



DECISION NOTICE

To: Alessandro Faro Trading Ltd (**AFTL**)

Address: Unit P2-071, Level 89
Burj Daman
Dubai International Financial Centre
PO Box 17237
Dubai
United Arab Emirates

Date: 09 June 2023

ACTION

1. For the reasons given in this Decision Notice, and pursuant to Article 90(2)(a) of the Regulatory Law 2004, the Dubai Financial Services Authority (the **DFSA**) has decided to impose on AFTL a fine of USD25,200 (the **Fine**) for contravening Article 71A of the Regulatory Law 2004 – the Designated Non-Financial Business or Profession (**DNFBP**) Prohibition.
2. AFTL agreed to settle this matter. The DFSA has therefore decided to reduce the Fine by a settlement discount of 30%. Were it not for the settlement discount, the DFSA would have imposed a fine of USD36,000 on AFTL.
3. This Decision Notice is addressed to AFTL alone. Nothing in this Decision Notice constitutes a determination that any person other than AFTL breached any legal or regulatory rule, and the findings expressed in this Decision Notice are without prejudice to the position of any third party or of the DFSA in relation to any third party.

DEFINITIONS

4. Defined terms are identified in this Decision Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined either in this Decision Notice or in the DFSA Rulebook, Glossary Module (**GLO**). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

SUMMARY OF REASONS

5. The DFSA has decided to take this action as it considers that, for the period from 2 February 2020 to 8 December 2022, AFTL carried on business as a dealer in precious metals and precious stones. However, AFTL failed to register with the DFSA as a DNFBP before it commenced trading in February 2020 and has never been registered by the DFSA as a DNFBP. Therefore, by virtue of Article 85(1) of the Regulatory Law 2004, AFTL contravened Article 71A(1) of the Regulatory Law 2004 – the DNFBP Prohibition.

FACTS AND MATTERS RELIED UPON

Background

6. According to the DIFC Public Register:
 - 6.1 AFTL was incorporated in the DIFC on 3 June 2020 (Registered Number 3843);
 - 6.2 AFTL's business activities are "*Watches & Clocks & Spare Parts Trading*";
 - 6.3 AFTL's offices are located at Unit P2-071, Level 89, Burj Daman in the DIFC; and
 - 6.4 AFTL has a sole director who is also its sole shareholder (the **Director**).
7. AFTL's trading store (the **Store**) is located on the ground floor of a hotel in the DIFC (the **DIFC Hotel**).
8. AFTL is not, and has never been, registered with the DFSA as a DNFBP.

DFSA Surveillance Visit

9. On 7 September 2022, the DFSA visited the Store and met with a staff member (the **Staff Member**). The DFSA obtained the following information:

- 9.1 AFTL buys and sells pre-owned and new watches, as well as gold and jewellery items;
 - 9.2 high-end watches and jewellery were displayed in the Store. The Staff Member also showed the DFSA some loose-cut gems which were for sale;
 - 9.3 AFTL sells gold and jewellery items ranging in value from AED300,000 to AED1,000,000. Three such items were on display at the Store; and
 - 9.4 the Staff Member said that a significant discount is offered if a customer agrees to pay for items in cash.
10. The DFSA also reviewed AFTL's social media accounts, including Instagram, Facebook and WhatsApp, and other traditional media sources. The review confirmed that AFTL markets products made of precious metals and precious stones, which are also offered for sale in the Store to retail customers.

DFSA Interview

11. On 8 December 2022, the DFSA interviewed the Director. During the interview, the Director stated that:
- 11.1 AFTL's main business is the consignment stock of high value branded jewellery and watches, some of which are considered as precious metals and precious stones;
 - 11.2 AFTL gets commission for displaying and selling the consignment pieces;
 - 11.3 he is not familiar with the legal framework in the DIFC;
 - 11.4 he has a friend who assists him with his businesses and takes care of his businesses when he is unavailable (the **Assistant**);
 - 11.5 through his Assistant, the Director was approached by the management of the DIFC Hotel to open a store in the hotel. The Director did not realise that the DIFC Hotel was in the DIFC;
 - 11.6 the Assistant dealt initially with the DIFC Hotel's management and then handled all dealings to obtain a DIFC commercial licence for the Store in the DIFC;

- 11.7 AFTL started operating the Store in February 2020. This was prior to getting DIFC registration in June 2020 because AFTL had already taken possession of the premises; and
- 11.8 the Store may accept cash from customers for items at the Store if the amount of the sale is less than AED50,000.

