



DECISION NOTICE

To: Morgan Gatsby Limited ("MGL")

DFSA Ref: F001950

Address: Emirates Financial Towers
South Tower, Office 2009
PO Box 500484
DIFC, Dubai, UAE

Date: 8 November 2018

Attention: Mr Ajay Arora, Senior Executive Officer
Board of Licensed Directors

ACTION

1. For the reasons given in this Notice and pursuant to Article 52(1)(c) of the Regulatory Law 2004 (the "Law"), the Dubai Financial Services Authority (the "DFSA") has decided to suspend the Licence of MGL to conduct Financial Services in or from the DIFC.
2. The suspension will come into immediate effect and be in place for 12 months or such shorter time as may be confirmed in writing by the DFSA.

DEFINITIONS

3. This Notice identifies defined terms by the capitalisation of the initial letter of a word or of each word in a phrase, which are defined either in this Notice or in the Glossary Module of the DFSA Rulebook ("GLO"). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

REASONS FOR THE ACTION

The DFSA's power under Article 52 of the Law

4. Pursuant to Articles 52(1)(c) and 52(2) of the Law respectively, the DFSA may suspend the Licence of an Authorised Person, and may do so on its own initiative or at the request of the Authorised Person.
5. Pursuant to Article 52(3) of the Law, the DFSA may act on its own initiative if it has reasonable grounds to believe that:

- (a) the Authorised Person is:
 - (i) in breach of, or has been in breach of, the Law or Rules or other legislation administered by the DFSA; or
 - (ii) no longer fit and proper to carry on a Financial Service for which it has authorisation under its Licence; and
- (b) the exercise of the power is necessary or desirable in the interests of the DIFC.

DFSA requirements regarding fitness and propriety, adequate resources and dealing with the DFSA in an open and cooperative manner

- 6. Consistent with the Principles for Authorised Firms described in GEN Chapter 4 and the licensing requirements in GEN section 7.2, the DFSA requires that MGL, as an Authorised Firm, at all times:
 - (a) deals with the DFSA in an open and cooperative manner;
 - (b) remains fit and proper to carry on a Financial Service in or from the DIFC; and
 - (c) maintains adequate resources (including financial resources and human resources) to conduct and manage its affairs.
- 7. In particular, MGL is required to comply with the following Rules:
 - (a) GEN Rule 4.2.10 (Authorised Firm Principle 10), which requires MGL to deal with the DFSA in an open an co-operative manner;
 - (b) GEN Rule 4.2.4 (Authorised Firm Principle 4), which requires MGL to maintain and be able to demonstrate the existence of adequate resources (including financial resources and adequate human resources) to conduct and manage its affairs;
 - (c) PIB Rule 3.2.2, which, by reference to PIB Rule 3.5.2, which requires MGL to maintain Capital Resources at all times on the following basis:
 - (i) Capital Resources equal to the applicable Base Capital Requirement of USD500,000, which consistently is the highest of the Capital Requirements applicable to MGL, according to its quarterly and annual financial returns; and
 - (ii) capital and liquid assets in addition to its Capital Requirement which are adequate in relation to the nature, size and complexity of its business, to ensure that there is no significant risk that liabilities cannot be met as they fall due; and
 - (d) PIB Rule 3.5.3(1), which requires MGL to maintain an amount which exceeds its Expenditure Based Capital Minimum ("EBCM") in the form of liquid assets.

