



DECISION NOTICE

To: Remi Ishak

DFSA Reference: I009506

Email: [REDACTED]

Date: 9 August 2023

ACTION

1. For the reasons given in this notice (**Notice**), the Dubai Financial Services Authority (the **DFSA**) has decided to impose on Remi Ishak (**Mr Ishak**) a fine of USD 33,220 (the **Fine**) pursuant to Article 90(2)(a) of the Regulatory Law 2004 (the **Regulatory Law**).
2. This Notice is addressed to Mr Ishak alone. Nothing in this Notice constitutes a determination that any person other than Equitativa (Dubai) Limited (**Equitativa**) and Mr Ishak breached any law or regulatory rule, and the findings expressed in this Notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

DEFINITIONS

3. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined either in Annex C to this 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.



EXECUTIVE SUMMARY

4. The DFSA has decided to take the action set out in this Notice because it considers on reasonable grounds that Mr Ishak failed to act with due skill, care and diligence when carrying out his role as a Finance Officer at Equitativa and was knowingly concerned in breaches by Equitativa of DFSA administered laws and Rules.
5. During the period from April 2017 to January 2019, Mr Ishak was the Chief Financial Officer (**CFO**) of Equitativa and Emirates REIT (CEIC) PLC (**EREIT** or the **Fund**). Mr Ishak was also an Authorised Individual carrying out the Licensed Functions of Finance Officer and Senior Manager at Equitativa for the period 3 April 2017 to 6 January 2019.
6. Equitativa is an Authorised Firm operating in the Dubai International Financial Centre (**DIFC**) and was first authorised by the DFSA on 14 November 2010. Equitativa is both the Fund Manager and the Reporting Entity in respect of EREIT.
7. EREIT is a Real Estate Investment Trust and Public Fund whose Securities are admitted to trading on NASDAQ Dubai. EREIT's portfolio of properties is composed of commercial, retail and educational assets. One of these properties was a school located in Dubai Investment Park (the **School**) operated by the British Columbia Canadian School (**BCCS**).
8. On 5 December 2021, the DFSA took action against Equitativa for committing contraventions of the following DFSA administered laws and Rules:
 - a. Article 56(2) of the Collective Investment Law 2010 (**CIL**) for making misleading statements in relation to the Fund;
 - b. Rule 9.2.1(2) of the Collective Investment Rules (**CIR**) and Article 41 of the Markets Law 2012 (the **Markets Law**), because the accounting treatment of the School in the 2018 half-year financial statements was not in accordance with International Financial Reporting Standards (**IFRS**); and



- c. CIR Rule 9.3.5(e) as Equitativa failed to take reasonable steps to ensure that it or its employees reported relevant information to the Auditor of EREIT.
9. The DFSA has decided that Mr Ishak was knowingly concerned in the contraventions by Equitativa set out above. Accordingly, under Article 86 of the Regulatory Law, Mr Ishak also committed a contravention.
10. BCCS remains in debt to EREIT for outstanding rent arrears in excess of AED 9 million. BCCS disputes the debt. BCCS first defaulted on its rental payments in late 2017. Between January 2018 and August 2018, Equitativa undertook a number of actions in relation to the defaults, including renegotiation of the rental payment dates (each of which was subsequently missed), serving arrears notices and final demands for payment on BCCS, and filing a criminal case against the CEO of BCCS (as the signatory to the rental cheques) in response to dishonoured BCCS cheques.
11. The DFSA found that, in breach of Article 56(2) of CIL, Equitativa made misleading announcements in relation to the Fund on two occasions: 28 August 2018 and 11 November 2018. Those announcements, including video messages posted on Equitativa's own website and on YouTube, accompanied EREIT's 2018 half-year results and 2018 third quarter financial results respectively. Mr Ishak was involved in those misleading announcements in the following ways:
 - a. on 28 August 2018, when Mr Ishak, as the CFO, signed the EREIT half-year financial statements, which should have included a provision for non-recovery of some or all of the relevant BCCS receivable and impairment of the asset under the relevant accounting standards. This also breached CIR Rule 9.2.1(2) and Article 41 of the Markets Law 2012; and
 - b. on 11 November 2018, regarding EREIT's 2018 third quarter results, in that Mr Ishak did disclose the closure of the School but omitted to disclose any of the BCCS issues set out in paragraph 10 above. Mr Ishak also misled investors by stating that Equitativa had "been able to secure a new operator" of the School for the next



academic year when in fact, other than accepting a non-binding offer, the potential operator had not made any binding commitment to operate the School and did not have the regulatory approvals it would need to do so.

12. Equitativa engaged an external auditor (the **Auditor**) for the purposes of carrying out:
 - a. a review of EREIT's interim unaudited financial statements for the six-month period ended 30 June 2018; and
 - b. the audit of EREIT's financial statements for the financial year ending 31 December 2018.
13. During the period from June 2018 and the signing of the half-year financial statements, while EREIT's 2018 half-year financial results were being prepared, Equitativa and Mr Ishak failed to take reasonable steps to ensure that Equitativa or its employees reported to the Auditor certain information which was relevant to the recoverability of the debt owed by BCCS, including the following facts, that:
 - a. BCCS had notified Equitativa on 30 July 2018 of its decision to close its operations at the School, that it would not open for the new academic year in September 2018. Whilst BCCS told Equitativa that it was in discussion with an operator to take over the lease, it did not give specifics or otherwise demonstrate that those discussions were substantive or at an advanced stage;
 - b. Equitativa presented rent cheques from BCCS which had been dishonoured and had, on that basis, filed criminal charges against the CEO of BCCS; and
 - c. Equitativa was preparing to terminate the leases with the BCCS in the days immediately following the signing of the half-year financial statements on 27 August 2018 and the release of the same on 28 August 2018 in order to improve its negotiating position and be in a position to commence discussions with operators as a back-up plan.



14. In so doing, Equitativa breached CIR Rule 9.3.5(e) in respect of its half-year financial statements for the period ended 30 June 2018, which the Auditor reviewed. Mr Ishak was a signatory to the accounts and was involved in their preparation and publication. As the CFO, he had primary responsibility for engaging with the Auditor and for ensuring that Equitativa provided all relevant information and assistance required to comply with its obligations under the Rules.
15. The DFSA has further found that the facts and matters set out in this Notice demonstrate that Mr Ishak failed to act with due skill, care and diligence when carrying out his role as a Finance Officer at Equitativa. In so doing, Mr Ishak contravened Principle 2 of the DFSA's Principles for Authorised Individuals in GEN Rule 4.4.2.
16. Given the nature and seriousness of Mr Ishak's contraventions, the DFSA considers it appropriate in the circumstances to impose the Fine on Mr Ishak.

FACTS AND MATTERS RELIED UPON

PART A - Background

17. This section sets out the background to the persons and firms relevant for this Notice.

Equitativa and EREIT

18. The Equitativa Group manages real estate assets across several funds. One subsidiary, Equitativa, manages EREIT. EREIT was established in 2010 in the DIFC and is registered by the DFSA as a Domestic Public Fund.
19. The Fund's Securities were admitted to the Official List and admitted to trading on NASDAQ Dubai on 8 April 2014.
20. The Fund consists of properties across Dubai including commercial, retail and educational premises. According to the 2020 EREIT Annual Report published on 6 May 2021, the



Fund's portfolio was valued at USD 690 million for the financial year ended 31 December 2020.

21. EREIT has no employees of its own. Pursuant to a fund management agreement, the staff of Equitativa carry out EREIT's functions, including all communications with BCCS and EREIT's other tenants.
22. Equitativa was incorporated on 27 October 2010 and authorised by the DFSA on 14 November 2010 to carry on the Financial Services of Advising on Financial Products and Managing a Collective Investment Fund. As the Fund Manager and Reporting Entity of EREIT, and pursuant to Article 41(1) of the Markets Law, Equitativa is responsible for making disclosures, in respect of and through EREIT as a Listed Fund, of financial information and inside information (as defined in Article 63(1)(a) of the Markets Law). In addition, Equitativa is required to make disclosures of *"any other information or material change which occurs in relation to a Reporting Entity"*.

Mr Remi Ishak – Group CFO

23. Mr Ishak was the Group CFO of Equitativa and EREIT between April 2017 and January 2019.
24. For the period 3 April 2017 to 6 January 2019, Mr Ishak was also an Authorised Individual carrying out the Licensed Functions of Finance Officer and Senior Manager at Equitativa. Mr Ishak's Authorised Individual status was voluntarily withdrawn on 6 January 2019 as part of the process of his resignation from Equitativa.

PART B: Relevant facts and matters

25. This section sets out the facts and matters relating to the preparation and publication of EREIT's 2018 half-year results and Q3 2018 results, the public statements that accompanied their publication and Mr Ishak's involvement in the same.



26. In 2015, an Egypt based school operator established BCCS as a UAE limited liability company, which then leased a 25,000 square meter plot of land from Dubai Investment Park (**DIP**), which became the site of the School.
27. In September 2016, EREIT entered into a series of lease and sub-lease agreements with DIP and BCCS, respectively, to effectively fund the design and construction of a school which BCCS would lease and operate for a period of 28 years.
28. The School was intended to have a capacity for 1,500 pupils across primary and secondary facilities at the site. During its first and only year of operation, the 2017 – 2018 academic year, approximately 85 pupils were enrolled at the School.

BCCS payment defaults

29. The School began operating with its first intake of pupils in September 2017, the start of the 2017 – 2018 academic year. The following month, on 23 October 2017, BCCS informed EREIT that it was facing financial issues and that the “*likelihood to pay anything this year is very low*”. BCCS therefore wanted to renegotiate the rent amount and payment schedule.
30. BCCS also requested EREIT not to cash the cheques BCCS had already provided, stating that BCCS would issue fresh cheques, with amended dates, as part of the rescheduled payment agreement BCCS sought.
31. From October to December 2017, BCCS discussed its financial difficulties with Equitativa, the state of the arrears, the dishonoured cheques due to insufficient funds, the rescheduling of payment dates, and BCCS’ failed attempt at securing an investor.
32. In or around mid-January 2018, Mr Ishak was copied in on several emails discussing the dishonoured cheques provided by BCCS and overdue payments.
33. On 30 January 2018, a member of Equitativa’s senior management sent an email to Mr Ishak and others which referred to “*late payment[s]*” in relation to BCCS rent and contained the following two attachments:



- a. the first attachment was a letter from EREIT to BCCS dated 18 January 2018, listing the three rent cheques that had been dishonoured by the bank for insufficient funds, totalling AED 6,170,000. As part of the letter, EREIT proposed a new payment schedule for the outstanding rent due from BCCS and required BCCS to deliver new post-dated cheques. This offer letter was countersigned by the BCCS Chief Executive Officer and owner of BCCS (**BCCS CEO**); and
 - b. the second attachment was an amendment to the Lease Agreement dated 18 January 2018 giving effect to the new payment schedule and was signed by both parties.
34. On 4 February 2018, EREIT's Auditor delivered a presentation to EREIT's board. Among the Auditor's recommendations for the improvement of internal controls was "*implementing a policy for provisioning of long outstanding receivables*". As the new IFRS rules were to be implemented from 1 January 2018, the Auditor noted that there was "*no formal accounting policy in place in relation to provisions for doubtful debts based on ageing of the balance receivables*" and offered consulting services to assist in defining the formal policy.
35. EREIT's 'Management comments' to the Auditor's recommendation was that:

"The Group has a policy of objectively accessing (sic) each receivable balance individually and identifying receivables which have higher credit risk. The Group does a through (sic) review of its receivables at the end of the year and categories (sic) them into 3 risk categories. These categories are high credit risk, low - medium credit risk. The group has extensive process of categorising its receivables into the risk categories."
36. On 7 March 2018, a member of Equitativa's senior management forwarded to Mr Ishak an email from the BCCS CEO stating that BCCS was in the process of securing a local investor and requesting to reschedule all payments to EREIT until 31 May 2018.
37. On 31 March 2018, Equitativa received a part payment of AED 1.4 million from BCCS in respect of overdue rent.



