
DECISION NOTICE

To: Rasan Capital Limited

DFSA Ref: F003905

Address: Unit 10, Level 1
Currency House - Tower 2
DIFC
PO Box 507129
Dubai, UAE

Date: 12 May 2019

DECISION

1. For the reasons given in this notice (the "**Notice**") and pursuant to Article 52(1)(c) of the Regulatory Law 2004, the Dubai Financial Services Authority (the "**DFSA**") hereby suspends the Licence of Rasan Capital Limited ("**RCL**" or the "**Firm**") to conduct Financial Services in or from the Dubai International Financial Centre (the "**DIFC**").
2. This action comes into immediate effect.
3. The suspension of the Firm's Licence set out in paragraph 1 of this Notice will continue until the earlier of:
 - a. the date the Firm satisfies the DFSA's prudential Category 4 Capital Requirements (as set out in PIB) including by providing a reasonable plan with documented assumptions for maintaining the capital level above the minimum requirement for at least twelve (12) months; or
 - b. 12 May 2020 (the "**Action Date**").

In the event the Firm fails to take the actions set out in paragraph 3(a) of this Notice on or before the Action Date, the DFSA may take action to withdraw the Firm's Licence and/or take such other actions as the DFSA deems appropriate in accordance with the Rules and DFSA administered laws (the "**Law**").

DEFINITIONS

4. 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, unless otherwise indicated, are defined in the DFSA Rulebook Glossary module ("**GLO**") or the Prudential – Investment, Insurance Intermediation and Banking module ("**PIB**").
5. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.
6. Laws and Rules referred to in this Notice can be found on the DFSA's website at: <http://www.dfsa.ae/en/Laws-and-Rules/Legal-Resources#Legislation>

SUMMARY OF REASONS

7. The DFSA has decided to take the action set out in this Notice, under Articles 52(1)(c) and 52(3) of the Regulatory Law, as it has serious concerns as to:
 - a. the Firm's ability to maintain adequate resources (including financial resources) to conduct and manage its affairs;
 - b. the Firm's ability to maintain adequate Capital Resources;
 - c. the Firm's status as being fit and proper to carry on Financial Services in the DIFC;
 - d. the Firm's handling of Client Money in circumstances where it is not authorised to hold or control Client Money;
 - e. the Firm's ability to maintain adequate systems and controls to ensure that it complies with all legislation that applies in the DIFC; and
 - f. the Firm's failure to keep the DFSA promptly informed of matters relating to its attempts to remediate its failure to maintain adequate Capital Resources, of which the DFSA would reasonably expect to have been notified.
8. In issuing this Notice and the suspension set out therein, the DFSA acted under the powers vested in it under Articles 52(1)(c) and 52(3) of the Regulatory Law on its own initiative as it has reasonable grounds to believe that the Firm is in breach of, or has been in breach of, the Regulatory Law or Rules or other legislation administered by the DFSA and that the Firm is no longer fit and proper to carry on the Financial Services for which it has authorisation under its Licence.

REASONS FOR THE ACTION

DFSA concerns set out in the Preliminary Notice dated 4 April 2019

9. On 4 April 2019, the DFSA gave RCL a preliminary notice in which it proposed to suspend the Licence of RCL (the "**Preliminary Notice**") due to the matters set out in this section.
10. RCL was authorised by the DFSA on 20 November 2017 as a PIB Category 4 Authorised Firm, and is licensed to carry on the Financial Services of:
 - a. Advising on Financial Products;
 - b. Arranging Credit & Advising on Credit; and
 - c. Arranging Deals in Investments.
11. On 29 July 2018, RCL lodged a notification with the DFSA indicating that it had fallen below its capital adequacy requirement and attaching a copy of its 2018 Q2 PIB return. That return showed that, as at 30 June 2018, RCL's Capital Resources had fallen US\$ 61,000 below its Expenditure Based Capital Minimum ("**EBCM**") of US\$ 109,000. On 6 August 2018, the DFSA acknowledged that notification and requested RCL to confirm whether that breach had been rectified and, if not, to provide a plan for doing so.
12. On 6 August 2018 and in response to that request, the Firm's ██████████ stated that RCL had a plan to resolve its capital deficit within Q3 or, failing that, by year end. On 7 August 2018, ██████████ provided the DFSA with a signed Board Resolution dated 22 July 2018, which acknowledged the capital deficiency and stated that RCL was required to inject additional capital of US\$ 205,000, but did not detail how or by when that capital injection

would be achieved. The DFSA responded to RCL by email that same day, noting that the Board Resolution did not contain a plan or timetable for the capital injection to which it referred.