DFSA concerns set out in the Preliminary Notice dated 19 September 2018

8. On 19 September 2018, the DFSA gave MGL a Preliminary Notice in which it proposed to suspend the Licence of MGL due to the concerns set out in this section.
9. On 9 April 2018, the DFSA sent MGL a letter outlining the DFSA's serious supervisory concerns regarding MGL, and referring to various relevant communications or documents regarding those, and other, concerns (the "**Second Supervisory Concerns Letter**"). The previous communications or documents referred to included:
 - (a) the DFSA's letter dated 21 April 2016, in which it outlined serious supervisory concerns requiring immediate attention by MGL (the "**First Supervisory Concerns Letter**");
 - (b) MGL's letter of undertaking dated 27 April 2016, in which it undertook to restrict its business activities until the completion of all remedial actions to the satisfaction of the DFSA as outlined in the First Supervisory Concerns Letter (the "**Undertaking**");
 - (c) MGL's email dated 20 September 2016 which followed a meeting with the DFSA of the same date. In that email and during that meeting, MGL requested to withdraw the Undertaking and made submissions in support of its request;
 - (d) the DFSA's letter dated 22 September 2016, in which the DFSA agreed to MGL's request to withdraw the Undertaking subject to strict conditions, including monthly financial reporting and maintaining capital adequacy in compliance with PIB (the "**Conditional Undertaking Withdrawal**");
 - (e) the DFSA's Risk Mitigation Programme letter given to MGL on 5 June 2017 related to the DFSA's risk assessment undertaken on 7 March 2016, requiring MGL to take significant remedial measures to resolve the DFSA's serious concerns (the "**RMP Letter**"). The RMP Letter highlighted material inadequacies in MGL's overarching corporate governance framework, as well as its systems and controls related to risk management, compliance and AML. Further, there appeared to be inadequate protection of Client Assets and breaches of the Conduct of Business Module of the DFSA Rulebook (COB);
 - (f) MGL's 2017 breach register in which it recorded a significant scale and scope of breaches over a material period, in particular regarding Client Money handling, transaction records, documentation related to the [REDACTED] (the "[REDACTED] Fund"), KYC, and Client Classification;
10. On 21 April 2018, and in the context of the supervisory concerns referred to in paragraph 9 above, MGL sent the DFSA a letter requesting that certain prohibitions be imposed on MGL's business and dealings with relevant property pursuant to Article 75 and Article 76 of the Law (the "**Prohibitions**"). On 2 May 2018, the DFSA imposed the Prohibitions on MGL and gave MGL notice of that decision (the "**Prohibition Notice**").
11. Certain of the DFSA's concerns raised in the Supervisory Concerns Letter are continuing, and MGL's status has further declined, since the date of the Prohibition Notice. The continuing concerns are as follows:

- (a) MGL's inadequate management, systems and controls regarding its financial resources, and therefore its inability to continue to conduct a viable Financial Services business;
- (b) MGL's lack of adequate and competent human resources to sustain its Financial Services business;
- (c) MGL's inappropriate classification of and dealings with its Client, [REDACTED], including AML concerns, and in circumstances where MGL had provided the Undertaking to the DFSA, committing to refrain from soliciting or on-boarding or dealing in any manner with any new or prospective clients; and
- (d) MGL's failure to comply with relevant Rules in the marketing of a Foreign Fund, the [REDACTED] Fund.

12. The DFSA has also become aware of new concerns:

- (a) As communicated in emails dated 5 July 2018 and 17 July 2018, the DFSA is concerned that MGL may be carrying out activities which require its registration as a Designated Non-Financial Business or Profession (DNFBP). MGL is currently not registered as a DNFBP and has not sought to be so registered. In its email response dated 10 July 2018, MGL appeared to claim that it is not required to be registered as a DNFBP. As at the date of this notice, MGL has failed to properly substantiate its position to the DFSA or otherwise seek the appropriate DNFBP registration; and
- (b) Despite the DFSA's continuing engagement with MGL regarding its concerns, which engagement has been continuing for over 15 months (since the date of the RMP Letter), MGL has failed to remediate the DFSA's serious concerns. As a result of continuing failure to remedy the DFSA's serious concerns, the DFSA is concerned that MGL has failed to deal with the DFSA in an open and co-operative manner, in breach of GEN Rule 4.3.10 (Authorised Firm Principle 10).

13. Regarding MGL's inadequate management, systems and controls regarding its financial resources, the DFSA's concerns are based on the following:

- (a) A material number of MGL's accounts receivable appear to be impaired on the basis of their age (in many cases past due more than one year) and the absence of demonstrable prospects of payment, including, but not limited to, one receivable of USD102,000 from [REDACTED] overdue for 12 months or more. From the customer file, it appears that [REDACTED] has severe cash flow issues and does not expect to be able to pay this debt for some time;
- (b) MGL's failure to proactively identify and provision for doubtful receivables, and instead waiting for its auditor to instruct MGL to do so in connection with its annual audit;
- (c) MGL's lack of formal processes for tracking past due invoices or chasing debtors, and MGL's lack of any policy for provisioning for aged invoices or for reporting the same to its Board;
- (d) MGL reported USD408,000 in total liabilities as at 31 December 2017. Of these liabilities, roughly half represents [REDACTED] salary, the payment of which he has opted not to take for at least three months;

