



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

To: Babar Abbas

Address:



Email: [REDACTED]@com; [REDACTED]@com

Date: 20 May 2022

1. DECISION

1.1 This Final Notice ("Final Notice") is issued under section 50 of the *Commercial Licensing Regulations 2015* ("CLR 2015").

1.2 For the reasons given in this Final Notice, the Registrar ("Registrar") of Abu Dhabi Global Market ("ADGM") has decided to:

- i) impose a financial penalty of **USD 100,000** on Babar Abbas ("Abbas") for two separate contraventions of section 857 of *Companies Regulations 2020* ("CR 2020") - Fraudulent Trading; and
- ii) impose a financial penalty of **USD 25,000** on Abbas for a contravention of section 984 of CR 2020 – General False Statement Contravention.

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 ADGM's commercial legislation, 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 ADGM website www.adgm.com/legal-framework/rules-and-regulations.

3. SUMMARY OF EVIDENCE SUPPORTING THE DECISION

3.1 On 12 September 2017, Elia Investments Limited ("Elia") was incorporated in ADGM and received a licence permitting it to carry on the non-financial business activities of a special purpose vehicle ("SPV") – proprietary investment company, proprietary asset investment

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- 3.14 Throughout June and July 2020, Company #1 repeatedly contacted Abbas and others at Elia regarding the promised financing from Elia, and failing that, return of its USD 500,000.
- 3.15 Ultimately, on 22 July 2020, on behalf of Elia, Abbas executed a "Settlement Letter Agreement" promising to return Company #1 its USD 500,000 within five working days and providing a security cheque for AED 1,832,500 if the event the USD 500,000 was not returned.
- 3.16 In early August 2020, after misappropriating a significant percentage of the funds provided by Company #1, Abbas continued to represent to Company #1 that their funds were still being held in the "fixed deposit" in Bank #1.
- 3.17 On 15 August 2020, Company #1 attempted to cash this security cheque but it was not honoured by Bank #1 due to insufficient funds. Further attempts by Company #1 to cash this security cheque were not successful.
- 3.18 The financings promised to Company #1 never occurred and there is no credible evidence that Elia had the means to provide the promised loans to Company #1.
- 3.19 By November 2020, Abbas had personally withdrawn virtually all of the funds provided by Company #1, including the interest accrued on these funds. Company #1 never recovered any of its USD 500,000 deposit from Elia or Abbas.

Company #2

- 3.20 In December of 2019 and January of 2020, Abbas caused Elia to enter into financing agreements with Company #2. Elia was to provide a total of AED 64,000,000 in loans but required Company #2 to provide Elia with a total deposit of AED 6,400,000, constituting 10% of the total capital to be lent under these financing agreements.
- 3.21 On 12 December 2019 and 14 December 2019, Company #2 transferred the initial deposits totalling AED 3,400,000 into the Elia AED Account. In return, Company #2 received two security cheques written on the Elia AED Account, one in the amount of AED 2,600,000 and the other in the amount of AED 800,000.
- 3.22 Prior to these transfers by Company #2, the Elia AED Account had a balance of AED 304,687.28.
- 3.23 Commencing on 16 December 2019, Abbas began withdrawing significant funds in cash from the Elia AED Account.
- 3.24 On 22 December 2019, Abbas also transferred AED 750,000 from the Elia Accounts to a personal account at a bank in Pakistan ("Bank #2").
- 3.25 By 31 December 2019, Abbas had personally withdrawn over AED 1,500,000 from the Elia AED Account as well as sending the AED 750,000 to his account at Bank #2.
- 3.26 There is no evidence that these personal withdrawals by Abbas had anything to do with the financing agreements with Company #2 nor were there any other deposits into the Elia AED Account from 14 December 2019 to 31 December 2019.

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- Abbas admitted that he entered into four contracts under Elia with clients for the provision of finance including contracts with Company #1 and Company #2 but that these financing never occurred
- Abbas claimed that Elia raised funds through “Elia Capital” in London and this company was registered by Companies House UK
- Abbas acknowledged that he only used the Elia contracts to take money from people but not to give it out
- Abbas claimed that deposit from Company #1 was still “with the bank, but it’s just frozen”

3.40 An on-line search of the register of Companies Houses UK reveals that Abbas and another person were directors of an UK entity called “Elia Capital Investments Ltd” with company number 10750918 and a registered address in London. This company was dissolved on 9 October 2018 and would have been unable to have bank accounts after dissolution and would not have been a source of capital for Abbas.