38. On 27 May 2018, following several payment reminders by EREIT, and unsuccessful attempts by BCCS to secure another investor or to make payments to EREIT as they became due, EREIT sent BCCS a final arrears notice demanding BCCS settle within 7 days the rent arrears amounting to AED 9.7 million. The arrears notice set out EREIT's intention to file legal proceedings against BCCS if the arrears were not paid. BCCS failed to meet the demands stated in that final arrears notice.
39. On 8 July 2018, the Khaleej Times published an article speculating on the closure of BCCS.
40. On 9 July 2018, a member of Equitativa's senior management forwarded to Mr Ishak an email chain from Al Khaleej times to the BCCS CEO titled "*BCCS school closure*", which included a statement from the Knowledge and Human Development Authority (**KHDA**):

"We are aware that BCCS has sent a communication to parents informing them of the school's closure, though we have yet to receive the official request from the school. KHDA will assist all students affected by the closure to find seats in schools by the start of the coming academic year."
41. On 10 July 2018, a further article regarding the School was published confirming the closure of the School, and the article also included the above quote from the KHDA acknowledging that the School had closed.
42. At the time of closure, the media reported the School had approximately 85 pupils. The proposed capacity of the School was 1,500.
43. By 12 July 2018, external counsel acting for Equitativa confirmed that a criminal complaint, had been filed on behalf of Equitativa against the BCCS CEO in relation to the dishonoured cheques and that a travel ban was in place.



Management Representation Letter and Engagement Letter

44. On 18 July 2018, a member of Equitativa's finance team received an email from EREIT's Auditor asking why no accounting provision had been made for the rent owed by BCCS when it was more than 180 days overdue.
45. On the same day, that member of Equitativa's finance team forwarded the Auditor's email to Mr Ishak, stating that he "*will have a chat with [EREIT Auditor employee] consistent with our conversation this morning about BCCS*".
46. On 22 July 2018, Mr Ishak signed a letter of engagement with the Auditor (**2018 Engagement Letter**) to perform the 2018 interim review and annual audit of the consolidated financial statements of EREIT and its subsidiary Emirates REIT Sukuk Limited (the **subsidiary** and together, **the Group**). The 2018 Engagement Letter includes a description of Equitativa's Directors' responsibilities covering disclosure of all relevant information to the Auditor.
47. On 8 August 2018, the Auditor sent Mr Ishak and a member of Equitativa's finance team an email attaching, among other things, a draft management representation letter, which included the following representation:

"We confirm that the Group's rental and service income receivables of USD 8,097 thousand are fully performing and we do not have any doubt on the balance collectability."
48. On 9 August 2018, that member of Equitativa's finance team sent a response to Mr Ishak and the Auditor, attaching a marked-up version of the management representation letter. The marked-up version deleted the above representation regarding confirmation of the collectability of outstanding rent amounts.
49. On 14 August 2018, Mr Ishak and the same member of Equitativa's finance team received a response from the Auditor, requesting to add back the representation above, stating "*Please keep the point on collectability of receivables, you can suggest different wording*



but we need this point in the rep letter given that no provision was recorded for overdue receivables”.

50. As at 30 June 2018, BCCS was EREIT’s single largest defaulting tenant. The Auditor’s initial insistence that a representation was necessary reflected the Auditor’s concern over collectability of those receivables. The DFSA did not find any evidence that the Auditor was provided with any information which prompted its request for the specific representation, aside from the amount and ageing of the rental receivable.
51. On the same day, Mr Ishak responded to the Auditor, objecting to the request to add back the representation above, stating:

“that is not possible, firstly how can we guarantee collectibility (sic) and secondly further provisions have been recorded as per our current assessment. We are recording our videos tomorrow. This hasn’t been a very smooth first half review, let’s try to be more coordinated moving forward”.
52. Despite Mr Ishak’s statement to the Auditor that *“further provisions have been recorded per our current assessment”*, the provision for non-recovery of rental receivables remained unchanged between 31 December 2017 and 30 June 2018.
53. On 15 August 2018, the final management representation letter (dated 8 August 2018), which did not include a representation regarding the collectability of outstanding rent amounts, was signed by Mr Ishak and the Equitativa CEO. That letter did, however, state that *“To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that may require adjustment to or disclosure in the aforementioned condensed interim financial information.”*
54. The Auditor confirmed to the DFSA that it was not advised by Equitativa prior to the publication of the 2018 half year financial statements about the closure of the School, or that criminal proceedings had been initiated against BCCS CEO for the dishonoured rent cheques, or the planned termination of the BCCS lease.



EREIT 2018 half-year (interim) results announcements

55. On 28 August 2018, Equitativa published EREIT's 2018 half-year results, including a half-year report, video, press release and investors call. By that time:
- a. BCCS had defaulted on various payments as they came due, provided Equitativa with dishonoured cheques, entered into several negotiations with Equitativa on past due rentals and received several rent arrears notices from Equitativa;
 - b. Equitativa had declined to provide a specific representation to its Auditor relating to the recoverability of rent receivable as at 30 June 2018;
 - c. Equitativa had commenced criminal proceedings against the BCCS CEO, who was not residing in the UAE at the time;
 - d. BCCS had notified Equitativa of its decision to close the School;
 - e. parents of children at BCCS had been given notice that the School would not be operating at the start of the next academic year;
 - f. the prospective investor relied on by BCCS to fund the new rent payment schedule had fallen through; and
 - g. Equitativa was in the process of finalising notices to terminate the BCCS leases. On the advice of Equitativa's legal counsel, those notices were issued to BCCS at the end of August 2018. The termination of the BCCS leases resulted in the BCCS property being vacant.
56. The EREIT 2018 half-year report, which was signed by Mr Ishak, did not disclose or reflect the above events having occurred subsequent to the 30 June 2018 reporting date as required by the accounting standards. Had such events been included in the half-year report, this would have resulted in an impairment to the valuation of the School and a provision of some or all of the BCCS receivable as at 30 June 2018.



57. In particular, drafting of the notices for the termination of the BCCS' leases was ongoing from early July 2018 until they were issued on 29 and 30 August 2018 and should have been factored into the EREIT 2018 half-year report published on 27 August 2018.
58. The June 2018 valuation report assumed that the BCCS property was tenanted and would continue to be tenanted for the duration of the lease of 28 years. Had the vacancy of the property been appropriately reflected, this would have resulted in an impairment (i.e. reduction) to the value of the BCCS property as at 30 June 2018.
59. The DFSA commissioned an external accounting and auditing expert to provide independent advice and opinions on the accounting issues in this matter (the **Expert**). As an illustrative example provided by the Expert, applying certain assumptions that appear reasonable in the circumstances, the impairment to the value of the BCCS property as at 30 June 2018 would have been approximately USD 2 million. The Expert arrived at this assessment by adjusting only the capitalisation rate, and not the net rental streams, as applied by the valuers used by Equitativa for the June 2018 valuation report, to reflect that the BCCS property was no longer tenanted.
60. Therefore, had both the net rental streams and the yield been revised to reflect that the property was no longer tenanted, this would have resulted in a larger impairment.
61. The impact of recognising the impairment and the provision would have been '*qualitatively material*' to EREIT's 2018 half-year report. This is since the movement on the revaluation of investment property is a very important key performance indicator in a property investment entity, such as EREIT. Similarly, the recognition of a provision for non-recovery of rentals from a tenant is directly relevant to the core business of any Real Estate Investment Trust.
62. Despite that the recognition of an impairment and a provision would have been material to EREIT's 2018 half-year report, no such recognition was made. Instead, EREIT's 2018 half-year report stated that BCCS was still occupied at 100% and included a paragraph detailing the investment in the School, including a specific reference to the leasing of the School:



“On 28 September 2016, the REIT acquired the leasehold interest in a 25,000 square meter plot of land and subsequently commenced construction of a school building on the plot. Simultaneously, the REIT entered into a lease agreement with BCCS for the lease of the school building for a period of 28 years.”

63. Also on 28 August 2018, Equitativa published a video on EREIT’s website and YouTube featuring Mr Ishak and the Equitativa CEO providing commentary on the 2018 half-year results. No disclosure was made by either of the presenters in the video concerning the BCCS issues.
64. While reviewing the video prior to its publication, an Equitativa senior management member sent an email on 17 August 2018 to Mr Ishak and others discussing the deliberate silence on the BCCS issues, stating:

“The BCCS part is voluntary (sic) left out - but we will need to address this either in the Press Release or during the call”.

65. Mr Ishak replied to the email from the Equitativa senior management member, stating that the video *“looks good”* with his only comment being in relation to the background used in the video. Mr Ishak did not raise any query or comment as to why the BCCS issues were ‘voluntarily’ left out.
66. An investor conference call on 28 August 2018 presenting the 2018 half-year results was held. The following invitation was sent to more than 1,000 individuals:

“On Tuesday 28 August, Emirates REIT will be announcing their H1 Results and releasing a video presenting the results. Following the announcement and the presentation, the management will hold a conference call”.

67. That invitation listed only Mr Ishak and the Equitativa CEO as speakers on the investor conference call.



68. Investors' queries received after the conference call suggest that the BCCS issues were not discussed on the call either. After the conference call, one investor addressed some enquiries to Equitativa regarding BCCS issues:

"There are news circulating about one of your tenants, namely British Columbia Canadian School, having shut it's (sic) doors this school year. Since there was no mention of this event in your public communications or conference call, can you comment on this issue, it's (sic) impact on the value of the relevant property, lease payments and overall impact on the company and its cash flow?"