- (e) MGL's failure to submit monthly reports regarding its compliance with PIB, which the DFSA first required in writing on 22 September 2016 and which MGL has failed to do since providing the report for February 2018. The DFSA notified MGL of this failure on 31 July 2018. As at the date of this notice, MGL has failed to provide any satisfactory explanation or the outstanding PIB reports; and
- (f) MGL's available Capital Resources as at 31 December 2017 were USD530,000, which was only 106% of its Capital Requirement of USD500,000. As at the end of February 2018, MGL's Capital Resources had further reduced to USD527,000, or just 105.4% of its Capital Requirement. According to its 2018 Q2 PIB filing, MGL had Capital Resources of USD503,000 or 100.6% of its Capital Requirement as at 30 June 2018,

and given the accumulation of the above factors, the DFSA is seriously concerned that the amount of funds held in excess of the Capital Requirement is inadequate in relation to the nature, size and complexity of MGL's business to ensure there is no significant risk that liabilities cannot be met as they fall due. Specifically, because MGL has failed to implement appropriate systems for tracking past due invoices and recovering overdue amounts, nor adequate identification of and provisioning for doubtful receivables, any provisions or "write-offs" regarding doubtful receivables, the payment of outstanding amounts including [REDACTED] salary, or unexpected expenses, may cause a Capital Requirement deficiency and a breach of PIB.

14. Regarding MGL's inadequate human resources, the DFSA's concern arises from MGL's continued failure to have in place any individual to adequately and competently carry out MGL's compliance function. In particular:
- (a) MGL is required, pursuant to GEN Rule 7.5.1(1), to have in place at all times an Authorised Individual to carry on the respective Licensed Functions of a Compliance Officer (CO) and a Money Laundering Reporting Officer (MLRO);
 - (b) MGL's last CO and MLRO, [REDACTED], was withdrawn as such on 22 February 2018, more than 6 months ago;
 - (c) Another employee who carried out compliance tasks, [REDACTED] also resigned and left MGL in February 2018, more than 6 months ago;
 - (d) MGL, despite some attempts, has still failed to successfully appoint any permanent or temporary replacement CO, nor an MLRO, despite the DFSA raising its continuing concerns in this regard on several occasions since the Supervisory Concerns Letter, including by email dated 5 July 2018 and during the meeting on 31 July 2018; and
 - (e) The DFSA acknowledges that MGL indicated to the DFSA on 18 September 2018 that it had come to an agreement with an external consultancy to provide the CO/MLRO function and that MGL expected to soon lodge an IND1 form seeking authorisation from the DFSA of a new CO/MLRO. However, the DFSA is of the view that neither this development, nor the potential lodgement of an IND1 form, will in of itself remediate the DFSA's concerns set out in (a) to (d) above.

- (i) Article 54(1)(a)(i) of the Collective Investment Law 2010, because it has failed to comply with the criteria for a Designated Fund in a Recognised Jurisdiction set out in CIR Rule 15.1.5; or
 - (ii) Article 54(1)(a)(ii) of the Collective Investment Law 2010, because it has failed to comply with the other Foreign Fund criteria set out in CIR Rule 15.1.6.
- 18. Again, MGL has provided no information indicating that it has ceased to market the [REDACTED] Fund while failing to meet the relevant Fund requirements, or sought to rectify past failures.
- 19. The DFSA is seriously concerned about the nature of the above conduct, and that, while MGL has been without a CO and MLRO since February 2018, many of the other concerns explained here relate to conduct dating back to 2016 and that which continues.

