACTED] (shareholder) regarding the stated purpose provided in the business plan.

Elmar Capital's Website

- 4.6 In July 2020, the Registrar received information concerning business activities being promoted on the public website, www.elmarcapital.ae. The website showcased a company called 'Elmar Capital', a company located in Emirates Towers in Dubai that purported to offer investment services and invited people to open an account with the company.
- 4.7 In the 'Products' section of the website, the company offers people to choose a number of 'investment opportunities' including investing in money markets, investing in local stock markets, fixed deposits, Islamic structured investments and commodities.
- 4.8 In the 'About us' section of the website, the following extract appeared:

"About Elmar

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 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 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 . . .” (emphasis added)

- 4.9 The Registrar notes in the above extract the reference to ECSL’s ADGM commercial license together with references to various financial services provided by the company. The Registrar notes ECSL is not licensed by ADGM to conduct the activities stated on the website.

Registrar’s Concerns

- 4.10 On 27 July 2020, the Registrar wrote to ECSL regarding ECSL’s website. The letter highlighted the Registrar’s concerns with ECSL’s website and in summary, requested that ECSL cease any activities that fall outside the scope of its licence and remove all material that states or could reasonably be understood as indicating that ECSL was licensed to conduct activities for which it is not licensed, including financial services.
- 4.11 The Registrar was concerned that ECSL, or one of its affiliated companies, was marketing itself as being licensed by ADGM to conduct certain business activities, including financial services, when in fact it is not.
- 4.12 The Registrar’s concerns involved possible contraventions of the following sections of the Regulations:
- Section 1 – The general prohibition; and
 - Section 4 – Licensed persons exceeding the scope of licence; and
 - Section 5 – False claims to be licensed or exempt.
- 4.13 ECSL responded to the Registrar’s letter on 29 July 2020 and noted that, among other things, since ECSL’s incorporation, the company has not engaged in any commercial or financial activities. Furthermore, the Registrar noted that the contents of the public website, www.elmarcapital.ae, had been removed from public view.
- 4.14 ECSL’s response that it has not conducted any activities since incorporation addresses the concerns regarding contravention of section 1 of the Regulations.

Licensed Persons Exceeding Scope of Licence

- 4.15 As noted in the extract of the ‘About Us’ section of ECSL’s website in 4.8 above, the licence number ‘3366’ referred to is the licence number assigned by the Registrar to ECSL, whose licence is to only conduct the non-financial activities of a special purpose vehicle.
- 4.16 In the Registrar’s view, the reference to “Elmar Capital” being “a financial company licensed by the Abu Dhabi Global Market authority under licence number 3366”, together with other references on the same page and website to it being able to offer a variety of investment services, means that ECSL purported to be able to conduct financial services in or from ADGM under its ADGM licence, when in fact it could not.

5. CONTRAVENTIONS

5.1 Based on the facts and matters noted above, the Registrar considers that ECSL 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 ECSL purported to carry on a controlled activity in or from ADGM otherwise than in accordance with the licence given to ECSL under the Regulations.

6. SANCTION

Financial Penalty

6.1 In deciding to impose a financial penalty, the Registrar has taken into account the factors and considerations in the Registrar'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 ECSL:

- a. To promote compliance with the Regulations and achieve the Registrar'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 decides to impose, which are set out as follows.

The seriousness of the contravention

6.5 The Registrar considers that the statement made on ECSL's website is serious because improper and excessive claims of being licensed to conduct activities that the firm is not licensed to conduct adversely affects the integrity and reputation of ADGM.

6.6 Further, the accuracy and completeness of ECSL's website and its contents are the responsibility of the sole shareholder and director, [REDACTED].

Deliberate or reckless

6.7 The Registrar considers that the construction of the first sentence of the 'About us' page of the ECSL website, and indeed the rest of the page and website, was designed to imply or invite the public to infer that 'Elmar Capital' group was licensed and regulated in the ADGM to conduct financial services, when in fact it is not.

Whether the person is an individual

6.8 This factor was not considered to be relevant.

Effect on third parties

6.9 Despite the fact that ECSL had not conducted any activities since incorporation, the content on ECSL's website had the potential of attracting potential clients under the mistaken impression that 'Elmar Capital' is licensed and regulated as a financial services firm in the ADGM.

Deterrence

6.10 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.

6.11 The penalty imposed must deter ECSL and others from purporting to being licensed to conduct controlled activities in or from the ADGM when in fact they are not so licensed.

Financial gain or loss avoided

6.12 Based on the confirmation that ECSL has not engaged in any commercial activities since its incorporation, this factor was not considered to be relevant.

Subsequent conduct

6.13 ECSL cooperated promptly with the Registrar's request of 27 July 2020, by taking down the content from the website and providing written confirmation on 29 July 2020.