69. The DFSA investigation did not find any evidence that a response was provided.

Termination of BCCS Leases and disclosure to the Auditor

70. On 29 August 2018, one day after EREIT's 2018 half-year results announcement, EREIT issued BCCS with a formal Notice of Termination of the land lease.
71. On 30 August 2018, two days after EREIT's 2018 half-year results announcement, EREIT issued BCCS with a formal Notice of Termination of the rental agreement with immediate effect as at the date of the Notice.
72. In September 2018, BCCS started arbitration proceedings in the DIFC LCIA Arbitration Centre against EREIT. The Arbitration Request claimed that EREIT breached its obligations to ensure that construction of the School was completed on time.
73. On 30 October 2018, Mr Ishak forwarded the two Notices of Termination for the BCCS leases to the Auditor, in response to a request for those documents. There is no evidence that these termination notices were previously forwarded or communicated to the Auditor during its review of the 2018 half-year financial statements.
74. On receiving these, the Auditor emailed Mr Ishak on the same day asking him to *"confirm the status of the receivable from BCCS as of 30 June 2018?"*. Mr Ishak replied stating that it is *"Still a receivable as at June 2018, as is the case currently while it is undergoing*



evaluation in coordination with asset management and legal as part of our receivables review”.

75. On the following day, Mr Ishak and another member of Equitativa’s senior management received an email from the Auditor enquiring about the impact on Equitativa’s half-year results *“had this [i.e. BCCS] receivable been written off/provided for”*. Again, Mr Ishak maintained that *“this has no representation for subsequent event given we have updated the subsequent event status as of Oct 31”*.

EREIT Q3 2018 results announcements

76. On 30 October 2018, a member of Equitativa’s senior management sent an internal email to Mr Ishak, a member of the compliance team and others at Equitativa, attaching a draft press release for EREIT’s Q3 2018 results.
77. That email specifically asked the member of the compliance team to *“take a look and check that what we’ve drafted is good to go from a legal perspective, particularly regarding the DIP School [i.e., the School]”*. The draft press release, attached to the email, indicated that EREIT’s portfolio occupancy decreased in Q3 2018 and included the following paragraph as a result of the BCCS closure:

“Occupancy levels dropped 10% from H1 due mainly to the change of operator of the DIP School property. We expect short-term recovery and are in the final stages of securing a new school operator”.

78. The reference to Equitativa being in the *“final stages of securing a new school operator”* was not included in the final version of the press release on 11 November 2018 when announcing the Q3 2018 results. The deletion had the effect of removing an indirect reference to the closure of the School.
79. On 8 November 2018, Mr Ishak sent to other members of Equitativa’s senior management a draft script for a video highlighting EREIT’s financial results for Q3 2018.



80. On 11 November 2018, after finalising the script and recording the videos, Equitativa published those videos in English and Arabic highlighting EREIT's financial results for the third quarter of the year. Among the announcements made in the videos, Equitativa disclosed that BCCS had ceased its operations. It also announced that a new operator would be in place for the next academic year. In particular, in that video, Mr Ishak stated to investors that:

*"BCCS defaulted in August and that has resulted in a valuation loss and **we have been able to secure a new operator** [emphasis added] for the commencement of the new academic year. This will support the recovery of this asset's valuation."*

81. At interview, Mr Ishak did not agree that the use of a past tense of "secure" had its common meaning in the context of the video, rather it meant that:

"So secured is we're working on assessing whether we can put in a new operator in place for the next academic year. That's a one-year exercise. It should be reasonable. It's a reasonable determination."

82. There was an acceptance of a non-binding offer at the time of the video statement to investors. However, no binding agreements had been signed between EREIT and any potential operator for the School. The proposed new School operator referred to in the video was a prominent local business but was not at the time licensed by the KHDA to operate a school.

83. The only formal document in place at the time of the announcement was a non-binding Letter of Intent from the potential School operator dated 5 November 2018. No lease agreement had been signed at that time. The DFSA therefore considers Mr Ishak's use of the term "secure" to have been misleading.

84. The Letter of Intent contained a period of exclusivity conditional on the payment of an AED 1 million deposit in advance. However, on 19 December 2018, EREIT withdrew its Offer Letter with the potential School operator due to non-payment of the deposit.



85. EREIT's 2018 annual report, published on 30 April 2019, stated that "*Emirates REIT management is negotiating with potential new operators*". This was the first public announcement regarding the search for another School operator, post the Q3 2018 announcement by Mr Ishak, which stated that an operator had been "secured" (see paragraphs 80 to 83).

CONTRAVENTIONS

86. Having regard to the facts and matters set out above, the DFSA has decided that Mr Ishak committed the following contraventions of DFSA administered laws and the Rules.

Mr Ishak's knowing involvement in Equitativa's contraventions

87. Article 86(1) of the Regulatory Law provides that if a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
88. Article 86(7)(c) of the Regulatory Law provides that a person is 'knowingly concerned' in a contravention if, and only if, the person "*has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention*".
89. The facts and matters set out in this Notice demonstrate that Mr Ishak, through his acts and omissions, was knowingly involved in contraventions by Equitativa, and was therefore 'knowingly concerned' under Article 86(7)(c) of the Regulatory Law. In particular, Mr Ishak was knowingly concerned in Equitativa's:
- a. failure to prepare and maintain all financial statements in accordance with IFRS - contrary to CIR Rule 9.2.1(2) and Article 41(1) of the Markets Law;
 - b. misleading statements and conduct in relation to 2018 half-year financial statements and the Q3 announcement – contrary to Article 56(2) of CIL; and



- c. failure to take reasonable steps to ensure that its employees reported to the Auditor any matter which may have significantly affected the financial position of the Fund – contrary to Rule 9.3.5(e) of CIR.

CIR Rule 9.2.1(2) - Equitativa's failure to prepare and maintain all financial statements in accordance with IFRS

- 90. CIR Rule 9.2.1(2) requires Equitativa to prepare and maintain all financial statements in accordance with IFRS. As the Reporting Entity for EREIT, Equitativa was responsible for EREIT's financial statements.
- 91. The audited financial statements of EREIT form the basis of the financial information that EREIT investors would rely on. Any omissions from, or erroneous information in, EREIT's audited financial statements could impact investment decisions by EREIT investors. As such, it is important that the information recorded in EREIT's financial statements is accurate and complete.
- 92. Equitativa prepared and published EREIT's financial statements as at 30 June 2018 which failed to truly and fairly represent the impact of the BCCS closure on the collectability of the BCCS receivable, the valuation of the BCCS investment property and the net profits of EREIT, contrary to IFRS. Equitativa therefore breached CIR Rule 9.2.1(2) (see paragraphs 55 to 68). As set out in paragraphs 58 to 60, the impact of not including the provision for the BCCS receivable and impairment of the asset meant that the net profit for the six months to 30 June 2018 was overstated and the asset should have been described as being vacant (occupancy of 0%) and not at 100%.
- 93. As the CFO of Equitativa, Mr Ishak was the most senior financial officer within management who was responsible for the implementation and oversight of the internal processes necessary to ensure that all potentially relevant information is correctly reflected in EREIT's financial reporting.



94. Mr Ishak was therefore ultimately responsible for the preparation of financial statements in accordance with IFRS free from material misstatement. The actions necessary to achieve compliance with that requirement include ensuring that any information which may be relevant to that financial reporting is properly understood. In so doing, the integrity of the financial reporting is preserved.
95. Mr Ishak signed EREIT's 2018 half-year financial statements which did not disclose or reflect any of the BCCS issues, but rather gave the impression that the School lease and rental stream was secure for the next 28 years.
96. At an interview with the DFSA on 11 March 2021 (the **Interview**), Mr Ishak was reluctant to agree that the evidence of BCCS' payment defaults, the School closure, criminal proceedings and planned termination necessitated a provision for non-recovery of the rental receivable in EREIT's 2018 half-year results but he acknowledged that, if the need for a provision was accepted, there would be a consequent effect on the BCCS property valuation.
97. The DFSA has concluded that the evidence set out in this Notice concerning BCCS payment defaults necessitated a provision under IFRS 9B5.5. In particular (see paragraphs 29 to 38):
- a. the rental payments were past due (see paragraphs 29 to 38), creating the need to consider a provision;
 - b. the requests from BCCS to renegotiate the payment terms and retrieve their cheques were a clear admission of the inability to pay; and
 - c. the admission by BCCS as early as October 2017 that the low likelihood of paying anything (see paragraph 29) represented an existing change in the tenant's financial condition, and therefore should have resulted in the creation of a provision under IFRS rules.



98. Mr Ishak maintained at the Interview that the only factor which would impact the collectability of the BCCS receivable would have been the payment defaults by BCCS and not the School closure.
99. However, the DFSA notes that IFRS 9.B5 17 (f) requires that, in assessing the need for an expected credit loss, the entity should take into account “*existing or forecast changes in business ... conditions that are expected to cause a significant change in the borrower’s ability to meet its debt obligations.*” The closure of the BCCS business clearly falls within this requirement.
100. Formal notices of termination were being prepared from early July 2018. Since formal notices of termination would have begun the process of ending the tenancy of BCCS, the incentive for BCCS to pay off the outstanding debt to remain operational was greatly diminished. The termination of its lease was a serious change in BCCS’ business, which would have necessitated further consideration by Mr Ishak of the need for a provision for doubtful lease rental receivables under IFRS 9.B5 17(f) (see paragraphs 61 and 99).
101. The start of the academic year was only days after the publication of the 2018 half-year financial statements and Mr Ishak was aware that there would not be an operator in place. Despite this, Mr Ishak, as the CFO, signed off the misleading financial statements with the valuation of the BCCS property based on the assumption that it had a secured tenant under a 28 year lease.
102. The above facts and matters demonstrate that Equitativa failed to prepare and maintain its June 2018 financial statements in accordance with IFRS and such failure was a direct or indirect result of Mr Ishak’s acts and omissions. Mr Ishak is therefore knowingly concerned in Equitativa’s breach of CIR Rule 9.2.1(2).



Article 56(2) of CIL - Equitativa's misleading or deceptive statements and conduct

103. Article 56(2) of CIL prohibits a person, in or from the DIFC, from making a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere. In particular, Article 56(2) provides that:

"56. (2) A person shall not, in or from the DIFC, make a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.

(3) This Article does not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets."

104. EREIT is a Listed Fund. As set out below, Equitativa contravened Article 56(2) of CIL by making misleading or deceptive statements in relation to that Fund.

105. Article 57 of CIL contains defences to the misconduct prohibited in Article 56 of CIL, including a reasonable belief that the statement or omission was not misleading or deceptive following the making of all inquiries that were reasonable in the circumstances (Article 57(1)); and reasonable reliance placed on information given by a non-related party (Article 57(2)).