13. On 28 August 2018, RCL provided the DFSA with a further signed Board Resolution dated 14 August 2018, which stated that the Board of RCL had approved an increase of US\$ 750,000 to the Firm's capital, which would be paid by 31 October 2018 (the "**14 August Resolution**").
14. On 29 October 2018, RCL lodged a notification with the DFSA indicating that the Firm was in breach of its EBCM. The notification attached a copy of RCL's 2018 Q3 PIB return, which showed that, as at 30 September 2018, the liquid assets held by the firm fell US\$ 101,000 below its EBCM. The financial information given in that notification also reflected that RCL's Capital Resources as at that date were US\$ (228,000), which was US\$ 337,000 below the Firm's EBCM of US\$109,000.
15. On 30 October 2018 and in response to the DFSA's acknowledgement of receipt of the notification, ██████ provided the DFSA with a further copy of the 14 August Resolution under cover of an email stating "*we will keep you posted on the same*".
16. As at 31 October 2018, and contrary to the statement made in the 14 August Resolution and communicated to the DFSA, the Firm's capital was not increased by US\$ 750,000, or by any other significant amount. Contrary to ██████'s statement on 30 October 2018 that the DFSA would be kept updated on the planned capital increase, the fact that it did not take place as planned was not communicated to the DFSA by RCL.
17. During December 2018 and January 2019, the DFSA was in regular contact with RCL in regard to its failure to have paid one US\$ 500 fee for an IND1 application and two US\$ 1,000 late payment fees related to the delayed payment of two prior annual fees. In connection with this dialogue, the DFSA requested copies of RCL's bank statements covering all of 2018. Upon receipt of these bank statements on 16 January 2019, the DFSA noted no apparent evidence of a monetary capital infusion having transpired on or around 31 October 2018.
18. On 21 January 2019, in an email to RCL's ██████ (and among other issues covered in that email), the DFSA specifically requested confirmation as to whether the capital increase referred to in the 14 August Resolution had taken place. The DFSA did not receive any response to its request and the continuing capital deficiency was only confirmed following RCL's submission of its 2018 Q4 PIB return on 31 January 2019.
19. On 31 January 2019, RCL's 2018 Q4 PIB return showed the Firm's Capital Resources as being US\$ (466,000) which represented a capital deficit of US\$ 575,000 as against the Firm's EBCM of US\$ 109,000. The return also showed that RCL's liquid assets had fallen US\$ 107,000 below its EBCM.
20. Also on 31 January 2019, ██████ lodged a notification with the DFSA which stated that RCL had three open breaches, as follows: (i) the Firm's Capital Resources were less than its capital requirements; (ii) the Firm's liquid assets were lower than its EBCM; and (3) RCL did not currently have a Compliance Officer, although temporary cover was in place (a position which has since been remedied with the appointment of a permanent Compliance Officer). In that notification, ██████ stated that "*RCL will do the Capital Increase of \$750,000 to remedy the deficits*".
21. On 4 February 2019, the DFSA sent a letter addressed to RCL's Board of Licenced Directors setting out certain supervisory concerns and requested, amongst other things, that by 14 February 2019, RCL provide either: (i) confirmation that the Firm was in

compliance with its Capital Requirements under PIB; or (ii) full details of any ongoing breaches of RCL's Capital Requirements, accompanied by a written Risk Mitigation Programme setting out the steps the Firm will take to resolve those ongoing breaches, the timetable it would follow in taking those steps and the reasons it considered that timetable to be achievable.