Disciplinary record and compliance history

6.14 At the time of the contravention, ECSL had been registered and licensed for less than 12 months and in that time the Registrar has not issued any other notices, nor is aware of any other concerns in relation to the firm.

Maximum Penalty

6.15 Pursuant to section 4(1) of the Regulations, a person who commits the contravention shall be liable to a fine not exceeding level 5 on the standard fines scale.

6.16 Level 5 on the standard fines scale equals USD 15,000.

6.17 Taking this and the preceding factors into account, the Registrar considers that a financial penalty of USD 5,000 appropriately reflects the seriousness of the contravention.

7. ECSL REPRESENTATIONS

7.1 On 10 December 2020, the Registrar issued ECSL with a warning notice in which it stated that it proposes to impose on ECSL a financial penalty of USD 5,000.

7.2 ECSL was provided with an opportunity to make written representations regarding the Registrar's concerns and the action proposed.

7.3 On 16 December 2020, the registrar received a representation made by ECSL in response to the warning notice.

7.4 It is understood that ECSL's response to the warning notice consists of the following 'key' representations:

- a. Admission of responsibility by [REDACTED] on behalf of ECSL;
- b. The information on ECSL's website contravening section 4 of the Regulations was published without the knowledge of ECSL's sole shareholder and director, [REDACTED];
- c. The quick action on behalf of ECSL to remove the contravention;
- d. The readiness of [REDACTED] to sign an undertaking that an incident akin to the contravention will not be repeated;
- e. Neither ECSL nor [REDACTED] have any history that evidences non-compliance or contravention of ADGM legislation;
- f. There was no evidence that the contravention generated any revenue for ECSL; and
- g. The penalty will cause the entity a serious financial hardship on ECSL (the "ECSL Representations").

7.5 In response to the ECSL Representations, the Registrar is of the view that:

- a. The ECSL Representations support an admission of responsibility and acknowledgement of the contravention by ECSL. In fact, the ECSL Representations are "pleas of mitigation" rather than submissions that could be considered defences to the contravention;
- b. It is [REDACTED] responsibility, as the beneficial owner, sole shareholder and director of ECSL, to take steps to ensure ECSL does not commit contraventions of the Regulations;
- c. The corrective action to remove the contravention was taken into account by the Registrar in the original recommendation not to impose the maximum penalty of USD 15,000;

- d. ADGM expects its licensees to comply with the Rules and Regulations of ADGM and therefore, the offer to sign an undertaking by [REDACTED] that an incident akin to the contravention will not be repeated, would be of no value to the ADGM;
- e. The fact that neither ECSL nor [REDACTED] have any history that evidences non-compliance or contravention of ADGM legislation has no weight in light of the short lifetime of ECSL (ECSL was incorporated in the ADGM on 19 December 2019. The contravention was identified approximately 7 months later);
- f. The lack of evidence that the contravention generated any revenue for ECSL was recognised at the outset and taken into consideration by the Registrar as mitigating factor for determining the appropriate level of the financial penalty; and
- g. There was no supporting documentation presented to the Registrar in support of ECSL's claim of suffering financial hardship.

7.6 Having taken into account the facts, matters and circumstances of the contraventions above, the Registrar has decided to impose a financial penalty of USD 5,000 on ECSL.

8. PROCEDURAL MATTERS

Issuance of Decision Notice

- 8.1 On 26 January 2021, the Registrar issued a Decision Notice to ECSL pursuant to section 44 of the Regulations.
- 8.2 Under section 44(4) of the Regulations, ECSL had the opportunity to refer the Decision Notice to the ADGM Courts.
- 8.3 ECSL acknowledged the receipt of the Decision Notice on the same day of issuing the Decision Notice (26 January 2021) and as at the date of this Final Notice, no referral have been made by ECSL to the ADGM Courts.
- 8.4 As a referral was not made to the ADGM Courts for a review of the Decision Notice within 28 days of ECSL's receipt of the Decision Notice, the Registrar has proceeded to issue this Final Notice pursuant to section 50 of the Regulations.

Publicity

- 8.5 As this Final Notice has now been issued, pursuant to section 51(5) of the Regulations, the Registrar must publish the details about the matter to which the Final Notice relates as it considers appropriate.

Signed:

Natella Safar Ali
Executive Director, Registration & Incorporation
Delegate of the Registrar
Registration Authority

ANNEXURE A

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

EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

1. The general prohibition

- (1) No person may carry on a controlled activity in or from the Abu Dhabi Global Market, or purport to do so, unless he is –
- (a) a licensed person; or
 - (b) an exempt person.
- (2) The prohibition is referred to in these Regulations as the general prohibition.
- (3) For the purposes of these Regulations, a "licensed person" is a person who has a valid licence to carry on one or more controlled activities.

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.

REGISTRATION AUTHORITY
سلطة التسجيل

- (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.