106. Equitativa failed to take reasonable steps to ensure that it or its employees reported information to the Auditor that was relevant to the BCCS receivables and the likelihood of BCCS continuing as a tenant of the School. The DFSA therefore considers that Equitativa could not reasonably place reliance on information provided by its Auditor in determining whether EREIT's 2018 half-year report was misleading or deceptive in failing to recognise an impairment and provision relating to BCCS. The DFSA has not otherwise been presented with any evidence that any of the defences in Article 57 of CIL apply.



107. On 28 August 2018, Equitativa published EREIT's 2018 half-year results, including a half-year report, video, press release and investors call, which did not disclose any information about the closure of BCCS, despite the facts and matters set out at paragraph 55.
108. The 2018 half-year report, signed by Mr Ishak, contained a clear statement under the heading "*basis of preparation*" that the financial information it contained was prepared in accordance with International Accounting Standard 34 (**IAS 34**). IAS 34 requires the application of the same accounting policies in its interim financial information as in the immediately preceding financial statements. As EREIT's annual consolidated financial statements for the year ended 31 December 2017 were prepared in accordance with IFRS, this constituted a clear statement that the financial information contained in the 2018 half-year report was also prepared in accordance with IFRS. For the reasons set out at paragraphs 90 to 102 above, that statement was misleading and deceptive.
109. Mr Ishak was also a speaker at the investor conference call on 28 August 2018 concerning EREIT's 2018 half-year financial results, where he again failed to raise any of the BCCS issues (see paragraphs 66 to 68).
110. Mr Ishak reviewed the draft transcript of the video which provided commentary on EREIT's 2018 half-year financial results. Mr Ishak was informed that the draft transcript 'voluntarily' left out the BCCS issues. Nonetheless, Mr Ishak did not comment on, or object to, the omissions of the BCCS issues from the draft transcript, despite being aware of these issues and the impact on the financial statements. Accordingly, the final video published on EREIT's website and YouTube made no disclosure concerning any of the BCCS issues (see paragraphs 63 to 65).
111. At the DFSA Interview, Mr Ishak was asked about his understanding of the email he received on 17 August 2018 from an Equitativa senior management member which stated that "*The BCCS part is voluntary (sic) left out*" (see paragraph 64). Mr Ishak replied that "*A press release is a press release. It's part of media. It's not about financial disclosure*".



112. However, press releases and announcements, especially those accompanying the financial results, form an important part of the disclosure of such financial results and are therefore relevant to an investor's decision-making considerations.
113. As set out at paragraphs 79 to 84 above, in a video presentation released to accompany EREIT's third quarter results, Equitativa made misleading and deceptive statements that:
- a. it had "been able to secure a new operator", in the normal interpretation of that phrase;
 - b. the School's operations would begin again at the beginning of the following academic year; and
 - c. the new operator had been picked from a range of viable offers, when in fact no other offers had been made.
114. Those statements were made by Equitativa at a time when it knew, via its senior management, that:
- a. whilst a non-binding offer was confirmed subject to a deposit being paid, no lease had yet been signed with a new School operator, and that the previous lease and the agreement for the ongoing construction at the School had been terminated by Equitativa;
 - b. a potential operator who had expressed an interest in operating the School did not have any experience in the operation of schools, and had not secured the license from the KHDA to operate the School; and
 - c. the potential operator had only accepted a non-binding offer to lease which was subject to a number of conditions, including a deposit of AED 1 million.
115. Notwithstanding these facts, Mr Ishak made misleading statements that a new operator had been "*secured*" for the School. In so doing, Equitativa contravened Article 56(2) of of CIL and Mr Ishak was knowingly concerned in that contravention.



CIR Rule 9.3.5(e) – Equitativa’s failure to co-operate with auditors

116. CIR 9.3.5(e) provides that:

“A Fund Manager must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditor;*
- (b) give the Registered Auditor right of access at all reasonable times to relevant records and information within its possession;*
- (c) allow the Registered Auditor to make copies of any records or information referred to in (b);*
- (d) do not interfere with the Registered Auditor's ability to discharge its duties;*
- (e) report to the Registered Auditor any matter which may significantly affect the financial position of the Fund; and*
- (f) provide such other assistance as the Registered Auditor may reasonably request it to provide.”*

117. The facts and matters set out in this Notice demonstrate that Equitativa did not take reasonable steps to ensure its employees reported to EREIT’s Auditor matters which may have significantly affected the financial position of the EREIT Fund.

118. The principal responsibility for the provision of relevant information to Auditor is that of financial management. The most senior officer within Equitativa’s financial management was Mr Ishak, the CFO. Mr Ishak was also a signatory to both the Engagement Letter between Equitativa and the Auditor of EREIT’s 2018 half-year results and the management representation letter dated 8 August 2018 confirming that *“To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the*



date of this letter that may require adjustment to or disclosure in the aforementioned condensed interim financial information” (see paragraph 53). Therefore, Mr Ishak was responsible for: (i) ensuring that he, and other Equitativa staff, reported to the Auditor matters which may significantly affect EREIT’s interim financial position; and (ii) the actual information that was reported to the Auditor in respect of EREIT’s 2018 half-year results. However, he failed to report to the Auditors matters which significantly affected the EREIT Fund.

119. In particular, with regard to EREIT’s 2018 half-year report, Mr Ishak failed to ensure that he, or other Equitativa staff, provided the Auditor with information on the BCCS issues, including the impending termination notices, which were highly relevant to the determination of whether a provision for non-recovery of the BCCS rental receivable, and whether an impairment to the value of the BCC property was necessary.
120. Even when Mr Ishak eventually released the termination notices to the Auditor on 30 October 2018, he maintained that the outstanding rent due from BCCS was “*still a receivable*” as at 30 June 2018 and that the termination notices and their impact on the BCCS receivable had ‘no relevance’ for EREIT’s 2018 half-year results.
121. The termination notices were conclusive evidence that the tenancy of BCCS was terminated. As such, the termination notices should have resulted in a reduction to the occupancy rate and the valuation of the BCCS property in EREIT’s 2018 half-year report (which was published only a day or two before the termination notices were issued). Further, the termination notices should have cast significant doubt on whether recovery of the BCCS debt could ever be achieved.
122. In a DFSA interview, EREIT’s Auditor confirmed that it did not recall being advised by any members of Equitativa’s senior management about the impending termination notices prior to signing off EREIT’s 2018 half-year report. EREIT’s Auditor added that Equitativa’s senior management was responsible to disclose such information to the Auditor in a timely manner.



123. However, at the DFSA Interview, Mr Ishak made several remarks where he sought to assign much of the accounting responsibility to the Auditor. Mr Ishak was also unable to confirm to the DFSA whether all the evidence in relation to BCCS had been provided to the Auditor.
124. Further, Mr Ishak's reluctance to include the representation on the receivables' collectability in the management representation letter dated 8 August 2018, which he had signed, indicates that he was well aware of the BCCS issues, but omitted to provide the Auditor with information reasonably required to assess the degree of impairment of debt (see paragraphs 47 to 54). The Auditor was entitled to rely on the management representation letter to confirm that all of the financial information provided by Equitativa was accurate and that the company disclosed all material information.
125. At the DFSA Interview, Mr Ishak was unable to give a logical explanation to the DFSA why the specific management representation, requested by the Auditor, regarding recovery of rental receivables, was deleted. He asserted that the specific representation would have remained in the final management representation letter if the Auditor had convinced management that it "*made any sense*".
126. Based on the above, given Mr Ishak's knowledge and involvement in the withholding of relevant information from the Auditor that was relevant and significant to the financial position of the EREIT Fund, Mr Ishak was knowingly concerned in Equitativa's contravention of CIR Rule 9.3.5(e).

Article 41(1) of the Markets Law 2012 – Continuous disclosures

127. Article 41(1) of the Markets Law provides that:

"(1) A Reporting Entity shall, subject to Article 41(4), make disclosures to the market of information specified by the DFSA in the circumstances prescribed by the Rules.

(2) Without limiting the generality of Article 41(1), the DFSA shall, by Rules, prescribe the type of information and the circumstances in which such information shall be disclosed



including:

- (a) financial information;*
- (b) inside information as defined in Article 63(1)(a); and*
- (c) any other information or material change which occurs in relation to a Reporting Entity.*

(3) Where information is required to be disclosed pursuant to Article 41(1), the Reporting Entity shall:

- (a) issue a release of information to the market disclosing the information; and*
- (b) file a report with the DFSA,*

in the manner prescribed by the Rules.

(4) Where a Reporting Entity has failed to publish information required to be published pursuant to Article 41(1) and the Rules made for the purposes of this Article, the DFSA may publish such information in a manner considered appropriate by the DFSA.

(5) The DFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in Article 41(1)."

128. MKT Rule 6.9.2(1)(b) requires a Reporting Entity of a Listed Fund to disclose to the market its interim financial results, including the semi-annual financial report a Reporting Entity is required to prepare and file with the DFSA under Article 45(1)(a) of the Markets Law. MKT Rule 6.10 requires that market disclosure of information made pursuant to any provision in MKT chapter 6 to be made in accordance with the requirements of MKT section 4.7. MKT Rule 4.7.1(3) requires a Reporting Entity to take reasonable care to ensure that any information it is required to disclose is clear, fair and not misleading, false or deceptive.



129. For the reasons set out at paragraphs 55 to 69 of this Notice, Equitativa failed to take reasonable care to ensure that its disclosure of EREIT's half-year results in August 2018 was clear, fair and not misleading. Mr Ishak was centrally involved in the relevant events, including signing the EREIT 2018 half-year report which failed to reflect the BCCS issues and Mr Ishak featured in the video commenting on the half-year results; Mr Ishak was therefore knowingly concerned in Equitativa's contravention of Article 41 of the Markets Law.

Mr Ishak's contraventions of Principles for Authorised Individuals

130. Mr Ishak was authorised by the DFSA to perform Licensed Functions, including that of Finance Officer at Equitativa from 3 April 2017 to 6 January 2019.

131. As an Authorised Individual, Mr Ishak was at all times required to comply with the DFSA's Principles for Authorised Individuals in GEN section 4.4. These Principles include acting with due skill, care and diligence in carrying out every Licensed Function (Principle 2 – Due skill, care and diligence, GEN Rule 4.4.2).

132. As set out above, Mr Ishak failed to:

- a. inquire into, and fully understand, the position of BCCS' business, including by making himself fully aware of the BCCS issues and the extent to which they impacted the Fund;
- b. ensure that all potentially relevant information was correctly reflected in EREIT's 2018 half-year results announcements. This includes ensuring that EREIT 2018 half-year financial statements, which he had signed, were free of material misstatements;
- c. ensure that he, or other Equitativa staff, reported to the Auditor matters which may significantly affect EREIT's interim financial position; and
- d. use terminology that accurately represented the status of the negotiations with the new potential operator.