3.41 Abbas provided no credible exculpatory evidence.

Elia 2019 Annual Accounts

3.42 On 20 January 2021, Abbas caused Elia to deliver its 2019 annual accounts (the “Elia 2019 Annual Accounts”) to the Registrar in purported compliance with section 418 of CR 2020.

3.43 As sole director, Abbas approved the Elia 2019 Annual Accounts on 23 December 2020.

3.44 However, the Elia 2019 Annual Accounts were misleading, false or deceptive in a material respect as they did not account for the AED 3,400,000 provided by Company #2 in December 2019.

3.45 Further, this document did not account for the over AED 1,500,000 that Abbas diverted in December 2019 from the Elia Account through withdrawals and the wire transfer to his personal bank account in Bank #2.

3.46 By December of 2020, given the fraudulent trading conducted by Abbas through Elia, there is no legitimate basis upon which Abbas could have approved the Elia 2019 Annual Accounts given their misleading, false or deceptive content.

3.47 Delivering a document to the Registrar that is misleading, false or deceptive in a material particular violates section 984 of CR 2020 - General false statement contravention.

3.48 As of this date, Elia’s licence has expired, and it has not filed its annual accounts for 2020 in compliance with section 418 of CR 2020.

General False Statement Contravention - Financial Penalty

3.49 Based on the above, the Registrar considers that Abbas knowingly caused to be delivered to the Registrar a document that was misleading, false or deceptive in a material particular contrary to section 984 of CR 2020 – General False Statement Contravention.

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4. CONTRAVENTIONS

Fraudulent Trading

- 4.1 Based on the facts and matters noted above, the Registrar considers that Abbas committed two separate contraventions of section 857 of CR 2020, which states that -

857. Fraudulent trading

(1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, a contravention of these Regulations is committed by every person who is knowingly a party to the carrying on of the business in that manner.

(2) This applies whether or not the company has been, or is in the course of being, wound up.

(3) A person who commits the contravention referred to in subsection (1) shall be liable for a fine of up to level 8.

(4) The provisions of this section are without prejudice to any other fine, censure or legal proceeding to which a director may be subject under these Regulations or any other law or regulation applicable in the Abu Dhabi Global Market.

- 4.2 While fraud can be committed by both a company and an individual, a company can only act through an individual. Where a company's actions are all permitted or authorised by its sole director, it is more appropriate to pursue enforcement actions against the natural person, particularly where the company is largely in decline.
- 4.3 Under English common law, fraud typically has two components: (i) an act of deceit, falsehood or any other form of dishonesty¹ by one party causing (ii) a deprivation of another person's money, property, valuable security or any other thing of value.
- 4.4 Put another way, fraud occurs where a person (i) relies in good faith on false promises or dishonest representations made to him by a counterparty and (ii) suffers meaningful financial loss due to this dishonesty.
- 4.5 This dishonesty can also include the failure to disclose information that would be material to entering into any financial transaction, an on-going business relationship or continuous disclosure obligations.
- 4.6 Based on the evidence, the Registrar considers that Abbas knowingly carried on the business of Elia for a fraudulent purpose, contravening section 857 of CR 2020 – Fraudulent Trading.

¹ An objective standard is applied in determining whether the act in question is deceitful, false or dishonest, see *Ivey v Genting Casinos* [2017] UKSC 67, [2017] All ER (D) 134 (Oct), a decision of the UK Supreme Court, pages 971-998, see paragraphs 52-76.

- 4.14 The Registrar considers that Abbas knowingly caused to be delivered to the Registrar, in purported compliance with section 418 of CR 2020, a document that was misleading, false or deceptive in a material particular contrary to section 984 of CR 2020.

5. SANCTIONS

Financial penalties

- 5.1 In deciding to impose financial penalties, the Registrar has taken into account the factors and considerations in the Registrar's Decision Procedures, Disqualification and Enforcement Manual (the "Manual").

Determination to impose a financial penalty

- 5.2 With reference to paragraph 4.7 of the Manual, the Registrar considers the following factors to be of relevance in deciding to impose financial penalties against Abbas:
- To promote compliance with the Regulations and achieve the Registrar's objectives by:
 - penalising persons who have committed contraventions;
 - detering persons that have committed or may commit similar contraventions; and
 - depriving persons of any benefit that they may have gained as a result of their contraventions.

- 5.3 The Registrar has decided to impose financial penalties, given the seriousness of the contravention and the circumstances.