22. On 13 February 2019, RCL responded to the request contained in the DFSA's letter of 4 February 2019 by stating that its shareholders had agreed to increase RCL's capital by US\$ 1 million on or before 31 March 2019.
23. On 18 February 2019, during a meeting at RCL's offices, ██████ provided to the DFSA a copy of the minutes of RCL's 13 February 2019 Board meeting, which stated that RCL did not increase its capital as agreed in its 14 August 2018 Board meeting and that RCL's capital had to increase by US\$ 1 million on or before 31 March 2019 to maintain compliance with the DFSA's Rules.
24. At that same meeting on 18 February 2019, RCL informed the DFSA that it had handled Client Money by accepting US\$ 249,920 of a Client's money into its operating bank account on 2 June 2018 and subsequently paying US\$ 200,000 of that money to a third party for the benefit of the Client on 6 June 2018. The remaining US\$ 49,920 was used to reimburse RCL for a payment it had made to the same third party for the benefit of the Client on 21 March 2018. The US\$ 200,000 paid to a third party for the benefit of the Client constituted Client Money under COB Rule 6.12.1, having been held or controlled on behalf of a Client in the course of, or in connection with Investment Business. The remaining US\$ 49,920 did not constitute Client Money as it was money immediately due and payable by the Client to the Firm. RCL had not notified the DFSA of its handling of Client Money prior to the meeting on 18 February 2019 and only did so at that meeting in response to the DFSA inquiring about the relevant entries on its bank statements.
25. On 31 March 2019, ██████ provided to the DFSA a copy of what he represented to be a SWIFT transaction record, showing a transfer of US\$ 600,000 from RCL's majority shareholder to RCL on 28 March 2019. In his covering email, ██████ stated that capital of US\$ 600,000 had been infused into RCL and that a transfer of the remaining US\$ 400,000 would be made within 10 days.
26. On 1 April 2019, in response to a request from the DFSA, ██████ provided a summary of the Firm's current capital position as at 31 March 2019, which reflected that RCL held liquid assets exceeding its EBCM, but that its Capital Resources were US\$ (492,150), resulting in a capital deficit of US\$ (646,456), based on RCL's revised EBCM of US\$ 154,306. Based on that summary, RCL had failed to resolve its continuing breaches of Capital Requirements under PIB. That summary also indicated that the planned transfer of a further US\$ 400,000 would not have been sufficient to resolve those ongoing breaches of the Firm's Capital Requirements.
27. Finally, as at 31 March 2019 and based on the summary of the Firm's capital position referred to at paragraph 26 above, the Firm continued to recognise in its financial records a balance of US\$ 367,500 (being US\$ 350,000 plus VAT) receivable from a Client which it has treated as an asset in calculating its capital position. It is, however, questionable whether it will be open to RCL to include this balance receivable as an asset in its audited accounts without booking a corresponding provision for the same, for the following reasons:
 - a) RCL entered into a consultancy agreement with the Client dated 28 October 2017 (the "**Consultancy Agreement**"), pursuant to which RCL was to advise the Client on a specific high yield trade deal (the "**Investment Opportunity**") and receive remuneration

from the Client based on a percentage of the Client's income or profits from the Investment Opportunity;