133. Accordingly, Mr Ishak failed to act with due skill, care and diligence when carrying out his role as a Finance Officer at Equitativa. In so doing, Mr Ishak contravened GEN Rule 4.4.2.

ACTION

134. In taking the action set out in this 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**).

135. The DFSA considers the following factors to be of particular relevance in this matter:

- a. the DFSA's objectives, in particular:
 - i. to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the Financial Services industry in the DIFC, through appropriate means including the imposition of sanctions (Article 8(3)(d) of the Regulatory Law); and
 - ii. to protect direct and indirect users and prospective users of the financial services industry in the DIFC (Article 8(3)(e) of the Regulatory Law);
- b. the nature and seriousness of the contraventions; and
- c. the deterrent effect of the action and the importance of deterring Mr Ishak and others from committing further or similar contraventions.

136. The DFSA has considered the sanctions and other options available to it and has concluded that a fine is the most appropriate action given the circumstances of this matter.

Determination of the Fine

137. 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 6-6 of the RPP as follows.



Step 1 – Disgorgement

138. There is no evidence to suggest that Mr Ishak received a direct economic benefit as a result of his contraventions. Accordingly, this step was not considered to be relevant.

Step 2 – The seriousness of the contraventions

139. The DFSA considers Mr Ishak 's contraventions to be particularly serious for the reasons set out below.

140. As the CFO, Mr Ishak was the most senior finance manager of Equitativa, the fund manager of a publicly listed fund. As such, Mr Ishak's misleading statements or failure to ensure the Auditor was properly informed of relevant matters which would have impacted published financial information, were followed by investors and market analysts and would have impacted investors' decisions. Misleading statements made in such a manner have the potential to undermine the confidence of investors in the DIFC and damage the reputation and integrity of the DIFC, and the financial services industry in the DIFC.

141. In addition to being targeted specifically at the Fund's investors, the misleading statements were made available on public forums, namely YouTube and the Equitativa public website.

142. Mr Ishak made misleading and deceptive statements on more than one occasion, first in August 2018 and then again in November 2018; and on multiple channels.

143. Mr Ishak made misleading statements on behalf of Equitativa. Those misleading presentations were pre-recorded and published on multiple channels, with a view to them being seen by as many investors in the EREIT fund as possible.

144. Further, at the time of his employment with Equitativa, Mr Ishak was a Chartered Financial Analyst (**CFA**). Ensuring an awareness of all matters potentially relevant to the entity's reporting is typically an express professional requirement for the members of most financial and accounting professional bodies. Accordingly, Mr Ishak was required to maintain



appropriate levels of diligence, and to adhere to, and uphold, high technical and professional standards, by ensuring awareness of the BCCS issues.

145. Taking the above factors into account, the DFSA considers that a financial penalty of USD 33,220 appropriately reflects the seriousness of Mr Ishak's contraventions (which equates to 20% of Mr Ishak's base salary during the period from 1 July 2018 to 3 January 2019, being USD 166,100 (i.e., from the reporting date of the half-year results and commencement of the audit to Mr Ishak's final date of employment at Equitativa)).

146. Accordingly, the figure after Step 2 is USD 33,220.

Step 3 – Mitigating and aggravating factors

147. In considering the appropriate level of financial penalty, the DFSA had regard to RPP 6-6-8 and whether there are any factors which mitigate or aggravate Mr Ishak's contraventions.

148. The DFSA has not identified any relevant mitigating or aggravating factors, including those listed in RPP 6-6-8, and therefore does not consider it appropriate to adjust the amount of the fine arrived at after Step 2.

149. Accordingly, the figure after Step 3 is USD 33,220.

Step 4 – Adjustment for deterrence

150. Pursuant to RPP 6-6-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it.

151. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring Mr Ishak and others from committing further or 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.



152. Accordingly, the figure after Step 4 is USD 33,220.

Step 5 – Settlement discount

153. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-6-10 provides that the amount of the financial penalty that might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.

154. Mr Ishak did not agree to settle this matter, therefore the DFSA has not applied any settlement discount at Step 5.

155. Accordingly, the figure after Step 5 is USD 33,220.

The level of the Fine

156. Given the factors and considerations set out in paragraphs 138 to 155 and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate in the circumstances to impose on Mr Ishak the Fine of USD 33,220.

PROCEDURAL MATTERS

Decision Making Committee

157. The decision to which this Notice relates was made by the Decision Making Committee of the DFSA.

158. This Notice is given to Mr Ishak under paragraph 5 of Schedule 3 of the Regulatory Law.

Manner and time for payment

159. The Fine must be paid to the DFSA no later than 60 days from the date of receipt of this Notice.



If the Fine is not paid

160. If any or all of the Fine is outstanding after the due date referred to in paragraph 159 of this Notice, the DFSA may recover the outstanding amount as a debt owed by Mr Ishak and due and payable to the DFSA.

Evidence and other material considered

161. Annex B sets out extracts from certain statutory and regulatory provisions and guidance relevant to this Notice.

162. Mr Ishak was given the opportunity to make representations in person and in writing concerning the DFSA's decision as required under paragraph 4(1) of Schedule 3 to the Regulatory Law.

163. In accordance with paragraphs 5(2) and 5(3) of Schedule 3 to the Regulatory Law, the DFSA has considered the following materials in making its decision:

- a. Enforcement's Recommendation to the Decision Maker dated 11 May 2022;
- b. the Preliminary Notice and relevant materials provided with that notice, including an accounting expert report;
- c. Mr Ishak's written representations dated 31 October 2022;
- d. Enforcement's written response dated 16 January 2023, including a further accounting expert report;
- e. an independent expert report submitted on Mr Ishak's behalf on 27 April 2023;
- f. Mr Ishak's further written representations dated 11 May 2023; and
- g. the oral representations made by and on behalf of Mr Ishak and on behalf of Enforcement at the oral representations meeting held on 25 May 2023.



164. The DFSA provided Mr Ishak with a copy, or access to a copy, of the relevant materials that were considered in making the decision in this Notice.

165. Annex A contains a summary of the main points made by or on behalf of Mr Ishak in his representations and the DFSA's summary responses on those points. In making the decision, the DFSA has taken into account all of the representations made by or on behalf of Mr Ishak, whether or not set out in Annex A.

Referral to Financial Markets Tribunal (FMT)

166. Under Articles 29 and 90(5) of the Regulatory Law, Mr Ishak has the right to refer the matter to the FMT for review. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the matter.

167. Should Mr Ishak wish to have this matter reviewed by the FMT, Mr Ishak must exercise that right within 30 days of the date of this decision.

168. Proceedings before the FMT are commenced by submitting a Notice of Appeal (Form FMT 1) to the registrar of the FMT. The fee specified in section 4.2 of the Fees Module of the DFSA Rulebook must also be paid to the DFSA at the same time as the Notice of Appeal is filed with the registrar of the FMT.

169. The FMT Rules of Procedure, as well as the template of Form FMT 1, which includes the Registrar's contact details, can be found on the DFSA's website at:

<https://www.dfsa.ae/about-dfsa/our-structure/financial-markets-tribunal>.

170. Please note that under paragraph 26 of the FMT Rules of Procedure, Mr Ishak must send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.



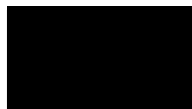
Publicity

171. 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, the FMT and the Court, sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.
172. Under the requirement of Article 29 of the Regulatory Law, the DFSA will publish appropriate information about a decision which has been referred to the FMT unless publication would, in the DFSA's opinion, be prejudicial to the interests of the DIFC or the FMT has made an order that such information should not be published.
173. RPP 5-17-9 to 5-17-11 are relevant to when information about the matters to which this Notice relates will be published, including if the matter is referred to the FMT.
174. As the DFSA has decided to give Mr Ishak a Decision Notice, Mr Ishak's representations may ultimately be made public in the event that this Notice is published.

DFSA contacts

175. 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:



.....

Naweed Lalani

On behalf of the Decision Making Committee at the DFSA



ANNEX A – REPRESENTATIONS

A summary of the main points made by Mr Ishak are in italics. The Decision Maker's responses on those points are set out under the italicised text.

Issue 1 – DFSA regulatory overreach and flawed basis for facts asserted against Mr Ishak.

The Preliminary Notice is an act of regulatory overreach by the DFSA. Moreover, the facts asserted against Mr Ishak arise from was a settlement negotiated and agreed between the DFSA and Equitativa, of which Mr Ishak took no part. Equitativa's submissions should not be taken as an admission by Mr Ishak that the irregularities occurred and the DFSA should not make inferences on the facts agreed by Equitativa as applying to Mr Ishak. There is no incentive for Equitativa to consider or protect Mr Ishak's rights when negotiating any settlement. If any irregularities occurred, which is not admitted, these are minor.

1. The Preliminary Notice was issued in accordance with the Schedule 3 Decision-Making Procedures set out in the Regulatory Law and in accordance with the DFSA's objectives set out in Article 8(3) of that law.
2. The decision notice and resulting settlement between the DFSA and Equitativa were not taken or relied upon, on any basis, as an admission by Mr Ishak that the irregularities occurred. The scope of the Equitativa's case and related documents covered a seven year period whereas the case concerning Mr Ishak covers a circa 2 year period during which he held the role roles set out in paragraphs 23 and 24 of this Notice.
3. The DFSA's approach to decision making is set out in Chapter 7 of the DFSA's Regulatory Policy and Process Sourcebook, and the DFSA has approached this decision making process on that basis, notably Sections 7-3, 7-5 and 7-7.
4. The DFSA notes that Mr Ishak, in his CFO role, should be well informed as to relevant information or documents held by Equitativa which he could request at any time. The DFSA further notes that Mr Ishak has been legally represented throughout this decision making process.
5. Mr Ishak also had the opportunity to request, and was granted, various extensions of time, and otherwise had the opportunity during the period 2 August 2022 [being the date of issue of the Preliminary Notice] to and including 25 May 2023 [being the date of the oral representations meeting] to consider his position, seek relevant information and documents he and his advisers consider appropriate, be advised by his appointed legal advisers, and make written and oral representations, including submission of an expert report.



6. Accordingly, the DFSA considers the claim made by Mr Ishak concerning DFSA regulatory overreach and flawed basis for facts asserted against Mr Ishak is unfounded. Issues raised concerning relevant materials are addressed under Issue 2.

Issue 2: Lack of procedural fairness.

The DFSA issued various iterations of the preliminary decision notice to Mr Ishak over two years indicating that the DFSA was uncertain as to whether it should proceed. Mr Ishak was not provided with all the relevant materials on which the proposed DFSA decision is based.

