

**FINANCIAL MARKETS TRIBUNAL**

**B E T W E E N:**

**ROYAL SHIELD LTD**

**Appellant**

**-and-**

**THE DUBAI FINANCIAL SERVICES AUTHORITY (DFSA)**

**Respondent**

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**ORDER  
DISMISSAL OF REFERENCE**

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UPON the DFSA deciding on 30 September 2018 to withdraw the Appellant's Licence to conduct to conduct Financial Services in or from the Dubai International Financial Centre and the Appellant referring that decision to the Tribunal for review

UPON the parties filing the following pleadings or other submissions: the Appellant's Notice of Appeal dated 14 November 2018, the Appellant's further submission dated 16 December 2018, the Respondent's Answer dated 13 January 2019, and the Appellant's Reply dated 9 February 2019

UPON the Tribunal directing the Appellant on 12 and 22 March 2019 to inform the Tribunal in writing which aspects of the DFSA's decision it disagrees with and why

UPON the Appellant's failure to comply with the Tribunal's directions on 12 and 22 March 2019

UPON the Appellant filing a further submission on 4 April 2019

UPON the Tribunal communicating on 30 April 2019 that, unless the Appellant filed a properly reasoned document stating the reasons for its reference in a form acceptable to the Tribunal within five days, the Tribunal will dismiss the reference and affirm the original decision of the DFSA

AND UPON the Appellant's failure to file the document required in the Tribunal's communication on 30 April 2019

**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Articles 27(1), 27(2) and 29(4) of the Regulatory Law 2004, the Tribunal dismisses the Appellant's reference and affirms the original decision of the DFSA. The Tribunal shall provide brief written reasons for its decision in due course.
2. Pursuant to Article 29(4)(f) of the Regulatory Law 2004 and Rule 78 of the FMT Rules, unless ordered otherwise, this order together with the Tribunal's written reasons for its decision shall be published on the FMT website.
3. There shall be no order as to costs.

His Honour David Mackie QBE QC  
President  
Financial Markets Tribunal  
8 May 2019

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**REASONS FOR DISMISSAL OF REFERENCE**

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1. On 8 May 2019 the Tribunal dismissed the Reference by Royal Shield Limited (“RSL”) started by its Notice of Appeal dated 14 November 2018.

**Background.**

2. The facts set out in the documents provided by the parties seem largely undisputed. RSL was incorporated on 6 July 2010, and was an Authorised Firm holding a DFSA Licence, which carried out the Financial Service of Insurance Intermediation in or from the DIFC. It was a reinsurance broker, acting as an intermediary between insurance and reinsurance companies. RSL was categorised within the DIFC as falling within PIB Category 4, which in general terms is one of the categories which attracted the lowest or least burdensome prudential requirements.
3. RSL had a history of DFSA regulatory issues. In May 2016, the DFSA’s Supervision Division (“Supervision”) conducted an on-site risk assessment, which revealed serious suspected breaches of DFSA Rules and significant weaknesses in RSL’s systems, controls and financial resources. In June 2016 RSL offered, and the DFSA accepted, an Enforceable Undertaking (“EU”) by which it agreed to be restricted from undertaking new business. On 20 June 2016 RSL’s auditors submitted the audited financial statements for 2015, with an “adverse” opinion. Further, the Insurance Monies Auditor’s Report was not submitted as required.
4. On 17 July 2016, RSL’s Finance Officer provided a report on the financial condition of RSL, noting a deficiency of US\$330,000 in its accounts. DFSA Supervision expressed serious

concerns that RSL was bankrupt and asked it urgently to provide a plan on how it could resolve these. In September 2016, Supervision referred its concerns to the DFSA's Enforcement Division which conducted enquiries. Issues identified led to an EU being offered by RSL's owner and (at the time) SEO, Mr Naidu, in May 2017. In his EU, which was published, Mr Naidu agreed, among other things:

(a) to pay a financial penalty of USD 70,000 (USD60,000 suspended) and to voluntarily withdraw as SEO;

(b) that he had failed to act with due skill, care and diligence in carrying out the Licensed Function of SEO of RSL, contrary to Principle 2 of the Principles for Authorised Individuals; and

(c) that he had failed to take reasonable care to ensure that the business of RSL for which he was responsible was organised so that it could be managed and controlled effectively, contrary to Principle 5 of the Principles for Authorised Individuals.

5. In December 2017, the DFSA agreed to lift the restriction on RSL's business imposed by the EU as RSL had taken steps to address the concerns. On 30 April 2018, the DFSA received a copy of RSL's 2017 financial statements showing it was insolvent from both a cashflow and balance sheet perspective, a fact confirmed by RSL in a meeting on 8 May 2018. On 23 May, Supervision wrote to RSL setting out its concerns and requiring certain action, including the injection of capital by 7 June. RSL failed to meet this requirement so the DFSA suspended RSL's Licence by Decision notice dated 28 June and requested that RSL provide a detailed resolution plan.
6. On 13 July 2018, RSL sent a letter to the DFSA in which it made written representations on the decision to suspend the Licence. Having received and considered these the DFSA on 27 July confirmed that RSL's Licence would remain suspended. RSL did not provide a resolution plan and in July it informed the DFSA that, among other things:
  - (a) RSL had no office as it did not renew its lease (which led to the landlord locking the office containing the firm's files);
  - (b) the only remaining employee was the SEO;
  - (c) it did not have a Finance Officer; and
  - (d) its commercial licence and professional indemnity (PI) insurance policy had expired.
7. In August 2018, RSL informed the DFSA that, while it had completed the disbursement of Insurance Monies from its Insurance Monies Bank Account (the "IBA") to its reinsurance creditors, it had been unable to disburse funds to settle the debts owed to its sundry creditors. The reason for this was that Mr Naidu (the controller, Licensed Director and former SEO) was also the sole remaining bank account signatory, and had blocked the liquidation of RSL's fixed deposits held at the bank.
8. In September 2018, Mr Naidu claimed that he was in talks with potential buyers of RSL, which was why he had blocked the disbursement of funds. The DFSA did not accept that and on 30 September decided to withdraw RSL's Licence. RSL did not take the opportunity to make