SUMMARY OF REASONS

- 20. As explained in paragraph 8 above, on 19 September 2018, the DFSA gave MGL a Preliminary Notice in which it, due to the concerns outlined in paragraphs 9 to 19 above, proposed to suspend the Licence of MGL.
- 21. MGL was provided with an opportunity to provide written and oral representations to the decision maker regarding the DFSA's concerns and action proposed in the Preliminary Notice. MGL did so, as follows:
 - (a) Written representations dated 30 September 2018;
 - (b) Written representations dated 11 October 2018, including a remediation plan;
 - (c) Oral representations at the meeting held on 17 October 2018;
 - (d) Written representations via an email dated 22 October 2018, including attachments;
 - (e) Written representations via an email dated 25 October 2018;
 - (f) Written representations via an email dated 30 October 2018, including an attachment; and
 - (g) Written representations via an email dated 4 November 2018.
- 22. In addition, the decision maker received a memorandum from the DFSA Supervision Division dated 4 October 2018, which was in response to MGL's written representations dated 30 September 2018 and contained further relevant information. A copy of this memorandum was provided to MGL. The decision maker has also reviewed the Quarter 3 2018 prudential returns submitted by MGL to the DFSA for the period ending 30 September 2018.
- 23. After reviewing the written and oral representations made by the parties, the DFSA has decided to suspend the Licence of MGL for the reasons set out below.

Financial Resources

24. The DFSA has set out various matters at paragraph 13 of this Notice regarding the inadequacy of MGL's management, systems and controls regarding its financial resources and its failure to comply with GEN Rules 4.2.4 and PIB Rules 3.3.3. and 3.5.3(1). MGL have obtained a letter from its shareholders dated 17 October 2018 which confirms that its shareholders will support MGL by providing additional capital as and when required. In addition, MGL have represented that it will be in a stronger capital position following a proposed variation of its Licence to a Prudential Category 4 entity. As at 30 September 2018, MGL has reported Capital Resources of USD 610,000 and total liabilities of USD252,000. However, concerns remain as to the adequacy of MGL's current management, systems and controls relating to its financial resources given the matters raised in paragraph 13 of this Notice, in particular, MGL's accounts receivables balances and the ageing nature of these balances and recoverability of these balances as at 30 September 2018 which it continues to carry on its books.

Human Resources

25. The DFSA has set out various matters at paragraph 14 of this Notice regarding MGL's lack of adequate and competent human resources. After the withdrawal of its Compliance Officer (CO) and Money Laundering Reporting Officer (MLRO) on 22 February 2018, MGL have recently appointed an Authorised Individual to the respective Licensed Functions of CO/MLRO. However, MGL currently does not have an Authorised Individual appointed as a Finance Officer, which further adds to the concerns around the inadequacy of MGL's management, systems and controls regarding its financial resources. In terms of its other human resources, it would appear that MGL has adequate resources given the extent of their business activities in light of the restrictions imposed under the Prohibition Notice on MGL.

Dealings with a Client – [REDACTED]

26. The DFSA has set out various matters at paragraphs 11(c) and 16 of this Notice regarding MGL's dealings with a Client, [REDACTED]. MGL have failed to on-board such Client, in breach of specified COB and AML rules set out in paragraph 16 of this Notice.

Marketing of a Foreign Fund

27. The DFSA has set out various matters at paragraph 17 of this Notice relating to the marketing of a Foreign Fund by MGL. In respect of the [REDACTED] Fund, MGL has failed to comply with relevant CIR Rules set out in paragraph 17 of this Notice relating to the marketing of a Foreign Fund in that it failed to:

- (a) make a Prospectus available to a Person to whom it has made an Offer of the [REDACTED] Fund; and
- (b) comply with the criteria under which an Offer of a Unit of a Foreign Fund can be made by an Authorised Firm.

Dealing with the DFSA in an open and co-operative manner

28. MGL's written representations dated 11 October 2018 outline a proposed remediation plan to address a number of the continuing concerns that the DFSA has raised, in particular

those relating to the concerns raised in paragraphs 11 and 12 of this Notice. However, MGL have been aware of DFSA's continuing concerns since receiving a letter from the DFSA dated 1 April 2018, and if not earlier, in relation to some concerns based on a letter received from the DFSA dated 5 June 2017. Whilst MGL have recently prepared a proposed remediation plan, MGL has failed to remediate DFSA's concerns as set out in this Notice in a timely manner. In particular:

- (a) MGL has failed to submit monthly reports regarding its compliance with the PIB Module as set out in paragraph 13(e) of this Notice;
 - (b) MGL has failed to provide the DFSA with information which confirmed that it had ceased conducting marketing activities relating to the [REDACTED] Fund;
 - (c) MGL carried out activities which required its registration as a Designated Non-Financial Business or Profession (DNFBP);
 - (d) MGL, via [REDACTED], appears to have not provided prompt notification to relevant staff in respect of the restrictions which were imposed by the DFSA under the Prohibition Notice issued on 2 May 2018;
 - (e) MGL appears to have continued to Provide Custody, execute transactions and conduct activities in contravention of the Prohibition Notice issued by the DFSA on 2 May 2018. Such matters were summarised at paragraphs 13 and 14 of the memorandum from the DFSA Supervision Division dated 4 October 2018; and
 - (f) MGL appears to have conducted business activities with its Client, [REDACTED], during a period of time where MGL had given a voluntary undertaking to the DFSA that it would restrict its business activities until completion of specified remedial actions.
29. The DFSA has therefore taken the action set out in this Notice, under Article 52(3) of the Law, as it has reasonable grounds to believe that:
- (a) MGL is in breach, or has been in breach, of the Law or Rules or other legislation administered by the DFSA, as set out above;
 - (b) MGL is no longer fit and proper to carry on any Financial Service for which it has Authorisation under its Licence; and
 - (c) it is necessary and desirable in the interests of the DIFC to suspend the Licence of MGL to conduct Financial Services in or from the DIFC.

PROCEDURAL MATTERS

Decision Maker

30. The decision which gave rise to the obligation to give this Notice was made by Lawrence Paramasivam, a Director in the Supervision Division.
31. This Notice is given to MGL under paragraph 5 of Schedule 3 to the Law.

Effect of action

32. The effect of the action in this Notice is as follows:
- (a) MGL's Licence is suspended immediately;
 - (b) The DFSA's public register on its website will be amended to reflect the action that has been taken; and
 - (c) The DFSA may otherwise publicise details of the action that has been taken against MGL in such form and manner as it regards appropriate.

Evidence and other material considered

33. In accordance with paragraph 5(2) of Schedule 3 to the Regulatory Law, the DFSA is required to provide a copy of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice. Pursuant to paragraph 5(3) of Schedule 3 to the Regulatory Law, the DFSA may refer to materials instead of providing a copy if they are already held by the relevant person or are publicly available.

Right of referral of decision to the Financial Markets Tribunal (FMT)

34. Pursuant to Article 52(6) of the Law, MGL has the right to refer this matter to the FMT for review.
35. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the DFSA's decision. After review of the DFSA's decision, the FMT has the power to make a new decision using the powers available to the DFSA. This could involve:
- (a) confirming the decision set out in this Decision Notice;
 - (b) substituting the DFSA decision with a new decision; or
 - (c) referring the matter back to the DFSA with a direction for the DFSA to make a new decision.
36. Should MGL wish to have this matter reviewed by the FMT, it must exercise that right within 30 days from the date it is notified of this decision. Any reference made after that date would have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Law.
37. Proceedings before the FMT are commenced by submitting a Notice of Appeal ("Form FMT 1") to the Registrar of the FMT. The Rules of Procedure of the FMT, as well as a template Form FMT 1 and the Registrar's contact details can be found on the DFSA's website at:
- <http://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal>
38. Under paragraph 26 of the FMT Rules of Procedure, MGL is required to send a copy of any Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Publicity

39. Under Article 62(1) of the Law, the DFSA is required to publish and maintain a register of current and past grants, withdrawals and suspensions of Licences and authorisations of all Authorised Persons. The DFSA will therefore update its public register to ensure it accurately reflects the action taken in this Notice and the status of MGL's Licence.
40. Further, under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.
41. Consistent with the DFSA's general policy set out in paragraph 5-17-2 of the Regulatory Policy and Process Sourcebook (RPP), the DFSA will generally publish, in such form and manner as it regards appropriate, information and statements relating to formal regulatory decisions.
42. Therefore, the DFSA may publish in due course the action taken in this Notice and the reasons for that action. This may include publishing the Notice itself, in whole or in part.
43. In the event that you refer this matter to the FMT, and consistent with the policy set out in RPP 5-17-8, the DFSA expects to publish information about the hearing or commencement of proceedings before the FMT or Court unless otherwise ordered by the FMT or Court.

DFSA contacts

44. For more information concerning this matter generally, please contact [REDACTED] by email at [REDACTED] or by telephone at +971 4 362 1 [REDACTED].

Signed:

[REDACTED]

Lawrence Paramasivam
Director, Supervision
On behalf of the DFSA