1. Number of decision notices: Mr Ishak received one preliminary decision notice dated 2 August 2022 (**the Preliminary Notice**), which was given to Mr Ishak by the DFSA Decision Making Committee (the **DMC**) under paragraph 4 of Schedule 3 to the Regulatory Law. The DMC has not received, considered or issued any other decision notices and is only concerned with that preliminary decision notice. Therefore, no issue arises.
2. Relevant Materials:
 - a. Mr Ishak was provided with a copy, or access to a copy, of all relevant materials that were considered by the DMC in making the proposed decision set out in the Preliminary Notice. Annex C of the Preliminary Notice sets out the relevant materials that were considered by the DMC in deciding to give Mr Ishak that notice. The Enforcement Case Team's written response dated 16 January 2023 [to Mr Ishak's first written representations dated 31 October 2022], including a further accounting expert report, was provided to Mr Ishak and his advisers on 20 January 2023.
 - b. On 22 May 2023, Mr Ishak and his advisers were provided with a table setting out all materials, submissions, and legislation relevant to the Preliminary Notice and informed that the information in that table will be made available electronically during the oral representations meeting [to be held on 25 May 2023]. The only other relevant materials were Mr Ishak's own submissions as set out in paragraph 163 of this Notice.
 - c. The above is the full extent of the relevant materials considered by the DMC and which have been provided to Mr Ishak. Therefore, no issue arises.



Issue 3: Was Mr Ishak knowingly concerned in the contraventions committed by Equitativa?

Mr Ishak contends that he did not have the required level of knowledge nor involvement in the Equitativa contraventions of DFSA administered laws and Rules. Mr Ishak's role as CFO at the time is insufficient to demonstrate actual involvement. The issues in question were the collective responsibility of the heads of departments [Legal, Compliance, Marketing, Investor Relations] and the CEO. Mr Ishak is entitled to rely on information given by his contemporaries.

1. Mr Ishak held the position of CFO of Equitativa at all material times which qualifies him as an "officer" under the definition in Article 86(6) of the Regulatory Law, and therefore a person capable of qualifying as 'knowingly concerned in a contravention' as provided for in Article 86(2) of that law.
2. Article 86(7) states that a person is "knowingly concerned" in a contravention if the person "has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention". As accepted by the FMT in *Al Masah* (FMT 19007) at [323-325], all that is required in order to show a person was "knowingly" concerned in a contravention is actual knowledge of the facts which constitute the contravention. In that matter, the FMT further accepted that in a case of being knowingly concerned in misleading communications: *"The only question is whether they had actual knowledge of the relevant facts. Indeed, a lack of knowledge as to the law or the legal conclusions from known facts is irrelevant to a finding of knowing concern"*.
3. Further, the FMT's decision in *Sheikh* (FMT 19006) is also noteworthy, stating (at [129]-[134]) that a person is knowingly concerned in a contravention committed by another person if he or she has in any way, by act or omission, directly or indirectly been knowingly involved in or party to the contravention, where the relevant knowledge means actual knowledge of the facts upon which the contravention depends.
4. Accordingly, it is necessary to establish both actual knowledge of the facts which constitute a contravention and actual involvement in the contravention. It is not necessary to prove knowledge that the conduct did amount to a contravention, nor dishonesty.
5. The relevant materials considered in making the Decision reveal:
 - a. that the events described in paragraph 55 of this Notice had, in fact, occurred and were known to Equitativa at the time of publishing Equitativa's 2018 half year results, including a video, press release and investors call; and



- b. Mr Ishak's knowledge, involvement, role and responsibility as a key actor in Equitativa's contraventions set out in paragraph 8 of this Notice.

Issue 4: Non-disclosure of BCCS issues; failure to provision for non-recovery of rental receivables from BCCS; failure to include any asset impairment adjustment in the 2018 condensed interim consolidated financial statements [2018 CICFS]; and failure to make related disclosures required by IFRS.

- a. *The 2018 CICFS were in accordance with International Financial Reporting Standards. Accordingly, there was no breach of Rule 9.2.1(2) of CIR or Article 41 of the Markets Law.*
- b. *The BCCS receivables were not material or contrary to accounting standards since the total amount of the alleged arrears that should have been provided for amounted to USD2.643 million, which is significantly below the materiality threshold applied by the Auditor in its review of the 2018 CICFS. Further, those rent arrears are not material to the 2018 CICFS since even if the hypothetical valuation adjustment of USD 2 million proposed by the DFSA's expert is applied in addition to the alleged rent arrears, the total hypothetical valuation adjustments are:*
 - i. *0.49% of the total asset value of EREIT (USD 951,263,000);*
 - ii. *0.88% of the net asset value of EREIT (USD 526,398,000); and*
 - iii. *Well below the materiality threshold adopted by the Auditor in the 2018 CIFS.*
- c. *The DFSA has failed to justify its findings that the 2018 CICFS were inaccurate and/or misleading, the DFSA and its expert:*
 - i. *have not identified any reporting standard which requires the specific provision of the rent arrears;*
 - ii. *failed to take into account that the relevant IFRS standards in-fact leave room for the management of an entity to decide the materiality of a particular fact;*
 - iii. *failed to take into account the recoverability of the rent arrears but instead applied an arbitrary and hypothetical valuation adjustment of USD 2 million to artificially inflate the materiality of the debt (which still fails to pass the materiality threshold);*
 - iv. *applied a USD 2 million adjustment for a hypothetical reduction of property value when the Auditor confirmed to the DFSA that they applied overall materiality threshold based on Net Asset value which amounted to USD 9.513 million; and*
 - v. *proposed USD 2 million adjustment is not required and confirmed as not being required by the Auditor.*



- d. *There is no breach of any accounting standard in any event since:*
- i. *the accounts in question are interim accounts and as such are condensed interim financial accounts and under standard IAS34 a company “may elect to provide less information at interim dates as compared with its annual financial statements”. This same standard notes that “if an entity’s interim financial report is described as complying with IFRSs, it must comply with all of the requirements of this Standard”.*
 - ii. *Interim financial statements are by nature less comprehensive than the annual accounts. Furthermore, interim accounts are not audited, but are instead reviewed for which a specified scope is conducted, as noted by the Auditor in the interim accounts.*
 - iii. *The Auditor in their letter to the DFSA dated 9 March 2021 stated that materiality for the interim review was based on Net Asset Values. Appendix I of that same letter confirmed that the materiality amount for the interim review was USD9.513 million. The alleged adjustment for rent arrears fails to meet this threshold as illustrated above and, accordingly, no provisions or impairments, or asset [BCCS] write downs were required to be included in the 2018 half year financial reports or 2018 third quarter reports.*
 - iv. *As noted by the Auditor in their letter dated 9 March 2021, the amounts in respect of the rent arrears would not have been material and therefore “there would have been no impact on the HI 2018 Review”.*
 - v. *The recoverability of the debt is a material factor and the DFSA wrongly notes that the full rent arrears should have been accounted on the assumption that the recoverability is non-existent. In fact, recoverability of rent in the UAE is not thought to be non-existent (to the contrary, effective) with criminal and civil proceedings made available to assist such recoverability.*
- e. *Even if the reporting of the rent arrears were material, Mr Ishak cannot be blamed for such a failure since:*
- i. *The fact that the rent being due was a fact known to the Auditor;*
 - ii. *It was not Mr Ishak’s sole responsibility to report all issues to the Auditors, especially since Mr Ishak was not handling legal matters at Equitativa given the segregation of duties between the finance, legal and compliance, investor relations and investment departments. It is not clear what, if any, representations were sought by the Auditor from these departments;*
 - iii. *Mr Ishak relied on information given to him by others which included senior members of the management of Equitativa and the Auditor;*



- iv. The Auditor could have qualified the condensed interim consolidated financial statements if they were of the view that the accounts did not provide a true and fair position to investors; and*
 - v. The 2018 CICFS were not equivalent to a full audit.*
 - f. This concerns a \$950 million plus fund, the balance sheet being managed by Mr Ishak, and this is a \$2 million plus/minus provision. These facts speak for themselves.*
 - g. The IFRS is unclear. The fact that three expert reports have been provided in relation to the proposed DFSA decision supports this. Mr Ishak has not breached any clear IFRS. The DFSA is setting a dangerous precedent in relying on an unclear IFRS as a basis for a breach and imposing penalties on a CFO.*
1. The DFSA considers that the failures to: (i) provision for non-recovery of rental receivables from BCCS; and (ii) include any related asset impairment adjustment in the 2018 condensed interim consolidated financial statements, is material and would likely impact investor's or potential investors because they were denied the opportunity to make informed decisions on the basis of the true position concerning BCCS.
 2. Regarding the attribution of knowledge and fault to the Auditor, or that the Auditor could have qualified the condensed interim consolidated financial statements if those statements did not provide a true and fair position to investors:
 - a. The responsibility for ensuring that the financial statements give a fair and accurate view of Equitativa's assets, liabilities, financial position and profit or loss rests with Equitativa's senior management and cannot be delegated to the Auditor.
 - b. The evidence shows that the Auditor was not informed of the issues concerning: (i) BCCS' notification to Equitativa of an intent to cease operations; (ii) the Notices of Termination served on BCCS by Equitativa at the end of August 2018, (iii) press reports in early July 2018 that the School might close; and (iv) EREIT's commencement of criminal proceedings against the CEO of BCCS for dishonoured cheques.
 - c. The DFSA considers the facts and matters set out in paragraphs 44 to and including 55; 70 to and including 75; 91 to and including 102; and 117 to and including 126 of this Notice, and the evidence considered, do not support Mr Ishak's submissions concerning the Auditor on any basis whatsoever. The DFSA considers Mr Ishak's representations concerning the Auditor are unreliable and unsupported by any evidence.



3. The International Accounting Standards Board (**IASB**) which issues the International Financial Reporting Standard (**IFRSs**) has developed the Conceptual Framework for Financial Reporting (**Conceptual Framework**)¹. According to the Conceptual Framework, information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general-purpose financial reports make on the basis of those reports, which provide financial information about a specific reporting entity. In other words, materiality is an entity-specific aspect of relevance based on the nature or magnitude, or both, of the items to which the information relates in the context of an individual entity's financial report. Consequently, the IASB does not specify a uniform quantitative threshold for materiality or predetermine what could be material in a particular situation. For the same reason, relying on the Auditor's calculation of materiality for the purposes of preparation of financial statement is not appropriate.
4. Regarding that there was no breach of any accounting standard or IFRSs are unclear:
 - a. The interim financial statements are prepared in accordance with IAS 34 - Interim Financial Reporting. Where IAS 34 permits an entity to provide less information at interim dates as compared with its annual audited financial statements, it, however, mandates an explanation of events and transactions that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period. Paragraph 15B of IAS 34 provides a non exhaustive list of events and transactions for which disclosures would be required if they are significant. Included in that list is: "recognition of a loss from the impairment of financial assets, property, plant and equipment, intangible assets, assets arising from contracts with customers, or other assets, and the reversal of such an impairment loss".
 - b. IFRSs are designed for general purpose financial reporting. The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions relating to providing resources to the entity.