Sales Report

- 12. AFTL's sales report for the period from 2 February 2020 to 8 December 2022 (the **Relevant Period**) contains the following information:
 - 12.1 the items sold included pre-owned branded watches as well as gold and diamond jewellery,
 - 12.2 there were six transactions paid in cash at the Store; and
 - 12.3 AFTL made revenue during the Relevant Period of USD432,133.42.

CONTRAVENTIONS

- 13. Article 71A(1) of the Regulatory Law 2004 states that a person who is a DNFBP shall not carry on any activities in or from the DIFC, unless that person is registered as a DNFBP by the DFSA.
- 14. A DNFBP is defined in Rule 3.2.1 of the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook (**AML**) and GLO as a class of persons whose business or profession is carried on in or from the DIFC including, among others, a dealer in precious metals or precious stones.
- 15. By reason of the facts set out in paragraphs 6 to 12 above, the DFSA finds that:
 - 15.1 during the Relevant Period, AFTL carried on business as a dealer in precious metals and precious stones in the DIFC. AFTL was therefore a DNFBP as defined in Rule 3.2.1 of AML and GLO;
 - 15.2 as a DNFBP, AFTL was prohibited from carrying on any such activities in the DIFC unless it was registered by the DFSA as a DNFBP;
 - 15.3 AFTL was not registered with the DFSA as a DNFBP before it commenced trading in February 2020, and has never been registered by the DFSA as a DNFBP; and

- 15.4 AFTL, therefore, by virtue of Article 85(1) of the Regulatory Law 2004, contravened Article 71A of the Regulatory Law 2004.

ACTION

16. In deciding to take the action set out in this Decision Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (**RPP**).
17. The DFSA considers the following factors to be of particular relevance in this matter:
- 17.1 the DFSA's zero tolerance approach to anti-money laundering related breaches and contraventions in the DIFC, and the approach to anti-money laundering breaches more generally in the UAE;
 - 17.2 the deterrent effect of the action on AFTL and others from committing similar contraventions; and
 - 17.3 the conduct of the AFTL after the contravention.
18. On this basis, the DFSA has considered the sanctions and other options available to it given the circumstances of this matter and concluded that a fine is the most appropriate action to take against AFTL.

Determination of the Fine

19. In determining the appropriate level of financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in sections 6-4 and 6-5 of the RPP as follows.

Step 1 – Disgorgement

20. There is no evidence to suggest that AFTL made a profit or avoided a loss, as a direct result of the contravention. Accordingly, this step was not considered relevant.

Step 2 – The seriousness of the contraventions

21. The DFSA finds AFTL's contraventions to be serious because:
- 21.1 the contraventions involved dealings in precious metals and precious stones in the DIFC. Dealers in precious metals and precious stones are included in typical money laundering typologies; and

- 21.2 these activities were carried out without being registered as a DNFBP with the DFSA and were therefore unauthorised. AFTL was therefore not supervised by the DFSA in relation to the requirements specified in the AML and other DFSA administered legislation, which also created serious risks of money laundering. However, the DFSA does not allege that AFTL engaged in money laundering.
22. The DFSA considers the contraventions to be serious notwithstanding that there is nothing to suggest that AFTL's contraventions were intentional or that AFTL acted in a deliberate manner to contravene the Regulatory Law 2004.
23. Taking the above factors into account, the DFSA considers that a financial penalty equivalent to two times the unpaid total DNFBP registration fees during the Relevant Period appropriately reflects the seriousness of the contraventions. The amount of the unpaid DNFBP registration fees per year is USD6,000. Therefore, the unpaid DNFBP registration fees for 3 years is USD18,000. The amount of the fine after Step 2 is therefore USD36,000.

Step 3 – Mitigating and aggravating factors

24. In considering the appropriate level of financial penalty, the DFSA had regard to the mitigating and aggravating factors set out in RPP paragraph 6-5-8.
25. However, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 2 for the factors set out in RPP paragraph 6-5-8, as it does not consider any of these factors to be relevant for the purposes of this Decision Notice.
26. Accordingly, the figure after Step 3 is USD36,000.

Step 4 – Adjustment for deterrence

27. Pursuant to RPP paragraph 6-5-9, if the DFSA 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 DFSA may increase it.
28. The DFSA considers that the figure after Step 3 is sufficient for the purpose of deterring AFTL from committing further contraventions and others from committing similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.
29. Accordingly, the figure after Step 4 is USD36,000.