Determination of the level of financial penalty

- 5.4 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 contraventions

- 5.5 Using Elia, Abbas committed a significant fraud against Company #1 and Company #2.
- 5.6 Through Elia, Abbas promised to supply large financings to Company #1 and Company #2. There is no credible evidence that Elia could ever have honoured this commitment. As an SPV, Elia's ADGM licence did not permit it to carry on these controlled activities.
- 5.7 Due to Abbas' fraudulent trading through Elia, Company #1 suffered a loss of USD 500,000 (plus accrued interest) and Company #2 suffered a loss of AED 3,600,000.
- 5.8 Almost all of the amounts lost by Company #1 and Company #2 were personally misappropriated by Abbas by withdrawals from Bank #1 (largely in cash) or transfers to his personal accounts both in Abu Dhabi and Pakistan.

Subsequent conduct

- 5.21 Abbas showed little cooperation during the investigation except for eventually attending for a required interview during which he attempted to mislead staff. However, Abbas did provide some admissions which helped prove these contraventions of section 857 of CR 2020 and section 984 of CR 2020.
- 5.22 His limited cooperation provides no basis for reducing the financial penalty.

Disciplinary record and compliance history

- 5.23 At the time of the contravention, Abbas had been a director of Elia for approximately 27 months and in that time the Registrar has not issued any other notices, nor is aware of any other concerns in relation to Elia.

6. PROCEDURAL MATTERS

Representations

- 6.1 On 8 March 2022, the Registrar issued Abbas with a Warning Notice in which it proposed to (i) impose a financial penalty of USD 100,000 on Abbas for two separate contraventions of section 857 of CR 2020 - Fraudulent Trading; and (ii) impose a financial penalty of USD 25,000 on Abbas for a contravention of section 984 of CR 2020 – General False Statement Contravention.
- 6.2 Abbas was provided with an opportunity to make written representations regarding the Registrar's concerns and the actions proposed. No representations were submitted by Abbas nor did Abbas submit any requests for an extension of time for making representations.

Opportunity to have the matter referred to the ADGM Courts

- 6.3 On 30 March 2022, the Registrar issued a Decision Notice to Abbas pursuant to section 48 of the CLR 2015.
- 6.4 Under section 48 of the CLR 2015, Abbas had the opportunity to refer the Decision Notice to the ADGM Courts. As of the date of this Final Notice, no referral has been made by Abbas to the ADGM Courts.
- 6.5 As a referral was not made to the ADGM Courts for a review of the Decision Notice within 28 days of Abbas' receipt of the Decision Notice, the Registrar has proceeded to issue this Final Notice pursuant to section 50 of the CLR 2015.

Payment of the financial penalty

- 6.6 The financial penalty imposed by this Final Notice is to be paid by Abbas on or before 30 June 2022.

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ANNEXURE A

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

EXTRACT OF THE COMMERCIAL LICENSING REGULATIONS 2015

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.

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).

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).

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EXTRACT OF THE COMPANIES REGULATIONS 2020

418. Filing obligations of companies subject to small companies regime

- (1) The directors of a company subject to the small companies regime—
- (a) must deliver to the Registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and
 - (b) may also deliver to the Registrar—
 - (i) a copy of the company's profit and loss account for that year, and
 - (ii) a copy of the directors' report for that year.
- (2) The directors must also deliver to the Registrar a copy of the auditor's report on the accounts (and any directors' report) that it delivers. This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) Subject to section 419 the copies of accounts and reports delivered to the Registrar must be copies of the company's annual accounts and reports.
- (4) The copies of the balance sheet and any directors' report delivered to the Registrar under this section must state the name of the person who signed it on behalf of the board.
- (5) The copy of the auditor's report delivered to the Registrar under this section must—
- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior auditor, or
 - (b) if the conditions in section 477 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Board in accordance with that section.

857. Fraudulent trading

- (1) If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, a contravention of these Regulations is committed by every person who is knowingly a party to the carrying on of the business in that manner.
- (2) This applies whether or not the company has been, or is in the course of being, wound up.
- (3) A person who commits the contravention referred to in subsection (1) shall be liable for a fine of up to level 8.
- (4) The provisions of this section are without prejudice to any other fine, censure or legal proceeding to which a director may be subject under these Regulations or any other law or regulation applicable in the Abu Dhabi Global Market.

984. General false statement contravention

- (1) It is a contravention of these Regulations for a person knowingly or recklessly—
- (a) to deliver or cause to be delivered to the Registrar, for any purpose of these Regulations, a document, or
 - (b) to make to the Registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular.
- (2) A person who commits the contravention referred to in subsection (1) is liable to a fine of up to level 7.



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