¹ The *Conceptual Framework* sets out the fundamental concepts for financial reporting that guide the IASB in developing IFRS Standards.



Issue 5: False or misleading statements – Equitativa’s video presentations to investors.

Mr Ishak did not make false representations or misleading statements to investors in Equitativa's video presentations. Mr Ishak relied on the existence of a contract and the transcripts and information provided by other heads of departments as the basis for his statements and cannot be held responsible for making misleading statements. We are talking about the use of one single word in a video that was viewed probably [by] the majority of employees of the firm. Mr Ishak made adequate inquiries from relevant departments regarding the information presented by him which was verified by other departments and he was entitled to rely on that information.

Mr Ishak’s statement in the video presentations are based on two key factors:

- a. The letter of intent [which is included in the relevant materials]: Mr Ishak was aware that a letter of intent had been signed with the new operator. Mr Ishak was not involved in any specific contract negotiations between Equitativa and any new operator. The letter of intent signed by Equitativa and a third party concerning BCCS is as good as, and for all intents and purposes, a contract under UAE law and was sufficient to show that an operator had been secured for BCCS.*
 - b. Responsibility for preparing the video transcripts: Mr Ishak was not responsible for the video transcript, which was reviewed and approved by Equitativa’s legal, compliance, and investor relations departments. The CEO’s statements gave a higher level of assurance that an operator had been secured. Mr Ishak was only following suit of his superiors.*
1. The evidence reveals that Mr Ishak’s statements were not supported by the facts at the relevant time of publication of the video, specifically:
 - a. The video published on 28 August 2018 by Equitativa on EREIT’s website featuring Mr Ishak and the Equitativa CEO providing commentary on the 2018 half-year results, where no disclosure was made by either presenter on the BCCS issues.
 - b. The video published on 11 November 2018 by Equitativa announcing EREIT’s financial results for Q3 2018 featuring Mr Ishak and the Equitativa CEO providing commentary, which included the statement made by Mr Ishak set out in paragraph 80 of this Notice.
 2. The facts concerning BCCS, that is, the payment defaults, closure of the school, and initiation of criminal proceedings against the BCCS CEO for the dishonoured rent cheques, and intention to terminate the BCCS lease, were in stark contrast to Mr Ishak’s omission of the BCCS issues and subsequent statement that “Equitativa has been able to secure a new operator for a definite start date. It will support the recovery of the asset’s valuation.”



3. The misleading nature of Mr Ishak's statement is further exacerbated by his reliance on the referenced letter of intent, which explicitly states in clause 30 "the letter of intent is non-binding and it will not create any obligation or liability for any person". Moreover, any assertion of what constitutes a legally binding and enforceable letter of intent under UAE law is moot as the letter of intent is governed by the laws of the DIFC [not UAE]. Further, and more fundamentally, the counterparty signing the letter of intent was a "new operator" yet to be incorporated, had no experience in operating schools, and was required to be incorporated and then obtain a licence to run the school. None of which had occurred when Mr Ishak informed investors that "We've been able to secure a new operator".
4. Mr Ishak also admitted during his interview with the DFSA Enforcement Team on 11 March 2021, that the letter of intent "It's not a legally binding document", which also fundamentally erodes the legitimacy of Mr Ishak's statement. Accordingly, there was no basis for Mr Ishak to rely on the letter of intent to support his statement "Equitativa has been able to secure a new operator for a definite start date. It will support the recovery of the asset's valuation".
5. Regarding the video announcement made on behalf of EREIT on 11 November 2018, there is no clear evidence to support Mr Ishak's claim that the CEO of EREIT gave a "more robust indication of comfortability" than Mr Ishak's own statement in that video announcement. Moreover, Mr Ishak's claim that the only issue with his statement was the use of "one single word in a video" is wrong. Mr Ishak's statement [repeated in paragraph 80 of this Notice] must be considered in its entirety, and, in so doing, that statement conveys:
 - a. a high degree of certainty that a new operator was secured for the commencement of the new academic year; and
 - b. the implications of a. are positive, that is, this *will* support the recovery of the asset's valuation. [*emphasis added*].
6. Regarding the video transcript, there was no evidence to support Mr Ishak's submission that the transcript was reviewed and approved by Equitativa's legal, compliance, and investor relation's departments. Moreover, even if this was the case, this does not relieve Mr Ishak of responsibility for his omissions and statements in each video. Those departments do not have the expertise to evaluate and approve those aspects of Mr Ishak's statement that fall within his responsibilities and expertise as a CFO. The responses to Issue 8 are also instructive in this regard. During the course of the Oral Representation, Mr Ishak confirmed that he was involved in drafting the transcript as far as his sections were concerned.



Issue 6: Failure to act with due skill, care and diligence:

Mr Ishak submits that he committed no wrongdoing in connection with the 2018 condensed interim consolidated financial statements or the video presentations. Accordingly, any allegation that he failed to act with due skill, care and diligence falls away since the DFSA does not allege any other wrongdoing by Mr Ishak. Moreover, given the lack of a precise definition to the highly subjective standard of “exercising due skill, care and diligence”, Mr Ishak’s experience, achievements and perception by third parties should comprehensively negate this allegation. In any event, the DFSA has failed to establish any wrongdoing by Mr Ishak.

1. The DFSA considers that Mr Ishak has failed to act with due skill, care and diligence in carrying out the Licensed Functions, Finance Officer.
2. By reason of his CFO role, Mr Ishak was primarily responsible for overseeing Equitativa’s financial reporting, and Equitativa’s senior management were entitled to rely on Mr Ishak in this capacity.
3. In carrying out his CFO role, Mr Ishak is also primarily responsible to ensure that the necessary internal processes and controls are in place to ensure that all potentially relevant events and circumstances are properly reflected in the Equitativa’s financial reporting. As CFO, Mr Ishak was the key person involved in Equitativa’s financial reporting and engagement with the external auditor, including engaging the external auditors to review the H1 Report.
4. A CFO role requires a unique, professional set of competencies which cannot simply be attributed to, assumed by, or delegated to, other departments or senior management or finance staff, thereby relieving the CFO of his core responsibilities and obligations.
5. The relevant materials considered by the DMC sufficiently evidence Mr Ishak’s knowledge, involvement, role and responsibility as a key actor in Equitativa’s contraventions set out in paragraph 8 of this Notice. There is, therefore, an obvious corollary that Mr Ishak has failed to act with due skill, care and diligence in carrying out the Licensed Function, Finance Officer.



Issue 7: Proportionality:

The fine proposed to be imposed on Mr Ishak is disproportionate in comparison to the fine imposed on Equitativa for the same contraventions. The DFSA has failed to demonstrate that the penalty is based on clear guidelines and equal standards in relation to equal contraventions. The imposition of the fine is a life altering and draconian penalty which is wholly disproportionate to the alleged contraventions.

1. The DFSA considers the action taken against Mr Ishak (as set out in paragraphs 134 to 155 of this Notice) to be appropriate, proportionate and in accordance with the guidance set out in the DFSA's Regulatory Policy and Process Sourcebook.
2. The responses to Issue 6 also apply here.
3. Mr Ishak was a key actor involved in the Equitativa contraventions. This fact when considered with the responsibilities and obligations of a CFO, prevent a like for like percentage being applied when determining the fine to be imposed on Equitativa and the fine to be imposed on Mr Ishak.

Issue 8: Has the burden of proof been discharged by the DFSA?

Mr Ishak contends that the burden of proof has not been discharged by the DFSA. Article 57 of the CIL provides a complete defense to the allegation of breach of Article 56(2) of the CIL. Mr Ishak made all inquiries that were reasonable in the circumstances and after doing so, believed on reasonable grounds that his actions were not misleading or deceptive.

1. The DFSA accepts that the relevant standard of proof is on a balance of probabilities applied to the likelihood of whether Mr Ishak committed the alleged contraventions. However, this does not apply where Mr Ishak seeks to rely on the Article 57(1) of CIL (*Defences to misconduct*). In order to rely on Article 57(1), Mr Ishak, himself, must prove that that he: (a) made all inquiries that were reasonable in the circumstances; and (b) after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.
2. The DFSA considers that there is sufficient evidence to conclude, on the balance of probabilities, that Mr Ishak had actual knowledge of, and was involved in, the contraventions by Equitativa as stated in paragraph 8 of this Notice. In particular, the evidence reveals that Mr Ishak:
 - a. was the CFO of Equitativa at all times when those contraventions occurred;



- b. as CFO, was responsible for overseeing the management and coordination of all financial reporting (including the maintenance of internal controls at Equitativa that ensured all relevant information was conveyed to the external auditor of EREIT) and assuring that Equitativa fulfilled its regulatory duties;
 - c. was one of two signatories who approved the financial information in the H1 Report on behalf of Equitativa;
 - d. was one of two signatories to the management representation letter from EREIT to the external auditor dated 8 August 2018;
 - e. as CFO, was ultimately responsible for the financial information in the H1 Report; and
 - f. made misleading statements to investors which are referenced under Issue 5 above, including omissions of the BCCS issues in the 2018 half-year results, and, in relation to the financial results for Q3 2018, informing investors that BCCS had defaulted on its rental obligations to EREIT but that “we have been able to secure a new operator for the commencement of the new academic year. This will support the recovery of this asset’s valuation.”
3. Regarding Mr Ishak’s Reliance on Article 57(1) of CIL, no evidence was provided by Mr Ishak to show that:
- i. he had made all inquiries;
 - ii. those inquiries were reasonable in the circumstances;
 - iii. those inquiries were the basis for him forming a reasonable belief that his statements or omissions were not misleading or deceptive; and
 - iv. he had knowledge of sufficient facts that would enable him to believe ‘on reasonable grounds’ that a new operator had been secured for BCCS for the new academic year,
- which, collectively, would enable him to form a belief on reasonable grounds that his statements or omissions were not misleading or deceptive. Accordingly, Mr Ishak is not entitled to invoke the defences offered under Article 57(1). Article 57(2) is also not viable on the basis of facts pertaining to Mr Ishak’s reliance on other Equitativa departments which falls outside the ambit of that defence.



Issue 9: Impact of publication:

Despite any right to refer a decision to the Financial Markets Tribunal, the publication of any decision notice would cause irreparable harm to Mr Ishak's career and future prospects, and this is disproportionate and unwarranted in the circumstances.

1. Given Mr Ishak made certain submissions on publication both in his written and oral representations, the DFSA considers it appropriate in the circumstances to provide a brief response.
2. No evidence was presented by Mr Ishak to support his assertions or that would somehow distinguish his position from those of other Authorised Individuals the subject of a DFSA Decision Notice that has been published on the DFSA's website.
3. The DFSA's approach to publication is as set out in the DFSA's Regulatory Policy and Process Sourcebook, and which is also reflected in the "Publicity" section of this Notice.