Step 5 – Settlement discount

30. Where the DFSA and the firm on which the financial penalty is to be imposed agree on the amount and other terms, RPP paragraph 6-5-10 provides that the amount of the financial penalty that might otherwise have been payable will be reduced to reflect the fact that an agreement is reached.
31. The DFSA and AFTL have reached agreement on the relevant facts and matters relied upon and the amount of fine that would be imposed. Therefore, the DFSA has applied a 30% discount to the level of fine which the DFSA would have otherwise imposed.
32. Accordingly, the figure after Step 5 is USD25,200.

The level of the fine imposed

33. Given the factors and considerations set out above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate in the circumstances to impose on AFTL a financial penalty of USD25,200.

PROCEDURAL MATTERS

Settlement Decision Maker

34. The decision which gave rise to the obligation to give this Decision Notice was made by a the DFSA Board Members on behalf of the DFSA.
35. This Decision Notice is given to AFTL under paragraph 3(2) of Schedule 3 of the Regulatory Law.

Evidence and other material considered

36. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Decision Notice.
37. The DFSA provided AFTL with a copy, or access to a copy, of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Decision Notice.

Manner and time for payment of the Fine

38. The Fine must be paid no later than 28 days from the date on which this Decision Notice is given to AFTL.

39. If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by AFTL and due to the DFSA.

Referral to the Financial Markets Tribunal (FMT)

40. Pursuant to Article 90(5) of the Regulatory Law, AFTL has the right to refer this matter to the FMT for review. However, in deciding to settle this matter and in agreeing to the action set out in this Decision Notice, AFTL has agreed that it will not refer this matter to the FMT.

Publicity

41. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters that the DFSA considers relevant to the conduct of affairs in the DIFC.
42. In accordance with Article 116(2) of the Regulatory Law, the DFSA intends to publicise the action taken in this Decision Notice and the reasons for that action. This may include publishing this Decision Notice itself, in whole or in part.
43. The DFSA will notify AFTL of the date on which the DFSA intends to publish information about this Decision Notice.

DFSA contacts

44. For more information concerning this matter generally, please contact the Administrator to the Decision Making Committee on +971 4 362 1500 or by email at DMC@dfsa.ae.

Signed:



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Naweed Lalani

Director, Supervision

As a Settlement Decision Maker on behalf of the DFSA

ANNEX A – RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Relevant Legislation

Regulatory Law - DIFC Law No. 1 of 2004

CHAPTER 2 – ANTI-MONEY LAUNDERING COMPLIANCE

71A. DNFBP Prohibition

- (1) A person who is a DNFBP shall not carry on any activities in or from the DIFC unless that person is registered by the DFSA as a DNFBP.*
- (2) The DFSA shall make Rules prescribing the class of persons who are DNFBPs.*

PART 7: ENFORCEMENT

90. Sanctions and directions

- (1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.*
- (2) For the purposes of Article 90(1) the DFSA may:*
 - (a) fine the person such amount as it considers appropriate in respect of the contravention;*
- (...)*
- (5) If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.*

PART 11: MISCELLANEOUS

116. Publication by the DFSA

- (...)*
- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA, the FMT and the Court, sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the*

DIFC.

SCHEDULE 3

DECISION-MAKING PROCEDURES

3. Decisions to which procedures do not apply

- (1) *The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the DFSA:*
- (a) to withdraw a direction, requirement, restriction or prohibition;*
 - (b) to withdraw a condition or restriction imposed in relation to a Licence, Licence Endorsement, registration, authorisation or approval; or*
 - (c) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.*
- (2) *In the cases referred to in sub-paragraph (1), the DFSA must notify the person in writing of the decision and the date on which it is to take effect.*

2. Relevant DFSA Rulebook Provisions

AML RULE 3.2.1 / GLOSSARY

Designated Non-Financial Business or Profession (DNFBP)

Means:

- (1) *The following class of Persons whose business or profession is carried on in or from the DIFC:*
- (a) a real estate developer or agency which carries out transactions with a customer involving the buying or selling of real property;*
 - (b) a dealer in precious metals or precious stones;*
 - (c) deleted*
 - (d) a law firm, notary firm, or other independent legal business;*
 - (e) an accounting firm, audit firm or insolvency firm;*
 - (f) a company service provider; or*
 - (g) a Single Family Office.*

(2) *A Person who is an Authorised Person or an Auditor is not a DNFBP.*

3. Other Relevant Regulatory Provisions

The DFSA's policy in relation to its approach to enforcement is set out in Chapter 5 of the DFSA's Regulatory Policy and Process Sourcebook (RPP) (April 2022 Edition).

Chapter 6 of RPP sets out the DFSA's approach to imposing a penalty, which includes a financial penalty, and the matters the DFSA will take into account when determining a penalty.