- b) During the 18 February 2019 meeting at RCL's offices, [REDACTED] provided to the DFSA a 'credit note' issued by the Client, dated 15 March 2018. That credit note stated that the Client owed RCL \$350,000 in fees related to the Investment Opportunity, although RCL had not clearly represented this balance receivable on its PIB returns prior to submission of its 2018 Q4 PIB return;
 - c) On 21 March 2019, RCL informed the DFSA that the Client's participation in the Investment Opportunity had been cancelled, with no income or profits accruing, in August 2018;
 - d) On 1 April 2019, the DFSA asked RCL to explain why it continued to recognise the balance due from the Client as an account receivable. [REDACTED] responded by notifying the DFSA that RCL and the Client had entered into a variation of the Consultancy Agreement on 21 March 2019 (the "**Variation**"). The Variation provided that the Client will pay to RCL a 'standard service fee' of \$350,000 within 18 months of the date of the agreement; and
 - e) The Variation did not appear to identify any specific products or services to be offered or provided to the Client by RCL in consideration of the fee, nor did it explain how the purpose of the Consultancy Agreement, which appeared to relate only to the now cancelled Investment Opportunity, had been varied. It is therefore unclear what event or transaction renders the fee due and payable by the Client.
28. Given the matters identified in paragraph 11 to and including paragraph 27 above, the DFSA considers that the Firm has inadequate resources to conduct and manage its affairs and has inadequate systems and controls to ensure it complies with all relevant laws and regulations and Rules applicable to it in the DIFC, and, accordingly, should not be permitted to continue to operate in or from the DIFC.

Rulebook requirements

29. Consistent with the Principles for Authorised Firms described in GEN 4 and the licensing requirements in GEN 7.2, the DFSA requires that RCL, as an Authorised Firm, at all times:
- a. remains fit and proper to carry on Financial Services in the DIFC;
 - b. maintains adequate resources (including financial resources) to conduct and manage its affairs;
 - c. maintains adequate systems and controls to ensure that it complies with all legislation that applies in the DIFC; and
 - d. deals with the DFSA in an open and co-operative manner.
30. In particular, RCL is required to comply with the following Rules:
- a. GEN Rule 4.2.4, which requires RCL to maintain and be able to demonstrate the existence of adequate resources (including financial resources) to conduct and manage its affairs;
 - b. GEN 4.2.3, which requires RCL to have adequate systems and controls to ensure it complies with legislation applicable in the DIFC;

- c. GEN 4.2.10 which requires RCL to deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Authorised Firm of which the DFSA would reasonably expect to be notified.
- d. PIB Rule 3.2.2, which, by reference to PIB Rule 3.5.2, requires RCL to maintain a Capital Requirement at all times on the following basis:
 - i. Capital Resources equal to its EBCM (because this is higher than its Base Capital Requirement); 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;
- e. PIB Rule 3.5.3(1), which requires RCL to maintain an amount which exceeds its EBCM in the form of liquid assets; and
- f. COB Rule 6.12.2 which prohibits RCL, as an Authorised Firm in Category 4, from holding Client Money.

Summary of reasons

- 31. As set out at paragraph 9 above, on 4 April 2019, the DFSA gave RCL a Preliminary Notice in which it proposed to suspend the Licence of RCL due to the matters set out at paragraphs 11 to 28 above.
- 32. RCL was provided with an opportunity to provide written representations to the decision maker and invited to request an opportunity to make oral representations if it wished to do so. RCL did not request the opportunity to make oral representations, but made written representations, as follows:
 - a. written representations dated 25 April 2019 (the "**Representations**"), which annexed a number of documents, including: (i) a financial undertaking to increase the capital of RCL by US\$ 2 million on or before 9 May 2019, signed by board members and shareholders of RCL; and (ii) a remedial action plan; and
 - b. an email dated 9 May 2019 confirming that the increase in capital of US\$ 2 million referred to in paragraph (a) above had not been made.
- 33. In addition, the decision maker received a memorandum from the DFSA Supervision Division dated 29 April 2019, which was in response to the Representations. A copy of this memorandum was provided to RCL on 1 May 2019.
- 34. After reviewing the representations made by RCL, the DFSA has decided to suspend the Licence of RCL for the following reasons:
 - a. RCL has failed to maintain adequate resources to conduct and manage its affairs, as required by Authorised Principle 4 (GEN Rule 4.2.4);
 - b. RCL has failed to maintain Capital Resources equal to its EBCM as required by PIB Rule 3.2.2;
 - c. RCL has failed to ensure it maintains capital and liquid assets in addition to its Capital Requirement which are adequate in relation to the nature, size and complexity of its business as required by PIB Rule 3.2.2;
 - d. RCL has failed to maintain an amount which exceeds its EBCM in the form of liquid assets as required by PIB Rule 3.5.3(1);