ANNEX B – RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT LEGISLATION

Regulatory Law, DIFC Law No. 1 of 2004 (Regulatory Law)

8. *The Powers, Functions and Objectives of the DFSA*

(3) *In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:*

(b) *to foster and maintain confidence in the financial services industry in the DIFC;*

...

(d) *to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;*

(e) *to protect direct and indirect users and prospective users of the financial services industry in the DIFC;*

86. *Involvement in contraventions*

(1) *If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.*

(2) *If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.*

[...]



- (6) *For the purposes of Article 86, “officer” means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is controller of the body.*
- (7) *For the purposes of Article 86, a person is ‘knowingly concerned’ in a contravention if, and only if, the person:*
- (a) has aided, abetted, counselled or procured the contravention;*
 - (b) has induced, whether by threats or promises or otherwise, the contravention;*
 - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to the contravention; or*
 - (d) has conspired with another or others to effect the contravention.*

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.*
- ...



- (10) *If the person who is subject to a fine under Article 90(2)(a) has not paid to the DFSA the full amount of the fine within the period specified in the notice, the Court may order on application of the DFSA, the recovery as a debt so much of the fine as remains outstanding, together with costs.*

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.*

Markets Law, DIFC Law No. 1 of 2012 (Markets Law 2012)

PART 4: OBLIGATIONS OF REPORTING ENTITIES

CHAPTER 3 – MARKET DISCLOSURE

41. Continuous disclosures

- (1) *A Reporting Entity shall, subject to Article 41(4), make disclosures to the market of information specified by the DFSA in the circumstances prescribed by the Rules.*
- (2) *Without limiting the generality of Article 41(1), the DFSA shall, by Rules, prescribe the type of information and the circumstances in which such information shall be disclosed including:*
- (a) financial information;*
 - (b) inside information as defined in Article 63(1)(a); and*
 - (c) any other information or material change which occurs in relation to a Reporting Entity.*
- (3) *Where information is required to be disclosed pursuant to Article 41(1), the Reporting Entity shall:*
- (a) issue a release of information to the market disclosing the information; and*



- (b) *file a report with the DFSA,*

in the manner prescribed by the Rules.
- (4) *Where a Reporting Entity has failed to publish information required to be published pursuant to Article 41(1) and the Rules made for the purposes of this Article, the DFSA may publish such information in a manner considered appropriate by the DFSA.*
- (5) *The DFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in Article 41(1).*

CHAPTER 5 – FINANCIAL REPORTS

45. Interim financial report

- (1) *A Reporting Entity shall, subject to Article 45(2), prepare and file with the DFSA:*
 - (a) a semi-annual financial report; and*
 - (b) any other financial statements required by the DFSA.*

Collective Investment Law, DIFC Law No. 2 of 2010 (Collective Investment Law 2010)

PART 2: DEFINITIONS

Chapter 1: Collective Investment Funds

11. Arrangements constituting a Collective Investment Fund

- (1) *A Collective Investment Fund (“Fund”) is, subject to Article 12, any arrangements with respect to property of any description, including money, where:*
 - (a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition,*



holding, management or disposal of the property or sums paid out of such profits or income;

- (b) the arrangements must be such that the persons who are to participate (“Unitholders”) in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and*
- (c) the arrangements have either or both of the following characteristics:*
 - (i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or*
 - (ii) the property is managed as a whole by or on behalf of the Fund Manager.*
- (2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.*

12. Arrangements not constituting a Collective Investment Fund

The DFSA may, by Rules, specify when arrangements or types of arrangements that meet the definition of a Fund in Article 11(1) do not constitute a Fund.

Chapter 2: Types of Funds and relevant criteria

13. Domestic and Foreign Funds

- (1) A Fund is either a Domestic Fund or a Foreign Fund.*
- (2) A Fund is a Domestic Fund if it is either:*
 - (a) established or domiciled in the DIFC; or*
 - (b) an External Fund as defined in Article 14(1).*



- (3) *A Fund that does not meet the Domestic Fund criteria in Article 13(2) is a Foreign Fund.*

14. *An External Fund*

- (1) *An External Fund is a Fund which is:*
- (a) *established or domiciled in a jurisdiction other than the DIFC; and*
 - (b) *managed by a Fund Manager which is an Authorised Firm.*
- (2) *The requirements relating to Domestic Funds do not apply to an External Fund except to the extent otherwise provided in this Law or the Rules.*

PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

Chapter 4: Misconduct in Relation to Domestic and Foreign Funds

56. *Misleading and Deceptive Statements*

- (1) *A person shall not make an Offer of Units if there is:*
- (a) *a misleading or deceptive statement in:*
 - (i) *the relevant Prospectus;*
 - (ii) *any application form that accompanies the relevant Prospectus; or*
 - (iii) *any other document that relates to the Offer, or the application form;*
 - (b) *an omission from any document specified in Article 56(1)(a) of information that is required to be stated or that is necessary to make the statement not misleading or deceptive; or*



- (c) a new circumstance that under the Law or the Rules requires a Supplementary or Replacement Prospectus to be published or issued and this has not been published or issued.*
- (2) A person shall not, in or from the DIFC, make a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.*
- (3) This Article does not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets.*

57. Defences to Misconduct

- (1) A person does not commit a contravention of Article 56, if that person proves that he:*
 - (a) made all inquiries that were reasonable in the circumstances; and*
 - (b) after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.*
- (2) A person does not commit a contravention of Article 56, if that person proves that reasonable reliance was placed on information given to that person by:*
 - (a) if the person is a body corporate, someone other than a director, employee or agent of that body corporate; or*
 - (b) if the person is a natural person, someone other than an employee or agent of that individual.*
- (3) For the purposes of Article 57(2), a person does not become an agent of another person simply because he performs a particular professional or advisory function for the person.*



2. RELEVANT RULEBOOK PROVISIONS

Collective Investment Rules (CIR)

Financial statements and financial reporting standards

- 9.2.1** (1) *A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.*
- (2) *A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP).*

Co-operation with auditors

9.3.5 *A Fund Manager must take reasonable steps to ensure that it and its employees:*

...

- (e) *report to the Registered Auditor any matter which may significantly affect the financial position of the Fund;*

Market Rules (MKT)

Manner of market disclosure

- 4.7.1** (1) *When a Reporting Entity is required to make market disclosure of any information, such information must be released to the market by way of an announcement made:*
- (a) *to the Authorised Market Institution on which the Securities are admitted to trading;*
- (b) *on the website of the Reporting Entity; and*
- (c) *to any approved Regulatory Announcement Service.*



- (2) *The disclosure in (1) must also be concurrently provided to the DFSA.*
- (3) *Without prejudice to its obligations relating to market disclosure, a Reporting Entity must take reasonable care to ensure that any information it is required to disclose is clear, fair and not misleading, false or deceptive.*

6.9 Accounting periods and financial reports of listed funds

Market disclosure

6.9.2 (1) *A Reporting Entity of a Listed Fund must disclose to the market the following:*

- (a) its annual financial report;*
- (b) its interim financial reports; and*
- (c) its preliminary financial results.*

6.10 Manner of market disclosure

6.10.1 *Where a Reporting Entity of a Listed Fund is required to make market disclosure of information pursuant to a provision in this chapter, such information must be disclosed to the market in accordance with the requirements in Section 4.7.*

6.10.2 *A Reporting Entity of a Listed Fund must retain on its website all information that has been disclosed to the market for a period of one year following publication.*

General Module (GEN)

4.4 The Principles for Authorised Individuals

Principle 2 - Due skill, care and diligence

4.4.2 *An Authorised Individual must act with due skill, care and diligence in carrying out every Licensed Function.*



7.4 Licensed Functions and Authorised individuals

Finance Officer

7.4.5 *The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the applicable Rules in PIN or PIB.*

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.



ANNEX C – DEFINITIONS

Authorised Firm	Has the same meaning provided in GLO, namely, a Person, other than an Authorised Market Institution, who holds a Licence.
Authorised Individual	Has the same meaning provided in GLO, namely, an individual who has been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Firm.
BCCS	British Columbian Canadian School, a limited liability company.
the School	The school leased and operated by BCCS at Dubai Investment Park 1.
Chief Financial Officer (CFO)	Officer of a company that has primary responsibility for managing the company's finances.
CIL	The Collective Investment Law 2010 (DIFC Law No. 2 of 2010), as amended.
CIR	The Collective Investment Rules module of the DFSA Rulebook as in force from time to time during the relevant period.
Collective Investment Fund (CIF)	Has the same meaning provided in GLO, namely, an arrangement which amounts to a Fund under Article 11 of the CIL and which is not excluded under the Rules made under Article 12 set out under CIR section 2.1.
DFSA	Dubai Financial Services Authority.
DIFC	Dubai International Financial Centre.
DIFC Court OR Court	Has the same meaning in GLO, namely, the DIFC Court.
DIP or DIP1	Dubai Investments Park, a mixed-use industrial, commercial and residential zone.
DMC	The DFSA's Decision Making Committee in this matter.
Equitativa	Equitativa (Dubai) Limited.
EREIT or the Fund	Emirates REIT (CEIC) PLC.



Financial Markets Tribunal (FMT)	Has the same meaning provided in GLO, namely, the tribunal referred to in Article 26 of the Regulatory Law.
Financial Service	Has the same meaning provided in GLO and GEN Rule 2.2.1, namely, an activity that is specified in GEN Rule 2.2.2 and is carried on by way of business in the manner described in GEN section 2.3.
Fine	The fine to be imposed on Mr Ishak by the DFSA, as set out in this Notice.
Fund	Has the same meaning provided in GLO, namely, a Collective Investment Fund.
Fund Manager	Has the same meaning provided in GLO, namely, the Person, described under Article 20(4) of the Collective Investment Law 2010, who is responsible for the management of the property held for or within a Fund and who otherwise operates the Fund and, in relation to a Domestic Fund, is authorised under a Licence granted by the DFSA to operate the Fund.
GEN	The General Module of the DFSA Rulebook as in force from time to time during the relevant period.
GLO	The Glossary Module of the DFSA Rulebook as in force from time to time during the relevant period.
IFRS	International Financial Reporting Standards.
KHDA	Knowledge and Human Development Authority of Dubai.
Licence	Has the same meaning provided in GLO, namely, a licence granted by the DFSA under Chapter 2 of Part 3 of the Regulatory Law, authorising a person to carry on one or more Financial Services in or from the DIFC.
Licensed Function	Has the same meaning provided in GLO and GEN section 7.4.
Mr Ishak	Remi Ishak, Group CFO of Equitativa and EREIT from 3 April 2017 to 6 January 2019.



Person	Has the same meaning provided in GLO, namely, including any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state.
Preliminary Notice	The Preliminary Notice dated 2 August 2022, given to Mr Ishak under paragraph 4 of Schedule 3 to the Regulatory Law.
REIT	Real Estate Investment Trust.