representations on the Decision so, on 16 October 2018, the DFSA confirmed its Decision to withdraw the firm's Licence.

### **The Reference.**

9. Unfortunately, RSL has, despite the Tribunal's repeated requests, failed to inform us clearly of the reasons why it challenges the Decision of the DFSA. From the material that RSL has supplied it appears to attribute the alleged shortcomings to the consequences of a commercial dispute in 2013 or 2014. RSL appears to allege that the DFSA Rules are ambiguous, that accounting treatment has been incorrect and compliance inefficient and that DFSA employees have been indecisive. If our understanding is inaccurate it is entirely the fault of RSL which has repeatedly failed to state and clarify its case over a long period to the point where the Tribunal has been compelled to dismiss the reference without a hearing.

### **Procedural steps.**

10. On 19 November 2018 the DFSA applied to the Tribunal asking it not to allow the reference to proceed, essentially because RSL had failed to set out adequately the grounds on which the case was being pursued. The President rejected that submission and allowed the reference to be registered but directed RSL to comply with Rule 25 and give more and clearer details of what its case was. At this point the Tribunal was conscious first that English might not be the first language of Mr Naidu and his colleagues and secondly that RSL appeared not to have had the benefit of legal advice.
11. On 16 December 2018 RSL sent to the Tribunal a letter and six attachments providing additional information. It still remained unclear what RSL's grounds were but the President considered that the position would be clarified by an Answer from the DFSA. This was submitted on 13 January 2019. On 9 February RSL submitted a Reply but this document also was unclear and did not appear to the Tribunal to engage with the issues under the reference. On 24 February the Tribunal reminded both sides of our objective set out in Rule 7 that: *"The overriding objective of these Rules is to enable the FMT to deal with cases fairly and justly. 7.1 Dealing with a case fairly and justly includes: (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the FMT effectively; and (e) avoiding delay, so far as compatible with proper consideration of the issues."*
12. The Tribunal therefore asked the parties to consider what they needed to take this case to a hearing or other final decision and to discuss steps to that end. The Tribunal stressed that RSL was not obliged to engage lawyers to represent it but it needed to consider carefully whether or not to do so. We offered to supply clarification. On 9 March 2019 RSL simply stated that agreement had not been reached and sought a hearing without identifying what relevant aspects of the Decision, as opposed to other matters, it sought to challenge. On 12 March the Tribunal requested RSL to spell out what aspects of the Decision of the DFSA it

disagreed with and why and to tell us paragraph by paragraph what it accepted and what it disagreed with. The Tribunal also sought the DFSA's response to the Reply and this was provided on 19 March.

13. On 22 March 2019 the Tribunal warned RSL that if it did not take what was described as the final chance to provide the information necessary to progress this case we might have to dismiss the reference without a hearing. By this time the two other members of the Tribunal panel had been appointed and had formed the same view as the President about the difficulties in understanding what RSL's case was.
14. RSL submitted another document on 4 April 2019 but this too failed to provide essential information about the grounds on which the Decision was challenged. On 30 April the Tribunal warned that unless a properly reasoned document was received within 5 days it would dismiss the reference and affirm the underlying Decision exercising its powers under the Rules, and Rules 7 and 41 in particular, to dismiss the reference and to affirm the original Decision of the DFSA.
15. No satisfactory response having been received on 8 May 2019 the Tribunal dismissed the reference and affirmed the Decision of the DFSA.

#### **Conclusion.**

16. As the Tribunal has only dealt with a small number of cases, there is no record of how it approaches references of this kind. As we see it RSL has not taken the process with the commitment required by the Rules. At first it seemed that this might be due simply to inexperience, a language difficulty and/or absence of legal assistance. RSL then persistently failed over a significant period to comply with simple requests for information or to engage with the process. In this case the Tribunal has decided that it is not appropriate to order RSL to pay the costs of the proceedings. In future cases the Tribunal will take a different approach both to the length of time it allows parties to comply with basic requirements and to the ordering of costs where it does not appear that the process has been treated with the seriousness the Rules require. The costs of proceedings are substantial and are borne indirectly by the individual members of the bodies that the DFSA exists to serve. There is no reason why they should be put to wholly unnecessary expense. The Tribunal emphasises that this indication of its likely approach to similar cases in future is made on its own initiative and not at the request of the DFSA.

**David Mackie**

**President**

**10 June 2019**