- e. RCL has failed to keep the DFSA promptly informed of matters relating to its attempts to remediate its failure to maintain adequate Capital Resources of which the DFSA would reasonably expect to have been notified as required by GEN Rule 4.2.10; and
 - f. RCL has held Client Money in breach of COB Rule 6.12.2.
35. The DFSA notes that many of the contraventions referred to in paragraph 34 have been continuing for approximately ten months.
36. The DFSA notes it is acting under the powers vested in it in under Article 52(1)(c) of the Regulatory Law and the suspension of RCL's Licence will continue until the earlier of:
- a. RCL satisfying the DFSA's prudential Category 4 Capital Requirements (as set out in PIB); or
 - b. the Action Date,
- and if by the Action Date, RCL has failed to satisfy the required prudential Category 4 Capital Requirements (as set out in PIB), the DFSA will consider taking immediate steps to withdraw RCL's Licence and/or such other actions as the DFSA deems appropriate in accordance with the Law.

PROCEDURAL MATTERS

Decision Maker

37. The decision which gave rise to the obligation to give this Notice was made by a Director of Supervision.
38. This Notice is given to the Firm under Paragraph 5 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

39. In accordance with Paragraphs 5(2) and 5(3) of Schedule 3 of the Regulatory Law:
- a. 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.
 - b. A copy of an internal DFSA memorandum, dated 3 April 2019 and containing a recommendation to make the decision which gave rise to the obligation to give the Preliminary Notice, was provided to the Firm on 4 April 2019.
 - c. A copy of an internal DFSA memorandum, dated 29 April 2019 responding to the Representations was provided to the Firm on 1 May 2019.
 - d. The DFSA notes that other relevant materials considered by the DFSA are set out above in paragraphs 11 to and including paragraph 27, paragraph 32 and otherwise in email and other written correspondence between the Firm and the DFSA. The DFSA further notes the Firm has copies of these relevant materials and accordingly the DFSA does not propose to provide further copies with this Notice.

Review of decision by the Financial Markets Tribunal (the "FMT")

40. Pursuant to Article 52(6) of the Regulatory Law, RCL has the right to refer this matter to the FMT for review. The FMT is operationally independent of the DFSA and it 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 decision using the powers available to the DFSA. This may involve:
- a. confirming the decision set out in this 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.
41. Should you wish to have this matter reviewed by the FMT, you must exercise that right within 30 days from the date when you are notified of this decision. The DFSA considers the deadline for referral of this matter to the FMT to be 11 June 2019.
 42. Proceedings before the FMT are commenced by submitting a Notice of Appeal ("**Form FMT 1**") to the Registrar of the FMT.
 43. 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:
<https://www.dfsa.ae/en/About-Us/Our-Structure/Financial-Market-Tribunal>
 44. Please note, under Paragraph 26 of the FMT Rules of Procedure, the Firm is required to send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Effect of decision

45. If RCL does not refer the matter to the FMT within the time specified in a Decision Notice, or the FMT does not order otherwise, the decision in this Notice will stand.
46. The effect of taking the action set out in this Notice included the following:
 - a. The DFSA's public register and website will be amended to reflect the action that has been taken.
 - b. The DFSA may publicise details of the action that has been taken against RCL in such form and manner as it regards appropriate.

Publicity

47. Under Article 62(1) of the Regulatory 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 the Firm's Licence and authorisations.
48. 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.
49. Therefore, subject to any referral of this matter to the FMT, 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.
50. RPP 5-17-8 to 5-17-10 are relevant to the publication of information about the matter to which this Notice relates. As stated in these paragraphs, the DFSA will generally make public any decision made by the DMC and will do so in a timely manner after any relevant period to refer a matter to the FMT has expired or the appeal process has come to an end.
51. In the event that you refer this matter to the FMT and as 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

52. For more information concerning this matter generally, please contact [REDACTED] by email at [REDACTED].

Signed:

[REDACTED]

Lawrence Paramasivam
Director, Supervision
On behalf of the Dubai Financial Services Authority